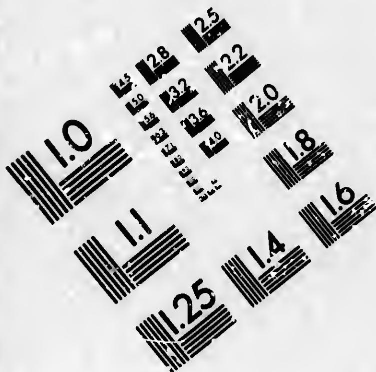

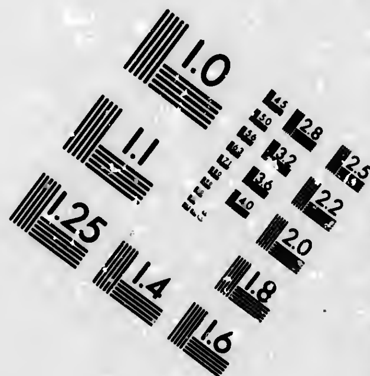

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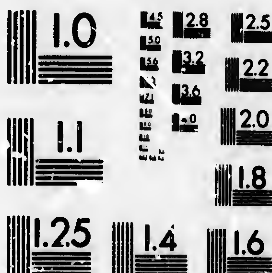

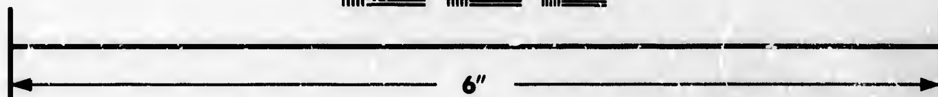

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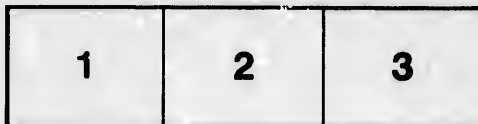

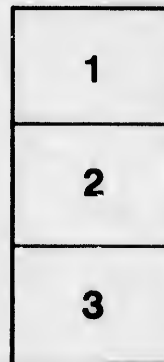

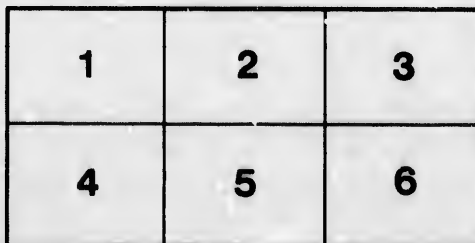

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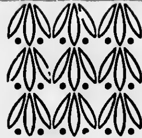

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How to Incorporate a Company.

BY

C. A. MASTEN,

Barrister-at-law

OF OSGOODE HALL, TORONTO.

	PAGE		PAGE
Dominion of Canada	35	Province of New Brunswick	69
Province of Ontario	44	" " Nova Scotia	74
" " Quebec	56	North West Territories	77
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There are in Canada two methods by which Corporations are constituted.

1. By special Act either of the Parliament of Canada or of the Legislature of the Province in which incorporation is sought.

2. By letters patent issued under the Companies' Act.

INCORPORATION BY SPECIAL ACT.

If incorporated by special Act, the company's powers, its liabilities, the rights of its shareholders, etc., are determined by The Special Act of Incorporation and by certain general provisions applicable to all such companies where these are not inconsistent with the provisions of the special act.

If any inconsistency arises between the general act and the special act of incorporation, the provisions of the special act govern.

The general provisions which govern companies incorporated by special Act of Parliament or of the Legislature are embodied in enactments known as the "Companies' Clauses Acts," which, though similar, are not always identical in their provisions with the acts governing Companies incorporated by letters patent.

The Companies' Clauses Acts are as follows, and apply to all companies incorporated by special Act unless excluded by or inconsistent with the terms of the Special Act of Incorporation.

Canada R. S. C., 1886, cap. 118.
Quebec R. S., Que., 1888, Articles 4651 to 4693.
Nova Scotia R. S., N.S., 5th Series, cap. 78.
British Columbia R. S., B.C., 1897, cap. 45.

In the following Provinces the same Act applies to companies incorporated by Special Act as to those incorporated by Letters Patent.

Ontario R. S. O., 1897, cap. 191, sec. 6.

In the following Provinces the usual method is either to incorporate in the Special Act of Incorporation in full all the requisite provisions or to incorporate by reference to the Letters Patent Act certain of its provisions, but, unless these are specially so incorporated, they do not apply. This practice exists in:

New Brunswick.

Nova Scotia, as to R. S. N.S., 5th Series, cap. 79.

Manitoba.

North West Territories.

For the procedure necessary to incorporate a company by special Act of Parliament or of a Provincial Legislature, the reader is referred to the article on Private Bills Procedure of the Dominion and various Provinces embodied in Snow's Legal Compendium for 1899, at page 120, 134, 136, 140, 149 and 151.

The greater number of companies are now incorporated by Letters Patent in preference to the method of incorporation by Special Act, unless the incorporators require some special powers, and the circumstances warrant the grant of these powers; the incorporation by Letters Patent is quicker and easier, owing to the facility for subsequent change and modification, it is more flexible, hence it is better adapted to the requirements of original manufacturing and mercantile undertakings.

COMPANIES INCORPORATED UNDER LETTERS PATENT.

The subsequent portions of this article deal exclusively with the incorporation of companies by Letters Patent or registration in the Dominion of Canada and in the various Provinces.

The Legislature of Canada, both Dominion and Provincial, with the exception of British Columbia, after a trial of the Registration System, which exists in England and the United States and in France and some other European countries, have returned to the more formal method of issuing Letters Patent incorporating the proposed company under the Great Seal.

The effect of this difference in method is to bring the proposed company sought to be incorporated directly under the scrutiny of the executive officers of the Government, and to give to the Governor or Lieutenant-Governor in Council an opportunity to refuse the incorporation or to require modifications of the powers sought by the proposed Company.

The following memorandum embraces the Statutory Provisions governing the incorporation of joint stock companies by the Dominion Authority, and also by the various Provinces; also the forms of petition for incorporation, subscriptions for stock and necessary papers in the form officially prescribed by the several departments where any such directions or forms are published.

Where no forms or instructions are officially issued that fact is stated, and the provisions of the statute are given.

In such cases the forms adopted by other Provinces will afford a satisfactory guide.

DOMINION OF CANADA.

Information respecting the incorporation of joint stock companies by Letters Patent under the Provisions of the Companies' Act, Revised Statutes of Canada, Chapter 119, as issued by the Department of the Secretary of State.

The sections of the Statute relating to the incorporation of Companies by the Dominion are as follows:—

REVISED STATUTES OF CANADA, 1886, CHAPTER 119, SECTIONS 3 TO 9.

3. The Governor in Council may, by Letters Patent under the Great Seal, grant a charter to any number of persons, not less than five, who petition therefor, constituting such persons, and others who thereafter become shareholders in the company thereby created, a body corporate and politic, for any of the purposes or objects to which the Legislative authority of the Parliament of Canada extends, except the construction and working of railways, or the business of banking, and the issue of paper money, or the business of insurance. 40 V., c. 43, s. 3.

4. The applicants for such Letters Patent shall give at least one month's previous notice, in *Canada Gazette*, of their intention to apply for the same, stating therein:

a. The proposed corporate name of the company, which shall not be that of any other known company, incorporated or unincorporated, or any name liable to be confounded therewith, or otherwise on public grounds, objectionable;

b. The purposes for which this incorporation is sought;

c. The place within Canada which is to be its chief place of business;

d. The proposed amount of its capital stock—which in the case of a loan company shall not be less than one hundred thousand dollars;

e. The number of shares and the amount of each share;

f. The names in full and the address and calling of each of the applicants, with special mention of the names of not more than fifteen and not less than three of their number, who are to be the first or provisional directors of the company, and the majority of whom shall be residents of Canada. 40 V., cap. 43, s. 4.

5. At any time not more than one month after the last publication of such notice, the applicants may petition the Governor in Council, through the Secretary of State, for the issue of such Letters Patent:

2. Such petition shall state the facts set forth in the notice, the amount of stock taken by each applicant, the amount paid in upon the stock of each applicant, and the manner in which the same has been paid in, and is held for the Company;

3. The aggregate of the stock so taken shall be at least the one-half of the total amount of the proposed capital stock of the company.
4. The aggregate so paid in thereon shall, if the company is not a loan company, be at least ten per cent. of the stock, and shall not be less than one hundred thousand dollars;
5. Such aggregate shall be paid in to the credit of the company, or of trustees therefor, and shall be standing at such credit in some chartered bank or banks in Canada, unless the object of the company is one requiring that it should own real estate—in which case any portion not exceeding one-half of such aggregate may be taken as paid in, if it is *bona fide* invested in real estate suitable to such object, which is duly held by trustees for the company, and is of the required value, over and above all incumbrances thereon;
6. The petition may ask for the embodying in the Letters Patent of any provision which, under this Act might be made by by-law of the company; and such provision so embodied shall not, unless provision to the contrary is made in the Letters Patent, be subject to repeal or alteration by by-law. 40 V., cap. 43, s. 5.

6. Before the Letters Patent are issued the applicants shall establish to the satisfaction of the Secretary of State, or of such other officer as is charged by the Governor in Council to report thereon, the sufficiency of their notice and petition, and the truth and sufficiency of the facts therein set forth, and that the proposed name is not the name of any other known incorporated or unincorporated company, and for that purpose the Secretary of State, or such other officer, shall take and keep of record any requisite evidence in writing, by oath or affirmation or by solemn declaration. 40 V., cap. 43, s. 6.

7. The Letters Patent shall recite such of the established averments of the notice and petition as to the Governor in Council seems expedient. 40 V., cap. 43, s. 8.

8. The Governor in Council may give to the company a corporate name, different from that proposed by the applicants in their published notice, if the proposed name is objectionable. 40 V., cap. 43, s. 8.

9. Notice of the granting of the Letters Patent shall be given forthwith by the Secretary of State, in the *Canada Gazette*, in the form A. in the schedule to this Act; and thereupon from the date of the Letters Patent, the persons therein named, and their successors shall be a body corporate and politic, by the name mentioned therein; and a copy of every such notice shall forthwith be, by the company to which such notice relates, inserted on four separate occasions in at least one newspaper in the county, city or place where the head office or chief agency is established. 40 V., cap. 43, ss. 9 and 106.

LETTERS PATENT.

The Governor in Council may, by letters patent under the Great Seal, grant a Charter to any number of persons, not less than five, who petition therefor, constituting such persons, and others who thereafter become shareholders in the company thereby created, a body corporate and politic, for any of the purposes or objects to which the Legislative authority of the Parliament of Canada extends, except the construction and working of railways, or the business of banking and the issue of paper money, or the business of insurance.

PUBLIC NOTICE.

The applicants for such letters patent must give at least one calendar month's previous notice in the *Canada Gazette* of their intention to apply for same. All communications having reference to the publication of the notice should be addressed to the Queen's Printer and Controller of Stationery, Ottawa.

The notice must contain the following particulars:—

I. The proposed corporate name of the company, which must not be that of any other known company, incorporated or unincorporated, or any name liable to be confounded therewith, or otherwise on public grounds objectionable.

The name of the company should, as far as it is possible, indicate its object. The prefix "The" and the word "Company" or some equivalent collective appelation such as "Factory," "Association" or "Club" must form part of the corporate name of all companies incorporated under this Act. Old and well-established firms may be incorporated under the firm name without the prefix "The" or the word "Company." The word "Limited" must likewise be added to the proposed name.

II. The purposes within the purview of the Act for which its incorporation is sought.

(*a*) Intending applicants should bear in mind that the statute provides for the acquisition and holding by companies incorporated under this Act of all property real and personal requisite for the purposes of the Company. There is no object therefore in asking for facilities already afforded by the Act.

(*b*) The intention of the Acts is to limit the powers of a company to the due carrying out of but one object and the strictly necessary adjuncts thereto, and the practice of the department is to so restrict them. It is useless, therefore, for intending applicants to encumber their petition with the recital of a multiplicity of powers which cannot be granted.

(*c*) In the charter granted to telegraph and telephone companies the following provisos are added to the powers given to these companies, and are incorporated in their charters. These should, therefore, be embodied in the petition for incorporation, though not necessarily inserted in the notice.

Provided that nothing herein contained shall be construed to interfere with any private right or to confer on the said company the right of building bridges, piers, or works over

any navigable river in Canada, without the consent of the Governor in Council, or of erecting posts or placing their line of telegraph (or telephones) upon the line of any railway, without the consent of the company or parties to whom such railway belongs.

Provided also that any message in relation to the administration of justice, the arrest of criminals, the discovery for prosecution of crime, and government messages or despatches shall always be transmitted in preference to any other message or despatch, if required by any person connected with the administration of justice or any person thereto authorized by any Minister of Canada.

(*d*) If it is not specially stated in the purposes for which incorporation is sought that the operations of the company are to be carried on throughout the Dominion of Canada, that fact should be set out in a supplementary paragraph to be added to such purposes.

III. The place within the Dominion of Canada which is to be its chief place of business.

The above is the language of the statute; consequently one place only can be named in the Charter as the chief place of business.

IV. The proposed amount of its capital stock, which in case of a Loan Company, shall not be less than one hundred thousand ($100,000) dollars.

V. The number of shares into which the capital is intended to be divided, and the amount of each share.

The statute contemplates the issue of ordinary stock only, and, therefore, no provision can be made in the Letters Patent for the issue of any other class of stock.

VI. The Christian name in full, and the address or residence, and the calling and occupation of each of the applicants, with special mention of not less than three—nor more than fifteen, of their number, who are to be the first or provisional directors of the company, and the majority of whom must be resident in Canada.

Each director must be a shareholder in the company, and own stock absolutely in his own right.

THE PETITION.

1. At any time not more than one month after the last publication of such notice in the *Canada Gazette* the applicants may petition the Governor General, through the Secretary of State of Canada, for the issue of such letters patent.

(*a*) The persons who petition must be the same persons whose names appear in the *Canada Gazette*, and must be shareholders in the proposed company.

(*b*) One half of the proposed capital stock must be subscribed for and ten per cent. in cash paid in thereon by those whose names are set out in the notice in the *Canada Gazette* and in the petition, or by some of them. Stock subscribed for by persons who have not joined in the notice and petition shall not be recognized.

(c) The petition must correspond in every particular with the facts set forth in the notice inserted in the *Canada Gazette*, and should contain the following additional information, that is to say:—

The amount of stock taken by each of the petitioners respectively; the amount paid in thereon by each applicant, and how it is held for the company, and whether it was paid in cash, by services, or by the purchase or transfer of property, or how otherwise. This information should be given in the form of the tabulated statement embodied in the specimen petition hereto annexed. The Stock Book of the Company need not be produced.

The aggregate of the stock taken must be at least one-half of the total amount of the stock of the company. The aggregate paid in on the stock taken must, if the company be not a loan company, be at least ten per cent. thereof. If the company be a loan company, the aggregate paid in upon the stock must be at least ten per cent. thereof, and must not be less than one hundred thousand dollars.

Such aggregate shall be deposited to the credit of the Receiver General of Canada, and shall be standing at such credit in some chartered bank in Canada, and the applicants shall, with their petition, produce the deposit receipt for such amounts so deposited. This receipt should be accompanied by a draft for the amount so deposited payable to the credit of the Receiver General. As a matter of practice, this sum is usually withdrawn by the Department at Ottawa from the Bank and retained at Ottawa until after the incorporation of the company is completed.

At any time after the signing of letters patent incorporating the applicants as a company, the said aggregate, so paid in to the credit of the Receiver General, may be returned to and for the sole use of the company, or in case of failure to incorporate, to the applicants who have paid in or contributed to the same, under regulations from time to time made by the Governor in Council. These regulations provide that when a charter has been granted or refused the Receiver General shall upon the request of, and through the Secretary of State, refund to the company the amount deposited in connection with its application.

In case the object of the company is one requiring that it should own real estate, any portion not exceeding one-half of such aggregate may be taken as paid in, if it is *bona fide* invested in real estate suitable to such object, and such real estate is, by a valid and sufficient registered deed, duly held by two or more trustees for the company, and the applicants shall establish the fact, by oath, affirmation or declaration, that such real estate is of the required value over and above all encumbrances thereon.

Evidence must be produced showing the value of the real estate which it is proposed to transfer to the company.

The petition may ask for the embodying in the letters patent of any provision which under the Act might be made by by-law of the company incorporated; and such provision so embodied shall not, unless provision to the contrary be

made in the letters patent, be subject to repeal or alteration by by-law.

The petition must be signed by each of the applicants in person, and in presence of a witness. If, however, this is found impracticable in any case the applicant may sign by an attorney, but the original Power of Attorney, or a duly authenticated or notarial copy thereof must be produced. Each signature should be verified by an affidavit or statutory declaration made by the witness thereof.

PROOF REQUIRED BY SECTION 6 OF THE ACT.

(*a*) An Affidavit or Statutory Declaration establishing the sufficiency of the petition and the truth and sufficiency of the facts therein stated, also that the proposed name of the company is not that of any other known incorporated or unincorporated Company.

(*b*) An affidavit or Statutory Declaration proving the publication in the *Canada Gazette* of the notice required by Section 6 of the Act, setting out the dates of the several insertions and having attached to it a copy of such notice.

(*c*) Affidavits or Statutory Declarations verifying the signatures of the petitioners.

The proofs required with reference to the truth and sufficiency of the facts stated in the petition, and with respect to the proposed corporate name, may be made by an affidavit or affirmation, or statutory declaration of any of the petitioners or their Attorney or Agent, who should be a resident of the Dominion of Canada.

FEES.

No step shall be taken in any department of the Government towards the issue of any letters patent, until after the amount of all fees therefor shall have been duly paid.

The following is the schedule of fees payable under Section 84 of the Act:—

1. When the proposed capital is $1,000,000 or upwards $500
2. When the proposed capital stock of the Company is $500,000 or upwards and less than $1,000,000.. 300
3. When the proposed capital stock of the Company is $200,000 or upwards and less than $500,000.. 250
4. When the proposed capital stock of the Company is $100,000 or upwards and less than $200,000.. 200
5. When the proposed capital stock of the company is more than $40,000 or less than $100,000.. 150
6. When the proposed capital stock of the company is $40,000 or less than $40,000.. .. 100

On application for Supplementary Letters Patent, other than those for increase of capital stock, the fee is to be one

half of that charged on the original Letters Patent, and if such application for Supplementary Letters Patent be made by a company incorporated during the currency of the tariff of fees established by Order in Council of the 22nd October, 1877, the fee payable thereon shall be one half of that charged for original Letters Patent of the same class issued subsequently to the 22nd of May, 1897. "When an increase of capital stock is applied for, the fee thereon shall be based upon the actual increase of the capital stock, and the fee payable shall be the same as is payable upon letters patent for the incorporation of a company whose capital stock is of the same amount as such increase."

All fees must be paid in cash or by an accepted cheque made payable to the order of the Honourable the Secretary of State, and should be transmitted to him by Registered Letter.

FORM OF PETITION FOR INCORPORATION.

To His Excellency

THE GOVERNOR GENERAL IN COUNCIL.

The petition of .

(Here insert names in full, address and calling, or occupation of each of the applicants.)

1. That your petitioners are desirous of obtaining a Charter of Incorporation by Letters Patent under the provisions of "The Companies' Act" (Revised Statutes of Canada, Chapter 119) incorporating your petitioners and such others as may become shareholders in the company, thereby created, a body corporate and politic, under the name of "The Company" (Limited,) which is not the name of any other known company incorporated or unincorporated, or liable to be confounded therewith, or otherwise on public grounds objectionable.

2. That your petitioners have given one month's previous notice of their intention to apply for the said Letters Patent, by inserting the same in the issues of the *Canada Gazette* of the following dates, 19 , viz.:—

3. That the purposes or objects of the said company within the purview of the Act for which incorporation is sought, are:—

4. That the operations of the said company are to be carried on at and elsewhere throughout the Dominion of Canada.

5. That the chief place of business of the said company is to be at the of in the Province of in the Dominion of Canada aforesaid.

6. That the amount of the capital stock of the said company is to be dollars.

7. That the said stock is to be divided into shares of the value of dollars each.

8. That the said are to be the first or provisional directors of the said company.

9. That your petitioners have taken the amount of stock, and paid in thereon the several amounts thereon, set opposite to their respective names as follows:—

Petitioner's name in full	No. of shares taken	Amount of stock subscrib'd for	Amount paid in on stock subscrib'd	How paid.
Total.................				

10. The aggregate of stock so taken amounts to dollars, being one-half of the total amount of the stock of the company, and the aggregate paid in on the stock so taken amounts to dollars, being ten per cent. thereof, such aggregate has been paid in to the credit of the Receiver General and is now standing at such credit in the Bank in the of as appears by the receipts from said bank, which are hereunto annexed.

There has been invested in real estate, suitable to the objects of the company, the sum of dollars. The said real estate consists of and is of the value of at least dollars over and above all insurances thereon, being sufficient with the sum so paid in as aforesaid, to make per cent. of the aggregate of the stock so taken, and is duly held by , and , as

YOUR PETITIONERS THEREFORE PRAY,

THAT Your Excellency will be pleased to grant a Charter of Incorporation by Letters Patent under the Great Seal to your petitioners and such others as may become shareholders in the company thereby created, a body corporate and politic, for the purposes and objects aforesaid, under the name of "The Company" (Limited).

AND YOUR PETITIONERS AS IN DUTY BOUND WILL EVER PRAY.

Dated at the of in the of this day of A.D., 19 .

Signed and executed in the presence of

....

....

....

....

....

FORM OF DECLARATION TO BE USED IN FURNISHING PROOF REQUIRED IN SUPPORT OF PETITION. FOR INCORPORATION*.

Canada,
Province of
County of
To WIT:

In the matter of the application of
and others for Letters Patent of incorporation as "The
Company" (Limited).

I, of the
of in the
County of and Province of
, do solemnly declare:—

1. That I was personally present and did see
sign their respective names to the petition (hereunto annexed) praying for Letters Patent of incorporation as "The
Company" (Limited).

2. That I know the said

3. That the signatures of
are of the proper handwriting of the said parties respectively.

4. That the several allegations and statements made and contained in the petition for incorporation of "The
Company" (Limited) hereunto annexed are, to the best of my knowledge and belief, true and correct.

5. The proposed corporate name "The
Company" (Limited), is not, as I verily believe, the name of any other known company, incorporated or unincorporated, or liable to be confounded therewith, or otherwise on public grounds objectionable.

6. That I have examined copies of the *Canada Gazette* published on the
and in each of said issues of that publication is inserted the notice of application in this matter similar to that hereto annexed marked

7. That I was personally present, and did see the annexed certificate of deposit duly signed by
who is manager (*agent or cashier*) of the Bank of
at the of
aforesaid.

8. That I know the said

9. That I am the subscribing witness to the said document.

And I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath and by virtue of "The Canada Evidence Act, 1893."

Declared before me at the
of in the
of this
day of A.D., 19 .

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* Where it is impossible for one person to subscribe as to the facts set out in the several paragraphs of this declaration, it will, of course, be necessary to omit that portion and have it established in a separate declaration by some one possessing the requisite knowledge.

FORM OF RECEIPT.

No.

Bank of

$

19

Received from
on account of
the sum of dollars,
which amount will appear at the Receiver General's credit with this bank.

Signed in triplicate,

Ent'd.

Pro Manager.

*

DRAFT ON GOVERNMENT ACCOUNT.

No.

Bank of

$

19

On demand please place to the credit of the Receiver General, the sum of

Pro Manager.

ONTARIO.

In the Province of Ontario it is not necessary to publish either in the Official Gazette or elsewhere any notice on the part of the applicants that they intend to apply for the issue of Letters Patent. This has the effect of shortening the period necessary for obtaining the charter to about ten days, and saves considerable expense in advertising.

The Statutory Provisions governing the incorporation of joint stock companies in Ontario are as follows:—

REVISED STATUTES OF ONTARIO, 1897, CHAPTER 191.

SECTIONS 9 TO 15 OF THE ACT.

INCORPORATION BY LETTERS PATENT.

9. The Lieutenant-Governor in Council may, by Letters Patent, grant a charter to any number of persons, not less than five, who petition therefor, creating and constituting such persons and any others who have become subscribers to the memoranda of agreement, a body corporate and politic for any of the purposes or objects to which the Legislative Authority of the Legislature of Ontario extends, except the construction and working of railways, the business of insurance and the business of a loan corporation within the meaning of The Loan Corporation Act. 60 V., cap. 28, s. 8.

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* A supply of these forms may be procured by any bank upon application to the Deputy Minister of Finance.

10. (1) The applicants for incorporation, who must be of the full age of twenty-one years, may petition the Lieutenant-Governor, through the Provincial Secretary, for the issue of Letters Patent. The petition of the applicants shall show:—

a. The proposed corporate name of the company, with the word "Limited" as the last word thereof; and such name shall not on any public ground be objectionable, and shall not be that of any known company, incorporated or unincorporated, or of any partnership or individual, or any name under which any known business is being carried on, or so nearly resembling the same as to deceive; provided, however, that a subsisting company or partnership, or individual, or a person carrying on such business may consent that such name in whole or in part be granted to the new company.

b. The objects simply stated for which the company is to be incorporated.

c. The place within the Province of Ontario where the head office of the company is to be situated, and where its principal books of account, and it corporation records are to be kept, and to which all communications and notices may be addressed.

d. The amount of the capital stock of the company.

e. The number of shares and the amount of each share.

f. The name in full of the place of residence and the calling of each of the applicants.

g. The number and the names of the applicants, not less than three, who are to be the provisional directors of the company.

2. The petition may be similar to but its essential features shall comply with Schedule B. to this Act, and shall be accompanied by a memorandum of agreement executed in duplicate, which may be similar to but which shall in its essential features comply with Schedule A. to this Act.

3. In case any amount has been paid in on shares taken by transfer of property to a trustee, the Provincial Secretary may require such evidence as shall be satisfactory to him of such transfer, and of the kind, nature and value of the property, and the manner in which, and the person or persons or corporate body by whom the property transferred, or any other payment, is held in trust for the company with a view to its incorporation.

4. Each petitioner shall be the *bona fide* holder in his own right of the share or shares for which he has subscribed in the memorandum of agreement.

5. The petition may ask for the embodying in the Letters Patent of any provision which otherwise under this Act might be embodied in any by-law of the company when incorporated. 60 V., cap. 26, s. 9.

11. The Lieutenant-Governor in Council may, from time to time, make regulations with respect to the following matters, namely:—

a. The cases in which notice of application for Letters Patent or Supplementary Letters Patent under this Act must be given;

b. The granting to one company the power to carry on more than one kind of undertaking;

c. The forms of Letters Patent, Supplementary Letters Patent, licenses, notices and other instruments and documents relating to applications and other proceedings under this Act;

d. The form and manner of the giving of any notice required by this Act;

and such regulations shall be published in the *Gazette*. 60 V., cap. 28, s. 10.

12. Before the Letters Patent are issued, the applicants shall establish to the satisfaction of the Provincial Secretary, or such other officer as may be charged by him to report thereon, the sufficiency of their memorandum of agreement and petition, and show that the proposed name is not open to objection under section 10 of this Act. 60 V., cap. 28, s. 11.

13. (1) The Provincial Secretary, the Assistant Provincial Secretary, or such other officer may for the purpose aforesaid, or for any other purpose under this Act, take any requisite evidence in writing under oath and affirmation.

(*a*) Proof of any matter which may be necessary to be made under this Act may be made by statutory declaration, or by affidavit or by deposition before the Provincial Secretary or Assistant Provincial Secretary, or any other officer as aforesaid, or before any Justice of the Peace, or Commissioner for taking affidavits, or Notary Public, who, for that purpose, are hereby authorized and empowered to administer oaths or take affirmations. 60 V., cap. 28, s. 12.

14. The Lieutenant-Governor may give to the company a corporate name, wholly or partially different from the name proposed by the applicants in their petition, and may in the Letters Patent vary the powers of the company from the powers stated in the petition. 60 V., cap. 28, s. 13.

15. Notice of the granting of Letters Patent shall be given forthwith by the Provincial Secretary in the *Gazette*, and from the date of the Letters Patent the petitioners and the persons who signed the memorandum of agreement and their successors, respectively, shall be a corporation by the name mentioned in the Letters Patent, and shall be invested with all the powers, privileges and immunities which are incident to such corporation, or expressed or are included in the Letters Patent and The Interpretation Act, and which are necessary to carry into effect the intention and objects of the Letters Patent and such of the provisions of this Act as are applicable to the company. 60 V., cap. 28, sec. 14.

OFFICIAL FORMS.

ATTACH NO PAPERS.

To His Honour the Lieutenant-Governor of the Province of Ontario-in-Council.

THE PETITION OF.... ....*write*........... ....

IF NAMES ....*legibly*.................. ....

AND ....*and*...........................

SIGNATURES ....*in full*..... ....

DO NOT ....*the*...........................

AGREE, ...*names*,.......... ....

PETITION ....*residences*....... ....

WILL ....*and*...........................

BE ....*occupations*...................

RETURNED ....*of the*.......................

FOR ....*petitioners*... ....

CORRECTION. ....*here*...........................

....*Humbly Sheweth*:—

1. That your petitioners are desirous of obtaining by Letters Patent, under the Great Seal, a Charter under the provisions of The Ontario Companies' Act*

constituting Your Petitioners and such others as may become shareholders in the Company thereby created a body corporate and politic under the name of The

Limited,

or such other name as shall appear to Your Honour to be proper in the premises.

2. That your petitioners have satisfied themselves and are assured that the corporate name under which incorporation is sought is not on any public ground objectionable, and that it is not that of any known Company, incorporated or unincorporated, or of any partnership, or individual, or any name under which any known business is being carried on, or so nearly resembling the same as to deceive.†

3. That your petitioners have satisfied themselves and are assured that no public or private interest will be prejudicially affected by the incorporation of your petitioners as aforesaid.‡

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* If incorporation is being sought under any other Act as well, set out its title here.

† Add here, when proper, " except the name
and your petitioners elsewhere shew that they have received the necessary consent in writing, under section 10 of the said Act, to the use of the name applied for."

‡ If otherwise, then the interests liable to be so affected shall be set out at length by affidavit, to be briefly referred to here.

4. That your petitioners are of the full age of twenty-one years.

5. That the object for which incorporation as aforesaid is sought by your petitioners is

TO..................................*state*.....................................

.....................................*object*.....................................

.....................................*in*.....................................

.....................................*general*.....................................

.....................................*terms;*.....................................

.....................................*incidental*.....................................

.....................................*powers*.....................................

.....................................*are*.....................................

.....................................*given*.....................................

.....................................*by*.....................................

.....................................*statute*.....................................

6. That the undertaking of the Company will be carried on (or from)
which is (or are) within the Province of Ontario, and that its Post Office will be

7. That the head-office of the Company will be at

8. That the amount of the capital stock of the Company is to be dollars.

9. That the said stock is to be divided into shares of dollars each.

10. That the said

are to be the provisional directors* of the Company.

11. That by subscribing therefor in a Memorandum of Agreement and Stock-Book duly executed, in duplicate, with a view to the incorporation of the company, your petitioners have taken the following amounts of stock set opposite their names:—

---

* The Directors, who must be at least three in number, must be petitioners and shareholders. *Each director must hold stock absolutely in his own right.*

NOTE.—If any payment, in cash or otherwise, has actually been made by any petitioner on his stock, particulars thereof may be set out here.

PETITIONERS.	Amount of stock subscribed for
....	.... *set* .... DOLLARS.
....	.... *out* .... DOLLARS.
....	.... *each* .... DOLLARS.
....	.... *amount* .... DOLLARS.
....	.... *in* .... DOLLARS.
....	.... *words,* .... DOLLARS.
....	.... *not* .... DOLLARS.
....	.... *in* .... DOLLARS.
....	.... *figures* .... DOLLARS.
....	.... DOLLARS.
....	.... DOLLARS
....	.... DOLLARS

....

....

Your petitioners therefore pray that Your Honour may be pleased by Letters Patent under the Great Seal to grant a Charter to your petitioners constituting your petitioners and such others as have or may become subscribers in the Memorandum of Agreement and Stock-Book of the Company thereby created, a body corporate and politic for the due carrying out of the undertaking aforesaid.

And your petitioners, as in duty bound, will ever pray.

Witnesses must sign here, and in their verifying affidavits must identify each signature in *the form* in which it was made.

(WITNESSES.)	(PETITIONERS.)
....	....
....	....
....	....
....	....
....	....
....	....
....	....
....	....
....	....
....	....
....	....
....	....

Petitioners will use their ordinary signatures, and see that their names, etc., in the preamble are correctly stated IN FULL.

☞ N.B.—Each signature must be verified by affidavit, to be made by the witness thereto. Signatures by attorney must be made under a *specific*, not general power, duly executed, which power must accompany this application. This rule also applies to the Memorandum of Agreement and Stock-Book.

Dated at this day of 19 .

AFFIDAVIT.

Province of Ontario.
County of
To wit:

In the matter of the herein application for the incorporation by the grant of Letters Patent of The Limited.

I, of the of in the County of Esquire, make oath and say:—

1 That I am one of the applicants herein.

2. That I have a knowledge of the matter, and that the allegations in the within petition contained are, to the best of my knowledge and belief, true in substance and in fact.

3. That I am informed and believe that each petitioner is of the full age of twenty-one years.

4. That the proposed corporate name of the Company is not on any public ground objectionable, and that it is not that of any known company, incorporated or unincorporated, or of any partnership or individual, or any name under which any known business is being carried on, or so nearly resembling the same as to deceive.*

5. That I have satisfied myself and am assured that no public or private interest will be prejudicially affected by the incorporation of the company as aforesaid

Sworn before me at the
of in the County of
this
same as to deceive.*

(Signature of Deponent.)

(Sig.)
day of A.D., 19 .

A Justice of the Peace, or a Commissioner for taking affidavits, etc. (or as the case may be)

FEES.

Memo.—Unless the fee be remitted with this Application, it will not be considered.

Extract from the Ontario Companies' Act.

Sec. 95.—(3) No step shall be taken in any Department towards the issue of any Letters Patent or Supplementary Letters Patent or License under this Act until after all fees therefor have been duly paid.

☞ N.B.—Cheques not "marked" will be returned, and no action taken in the meantime.

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* Add here, when proper, "except the name and your petitioners elsewhere shew that they have received the necessary consent in writing, under section 10 of the said Act, to the use of the name applied for."

SUGGESTIONS AS TO FORMING COMPANIES UNDER THE ONTARIO COMPANIES' ACT.

I. Letters Patent may, on petition therefor, be granted to any number of applicants not less than five.

II. The Memorandum of Agreement and Stock-Book, as per the following statutory form, must be in duplicate.

We, the undersigned, do hereby severally covenant and agree each with the other to become incorporated as a company under the provisions of The Ontario Companies' Act* under the name of The Company of Limited, or such other name as the Lieutenant-Governor-in-Council may give to the company, with a capital of dollars, divided into shares of dollars each.

And we do hereby severally, and not one for the other, subscribe for and agree to take the respective amounts of the capital stock of the said company set opposite our respective names as hereunder and hereafter written, and to become shareholders in such company to the said amounts. In witness whereof we have signed.

Signatures of subscribers	Seals.	Amounts of subscription.	Dates and places of subscription.		Residence of subscribers.	Signatures of witnesses.
			Dates.	Places.		
†						‡

(At least TWO signatures must appear on page containing the undertaking.)

Both of the duplicate originals must be produced with the application.

III. The petition, which may be put in at any time without Gazette notice must state:—

(*a*) The name, residence and occupation of each applicant in full, else it will be returned for correction.

(*b*) The proposed corporate name of the Company;

(*c*) The object of the company briefly expressed in general terms;

(*d*) The place at or from which the undertaking of the company is to be carried on;

(*e*) The place in Ontario where the head-office of the company is to be situated;

(*f*) The capital of the company divided into shares;

(*g*) The names of the provisional directors of the Company and

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*The name of any other Act, if any, may be inserted here. † If a signature is by power of Attorney, the power must be specific and must be filed with the duplicate original Stock-Book to be retained by the Provincial Secretary. ‡ Witnesses must, by affidavit, prove *each* signature (in the form in which it is made) in both of the Stock-Books.

(*h*) The amount each applicant has subscribed in the Memorandum of Agreement and Stock-Book.

The petition must further show:—

(*j*) That the proposed name of the company is not open to objection, if such be the fact, and

(*k*) That no public or private interest will be prejudicially affected by incorporation, if such be the fact.

(*l*) At least two signatures must be written on page containing the prayer of the petition.

IV. The fee for the Letters Patent must be remitted with the application, else it will not be considered.

The following fees for Letters Patent, et cetera, have been fixed by order-in-Council dated 25th November, 1899.

FOR LETTERS PATENT

When the proposed capital of the applicant Company is $40,000 or less, the fee to be $100.

When it is more than $40,000, but does not exceed $100,000, the fee to be $100 and $1 for every $1,000 or fractional part thereof in excess of $40,000.

When it is over $100,000, but does not exceed $1,000,000, the fee to be $160 and $2.50 for every $10,000 or fractional part thereof in excess of $100,000.

When it is $1,000,000, the fee to be $385 and $2.50 for every $10,000 or fractional part thereof in excess of $1,000,000.

When the Charter is for a Cheese or Butter Company, the fee to be $10.

When the Charter is for an Educational Institution not carried on for the purpose or object of gain, the fee to be $10.

When the Charter is for a Cemetery Company which is not to be carried on for gain, or which shall undertake to distribute in the improvement of its property any gain derived by the Company, the fee to be $10.

FOR SUPPLEMENTARY LETTERS PATENT

Where the capital stock of a company is increased, the fee to be according to the above list, but on the increase only.

Where the capital is not increased, the fee to be $100.

FOR LICENSES.

For a license to an Extra-Provincial Company, (*a*) To hold land; (*b*) To do business under The Ontario Companies' Act, or (*c*) To sell mining stocks, etc., the fee to be according to the above list, and to be levied according to the nominal capital of the company.

FOR ORDERS-IN-COUNCIL, ETC.

For an Order-in-Council changing the name of a Company, $25.

For an Order-in-Council accepting the surrender of a Charter, $50.

For an Order-in-Council approving of a by-law creating Preference Stock under The Ontario Companies' Act, $50.

For an Order-in-Council under R. S. O., cap. 130, ss. 5 and 6 (Trustees Investment Act), $100.

For an Order-in-Council authorizing a Company being accepted by the High Court as a Trusts Company for the purpose of such Court, $200.

The undersigned begs leave to recommend that the above schedule of fees be ordered to take effect on and from the 25th day of November, instant, but only in respect of such applications as shall thereupon or thereafter come to the official knowledge of the undersigned, and that all Orders-in-Council at variance with the above tariff of fees be rescinded.

All of which is respectfully submitted.

(Signed) J. R. STRATTON,
Provincial Secretary.

Toronto, 23rd November, 1899.

The department now requires at least 10 per cent. of the authorized capital stock to be subscribed before application is made for incorporation, but there is no requirement as to the amount to be paid up on the stock so subscribed.

The following additional information respecting the joint stock companies in the Province of Ontario is reprinted from Snow's Legal Compendium, 1898:—

Directors.—The affairs of the company shall be managed by a board of not less than three directors, elected by shareholders in general meeting of the company, assembled at some place within the Province. The persons named as such in Letters Patent shall be the directors of the company until replaced by others duly appointed in their stead. Under the Dominion of Canada Act, a majority of the directors must be residents of Canada; under the Ontario Act the directors may reside where they please. No person shall be elected or appointed a director thereafter unless he is a shareholder owning stock absolutely in his own right, and not in arrear in respect of any calls. The directors in certain events are liable to the servants of the company for one year's wages. The directors of every company formed under the general Act are jointly and severally liable upon every written contract or undertaking of the company on the face of which the word "Limited" is not distinctly written or printed as the last word in the name of the company when it first occurs in such contract or writing, and penalties are imposed upon the directors and the company for the omission of the said word in the company's seal, notices, advertisements or contracts.

Stock.—The stock is deemed personal estate. No share is transferable until all previous calls have been paid, or the share declared forfeited for non-payment of calls. Preference stock may be issued by the directors, but only if issue approved by all shareholders, or under the order of the Lieutenant-Governor upon aplication of three-fourths of the shareholders.

Capital.—There is no limit to the capital of the company, and, under certain conditions, this may be increased or de-

creased, and the shares re-divided into shares of larger or smaller amount by by-law approved by two-thirds in value of shareholders, and confirmed by supplementary Letters Patent.

Calls.—Ten per centum upon the allotted stock must, by means of one or more calls, be called in and made payable within one year from the incorporation of the company; the residue as and when the by-laws direct.

Shareholders.—Each shareholder is individually liable to the creditors of the company to an amount equal to that not paid up on his stock, but is not liable to an action therefor by a creditor until an execution against the company has been returned unsatisfied in whole or part. No person holding stock as executor, administrator, guardian, or trustee, shall be personally subject to liability as a shareholder, but the estates and funds in the hands of such person shall be liable in like manner and to the same extent as the testator or intestate, or the minor, ward or person interested in the trust fund would be if living and competent to act, and holding such stock in his own name. No person holding stock as collateral security shall be subject to liability as a shareholder.

Real Estate.—A company incorporated under the Ontario Companies' Act may acquire, hold and convey real estate necessary for the carrying on of its undertaking; subject to certain restrictions upon holding real estate not required for actual use and occupation for more than seven years.

Contracts.—Every contract made, and every cheque, promissory note or bill of exchange made, drawn, accepted or endorsed on behalf of the company by any agent, officer, or servant of the company in general accordance with his powers under its by-laws and resolutions, binds the company.

Trusts.—The company is not bound to see to the execution of any trust, nor to the application of any money payable in respect of any share.

Loans.—In case a by-law authorizing the same is sanctioned by a vote of not less than two-thirds in value of the shareholders at a general meeting duly called for considering the by-law, the directors may borrow upon the credit of the company, and issue debentures of not less than one hundred dollars each. The property of the company may, under the like sanction, be mortgaged as security for loans. No loan shall be made to a shareholder under penalty on the part of all directors and officers of the company making, and in any wise assenting to the same of becoming liable to the company to the amount of the loan, and also to third parties to the extent of the loan and interest, for all debts of the company contracted from the time of the making of the loan to that of its repayment.

Stock of other Corporations.—No company shall use any funds in the purchase of stock in any other corporation,

unless expressly authorized by by-law confirmed at a general meeting by a vote of not less than two-thirds in value of the shareholders present.

Supplementary Letters Patent.—May be issued to the company: 1. Extending its powera to any objects within the scope of the general Act which may be desired. 2. Providing for the formation of a reserve fund. 3. Varying any provision contained in the Letters Patent, so long as the alteration desired is not contrary to the provisions of the general act. 4. Making provision for any other matter or thing in respect of which provision might have been made by the original Letters Patent.

Forfeiture of Charter.—The charter of the company is forfeited by non-user for two consecutive years at any one time, or if the company does not go into operation within two years after it is granted.

Winding Up.—Ontario companies are subject to the provisions of the Joint Stock Companies' Winding-up Act, being ch. 222 of R. S. O., 1897, by which, speaking generally, the company or a contributory may take proceedings to wind up its business. They are also subject to the provisions of the Winding-up Act of the Dominion R. S. Can. 1886, cap. 129, and amending Acts. Those Acts provide the means whereby a company may be wound up at the suit of a creditor. The paramount object of both Winding-up Acts is the division of the company's assets among its creditors and members with all reasonable speed.

Special Statutes.—The following special statutes (among others) govern the incorporation of certain classes of companies:

Mining Companies:—The Ontario Mining Companies' Incorporation Act, R. S. O. 1897, ch. 197.

Gas and Water Companies, R. S. O. 1897, ch. 199.

Insurance Companies:—The Ontario Insurance Act, R. S. O. 1897, ch. 203.

Trust Companies:—The Ontario Trust Companies' Act, R. S. O. 1897, ch. 206.

Building and Loan Companies:—The Loan Corporations' Act, R. S. O. 1897, ch. 205.

Foreign Corporations may carry on business in Ontario, and sue and be sued in the Ontario courts. Such corporations carrying on business in Ontario prior to the 1st of November, 1897, are required to make certain returns as to their organization to the Provincial Secretary, on or before that date, under penalty of a fine. Such corporations may, upon petition to the Lieutenant-Governor-in-Council, through the Provincial Secretary, obtain a license to carry on their business in Ontario.

Insurance Companies require to be registered, and to observe other formalities laid down in Ontario Insurance Act, R. S. O. 1897, ch. 203, before commencing operations.

QUEBEC.

In the Province of Quebec the Statutory Provisions relating to the incorporation of joint stock companies are contained in the Revised Statutes of Quebec, articles 4694, *et seq*, and are as follows:—

R. S. Q., 1888, SECTION 4696.

4696. The Lieutenant-Governor may by Letters Patent under the Great Seal, grant a charter to any number of persons, not less than five, who petition therefor.

Such charter constitutes the petitioners and all others who may become shareholders in the company thereby created a body politic and corporate for any of the purposes within the jurisdiction of the Legislature, except for the construction and working of railways, and the business of insurance.

2. It is not necessary that an Order-in-Council be passed for granting any such charter, but the Lieutenant-Governor may grant any charter upon a favorable report from the Attorney-General.

4697. The applicants for such Letters Patent shall previously give notice of their intention to make such application. Such notice shall be published during four consecutive weeks in The Quebec Official Gazette, and contain:—

1. The corporate name of the proposed company, which shall not be that of any other company or any name liable to be confounded therewith, or otherwise on public grounds objectionable.
2. The object for which incorporation is sought.
3. The place within the limits of the Province selected as its chief place of business.
4. The proposed amount of its capital stock,
5. The number of shares and the amount of each share.
6. The name in full and the address and calling of each of the applicants, with special mention of the names of not less than three or more than nine of their number who are to be the first directors of the company.

The major part of such directors shall be residents in Canada, and be subjects of Her Majesty.

4698. At any time not more than one month after the last publication of such notice the applicants may petition the Lieutenant-Governor through the Provincial Secretary for the issue of such Letters Patent.

2. Such petition must recite the facts set forth in the notice, and must further state the amount of stock taken by each applicant, and by all other persons therein named, and also the amount paid in upon the stock of each applicant and the manner in which the same has been paid in, and is held for the company.

3 The aggregate of the stock so taken must be at least one half of the total amount of the company.

4. The aggregate so paid in thereon must be at least ten

per cent. thereof, or five per cent. of the total capital; unless such total exceed five hundred thousand dollars, in which case the aggregate paid in upon such excess must be at least two per cent thereof.

5. Such aggregate must have been paid in to the credit of the company or of trustees therefor, and must be standing at such credit in some chartered bank within the Province, unless the object of the company is one requiring that it should own real estate, in which case, not more than one-half thereof may be taken as invested in real estate suitable to such object duly held by trustees therefor, and being fully of the required value over and above all incumbrances thereon.

6. The petition may ask the embodying in the Letters Patent of any provision which otherwise under this section might be embodied in any by-law of the company when incorporated.

4699. Before the Letters Patent are issued the applicants must establish to the satisfaction of the Provincial Secretary, or of such other officers as may be charged by order of the Lieutenant-Governor-in-Council to report thereon, the sufficiency of their notice and petition, the truth and sufficiency of the facts therein set forth, and further that the applicants and more especially the provisional directors named are persons of sufficiently reputed means to warrant the application.

2. To the end the secretary or such other officer may take and keep on record any requisite evidence in writing under oath or affirmation, and may administer every requisite oath or affirmation.

4700. The Letters Patent shall recite all the material averments of the notice and petition as so established.

4701. The Lieutenant-Governor may if he deem it expedient give to the company a name different to that chosen for it by the applicants, if such name be objectionable, and may prescribe that the objects for which the company is constituted be changed, provided that they be of the same nature as that given in the notice.

4702. If it happens that the name of a company constituted as aforesaid is the same as that of any other existing company, or so nearly resembles it as to be liable to create confusion, the Governor may order the issue of Supplementary Letters Patent to change the name to another to be chosen. Such Supplementary Letters Patent shall refer to the former Letters Patent. Such change of name shall not effect the rights or obligations of the company.

4703. Whenever a company incorporated under this section desires to have its name changed for another, the Lieutenant-Governor may on petition to that effect grant Supplementary Letters Patent, if he deem that such change of name is not made for some avowed or illegitimate purpose; which Letters Patent shall be made in the manner provided in the preceding article, and shall have the same effect to all intents and purposes.

4704. Notice of the granting of the Letters Patent shall be forthwith given by the Provincial Secretary in the Quebec Official Gazette in the form of the Schedule A. of this section, and thereupon from the date of the Letters Patent the persons therein named and their successors shall be a body corporate and politic by the name mentioned therein.

The tariff of fees payable upon the incorporation of joint stock companies in the Province of Quebec is as follows:—

SECRETARY'S OFFICE,
QUEBEC, 5th December, 1892.

His Honour the Lieutenant-Governor has been pleased, by order in Council, dated the 3rd of December instant, to amend order in Council No. 205, of the 27th of April last, concerning the tariff of fees of the Provincial Secretary and Registrar, by striking out article 26, and replacing the whole of articles 17, 18, 19, 20, and 21, by the following:

17. On Letters Patent incorporating joint stock companies, when the capital stock is $500,000 or over, the fee will be..	$200 00
18. When the proposed capital stock is $200,000 or over, but under $500,000..	150 00
19. When the proposed capital stock [illegible]100,000 or over, but under $200,000.. .. .. .. [illegible]	100 00
20. When the proposed capital stock is [illegible] $100,000..	50 00
21. On application for Supplementary Letters Patent other than those for increasing capital stock, the fee will be one-half of the amount payable on the original Letters Patent.	

When application is made for an increase of capital stock, the fee will be calculated on the actual amount of the increase of such capital stock, and will be the same as that payable on original Letters Patent for an amount equal to such increase.

LOUIS P. PELLETIER,
Provincial Secretary.

There are no official forms issued by the Department or having the sanction of authority in the Province of Quebec, but the following forms will serve as a guide, and have been accepted by the officials in cases in which incorporation has been granted.

Montreal, 19

Notice is hereby given that within one month after last publication of this notice in the Quebec Official Gazette, application will be made to His Honour the Lieutenant-Governor in Council for a charter of incorporation by Letters Patent, under the provisions of the "Joint Stock Companies' Act," incorporating the applicants and such other persons as may become shareholders in the proposed company, corporate and politic, under the name and for the purpose hereinafter mentioned:

1. The proposed corporate name of the company is
2. The purposes within the provision of the Act for which incorporation is sought are
3. The head office of said company will be in of in the district of Province of Quebec.
4. The amount of capital stock of the said company is
5. The number of shares is to be of the par value of
6. The names in full and the address and calling of each of the applicants are as follows,
7. The said shall be the first or provisional directors of the said company, and all or the majority of them are residents of Canada and subjects of Her Majesty.

....

Attorneys for applicants.

The insertion of this notice four times in the Quebec *Gazette* is required.

Cost of publication of notice in *Gazette* is as follows:—
Publications in the *Gazette* 48 cents per line French.
Publications in the *Gazette* 48 cents per line English.
Translation fifteen cents per hundred words.
Copies of *Gazette* fifteen cents each, postage prepaid.

No. 2.

PETITION FOR INCORPORATION

To His Honour the Lieutenant-Governor in Council.

The petition of (here insert names in full, address and calling or occupation of each of the applicants), Humbly sheweth:

1. That your petitioners are desirous of obtaining a charter of incorporation by Letters Patent under the provisions of the "Joint Stock Companies Incorporation Act," Revised Statutes of Quebec, article 4694, *et seq.*, incorporating your petitioners and such others as may become shareholders in the company, thereby created, corporate and politic under the name of "The Company" (Limited), which is not the name of any other known company incorporated, or liable to be confounded therewith, or otherwise on public grounds objectionable.

2. That your petitioners have given notice for four consecutive weeks of their intention to apply for the said Letters Patent, by inserting the same in the issues of the Quebec Official *Gazette* of the following dates:

3. That the purposes or objects of the said company within the provisions of the Act for which incorporation is sought are: ....

4. That the chief place of business of the said company is to be at the of in the Province of Quebec.

5. That the amount of capital stock of the company is to be

6. That the said stock is to be divided into shares of the value of dollars each.

7. That the first or provisional directors of the said company shall be (give names in full, and addresses) all (or if the majority state names) are residents in Canada and subjects of Her Majesty.

8. That your petitioners have taken the amount of stock and paid in thereon the several amounts thereon, set opposite to their respective names, as follows:—

Petitioners' names in full	No. of shares taken.	Amt. paid in on stock subscribed.
....	....	....
....	....	....
Total		

How paid:

Total

9. The aggregate of stock so taken amounts to dollars, being one-half of the total amount of stock of the company, and the aggregate paid in on stock so taken amounts to dollars, being per cent. thereof, an aggregate has been paid in to the credit of (1) (1) and is now standing at such credit in the Bank of in the of as appears by the certificate of manager of the said Bank at aforesaid, which is hereto annexed.

(There has been invested in real estate, suitable to the objects of the company, the sum of dollars. The said real estate consists of and is of the value of at least dollars over and above all incumbrances thereon, being sufficient with the sum so paid in as aforesaid to make per cent. of the aggregate of the stock so taken, and is duly held by and as trustees for the company.) (2)

Your petitioners therefore pray:—

That Your Honour will be pleased to grant a charter of incorporation by Letters Patent under the Great Seal to your petitioners and such others as may become shareholders in the company, thereby created a body corporate and politic, for the purposes and objects aforesaid, under name of "The Company" (Limited).

And your petitioners as in duty bound will ever pray.

Dated at the of in the of Quebec, this day of A.D. 19 .

Signed and executed in the presence of

---

(1) Here state if paid in to the credit of the company, or of trustees for the company, giving the name of each trustee.

(2) This clause is only inserted when necessary.

AFFIDAVIT VERIFYING SIGNATURE OF BANK MANAGER TO CERTIFICATE OF DEPOSIT.

In the matter of:—

The application of and others for Letters Patent of incorporation as "The Company" (Limited).

I, of the make oath and say:—

1. That I was personally present and did see the annexed certificate of deposit duly signed by who is the manager (agent or cashier) of the Bank at the of aforesaid.

2. That I know the said . That I am the subscribing witness to the said document.

And I have signed,

Sworn before me this
day of 19 .

A Commissioner for the Superior Court, District of

AFFIDAVIT VERIFYING SIGNATURE TO PETITION PRAYING FOR LETTERS PATENT OF INCORPORATION.

In the matter of:—

The application of and others for Letters Patent of incorporation as "The Company" (Limited).

I, of the of in the County of Province of Quebec, make oath and say:

1. That I was personally present and did see sign their respective names to the petition (hereunto annexed) praying for Letters Patent of incorporation as "The Company" (Limited).

2. That I know the said parties.

3. That the signatures are of the proper handwriting of the said parties respectively.

And I have signed,

Sworn before me this
day of 19 .

A Commissioner for the Superior Court, District of

BANK MANAGER'S CERTIFICATE.

In the matter of:—

The application of and others for Letters Patent of incorporation as "The Company" (Limited).

I, manager of the in the and District of and Province of Quebec, do hereby certify that there is deposited in this bank, to the credit of "The Company" (Limited) dollars, and said sum is now remaining at such credit.

Dated at aforesaid this day of 19 .

And I have signed,

Sworn before me this
day of 19 .

A Commissioner for the Superior Court, District of

AFFIDAVIT VERIFYING TRUTH OF PETITION AND AS TO PROPOSED CORPORATE NAME. INSERTION IN THE GAZETTE.

In the matter of the affidavit of

The application of and others for Letters Patent of incorporation as "The Company" (Limited).

I, of the in the of and Province of Quebec, make oath and say:—

1. That I am one of the applicants herein.

2. That the several allegations and statements made and contained in the petition for incorporation of "The Company" (Limited), hereunto annexed are to the best of my knowledge and belief true and correct.

3. That the proposed corporate name of the said company is not as I truly believe the name of any other known company incorporated or unincorporated, or liable to be confounded therewith, or otherwise on public grounds objectionable.

4. That notice of the intention of the applicants herein to apply for the grant of Letters Patent as aforesaid was duly given in four consecutive issues of the Quebec Official Gazette published on the 19 .

5. That the clipping from the said Official Gazette attached to this affidavit is a true and correct copy of the said notice given as aforesaid.

And I have signed,

Sworn before me this

day of 19 .

A Commissioner for the Superior Court, District of

MANITOBA.

The Statutory Provisions of Manitoba relating to the incorporation of joint stock companies are as follows:—

R. S. M. CHAPTER 25, SECTIONS 4 TO 23 INCLUSIVE.

INCORPORATION BY LETTERS PATENT.

4. Charter may be granted by Lieut.-Gov. in Council. Except for railways and insurance.—The Lieutenant Governor in Council may, by Letters Patent under the Great Seal of the Province, grant a Charter to any number of persons, not less than five, who shall petition therefor, constituting such persons and others who may become shareholders in the company thereby created a body corporate and politic, for any purposes or objects to which the legislative authority of the Legislature of Manitoba extends, except the construction and working of railways and the business of insurance. C. S. M. c. 9, Div. 7, s. 226, *part;* 44 V. c. 11, s. 41; 46 and 47 V. c. 41, s. 5. *part.*

5. Notice to be given.—The applicants for such Letters Patent must give at least one month's previous notice, to be inserted in the *Manitoba Gazette*, of their intention to apply for the same, stating therein,—

(*a.*) Name must be different from any in use.—The proposed corporate name of the Company, which shall not be that of any other known Company, incorporated or unincorporated, or any name liable to be unfairly confounded therewith, or otherwise on public grounds objectionable;

(*b.*) Objects.—The objects for which the incorporation is sought;

(*c.*) Places of business.—The place or places within the Province of Manitoba, where its operations are to be carried on, with special mention, if there be two or more such places, of some one of them as its chief place of business;

(*d.*) Capital stock.—The amount of its capital stock;

(*e.*) Number of shares.—The number of shares and the amount of each share;

(*f.*) Names and addresses of applicants.—The names in full and the address and calling of each of the applicants, with special mention of the names of not less than three, nor more than nine of their number, who are to be the first Directors of the Company. C. S. M. c. 9, Div. 7, s. 227; 52 V. c. 3, s. 15.

6. Petition for the issue of Letters Patent within one month.—At any time, not more than one month after the publication of such notice, the applicants may petition the Lieutenant Governor, through the Provincial Secretary, for the issue of such Letters Patent C. S. M. c. 9, Div. 7, s. 228, *part;* 52 V. c. 3, s. 16.

7. (*a.*) To set forth facts as in notice, and amount of stock taken and paid.—Such petition must state the facts required to be set forth in the notice, and must further state the amount of stock taken by each of such applicants, and also the amount, if any, paid in upon the stock of each applicant;

(*b.*) How paid.—The petition shall also state whether the amount is paid in cash or transfer of property, or how otherwise;

(*c.*) May ask to be embodied in Letters Patent any provision which might be embodied in by-law.—The petition may ask for the embodying in the Letters Patent of any provision which otherwise under the provisions hereof might be embodied in any by-law of the Company when incorporated. C. S. M. c. 9, Div. 7, s. 228, s-ss. 1, 2, 4.

8. When petition not signed by all, Memorandum of Association to be filed.—In case the petition is not signed by all the shareholders whose names are proposed to be inserted in the Letters Patent, it shall be accompanied by a Memorandum of Association, signed by all the parties whose names are to be so inserted, or by their attorneys duly authorized in writing; and such Memorandum shall contain the particulars required by the next preceding section. C. S. M. c. 9, Div. 7, s. 228, s-s. 3.

9. Applicants to establish sufficiency of notice and that proposed name not the name of another Company. Evidence to be taken and kept.—Before the Letters Patent

are issued, the applicants must establish to the satisfaction of the Provincial Secretary, or of such other officer as may be charged by the Lieutenant Governor in Council to report thereon, the sufficiency of their notice and petition, and that the proposed name is not the name of any other known incorporated or unincorporated Company. And to that end, the Provincial Secretary or such other officer may take and keep of record any requisite evidence in writing under oath or otherwise; and he or any justice of the peace or person authorized by "The Oaths Act" to take affidavits for use in Manitoba may administer every requisite oath. C. S. M. c. 9, Div. 7, s. 229; 49 V. c. 23, s. 2.

10. When notice given of intention to apply for an Act of Parliament this session.—Where a notice has been duly published according to the rules of the Legislative Assembly that an application will be made to the Legislature at its then next session for an Act incorporating any Company, the incorporation whereof is sought for objects for which incorporation is authorized by the provisions hereof, and, in contemplation of its passing, a notice of an application for incorporation under the foregoing provisions shall not be necessary; and the Lieutenant Governor in Council, upon the report of the proper Minister or officer that proof has been furnished that the other requirements hereinbefore contained have been complied with, may grant a charter of incorporation to such Company. In any application under this section the facts required to be stated in the petition may be verified in any manner that the Provincial Secretary, or other officer charged to report thereon, may deem sufficient, and in such case it shall not be requisite that the petition should be signed by all the shareholders to be named in the Letters Patent, or that the Memorandum of Association or other particulars should be in accordance with the requirements hereinbefore contained. C. S. M. c. 9, Div. 7, s. 282.

11. Lieut.-Gov. may allow Company to change name in issuing Letters Patent. Notice thereof in Manitoba Gazette. Proof of notice. Form.—In case it shall appear or became known, at any time before the issue of Letters Patent, that the name of the proposed Company is that of some other incorporated or unincorporated Company, or liable to be unfairly confounded therewith, or otherwise on public grounds objectionable, it shall be competent for the Lieutenant Governor in Council to allow the proposed name to be changed, on a supplementary petition or request in writing of the applicants for incorporation or of a majority of them, including a majority of the first Directors named in the original petition; and the Letters Patent may issue incorporating the applicants therefor under the name proposed to be substituted for that first given:

Provided that the Letters Patent in such a case shall not issue until after a notice of the application for such change of name shall have been published in at least one issue of the *Manitoba Gazette*, and one week shall have elapsed after such publication without any valid objection being submitted to the Provincial Secretary as to such proposed change; and such

notice shall be proved by affidavit and may be in the following form: "Notice is hereby given that, after one week has elapsed from the date of the publication hereof, application will be made to His Honor the Lieutenant Governor in Council to change the name of the proposed (*give name as for first notice for incorporation*) advertised in the issue of the *Manitoba Gazette* of the (*date of publication of first notice*) to that of the (*name proposed to be substituted*), and to issue Letters Patent of incorporation to the applicants therefor mentioned in such notice under the provisions of the statutes in that behalf. Dated, &c. 46 and 47 V. c. 41, s. 1.

12. Capital stock not to exceed $500,000 without authority of supplementary Letters Patent, etc.—The capital stock of any such company shall not exceed the sum of five hundred thousand dollars, unless under the authority of supplementary Letters Patent, or under the provisions hereinafter mentioned, or unless it can be shown by the production of the stock book of the proposed Company (a certified copy of which shall in such case be filed with the Provincial Secretary, with the other proofs required), and by the certificate of the Manager of some chartered Bank doing business in the Province, that at least fifty per cent. of the proposed capital stock has been subscribed for and at least ten per cent. of said subscribed stock paid into such Bank to the credit of the said proposed Company; in which case the capital stock may be increased to a sum not exceeding one million dollars. 46 and 47 V. c. 41, s. 5.

13. Deposit on stock may be repaid to subscribers when Letters Patent are refused.—Where a payment on any subscribed stock, as provided for in the last preceding section, shall have been made pending the application for Letters Patent of Incorporation, and where such application shall fail or be withdrawn, the said deposit, upon the certificate of the Provincial Secretary stating the failure or withdrawal of such application, may be re-paid to the person through whom the said deposit was specially made. 46 and 47 V. c. 41. s. 6.

14. Companies existing may apply under this Act.—Any Company, for purposes or objects within the scope of the provisions herein contained, heretofore incorporated, whether under a special or general Act, and now being a subsisting and valid corporation, may apply for Letters Patent under the foregoing provisions; and the Lieutenant Governor in Council, upon proof that notice of the application has been inserted for four weeks in the *Manitoba Gazette*, may direct the issue of Letters Patent incorporating the shareholders of the said Company as a Company under the foregoing provisions, and thereupon all the rights and obligations of the former Company shall be transferred to the new Company, and all proceedings may be continued or commenced by or against the new Company, that might have been continued or commenced by or against the old Company; and it shall not be necessary in any such Letters Patent to set out the names of the shareholders; and after the issue of the Letters Patent the Company shall be governed

in all respects by the provisions hereof, except that the liability of the shareholders to creditors of the old Company shall remain as at the time of the issue of the Letters Patent. C. S. M. c. 9, Div. 7, s. 281.

15. Letters Patent to recite all material averments of notice and petition.—The Letters Patent shall recite all the material averments of the notice and petition, as established under the preceding sections of this Act. C. S. M. c. 9, Div. 7, s. 230.

16. Restrictions in Letters Patent.—The Lieutenant Governor in Council may restrict such Letters Patent of incorporation in any manner which may seem desirable. 53 V. c. 22, s. 8.

17. Provisions preliminary to issue of Letters Patent to be directory.—The provisions of this Act relating to matters preliminary to the issue of the Letters Patent shall be deemed directory only; and no Letters Patent issued or which have heretofore been issued under this Act, or "The Manitoba Joint Stock Companies Incorporation Act," shall be held void or voidable on account of any irregularity in any prescribed notice, or on account of the insufficiency of any such notice, or on account of any irregularity in respect of any other matter preliminary to the issue of such Letters Patent. 46 and 47 V. c. 41, s. 3.

18. Notice of grant to be given in Manitoba Gazette by Prov. Sec. Parties therein named shall be body corporate.—Notice of the granting of the Letters Patent shall be forthwith given by the Provincial Secretary in the *Manitoba Gazette* in the form in Schedule A. to this Act; and from the date of the Letters Patent the persons therein named and their successors shall be a body corporate and politic by the name mentioned therein. C. S. M. c. 9, Div. 7, s. 231.

19. All powers subject to restrictions and provisions of this Act.—All powers given to the Company by the Letters Patent granted in its behalf shall be exercised subject to the provisions and restrictions herein contained. C. S. M. c. 9, Div. 7, s. 242.

20. Lieut.-Gov. in Council may change name of Company; not to affect rights and obligations of Company. Continuation of proceedings.—In case it should be made to appear that any Company is incorporated under the same name as, or under a name similar to that of, an existing Company, it shall be lawful for the Lieutenant-Governor in Council to direct the issue of supplementary Letters Patent reciting the former Letters and changing the name of the Company to some other name to be set forth in the supplementary Letters Patent; and no such alteration of name shall affect the rights or obligations of the Company; and all proceedings may be continued and commenced by or against the Company by its new name, that might have been continued or commenced by or against the Company by its former name; and the Court of

Queen's Bench may compel an application under this section, whenever a Company improperly assumes the name of, or a name similar to that of, an existing Company. C. S. M. c. 9, Div. 7, s. 232.

21. Before commencing business 10 per cent. to be subscribed, etc.—No Companies incorporated under "The Manitoba Joint Stock Companies Incorporation Act," or under this Act, shall commence business until at least ten per cent. of the capital stock of the said Company shall have been subscribed, and at least ten per cent. of the amount of stock so subscribed actually paid up. 47 V. c. 20, s. 1.

22. Forfeiture of Charter for non-user.—The Charter of the Company shall be forfeited by non-user during three consecutive years at any one time, or if the Company do not go into actual operation within three years after it is granted; and no declaration of such forfeiture by any Act of the Legislature shall be deemed an infringement of such charter. C. S. M. c. 9, Div. 7, s. 278.

23. Future legislation.—The Company shall be subject to such further and other provisions as the Legislature of Manitoba may hereafter deem expedient, in order to secure the due management of its affairs and the protection of its shareholders and creditors. C. S. M. c. 9, Div. 7, s. 279.

PETITION FOR INCORPORATION.

The official form of petition for incorporation is as follows:

To the Honorable Lieutenant-Governor of the Province of Manitoba in Council.

The petition of*

Humbly Sheweth:

1. That your Petitioners are desirous of obtaining a Charter of Incorporation by Letters Patent under "The Manitoba Joint Stock Companies Act," R. S. M. cap 25, and Acts amending the same, incorporating your petitioners and such others as may become shareholders in the Company thereby created a body corporate and politic under the name of which is not the name (as your petitioners believe) of any other known Company incorporated or unincorporated, or liable to be unfairly confounded therewith or otherwise on public grounds objectionable.

2. That your petitioners, in accordance with the provisions of section 5 of the said Act, have given at least one month's previous notice in the *Manitoba Gazette* of your petitioners' intention to apply for the said Letters Patent.

3. That the object for which incorporation is sought by your petitioners is

4. That the operations of the said Company are to be carried on at within the Province of Manitoba.

*Note.—Here set out in full, legibly written, the names, residences, and legal additions or occupations of the petitioners who must be shareholders in the proposed Company, and must be at least five in number.

5. That the chief place of business of the said Company is to be at

6. That the amount of the capital stock of the said Company is to be dollars.

7. That the said stock is to be divided into shares of dollars each.

8. That the said* are to be the first Directors of the said Company.

9. That your petitioners have taken the amount of stock set opposite their respective names as follows:

PETITIONERS.	Amount.	†Amount Paid thereon.	†How paid.
....	....	....	....
....	....	....	... .
....	....	....	....

Your petitioners therefore pray that your Honor will be pleased by Letters Patent under the Great Seal of the Province, to grant a Charter to your petitioners constituting your petitioners and such others as may become shareholders in the Company thereby created a body corporate and politic for the purposes and objects aforesaid.

And your petitioners, as in duty bound, will ever pray.

Dated at
this day of 19

SIGNATURE OF WITNESSES.	SIGNATURE OF PETITIONERS.
....	....
....	....
....	....

For form of notice of intention to apply for incorporation, see the preceding forms in use in the Dominion of Canada and in the Province of Quebec. The other forms may readily be adapted from those in use in the other provinces.

The fees payable for incorporation in the Province of Manitoba are as follows:—

TARIFF OF FEES.

On the recommendation of the Honorable the Provincial Secretary,

COMMITTEE ADVISE,

That the fees to be charged for Letters Patent of incorporation of Companies under the The Manitoba Joint Stock Com-

*Note.—The Directors, who must be at least three in number, must be Petitioners and Shareholders.

† In these columns shew the amount, if any, paid by each Petitioner upon his stock, and whether it was paid in cash, by transfer of property, or otherwise, and if nothing paid, state so.

panies' Act, The Foreign Corporations' Act, and the Mutual Hail Insurance Act, and Acts amending the same, shall be as follows:—

FOR LETTERS PATENT.

When the capital is $1,000,000, or upwards..	$300 00
When it is $500,000, but less than $1,000,000..	200 00
When it is $200,000, but less than $500,000..	160 00
When it is $100,000, but less than $200,000..	120 00
When it is more than $40,000, but less than $100,000..	100 00
When is it $40,000, or less, but more than $20,000..	60 00
When it is $20,000, or less, but more than $2,000..	40 00
Not exceeding $2,000..	10 00
When the Charter is for an incorporation under "The Mutual Hail Insurance Act"	30 00
When the Charter is for an Education Institution not to be carried on for the purpose or object of gain.. ..	10 00

FOR SUPPLEMENTARY LETTERS PATENT.

Where the capital is increased, the fees to be according to the above list, but on the increase only.	
Where the capital is not increased..	10 00
License fee under "The Foreign Corporations Act"..	150 00

The above schedule of fees be directed to take effect on and from the 31st day of August instant, and that all Orders-in-Council at variance with the above Tariff of Fees be rescinded.

Certified,
(Signed) C. GRABURN.
Clerk, Executive Council.

NEW BRUNSWICK.

The Statutory Provisions relating to the incorporation of Joint stock companies in the Province of New Brunswick are contained in the Statutes of 1893, being 56 Victoria, chapter 7, sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13.

3. The Lieutenant Governor in Council may, by Letters Patent under the Great Seal, grant a Charter to any number of persons, not less than five, who shall petition therefor, constituting such persons and others who may become shareholders in the Company thereby created, a body corporate and politic for any purposes or objects to which the legislative authority of the Legislature of New Brunswick extends, except the construction and working of Railways and the business of Insurance, or for the management of trades' unions, friendly societies, building societies or other associations of like character.

4. The applicants for such Letters Patent must give two weeks' previous notice in the Royal Gazette, by at least two consecutive insertions of the notice, of their intention to apply for the same, stating therein,—

(a) The proposed corporate name of the Company, which shall not be that of any other known Company incor-

porated, or any name liable to be confounded therewith, or otherwise on public grounds objectionable;

(b) The object for which its incorporation is sought;

(c) The Town or place, or some one of the Towns or places within the Province of New Brunswick, in which its office or chief place of business is to be established;

(d) The amount of its capital stock, which shall not be less in any case than two thousand dollars ($2,000), actually subscribed;

(e) The number of shares and the amount of each share;

(f) The name in full, address and calling of each of the applicants, with special mention of the names of not less than three of their number, who are to be the first or Provisional Directors of the Company;

5. (1) At any time, not more than one month after the last publication of such notice, the applicants may petition the Lieutenant Governor, through the Provincial Secretary, for the issue of such Letters Patent;

(2) Such petition must recite the facts set forth in the notice, and must further state the amount of stock taken by each applicant, and also the amount, if any, paid in upon the stock of each applicant;

(3) The aggregate of the stock so taken must be at least the one-half of the total amount of the stock of the Company;

(4) The petition must also state whether such amount is paid in cash or by transfer of property, or how otherwise, and if by transfer of property, shall state briefly the description of property transferred;

(5) In case the petition is not signed by all the shareholders whose names are proposed to be inserted in the Letters Patent, it shall be accompanied by a Memorandum of Association, signed by all the persons whose names are to be so inserted, or by their Attorneys duly authorized in writing, and such Memorandum shall contain the particulars required by the next preceding Section, and shall be in the form A in the Schedule to this Act, or as near thereto as circumstances will admit;

(6) Any payments which shall have been made in cash, on account of the stock, must have been paid in to the credit of the Company, or of the Trustees therefor, and must be standing at such credit in some chartered Bank in the Province;

(7) The petition may ask for the embodying in the Letters Patent of any provisions which otherwise under this Act might be made by the bye laws of the Company, when incorporated, and such provisions shall not unless provision to the contrary be made in the Letters Patent, be subject to repeal or alteration by bye law.

6. When a notice has been published according to the Rules of the Legislative Assembly relating to the publication of an Act incorporating any Company, the incorporation whereof is sought, for purposes for which incorporation is authorized by this Act,

and a Bill has been introduced into the Assembly in accordance with such notice, and is subsequently thrown out or withdrawn, then in case a petition to the Lieutenant Governor for the incorporation of such Company under this Act is filed with the Provincial Secretary within one month from the day of the termination of the Session of the Assembly, for which the said notice was given, such notice may be accepted in lieu of the notice required by Section four.

7. The publication of the notice mentioned in Section four shall not be necessary in any case in which the capital stock of the proposed Company shall not exceed five thousand dollars, and in such case the petition to the Lieutenant Governor shall state the particulars mentioned in Section four, in addition to those required by Section five.

8. No Order in Council for the issue of Letters Patent or Supplementary Letters Patent shall be made, until and unless the Attorney General shall indorse his fiat upon the petition to the effect, that in his opinion no objection exists to the granting of the incorporation applied for.

9. (1) Before the Letters Patent are issued the applicants must establish to the satisfaction of the Provincial Secretary or such other officer as may be charged by Order of the Lieutenant Governor in Council to report thereon, the sufficiency of their notice and petition, and that the proposed name is not the name of any other known incorporated or unincorporated Company;

(2) The Provincial Secretary or such other officer may, for the purposes aforesaid, take and keep of record any requisite evidence in writing, under oath or affirmation, or by solemn declaration, under any Act of the Parliament of Canada respecting extra-judicial oaths;

(3) Proof of any matter which may be necessary to be made under this Act may be made by affidavit before the Provincial Secretary, or before any Justice of the Peace or Commissioner for taking affidavits, who are hereby authorized and empowered to administer oaths for that purpose.

10. The Letters Patent shall recite such of the material averments of the notice and petition so established, as the Lieutenant Governor may deem expedient, and the Lieutenant Governor may, if he thinks fit, give to the Company a corporate name different from that proposed by the applicants in the published notice, and the objects of the Company, as stated in the Letters Patent, may vary from the objects stated in the said notice, provided the objects of the Company as stated in the Letters Patent are of a similar character to those contained in the notice published as aforesaid.

11. Notice of the granting of the Letters Patent shall be forthwith given by the Provincial Secretary in the Royal Gazette, in the Form B in the Schedule appended to this Act, and thereupon, from the date of the Letters Patent, the persons therein named, and their successors, shall be a body politic and corporate by the name mentioned therein.

12. In any application for Letters Patent under this Act for the incorporation of any fishing, sporting or literary club or association, the petition may, notwithstanding anything contained in this Act, ask for the embodying in the Letters Patent of a provision (which shall be therein inserted) that the shares of the capital stock of the Club or Association shall not be transferable to any person not then being a member of and shareholder in the Club, until the name of the proposed transferee or member has been first submitted for the approval of the existing shareholders or members, and approved in such manner as may in such petition be set forth, or as may be prescribed by the bye laws of the Club or Association when incorporated; and if such provision be embodied in the Letters Patent, it shall not, unless otherwise provided in the Letters Patent, be subject to repeal or alteration by by-law.

13. In case the transfer of the shares of the Club or Association be prohibited as in the last Section mentioned, no transfer of such shares may be made, otherwise than in conformity with the conditions prescribed, so as to entitle the transferee thereof to membership in the Club or Association, or to any rights, benefits or privileges in respect of such shares in the said Association.

MEMORANDUM OF ASSOCIATION.

The official form of memorandum of association referred to is sub-section 5 of the section 5, and is as follows:—

SCHEDULE.

Form A.

Section 5, sub-section 5.

Memorandum of Association of the Company, a company for which incorporation by Letters Patent is sought under the provisions of the New Brunswick Joint Stock Companies' Act, 1893, and a petition for which incorporation accompanies this memorandum agreeably to the said Act.

1. The proposed corporate name of the Company is "The Company."

2. The object for which the incorporation of the Company is sought is (here state the object of the Company), with such other things as are incident thereto.

3. The office or principal place of business is to be at in the County of

4. The nominal capital of the company is (here state the amount of each share) dollars each.

5. The names of the provisional directors of the Company are:—

............of................in the County of.......... .....farmer.
............of................in the County of..............merchant.
............of................in the County of.................banker.

We, the several persons whose names are subscribed, are desirous of being formed into a company in pursuance of this Memorandum of Association and the petition herewith presented, under The New Brunswick Joint Stock Companies'

Act, 1893, and we hereby respectively agree to take the number of shares in the capital of the Company set opposite our names:

Name.	Address.	Occupation.	No. of Shares.
....	....	....	....
....	....	....	....

Dated the day of A.D., 19 .

No other official forms save and except the above are issued by the department or prescribed by the Statute. The other forms required may readily be adapted from the preceding forms used in other Provinces.

The fees payable upon the corporation of joint stock companies in the Province of New Brunswick are as follows:—

REGULATIONS AND TARIFF.

His Honor the Lieutenant Governor in Council has been pleased to make the following Order respecting the incorporation of Companies by Letters Patent under the Act 56th Victoria, Chapter 7, which is to take effect from the date hereof, and all previous Orders and Regulations relating thereto are rescinded:—

1. The Honorable the Provincial Secretary is hereby designated as the Officer charged with the issue of Letters Patent and Supplementary Letters Patent; and the Department of the Honorable the Provincial Secretary as the Department through which such issue shall take place.

2. The signatures of the Subscribers to the Petition for Letters Patent or Supplementary Letters Patent, or to the Memorandum of Association, shall be verified by affidavit to the satisfaction of the Provincial Secretary.

3. The following is the Schedule of Fees payable under the 93rd Section of the said Act:—

(1) When the proposed Capital Stock of the Company is $5,000 or less, the fee to be Thirty Dollars ($30.00).

(2) When the proposed Capital Stock of the Company is above $5,000 and less than $10,000, the fee to be Forty dollars, ($40.00).

(3) When the proposed Capital Stock of the Company is above $10,000 and less than $25,000, the fee to be Fifty dollars, ($50.00).

(4) When the proposed Capital Stock of the Company is $25,000 and less than $50,000, the fee to be Sixty dollars, ($60.00).

(5) When the proposed Capital Stock of the Company is $50,000 and less than $100,000, the fee to be Eighty dollars, ($80.00).

(6) When the proposed Capital Stock of the Company is $100,000 and less than $200,000, the fee to be One hundred and twenty dollars, ($120.00).

(7) When the proposed Capital Stock of the Company is $200,000 and less than $300,000, the fee to be One hundred and sixty dollars, ($160.00).

(8) When the proposed Capital Stock of the Company is $300,000 and less than $500,000, the fee to be Two hundred dollars, ($200.00).

(9) When the proposed Capital Stock of the Company is $500,000 and less than $1,000,000, the fee to be Two hundred and fifty dollars ($250.00).

(10) For every $500,000 in excess of $1,000,000, an additional fee of Fifty dollars, ($50.00).

(11) Supplementary Letters, when application is to increase the Capital Stock, a sum of Twenty dollars ($20.00), and a further sum in addition thereto, according to the scale aforesaid, upon the increased amount for which Letters are applied for.

In all other cases a fee of Fifty dollars, ($50.00).

4. All fees must be paid in cash or by an accepted cheque, payable to the order of the Receiver General or Deputy Receiver General, and must be transmitted by Registered Letter.

JAMES MITCHELL.

Provincial Secretary's Office,
Fredericton, 14th February, 1896.

NOVA SCOTIA.

The Statutory provisions relating to the incorporation of joint stock companies in the Province of Nova Scotia are contained in the Revised Statutes of Nova Scotia, 1884, cap. 79, known as The Nova Scotia Joint Stock Companies' Act, and are as follows:—

3. Governor-in-Council may grant Charter.—The Governor-in-Council may by Letters Patent under the Great Seal of the Province grant a charter to any number of persons not less than five who shall petition therefor, constituting such persons and others who may become shareholders in the company thereby created a body corporate and politic for any of the purposes or objects to which the legislative authority of the Parliament of Nova Scotia extends, except the construction and working of railways and loan companies.

4. Conditions of application for Letters Patent.—The applicants for such Letters Patent must give at least one month's previous notice in the Royal Gazette of their intention to apply for the same, stating therein:

(*a*) The proposed corporate name of the company, which shall not be that of any other known company incorporated or unincorporated, or any name liable to be confounded therewith, or otherwise on public grounds ob-

(*b*) The purposes within the purview of this chapter for jectionable.
which its incorporation is sought.

(*c*). The place within the Province of Nova Scotia which is to be its chief place of business.

(*d*) The intended amount of its capital stock.

(*e*) The number of shares and amount of each share.

(*f*) The name in full and the address and calling of each of the applicants, with special mention of the names of not less than three nor more than fifteen of their number who are to be the first or provisional directors of the company, and the major part of whom must be resident in Nova Scotia.

5. Petition for Letters Patent.—At any time not more than one month after the last publication of such notice the applicants may petition the Governor through the Provincial Secretary of Nova Scotia for the issue of such Letters Patent.

(*a*) Such petition must recite the facts set forth in the notice, and must further state the amount of stock taken by each applicant, and also the amount paid in upon the stock of each applicant, and the manner in which the same has been paid in and is held by the company. Such list of shareholders must be sent in with the petition in duplicate.

(*b*) The aggregate of the stock so taken must be at least one-half of the total amount of the stock of the company.

(*c*) The aggregate so paid in thereon must be at least ten per cent.

(*d*) Such aggregate must have been paid into the credit of the company or of trustees therefor, and must be standing at such credit in some bank or banks in Nova Scotia, unless the object of the company is one requiring that it should own real estate, in which case any part not more than one-half of such aggregate may be taken as being paid in if *bona fide* invested in real estate suitable to such object, duly held by trustees for the company, and being of the required value over and above all incumbrances thereon.

(*e*) The petition may ask for the embodying in the Letters patent of any provision which under this chapter might be made by by-law of the company incorporated, and such provision so embodied shall not, unless provision to the contrary be made in the Letters Patent, be subject to repeal or alteration by by-law.

6. Proof of sufficiency of preliminary steps.—Before the Letters Patent are issued the applicants must establish to the satisfaction of the Provincial Secretary, or of such other officer as may be charged by order of the Governor-in-Council to report thereon, the sufficiency of their notice and petition, and the truth and sufficiency of the facts therein set forth, and that the proposed name is not the name of any other known incorporated or unincorporated company; and to that end the Provincial Secretary or such other officer may take and keep on record any requisite evidence in writing by solemn declaration under the Act of the Parliament of Canada, 37 Victoria, 1874, entitled, "An Act for the Suppression of Voluntary and Extra-judicial Oaths."

7. Contents of the Letters Patent.—The Letters Patent shall state the objects of the company to be incorporated thereby, and shall give the names of the directors thereof, and shall

state the amounts of the capital stock of the company, the number of shares into which said capital stock is divided, the number of shares taken as subscribed, and the aggregate amount in cash paid thereon.

8. Different name may be given.—The Governor may, if he think fit, give to the company a corporate name different from that proposed by the applicants in their published notice, if the latter is objectionable.

9. Notice of granting given in Royal Gazette.—Notice of the granting of such Letters Patent shall be forthwith given by the Provincial Secretary in the Royal Gazette, in the form of Schedule A appended to this chapter, and thereupon from the date of the Letters Patent the persons therein named and their successors shall be a body corporate and politic by the name mentioned therein.

10. Powers of Company.—Every company so incorporated may acquire, hold, sell and convey any real estate requisite for the carrying on of the undertaking of such company, and shall forthwith become and be invested with all property and rights, real and personal, theretofore held by or for it under any trust created with a view to its incorporation, and with all the powers, privileges and immunities requisite or incidental to the carrying on of its undertaking, as if it had been incorporated by a special Act of Parliament embodying the provisions of this chapter and of the Letters Patent.

11. Governor may change name of Company.—In case it should be made to appear to the satisfaction of the Governor-in-Council that the name of any company (whether given by the original or by supplementary Letters Patent, or on amalgamation) incorporated under the provisions of this chapter, is the same as the name of an existing incorporated or unincorporated company, or so similar thereto as to be liable to be confounded therewith, it shall be lawful for the Governor-in-Council to direct the issue of supplementary Letters Patent, reciting the former Letters, and changing the name of the company to some other name, to be set forth in the supplementary Letters Patent.

Secs. 4 and 5.—The Governor-in-Council may suspend the provisions or any of the provisions of paragraphs 4 and 5, and may, by Order-in-Council, direct that no publication at all of a petition for Letters Patent need be given, or that a shorter publication may be given than that directed by the said paragraph 4.

1897, 60 Vic., chap. 27:—

2. The applicants for Letters Patent, or the Provisional directors, and the directors of any company, incorporated under the provisions of the said chapter, may all, or any of them, be aliens—and any alien who is an applicant for any Letters Patent under said chapter, or is a provisional director or director in any company incorporated under said chapter need not reside within this Province of Nova Scotia; and the head

office of any company incorporated under said chapter may be in such place in this Province of Nova Scotia or outside this Province, as any company incorporated under the provisions of said chapter shall by by-law declare.

3. All provisions of said chapter which are inconsistent with the provisions of this amendment are hereby repealed.

FEES.

The fees payable on the incorporation of joint stock companies in the Province of Nova Scotia are as follows:—

74. The Governor-in-Council under this chapter may designate the department or departments through which the issue of Letters Patent shall take place, and may prescribe the forms of proceeding and record in respect thereof, and all other matters requisite for carrying out the object of this chapter.

(1) All companies whose capital stock shall be less than ten thousand dollars, the fee shall be twenty dollars. Ten thousand dollars and less than fifty thousand dollars, the fee shall be thirty dollars. Fifty thousand dollars and less than one hundred thousand dollars, the fee shall be forty dollars. One hundred thousand dollars and less than two hundred and fifty thousand dollars, the fee shall be fifty dollars. Two hundred and fifty thousand dollars and less than five hundred thousand dollars, the fee shall be sixty dollars. Five hundred thousand dollars and upwards, the fee shall be seventy dollars.

The fee for supplementary Letters Patent, changing the name of a company incorporated under this Act, shall be fifteen dollars.

The fee for supplementary Letters Patent, increasing the capital stock of a company to any sum within the amount for which a fee has already been paid, shall be fifteen dollars.

The fee for supplementary Letters Patent, increasing the powers of a company, shall be fifteen dollars.

No official forms or instructions regarding the incorporation of joint stock companies in the Province of Nova Scotia are issued by the department or prescribed by the Statute, but the provisions of the Statutes coupled with the forms in use in the other Provinces will afford a ready guide to parties seeking incorporation in that Province.

NORTH WEST TERRITORIES.

The Statutory Provisions relating to the incorporation of joint stock companies in the North-West Territories are contained in the Consolidated Ordinances of the North-West Territories, 1898, cap. 61, sections 3 to 15, and are as follows:—

3. Incorporation by Letters Patent.—The Lieutenant Governor in Council may, by Letters Patent under the Seal of the Territories, grant a charter to any number of persons not less than three, who petition therefor, constituting such persons and others who thereafter become shareholders in the company

thereby created a body corporate and politic for any of the purposes or objects to which the legislative authority of the Legislative Assembly of the Territories extends. R. O., c. 30, s. 3; No. 35 of 1892, s. 6.

4. Advertisement of application.—The applicants for such Letters Patent must advertise by notice published at least once in the official gazette of the Territories, and in three consecutive weekly issues of any newspaper published at or nearest the place which is to be the chief business place of the company, their intention to apply for the same, stating in such notice:

1. The proposed corporate name of the company, which shall not be that of any other known company, incorporated or unincorporated, or any name liable to be unfairly confounded therewith, or otherwise on public grounds objectionable;
2. The object for which the incorporation is sought;
3. The place within the Territories which is to be its chief place of business;
4. The proposed amount of its capital stock;
5. The number of shares and the amount of each share;
6. The names in full and the address and calling of each of the applicants, with special mention of the names of not less than three nor more than nine of their number who are to be the first or provisional directors of the company, the majority of whom shall be residents of Canada. R. O., c. 30, s. 4.

5. Time for petition.—At any time not more than two months after the last publication of such notice the applicants may petition the Lieutenant-Governor through the Territorial Secretary for the issue of such Letters Patent. R. O., c. 30, s. 5; No. 38 of 1897, s. 34 (1).

6. Contents of petition.—Such petition shall set forth:

1. The facts contained in the notice;
2. The amount of stock taken by each applicant, and the amount paid in upon the stock of each applicant, as also the manner in which the same has been paid in and is held for the company. R. O., c. 30, s. 6.

7. Amount of stock to be taken.—The aggregate of the stock so taken shall be at least the one-half of the total amount of the proposed capital stock of the company. R. O., c. 30, s. 7.

8. Disposal of amount paid up.—The aggregate paid in upon the aggregate stock so taken shall be at least ten per cent. thereof, and shall be paid in to the credit of the company or trustees therefor, and shall be standing at such credit in some chartered bank of Canada, unless the object of the company is one requiring that it should own real estate, in which case such aggregate may be taken as paid in if it is *bona fide* invested in real estate suitable to such object, which is duly held by the trustees for the company, and is of the required value over and above all incumbrances thereon. R. O., c. 30, s. 8.

9. Additional provisions in Letters Patent.—The petition may ask for the embodying in the Letters Patent of any provisions which otherwise under the provisions hereof might

be incorporated in any by-law of the company when incorporated; and such provision so embodied shall not, unless provision to the contrary is made in the Letters Patent, be subject to repeal or alteration by by-law. R. O., c. 30, s. 9.

10. Preliminary matters to be proved.—Before the Letters Patent are issued the applicants must establish to the satisfaction of the Territorial Secretary or such other officer as may be charged by the Lieutenant Governor in Council to report thereon, the sufficiency of their notice and petition, and the truth and sufficiency of the facts therein set forth, and that the proposed name is not the name of any other known incorporated or unincorporated company, and to that end the Territorial Secretary or such other officer may take and keep on record any requisite evidence in writing under oath, affirmation or solemn declaration. R. O., c. 30, s. 10; No. 38 of 1897, s. 34 (2).

11. Letters Patent recitals.—The Letters Patent shall recite all the material averments of the notice and petition so established. R. O., c. 30, s. 11.

12. Corporate name.—The Lieutenant Governor in Council may give to the company a corporate name different from that proposed by the applicants in their published notice if the proposed name is objectionable. R. O., c. 30, s. 12.

13. Restriction of Letters Patent after incorporation.—The Lieutenant Governor in Council may restrict such Letters Patent after incorporation in any manner which may seem desirable. No. 38 of 1897, s. 34 (4).

14. Preliminary requirements directory. Irregularities not to avoid.—The provisions of this Ordinance relating to matters preliminary to the issue of Letters Patent shall be deemed directory only; and no Letters Patent issued or which have heretofore been issued under this Ordinance or any Ordinance for which this Ordinance either wholly or in part shall have been substituted, shall be held void or voidable on account of any irregularity in any prescribed notice, or on account of the insufficiency of any such notice, or on account of any irregularity in respect of any other matter preliminary to the issue of such Letters Patent. No. 38 of 1897, s. 34 (4).

15. Notice of grant of Letters Patent.—Notice of granting of every original Letters Patent under the provisions of this Ordinance shall be forthwith given in the official Gazette of the Territories in form A in the schedule to this Ordinance, and thereupon from the date of the Letters Patent the persons therein named and their successors shall be a body politic and corporate by the name mentioned therein. R. O., c. 30, s. 16.

The fees payable upon the incorporation of joint stock companies in the North-West Territories are as follows:—

See section 109 of the Joint Stock Companies' Act.

109. Fees on issue of Letters Patent.—In addition to the cost of all necessary advertising in the official gazette of the Territories, the following fees shall be paid on application for Letters Patent of incorporation and supplementary Letters Patent under this Ordinance:

1. When the capital stock of the company is $400,000 and upwards, the fee to be $200;

2. When the capital stock of the company is $200,000 and upwards, and under $400,000, the fee to be $150;

3. When the capital stock of the company is $100,000 and upwards and under $200,000, the fee to be $100;

4. When the capital stock of the company is $50,000 and upwards and under $100,000, the fee to be $50;

5. When the capital stock of the company is $40,000 and upwards and under $50,000, the fee to be $40;

6. When the capital stock of the company is over $10,000 and under $40,000, the fee to be $30;

7. And when the capital stock of the company is $10,000 or under, the fee to be $20;

8. On application for supplementary Letters Patent the fees to be one-half of that charged on the original Letters Patent. R. O., c. 30, s. 113; No. 38 of 1897, s. 34 (19).

No official forms or letters of information for use in the incorporation of joint stock companies are issued by the Government, but the directions contained in the sections above quoted together with the forms of petition and affidavits in use in the other Provinces will guide the applicant with respect to the forms and procedure.

BRITISH COLUMBIA.

R. S. B. C., 1897.

PART I.

CONSTITUTION AND INCORPORATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Memorandum of Association.

9. Mode of forming Company.—Any five or more persons associated for any lawful purpose within the scope of this Act may, by subscribing their names to a Memorandum of Association, and otherwise complying with the requisitions of this Act in respect of registration, form an incorporated company, with or without limited liability. 25 and 26 Vict., c. 89, s. 6.

10. Mode of limiting liability of members.—The liability of the members of a company formed under this Act, may, according to the Memorandum of Association, be limited either to the amount, if any, unpaid on the shares respectively held by them, or to such amount as the members may respectively undertake by the Memorandum of Association to contribute to the assets of the company, in the event of its being wound up. 25 and 26 Vict., c. 89, s. 7.

11. Memorandum of Association of a Company limited by shares.—Where a company is formed on the principle of having the liability of its members limited to the amount unpaid on their shares, hereinafter referred to as a company limited by shares, the Memorandum of Association shall contain the following things, that is to say:—

(1.) The name of the proposed company, with the addition of the word "Limited" as the last word in such name;
(2.) The part of the Province in which the registered office of the company is supposed to be situate;
(3.) The objects for which the proposed company is to be established;
(4.) The time of existence of the proposed company, if it is intended to secure incorporation for a fixed period;
(5.) A declaration that the liability of the members is limited;
(6.) The amount of capital with which the company proposes to be registered, divided into shares of a certain fixed amount;

Subject to the following regulations:—
(1.) That no subscriber shall take less than one share;
(2.) That each subscriber of the Memorandum of Association shall write opposite to his name the number of shares he takes. 25 and 26 Vict., c. 89, s. 8.
(3.) That each subscriber of the Memorandum of Association shall be the *bona fide* holder in his own right of the share or shares for which he has subscribed in the Memorandum of Association.

12. Memorandum of Association of a Company limited by guarantee.—Where a company is formed on the principle of having the liability of its members limited to such amount as the members respectively undertake to contribute to the assets of the company in the event of the same being wound up, hereinafter referred to as a company limited by guarantee, the Memorandum of Association shall contain the following things, that is to say:—
(1.) The name of the proposed company, with the addition of the words "Limited by guarantee" as the last words in such name;
(2.) The part of the Province in which the registered office of the company is proposed to be situate;
(3.) The objects for which the proposed company is to be established;
(4.) A declaration that each member undertakes to contribute to the assets of the company, in the event of the same being wound up, during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and of the costs, charges, and expenses of winding up the company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount. 25 and 26 Vict., c. 89, s. 9.

13. Memorandum of Association of an unlimited Company.—Where a company is formed on the principle of having no limit placed on the liability of its members, hereinafter referred to as an unlimited company, the Memorandum of Association shall contain the following things, that is to say:
(1.) The name of the proposed company;

(2) The part of the Province in which the registered office of the company is proposed to be situate;

(3.) The objects for which the proposed company is to be established. 25 and 26 Vict., c. 89, s. 10, *as amended by C. A. 1888, c. 21, s. 67, for the purposes of Part III. of that Statute only.*

14. Stamp, signature and effect of Memorandum of Association.—The Memorandum of Association shall be signed by each subscriber in the presence of, and attested by one witness at the least; it shall, when registered, bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in the Memorandum contained, on the part of himself, his heirs, executors, and administrators, a covenant to observe all the conditions of such Memorandum, subject to the provisions of this Act. 25 and 26 Vict., c. 89, s. 11, *as amended by C. A. 1888, c. 21, s. 68, for the purposes of Part III. of that Statute only.*

15. Power of certain companies to alter Memorandum of Association.—Any Company limited by shares may so far modify the conditions contained in its Memorandum of Association, if authorized to do so by its regulations as originally framed, or as altered by special resolution in manner hereinafter mentioned, as to increase its capital, by the issue of new shares of such amount as it thinks expedient, or to consolidate and divide its capital into shares of larger amount than its existing shares, or to convert its paid-up shares into stock, but save as aforesaid, to the location of the registered office of the company, and as hereinafter provided, no alteration shall be made by any company in the conditions contained in its Memorandum of Association. 25 and 26 Vict., c. 89, s. 12.

Articles of Association.

16. Regulations to be prescribed by Articles of Association.—The Memorandum of Association may, in the case of a company limited by shares, and shall, in the case of a company limited by guarantee or unlimited, be accompanied, when registered, by Articles of Association, signed by the subscribers to the Memorandum of Association, and prescribing such regulations for the company as the subscribers to the Memorandum of Association deem expedient. The Articles shall be expressed in separate paragraphs numbered arithmetically; they may adopt all or any of the provisions contained in the table marked A in the First Schedule hereto; they shall, in the case of a company, whether limited by guarantee or unlimited, that has a capital divided into shares, state the amount of capital with which the company proposes to be registered; and in the case of a company, whether limited by guarantee or unlimited, that has not a capital divided into shares, state the number of members with which the company proposes to be registered, for the purpose of enabling the Registrar to determine the fees payable on registration. In a company limited by guarantee or unlimited, and having a capital divided into shares, each subscriber shall take one share at the least, and shall

write opposite to his name in the Memorandum of Association the number of shares he takes. 25 and 26 Vict., c. 89, s. 14.

17. Application of Table A.—In the case of a company limited by shares, if the Memorandum of Association is not accompanied by Articles of Association, or in so far as the Articles do not exclude or modify the regulations contained in the table marked A in the First Schedule hereto, the last-mentioned regulations shall, in so far as the same are applicable, be deemed to be the regulations of the company in the same manner and to the same extent as if they had been inserted in Articles of Association, and the Articles had been duly registered. 25 and 26 Vict., c. 89, s. 15.

18. Stamp, signature and effect of Articles of Association.—The Articles of Association shall be printed, and shall be signed by each subscriber in the presence of, and be attested by, one witness at the least. When registered, they shall bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in such Articles contained a covenant on the part of himself, his heirs, executors, and administrators, to conform to all the regulations contained in such articles, subject to the provisions of this Act; and all moneys payable by any member to the company, in pursuance of the conditions and regulations of the company, or any of such conditions or regulations, shall be deemed to be a debt due from such member to the company in the nature of a specialty debt. 25 and 26 Vict., c. 89, s. 16.

General Provisions.

19. Registration of Memorandum of Association and Articles of Association, with fees as in Table B.—The Memorandum of Association and the Articles of Association, if any, shall be delivered to the Registrar of Joint Stock Companies, who shall retain and register the same. There shall be paid to the Registrar by a company having a capital divided into shares, in respect of the several matters mentioned in the table marked B. in the First Schedule hereto, the several fees therein specified, or such smaller fees as the Lieutenant-Governor in Council may from time to time by order or orders in council direct; and by a company not having a capital divided into shares, in respect of the several matters mentioned in the table marked C. in the First Schedule hereto, the several fees therein specified, or such smaller fees as the Lieutenant-Governor in Council may from time to time by order or orders in Council direct. All fees paid to the said Registrar in pursuance of this Act shall be paid, and be carried to the account of the Consolidated Revenue Fund of the Province. 25 and 26 Vict., c. 89, s. 17.

20. Effect of registration.—Upon the registration of the Memorandum of Association, and of the Articles of Association in cases where Articles of Association are required by this Act, or by the desire of the parties to be registered, the Registrar

shall issue a certificate of incorporation, showing the corporate name of the company, the part of the Province where the registered office of the company is proposed to be situate, the objects for which the company has been established, the amount of the capital of the company, the number of shares into which the same is divided, and the amount of each share, the time of existence of the company if incorporated for a fixed period, and in the case of a limited company that the company is limited, and in the case of a mining company the liability of the members whereof is specially limited under section 56, hereof, that the company is so specially limited under said section 56; and such certificate shall be published for four weeks in the British Columbia Gazette. The subscribers of the Memorandum of Association, together with such other persons as may from time to time become members of the company, shall thereupon be a body corporate by the name contained in the Memorandum of Association, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, with power to hold lands, but with such liability on the part of the members to contribute to the assets of the company in the event of the same being wound up as hereinafter mentioned. A certificate of the incorporation of any company given by the Registrar shall be conclusive evidence that all the requisitions of this Act in respect to registration have been complied with.

21. Subject to the provisions of this Act, any company registered under this Act may, by special resolution, alter the provisions of its Memorandum of Association, so far as may be required for any of the purposes hereinafter specified, but in no case shall any alteration take effect until confirmed on petition, by the Supreme Court:

2. Before confirming any such alteration the Supreme Court must be satisfied:—

a. That sufficient notice has been given to every holder of debentures or debenture stock of the company, and any person or class of persons whose interests will, in the opinion of the Court, be effected by the alteration, and

b. That with respect to every creditor who, in the opinion of the Court, is entitled to object, and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained, or his debt or claim has been discharged or has determined or has been secured to the satisfaction of the Court;

Provided that the Court may in the case of any person or class of persons, for special reasons, dispense with the notice required by this section;

3. An order confirming any such alteration may be made on such terms and subject to such orders as to the Court seems fit, and the Court may make such orders as to costs as it deems proper.

4. The Court shall, in exercising its discretion under the provisions of this section, have regard to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the

satisfaction of the Court for the purposes of the interests of dissentient members; and the Court may give such directions and make such orders as it may think expedient for the purpose of facilitating any such arrangement or carrying the same into effect; Provided always that it shall not be lawful to expend any part of the capital of the company in any such purchase.

5. The company may confirm, either wholly or in part, any such alteration as aforesaid with respect to the objects of the company if it appears that the alteration is required in order to enable the company:—

a. To carry on its business more economically or more efficiently; or

b. To attain its main purpose by new or improved means; or

c. To enlarge or change the local area of its operations; or

d. To carry on some business which, under existing circumstances may, conveniently or advantageously, be combined with the business of the company; or

e. To restrict or abandon any of the objects specified in the Memorandum of Association.

22. Where a company has altered the provisions of its Memorandum of Association with respect to the objects of the Company, and such alteration has been confirmed by the Court, an office copy of the order confirming such alteration, together with a printed copy of the Memorandum of Association, so altered, shall be delivered by the company to the Registrar within fifteen days from the date of the order, and the Registrar shall register the same, and shall certify under his hand the registration thereof, and his certificate shall be conclusive evidence that all the requisitions of this Act with respect to such alterations and the confirmation thereof have been complied with, and thenceforth (but subject to the provision of this Act) the Memorandum so altered shall be the Memorandum of Association of the company.

2. If a company makes default in delivering to the Registrar any documents required by this section to be delivered to him, the company shall upon summary conviction, be liable to a penalty not exceeding fifty dollars for every day during which it is in default, and every director, manager, secretary and officer of the company who shall knowingly and wilfully authorize or permit such default, shall, upon summary conviction, be liable to the like penalty.

23. Copies of Memorandum and Articles to be given to members.—A copy of the Memorandum of Association, having annexed thereto the Articles of Association, if any, shall be forwarded to every member at his request, on payment of the sum of one dollar or such less sum as may be prescribed by the company for each copy; and if any company makes default in forwarding a copy of the Memorandum of Association and Articles of Association, if any, to a member, in pursuance of this section, the company so making default shall, upon summary conviction, for each offence incur a penalty not exceeding five dollars, and every director, manager, secretary and officer of the company who shall knowingly and wil-

fully authorize or permit such default shall, upon summary conviction, be liable to the like penalty. 25 and 26 Vict., c. 89, s. 19.

24. Prohibition against identity of names in Companies.—No company shall be registered under a name identical with that by which a subsisting company is already registered, or so nearly resembling the same as to be calculated to deceive, except in a case where such subsisting company is in the course of being dissolved, and testifies its consent in such manner as the Registrar requires; and if any company, through inadvertence or otherwise, is, without such consent as aforesaid, registered by a name identical with that by which a subsisting company is registered, or so nearly resembling the same as to be calculated to deceive, such first-mentioned company shall, with the direction of the Registrar, change its name, and upon such change being made the Registrar shall enter the new name on the Register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name. 25 and 26 Vict., c. 89, s. 20.

TABLE B.

TABLE OF FEES to be paid to the REGISTRAR OF JOINT STOCK COMPANIES by a Company having a capital divided into shares.

For registration of a company whose nominal capital does not exceed $10,000, a fee of.. .. .. $25 00

For registration of a company whose nominal capital exceeds $10,000, the above fee of $25.00, with the following additional fees, regulated according to the amount of nominal capital; (that is to say)—

For every $5,000 of nominal capital, or part of $5,000 after the first $10,000 up to $25,000.. .. .. $5 00

For every $5,000 of nominal capital, or part of $5,000 after the first $25,000, up to $500,000.. .. .. .. 2 50

For every $5,000 of nominal capital, or part of $5,000 after the first $500,000.. .. .. 1 25

For registration of any increase of capital made after the first registration of the company, the same fees per $5,000 or part of $5,000, as would have been payable if such increased capital had formed part of the original capital at the time of registration.

For a license to or registration of any extra-provincial company, the same fees as are payable for registering a new company.

For registration under this Act of any existing company, the certificate of registration whereof is issued pur-

suant to section 56 hereof, or the capital whereof is increased pursuant to section 5 (*b*) hereof, in lieu of the fee of ten dollars prescribed by section 5 of this Act, the same fees as are payable for registering a new company hereunder, allowing credit as part of such fees for the amount of fees paid by such company in respect of its original registration.

For a license to or registration under this Act of any extra-provincial company already registered in this Province as a foreign company.. .. .. 25 00

And in addition thereto, if the license or certificate of registration under this Act is issued pursuant to section 56 hereof, the same fees as are payable for registering a new company hereunder, allowing credit as part of such fees for the amount of fees paid by such extra-provincial company in respect to its original registration in this Province.

For a licence to an extra-provincial insurance company under section 125 of this Act.. .. .. 25 00

For registering any document hereby required or authorized to be registered, other than the Memorandum of Association.. .. .. 1 00

For making a record of any fact hereby authorized or required to be recorded by the Registrar, a fee of.. 1 00

Publication in the *Gazette*, according to the scale of charges as defined in Schedule B of the "Statutes and Journals Act."

TABLE C.

TABLE OF FEES to be paid to the REGISTRAR OF JOINT STOCK COMPANIES by a company not having a capital divided into shares.

For registration of a company whose number of members, as stated in the Articles of Association, does not exceed 20.. .. .. $10 00

For registration of a company whose number of members, as stated in the Articles of Association, exceeds 20, but does not exceed 100.. .. .. 25 00

For registration of a company whose number of members, as stated in the Articles of Association, exceeds 100, but is not stated to be unlimited, the above fee of $25 with an additional $1 for every 50 members or less number than 50 after the first 100.

For registration of a company in which the number of members is stated in the Articles of Association to be unlimited, a fee of.. .. .. 100 00

For registration of any increase on the number of members made after the registration of the company in respect of every 50 members, or less than 50 members, of such increase.. .. .. 1 00

Provided that no company shall be liable on the whole to pay a greater fee than $100 in respect of its number of members, taking into account the fee paid on the first registration of the company.

For registering any document hereby required or authorized to be registered, other than the Memorandum of Association.. .. .. 1 00

For making a record of any fact hereby authorized or required to be recorded by the Registrar of Companies, a fee of.. .. .. 1 00

SECOND SCHEDULE.

Form A.

Memorandum of Association of a Company limited by shares.

1. The name of the company is "The Company, Limited."

2. The registered office of the Company will be situate in

3. The objects for which the company is established are "the conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine, and the doing all such other things as are incidental or conducive to the attainment of the above objects."

4. The liability of the members is limited.

5. The capital of the company is dollars divided into shares of dollars each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this Memorandum of Association, and we respectively agree to take the number of shares set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers.			No. of Shares taken by each Subscriber.
"1. John Jones of	in the County of	Merchant.	200
"2. John Smith of	in the County of	—	25
"3. Thomas Green of	in the County of	—	30
"4. John Thomson of	in the County of	—	40
"5. Caleb White of	in the County of	—	15
	Total shares taken	— — —	310

Dated the day of , 19 .

Witness to the above signatures,

A. B., No. Street, British Columbia.

Form B.

Memorandum and Articles of Association of a Company limited by guarantee, and not having a capital divided into shares.

Memorandum of Association.

1. The name of the company is the Limited."

2. The registered head office of the company will be situate in

3. The objects for which the company is established are "the mutual insurance of ships belonging to members of the company, and doing all such other things as are incidental or conducive to the attainment of the above objects."

4. Every member of the company undertakes to contribute to the assets of the Company in the event of the same being wound up during the time that he is a member or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and the costs, charges and expenses of winding up the same, and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding dollars.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this Memorandum of Association.

Names, Addresses and Descriptions of Subscribers.

1. John Jones of	in the County of	Merchant.
2. John Smith of	in the County of	
3. Thomas Green of	in the County of	
4. John Thompson of	in the County of	
5. Caleb White of	in the County of	

Dated the day of 19 .

Witness to the above signatures,

A. B., No. Street, British Columbia.

Articles of Association to accompany preceding Memorandum of Association.

(1) The Company, for the purpose of registration, is declared to consist of five hundred members.

(2) The directors hereinafter mentioned may whenever the business of the Association requires it, register an increase of members.

Form C.

Memorandum and Articles of Association of a Company limited by guarantee, and having a capital divided into shares.

Memorandum of Association.

1. The name of the Company is the " Company, Limited."

2. The registered office of the Company will be situate in

3. The objects for which the Company is established are "the facilitating travelling in the Province by providing hotels and conveyances by sea and by land, for the accommodation of travellers, and the doing of all such other things as are incidental and conducive to the attainment of the above object."

4. Every member of the Company undertakes to contribute to the assets of the Company in the event of the same being wound up during the time that he is a member, or within one

year afterwards, for payment of the debts and liabilities of the Company, contracted before the time at which he ceases to be a member, and the costs, charges and expenses of winding up the same, and for the adjustments of the rights of the contributories amongst themselves, such amount as may be required, not exceeding dollars.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company, in pursuance of this Memorandum of Association.

Names, Addresses and Descriptions of Subscribers.

1. John Jones of in the County of Merchant,
2. John Smith of in the County of
3. Thomas Green of in the County of
4. John Thompson of in the County of
5. Caleb White of in the County of

Dated the day of 19

Witness to the above signatures,

A. B., No. Street, British Columbia.

Articles of Association to accompany preceding Memorandum of Association.

1. The capital of the company shall consist of dollars, divided into shares of dollars each.

2. The directors may, with the sanction of the Company in general meeting, cancel any shares belonging to the Company.

3. The directors may, with the sanction of the Company in general meeting, cancel any shares belonging to the Company.

4. All the articles of Table A. shall be deemed to be incorporated with these articles, and to apply to the Company.

WE, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the Company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers.			Number of Shares taken by each Subscriber.
"1. John Jones of	in the County of	Merchant.	200
"2. John Smith of	in the County of	—	25
"3. Thomas Green of	in the County of	—	30
"4. John Thompson of	in the County of	—	40
"5. Caleb White of	in the County of	—	15
	Total shares taken	— — —	310

Dated the day of 19 .

Witness to the above signatures,

A. B., No. Street, British Columbia.

FORM D.

MEMORANDUM AND ARTICLES OF ASSOCIATION of the unlimited Company having a capital divided into shares.

Memorandum of Association.

1. The name of the Company is the " Company."
2. The registered office of the Company will be situate in
3. The objects for which the company is established are "the working of a patent method of founding and casting stereotype plates, of which method John Smith, of , is tho sole patentee."

WE, the several persons whose names are subscribed, are desirous of being formed into a company, in pursuance of this Memorandum of Association.

Names, Addresses and Descriptions of Subscribers.

1. John Jones of in the County of Merchant,
2. John Smith of in the County of
3. Thomas Green of in the county of
4. John Thompson of in the County of
5. Caleb White of in the County of

Dated day of 19

Witness to the above signatures,

A. B., No. Street, British Columbia.

Articles of Association to accompany preceding Memorandum of Association.

Capital of the Company.

The capital of the Company is dollars divided into shares of dollars each.

Application of Table A.

All the articles in Table A. shall be deemed to be incorporated with these articles, and apply to the company.

WE, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the Company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers.			Number of Shares taken by Subscribers.
"1. John Jones of	in the County of	Merchant	1
"2. John Smith of	in the County of	—	5
"3. Thomas Green of	in the County of	—	2
"4. John Thompson of	in the County of	—	2
"5. Caleb White of	in the County of	—	3
	Total shares taken	— — —	13

Dated the day of 19 .

Witness to the above signatures,

A. B., No. Street, British Columbia.

WHERE TO INCORPORATE.

The following is a comparison of some of the points of advantage and disadvantage commonly raised for consideration in determining *where* to incorporate a company.

The points noted relate to three classes of incorporation.

1. Incorporation under Dominion Letters Patent.
2. Incorporation under Dominion Special Act.
3. Incorporation by Letters Patent under the Ontario Act.

The considerations here enumerated are not exhaustive, and other points of advantage and disadvantage will readily occur to the reader, but these will serve to draw his attention to some of the considerations to be weighed in determining *where* to incorporate.

DOMINION LETTERS PATENT.	DOMINION SPECIAL ACT.	ONTARIO.
Cost. $1,000,000 and upwards .... $500.00 500,000 to 1,000,000 .... 300.00 200,000 to 500,000 .... 250.00 100,000 to 200,000 .... 200.00 40,000 to 100,000 .... 150.00 Less than $40,000 .... 100.00 Must be advertised in Gazette which costs $25.00 more. Takes from 4 to 6 months to complete at the best.	*Cost.* from $300 to $1,000.	*Cost.* $000,000 to $40,000. $100 $40,000 to $100,000 . $100 and $1.00 per $1,000 on amount over $40,000 $100,000 to $1,000,000. $160 and $2.50 per $10,000 on amount over $100,000 $1,000,000 to .... $385 and $2.50 per $10,000 on amount over $1,000,000. no advertisement.
Borrowing Powers. Sec. 37 provides : "But the amount borrowed shall not at any "time be greater than seventy-five per cent. of "the actual paid-up stock of the Company (and as "amended), provided always that the limitations "and restrictions on the borrowing powers of the "Company contained in this section shall not "apply to or include moneys borrowed by the Company on bills or promissory notes drawn, made, "accepted or endorsed by the Company.	*Borrowing Powers.* No authority to borrow at all in the "Company Clauses Act." It appears to be left, to be covered by the Special Act.	*Borrowing Powers.* See Sec. 47. The power here given is not limited as in the Dominion Act.

Calls. Sec. 5. One half of the stock must be subcribed and 10 per cent. on this paid before petition is filed, and the Charter cannot be got unless this is done.	*Calls.* Sec. 18. 10 per cent. must be called during the first year and 10 per cent. in each succeeding year till all is called up.	*Calls.* Sec. 32. No sum need be paid before petition filed nor any particular amount of stock subscribed for; 10 per cent. must be called in the first year; that is all.
General Powers. Secs. 23 and 24, and Rev. Stats. Can., cap. 1, sec. 7, sub-sec. 43. The Dominion Officials are stricter in limiting the powers which they will confer by Charter and in narrowing them down.	*General Powers.* Secs. 5 and 6. Same as Dominion Letters Patent.	*General Powers.* Sec. 25. Compare these sections carefully. It appears to me the advantage here is with the Ontario Act. *See especially sub-sec. f. of sec.* 25. The Ontario Officials are more liberal in the powers which they will insert in their charter.
Statements to Government. NONE.	*Statements to Government.* NONE.	*Statements to Government.* Sec. 79. This return relates solely to the shares and capital of the Company, and is for the purpose of informing the public who are doing business with the Company on what capital it is supposed to be operating. No return is required which discloses the profits or transactions of the Company, or permits a rival to acquire knowledge of its affairs. The officers of the department here are fully alive to the impropriety of requiring any such return, and there is not I think any danger of the requirement being extended into this line.

DOMINION LETTERS PATENT.	DOMINION SPECIAL ACT.	ONTARIO.
Disclosure to Shareholders. Sec. 85. Under this section a shareholder might I think insist on disclosures that would be prejudicial.	*Disclosure to Shareholders.* No corresponding provision.	*Disclosure to Shareholders.* Sec. 78. This is considerably narrower than Sec. 85 of Dominion Act.
Payment of Stock by transfer of Assets. Sec. 27. This section has given rise to considerable trouble and difficulty. If any shareholders give assets to the Company in payment of the shares allotted to them, this section applies, and the agreement must be filed at Ottawa, and becomes open to public inspection. If not filed the shareholder is liable to pay over again for his shares. No such provision in "Company Clauses' Act."	*Payment of Stock by transfer of Assets.* No corresponding section.	*Payment of Stock by transfer of Assets.* No corresponding section, but see sec. 10, s.s. 3. The usual course is to incorporate first and then afterwards agree to allot stock and take assets in payment of it. The Prov. Secy. has nothing to do with the matter.

LEGISLATION OF 1899, RELATIVE TO COMPANIES.

Resume of Company Legislation in the Dominion and in the various Provinces for the year 1899.

DOMINION OF CANADA.

Chapter 40.—

Companies heretofore or hereafter incorporated, and to which either The Companies Clauses Act, cap. 118, or The Companies Act, cap. 119, of the Revised Statutes, is applicable, may create or issue any part of the capital stock of the Company as preference stock. This Act does not apply to any Insurance or Trust Company.

Chapter 42.—

The Winding-Up Act is amended so as to empower the Court to appoint one or more inspectors to advise and assist the liquidators in the liquidation of the Company and providing for the remuneration of such inspector or inspectors.

Chapter 43.—

Amends the Winding-Up Act and provides that the Court may summon a meeting of creditors to consider any proposed compromise, and that if a majority in number representing three-fourths in value of such creditors or classes of creditors, agree to any arrangement or compromise, such arrangement or compromise, sanctioned by an order of the Court, shall be binding on all such creditors, and also on the liquidator and contributories of the Company.

ONTARIO.

62nd Victoria, 2nd session, cap. 11, sec. 20, makes section 23, sub-sec. 2 and 3, of the Ontario Companies Act retroactive, except in any case in which judgment has been heretofore de-

QUEBEC.

Cap. 41.—No bonus to be granted for establishing factory similar to one already established. No bonus for removal of industry in operation. Bonus so granted null.

NEW BRUNSWICK.

62 Vic., cap. 14.—An Act relating to the making and issuing of debentures by municipal and other incorporated bodies.

1. Debenture, how to be made.
2. Interest coupons, how to be made, form of.
3. Departure of form not to invalidate debenture, remedy for such departure.
4. In what Act shall apply Schedule.

NOVA SCOTIA.

No Legislation relating to Company Law was passed in this Province in the Session of 1899.

MANITOBA.

62 Victoria. Assented to 13th April, 1899.

"The Joint Stock Companies Winding-Up Act."

It contains the usual clause in respect to Application, Interpretation—Registration of Order—Consequences of commencing to wind up when they may be wound up—Powers of liquidators—Liability of contributories—Liquidator's duties—Expenses—Meetings—Assistance of the Court—Matters of Practice—Dissolution of Companies—Distribution of Assets.

NORTH-WEST TERRITORIES.

62 Vic.—In this Province an Act, Cap. 12, was passed providing for the voluntary winding up of joint stock companies.

This Act, like other voluntary Winding Up Acts, is not of any great moment or importance, judging by the slight use that has been made of them in the older Provinces.

Joint Stock Companies are seldom wound up voluntarily, the principal winding up has been done compulsorily in the event of the insolvency of the Company, and subject to the provisions of the Dominion Winding Up Act.

The Provinces have no jurisdiction in the case of insolvency.

BRITISH COLUMBIA.

62 Vic., cap. 15.—

An Act to amend the Companies Act, 1899, provides that—Companies Act not to apply to Hudson Bay Company, that any officers, etc., shall be liable for penalty for fraudulently withholding or altering report, also provides for registration of mortgages securing debentures.

Amendment to Dominion Companies Act and Dominion Companies Clauses Act.

62-63 Vict., *Chap.* 40.

Sec. 1. Preference stock may be created by law.

Sec. 2. Holders may be given control of affairs.

Sec. 3. By-law must be unanimously sanctioned by a vote of the shareholders, present in person or by proxy at a general meeting duly called for considering the same, and representing *two-thirds* of the stock of the Company; provided, however, that if the by-law be sanctioned by not less than three-fourths in value of the shareholders of the Company, the Company may, through the Secretary of State, petition the Governor-in-Council for an order approving the said by-law, and the Governor-in-Council may, if he sees fit, approve thereof, and from the date of such approval, the by-law shall be valid and may be acted upon.

Succession Duty in Canada.

BY

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(Registered in accordance with the Copyright Act.)

Definition.—Succession Duty may be defined as a governmental impost, duty or excise upon the privilege secured by the municipal or civil law to devisees, legatees, grantees, heirs and personal representatives of taking, holding and enjoying all property, real and personal, or any interest therein, passing (to such of them as are not especially excepted) by will, by intestate law, or by any grant or gift made *inter vivos*, and intended to take effect at or after the death of the grantor.

Theory of the Tax.—From long use the right of inheritance has come to be looked upon in these days as a natural inalienable right, but it is not so. Blackstone, in treating of this question uses the following words: "All property must "cease upon death, considering men as absolute individuals, "unconnected with civil society, and the next immediate oc-"cupant would acquire a right to all the deceased possessed. "But, as this would be productive of endless disturbances, "power is given to a man to continue his possessions by dis-"posing of them by will, or, if he neglect to do so, the muni-"cipal law steps in and declares who shall be his successor. "This is not a law of nature, but a civil political establishment. "This tends to make a man a good citizen, since if he work "hard and acquire wealth to a greater extent than his fellows, "he has the *"privilege"* of saying who shall enjoy the fruits of "his labors after his death."

The object selected by the legislature for taxation is the "privilege" referred to in this quotation. Everything to which the legislative power extends may be the subject of taxation, whether it be person or property, or possession, franchise or privilege. Nothing but express constitutional limitation upon legislative authority can exclude anything to which the authority extends from the grasp of the taxing power, if the legislature, in its discretion, should at any time select it for revenue purposes. Considerations of general policy alone determine and limit the selection of the subjects of taxation. The fact, that an individual lives in modern civilized society, and enjoys its manifold privileges, and is sheltered under its protecting laws, gives that society a right to expect that he shall contribute to the support of its institutions, and renders a tax on such a privilege as the right of succession to property a just and equitable tax.

The laws regulating the succession to property confer at the utmost a mere privilege upon the parties benefiting by them, and the legislature has the constitutional power to tax the privilege conferred, as it has the right to tax any other privilege within its jurisdiction.

In the reciprocal duties of protection and support between the state and those who are subject to its authority, and the exclusive sovereignty and jurisdiction of the state over all persons and property within its limits for governmental purposes, lie, therefore, the foundations of this tax, as of all other just and equitable taxes.

The principles underlying the tax are very clearly enunciated in the judgments of several learned judges in the American Courts.

Rodman, J., in Pullen *v.* Comrs. of Wake Co. (1872), 66 N. C. 363, says:—We do not regard the tax in question as a tax on property, but rather as a tax imposed on the "succession," on the right of the legatee to take under the will. The legislative power declares what objects in nature may be held as property; it provides by what forms and on what conditions it may be transmitted from one person to another; it confines the right of inheriting to certain persons whom it defines heirs, and, on the failure of such, it takes the property to the State on an escheat. The right to give or take property is not one of those natural and inalienable rights, which are supposed to precede all government, and which no government can rightly impair. May not the legislature lay conditions on the enjoyment of such a right? And the condition it has imposed in this case is a tax. The principle of protection by the State rendering private property liable to taxation is at the foundation of this tax. The death of the owner would leave his property at the mercy of the strongest were it not for the protection of the State, which takes care of the property, and guides it into the proper hands.

In State *v.*. Dalrymple (1889), 70 Md., 294; 17 Atl., 82, the tax is said to be the price exacted by the State for the privilege accorded in permitting property to be transmitted by will or descent.

Field, C. J., in a recent case in Massachusetts, Minot *V.* Winthrop (1894), 162 Mass. 113, thus refers to the tax:—Taxes on legacies and inheritances, or on succession in any form to property on the death of the owner, have generally been considered, not as taxes upon property, but as excises upon the privilege of taking or transmitting property in this way.

These cases bear out the theory of the "taxation of a privilege" as the foundation upon which succession duty rests.

In other American cases, however, it is said to be immaterial whether succession duty be called or assessed as a tax or not.

Lee, J., in the case of Eyre *v.* Jacob, 14 Grat. (Va.), 427, after reciting the powers of the State with reference to the right of inheritance, thus speaks of the principles upon which this tax is based. "Possessing this sweeping power over the " whole subject, it is difficult to see upon what ground its right " to appropriate a modicum of the estate, call it a tax or what " you will, as the condition upon which those who take the

"estate shall be permitted to enjoy it, can be successfully "questioned."

Again, in the case of Strode *v.* Com., 52 Pa. St. 181, the Supreme Court of Pennsylvania uses these words:—"Now, this is not to be viewed as a tax assessed upon the estate of the decedent, or of anyone, but a restriction upon the right of acquisition by those who, under the law regulating the transmission of property, are entitled to take as beneficiaries without consideration. The State is made one of the beneficiaries. It lays its land upon estates under such circumstances, and claims a share, and whether the share is exacted as a tax or duty or whatever else is of no consequence." And it is further said: "The tax is therefore an exercise of the same power as a change in the law of descent."

Taney, C. J., in Mager *v.* Grima (1849), 8 How, (U. S.) 490, considered the law to be "nothing more than the exercise of "the power possessed by every state of regulating the manner "and terms upon which property within its domain may be "transmitted by will or inheritance, and of prescribing who "shall and who shall not be capable of taking it." In these latter decisions two distinct legislative powers seem to have become confused, viz.—(1) The sovereign power of government to levy taxes and to select the objects to be taxed, and (2) The power of the State to regulate the succession to property.

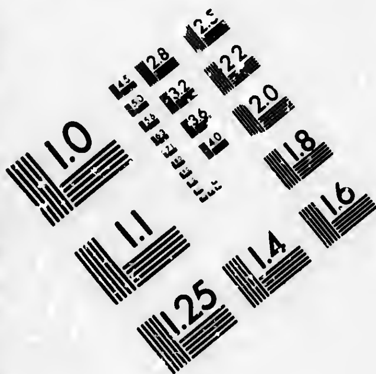
All will admit the absolute right of the State to regulate or even to abolish the law of succession, and will allow that the right of succeeding to property is a mere privilege, and that such a privilege is a lawful object of taxation.

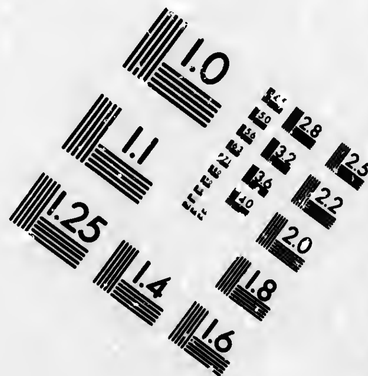
But the decisions quoted above, in which it is stated that the State "has appropriated a modicum of the estate," or "has constituted itself one of the beneficiaries," or that the tax is "an exercise of the same power as a change in the law of descent," assume that the government in passing these laws did so in the exercise of their undoubted power to restrict the right of inheritance; whereas it is clear from the wording and form of the different statutes under discussion that they are all Revenue Acts, and that in passing them the intention was to exercise the equally undoubted power of taxing a privilege.

The weight of authority is therefore that Succession Duties are legitimate taxes levied on the privilege of succession in consideration of the protection afforded by the State, and are neither in the nature of penalties or confiscations.

All authorities are agreed that this tax is one of the least burdensome that can be devised. It conforms to the recognized principles of taxation, being equal and uniform, duly proportioned to the protection afforded by the State to the party taxed, certain as to the time and manner of its payment and the sum to be paid, and levied at a time convenient to the contributor and at little expense of collection.

It presents the most complete system of reaching the class of personal property and privileges which it is framed to embrace, because its collection is aided by the requirement of the law that a dead man's property shall somewhere and at some time pass through a Surrogate or Probate Court for settlement, which gives little opportunity for concealment, and places the property within easy reach of the tax-collector.





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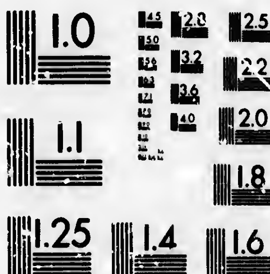

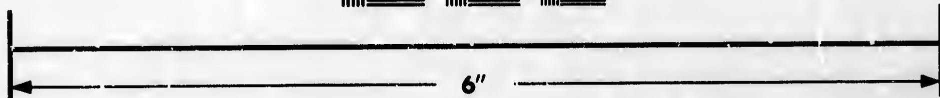

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Succession Duty is not a tax on property. This has been decided in the American Courts in Wallace *v.* Myers (1889), 38 Fed. 184, where the Court said: "The circumstances that, "incidentally, under such a statute, such bonds may have to "be valued in order to ascertain the amount of the tax, does "not affect its essential nature, as one upon the privilege and "not upon the bonds. The bonds are the subject of appraisal, "but the privilege is the subject of the tax."

The ratio in which the tax should be borne is a perplexing question to many students of taxation. In England Sir William Harcourt, when Chancellor of the Exchequer, boldly affirmed his belief in a graduated tax on realized wealth in proportion to the size and value of the estate—and the tax at present in force in England known as "Estate Duty" is so graduated. The Liberal party in England were practically unanimous that the time had come when large estates should pay death duties in proportion to their size, and while they recognized that taxation of this nature has no well-defined limits and could be pushed by irresponsible power to the extent of confiscation, still they judged that the good sense and moderation of the great body of the people could be trusted to protect realized wealth from the attacks of small but mischievous societies of communists and anarchists whoso doctrines might push the tax beyond reasonable limits. To the far-seeing wisdom of English statesmen, such a progressive tax was deemed necessary as a fair concession to the demands of democracy, while it is a barrier to the advance of unreasonable opinions and loose theories of taxation. In a country where wealth is so vast and so unequally distributed as it is in England, progressive taxation may be beneficial, as it tends to equalization, but in Canada this inequality is but slightly felt, and vast fortunes are rare.

In the United States Mr. Justice Brewer, of the Supreme Court, advocates a progressional inheritance tax in the following words:—"I have often urged that taxation on successions "is one of the most just of taxes; and if it were graduated in "proportion to the amount of property passing, I think it "would be most beneficial. It would tend largely to prevent "the accumulation of property in a family line, and to work "that distribution which is for the interest of all." Most of the acts in force, however, in the different States do not exact more than a level tax of five per cent., with the exception of the State of Illinois, where it is progressive.

While such Americans as Mr. Andrew Carnegie and Mr. Bellamy favor a progressive tax of a radical nature, reaching as high as 50 per cent. in the case of millionaires, still no State, except Illinois, has had the courage to put such a tax upon its Statute Books, and it would seem that American statesmen have not the same faith in the "moderation of the great body of the people," as was shown in England, and they fear the abuse of such a form of taxation, which might occur in their less conservative form of government.

Succession Duty seems to be an institution of democracy. It is in the most truly democratic countries in the world, England, Switzerland and the Australian Colonies that this form of taxation finds its highest development.

The United States has been ahead of any other country in the theory of the tax, but has been slow to make personal application of theories which have been too radical for hasty adoption.

Professor Ely, in his work on "Taxation in American States and Cities," thus refers to a progressive inheritance tax: "Although I am not prepared to recommend it at present, it "would be in accord with the principles of Jeffersonian democ-"racy, and also with the teachings of some of the best modern "thinkers on economic and social topics to grade this tax. One "of the most dangerous tendencies of our times is the in-"creasing aggregation of wealth in a few hands. This scheme "is a slight corrective, which is in harmony with the spirit of "our institutions."

Dos Passos, the recognized American authority on the subject of "Inheritance Taxes," is of opinion that "a graduated "tax would not dwarf individual ambition, genius or exertion, "nor could it be successfully maintained that such a tax was "socialistic or communistic in principle."

This author has the following suggestion to make regarding the extension of taxes on inheritances, based on a message of Gov. Hill to the legislature of the State of New York: "Another "suggestion occurs in connection with the inheritance tax "which may lead to the repeal of the frequently abused per-"sonal property tax. This could be accomplished by a small "increase in the rate of the inheritance tax. In consideration "of this repeal, the State would be justified in dividing some "equitable proportion of the inheritance tax among the different "counties in proportion to their respective contributions "thereto."

History of the Tax.—In the Roman Empire under the Emperor Augustus a tax (vicesima hereditatum et legatorum) of five per cent. was imposed upon all legacies and inheritances of a certain value, which were not given to the nearest of kin on the father's side. This tax (according to Gibbon) originated in the military necessities of the Empire at that time.

It is asserted that the tax on legacies of personal property was introduced into England in 1780, partly by the influence of the writings of Adam Smith, and partly by the reference of Gibbon to the Roman law, the books of both these writers having been published shortly before the introduction of the tax by Lord North.

Traces of taxes, based on very similar principles, are found in England, however, under the feudal system, and were known as reliefs and *primer seisins*.

In 1796 Pitt endeavored to tax all successions to real as well as personal estate, following the system then in force in Holland, but only succeeded in extending the tax against personal property.

It was not until 1853 that Gladstone was successful in taxing all successions to real property, chattels real, and a vast variety of personal property and rights not reached by the former act. From that time, the tax has been gradually extended until in 1894 the "Finance Act" introduced "Estates Duties," and the progressive form of the tax. Upon the intro-

duction of this Act (which, like the ancient Roman tax, was required to meet necessary military expenditure) the estimated revenue from all death duties was £13,500,000—personalty yielding £11,000,000, and realty the balance.

In Europe at the presnt day the heaviest inheritance taxes are levied in Switzerland. In Geneva distant relatives pay 15 per cent. In six cantons the rates are progressive. When there is no will, the little canton of Uri taxes distant relatives 25 per cent., and even more, on the excess above 10,000 francs. In Germany the erbschafts-zteuer nowhere applies to direct heirs, except in Alsace-Lorraine. The rates in Prussia are from 1 to 8 per cent., according to relationship.

The French law taxes the gross value of the property without allowing a deduction for debts. This maximum is 11¼ per cent. Austria, Holland, Russia, Italy, Spain, Portugal, Greece, Denmark, Poland, Sweden, Norway, Roumania, Monaco and other States also have the inheritance tax in some form.

But it is the American forms of the tax which are of most interest to the student of Succession Duties in Canada, the Acts now in force in the various Provinces having been modelled, not from the complicated English, but from the simpler and more modern American Statutes.

The first American State to pass a collateral inheritance Act was Pennsylvania in 1826, and under various Statutes the tax remained in force until 1887, when the whole subject was codified by " An Act to provide for the better collection of Collateral Inheritance Taxes."

In New York State the tax was first introduced in 1885, by an Act modelled after the Pennsylvania Acts existing prior to 1855. As the Act was crude and carelessly drawn an entirely new Act was passed in 1892 (after various previous attempts at amendment), known as "An Act in Relation to Taxable Transfers of Property."

Various forms of the tax are now to be found also in Maryland, Illinois, Virginia, West Virginia, Connecticut, Delaware, Ohio, Maine, Massachusetts, California, New Jersey, Tennessee and Minnesota. In Louisiana and North Carolina the Acts once in force have been repealed.

During the American War of the Rebellion, an inheritance tax was imposed of from 1 to 5 per cent. upon lineal and collateral heirs in terms very similar to the English Act in force at that time. This was repealed in 1870.

Under the Income Tax Act of 1894 a tax of 2 per cent. was imposed by the Federal Government upon money and the value of personal property acquired by gift or inheritance, but the Supreme Court by a recent decision declared the whole Act to be unconstitutional.

"There is no art which one Government sooner learns from " another, than that of draining money from the pockets of "the people," says Adam Smith, so it is not surprising that the attention of all the Canadian Provinces seems to have been attracted by the passage of the new Act above referred to in New York in 1892, for in that year Acts imposing "Succession Duty" were passed in Ontario, Nova Scotia, New Brunswick and Quebec. Manitoba followed the lead in 1893, and in 1894

Prince Edward Island and British Columbia completed the list. No such tax has yet been imposed in the North-west Territories.

The first Canadian Act was drafted in the office of the Attorney General for Ontario, and was modelled upon the Acts of New York and Pennsylvania mentioned above.

Unlike ancient Rome and modern England, the military necessities of Ontario would not justify the imposition of such a tax, but, as it was deemed necessary to find a plausible excuse, "charity," that cloak which is said to cover a multitude of sins, appears in the preamble to the Act, as the reason for its introduction.

The Ontario Act of 1892 was used as a model, with very slight variations in anything but the tax rate, by all the other Provinces, with the exception of Quebec. Even the "charitable" excuse was repeated in them.

The similarity of the various Acts in force and their derivation from and likeness to the American Statutes, renders the decisions of the Courts in one Province of value in construing the Act in another, and on many points American cases and text books will be found of value.

The full text of the Act at present in force in each of the Provinces, as amended to date, is given below—together with a synopsis of the decisions of the Courts upon questions which have arisen under the Acts—and an authentic statement of the Revenue derived therefrom by each Province since the imposition of the tax.

ONTARIO.

1892—55 Vic., cap. 6.—"The Succession Duty Act, 1892."

1895—58 Vic., cap. 7.—"An Act to make further provision for the payment of Succession Duties in certain cases."

1896—59 Vic., cap. 5.—"An Act to make further provision for the payment of Succession Duties in certain cases."

1897—60 Vic., cap. 15.—"The Statutes Amendment Act, 1897."

The above Acts were all repealed, and cap. 24 of R.S.O. (1897), as amended by 62 Vic., cap. 9, contains the law at present in force.

AN ACT TO PROVIDE FOR THE PAYMENT OF SUCCESSION DUTIES IN CERTAIN CASES.

(Rev. Stat. Ontario, 1897, cap. 24.)

	Secs.
Short title	1
Interpretation, "Property,"	2
Property liable to duty	3, 4
Inventory by executors	5
Appraisement	6-8
Appeal	9
When bequest to executor subject to duty	10
When duty becomes payable	11-13
Executors, etc., to deduct duty or may sell to enable payment	14-16
Refund in certain cases	17
Enforcing payment	18
Costs	19
Limitation of actions for	20
Fees of officers	21
Regulations under Act	22

Whereas this Province expends very large sums annually for asylums for the insane and idiots, and for institutions for the blind and for deaf mutes, and towards the support of

hospitals and other charities, and it is expedient to provide a fund for defraying part of the said expenditure by a succession duty on certain estates of persons dying as hereinafter mentioned;

Therefore Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as "*The Succession Duty Act*," and shall apply to the estates of persons dying on or after the 1st day of July, 1892, unless where it is herein otherwise expressly provided. 55 V. c. 6, s. 1.

2. The word "property" in this act includes real and personal property of every description, and every estate or interest therein capable of being devised or bequeathed by will or of passing on the death of the owner to his heirs of personal representatives. 55 V. c. 6, s. 2.

3. This Act shall not apply:—

1. To any estate the value of which, after payment of all debts and expenses of administration, does not exceed $10,000; nor

2. To property given, devised or bequeathed for religious, charitable or educational purposes; nor

3. To property passing under a will, intestacy or otherwise, to or for the use of the father, mother, husband, wife, child, grandchild, daughter-in-law or son-in-law of the deceased, where the aggregate value of the property of the deceased does not exceed $100,000 in value. 55 V. c. 6, s. 3.

4. (1) Save as aforesaid, the following property shall be subject to a successon duty as herenafter provided, to be paid for the use of the Province over and above the fees payable under *The Surrogate Courts Act;*

(*a*) All property situate within this Province, and any interest therein or income therefrom, whether the deceased person owning or entitled thereto was domiciled in Ontario at the time of his death or was domiciled elsewhere, passing either by will or intestacy;

(*b*) All property situate as aforesaid or any interest therein or income therefrom, which shall be voluntarily transferred by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, bargainor, vendor or donor, or made or intended to take effect, in possession or enjoyment after such death, to any person in trust or otherwise, or by reason whereof any person shall become beneficially entitled in possession or expectancy to any property, or the income thereof;

(*c*) Any property taken as a *donatio mortis causa* made by any person dying on or after the 7th day of April, 1896, or taken under a disposition made by any person so dying, purporting to operate as an immediate gift *inter vivos*, whether by way of trans-

fer, delivery, declaration of trust, or otherwise, which shall not have been *bona fide* made twelve months before the death of the deceased, including property taken under any gift, whenever made, of which property *bona fide* possession and enjoyment shall not have been assumed by the donee immediately upon the gift and thenceforward retained to the entire exclusion of the donor, or of any benefit to him by contract or otherwise;

(*d*) Any property which a person dying on or after the 7th day of April, 1896, having been absolutely entitled thereto, has caused, or may cause to be transferred to, or vested in himself, and any other person jointly, whether by disposition or otherwise, so that the beneficial interest therein, or in some part thereof, passes or accrues by survivorship on his death to such other person, including also any purchase or investment effected by the person who was absolutely entitled to the property either by himself alone, or in concert, or by arrangement with any other person;

(*e*) Any property passing under any past or future settlement, including any trust, whether expressed in writing or otherwise, and if contained in a deed or other instrument effecting the settlement, whether such deed or other instrument was made for valuable consideration or not as between the settlor and any other person, made by any person dying on or after the 7th day of April, 1896, by deed or other instrument not taking effect as a will, whereby an interest in such property or the proceeds of sale thereof for life, or any other period, determinable by reference to death, is reserved, either expressly or by implication to the settlor, or whereby the settlor may have reserved to himself, the right by the exercise of any power to restore to himself, or to reclaim the absolute interest in such property or the proceeds of sale thereof, or to otherwise resettle the same or any part thereof;

(*f*) Any annuity or other interest purchased or provided by any person dying on or after the 7th day of April, 1896, either by himself alone or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased.

(2) The descriptions of properties in clauses (*c*), (*d*), (*e*) and (*f*), shall not be construed to restrict the generality of the descriptions contained in clauses (*a*) and (*b*), and subject to the provisions of subsection 8 of this section, the expressions "all property" and "any property" in this section shall be restricted to property situate within this Province.

(3) Where the aggregate value of the property of the deceased exceeds $100,000, and passes in manner aforesaid, either in whole or in part, to or for the benefit of the father, mother,

husband, wife, child, grandchild, or other lineal descendant or daughter-in-law or son-in-law of the deceased, the same or so much thereof as so passes (as the case may be) shall be subject to a duty of $2.50 for every $100 of the value.

(4) Where the aggregate value of the property exceeds $200,000, the whole property which passes as aforesaid shall be subject to a duty of $5 for every $100 of the value.

(5) Where the value of the property of the deceased exceeds $10,000 so much thereof as passes to or for the benefit of the grandfather or grandmother or any other lineal ancestor of the deceased, except the father or mother, or to any brother or sister of the deceased, or to any descendants of such brother or sister, or to a brother or sister of the father or mother of the deceased, or of any descendant of such last mentioned brother or sister, shall be subject to a duty of $5 for every $100 of the value.

(6) Where the value of the property of the deceased exceeds $10,000 and any part thereof passes to or for the benefit of any person in any other degree of collateral consanguinity to the deceased than is above described, or to or for the benefit of any stranger in blood to the deceased, save as hereinbefore provided for, the same shall be subject to a duty of $10 for $100 of the value.

(7) Provided that where the whole value of any property devised, bequeathed or passing to any one person under a will or intestacy does not exceed $200, the same shall be exempt from payment of the duty imposed by this section.

(8) Provided also that any portion of the estate of any deceased person, whether at the time of his death such person was domiciled in the Province of Ontario or was domiciled elsewhere, which is brought into the Province by the executors or administrators of the estate to be administered or distributed in this Province shall be liable to the duty hereinbefore imposed; but if any succession or legacy duty or tax has been paid upon such property elsewhere than in Ontario, and such duty or tax is equal to or greater than the duty payable on property in this Province, no duty shall be payable thereon in this Province; and if the duty or tax so paid elsewhere is less than the duty payable on property in this Province, then the property upon which such duty or tax has been paid elsewhere shall be subject to the payment of such portion only of the succession duty provided for in the preceding subsections of this section as will equal the difference between the duties payable under this Act with respect to property in the Province of Ontario and the duty or tax so paid elsewhere.

(9) In case an executor or administrator shall in order to escape payment of succession duty, imposed by this Act, distribute any part of the said estate without bringing the same into this Province, such executor or administrator shall be liable personally to pay to Her Majesty the amount of the duty which would have been payable had the assets so distributed been brought within this Province. Provided that this subsection shall not apply to payments made to persons domiciled without the Province out of assets situate without the Province.

(10) Nothing herein contained shall render liable for duty any property *bona fide* transferred for a consideration that is of a value substantially equivalent to the property transferred. 59 V. c. 5, s. 1.

5.—(1) An executor or administrator applying for letters probate or letters of administration to the estate of a deceased person shall, before the issue of letters probate or administration to him, make and file with the Surrogate Registrar a full, true and correct statement under oath showing:

(*a*) A full itemized inventory of all the property of the deceased person and the market value thereof, and

(*b*) The several persons to whom the same will pass under the will or intestacy and the degree of relationship, if any, in which they stand to the deceased;

and the executor or administrator shall before the issue of letters probate or letters of administration deliver to the Surrogate Registrar a bond in a penal sum equal to ten per centum of the sworn value of the property of the deceased person liable, or which may become liable, to succession duty, executed by himself and two sureties, to be approved by the Registrar. conditioned for the due payment to Her Majesty of any duty to which the property coming to the hands of such executor or administrator of the deceased may be found liable. 55 V. c. 6, s. 5 (1); 59 V. c. 5, s. 8.

(2) This section shall not apply to estates in respect of which no succession duty is payable. 55 V. c. 6, s. 5 (2).

(3) Where property passes on the death of the deceased and no executor or administrator can be made accountable for succession duty in respect of such property, every person to whom any property so passes for any beneficial interest in possession, and also, to the extent of the property actually received or disposed of by him, every trustee, guardian, committee, or other person in whom any interest in the property so passing, or the management thereof, is at any time vested, and every person in whom the same is vested in possession by alienation or other derivative title shall be accountable for the succession duty on the property, and shall, within two months after the death of the deceased, or such later time as the Treasurer of the Province for the time being shall allow deliver to the Surrogate Registrar of the county in which the said property is situate, and verify an account to the best of his knowledge and belief of the property. 59 V. c. 5, s. 2.

6. In case the Treasurer of the Province is not satisfied with the value so sworn to, or with the correctness of the said inventory, the Surrogate Registrar of the county in which any property subject to the payment of the said duty is situate shall at the instance of the Provincial Treasurer, his solicitor or agent, direct in writing that the Sheriff of the County shall make a valuation and appraise the said property, and also appraise any property alleged to have been improperly omitted from the said inventory. 59 V. c. 5, s. 3, part.

7. In such case the Sheriff shall forthwith give due and sufficient written notice to the executors and administrators

and to such other persons as the Surrogate Registrar may by order direct of the time and place at which he will appraise the property included in the inventory, or any property which in the opinion of the Provincial Treasurer, his solicitor or agent should be included therein, and shall appraise the same accordingly at its fair market value, and make a report thereof in writing to the Surrogate Registrar, together with such other facts in relation thereto, as the Surrogate Registrar may by order require, and such report shall be filed in the office of the Surrogate Registrar, and for the purposes of the said enquiry and appraisement the said Sheriff shall have all the powers which may be conferred upon Commissioners under *The Act respecting Inquiries concerning Public Matters.* The Sheriff shall be entitled to receive the sum of $5 per diem for services performed under this Act, and his actual and necessary travelling expenses, and the same shall be paid to him by the Treasurer of the Province. 59 V. c. 5, s. 3, part.

8. Where the Provincial Treasurer, his solicitor or agent and the other parties interested do not agree thereon, the Surrogate Registrar shall assess and fix the cash value at the date of the death of the deceased of all estates, interests, annuities and life estates or terms of years growing out of such estate, and the duty to which the same is liable, and shall immediately give notice thereof, by registered letter, to such parties as by the rules of the High Court would be entitled to notice in respect of like interests in an analogous proceeding; and the Surrogate Registrar may appoint for the purpose of this Act a guardian for infants who have no guardians; and the value of every future or contingent or limited estate, income or interest in respect of which the duty is payable at the death of the deceased, either by the terms of this Act or by arrangement made under subsection 3 of section 11, shall, for the purposes of this Act, be determined by the rule, method and standards of mortality and of value, which are employed by the Provincial Inspector of Insurance in ascertaining the value of policies of life insurance and annuities for the determination of the liabilities of life insurance companies, save that the rate of interest to be taken for the purpose of computing the present value of all future interests and contingencies shall be five per centum per annum; and the Inspector of Insurance shall, on the application of any Surrogate Registrar, determine the value of such future or contingent or limited estate, income or interest, upon the facts contained in such application, and certify the same to the Surrogate Registrar, and his certificate shall be conclusive as to the matters dealt with therein. 55 V. c. 6, s. 8; 59 V. c. 5, s. 4.

9. Any person dissatisfied with the appraisement or assessment may appeal therefrom to the Surrogate Judge of the county within thirty days after the making and filing of such assessment and upon such appeal the said Judge shall have jurisdiction to determine all questions of valuation and of the liability of the appraised estate or any part thereof for such duty, and the decision of the Surrogate Judge shall be final, unless the property in respect of which such appeal

is taken shall exceed in value the sum of $10,000, when a further appeal shall lie from the decision of the Surrogate Judge to a Judge of the High Court and from such Judge of the High Court to the Court of Appeal, whose decision shall be final. 55 V. c. 6, s. 9; 59 V. c. 5, s. 5.

10. Where a bequest or devise of property, which otherwise would be liable to the payment of duty under this Act, is made to an executor or trustee in lieu of commission or allowance, and said bequest or devise exceeds what would be a reasonable compensation for the services of the executor or trustee, such excess shall be liable to said duty, and the Judge of the Surrogate Court having jurisdiction in the case shall fix such compensation. 55 V. c. 6, s. 10.

11.—(1) In all cases where there has been a devise, descent or bequest of property liable to succession duty, to take effect in possession or to come into actual enjoyment after the expiration of one or more life estates or a period of years, the duty on such future estate or interest shall not be payable, nor interest begin to run thereon, until the person or persons liable for the same shall come into actual possession of such estate or interest, by the determination of the estate or estates for life or years, and the duty shall be assessed upon the value of the estate or interest at the time the right of possession accrues as aforesaid. 55 V. c. 6, s. 11.

(2) Provided that where no person is entitled to the present enjoyment of such property or the income thereof, or where there is some part of such property or income to the present enjoyment of which no person is entitled, the duty on such property or income or such part of such property or income shall be payable as in section 12 is provided.

(3) Notwithstanding the duty may under this section not be payable until the time when the right of possession or actual enjoyment accrues, any executor, administrator, guardian, or trustee, or person owning a prior interest, when such executor, administrator, guardian, or trustee, or person has the custody or control of the property, may agree upon or commute for a present payment out of the property in discharge of the said duty; and the Treasurer of the Province may upon the application of any such person commute the succession duty which would or might, but for the commutation, become papable in respect of such interest, for a certain sum to be presently paid, and for determining that sum shall cause a present value to be set upon such duty, regard being had to the contingencies affecting the liability to and rate and amount of such duty and interest; and on the receipt of such sum the Treasurer shall give a certificate of discharge from such duty.

(4) Provided that the duty chargeable upon any legacy given by way of annuity, whether for life or otherwise, shall be paid by four equal payments, the first of which payments of duty shall be made before or on completing payment of the first year's annuity, and the three others of such payments of duty shall be made in like manner successively, before or on completing the respective payments of the three succeeding years' annuity respectively. In case the annuitant dies before

the expiration of the said four years only payment of instalments which fall due before his death shall be required.

(5) The duty is to be paid on the cash value of all estates, interests, annuities and life estates, or terms of years mentioned in section 8 of this Act, in the same manner as on the other assets of the estate; but the Judge may grant further time for payment thereof, or of a part thereof, where it appears to the Judge that having reference to the condition of the estate, the available means of making such payment, and the interest of others, that payment within the time prescribed by this Act would be unreasonable or unjust; in such cases, as between executors or administrators of the estate and the person who is to become entitled to the possession or enjoyment at a future period only, the duty payable and paid by the executors or administrators in respect of such future estate or interest shall be a charge on such future estate or interest, and shall be paid to them by the person aforesaid with interest at the time the estate or interest comes into actual possession; but the executors or administrators shall be entitled to receive the amount, or any part thereof, at an earlier date if the person to pay desires to pay the same at an earlier date. 59 V. c. 5, s. 6.

12.—(1) The duties imposed by this Act, unless otherwise herein provided for, shall be due and payable at the death of the deceased, or within eighteen months thereafter, and if the same are paid within eighteen months no interest shall be charged or collected thereon, but if not so paid interest at the rate of six per centum per annum from the death of the deceased shall be charged and collected, and such duties together with the interest thereon shall be and remain a lien upon the property in respect to which they are payable until the same is paid. 55 V. c. 6, s. 12.

(2) The Treasurer of the Province on being satisfied that the full amount of succession duty has been or will be paid in respect of an estate or any part thereof, shall, if required by the person accounting for the duty, give a certificate to that effect, which shall discharge from any further claim for succession duty the property shown by the certificate to form the estate, or such part thereof, as the case may be.

(3) Such certificate shall not discharge any person or property from succession duty in case of fraud or failure to disclose material facts, and shall not affect the rate of duty payable in respect of any property afterwards shown to have passed on the death, and the duty in respect of such property shall be at such rate as would be payable if the value thereof were added to the value of the property, in respect of which duty has been already accounted for.

(4) Provided, however, that a certificate purporting to be a discharge of the whole succession duty payable in respect of any property included in the certificate shall exonerate from the duty a *bona fide* purchaser for valuable consideration without notice, notwithstanding any such fraud or failure. 59 V. c. 5, s. 9.

13. The Surrogate Judge may make an order upon the application of any person liable for the payment of said duty, extending the time fixed by law for payment thereof where it appears to such Judge that payment within the time prescribed by this Act is impossible owing to some cause over which the person liable has no control. 55 V. c. 6, s. 13.

14. Any administrator, executor or trustee having in charge or trust, any estate, legacy or property subject to the said duty shall deduct the duty therefrom, or collect the duty thereon upon the appraised value thereof from the person entitled to such property, and he shall not deliver any property subject to duty to any person until he has collected the duty thereon. 55 V. c. 6, s. 14.

15. Executors, administrators and trustees shall have power to sell so much of the property of the deceased as will enable them to pay the said duty in the same manner as they may by law do for the payment of debts of the testator or intestate. 55 V. c. 6, s. 15.

16. Every sum of money retained by an executor, administrator or trustee, or paid into his hands for the duty on any property shall be paid by him forthwith to the Treasurer of the Province, or as he may direct. 55 V. c. 6, s. 16.

17. Where any debts shall be proven against the estate of a deceased person, after the payment of legacies or distribution of property from which the duty has been deducted, or upon which it has been paid, and a refund is made by the legatee, devisee, heir or next of kin, a proportion of the duty so paid shall be repaid to him by the executor, administrator or trustee, if such duty has not been paid to the Treasurer of the Province, or by the Treasurer if it has been so paid. 55 V. c. 6, s. 17.

18. If it appears to the Surrogate Judge that any duty accruing under this Act has not been paid according to law, he shall make an order directing the persons interested in the property liable to the duty to appear before the Court on a day certain to be therein named and show cause why said duty should not be paid. The service of such order and the time, manner and proof thereof, and fees therefor, and the hearing and determining thereon, and the enforcement of the judgment of the Court thereon shall be according to the practice in or upon the enforcement of a judgment of the High Court. 55 V. c. 6, s. 18.

19. The costs of all such proceedings shall be in the discretion of the Court or Judge and shall be upon the County Court scale unless and until another tariff shall be provided, save as to the costs of an appeal and then upon the scale of the court appealed to. 55 V. c. 6, s. 19.

20. Any action, matter or proceeding by or against the Province in respect of duties or claims arising upon or out of

ory succession, shall be commenced within six years from the time when such duties or claims became payable. 59 V. c. 5, s. 7; 60 V. c. 15, Sched. A. (71).

21. The Judges and Registrars of the several Surrogate Courts shall be entitled to take for the performance of duties and services under this Act, similar fees to those payable to them under and by virtue of *The Surrogate Courts Act* and the Surrogate Court rules for similar proceedings, and section 83 of such Act shall apply to the fees payable under this Act to the Surrogate Judge. 55 V. c. 6, s. 20.

22. The Lieutenant-Governor in Council may make regulations for carrying into effect the provisions of this Act, and such regulations shall be laid before the Legislative Assembly forthwith, if the legislature is in session at the date of such regulations, and if the Legislature is not in session such regulations shall be laid before the House within the first seven days of the session next after the same are made. 55 V. c. 6, s. 22.

See also "Surrogate Courts Act," R. S. O. (1897), c. 59, s. 12.

AN ACT RESPECTING SUCCESSION DUTIES.

(62 Vic. cap. 9.)

Assented to 1st April, 1899.

	Secs.
Recovery of succession duties under Rev. Stat., c. 24, by action.	1
Matters to be determined by High Court in action	2
Action may be brought before time for payment of duty	3
Production of documents, examination of witnesses, etc.	4
Ordering trial of issues	5
References	6
Appeals in actions under Act	7
Declaration as to liability of property transferred before death.	8
Registration of caution. Rev. Stat., c. 138	9
Retrospective operation of preceding provisions	10
Rev. Stat., c. 24, s. 4, amended	11
Property of which deceased was competent to dispose liable to duty. Imp. Act, 57-58 Vict., c. 30, s. 2 (a), and s. 22 (2)	(g)
Estates in dower or by curtesy. Imp. Act, 57-58 Vict., c. 30, s. 22 (3)	(h)
Aggregate value of estate—property out of province to be included.	12
Foreign executors, etc., not to transfer stocks, etc., until duty paid	13
Rev. Stat., c. 24, s. 8, amended	14
Remedies to be in addition to those under Rev. Stat., c. 24	15

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

1. Any sum payable under *The Succession Duties Act* shall be recoverable with full costs of suit as a debt due to Her Majesty from any person liable therefor by action in any court of competent jurisdiction and it shall not in any case be necessary to take the proceedings authorized by sections 6 to 10 of the said Act.

2. The High Court shall also have jurisdiction to determine what property is liable to duty under the said Act, the amount thereof and the time or times when the same is payable, and may itself or through any referee exercise any of the powers which by the said sections 6 to 10 are conferred upon any officer or person.

3. Subject to the discretion of the Court as to costs, an action may be brought for any of the purposes in this Act mentioned notwithstanding the time for the payment of the duty has not arrived.

4. In every such action Her Majesty's Attorney-General shall have the same right either before or after the trial to require the production of documents, to examine parties or witnesses or to take such other proceedings in aid of the action as a plaintiff has or may take in an ordinary action.

5. Where for the better determining any question raised in any such action the Court deems it advisable to order the trial of an issue or issues it may give such directions in that behalf as it deems expedient.

6. In case the Court shall think fit at any time to direct a reference such reference need not be to a surrogate registrar or to a sheriff but may be to an officer of the Court as provided by *The Judicature Act.*

7. An appeal shall lie in an action brought under this Act wherever an appeal would lie if the action were between subject and subject and to the like tribunal.

8. Where any property which has, previous to the death of a person whose estate is subject to duty, been conveyed or transferred to some other person is declared liable to duty the Court may declare the duty to be a lien upon the property and may make such declaration although the amount of such duty has not been ascertained, and where any property which, had it remained in the hands of the person to whom or for whose benefit it was conveyed or transferred by such deceased person, would have been liable to duty, has been conveyed or transferred to any purchaser for valuable consideration, the Court may direct the person to whom or for whose benefit the said property was conveyed or transferred by such deceased person as aforesaid to pay the amount of the duty to which such property would have been subject as aforesaid.

9. In case it is claimed that any land or money secured by any mortgage or charge upon land is subject to duty the Provincial Treasurer or the Solicitor to the Treasury acting in his behalf may when deemed necessary cause to be registered in the proper registry office, or if the land is registered under *The Land Titles Act* in the proper office of land titles, a caution stating that succession duty is claimed by the Provincial Treasurer in respect of the said land, mortgage or charge on account of the death of the deceased, naming him, and any subsequent

dealing with such land, mortgage or charge shall be subject to the lien for such duty, but nothing herein contained shall affect the rights of the Crown to claim a lien independently of the said caution.

10. The preceding sections shall apply to the estates of all persons in respect of which the duty is claimed whether such persons have died before or shall die after the passing of this Act.

11. Section 4 of *The Succession Duty Act* is amended by inserting the following as clauses (*g*) and (*h*) of subsection 1.

(*g*) Any property of which a person dying after the coming into force of this section was at the time of his death competent to dispose; and a person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general or limited power as would if he were *sui juris* enable him to dispose of the property as he thinks fit or to dispose of the same for the benefit of his children or some of them, whether the power is exercisable by instrument *inter vivos* or by will or both, including the power exercisable by a tenant in tail whether in possession or not but exclusive of any power exercisable in a fiduciary capacity under a disposition not made by himself or as mortgagee. A disposition taking effect out of the interest of the person so dying shall be deemed to have been made by him whether the concurrence of any other person was or was not required. Money which a person has a general power to charge on property shall be deemed to be property of which he has the power to dispose.

(*h*) Any estate in dower or by the curtesy in any land of the person so dying to which the wife or husband of the deceased becomes entitled on the decease of such person.

12. In determining for the purposes of sub-sections 3 to 6 of section 4 of *The Succession Duty Act* the aggregate value of the property of any person dying after this section takes effect, the value of his property situate outside of this Province shall be included as well as the value of the property situate within this Province.

13. No foreign executor or administrator shall assign or transfer any stocks or shares in this Province standing in the name of a deceased person or in trust for him which are liable to pay succession duty until such duty is paid to the Treasurer of the Province or security given as required by section 5 of the said Act and any corporation allowing a transfer of any stocks or shares contrary to this section shall be liable to pay the duty payable in respect thereof.

14. Section 8 of *The Succession Duty Act* is amended by substituting the word "four" for the word "five" in the twenty-third line thereof.

15. The remedies herein provided shall be in addition to those provided by *The Succession Duty Act*.

REGULATIONS AND FORMS.

The following instructions, regulations and forms have been issued by the Provincial Treasurer to the various Surrogate Court Registrars throughout the Province of Ontario, for their guidance in carrying out the provisions of the Act:—

SIR,—In the discharge of the duties imposed on you by *The Succession Duties Act*, the following synopsis and explanation of the Act may be useful, and I am directed by the Honorable the Treasurer to send the same to you with the regulations which have been made by the Lieutenant-Governor in Council, and the forms approved by the Order.

1. The words "aggregate value" occurring in the Act are to be construed as meaning the aggregate value of the property after payment of all debts and expenses of administration, in the same manner as the word "value" is used in the Act. See sec. 3, sub-s. (1).

2. All succession duties are to be paid to the Treasurer of the Province of Ontario for the time being.

3. No duty is to be payable in the following cases:—

(*a*) Where the value of the property does not exceed $10,000.

(*b*) On property given, devised or bequeathed for religious, charitable or educational purposes.

(*c*) Property passing to parties mentioned in section 3, sub-s. 3, of the Act, where the value does not exceed $100,000.

(*d*) Where bequest or devise does not exceed $200 although value of property exceeds $10,000.

4. The succession duties payable are as follows:—

(*a*) Where the property passes to or for the use of the parties named in section 4 of the Act, sub-ss. 3 and 4.

If aggregate value exceeds $100,000, $2.50 on each $100 of the whole value.

If aggregate value exceeds $200,000, $5 on each $100 of the whole value.

(*b*) Where the property passes to or for the benefit of the parties named in section 4, sub-s. 5 of the Act, and the aggregate value exceeds $10,000: $5 on every $100 of the whole value.

(*c*) Where the property passes to or for the benefit of the parties named in section 4, sub-s. 6 of the Act, and the aggregate value exceeds $10,000: $10 on every $100 of the whole value.

5. Where the estate left by the deceased does not exceed $200,000, and the same passes in various amounts to parties named in section 4, sub-ss. 3, 5 and 6, of the Act, the succession duties payable on each amount respectively will be as in paragraph 4 hereof. Thus, if the aggregate value of the estate is $150,000, of which say $50,000 passes to parties named in sub-s. 3, there will be $2.50 duty payable in respect of each $100 of this $50,000; and if the second $50,000 passes to parties named in sub-s. 5, there will be $5 duty payable on each $100 of this

$50,000; and if the third $50,000 passes to parties named in sub-s. 6, there will be $10 duty payable on each $100 of this $50,000; and so on according to the amounts passing to the various classes of persons specified.

In case the aggregate value of the whole property left by the deceased exceeds $200,000, the duty payable by the parties named in sub-s. 3, will be $5 for every $100, instead of $2.50 as above mentioned.

REGULATIONS BY THE LIEUTENANT-GOVERNOR IN COUNCIL.

1. The principal in the bond under section 5 of the Succession Duty Act shall be bound in the whole amount; and the sureties in such bond are required to justify each in an amount equal to the sum for which he is to be liable, and the aggregate shall equal the amount of the penalty of the bond.

2. One week's notice of valuation and appraisement under sec. 7 of the Act to all the parties interested or their solicitors or agents before proceeding therewith shall *prima facie* be considered sufficient notice.

3. All appointments of a guardian by the Registrar must be made with the privity and consent of the Official Guardian.

4. The fees payable under section 21 of the Act shall be the same as those payable in contentious matters under *The Surrogate Courts Act.*

5. The subjoined forms are to be followed as nearly as the circumstances of each case allow.

FORM 1.

BOND BY EXECUTORS OR ADMINISTRATORS. (Section 5.)

The Succession Duty Act.

IN THE SURROGATE COURT OF THE

In the matter of the estate of A. B., deceased.

Know all men by these presents that we, *C.D.*, of the of , in the County of , *E.F.*, of the of , in the County of , *G.H.*, of the of , in the County of , are jointly and severally bound unto Her Majesty the Queen in the sum of $ to be paid to the Treasurer of the Province of Ontario for the time being for which payment well and truly to be made we bind ourselves and each of us for the whole and our and each of our heirs, executors and administrators firmly by these presents.

Sealed with our seals. Dated the day of , in the year of our Lord, 18

The condition of this obligation is such that if the above named *C.D.*, the administrator of all the property (*or as the case may be*) of *A.B.*, late of the of , in the County of , deceased, who died on or about the day of , A.D., 18 , do well and truly pay or cause

to be paid to the said Treasurer of the Province of Ontario for the time being, representing Her Majesty the Queen in that behalf, any and all duty to which the property, estate and effects of the said *A.B.* coming into the hands of the said *C.D.* may be found liable under the provisions of *The Succession Duty Act*, within eighteen months from the date of the death of the said *A.B.* or such further time as may be given for payment thereof under section 13 of *The Succession Duty Act*, then this obligation shall be void and of no effect, otherwise the same to remain in full force and virtue.

Signed, sealed and delivered in
the presence of .

FORM 2.

AFFIDAVIT OF VALUE AND RELATIONSHIP. (Section 5.)

The Succession Duty Act.

CANADA,
PROVINCE OF ONTARIO.

IN THE SURROGATE COURT OF THE

In the matter of the estate of *A.B.*, deceased.

I, , of the of , in the County of , make oath and say:—

1. That I am the party applying for letters to the estate of the above named *A.B.*

2. That I have caused to be filed in the office of the Registrar of the above named court a petition praying that letters be granted by said court to me of the estate of the said *A.B.*

3. That I have made diligent enquiry and search as to the value of the property which the said *A.B.* died seised or possessed of or entitled to.

4. That the paper writing hereunto annexed marked "A," is an itemized inventory and true and correct statement of the property which the said *A.B.* died seised or possessed of or entitled to and of the market value thereof, and the amount and value of the debts due to him.

5. That the paper writing hereunto annexed marked "B," contains a true and correct list of all the persons to whom the said property will pass and the degree of relationship in which each of them stand to the said deceased, together with their addresses so far as I can ascertain them.

6. That to the best of my knowledge, information and belief the said did not voluntarily transfer by deed, grant or gift, made in contemplation of his death or made or intended to take effect in possession or enjoyment after his death, any property or any interest therein or income therefrom, to any person in trust or otherwise or by reason whereof any person has or shall become beneficially entitled in possession or expectancy in or to the said property or income thereof.

Sworn before me at the
of , in the County
of , this
day of , A.D., 18 .

A Commissioner, etc.

FORM 3.

DIRECTION TO THE SHERIFF TO MAKE VALUATION. (Section 6.)

The Succession Duty Act.

IN THE SURROGATE COURT OF THE

In the matter of the estate of *A.B.*, deceased.

To the Sheriff of the Count of

At the request of the Treasurer of the Province of Ontario, I hereby direct that you do make a valuation and appraisement of all property of the deceased and report to me the result of such valuation and appraisement forthwith after making the same.

Dated at , this day of , A.D. 18 .

FORM 4.

NOTICE BY SHERIFF. (Section 7.)

The Succession Duty Act.

IN THE SURROGATE COURT OF THE

In the matter of the estate of *A.B.*, deceased.

To

Take notice that by an order made by the Registrar of the Surrogate Court, of the on the day of , 18 , I have been directed to make a valuation and appraisement of the property which the said *A.B.* died seised or possessed of or entitled to, and further take notice that pursuant to the said order, I will on the day of , at of the clock, in the noon, at , proceed to make such valuation and appraisement of which all parties are required to take notice and govern themselves accordingly.

Dated the day of , A.D. 18 .

C.D.,
Sheriff of the County of

FORM 5.

REPORT OF SHERIFF. (Section 7.)

IN THE SURROGATE COURT OF THE

In the matter of the estate of *A.B.*, deceased.

To the Judge of the said Surrogate Court:

Pursuant to an order made in this matter and dated the day of , A.D., 18 , directing me to make a valuation and appraisement of the property which the above named deceased, died possessed or seised of or entitled to, having duly notified all parties (*or as the case may be*) entitled thereto, I proceeded in the presence of to make an appraisement and valuation of said property at its fair market value, and do value and appraise the same at the sum of $ as appears from the schedule hereto annexed.

Dated at , this day of A.D. 18 .

C.D.,
Sheriff of

FORM 6.

CERTIFICATE OF INSPECTOR OF INSURANCE. (Section 8.)

The Succession Duty Act.

IN THE SURROGATE COURT OF

In the matter of the estate of *A.B.*, deceased.

To the Surrogate Registrar of the above Surrogate Court:

I, , of , Provincial Inspector of Insurance, having been applied to by the Surrogate Registrar of this court to determine the value of , and having determined such value, in accordance with the provisions of section 8 of the above Act, hereby certify to the said Registrar the said values as follows:—

Dated at , this day of , A.D. 18 .

J.D.,

Provincial Inspector of Insurance.

FORM 7.

ORDER OF JUDGE. (Section 18.)

The Succession Duty Act.

IN THE SURROGATE COURT OF

In the matter of the estate of *A.B.*, deceased.

It appearing to me that there is duty unpaid accruing under *The Succession Duty Act*, in respect of the property of the above deceased and that the same has not been paid, I do hereby order and direct that do appear before this court at , on the day of , 18 , at of the clock in the noon, to show cause why he should not forthwith pay to the Treasurer of the Province of Ontario the sum of , being duty payable to said Treasurer in respect of the property of the above deceased under the said *The Succession Duty Act*, and why such payment should not be enforced according to the practice in or upon the enforcement of a judgment of the High Court.

FORM 8.

The Succession Duty Act.

BOND BY REGISTRAR. (R. S. O. [1897], c. 59, s. 12.)

Know all men by these presents, that we are held and firmly bound unto our Sovereign Lady Queen Victoria, Her heirs and successors, in manner and in sums following, that is to say, the said in the sum of dollars of lawful money of Canada, the said in the sum of dollars of lawful money; and the said in the sum of dollars of like lawful money, to be paid to Our Sovereign Lady the Queen, her heirs and seccessors, for which payments to be well and faithfully made, we severally and not each for the other, bind ourselves, our heirs, executors and administrators, and each of us binds himself, his heirs, executors and administrators, firmly by these presents.

Sealed with our seals and dated this day of
in the year of Our Lord one thousand eight hundred and

Whereas the above bounden as Registrar of the Surrogate Court of the Count of has been required pursuant to *The Succession Duty Act*, to give security for the due and punctual performance of duties imposed upon him by the said Act, and that he will not receive any duty payable under the said Act. Now the condition of this obligation is such, that if the said shall duly and punctually perform the duties imposed upon him by *The Succession Duty Act*, and shall not receive any duty payable under the said Act, then this obligation to be null and void; otherwise to remain in full force, virtue and effect.

Signed, sealed and delivered
in the presence of

Revenue.—The Annual Revenue from Succession Duties in Ontario has been:

1892	$ 758 53
1893	45,507 42
1894	150.754 04
1895	298,824 99
1896	165,383 40
1897	228,818 46
'898	206,185 59

Decisions.—The following are the only reported decisions of the Ontario Courts respecting Succession Duties:—

Attorney-General *v.* Cameron—27 O. R. 380; 28 O. R. 571; and 26 Ont. App. R. 103.

Special case stated for the opinion of the Court for the purpose of ascertaining the amount of Succession Duty payable under 55 Vic., cap. 6. Judgment by Rose, J. (27 O. R. 380):—

(1) Where a testator divides up his estate so as to create present and future estates or interests, the duty under the above Act is to be assessed on the whole estate at the time of his death, including both the present and future estates or interests, 'but duty is only payable at the death, or within eighteen months thereafter, on the present estates or interests; the payment of duty on the future estates being deferred until they become estates in possession or enjoyment, and the duty then payable is not the duty fixed at the time of the death, but that assessed upon the value of such estates or interests at the time the right of possession or enjoyment accrues.

(2) In computing the duty on an annuity payable on a testator's death, and of which there is present actual enjoyment, the duty thereon must be assessed on its then cash value; on a deferred annuity, duty is payable when the right to enjoy it commences.

(3) Duty is also payable on the capital producing an annuity, when it becomes distributable, as legacies or as part of the final distribution of the estate.

Also in 28 O. R. 571, Rose, J., further decided:—

(4) That, under the above Statute, the duty payable on the capital was deferred until the final distribution thereof, which

was the time when the moneys under the directions of the will reached the hands of the persons who should become entitled thereto, and that the duty then payable would be on the amount then actually distributed, whether increased by accumulations, or by the rise in value of the lands or securities, or decreased by loss.

26 Ont. Appeal Rep. 103—Osler, J. A., gave judgment of the Court:—

(1) When the Provincial Treasurer and the parties interested do not agree as to the Succession Duty payable under the above Act, the question must be settled by the tribunal appointed by the Act, namely the Surrogate Registrar, with the right of Appeal given by the Act. The High Court has no jurisdiction to decide the quest' ı in a stated case. The Court of Appeal refused, therefore, to entertain an appeal from the judgment of Rose, J.

Re Renfrew (29 O. R. 565), judgment of Street, J.:—

(1) The Judge of a Surrogate Court has jurisdiction to determine whether a particular estate, of which probate or administration is sought, is liable or not to pay Succession Duty under R. S. O. (1897), cap. 24, and the amount of such duty; his decision being subject to appeal.

(2) Where a deceased person had his domicile, prior to and at the time of his death, in another Province, and the value of his property, in Ontario, is under $100,000—although his whole estate, including property in the Province of his domicile, exceeds $100,000—and his whole estate in Ontario is by his will devised and bequeathed to his wife and children, the property in Ontario is not liable to pay duty under R. S. O. (1897), cap 24.

For judgment of Surrogate Court Judge in this case, see 34 Can. Law Jour. 318.

Kennedy *v.* Protestant Orphans' Home (25 O. R. 235).

Judgment of MacMahon, J.:—

Where a testator devised and bequeathed all his real and personal estate to his executors and trustees for the purpose of paying a number of pecuniary legacies, some to personal legatees, and others to charitable associations, and provided that the residue of his estate should be divided, *pro rata*, among the legatees:—Held—that it was the duty of the executors to deduct the Succession Duty, payable (under 55 Vic., cap. 6) in respect to the pecuniary legacies, before paying the balance over to the legatees respectively, and they had no right to pay such Succession Duty out of the residue left after paying the legacies in full.

QUEBEC.

1892—55-56 Vic., cap. 17.—"An Act respecting Duties on Successions and on Transfers of Property."
1894—57 Vic., cap. 16.—Amendment.
1895—58 Vic., cap. 16.—Amendment.
1896—59 Vic., cap. 17.—Amendment.

The following is the text of the amended law as in force at the present time under the above Acts:—

1191*b*.

"All transmissions, owing to death, of the property in usufruct or enjoyment of moveable and immoveable property in the Province shall be liable to the following taxes, calculated upon the value of the property transmitted, after deducting debts and charges existing at the time of the death:

"1. In the direct line, ascending or descending; between consorts; between father or mother-in-law and son or daughter-in-law.

"In estates the value of which, after deducting the debts and charges existing at the time of the death,

"(*a*) Does not exceed the sum of three thousand dollars, no tax shall be exigible.

"(*b*) Exceeds three thousand dollars, but does not exceed five thousand dollars, on every hundred dollars of value over three thousand dollars ½ per cent.

"(*c*) Exceeds five thousand dollars, but does not exceed ten thousand dollars, on every hundred dollars of value over three thousand dollars.. 1 per cent.

"(*d*) Exceeds ten thousand dollars, but does not exceed fifty thousand dollars, on every hundred dollars of value over three thousand dollars.. .. .. 1¼ per cent.

"(e) Exceeds fifty thousand dollars, but does not exceed one hundred thousand dollars, on every hundred dollars of value over three thousand dollars.. .. .. 1½ per cent.

"(*f*) Exceeds one hundred thousand dollars, but does not exceed two hundred thousand dollars, on every hundred dollars of value over three thousand dollars.. .. .. 2 per cent.

"(*g*) Exceeds two hundred thousand dollars, on every hundred dollars of value over three thousand dollars.. .. .. 3 per cent.

"2. *In the collateral line.*

"(*a*) If the succession devolves to the brother or sister, or descendant of the brother or sister of the deceased.. .. .. 3 per cent.

"(*b*) If the succession devolves to the brother or sister or descendant of a brother or sister of the father or mother of the deceased.. .. .. 5 per cent.

"(*c*) If the succession devolves to the brother or sister or descendant of the brother or sister of the grand-parents of the deceased.. .. .. 6 per cent.

"(*d*) If the succession devolves to any other collateral.. .. .. 8 per cent.

"If the succession devolves to a stranger.. .... 10 per cent.

"In case of property transmitted in usufruct or with substitution, the tax shall be paid by the usufructuary or the institute and shall not be exigible from any further beneficiary under the same deed.

"Every heir, universal legatee, legatee by general or particular title, executor, trustee and administrator, or notary before whom a will has been executed, shall within thirty days after the death of the testator or, *de cujus*, forward to the Collector of Provincial Revenue for the District wherein the

testator died or the succession devolved, a copy of the will, if there is one, and said persons, excepting the notary, shall also transmit, within three months, to such Collector of Provincial Revenue, a declaration under oath setting forth the name, surname, residence and calling of the declarant, the name, surname, and residence of the testator or *de cujus*, the description and real value of all the property transmitted, the amounts in detail of the debts and charges of the succession, with the names, surnames, residence and calling of all creditors; and, further, the nature and value of the share of the declarant in the succession, after deducting the debts and charges payable by him, of which a detailed statement, with the names, surnames, residence and calling of the creditors must also be given.

"The declaration duly made by one of the above named persons relieves the other as regards such declaration.

"2. If, however, within the said three months, an interim declaration, under oath, is made by any of the beneficiaries, that it is impossible, within the said delay, to furnish the declaration mentioned in the preceding paragraph, the said Collector may extend such delay for sixty days, and a further delay, not exceeding six months, may be granted by the Provincial Treasurer.

"3. On receipts of such first mentioned declaration, the said Collector shall cause to be prepared a statement of the amount of the duties to be paid by the declarant.

"4. Such Collector of Provincial Revenue shall inform the declarant of the amount due as aforesaid, by registered letter mailed to his address, and notify him to pay the same within thirty days after the notice is sent; and, if the amount is not then paid to him on the day fixed, the said Collector of Provincial Revenue may sue for the recovery thereof before any court of competent jurisdiction in his own district.

"5. No transfer of the properties of any estate or succession shall be valid, nor shall any title vest in any person, if the taxes payable under this section have not been paid; and no executor, trustee, administrator, curator, heir or legatee shall consent to any transfers or payments of legacies, unless the said duties have been paid.

NOTE.—See remarks on this sub-sec. in Abbott's Railway Law of Canada at p. 50.

"6. If any declaration, so required, is not made within the prescribed delay, or within any extended delay that may have been granted, or if any false or incorrect statement is made in any such declaration, either as to value or otherwise, double duties shall become due and exacted in favor of Her Majesty, and the person in default shall, in addition to any other recourse against him, be liable to a penalty of one hundred dollars and in default of payment imprisonment of one month.

"All fines imposed by this section shall be paid to the Collector of Provincial Revenue for the district in which such fines are incurred and collected, and shall be recovered before the Superior or Circuit Court, according to the amount thereof, by suit, on behalf of Her Majesty, taken by the Collector of Provincial Revenue in his own name.

"Any sum that may become due to the Crown in virtue of

this section **shall constitute a privileged debt, ranking concurrently with any other privileges of the Crown, immediately after** law costs.

"The Collector of Provincial Revenue who collects any sums in virtue of this section shall be entitled to retain such percentages as the Lieutenant-Governor in Council may determine.

"The lieutenant-Governor in Council may make, amend, replace and repeal all regulations and forms that he may consider necessary for the purpose of carrying out the provisions of this section, which regulations and forms shall come into force as soon as they are published in the Quebec *Official Gazette.*

"This Act shall not affect any deed passed or succession opened before the coming into force thereof; and such deeds and successions shall continue to be liable to the duties under the said Act 55-56 Vic., cap. 17, as if this Act had not been passed.

" 6. This Act shall come into force on the day of its sanction."

55-56 Vic., cap. 17, P. Q., sanctioned, 24th June, 1892; 57 Vic., cap. 16, P.Q., sanctioned 8th January, 1894; 58 Vic., cap. 16, P. Q., sanctioned 12th January, 1895.

59 Vic., cap. 17, in force from 21st Dec., 1895.

1. Article 1191*b* of the Revised Statutes, as enacted by the Act 55-56 Victoria, chapter 17, section 1, and replaced by the Act 57 Victoria, chapter 16, section 2, and amended by the Act 58 Victoria, chapter 16, section 1, is further amended by adding, after clause *g* of paragraph 1, the following clause: 59 Vic., cap. 17, Q.:

"For the purposes of clauses *a*, *b*, *c*, *d*, *e*, *f* and *g*, the sum of three thousand dollars, therein mentioned, is to be deducted out of the whole estate, and not out of the share of each beneficiary."

" 2. This Act shall not be interpreted as declaring that the law was previously different from that herein expressed.

NOTE.—Persons requiring detailed information regarding Succession Duties in the Province of Quebec are referred to an article entitled "Des Droits sur les successions," by L. P. Sirois, LL.D., cember, 1898 (No. 12, vol iv.); also to hand-book entitled "Duties of Quebec City, and published in "La Revue Legale" of De- on Successions," published in 1896, by Mr. Wm. B. Lambe, of Montreal—from which the following information is obtained.

Notes on the Acts.—

The ordinary forms of wills in Quebec are:—

(1) The authentic or notarial form, not requiring proof.

(2) The English form, signed by two witnesses, requiring proof.

(3) The holograph form, or will written and signed by the testator, declared to be intended as his will, requiring proof.

An authentic copy of the will (if in notarial form) or a copy of the probate, should be filed with the Collector of Provincial Revenue where the testator died or the succession devolved, by any heir, the universal legatee, any legatee of general or par-

ticular title, any executor, any trustee, any administrator, or by the notary before whom the testament was passed.

The filing of the will should be made within thirty days after the testator's decease.

No special form of declaration is prescribed by the Statute. It should be a sworn statement in writing, detailing the following points:—

(1) The name in full, and occupation, quality and domicile of the declarant.

(2) Name, residence and occupation of testator.

(3) When, where and before whom the will was executed, whether authentic or otherwise, with proof in the latter case. If intestate, or no will can be found, these facts should be stated.

(4) Place and date of testator's death.

(5) Whether community or other matrimonial rights exist and under what title.

(6) Name, residence and occupation of beneficiaries, with relationship (if any) and degree stated. If strangers, to be so stated.

(7) Detailed statement of assets and liabilities.

Property outside the Province of Quebec is not taxable under the Statute. The property of persons not domiciled in Quebec, but holding property therein at death, is subject to the duties under the Statute.

The declaration should be filed with the same officer as the copy of the will, within three months after testator's death.

Time for filing may be extended by the collector on cause shown for sixty days, and a further extension may be granted by the Provincial Treasurer for a further time limited to twelve months in all.

On receipt of the declaration, the collector shall furnish the declarant with a statement of the duties to be paid, by registered letter, requiring payment within thirty days after notice.

The succession is liable for the whole duty, and the party administering ought to collect the share of each person liable, and pay over the whole to the collector, and obtain a discharge.

The will and declaration must be filed, even if no duties are payable, or the estate be insolvent.

No orders in council have been passed, making, amending, replacing or repealing regulations of forms under the Acts.

Revenue.—

1892-3..	$40,313 59
1893-4..	149,823 46
1894-5..	162,535 50
1895-6..	163,365 33
1896-7..	229,441 72
1897-8..	163,455 26
1898-9..	287,995 63

Decisions.—Heneker *et al v.* Bank of Montreal (7 R. O. C. S. 257); Thivierge *v.* Cinq Mars (13 R. O. C. S. 398).

NOVA SCOTIA.

AN ACT TO AMEND AND CONSOLIDATE THE ACTS RESPECTING SUCCESSION DUTIES.

(58 Vic., cap. 8.)

(Passed the 29th day of March, A. D. 1895.)

SECTION.
Preamble.
1. Act, how cited.
2. Meaning of word "property."
3. General definition of terms used in Act.
4. Cases where Act shall not apply.
5. Succession duty imposed.
6. Case of bequest in lieu of commission.
7. Succession duties, when payable.
8. Executor or administrator to file statement.
9. Appointment of appraiser.
10. Appraiser shall give notice.
11. Powers and duties of appraiser.
12. Registrar to prepare statement of facts.
13. Registrar to assess and fix duty.
14. Appeal to Judge of Probate.
15. Duty, how paid.
16. Provision where property bequeathed to different persons in succession.

SECTION.
17. Duty to be a first charge.
18. List of persons personally accountable to treasurer.
19. Power to executors, etc., to sell property.
20. Duty payable to treasurer.
21. Provision as to refund.
22. Judge of Probate may order payment.
23. Provisions of certain sections of chapter 100, Revised Statutes, to apply.
24. Provision as to costs.
25. Registrar to make quarterly returns
26. Payment of Registrar.
27. Registrar to give bonds.
28. Fees of judges and registrars.
29. Regulations for carrying Act into effect.
30. Inconsistent law repealed.

Preamble.—Whereas, the Province of Nova Scotia expends a large sum annually for the care of the insane and the sick and in the support of other charities, and it is expedient to provide a fund for defraying part of such expenditure by a succession duty on certain estates of persons dying, as hereinafter mentioned,

Therefore be it enacted by the Governor, Council, and Assembly as follows:—

1. Act, how cited.—This Act may be cited as "The Succession Duty Act, 1895."

2. Meaning of word "property."—The word property in this Act shall include real and personal property of every kind and description, and the income therefrom, and every estate and interest therein capable of being devised or bequeathed by will, or passing on the death of the owner to his heirs or personal representatives.

3. General definition of terms used in Act.—In the construction and for the purposes of this Act:

(a) The word "registrar" shall mean the registrar of probate for the county or district of which the judge of probate shall have power to grant letters testamentary or letters of administration to the representatives of the deceased.

(b) "Executor" shall also mean and include "executrix" and "administrator" shall also mean and include "administratrix."

(*c*) The term "trustee" shall include any person taking upon himself the administration of property affected by any express or implied trust.

(*d*) The term "person" shall include a body corporate, company or society.

4. Cases where Act shall not apply.—This Act shall not apply—

(1) To any estate the value of which after payment of the debts and expenses of administration, does not exceed five thousand dollars.

(2) To property passing under a will, intestacy, or otherwise, to or for the father, mother, husband, wife, child, grandchild, daughter-in-law, or son-in-law of deceased, where the value of the property so passing as aforesaid does not exceed twenty-five thousand dollars.

5. Succession duty imposed.—Save as aforesaid all property situate or being within the province of Nova Scotia, and any interest therein or income therefrom, whether the deceased person owning or entitled thereto last dwelt within said province or not, passing either by will or intestacy, or which shall be voluntarily transferred by deed, grant or gift made in contemplation of the death of the grantor or bargainor, or made or intended to take effect in possession or enjoyment after such death, to any person in trust or otherwise, or by reason whereof any person shall become beneficially entitled in possession or expectancy to any property or the income thereof, and all property wherever situate or being over which the trustee, executor or administrator shall or may exercise control, and which shall or may come into his possession, shall be subject to a succession duty, to be paid for the use of the province, over and above the fees provided by chapter 128 of the Revised Statutes, fifth series.

(1) When the value of the property of the deceased after payment of all debts and expenses as aforesaid, exceeds twenty-five thousand dollars, and passes in manner aforesaid either in whole or in part to or for the benefit of the father, mother, husband, wife, child, grandchild, daughter-in-law or son-in-law of the deceased, the same or so much thereof as so passes shall be subject to a duty of two dollars and fifty cents for every one hundred dollars of the value.

(2) When the value of the property after payment as aforesaid exceeds one hundred thousand dollars, the whole property which passes as aforesaid shall be subject to a duty of five dollars for every one hundred dollars of the value.

(3) When the value of the property after payment as aforesaid exceeds five thousand dollars, so much thereof as passes to or for the benefit of the grandfather or grandmother or any other lineal ancestor of the deceased, except the father and mother, to or for any brother or sister of the deceased, or to any descendant of such brother or sister, or to the brother or sister of the father or mother of the deceased, or any descendant of such last mentioned brother or sister, shall be subject to a duty of five dollars for every one hundred dollars of value.

(4) When the value of the property of the deceased, after payment as aforesaid, exceeds five thousand dollars, and any part thereof passes to or for the benefit of any person in any other degree of collateral consanguinity to the deceased than is above described, or to or for the benefit of any stranger in blood to the deceased, save as hereinbefore provided for, the same shall be subject to a duty of ten dollars for every one hundred dollars of the value.

(5) Provided that when the whole value of any property devised, bequeathed or passing to any one person under a will or intestacy does not exceed two hundred dollars, the same shall be exempt from payment of the duty imposed by this section.

6. Case of bequest in lieu of commission.—Where a bequest or devise of property, which otherwise would be liable to the payment of duty under this Act, is made to an executor or trustee in lieu of commissions or allowance, and said bequest or devise exceeds what would be a reasonable compensation for the services of the executor or trustee, such excess only shall be liable to said duty, and the judge having jurisdiction in the case shall fix such compensation.

7. Succession duties when payable.—The duties imposed by this Act, unless otherwise herein provided for, shall be due and payable at the death of the deceased, or within eighteen months thereafter, and if the same are paid within eighteen months no interest will be charged or collected thereon, but if not so paid, interest at the rate of six per centum per annum shall be charged and collected from the death of the deceased.

8. Executor or administrator to file statement.—The executor or administrator to whom letters testamentary or letters of administration to the estate of a deceased person shall have been granted, shall, at or before exhibiting and filing the inventory required by section 18 of chapter 100 of the Revised Statutes, fifth series, make out and file with the registrar a true and correct statement under oath showing the several persons to whom such estate will pass under the will or intestacy and the degree of relationship, if any, in which they stand to the deceased, and the age, address and occupation of each of them.

9. Appointment of appraiser.—In case the treasurer of the province of Nova Scotia is not satisfied with the valuation of the property of deceased, as shown by the inventory and appraisement provided for by chapter 100 of the Revised Statutes, fifth series, the registrar shall, at the instance of the treasurer, his solicitor or agent, direct in writing that the appraiser appointed by the treasurer of the province shall make a valuation and appraise the said property under oath.

10. Appraiser shall give notice.—In such case the appraiser shall forthwith give due and sufficient notice by registered letter to the executor or administrator, and to such other persons as the registrar may direct, of the time and place at which he will appraise such property; and he shall

appraise the same accordingly at its fair market value, and make a report in writing thereof to the registrar, together with such other facts in relation thereto as the registrar may require, and such report shall be filed in the office of the registrar. The appraiser shall be entitled to receive the sum of five dollars per diem for services performed under this Act and his actual and necessary travelling expenses, and the same shall be paid to him by the treasurer.

11. Powers and duties of appraiser.—The treasurer of the province may, in any case in which he is not satisfied with the valuation of the property of the deceased, as aforesaid, appoint an appraiser whose duty it shall be to examine such inventory and the property therein enumerated, and the appraisement thereof, and the correctness of the same. He shall have power to summon before him witnesses, and to require them to give evidenee on oath, orally or in writing (or on solemn declaration, if they be parties entitled to affirm in civil matters) and to produce such documents and things as he may deem requisite to the full investigation of the matter of the correctness of said inventory and appraisement. For the purpose of such investigation he shall have all the powers that an executor or administrator has heretofore had when making an inventory, and also all the powers of appraisers appointed under section 22 of said chapter 100. He shall alter, amend, add to or take away from the said inventory and appraisement as to him shall appear just and proper, and shall, if necessary, make a new inventory and appraisement. He shall as soon as possible conelude such investigation, and make his report thereon without delay.

12. Registrar to prepare statement of facts.—The registrar shall upon receiving the inventory and appraisement from the executor or administrator, unless the appraiser is directed to value and appraise, and, in such case, upon receiving the report of the appraiser, prepare a statement of facts necessary to determine the value of all estates, interests, income, annuities, life estates or term of years subject to duty under the provisions of this Act, and shall mail the same postage prepaid and registered to an accountant, to be named by the treasurer of the province, and such accountant shall forthwith proceed to assess and fix the value of such interests, income, annuities and contingent or limited estates, and shall certify the same to the registrar, and his certificate shall be conclusive as to the matter dealt with therein.

13. Registrar to assess and fix duty.—The registrar shall, upon receiving the accountant's certificate, proceed to assess and fix the duty payable under the provisions of section 5 of this Act, and shall immediately give notice thereof and of the accountant's valuation by registered letter to all parties known to be interested therein, and the registrar may appoint for the purposes of this Act a guardian for infants who have no guardians.

14. Appeal to judge of probate.—Any person affected thereby who is dissatisfied with the appraisement provided for by section 22 and other sections of chapter 101 of the Revised

Statutes, fifth series, or with the appraisement provided for by sections 9 and 10 of this Act, or with the registrar's assessment of duty provided for in the last above section hereof, may appeal therefrom to the judge of probate of the proper county or district within thirty days after the registration of the notice to such person, on giving security, approved by the judge, to pay all costs, and upon such appeal to the judge of probate the judge shall have jurisdiction to determine the matter of such appeal and the costs thereof, with power to direct for the purposes of such appeal any inquiry, valuation or report to be made by any officer of the court, or other person, as the judge may think fit, and the decision of the judge shall be subject to a further appeal to a judge of the supreme court, who shall have similar powers, and whose decision shall be final.

15. Duty, how paid.—The duty payable in respect to an annuity shall be paid in four equal payments, the first of which payments shall be made before or on completing the payment of the first year's annuity, and the three others of such payments shall be made in like manner successively before or on completing the respective payments of the three succeeding years' annuity respectively, provided always that if such annuity shall determine by the death of any person or other contingency before said payments have been completed, no further duty shall be payable in respect of said annuity.

16. Provision where property bequeathed to different persons in succession.—Where any property is devised, bequeathed, descended, transferred or given to or for the benefit of, or so that the same shall be enjoyed by different persons in succession:—All persons who under or in consequence of such devise, bequest, descent, transfer, or gift, shall be entitled for life only or any other temporary interest, shall be chargeable with duty in respect thereof as if the annual produce thereof had been given by way of annuity, and the said duty shall be payable when such persons shall respectively become entitled to and begin to receive such produce, and at the times and in the instalments in the last preceding section provided as to annuities; and all and every person and persons who shall become absolutely entitled to any such devise, bequest, descent, transfer or gift so to be enjoyed in succession, shall, when and as such person or persons respectively shall receive the same, or begin to enjoy the benefit thereof, be chargeable with and pay the duty for the same or such part thereof as shall be so received, or of which the benefit shall be so enjoyed, in the same manner as if the same had come to such person or persons immediately on the death of the person by whom such property shall have been given to be enjoyed or in such manner that the same shall be enjoyed in succession.

17. Duty to be a first charge.—The duty imposed by this Act shall be a first charge on the interest of any person chargeable with said duty and of all persons claiming in his right in all the real property in respect whereof such duty shall be assessed, and such duty shall also be a first charge on the

interest of any person chargeable with said duty in the personal property in respect whereof the same shall be assessed, while the same shall remain in the ownership or control of such person or of any trustee, guardian or husband of such person, and such duty shall be payable by the person receiving the property in respect whereof the same shall be assessed.

18. List of persons personally accountable to treasurer.—The following persons beside the person receiving the property subject to duty shall be personally accountable to the treasurer of the province of Nova Scotia for the duty payable in respect of such property, but to the extent only of the property or funds actually received or disposed of by them respectively, after the time appointed for the commencement of this Act, that is to say, every executor, administrator, trustee, guardian or husband, in whom respectively any property, or the management of any property, subject to such duty shall be vested, and all such executors, administrators, trustees, guardians or husbands shall retain out of the property subject to any such duty the amount thereof, or collect the duty thereon, and shall not deliver any property subject to duty to any person until he has deducted the duty therefrom or collected the duty thereon.

19. Power to executors, etc., to sell property.—Executors, administrators and trustees shall have power to sell so much of the property of the deceased as will enable them to pay said duty in the same manner as they may be enabled by law so to do for the payment of debts of the testator or intestate.

20. Duty payable to treasurer.—Every sum of money retained by an executor, administrator or trustee, or paid into his hands for the duty on any property, shall be paid by him forthwith to the treasurer of the province, or as he may appoint.

21. Provision as to refund.—Where any debts are proven against the estate of a deceased person, after the payment of legacies or distribution of the property from which the said duty has been deducted, or upon which it has been paid, and a refund has been made by the legatee, devisee, heir or next-of-kin, a proportion of the duty so paid shall be repaid to him by the executor, administrator or trustee, if the said duty has not been paid to the treasurer of the province, or by the treasurer if it has been so paid.

22. Judge of Probate may order payment.—If it appears to the judge of probate that any duty accruing under this Act has not been paid according to law, he shall make an order directing the person or persons interested in the property liable to the duty to appear before him on a day certain, to be therein named, and show cause why said duty should not be paid. Such order shall be served personally or by registered letter ten clear days before the day named in said order. Upon said day the judge, upon being satisfied that such order has been duly served, may hear and determine all questions regarding said duty and the person or persons liable therefor,

and may make an order directing the person or persons liable to pay the same to make payment thereof to the treasurer forthwith, or within such reasonable time as may appear proper to the judge. Such order may be enforced by the registrar in the same manner, as nearly as possible, as a taxation and order under section 64 of chapter 100 of the Revised Statutes, fifth series, may be enforced.

23. Provisions of certain sections of Chapter 100, Revised Statutes, to apply.—The provisions of sections 79 to 86, inclusive, of chapter 100 of the Revised Statutes, fifth series, shall be applicable to all orders made by the judge of probate under the next preceding section.

24. Provision as to costs.—The costs of all proceedings under this Act shall be in the discretion of the court or judge, and shall be upon the scale of fees in the probate court, save as to the costs of appeals to the supreme court, and then upon the scale of supreme court fees.

25. Registrar to make quarterly returns.—The registrar shall make quarterly returns to the treasurer, showing the following facts:—

(1) The name and address of every executor and administrator to whom letters testamentary or letters of administration have been granted, the date of granting the same, and the name of the deceased person to whose estate the same relate.

(2) The date of filing every inventory, together with the amount of the appraised value of the property therein.

(3) A copy of every statement filed under section 6 of this Act.

(4) Every valuation and appraisement by the appraiser appointed by the treasurer.

(5) A statement of every assessment by the registrar of the cash value of property liable to duty, showing the duty payable in respect of the same.

(6) A statement showing what appeals have been taken under section 14 of this Act, and what appeals have been decided, with the results of the same.

26. Payment of registrar.—The registrar shall be paid for such returns such fee as may be fixed by the Governor-in-Council.

27. Registrar to give bonds.—Every registrar, before entering on the duties of his office, or, in the case of registrars appointed prior to the passing of this Act, before the foregoing provision shall take effect, shall deliver to the treasurer of the province a bond or other security or securities, in such sum and with such sufficient security or securities as may be approved of by the Governor-in-Council, for the due and punctual performance of the duties imposed upon such registrar by this Act, and that he will not receive any duty payable under this Act.

28. Fees of judges and registrars.—The judges and registrars of the several courts of probate shall be entitled to

take for the performance of duties and services under this Act, similar fees to those payable to them under chapter 128 of the Revised Statutes, fifth series, "of costs and fees."

29. Regulations for carrying Act into effect.—The Governor-in-Council may make regulations for carrying into effect the provisions of this Act, and such regulations shall be laid before the House of Assembly forthwith, if the house is in session at the date of such regulations, and if the house is not in session, such regulations shall be laid before the house within the first seven days of the session next after such regulations are made.

30. Inconsistent law repealed.—Chapter 6 of the Acts of 1892 and all Acts in amendment thereof are hereby repealed, except that all matters now affected by said Acts shall be carried on under such Acts as if this Act had not been passed.

NOTE.—There have been no amendments of the above Act, and no regulations by Order-in-Council.

Revenue.—

1894	$ 1,549 00
1895	49,526 00
1896	18,488 00
1897	22,343 00
1898	58,161 00
1899 to 1st August	27,851 00

Decisions.—(1) In *re* Cronan Estate, 27 N.S. Rep. 436.

(2) Attorney-General *v.* Parker, 31 N.S. Rep. 202.

By the Succession Duty Act, 1895 (58 V., c. 8, s. 5), all property passing either by will or intestacy, etc., shall be subject to a Succession Duty, etc., and by s. 7 the duties imposed, unless otherwise provided, shall be due and payable, at the death of the deceased, or within ten months thereafter, etc.

M. P. B. by his last will directed his trustees to invest a portion of his estate, and pay the income arising therefrom to his brother C., and at their discretion to pay C. a portion of the principal, and, after the death of C., to pay the principal remaining to such uses and purposes as C. should, by deed or will, appoint. M. P. B. died on 19th April, 1891, some four years before the passage of the Succession Duty Act. C. died on 30th December, 1897, having exercised his power of appointment by will made the 3rd June, 1897. Held (by the full Court), that the fund in question did not pass within the meaning of the Act, s. 5, by the exercise of the power of appointment by C., the appointees taking under the instrument creating the power, and not by virtue of the power itself. Held also, that the Act, s. 7, must be construed as applying only to deaths occurring after the passing of the Act.

See also the latest English decision on this point, In *re* Saunders, Saunders *v.* Gore (1898), 1 Ch. 17.

NEW BRUNSWICK.

1892—55 Vic., c. 6.—"The Succession Duty Act, 1892."
1893—56 Vic., c. 15.—"An Act in addition to and in amendment of 'The Succession Duty Act, 1892.' "
1894—57 Vic., c. 6.—"An Act to further amend 'The Succession Duty Act, 1892.' "
1896—59 Vic., c. 42.—"The Succession Duty Act, 1896."
1897—60 Vic., c. 36.—"An Act in Amendment of 'The Succession Duty Act, 1896.' "

AN ACT TO CONSOLIDATE AND AMEND THE ACTS TO PROVIDE FOR THE PAYMENT OF SUCCESSION DUTIES IN CERTAIN CASES.

(59 Vic., cap. 42). **Passed 20th March, 1896.**

Be it enacted by the Lieutenant-Governor and Legislative Assembly as follows:—

1. How Act may be cited.—This Act may be cited as "The Succession Duty Act, 1896."

2. Meaning of terms.—The word "property" in this Act includes real and personal property of every description, and every estate or interest therein, capable of being devised or bequeathed by will, or of passing on the death of the owner to his heirs or personal representatives.

3. Meaning of terms.—The word "Sheriff" shall include "Coroner," and the word "Registrar" shall mean "Registrar of Probates." The words "transfer" or "transferred" in the Succession Duty Act of 1892 and in this Act shall, without limitation or restriction in its meaning by reason of this Section, be held to mean and include any disposal of property or interest therein by a transferrer in trust, or any making over or vesting of the same in any incorporated company, or any gift, conveyance or distribution of shares of an incorporated company in the lifetime of the owner; and any property or interest in any property transferred in the lifetime of the deceased since the seventh day of April, 1892, voluntarily or without adequate consideration shall be deemed *prima facie* to have been made with intent to evade the payment of duties under the Succession Duty Act of 1892, or of this Act.

4. To what estates and property Act shall not apply.—This Act shall not apply (1) to any estate the value of which after payment of all such debts and expenses of administration, does not exceed $5,000 nor (2) to property given, devised or bequeathed for religious, charitable or educational purposes; nor (3) to property passing under a Will, Intestacy or otherwise, to or for the use of the father, mother, husband, wife, child, daughter-in-law or son-in-law of the deceased, where the aggregate value of the property of the deceased does not exceed $50,000 in value.

5. Succession Duties payable by estates of deceased persons.—Save as aforesaid all property, whether situate in this Province or elsewhere other than property being in the United Kingdom or Great Britain and Ireland, and subject to duty, whether the deceased person owning or entitled thereto had a fixed place of abode in or without this Province at the time of his death, passing either by Will or Intestacy, or any interest therein or income therefrom, which shall be voluntarily transferred in contemplation of the death of the grantor or bargainor, or made or intended to take effect, in possession or enjoyment after his death, to any person in trust or otherwise, or by reason whereof any person shall become beneficially entitled, in possession or expectancy, to any property or the income thereof which shall have been or shall be voluntarily transferred, or transferred without adequate consideration, for the purpose of evading the payment of Succession Duty to the Crown, or any transfer the effect of which shall have been or shall be to enable the transferee to escape payment of duty to the Crown, shall be subject to a Succession Duty, to be paid for the use of the Province over and above the fees provided by Chapter 52 of the Consolidated Statutes, or any Acts in amendment thereof or in addition thereto as follows:—

(1) Where the aggregate value of the property of the deceased exceeds $50,000, and passes in manner aforesaid, either in whole or in part, to or for the benefit of the father, mother, husband, wife, child, brother, sister, daughter-in-law, or son-in-law of the deceased, the same, or so much thereof as so passes (as the case may be), shall be subject to a duty of $1.25 for every $100 of the value up to the $50,000, and $2.50 for every $100 of the value in excess of $50,000.

(2) Where the aggregate value of the property exceeds $200,000 the whole property shall be subject to a duty of $5 for every $100 of the value; and

(3) Where the aggregate value of the property of the deceased exceeds $10,000 so much thereof as passes to or for the benefit of the grandfather, grandmother, or any other lineal ancestor of the deceased except the father or mother, or to any descendant of a brother or sister of the father or mother of the deceased, or any descendant of such last mentioned brother or sister, shall be subject to a duty of $5 for every $100 of the value.

(4) Where the value of the property of the deceased exceeds $5,000 and any part thereof passes to or for the benefit of any person in any other degree of collateral consanguinity to the deceased than is above described, or to or for the benefit of any stranger in blood to the deceased, save as hereinbefore provided for, such part shall be subject to a duty of ten per cent. on the value.

(5) Provided that where the whole value of any property devised, bequeathed or passing to any one person under a Will or Intestacy does not exceed $200, the same shall be exempt from the payment of duty imposed by this Section.

(6) Where the property of a deceased person liable to Succession Duty under this Act or any part thereof,

or any legacy, charge or annuity payable out of the same, goes to any person residing out of the Province, the duty payable on the amount or portion going to such person shall be double the amounts hereinbefore specified.

6. Statements to be made by Executors and Administrators under oath. What they shall show. Bond to be given. Neglect or refusal to furnish statement or give Bond, effect of.—An executor or administrator obtaining letters testamentary or letters of administration, or ancillary letters to the estate of a deceased person shall, thirty days after the issue of such letters to him, make and file with the Registrar of Probates a full, true and correct statement, under oath, showing (*a*) a full itemized inventory of all the property of the deceased person and the market value thereof; (*b*) the several persons to whom the same passes under the Will or Intestacy and the degree of relationship, if any, in which they stand to the deceased. And the executor or administrator shall, as soon after the issue of letters testamentary or of administration as the inventory has been filed, deliver to the Registrar a bond in a penal sum equal to ten per cent. of the sworn value of the property of the deceased person liable to Succession Duty, executed by himself and two sureties, to be approved by the Registrar, conditioned for the due payment to Her Majesty of any duty to which the property coming to the hands of such executor or administrator of the deceased may be found liable. In case the executor or administrator or either of them, shall neglect or refuse to furnish, procure and file such inventory within the required time or give the required bond, the letters granted to such executor or administrator shall be cancelled by the Judge of Probate, and new letters shall issue to other parties who may be entitled thereto.

7. Where Receiver General not satisfied with value sworn to, Registrar of Probate shall, at his instance, direct Sheriff or Coroner to make valuation.—In case the Receiver General of the Province is not satisfied with the value so sworn to, the Registrar of Probates of the County in which any property subject to the payment of the said duty is situate, shall, at the instance of the Receiver General, his solicitor or agent, direct in writing that the Sheriff or Coroner of the County shall make a valuation and appraise the said property.

8. Procedure by Sheriff. Compensation.—In such case the Sheriff shall forthwith give due and sufficient written notice to the executors and administrators, and to such other persons as the Registrar may by order direct, of the time and place at which he will appraise such property, and he shall appraise the same accordingly at its fair market value, and make a report thereof in writing to the Registrar, together with such other facts in relation thereto as the Registrar may by order require, and such report shall be filed in the office of the Registrar. The Sheriff shall be entitled to receive the sum of $5 per diem for services performed under this

Act, and his actual and necessary travelling expenses, and the same shall be paid to him by the Receiver General of the Province.

9. Registrar to fix the then cash value of all estates etc., and the duties to which the same are liable. Notice thereof to parties interested. Determination of value of future estate, etc.—The Registrar shall, upon receiving the inventory required by S. 6 of this Act, or the report of the Sheriff if a report shall be made by him, assess and fix the then cash value of all estates, interests, annuities and life estates or terms of years growing out of such estates, and the duty to which the same is liable, and shall immediately give notice thereof by registered letter to all parties known to be interested therein; and the value of every future or contingent or limited estate, income or interest, shall, for the purpose of this Act, be determined by the rule, methods, and standards of mortality and of value to be fixed by the Actuaries named by the Receiver General; and the Actuary shall on the application of any Registrar, determine the value of such future or contingent or limited estate, income or interest upon the facts contained in such report, and certify the same to the Registrar and his certificate shall be conclusive as to the matters dealt with therein.

10. Appeal to Judge of Probate, and in certain cases to Supreme Court.—Any person dissatisfied with the appraisement or assessment, may appeal therefrom to the Judge of Probate of the County within thirty days after the making and filing of such assessment, on giving security approved by the Judge of Probate, to pay all costs, together with whatever duty shall be fixed by said Court; and upon such appeal the Judge of said Court shall have jurisdiction to determine all questions of valuation and of the liabilities of the appraised estate, or any part thereof, for such duty, and the decision of the Judge of Probate shall be final, unless the property in respect of which such appeal is taken shall exceed in value the sum of $10,000, when a further appeal shall lie from the decision of the Judge to the Supreme Court, whose decision shall be final.

11. Where bequest or devise is made to Executor or Trustee in lieu of commission, excess over reasonable compensation liable to duty.—Where a bequest or devise of property, which otherwise would be liable to the payment of duty under this Act, is made to an executor or trustee in lieu of commissions or allowance, and said bequest or devise exceeds what would be a reasonable compensation for the services of the executor or trustee, such excess shall be liable to said duty, and the Judge of the Probate Court, having jurisdiction in the case, shall fix such compensation.

12. Where devise, descent or bequest of property liable to succession duty is to take effect in possession or come into actual enjoyment after the expiration of life estate or period of years, proceedings in

such case.—(1) In all cases where there has been a devise, descent, or bequest of property liable to Succession Duty, to take effect in possession, or come into actual enjoyment after the expiration of one or more life estates, or a period of years, the duty on such future estate or interest shall not be payable, nor interest begin to run thereon, until the person or persons liable for the same, shall come into actual possession of such estate or interest, by the determination of the estates for life or years, and the duty shall be assessed upon the value of the estate or interest at the time the right of possession accrued as aforesaid.

(2). Provided, however, that in all cases under this Section, it shall be the duty of the Judge of Probate having jurisdiction in the case, to make a decree showing the amount of such duty, and the property liable thereto, setting the same out, as far as possible, with sufficient detail as to enable it to be identified, giving the name of the person or persons to whom it is devised or bequeathed, or descends, together with the name or names of the person or persons having the life estate, or estate for years or other intermediate interest therein; the Judge in making such decree, shall fix the duty, based upon the then value of the property, but in case there shall be depreciation or increase in value of the property liable to the duty, before the duty becomes payable, the Receiver General shall accept, or be entitled to receive payment of such duty based on such lessened or increased value, as the case may be;

(3) A copy of such decree, certified by the Registrar of the said Court of Probate under the Seal of the Court, shall be forwarded to the Receiver General, and a copy thereof certified in like manner, shall be registered in the Office of the Registrar of Deeds of the County of which the deceased was an inhabitant at the time of his death, and also of every other County where any portion of the estate liable to such duty, may be situate, which certificate shall be registered, if it purports to be under the hand of the Registrar, and be under the Seal of the Court, without further proof, and shall bind and continue to be a lien upon all such estate until discharged as hereinafter provided;

(4) When it appears to the Judge of Probate that it would be expedient, owing to the nature of the estate in order to secure the payment of the duty so payable at a future date, he shall require the person or persons then in the possession or enjoyment of the estate and property, or any portion thereof, to give security to the Receiver General by bond, with sureties to his satisfaction, and conditioned for the payment of all Succession Duties under this Act, and in case of the neglect or refusal of such person to give such bond, the amount of the Succession Duty shall immediately become payable by the person so holding or enjoying such property, and payment thereof may be enforced against such person so holding or enjoying such property, and payment thereof may be enforced against such property or the said property in respect of which the duty has accrued;

(5) A certificate of the Receiver General, that such duty has been paid, duly acknowledged or proved in the manner as conveyances are required to be acknowledged or proved in order to their being registered, on being registered shall discharge such lien.

(6) The cost of obtaining such decree and registering the same shall be borne by the estate, and shall be paid by such parties, in such proportions, and in such manner as the Judge of Probate may direct.

13. When duty payable. Interest.—The duties imposed by this Act, unless herein provided for, shall be due and payable to the Receiver General of the Province at the death of the deceased, or within twelve months thereafter, and if the same are paid within twelve months, no interest shall be charged or collected thereon, but if not so paid, interest at the rate of six per cent. per annum shall be charged and collected, from the death of the deceased, and such duties, together with the interest thereon, shall be, and remain a lien upon the property, in respect of which they are payable, until the same are paid.

14. Extension of time for payment of duty.—The Receiver General may make an order, upon the application of any person liable for the payment of said duty, extending the time fixed by law for the payment thereof, where it appears that payment within the time prescribed by this Act is impossible, owing to some cause over which the person liable has no control.

15. Duty to be deducted by Executor, etc. from legacy or property subject thereto, or collected from the person entitled to such property.—Any administrator, executor or trustee, having in charge or trust any estate, legacy or property subject to the said duty, shall deduct the duty therefrom, or collect the duty thereon, upon the appraised value thereof, from the person entitled to such property, and he shall not deliver any property subject to duty to any person until he has collected the duty thereon.

16. Power of Executor, etc., to sell property of deceased to pay duty.—Executors, administrators and trustees shall have the power to sell so much of the property of the deceased as will enable them to pay said duty, in the same manner as they may be enabled by law to do for payment of debts of the testator or intestate.

17. Duty retained or collected by Executor, etc. to be forthwith paid over to Receiver General.—Every sum of money retained by an executor, administrator, or trustee, or paid into his hands for the duty on any property, shall be paid by him forthwith to the Receiver General of the Province, or as he may appoint.

18. Where duty has been paid by legatee or heir on receipt of legacy or distribution of property, and refund made owing to debts being proven against estate, proportion of such duty to be repaid.—When the

debts shall be proved against the estate of a deceased person, after the payment of legacies, or distribution of property from which the said duty has been deducted, or upon which it has been paid, and a refund has been made by the legatee, devisee, heir, or next of kin, a proportion of the duty so paid, shall be repaid to him by the executor, administrator or trustee; if the said duty has not been paid to the Receiver General of the Province, or by the Receiver General, if it has been so paid.

19. In case of Foreign Executor, etc., transferring stock, funds or debentures of any Company liable to duty, the Company or Corporation having notice shall be liable to the duty if it permits such transfer to be made without the duty being paid.—When any foreign executor, administrator, or trustee, assigns or transfers any stock, funds or debentures of any company or corporation in this Province, standing in the name of a deceased person, which are liable to the said duty, the said duty if not previously paid, shall be paid to the Receiver General of the Province, on the transfer thereof, otherwise the company or corporation permitting such transfer, shall become liable to pay such duty; provided that such company or corporation, had notice before such transfer, the said stock, or bonds, or debentures are liable to the said duty.

20. Proceedings where it appears to Judge of Probate that any duty accruing under this Act has not been paid.—If it appears to the Judge of Probate, that any duty accruing under this Act, has not been paid according to law, he shall make an order directing the persons interested in the property liable to the duty, to appear before the Court in a day certain, to be named therein, and show cause why said duty should not be paid. The service of such order, and the time, manner, and proof thereof, and the hearing and determining thereon, and the enforcement of the judgment of the Court thereon shall be according to the practice in or upon the enforcement of a judgment of the Supreme Court.

21. Costs.—No costs shall be allowed in or by the Probate Court, except as herein otherwise provided, in respect of any of the proceedings therein taken under this Act. In case of any appeal to the Supreme Court, the costs of appeal shall be occording to the Supreme Court scale.

22. Registrar of Probate to give bond or other security satisfactory to Lieutenant-Governor in Council.—Every Registrar of a Court of Probate shall, before entering upon the duties of his office, or in the case of Registrars appointed prior to the passing of this Act, immediately hereafter deliver to the Receiver General a bond or other security or securities, in such sum, and with such sufficient security or securities as may be approved of by the Lieutenant-Governor in Council, for the due and punctual performance of the duties imposed upon such Registrar by this Act, and that he will not receive any duty payable under this Act; and the provisions of any Act relating to the giving of security by public officers shall, when not inconsistent with this Act, apply to such bonds or other securities.

23. In certain cases Executors, etc. may agree with the Receiver General as to amount to be paid as Succession Duty on any estate. Amount so agreed upon to be a lien on the estate.—It shall be lawful for the executors and trustees of the estates of deceased persons liable to Succession Duties under this Act, in cases where the Lieutenant-Governor in Council may consider it in the public interest, as well as just and equitable to the persons beneficially interested in the estate of such persons, so to do, to agree to, and with the Receiver General of the Province, as to the amount to be paid to the said Receiver General as the Succession Duty upon any estate, and such amount so agreed upon shall be a first charge upon the estate of the deceased, and after payment of the same such executors or trustees shall administer the residue of such estate according to the provisions of the Will in the case in which such settlement is made under this Act, as near as may be, as if the estate of the deceased in such case had been less than it is by the amount of the duty paid under the terms of the settlement herein provided for.

24. Power given to Lieutenant-Governor in Council to direct enquiry as to any estate and duty payable thereon and issue commission for such purpose. Powers of Commissioner.—Whenever there shall be doubts as to whether all the property and estate of any deceased person, or which such person had prior to his decease transferred, has been fully accounted for, inventoried or disclosed for the purposes of Succession Duty under the Succession Duty Act of 1892, or this Act, the Lieutenant-Governor in Council may by order in Council authorize and direct an inquiry to be made for the purpose of ascertaining whether the whole of the property of any person subject to duty, has been made known, and may duly commission any person (the fact that such person is a member or officer of the Provincial Government not being a disqualification for such appointment) to make such inquiry and such Commissioner so appointed shall be fully authorized and empowered to inquire;

(*a*) Into the value, nature and particulars of all property of the deceased;

(*b*) Into any and all transfers of any property which the Commissioner may suspect or believe to have been transferred with intent to evade payment of duties under the Succession Duty Act of 1892, or this Act;

(*c*) Into the relationship of any person interested in such property to the deceased person; and upon such inquiry to adjudge and determine:

(*a*) What property, if any, has been transferred with intent to evade the payment of Succession Duty aforesaid, and what property is subject to duty;

(*b*) What amount, if any, is payable as Succession Duty to the Crown in respect of any property whatever of the deceased, or of any property which has been by him the said Commissioner adjudged to have been transferred to evade the duty, and the persons to whom payment shall be made; and for the purpose of such inquiry

and adjudication and under and by virtue of the commission issued to him as aforesaid, the Commissioner shall be and he is hereby invested with all the powers and authorities conferred upon a Commissioner appointed under Chapter 4 of 49 Victoria, or any Act in amendment thereof. In the case of any person dying after the passage of this Act, such Order in Council shall only be made within three years from the date of death; and in the case of persons heretofore deceased, shall only be made within three years from the passage hereof.

25. Witness, penalty for refusing or neglecting to obey summons.—Any person summoned as a witness under the last preceding section or in pursuance thereof, who shall neglect or refuse to obey the summons in all respects, shall, for each and every such neglect or refusal, incur a penalty of one hundred dollars to be enforced on behalf of the Crown before any Court of competent jurisdiction.

26. Penalty for making or accepting transfer with intent of evading payment of Succession Duties. Recovery of.—(1) Any person to whom a transfer has been or may be hereafter made, with intent of evading the payment of Succession Duties under the said Act of 1892, or this Act, or the estate and property of the person making such transfer, according as the same shall be adjudged and determined by the Commissioner, shall be liable to the payment of double the amount of duty to which the property so transferred would have been subject if such transfer had not been made, and such double duty may be recovered, in addition to other remedies provided by this Act, or any other remedies allowed by law by action brought on behalf of the Crown in the name of the Receiver General of the Province, in any Court of competent jurisdiction, from the transferee of such property or from the estate of the deceased, as the case may be. In any such action proof that the Commissioner had found such duty to be payable in respect of the property so transferred shall be conclusive evidence as to the fact of the transfer having been made to evade such duty, and the Crown shall be entitled to judgment in such action, provided that the transferee, having received notice of the inquiry by the Commissioner, and having an opportunity of being heard thereupon, had either not appeared, or, having appeared, had not appealed against the Commissioners finding as hereinafter provided, or, having taken his appeal, such appeal had been adjudged against him.

(2) A transferee and the property transferred may always escape liability to such double duty if notice in writing of such voluntary transfer, or transfer without adequate consideration be given to the Receiver General within a reasonable time thereafter, but failure to give such notice shall not raise any presumption against the transferee.

27. Appeal to Lieutenant-Governor in Council from decision of Commissioner.—Any person against whom the Commissioner renders a decision, imposing Succes-

sion Duty or double duty under the Succession Duty Act of 1892, or this Act, may appeal to the Lieutenant-Governor in Council against the decision of the Commissioner but such appeal must be taken, and notice thereof given, with the grounds of such appeal to the Commissioner within thirty days after notice to such person of the decision of the Commissioner; and it shall be the duty of the Governor in Council to deal with such appeal upon equitable grounds, and the decision of the Governor in Council shall be final and conclusive in all matters of fact therein determined.

28. No judgment, order or decision by any Court or Judge rendered in any estate, nor any payment of Succession Duties to prevent the enquiry provided by this Act or recovery of duties adjudged by Commissioner to be payable.—No judgment, order or decision by any Court or Judge, whether on appeal or otherwise, rendered in any estate nor any payment of or acceptance by the Receiver General of Succession Duties in any estate, shall bar or preclude the Crown holding or causing the inquiry to be held in the aforegoing Section authorized, or the Commissioner appointed by the Lieutenant-Governor in Council from holding such inquiry or adjudicating upon the matters therein inquired into, nor shall bar or preclude the recovery by the Crown of any Succession Duties adjudged by the Commissioner to be payable to the Receiver General in addition to any sums previously adjudged to be paid or paid in respect of Succession Duties upon the property, or any part of the property of such estate.

29. Application of Act.—This Act and all the provisions hereof shall be applicable to the case of any and all persons who have died since the passing of the Succession Duty Act of 1892, and to the estate and property of all and any such persons.

30. Power given to Lieutenant-Governor in Council to make regulations also to abate duty in any case in whole or in part.—The Lieutenant-Governor may by Order in Council make any regulations deemed expedient for carrying into effect the provisions of this Act, and shall duly publish the same in the Royal Gazette upon the making thereof, and the Governor in Council may also in his discretion abate the whole or any part of the duty imposed by this Act, when, by reason of the liabilities of the estate, or other good cause, such abatement would be deemed equitable.

31. Repeal of "The Succession Duty Act" 1892. Proviso.—The said Chapter 6, of 55th Victoria, being the Succession Duty Act of 1892 is hereby repealed as to the estates of all persons dying after the passing hereof; but such repeal shall not prejudice or prevent the enforcement of any of the provisions of the said Act against the estate or property of any person dying since the passing thereof and prior to the passing of this Act, and all proceedings taken or commenced thereunder for the enforcement thereof may be continued as fully as if the said Act had not been hereby repealed.

AN ACT IN AMENDMENT OF THE SUCCESSION DUTY ACT, 1896

(60 Vic., cap. 36.)

Passed 13th March, 1897.

Be it enacted by the Lieutenant-Governor and Legislative Assembly as follows:

1. Section 4 of "The Succession Duty Act 1896." amended.—Section 4 of "The Succession Duty Act, 1896," is hereby amended by inserting between the word "child," and the words "daughter-in-law" in the sixth line of the Section the word "grandchild."

2. Section 5 of the Act amended.—Section 5 of the Act 59th Victoria, Chapter 42, being "The Succession Duty Act, 1896," is hereby amended by adding at the end thereof following paragraph:

"(*a*) The provisions of this Section are not intended to apply, and shall not apply to property outside this Province, owned at the time of his death by a person not then having a place of residence within the Province, except so much thereof as may be devised or transferred to a person or persons residing within the Province."

Revenue.—

Year	Amount
1892	$ 1,690 48
1893	3,500 00
1894	4,804 01
1895	9,729 32
1896	10,365 80
1897	9,294 67
1898	8,197 83

Decisions.—(1) Attorney-General *v.* Sears—32 N.B. Rep. 412.

This was a special case, submitted for the opinion of the Court. The defendants represented estates valued respectively at over $50,000, and the testators whom they represented died before 6th July, 1893.

Lieutenant-Governor in Council, on 6th July, 1893, approved of the following regulation, purporting to be made under the authority of s. 23 of 55 Vic., c. 6:—"It is hereby ordered, under "and by virtue of the power and authority vested in the "Lieutenant-Governor in Council under the provisions of s. "23, c. 6, of 55 Vic., as follows:—The rate of duty upon all "estates, which, under the above Act, are subject to a Suc-"cession Duty, shall be $1.25 upon every $100 value thereof up "to $50,000."

The questions submitted to the Court were:—

(1) Are the above estates, which in value exceed $50,000 each, subject to Succession Duty upon the first $50,000 thereof, and (2) is the above regulation authorized by the Act 55 Vic., c. 6, and had the Lieutenant-Governor in Council power under the Act to pass the same so as to apply to the said Estates?

Held:—That the regulation by order in Council was *ultra vires*, and that the first $50,000 of each estate was exempt.

(2) In *re* Botsford's Will, 33 N.B. Rep. 55.

Unless otherwise stated by the terms of a will, the Succession tax is payable out of the specific legacy and not out of the residuary estate. A direction that a sum of money be paid yearly to a legatee, or that interest be allowed, until the specific legacy is paid in full, cannot be construed as an intention, on the part of the testator, that such legacy is to be paid free from Succession Duty.

(3) In *re* Chubb: Judgment of Trueman, J., in Probate Court on 23rd March, 1896.

The testatrix devised "to A.B., one of my executors, $500, and to C.D., the other of my said executors, $500." Duty was collected on these legacies, and on an application to the Court for an order for a re-fund, it was held that the devises were in lieu of commission and not liable to duty.

(4) The Queen *v.* Earle: Judgment 11th June, [illegible].

It was provided by the amendment of 1893 that where property went to strangers in blood, resident out of the Province, double duty should be payable thereon. Testator died in 1892, after the passing of the Act of 1892, but in 1896 the Succession Duty Acts were consolidated, and s. 29 of the Act of 1896 provides that all the provisions thereof shall be applicable to the case of any and all persons who have died since the passing of the Act of 1892.

Held:—That the retroactive section was valid, and that the estate of the defendant was liable to double duty.

PRINCE EDWARD ISLAND.

AN ACT TO PROVIDE FOR THE PAYMENT OF SUCCESSION DUTIES IN CERTAIN CASES.

(57 Vic., cap. 5.)

[Assented to May 9th, 1894.]

Preamble.—Whereas, the Province of Prince Edward Island expends large sums annually for the care of the insane and the poor, and it is expedient to provide a fund for defraying part of such expenditure by a succession tax on certain estates of persons dying as hereinafter mentioned:

Therefore, be it enacted by the Lieutenant-Governor and Legislative Assembly as follows:

1. Short Title.—This Act may be cited as "The Succession Duty Act, 1894."

2. "Property"—meaning of.—The word "property" in this Act includes real and personal property of every kind and description, and every estate or interest therein capable of being devised or bequeathed by will, or of passing on the death of the owner to his heirs or personal representatives.

3. "Executor" and "Administrator."—meaning of.—"Executor" shall mean and include "executrix," and "Administrator" shall mean and include "administratrix."

4. Where Act shall not apply.—This Act shall not apply:—

(1). To any estate the value of which, after payment of all debts and expenses of administration, does not exceed three thousand dollars; nor

(2). To property given, devised, or bequeathed for religious, charitable or educational purposes within this Province; nor

(3). To property passing under a will, intestacy or otherwise, to or for the father, mother, husband, wife, child, grandchild, brother, sister, brother's child, or sister's child, daughter-in-law or son-in-law of the deceased, where the value of the property of the deceased, after payment of all debts and expenses of administration does not exceed ten thousand dollars in value.

5. Property passing on death of owner liable to Succession duty.—Save as aforesaid all property situate or being within this Province, whether the deceased person owning or entitled thereto last dwelt within said Province or not, passing either by will or intestacy, and any interest therein or income therefrom which shall be voluntarily transferred by deed, grant or gift, made in contemplation of the death of the grantor or bargainor, or made or intended to take effect, in possession or enjoyment after such death, to any person in trust or otherwise, or by reason whereof any person shall become beneficially entitled in possession or expectancy, to any property or the income thereof, and all property wherever situate or being, over which the executor or administrator shall or may exercise control and which shall or may come into his possession, shall be subject to a succession duty to be paid for the use of the Province over and above all Probate and Surrogate fees.

(1). WHERE RATE OF DUTY SHALL BE 1½ PER CENT.—Where the value of the property of the deceased, after payments of all debts and expenses aforesaid, exceeds ten thousand dollars, and passes in manner aforesaid, either in whole or in part, to or for the benefit of the father, mother, husband, wife, child, grandchild, brother, sister, brother's child, or sister's child, daughter-in-law or son-in-law of the deceased, the same or so much thereof as so passes (as the case may be) shall be subject to a duty of one dollar and fifty cents for every one hundred dollars of the value; or

(2). WHERE RATE SHALL BE 2½ PER CENT.—Where the value of the property, after payment as aforesaid, exceeds fifty thousand dollars, the whole property which passes as aforesaid shall be subject to a duty of two dollars and fifty cents for every one hundred dollars of the value; and

(3). WHERE RATE SHALL BE 2½ PER CENT.—Where the value of the property, after payments as aforesaid, exceeds three thousand dollars, so much thereof as passes to or for the benefit of the grandfather or grandmother, or any other lineal ancestor of the deceased, except the father and mother, or to a brother or sister of the father or mother of the deceased, or any descendant of such last-mentioned brother or sister, shall be subject to a duty of two dollars and fifty cents for every one hundred dollars of value.

(4). WHERE RATE SHALL BE 7½ PER CENT.—Where the value of the property of the deceased, after payments as aforesaid exceeds three thousand dollars, and any part thereof passes to or for the benefit of any person in any other degree of collateral consanguinity to the deceased than is above described, or to or for the benefit of any stranger in blood to the deceased, save as hereinbefore provided for, the same shall be subject to a duty of seven dollars and fifty cents for every one hundred dollars of the value.

6. Executors, etc., to file Inventory. Bond for payment of duty.—An Executor or Administrator applying for Letters of Probate or Letters of Administration to the estate of a deceased person, shall, before the issue of Letters of Probate or Administration to him, make and file with the Surrogate or Judge of Probate a full, true and correct statement under oath showing (*a*) A full, itemized Inventory of all the property of the deceased person and the market value thereof. (*b*). The several persons to whom the same will pass under the will or intestacy and the degree of relationship, if any, in which they stand to the deceased, and the age, address and occupation of each of them so far as then can be ascertained. And the Executor or Administrator shall, before the issue of Letters of Probate or Letters of Administration, deliver to the Surrogate or Judge of Probate a bond in a penal sum equal to ten per cent. of the sworn value of the property of the deceased person liable to succession duty, executed by himself and two sureties (each of whom shall justify on oath) to be approved by the Surrogate or Judge of Probate, conditioned for the due payment to Her Majesty of any duty to which the property coming into the hands of such Executor or Administrator of the deceased may be found liable. Such bond shall be in the form Schedule A to this Act.

7. Attorney General may obtain Letters of Administration, etc., when no application is made for same within thirty days after death of owner of estate. Proviso.—If hereafter any person shall die whose estate or any part thereof is liable to succession duty under this Act, and Letters of Administration or Probate be not applied for and actually granted, within thirty days of the death of such person, it shall be lawful for the Attorney General to apply for and obtain Administration or Probate, as the case may be, without giving any security, either in his own name or of that of any other person to be appointed by him, and when he does so the estate shall thereafter be administered under the direction of the Court of Chancery. Provided always that any person having such an interest in the estate as would entitle him to Letters of Administration or Probate may at any time upon application to the Court of Chancery, by petition or summons, and giving security for the due payment of all succession duty payable in respect of such estate to the satisfaction of the said Court, assume the administration of said estate.

6. When appraisement to be directed.—In case the Provincial Secretary and Treasurer of the Province of Prince

Edward Island is not satisfied with the value of the property of the deceased, so sworn to, the Surrogate or Judge of Probate shall, at the instance of the Provincial Secretary and Treasurer, his solicitor or agent, direct in writing that an appraiser appointed by the Lieutenant Governor in Council of the Province shall make a valuation and appraise the said property under oath.

9. Valuation of Property.—In such case the appraiser shall forthwith give due and sufficient notice by delivery thereof or by registered letter to the executor or administrator, and to such other persons as the Surrogate or Judge of Probate may direct, of the time and place at which he will appraise such property, and he shall appraise the same accordingly at its fair market value, and make a report in writing thereof to the Surrogate or Judge of Probate, together with such other facts in relation thereto as the Surrogate or Judge of Probate may require, and such report shall be filed in the office of the Surrogate or Judge of Probate. The appraiser shall be entitled to receive, for services performed under this Act, such remuneration as the Lieutenant Governor in Council may decide, not exceeding Five Dollars per day.

10. Where Provincial Secretary is not satisfied with value of property, appraiser may be appointed by Lieutenant Governor. Powers of appraiser.—The Lieutenant Governor in Council of the Province may, in any case in which the Provincial Secretary is not satisfied with the value of the property of the deceased, as aforesaid, appoint an appraiser, whose duty it shall be to examine such inventory and the property therein enumerated, and the appraisement thereof, and the correctness of the same. He shall have power to summon before him witnesses, and to require them to give evidence on oath, orally or in writing (or on solemn declaration if they be parties entitled to affirm in civil matters), and to produce such documents and things as he may deem requisite to the full investigation of the matter of the correctness of said inventory and appraisement. For the purpose of such investigation he shall have all the powers that an executor or administrator has heretofore had when making an inventory. He shall alter, amend, add to or take away from the said inventory and appraisement as to him shall appear just and proper, and shall, if necessary, make a new inventory and appraisement. He shall as soon as possible conclude such investigation, and make his report thereon without delay.

11. Mode of assessing property liable to duty.—The Surrogate or Judge of Probate shall upon receiving the inventory and appraisement from the executor or administrator unless the appraiser is directed to value and appraise, and in such case upon receiving the report of the appraiser, forthwith proceed to assess and fix the then cash value of all estates, interests, annuities and life estates or terms of years growing out of such estate, and the duty to which the same is liable, and shall immediately give notice thereof by service of a copy of such notice or by registered letter, to all

parties known to be interested therein; and the value of every future or contingent or limited estate, income or interest shall, for the purpose of this Act, be determined by the rule, method and standards of mortality and of value to be fixed by an accountant named by the Provincial Secretary and Treasurer of the Province, and the accountant shall, on the application of a Surrogate or Judge of Probate, determine the value of such future or contingent or limited estate, income or interest upon the facts contained in the statement of the Surrogate or Judge of Probate hereinafter provided for, and shall certify the same to the Surrogate or Judge of Probate and his certificate shall be conclusive as to the matters dealt with therein.

12. Appeals from appraisement or assessment.—Any person affected thereby who is dissatisfied with the appraisement or with the assessment of the Surrogate or Judge of Probate provided for in the last above section hereof, may appeal therefrom to the Supreme Court of Prince Edward Island within thirty days after the registration of the notice to such person on giving security approved by a Judge of the Supreme Court to pay all costs, together with whatever duty shall be fixed by said Court, and upon such appeal to the Supreme Court the Court shall have jurisdiction to determine all questions of valuation and of the liabilities of the appraised estate or any part thereof for such duty, and such decision shall be final.

13. Bond of Executor to be delivered to Provincial Secretary.—The Surrogate or Judge of Probate shall require every executor or administrator as soon as the value of the property liable to succession duty has been ascertained, as hereinbefore provided, to deliver to him such bond as is provided for in section 6 of this Act, and shall forthwith upon receipt of such bond deliver the same to the Provincial Secretary and Treasurer of the Province at Charlottetown.

14. Surrogate to prepare statement of facts necessary to determine value of estate.—The Surrogate or Judge of Probate shall in every case where he is required to assess and fix the cash value of future or contingent or limited estates, income or interest, prepare a statement of facts necessary to determine the value of such estate, income or interest, and deliver or mail a copy thereof, postage prepaid and registered, to the accountant named by the Provincial Secretary and Treasurer. He shall, upon request of such accountant furnish him in the same way with such additional facts as may be necessary for such determination.

15. Surrogate to make monthly returns to Provincial Secretary of particulars of estate under administration, etc.—The Surrogate or Judge of Probate shall make monthly returns to the Provincial Secretary and Treasurer showing the following facts:—

(1). The name and address of every executor or administrator to whom letters testamentary or letters of administration have been granted, the date of granting the same, and the name of the deceased person to whose estate the same relate.

(2). The date of filing every inventory, together with the amount of the appraised value of the property therein.

(3). A copy of every statement filed under section 6 of this Act.

(4). Every valuation and appraisement by the appraiser appointed by the Lieutenant Governor in Council.

(5). A statement of every assessment by the Surrogate or Judge of Probate of the cash value of property liable to duty, showing the duty payable in respect of the same.

(6). A statement showing what appeals have been taken under section 12 of this Act, and what appeals have been decided, with the results of the same.

16. Bequests, etc., to executors or trustees.—Where a bequest or devise of property which otherwise would be liable to the payment of duty under this Act, is made to an executor or trustee in lieu of commissions or allowance, and said bequest or devise exceeds what would be a reasonable compensation for the services of the executor or trustee, such excess only shall be liable to said duty, and the Judge having jurisdiction in the case shall fix such conpensation.

17. When duty payable on future estates or interests.—In all cases where there has been a devise, descent or bequest of property liable to succession duty, to take effect in possession, or to come into actual enjoyment after the expiration of one or more life estate or estates for a period of years, the duty on such future estate or interest shall not be payable nor interest begin to run thereon until the person or persons taking such future estate or interest shall come into actual possession of such estate or interest by the determination of the estates for life or years, and the duty shall be assessed upon the value of the estate or interest at the time the right of possession accrues as aforesaid, and the person or persons so taking shall upon coming into actual possession become liable to pay such duty.

18. Duties payable within eighteen months from death of owner.—The duties imposed by this Act, unless otherwise herein provided for, shall be due and payable at the death of the deceased, or within eighteen months thereafter, and if the same are paid within eighteen months no interest will be charged or collected thereon, but if not so paid interest at the rate of six per centum per annum shall be charged and collected from the death of the deceased, and such duties, together with the interest thereon, shall be and remain a lien upon the property in respect to which they are payable until the same are paid.

19. Extension of time for payment of duty.—The Judge of Probate having jurisdiction in the case may make an order, upon the application of any person liable for the payment of said duty, extending the time fixed by law for payment thereof where it appears to such Judge that payment within the time prescribed by this Act is impossible owing to some cause over which the person liable has no control, provided, however, that such time shall in no case be extended for a greater period than one year beyond the time so fixed.

20. Administrators, etc., to deduct duty before delivering property.—Any administrator, executor or trustee, having in charge or trust any estate, legacy or property subject to the said duty, shall deduct the duty therefrom, or collect the duty thereon, upon the appraised value thereof from the person entitled to such property, and he shall not deliver any property subject to duty to any person until he has collected the duty thereon.

21. Power to sell for payment of duty.—Executors, administrators and trustees shall have power to sell so much of the property of the deceased as will enable them to pay said duty in the same manner as they may be enabled by law so to do for the payment of debts of the testator or intestate.

22. To whom duty to be paid.—Every sum of money retained by an executor, administrator or trustee, or paid into his hands for the duty on any property, shall be paid by him forthwith to the Provincial Secretary and Treasurer of the Province, or as he may appoint.

23. Refunding duty upon subsequent payment of debts.—Where any debts are proven against the estate of a deceased person, after the payment of legacies or distribution of the property from which the said duty has been deducted, or upon which it has been paid, and a refund has been made by the legatee, devisee, heir or next of kin, a proportion of the duty so paid shall be repaid to him by the executor, administrator or trustee, if the said duty has not been paid to the Provincial Secretary or Treasurer of the Province, or by the Provincial Secretary and Treasurer if it has been so paid.

24. Collection of duty upon stocks, bonds, etc.—Where any foreign executor, administrator or trustee assigns or transfers any stocks, bonds or debentures of any company or corporation in this Province, standing in the name of a deceased person, or in trust for a deceased person, which are liable to the said duty, the said duty, if not previously paid, shall be paid to the Provincial Secretary and Treasurer of the Province on the transfer thereof, otherwise the company or corporation permitting such transfer shall become liable to pay such duty, provided that such company or corporation had notice before such transfer that the said stocks, bonds or debentures were liable to the said duty.

25. Mode of enforcing payment of duty.—If it appears to the Judge of Probate that any duty accruing under this Act has not been paid according to law, he shall make an order directing the person or persons interested in the property liable to the duty to appear before him on a day certain to be therein named, and show cause why said duty should not be paid. Such order shall be served either personally or by registered letter ten clear days before the day named in said order. Upon said day the Judge, upon being satisfied that such order has been duly served, may hear and determine all questions regarding said duty, and the person or persons liable therefor, and may make an order directing the person or

persons liable to pay the same to make payment thereof to the Provincial Secretary and Treasurer forthwith, or within such reasonable time as may appear proper to the Judge. Such order shall be considered as a judgment of a Court of Record, and may be enforced by execution in the form Schedule B hereto annexed.

26. Additional remedies for collection of duty.—In addition to or in lieu of the remedy hereinbefore provided, if it shall at any time appear to the Attorney General that the duty payable in respect of any estate or any part thereof under the provisions of this Act has not actually been paid within the time allowed by the Statute he may:

(1). Proceed in the Court of Chancery to enforce the lien hereinbefore created; or

(2). He may in the Court of Chancery or the Supreme Court proceed by suit to be begun by ordinary Writ of Summons or Capias to enforce the bond which may have been given as provided by this Act; or

(3). He may in the same suit, notwithstanding that different parties may be required, proceed to enforce the lien and the bond.

27. Costs.—The costs of all proceedings under this Act shall be in the discretion of the Court or Judge.

28. Fees of Surrogate.—The Surrogate or Judge of t' Court of Probate shall be entitled to take for the performa of duties and services under this Act similar fees to ti payable under the Statute in force relating to Probate Courts.

29. Lieutenant Governor in Council may make regulations.—The Lieutenant Governor in Council may make regulations for carrying into effect the provisions of this Act, and such regulations shall be laid before the Legislative Assembly forthwith, if the Legislature is in session at the date of such regulations, and if the Legislature is not in session, such regulations shall be laid before the Legislature within the first seven days of the session next after such regulations are made.

SCHEDULE A.

Know all men by these presents that we, A. B. *(the Administrator or Executor)*, C. D. and E. F., all of ———, in the County of ———, Province of Prince Edward Island, are held and firmly bound unto our Sovereign Lady the Queen in the sum of ——— dollars *(ten per centum of the value as ascertained under this Act, the property liable to succession duty)*, to be paid to Her Majesty the Queen, for which payment well and truly to be made we bind ourselves, our and every of our heirs, executors and administrators jointly and severally by these presents, sealed with our seals and dated this——— day of ———A.D., 18——.

The condition of this obligation is such that if the above bounden A. B., Administrator *(or executor as the case may be)* of———, deceased, shall make due payment to the Provincial Secretary and Treasurer of the Province of Prince Edward

Island of all and any duty to which the property of the said ———, deceased, coming to the hands of the said A. B. may be found liable, then this obligation to be null and void, otherwise to remain in full force and effect.

Signed, sealed and delivered [L. S.]
in presence of [L. S.]
[L. S.]

————————

———

SCHEDULE B.

EXECUTION.

DOMINION OF CANADA,
Province of Prince Edward Island.
In the Surrogate and Probate Court.

County of——————
ss

To the Sheriff of the County of——————County.

GREETING:

You are hereby required (or in case it may be an alias execution, as before) to levy of the goods and chattels of ——— ———, within your bailiwick, the sum of———for costs awarded in favor of (or as the case may be) in a certain proceeding lately had before me as Surrogate Judge of Probate, in and for Prince Edward Island; and have that money before me at my office, in Charlottetown, in said Island, within thirty days from the date hereof, to be rendered to the said ——— ———, and for want of such goods and chattels whereon to levy you will take the body of the said ——— ———, and him safely keep until the said sum and your costs of levying this execution be paid and make return thereof within thirty days from the date thereof.

Given under my hand this——day of———18——.

C. D.

Surrogate, Judge of Probate.

E. F. Registrar.

Note:—There have been no amendments to the above Act, and no orders in council issued under sec. 29, and no decisions of the Courts.

Revenue.—

1895..	$ 959 00
1896..	3,660 63
1897..	810 00
1898..	213 75

MANITOBA.

AN ACT TO PROVIDE FOR THE PAYMENT OF SUCCESSION DUTIES IN CERTAIN CASES.

(56 Vic., cap. 31.)

[*Assented to March 11th, 1893.*]

Her Majesty by and with the advice and consent of the Legislative Assembly of the Province of Manitoba enacts as follows:—

1. Short title and commencement of Act.—This Act may be cited as "The Succession Duty Act, 1893," and shall go into effect as respects the estates of persons dying on or after the 1st July next.

2. "Property," meaning of.—The word "Property" in this Act includes real and personal property of every description, and every estate or interest therein capable of being devised or bequeathed by will or of passing on the death of the owner to his heirs or personal representatives.

(2) "VALUE."—"Value" in this Act means fair market value after payment of all debts, obligations and liabilities.

3. Where Act shall not apply.—This Act shall not apply:—

(1) To any estate the value of which, after payment of all debts and expenses of administration, does not exceed $4,000.00, nor

(2) To property passing under a will, intestacy or otherwise, to or for the use of the father, mother, husband, wife, child, grandchild, daughter-in-law, or son-in-law of the deceased, or one or more of such persons where the value of the property so passing does not exceed $25,000 in value.

4. Property passing on death of owner to be liable to succession duty.—Save as aforesaid all property situate within this Province passing either by will or intestacy, or any interest therein or income therefrom which shall be voluntarily transferred by deed, grant, or gift made in contemplation of the death of the grantor or bargainor, or intended to take effect, in possession or enjoyment after such death, to any person in trust or otherwise, or by reason whereof any person shall become beneficially entitled to the same or any part thereof or the income thereof, in possession or expectancy, shall be subject to a succession duty to be paid for the use of the Province over and above the fees provided by "The Surrogate Courts Act."

(2.) SCALE UPON WHICH DUTY COMPUTED.—The duty payable upon all property liable to duty under this Act shall be computed upon the following scale, that is to say:

Upon the value up to $25,000.00 a duty of $1.00 on every $100.00; in cases where said value reaches $25,000.00 but does not reach $50,000.00 a duty of $2.00 on every $100.00 of its value.

Where said value reaches $50,000.00 but does not reach $100,000.00, a duty of $3.00 on every $100.00 of the value.

Where said value reaches $100,000.00 but does not reach $250,000.00, a duty of $4.00 on every $100.00 of the value.

Where said value reaches $250,000.00 but does not reach $500,000.00, a duty of $5.00 on every $100.00 of the value, and

Where said value reaches $500,000.00 but does not reach $600,000.00, a duty of $6.00 on every $100.00 of the value.

Where said value reaches $600,000.00 but does not reach $700,000.00, a duty of $7.00 on every $100.00.

Where said value reaches $700,000.00 but does not reach $800,000.00, a duty of $8.00 on every $100.00.

Where said value reaches $800,000.00 but does not reach $1,000,000.00, a duty of $9.00 on every $100.00.

Where said value reaches $1,000,000.00 or more, a duty of $10.00 on every $100.00.

(3.) EXEMPTION.—Provided that where the whole value of any property devised, bequeathed or passing to, or for the use of any one person being the father, mother, husband, wife, child, grandchild, daughter-in-law or son-in-law of the deceased, under a will or intestacy does not exceed $10,000.00 the same shall be exempt from payment of the duty imposed by this section.

(4.) DUTY COLLECTED PRO RATA UPON WHOLE ESTATE.—Provided that all duties under this Act shall be levied and collected *pro rata* upon the whole of the estate of the deceased person liable to the duty.

5. Executors, et al. to file inventory and bonds for payment of duty.—An executor or administrator applying for letters probate or letters of administration to the estate of a deceased person shall, before the issue of letters probate or administration to him, make and file with the Surrogate Clerk a full, true and correct statement under oath showing (*a*) a full itemized inventory of all the property of the deceased person and the market value thereof; (*b*) the several persons to whom the same will pass under the will or intestacy so far as known and the degree of relationship, if any, in which they stand to the deceased; and the executor or administrator, except the official administrator, shall before the issue of letters probate or letters of administration deliver to the Surrogate Clerk a bond in a penal sum equal to ten per centum of the sworn value of the property of the deceased person liable to succession duty, executed by himself and two sureties, to be approved by the Registrar, conditioned for the due payment to Her Majesty of any duty to which the property coming to the hands of such executor or administrator of the deceased may be found liable, or furnish such other security in lieu of such bond as may be satisfactory to the Surrogate Judge.

(2.) PROVISO.—This section does not apply to estates in respect of which no succession duty is payable.

6. When appraisement to be directed.—In case the Treasurer of the Province is not satisfied with the value so sworn to, the Surrogate Clerk shall, at the instance of the Provincial Treasurer, his solicitor or agent, direct in writing that the Sheriff of the Judicial District in which any property subject to the payment of the said duty is situate shall make a valuation and appraise the said property.

7. Valuation of property by Sheriff. Sheriff's fees.—In such case the Sheriff shall forthwith give due and sufficient written notice to the executors and administrators and to such other persons as the Surrogate Clerk may by order direct, of the time and place at which he will appraise such property; and he shall appraise the same accordingly at its fair market value and make a report thereof in writing to the Surrogate Clerk, together with such other facts in relation thereto as the Surrogate Clerk may by order require, and such report shall be filed in the office of the Surrogate Clerk. The Sheriff shall be entitled to receive the sum of $5 per diem for services performed under this Act, and his actual and necessary travelling expenses, and the same shall be paid to him by the Treasurer of the Province.

8. Mode of assessing property liable to duty.—The Surrogate Clerk shall, upon receiving the report of the Sheriff, forthwith assess and fix the then cash value of all estates, interests, annuities and life estates or terms of years growing out of such estate, and the duty to which the same is liable and shall immediately give notice thereof, by registered letter, to such parties as by the rules of the Court of Queen's Bench would be entitled to notice in respect of like interests in an analogous proceeding and the Surrogate Clerk may, and in every proper case, shall, where infants who have no guardian are interested, notify the official guardian ad litem of infants' estates to represent the interest of said infants, and the value of every future or contingent or limited estate, income or interest shall, for the purpose of this Act be determined by the rule, method and standards of mortality and of value, which are employed in ascertaining the value of policies of life insurance and annuities, for the determination of the liabilities of life insurance companies, save that the rate of interest to be assessed in computing the present value of all future interests and contingencies shall be five per centum per annum.

9. Appeals from appraisement or assessment.—Any person dissatisfied with the appraisement or assessment may appeal therefrom to the Surrogate Judge of the court in which application has been made for letters probate or letters of administration within thirty days after the making and filing of such assessment, and upon such appeal the Judge of said court shall have jurisdiction to determine all questions of valuation and of the liabilities of the appraised estate or any part thereof for such duty, and the decision of the Surrogate Judge shall be final, unless the property in respect of which such appeal is taken shall exceed in value the sum of $10,000, when a further appeal shall lie from the decision of the Surrogate Judge to a Judge of the Court of Queen's Bench, whose decision shall be final.

(2.) PROCEDURE GOVERNING APPEALS.—The law and practice governing appeals from the decision of a County Court Judge to a Judge of the Court of Queen's Bench from time to time in force shall govern such appeal from the Surrogate Judge to a Judge of the Court of Queen's Bench.

10. Bequests, etc., to executors or trustees.—Where a bequest or devise of property, which otherwise would be liable to the payment of duty under this Act, is made to an executor or trustee in lieu of commissions or allowance, and said bequest or devise exceeds what would be a reasonable compensation for the services of the executor or trustee, such excess shall be liable to said duty, and the judge of the Surrogate Court having jurisdiction in the case shall fix such compensation.

11. When duty payable on future estates and interests.—In all cases where there has been a devise, descent or bequest of property liable to succession duty, to take effect in possession, or come into actual enjoyment after the expiration of one or more life estates or a period of years, the duty on such future estate or interest shall not be payable nor interest begin to run thereon, until the person or persons liable for the same shall come into actual possession of such estate or interest by the determination of the estates for life or years, and the duty shall be assessed upon the value of the estate or interest at the time the right of possession accrues as aforesaid.

12. Duties to be payable within 18 months from death of owner.—The duties imposed by this Act, unless otherwise herein provided for, shall be due and payable at the death of the deceased, or within eighteen months thereafter, and if the same are paid within eighteen months no interest shall be charged or collected thereon, but if not so paid interest at the rate of six per centum per annum shall be charged and collected from the death of the deceased, and such duties together with the interest thereon, shall be and remain a lien upon the property in respect to which they are payable until the same is paid.

13. Extension of time for payment of duty.—The Surrogate Judge may make an order upon the application of any person liable for the payment of said duty, extending the time fixed by law for payment thereof where it appears to such Judge that payment within the time prescribed by this Act is impossible owing to some cause over which the person liable has no control.

14. Administrator, et al, to deduct duty before delivering property.—Any administrator, executor or trustee having in charge or trust, any estate, legacy, or property subject to the said duty shall deduct the duty therefrom, or collect the duty thereon upon the appraised value thereof, from the person entitled to such property, and he shall not deliver any property subject to duty to any person until he has collected the duty thereon.

15. Power to sell for payment of duty.—Executors, administrators and trustees shall have power to sell so much of the property of the deceased as will enable them to pay said duty in the same manner as they may be or are enabled by law so to do for the payment of debts of the testator or intestate.

16. Duty to be paid to Provincial Treasurer.—Every sum of money retained by an executor, administrator or trustee, or paid into his hands for the duty on any property, shall be paid by him forthwith to the Treasurer of the Province.

17. Refunding duty upon subsequent payment of debts.—Where any debts shall be proven against the estate of a deceased person, after the payment of legacies or distribution of property from which the said duty has been deducted, or upon which it has been paid, and a refund is made by the legatee, devisee, heir or next of kin, a proportion of the duty so paid shall be repaid to him by the executor, administrator or trustee, if the said duty has not been paid to the Treasurer of the Province, or by the Treasurer if it has so been paid.

18. Mode of enforcing payment of duty.—If it appears to the Surrogate Judge that any duty accruing under this Act has not been paid according to law, he shall make an order directing the persons interested in the property liable to the duty to appear before the court on a day certain to be therein named and show cause why said duty should not be paid. The service of such order and the time, manner and proof thereof, and the fees therefor, and the hearing and determining thereon, and the enforcement of the judgment of the court thereon shall be according to the practice in or upon the enforcement of a judgment of the Court of Queen's Bench.

(2.) Appeal.—An appeal shall lie from the decision of the Judge under this section in the manner provided by Subsection (2) of Section 9 of this Act.

19. Costs.—The costs of all such proceedings shall be in the discretion of the court or Judge, and shall be upon the county court scale, unless and until another tariff shall be provided, save as to the costs of an appeal and then upon the scale of the court appealed to.

20. Fees of Judges and Surrogate Clerk.—The judges of the several Surrogate Courts and the Surrogate Clerk shall be entitled to take for the performance of duties and services under this Act, similar fees to those payable to them under and by virtue of "The Surrogate Courts Act" and rules for similar proceedings.

21. Security to be given by Surrogate Clerks.—The Surrogate Clerk before entering on the duties of his office, or in the case of a Surrogate Clerk appointed prior to the passing of this Act, before the foregoing provisions shall take effect, shall deliver to the Treasurer of the Province a bond or other security or securities in such sum and with such sufficient surety or sureties, as may be approved of by the Lieutenant Governor in Council, for the due and proper performance of the duties imposed upon such Surrogate Clerk by this Act, and the provisions of "The Manitoba Public Officers Act" relating to the giving of security by such officers, shall, where not inconsistent with this Act, apply to such bonds or other securities.

22. Lieutenant Governor in Council may make regulations.—The Lieutenant Governor in Council may make

regulations for carrying into effect the provisions of this Act, **which shall forthwith be published in *The Manitoba Gazette*,** and such regulations shall be laid before the Legislative Assembly forthwith, if the Legislature is in session at the date of such regulations, and if the Legislature is not in session such regulations shall be laid before the house within the first fourteen days of the session next after such regulations are made.

AN ACT TO MAKE FURTHER PROVISION FOR THE PAYMENT OF SUCCESSION DUTIES IN CERTAIN CASES.

(59 Vic., cap. —.)

(Assented to 19th March, 1896.)

Her Majesty, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:—

1. 56 V., c. 31, s. 4, amended.—Section 4 of Chapter 31 of 56 Victoria, being "The Succession Duty Act," is hereby amended by adding thereto the following sub-section:—

(5). DUTY ON ESTATE BROUGHT INTO THE PROVINCE FOR ADMINISTRATION.—Provided that any portion of the estate of any deceased person, whether at the time of his death such person was domiciled in the Province of Manitoba or was domiciled elsewhere, which is brought into the Province by the executors or administrators of the estate to be administered or distributed in this Province, shall be liable to the duty hereinbefore imposed; but if any succession or legacy duty or tax has been paid upon such property elsewhere than in Manitoba, and such duty or tax is equal to or greater than the duty payable on property in this Province, no duty shall be payable thereon in this Province; and if the duty or tax so paid elsewhere is less than the duty payable on property in this Province, then the property upon which such duty or tax has been paid elsewhere, shall be subject to the payment of such portion only of the succession duty provided for in the preceding sub-sections of this section as will equal the difference between the duties payable under this Act with respect to property in the Province of Manitoba, and the duty or tax so paid elsewhere.

2. Commencement of Act.—This Act shall come into force on the day it is assented to.

Decisions.—In *re* Campbell's Estate:—Judgment of Cumberland, Surrogate J., of Western Judicial District, on 18th August, 1894.

Application under the Succession Duty Act, 1893. The deceased, who lived in Manitoba, died there. With the exception of cattle on a farm in the Province, valued at $1,500, the whole of the estate, valued at over $70,000, consisted of bank stocks in several Canadian banks, the head offices of which were in Quebec or Ontario, shares in the Hudson's Bay Company, and moneys in the hands of that company in London.

A question arose under the Succession Duty Act as to the duty payable on the estate, if any.

Held, that the matter might be decided on the simple ground that the Statute, when it expressly limited its operation to "property situate within this Province," should be taken to mean property actually situated, not merely deemed to be situated, within Manitoba. It seems unlikely that the word "situate" would have been inserted if it had been intended that the provisions of the Act should extend to personalty which, though actually situated abroad, was by fiction of law considered as having for certain purposes a situs where the deceased person had his domicile. While it is true that personal property for some purposes is said to follow the domicile of the deceased owner, and to be dealt with as if it had been situated in the country where that domicile was, it could not properly be said that the property was situated there.

There were other provisions in the Statute which were consistent only with the idea that the property intended to be taxed was property actually situated within the Province. Even if the word "situate" had not been used in the Statute, taking it as a whole the proper construction to place upon it would be one which would exclude personalty outside the Province. There was no sufficient reason to draw a distinction between property such as bank stock, and personalty of a more tangible character, so as to hold the Statute applicable in the case of the former though not of the latter. It appearing that the sons and daughters of the deceased were the only beneficiaries, there was no reason why the matter should not be considered, for the purposes of the Act, as if the $4,500 were the only property passing under the will, and, if so, under s. 3, s-s. 2, no duty would be payable.

BRITISH COLUMBIA.

1894—57 Vic., Cap. 47.—"Succession Duty Act," 1894.
1896—59 Vic., Cap. 44.—"Succession Duty Amendment Act, 1896."
1897—R. S. B. C. (1897), Cap. 175.—"Succession Duty Act."
1899—62 Vic, Cap 68.—"Succession Duty Amendment Act, 1899."

AN ACT TO PROVIDE FOR THE PAYMENT OF SUCCESSION DUTIES IN CERTAIN CASES.

(R. S. B. C. [1897], cap. 175.)

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

1. Short title.—This Act may be cited as the "Succession Duty Act." 1894, c. 47, s. 1.

2. "Property" defined.—The word "property" in the following sections includes real and personal property of every description, and every estate or interest therein capable of being devised or bequeathed by will, or of passing on the death of the owner to his heirs or personal representatives.

(2.) "VALUE" DEFINED.—"Value," means fair market value after payment of the expenses of administration and all just debts and liabilities. 1894, c. 47, s. 2.

3. To what Act does not apply.—This Act shall not apply—

(1). IN VALUE.—In any estate the value of which does not exceed five thousand dollars; nor

(2.) IN CASE OF CERTAIN RELATIONS OF THE DECEASED.—To property passing under a will, intestacy or otherwise, to or for the use of the father, mother, husband, wife, child, grandchild, daughter-in-law or son-in-law of the deceased, where the aggregate value of the property of the deceased does not exceed twenty-five thousand dollars in value. 1894, c. 47, s. 3.

4. Property passing by will, etc., subject to succession duty.—Save as aforesaid, all property situate within this Province, passing either by will or intestacy, or any interest therein or income therefrom which shall be voluntarily transferred by deed, grant or gift made in contemplation of the death of the grantor or bargainor, or made or intended to take effect in possession or enjoyment after such death, to any person in trust or otherwise, or by reason whereof any person shall become beneficially entitled in possession or expectancy to any property or the income thereof, shall be subject to a succession duty to be paid for the use of the Province, over and above the probate duties prescribed in that behalf from time to time by law.

(2.) SCALE.—The duty payable upon all property liable to duty under this Act shall be computed upon the following scale, that is to say:—

Upon the value up to $100,000, a duty of $1 on every $100.

Where said value reaches $100,000 but does not reach $200,000, a duty of $2 on every $100 of the value.

Where said value reaches $200,000 but does not reach $700,000, a duty of $3 on every $100 of the value.

Where said value reaches $700,000 but does not reach $1,000,000, a duty of $4 on every $100 of the value.

Where said value reaches $1,000,000 or more, a duty of $5 on every $100 of the value.

(3.) DUTY ON PROPERTY DEVOLVING ON CERTAIN RELATIONS, AT ONE-HALF ABOVE RATES.—Provided that property passing under a will, intestacy or otherwise, to or for the use of the father, mother, husband, wife, child, grandchild, daughter-in-law or son-in-law of the deceased shall be charged with duty at one-half the several aforesaid rates.

(4.) LEVIED PRO RATA.—Provided that all duties under this Act shall be levied and collected pro rata upon the whole of the estate of the deceased person liable to the duty. 1894, c. 47, s. 4, & 1896, c. 44, s. 2.

5. Executors and administrators to file inventory, etc., on letters of administration issued.—An executor or administrator applying for letters probate or letters of administration to the estate of a deceased person shall, before the issue of letters probate or administration to him, or within

such time as may be limited by the Court issuing such letters probate or administration, make and file with the Registrar of the County Court of the County or District in which any property of the deceased is situate, a full, true and correct statement under oath showing (*a*) a full itemized inventory of all the property of the deceased person, and the market value thereof; (*b*) the several persons so far as known to whom the same will pass under the will or intestacy, and the degree o. relationship, if any, in which they stand to the deceased; and the executor or administrator, execept the official administrator, shall, before the issue of letters probate or letters of administration, deliver to the Registrar a bond in a penal sum equal to ten per centum of the sworn value of the property of the deceased person liable to succession duty, to be approved by the Registrar, conditioned for the due payment to Her Majesty of any duty to which the property coming to the hands of such executor or administrator of the deceased may be found liable, or shall furnish such other security in lieu of such bond as may be required by the Lieutenant Governor in Council.

(2.) THIS SECTION NOT TO APPLY WHERE NO DUTY PAYABLE.—This section does not apply to estates in respect of which no succession duty is payable. 1894, c. 47, s. 5.

6. If Minister of Finance not satisfied with value sworn to, Sheriff to appraise.—In case the Minister of Finance is not satisfied with the value so sworn to the Registrar of the County Court of the County or District in which any property subject to the payment of the said duty is situate shall, at the instance of the Minister of Finance, his solicitor or agent, direct in writing that the Sheriff for such County or District shall make a valuation and appraise the said property. 1894, c. 47, s. 6.

7. Duties of Sheriff in such case.—In such case the Sheriff shall forthwith give due and sufficient written notice to the executors and administrators, and to such other persons as the Registrar may by order direct, of the time and place at which he will appraise such property; and he shall appraise the same accordingly at its fair market value, and make a report thereof in writing to the Registrar, together with such other facts in relation thereto as the Registrar may by order require, and such report shall be filed in the office of the Registrar. The sheriff shall be entitled to receive the sum of five dollars per diem for services performed under this Act, and his actual and necessary travelling expenses, and the same shall be paid to him by the Minister of Finance. 1894, c. 47, s. 7.

8. Registrar, on receipt of report of Sheriff, to fix cash value of estate, etc., and give notice. Registrar may appoint guardian for infants. Value of future interests, how computed.—The Registrar shall, upon receiving the report of the Sheriff, forthwith assess and fix the then cash value of all estates, interests, annuities and life estates, or terms of years growing out of such estate and the duty to which the same is liable, and shall immediately

give notice thereof, by registered letter, to such parties as by the rules of the Supreme Court would be entitled to notice in respect of like interests in an analogous proceeding, and the Registrar may appoint for the purposes of this Act a guardian for infants who have no guardians; and the value of every future or contingent or limited estate, income or interest shall, for the purpose of this Act, be determined by the Schedule hereto, save that the rate of interest to be assessed in computing the present value of all future interests and contingencies shall be six per centum per annum; and the Provincial Auditor shall, on the application of any Registrar, determine the value of such future or contingent or limited estate, income, or interest upon the facts contained in such report, and certify the same to the Registrar, and his certificate shall be conclusive as to the matters dealt with therein. 1894, c. 47, s. 8.

9. Appeal of person from such assessment.—Any person dissatisfied with the appraisement or assessment may appeal therefrom to a Judge of the Supreme Court of British Columbia within thirty days after the making and filing of such assessment, and upon such appeal the Judge of said Court shall have jurisdiction to determine all questions of valuation and of the liabilities of the appraised estate, or any part thereof, for such duty, and the decision of the Judge shall be final, unless the property in respect of which such appeal is taken shall exceed in value the sum of ten thousand dollars, when a further appeal shall lie from the decision of the Judge to the Full Court. 1894, c. 47, s. 9.

10. Bequest to an executor in lieu of commission.—Where a bequest or devise of property, which otherwise would be liable to the payment of duty under this Act, is made to an executor or trustee in lieu of commissions or allowance, and said bequest or devise exceeds what would be a reasonable compensation for the services of the executor or trustee, such excess shall be liable to said duty, and such compensation shall be fixed by a Judge of the Supreme Court. 1894, c. 47, s.10.

11. Duty on reversions or remainders not to take effect until after determination of particular estate.—In all cases where there has been a devise, descent, or bequest of property liable to succession duty, to take effect in possession or come into actual enjoyment after the expiration of one or more life estates or a period of years, the duty on such future estate or interest shall not be payable nor interest begin to run thereon until the person or persons liable for the same shall come into actual possession of such estate or interest by the determination of the estates for life or years, and the duty shall be assessed upon the value of the estate or interest at the time the right of possession accrues as aforesaid. 1894, c. 47, s. 11.

12. Minister of Finance may commute duty on future interest.—The Minister of Finance, in his discretion, upon application made by any executor or administrator, or by any person entitled to a future estate or interest, may commute

the duty which would, or might but for the commutation, become payable in respect of such future estate or interest for a certain sum to be presently paid, and for determining that sum shall cause a present value to be set upon such duty, in the manner provided for computing the value of future interests by section 8 of this Act. 1896, c. 44, s. 3.

13. Minister of Finance may assess duty in respect of complicated interests in property by way of composition.—(1.) Where by reason of the number of deaths on which property has passed, or of the complicated nature of the interests of different persons in property which has passed on death, or from any other cause, it is difficult to ascertain exactly the amount of succession duty payable in respect of any property or any interest therein, or so to ascertain the same without undue expense in proportion to the value of the property or interest, the Minister of Finance, on the application of any person accountable for any duty thereon, and upon his giving to him all the information in his power respecting the amount of the property and the several interests therein, and other circumstances of the case, may, by way of composition for the duty payable in respect of the property or interest, and the various interests therein, or any of them, assess such sum on the value of the property or interest, as having regard to the circumstances appears proper, and may accept payment of the sum so assessed in full discharge of all claims for duties in respect of such property or interest, and shall give a certificate of discharge accordingly:

(2.) Provided that the certificate shall not discharge any person from any duty in case of fraud or failure to disclose material facts. 1896, c. 44, s. 4.

14. Interest on duty not paid within two years.—The duties imposed by this Act, unless otherwise herein provided for, shall be due and payable at the death of the deceased, or within two years thereafter, and if the same are paid within two years no interest shall be charged or collected thereon, but if not so paid interest at the rate of six per centum per annum shall be charged and collected from the expiry of such period of two years, and such duties, together with the interest thereon, shall be and remain a lien upon the property in respect to which they are payable until the same are paid. 1894, c. 47, s. 12.

15. Judge may make order as to time for payment of duty and interest.—A Judge of the Supreme Court may make an order, upon the application of any person liable for the payment of said duty, extending the time fixed by law for payment thereof, and also the date when interest shall be chargeable, where it appears to such Judge that payment within the time prescribed by this Act is impossible, owing to some cause over which the person liable has no control. 1894, c. 47, s. 13.

16. Administrators, etc., to deduct or collect duty.—Any administrator, executor, or trustee having in charge or trust any estate, legacy, or property subject to the said duty shall deduct the duty therefrom or collect the duty thereon

upon the appraised value thereof from the person entitled to such property, and he shall not deliver any property subject to duty to any person until he has collected the duty thereon. 1894, c. 47, s. 14.

17. Executors' power of sale to realize duty.—Executors, administrators and trustees shall have power to sell so much of the property of the deceased as will enable them to pay said duty in the same manner as they may be enabled by law so to do for the payment of debts of the testator or intestate. 1894, c. 47, s. 15.

18. Money coming into executors' hands for duty to be paid into Treasury.—Every sum of money retained by an executor, administrator, or trustee, or paid into his hands for the duty on any property, shall be paid by him forthwith into the Treasury of the Province, or as the Minister of Finance may appoint. 1894, c. 47, s. 16.

19. Duty paid on property refunded by next of kin, etc., to pay debts proved after distribution, to be repaid.—Where any debts shall be proven against the estate of a deceased person after the payment of legacies or distribution of property from which the said duty has been deducted or upon which it has been paid, and a refund is made by the legatee, devisee, heir, or next of kin, a proportion of the duty so paid shall be repaid to him by the executor, administrator, or trustee, if the said duty has not been paid to the Minister of Finance, or by the Minister if it has so been paid. 1894, c. 47, s. 17.

20. Judge may order persons to show cause why duty has not been paid. Practice.—If it appears to a Judge that any duty accruing under this Act has not been paid according to law, he shall make an order directing the persons interested in the property liable to the duty to appear before the Court on a day certain, to be therein named, and show cause why said duty should not be paid. The service of such order, and the time, manner, and proof thereof, and fees therefor, and the hearing and determining thereon, and the enforcement of the judgment of the Court thereon, shall be according to the practice in or upon the enforcement of a judgment of the Supreme Court. 1894, c. 47, s. 18.

21. Costs of such proceeding.—The costs of all such proceedings shall be in the discretion of the Court or Judge, and shall be upon the Supreme Court scale, unless and until another tariff shall be provided. 1894, c. 47, s. 19.

22. Lieut.-Governor may make rules.—The Lieutenant-Governor in Council may make regulations for carrying into effect the provisions of this Act, which shall be published forthwith in the British Columbia Gazette, and such regulations shall be laid before the Legislative Assembly forthwith, if the Legislature is in session at the date of such regulations, and if the Legislature is not in session, such regulations shall be laid before the House within the first fourteen days of the session next after such regulations are made. 1894, c. 47, s. 20.

SCHEDULE.

Age.	Expectation Years.	Age.	Expectation Years.	Age.	Expectation Years.	Age.	Expectation Years.
0	57.64	25	38.44	50	20.51	75	6.56
1	56.61	26	37 65	51	19.84	76	6 17
2	55.64	27	36.93	52	19.17	77	5.85
3	55.09	28	36.18	53	18.50	78	5.48
4	54 83	29	35.47	54	17.81	79	5.22
5	53.83	30	34.75	55	17.14	80	4.93
6	53 08	31	34.04	56	16 53	81	4.61
7	52 67	32	33.30	57	15.90	82	4.36
8	55 17	33	32.59	58	15.26	83	4.04
9	50.80	34	31.86	59	14.64	84	3.84
10	49.89	35	31.15	60	13.99	85	3.58
11	49 38	36	30.4t	61	13 42	86	3.44
12	48 38	37	29.69	62	12.83	87	3.26
13	47.50	38	28.97	63	12.26	88	3.05
14	46 60	39	28.27	64	11.72	89	2.94
15	45.90	40	27.57	65	11.17	90	2.68
16	45.14	41	2?.85	66	10.65	91	2.46
17	44.23	42	26 14	67	10.12	92	2.25
18	43.39	43	25.42	68	9.61	93	2.34
19	42.64	44	24 69	69	9 13	94	2 90
20	41.98	45	23 98	70	8.68	95	1.90
21	41 23	46	23 27	71	8 16	96	1.06
22	40.51	47	22.57	72	7.65	97	1.00
23	39.84	48	21 89	73	7.24	98	0.50
24	39 15	49	21.20	74	6.83		

AN ACT TO AMEND THE "SUCCESSION DUTY ACT."

(R. S. B. C., c. 175.)

(62 Vic., cap. 68.)

[*27th February, 1899.*]

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

1. Short title.—This Act may be cited as the "Succession Duty Act Amendment Act, 1899."

2. Re-enacts s. 4.—Section 4 of chapter 175 of the Revised Statutes, 1897, is hereby repealed, and the following substituted therefor:—

"4. PROPERTY LIABLE TO SUCCESSION DUTY.—(1) Save as aforesaid, the following property shall be subject to succession duty as hereinafter provided, to be paid for the use of the Province over and above the probate dues prescribed in that behalf from time to time by law—

"(*a*) PROPERTY SITUATE IN PROVINCE.—All property situate within this Province and any interest therein or income therefrom, whether the deceased person owning or entitled thereto was domiciled in British Columbia at the time of his death, or was domiciled elsewhere, passing either by will or intestacy. The words 'all property situate within this Province' shall include all policies of insurance, wherever entered into, or wherever payable, and all mortgages upon property of any kind situate

or partly situate in this Province, and all choses in action of whatever kind soever, wherever entered into or wherever payable, all shares, stocks, bonds, debentures and other securities for money, no matter where the corporation or other body issuing the same may be located, belonging to the estate of any person dying in this Province, who was at the time of his death domiciled in this Province:

"(*b*) PROPERTY VOLUNTARILY TRANSFERRED IN CONTEMPLATION OF DEATH.—All property situate as aforesaid, or any interest therein, or income therefrom, which shall be voluntarily transferred by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, bargainor, vendor or donor, or made or intended to take effect in possession or enjoyment after such death, to any person in trust or otherwise, or by reason whereof any person shall become beneficially entitled in possession or expectancy to any property or the income thereof:

"(*c*.) DONATIONES MORTIS CAUSA OR VOLUNTARY DISPOSITIONS MADE WITHIN 12 MONTHS BEFORE DEATH, ETC.—Any property taken as donatio mortis causa, made by any person dying on or after the first day of May, A.D. 1899, or taken under a disposition made by any person so dying, purporting to operate as an immediate gift inter vivos, whether by way of transfer, delivery, declaration of trust, or otherwise, which shall not have been bona fide made twelve months before the death of the deceased, including property taken under any gift, whenever made, of which property bona fide possession and enjoyment shall not have been assumed by the donee immediately upon the gift, and thenceforward retained to the entire exclusion of the donor, or of any benefit to him by contract or otherwise:

"(*d*) PROPERTY TRANSFERRED BY OWNER TO HIMSELF JOINTLY WITH SOME OTHER PERSON.—Any property which a person dying on or after the first day of May, A.D. 1899, having been absolutely entitled thereto, has caused or may cause to be transferred to or vested in himself, and any other person jointly, whether by disposition or otherwise, so that the beneficial interest therein, or in some part thereof, passes or accrues by survivorship on his death to such other person, including also any purchase or investment effected by the person who was absolutely entitled to the property, either by himself alone, or in concert, or by arrangement with any other person:

"(*e*.) PROPERTY PASSING UNDER SETTLEMENT.—Any property passing under any past or future settlement, including any trust, whether expressed in writing or otherwise, and if contained in a deed or other instrument effecting the settlement, whether such deed or other instrument was made for valuable consideration or not as between the settlor and any other person, made by any person dying on or after the first day of May, A.D. 1899, by deed or other instrument not taking effect as a will, whereby an interest in such property or the proceeds of sale thereof for life, or any other period, deter-

minable by reference to death, is reserved, either expressly or by implication to the settlor, or whereby the settlor may have reserved to himself the right by the exercise of any power to restore to himself or to reclaim the absolute interest in such property or the proceeds of sale thereof, or to otherwise re-settle the same, or any part thereof:

"(*f*.) ANNUITIES, ETC.—Any annuity or other interest purchased or provided by any person dying on or after the first day of May, A.D. 1899, either by himself alone, or in concert, or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship, or otherwise on the death of the deceased.

"(2.) PARTICULAR DESCRIPTION OF PROPERTY LIABLE NOT TO AFFECT GENERAL WORDS.—The descriptions of properties in clauses (*c*), (*d*), (*e*) and (*f*) shall not be construed to restrict the generality of the descriptions contained in clauses (*a*) and (*b*).

(3.) AMOUNT OF DUTY.—Where the aggregate value of the property of the deceased exceeds $25,000 and passes under a will, intestacy or otherwise, either in whole or in part, to or for the use of the father, mother, husband, wife, child, grandchild, daughter-in-law or son-in-law of the deceased, the same, or so much thereof as so passes (as the case may be) shall be subject to duty as follows:—

"For the first $75,000, or portion thereof in excess of $25,000, at the rate of $1.50 for every $100.00.

"For the first $100,000, or portion thereof in excess of $100,000, at the rate of $2.50 for every $100.

"For any sum in excess of $200,000, at the rate of $5 for every $100.

"(4) Where the aggregate value of the property of the deceased exceeds five thousand dollars and passes under a will, intestacy, or otherwise, either in whole or in part, to or for the use of the grand-father, grand-mother, or any other lineal ancestor of the deceased, except to the father or mother, or to any brother or sister of the deceased, or to any descendants of such brother or sister, or to a brother or sister of the father or mother of the deceased, or to any descendant of such last-mentioned brother or sister, the same or so much thereof as so passes (as the case may be) shall be subject to a duty of five dollars for every one hundred dollars of the value in excess of five thousand dollars.

"(5.) Where the aggregate value of the property of the deceased exceeds five thousand dollars and passes under a will, intestacy or otherwise, either in whole or in part, to or for the use of any person in any other degree of collateral consanguinity to the deceased, than is above described, or to or for the use of any stranger in blood to the deceased, save as hereinbefore provided for the same, or so much thereof as so passes (as the case may be) shall be subject to a duty of ten dollars for every one hundred dollars of the value in excess of five thousand dollars.

"(6.) PROVISO.—Provided that the duties hereby imposed shall be deducted from the share of each person entitled to share in

the estate, according to the rate applicable as above to such person's share.

"(7.) PROVISO AS TO PROPERTY BROUGHT INTO PROVINCE FOR ADMINISTRATION.—Provided also, that any portion of the estate of any deceased person, whether at the time of his death such person was domiciled in the Province of British Columbia, or was domiciled elsewhere, which is brought into the Province by the executors or administrators of the estate to be administered or distributed in this Province, shall be liable to the duty hereinbefore imposed; but if any succession or legacy duty or tax has been paid upon such property elsewhere than in British Columbia, and such duty or tax is equal to or greater than the duty payable on property in this Province, no duty shall be payable thereon in this Province; and if the duty or tax so paid elsewhere is less than the duty payable on property in this Province, then the property on which such duty or tax has been paid elsewhere shall be subject to the payment of such portion only of the succession duty provided for in the preceding sub-sections of this section as will equal the difference between the duties payable under this Act with respect to property in the Province of British Columbia and the duty or tax so paid elsewhere.

"(8.) PENALTY AGAINST EXECUTOR OR ADMINISTRATOR WHO TO ESCAPE PAYMENT OF DUTY DISTRIBUTES ESTATE WITHOUT BRINGING SAME INTO PROVINCE.—In case an executor or administrator shall, in order to escape payment of succession duty imposed by this Act, distribute any part of any such estate without bringing the same into this Province, such executor or administrator shall be liable, personally, to pay to Her Majesty the amount of the duty which would have been payable had the assets so distributed been brought within this province.

"(9.) BONA FIDE TRANSFERS OF PROPERTY NOT SUBJECT TO ACT.—Nothing herein contained shall render liable for duty any property bona fide transferred for a consideration that is of a value substantially equivalent to the property transferred."

3. Commencement.—This Act shall come into force on the first day of May, A.D. 1899.

Revenue.—

1894-5..	$ 619 33
1895-6..	8,481 50
1896-7..	2,156 31
1897-8..	2,821 83
1899 (to 30th June)..	1,909 08

Decisions.—In *re* Templeton, 6 B. C. L. R. 180.

The proceedings herein were commenced by originating summons for an order that probate of the will of William Templeton, deceased, be issued to his executrix, and for the determination of the question as to whether or not the Succession Duty Act applies to insurance moneys where the same are specifically disposed of under the policies, and also where policies were made payable out of the Province, payment of the duty having been demanded by the registrar.

Under R. S. B. C., c. 175, it is provided (subject to certain

exceptions which need not here be referred to) that all property situate within this Province passing by will or intestacy shall be subject to a succession duty varying in amount to the scale laid down in the Act. The deceased, who, by his will had left everything to his widow, had, during his lifetime, taken advantage of the provisions of s. 7 of the Families' Insurance Act, and by a writing identifying three of the policies by their respective numbers, had declared those three policies for the benefit of his wife; they therefore formed no part of his estate, and could not pass by his will, and accordingly were not liable to succession duty. There were two other policies payable outside the Province, but the deceased at the time of his death had his domicile within the Province.

Held.—That the proceeds of a life policy payable at death without the Province are not liable, in the hands of a beneficiary domiciled in the Province, to succession duty. The Act aims at property having an actual situation within the Province, and not to property which can only be deemed to be situate within the Province by legal fiction.

Insurance Law of Canada.

BY

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Author of Holt's Insurance of Canada.

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1. Jurisdiction of Parliament and Legislatures of the Provinces.—The terms upon which insurance business is to be carried on within the provinces is a matter coming exclusively within the powers of the local legislatures, and any such legislation by the Dominion would seem to be *ultra vires*. Thus, although the Dominion Act has properly regulated the question of the supervision of insurance companies through the Superintendent of Insurance, the deposits required under the Act, and the liquidation of insolvent companies; the provisions it contains purporting to deal with the form of conditions on policies and the effect of untrue statements, mis-state-

ments of age, etc., seem of doubtful constitutionality, except in so far as they are also prescribed by provincial legislation.

As we shall see later, under the proper heading, each of the provinces has its own legislation on these points, and these provincial statutory provisions should be looked to rather than the Dominion enactments.

2. The Application, Payment of Premium and Delivery of Policy.—The acceptance of the application completes the contract; the policy is merely the expression and evidence of what has been agreed to.

The ancient stringency of the common law required that corporations should contract under corporate seal, and held that they could only thus contract. But this doctrine is now obsolete. The application for insurance upon which the insured's policy may be issued is treated as his part of the contract. He must make such representations in answer to the questions put as are truthful and correct, to enable the company to judge of the quality of the risk.

Statements of an insurance agent prior to the execution of the policy are not admissible as against the Company to vary the terms of the written contract.

Further, a policy obtained by fraud or by a breach of the high degree of good faith required as between insurer and assured being only voidable, the party defrauded, whether insurer or assured, must take steps to avoid the contract, or he will be held by his quiescence to have assented to the contract and elected to treat it as valid.

If the insurer discovers that he has been induced by fraud to grant the policy, and after such discovery accepts premiums and treats the policy as good, it would seem that he would thereafter be estopped from denying its validity, more especially if he allows the policy to be assigned to a *bona fide* holder for value.

There are three courses open to the insurer on discovering that he has been induced to grant the policy through fraud of the assured:

To refuse to receive further premiums and repudiate the contract after discovering the fraud;

To seek cancellation of the policy, offering at the same time to return all premiums paid;

If the policy has matured, by defending any action for recovery of the insurance money.

In fire insurance the fact that property is insured for more than its real value does not create a presumption of fraud. The presumption is rather that the over-valuation is in good faith. But if the over-valuation be grossly enormous it gives rise to a strong presumption of fraud. In the old policies the words "I am content with this assurance" were inserted as an acknowledgment that the insurer was satisfied with and would not later dispute the sufficiency of the premium. The adequacy of the premium, however, is now purely the insurer's concern.

Prepayment of the premium is not in law a condition precedent to the making of a complete contract of insurance;

but it is the almost universal practice of insurance companies (other than marine) to stipulate that the contract shall not begin to take effect until the premium has been paid. This stipulation is enforced by the courts, and they refuse to give effect to a contract where a loss has happened after an agreement to issue and accept a policy, but before the premium has been paid and the policy issued, or even when it has been delivered as an escrow.

A person dealing with an insurance agent may fairly assume that the agent is authorized to take a promissory note in payment of a premium when the policy does not forbid it, and such person has no knowledge that the agent's authority is limited. But when a policy contains provisions to the effect that it shall not be in force until the first premium is paid, and that if a note be taken for the first or renewal premium, and not paid, the policy is to be void at and from default, the onus is on the policy holder to prove cash payment of the premium. And when the company's agent accepts in payment of a premium a promissory note which is not paid when due, there is no presumption that he should raise money thereon as agent for the assured, so that he may pay the premium out of the proceeds.

When a company, having accepted a proposal for insurance, signs and seals a policy which recites that the premium has been paid, the company cannot shew in contradiction of the terms of its own deed that the premium has not in fact been paid in answer to a claim for payment of a loss.

In Quebec there is no doubt that where a month's grace is given for payment of renewal premium, the death of the insured within the month and before payment of the premium will not prevent a valid tender of it being made by his representatives within the month. In Ontario, however, the judges of the Court of Appeal are divided upon this question, and it must remain doubtful until either the Supreme Court of Canada has pronounced upon it, or further legislation has made it clear. Of course, where the stipulation on the policy clearly gives the right to the representative, no difficulty can arise, and such a stipulation will be enforced.

It may be and frequently is stipulated that the non-payment at maturity of a note given for premium shall terminate the risk, and the company still be entitled to collect on the note; and the courts will enforce this clause, though the company have asked payment of the note without making a formal cancellation of the risk.

3. Accident Insurance.—The tickets issued in some branches of accident insurance, sold and delivered by an agent and paid for, give the owner a valid claim against the company, subject to the conditions on the ticket.

4. Interim Receipts.—Interim receipts for fire insurance, as the name implies, are intended to serve temporary purposes only; they are usually limited to a term sufficient to enable the company to decide as to the acceptance of the application or otherwise, and to prepare the policy. They are issued in the interest of the insured as a written evidence that he is held

covered pending the delivery of the policy, unless he is previously notified by the company of their refusal to undertake the risk, or the receipt stipulates that such preliminary insurance expires at the end of the period named therein without further notice.

They are interim contracts, legally binding on both parties, although not policies within the meaning of that term in the Ontario Insurance Act, and when they are made subject to conditions of policy, according to the usual practice, such conditions ought to be read into them, as far as they may lawfully be made a part of the policy.

5. Insurable Interest.—Under the Civil Code of Lower Canada, a person has an insurable interest in the object insured whenever he may suffer direct and immediate loss by the destruction or injury of it, and this is the common law.

In England and the United States the earlier cases restrict the term "insurable interest" to a clear, substantial, vested, pecuniary interest, and deny its applicability to a mere expectancy, but the later decisions would seem to give a broader interpretation, and allow an insurable interest to any one who either personally or as representing another has a reasonable expectation of deriving pecuniary advantage from the preservation of the subject matter of insurance. The French law is, however, more restricted than the law in England and the United States.

With regard to life insurance, the Civil Code of Lower Canada, following the weight of foreign authority, declares that a man has an insurable interest in the life:

(1) Of himself. (2) Of any person upon whom he depends wholly or in part for support or education. (3) Of any person under legal obligation to him for the payment of money, or respecting property or services which death or illness might defeat or prevent the performance of. (4) Of any person upon whose life any estate or interest vested in the insured depends. And it decrees (in this also following the common law) that a policy of insurance on life or health may pass by transfer, will or succession to any person whether he has an insurable interest or not in the life of the person insured.

Mr. Cooke, in his American work on life insurance, points out that the doctrine of insurable interest in a life, though so perfectly established as to be fundamental, cannot find justification in the rules applied to analogous cases. The supposition is that it is contrary to public policy that one person should receive a benefit conditional upon the death of another, and that the temptation to destroy that other's life must be balanced or counteracted by the existence of an insurable interest in that other's life. But this expectation exists in the case of a legacy, a dower or a substitution or life tenancy, and the objection has never been applied to these cases.

Further, if the doctrine had a sound logical basis, the cessation of the insurable interest would cause the contract to become invalid. The contrary is the case.

The reason given for applying a different rule to fire insurance, viz., that it is a contract of indemnity, is not satisfactory, as it does not meet the objection. Under the common law it

would seem that no insurable interest in a life is necessary, though the contrary appears to have been commonly supposed. The principle was originally based on the construction of the Gambling Act.

The general rule is that the insured must have an insurable interest both at the time of insurance and at the time of loss, but this is modified as to life policies. It has been held by the Supreme Court of Canada that if the assured had no interest in the property at the time of insurance, a subsequently acquired interest will not save the policy, and a renewal after the interest is gained being a mere continuation of the void policy, is itself void. But though given by the highest Court in Canada, this decision seems difficult to reconcile with the views now generally accepted that the renewal is not a mere continuation of the old policy, but a new contract. If, knowing the facts, the company recognises the policy as valid, and executes a renewal, there would seem to be the *aggregate mentium* and all the elements of a valid new contract based on a good insurable interest.

6. Insurance by Mortgagee or Hypothecary Creditor.—It is said that under English law, while the mortgagor is not entitled to the benefit of the mortgagee's contract, the mortgagee is not entitled to be indemnified from two quarters. And there is authority for this view in the United States also. The question is one of some difficulty, but in so far as our Courts in Canada have dealt with it, it would appear that in Quebec a mortgagee who has insured his property and received the value from an insurer cannot recover from a mortgagor (after he has been paid by the insurer) on the principle of the Civil Law, "*bona fides non patitur ut bis idem exigatur.*"

The English law would let him recover where he paid the premiums out of his own pocket under circumstances which did not entitle him to charge them to the mortgagor, but he would so recover for the benefit of the insurers who would be entitled on payment to be subrogated in his rights independently of stipulation to that effect.

The Civil Code of Lower Canada gives the insurers subrogation in the rights of the insured against the person by whose fault the loss occurred. It has been held in Quebec that a creditor who takes out a policy of fire insurance for his own protection and at his own expense on his debtor's property is not bound to account to the debtor for the portion of the insurance money paid to him under such policy and remaining as a surplus above the amount required to extinguish the debt, but this decision was questioned in a later case in Appeal.

It has been held in Ontario that the creditor who has without any express or implied agreement with his debtor insured to protect his claim, after receiving his insurance indemnity may still proceed to recover his debt.

In British Columbia in cases where the loss is payable to a mortgagee with the company's consent it has been specially enacted by the Legislature that the policy cannot be conceded or dealt with without notice to the mortgagee; and proofs of loss may be made by the mortgagee.

In case the loss, if any, is made payable to a mortgage creditor, there is no new contract created between the insur-

ance company and the mortgage creditor; consequently, any cause of nullity existing *prior* to the intervention of the mortgage creditor may be invoked by the company against the latter; and probably causes of nullity due to the act of the insured, although *subsequent* to the intervention of the mortgage creditor, may also be invoked.

7. Insurance for Benefit of Wife and Children.—The different provinces of the Dominion have each special legislative enactments providing for insurances in favor of wife and children, and in some of them of the mother and husband also; called in the Ontario Insurance Act preferred beneficiaries.

In some of the Provinces the policies so assigned have been legally dealt with by the assured and the assignee acting together; in others they have had until recently no power to do so.

Thus, in Quebec, until the last session of the Legislature, it had been held that the appropriated policy could not be dealt with even by both parties acting together. The words of the statute, "shall be unassignable by either of such parties," were interpreted as equivalent to "shall be unassignable by both of such parties." The law now allows the assignment of such a policy with the consent of the insured and the parties benefited.

In Ontario it may be assigned if the parties are of age and consent.

In British Columbia the law is similar to that in Ontario.

In Manitoba the appropriated policy was formerly unassignable by either of the parties. But the law has been changed and the parties are now allowed to assign—"save during minority."

In New Brunswick the appropriated policy may be assigned when the parties are of full age.

In Nova Scotia and Prince Edward Island the question of the right to assign the appropriated policy is not dealt with by statutory enactment.

It has been held in Ontario that the declaration of an appropriation may be effectively made even after a seizure of the policy by a creditor of the insured.

8. Warranties and Representations.—Warranties and conditions are a part of the contract, and must be true if affirmative, and, if promissory, must be complied with, otherwise the contract may be annulled though made in good faith. Warranties may be implied as well as expressed.

These rules express the received and long settled doctrine of the English law. They do not differ from the rules of the French law in the particular of making the clauses and conditions called warranties binding *prima facie* upon the insured, but under the latter system the question of materiality is always admitted, while in the former it is excluded, and the insured is bound by the special terms of his agreement whether they be material or not.

The Insurance Act of Canada provides that no life policy shall contain any condition declaring the policy void by reason of any statement in the application being untrue, unless such

condition is limited to cases in which such statement is material to the contract. And it has been held by the Supreme Court of Canada that, unless the application for insurance is made part of the policy by insertion or reference, the statements in it are not warranties, but mere collateral representations which would not avoid the policy unless the facts misstated were material to the risk.

And even if the application be considered as forming part of the policy owing to its being connected with it by verbal testimony, and if the statements in it are held to be warranties, still if the insured has only pledged himself to the truth of his answers so far as known to him and material to the risk, the result is the same whether they are warranties or collateral representations, and it is a question for the jury as to such knowledge and materiality.

As a rule, when the application is referred to as forming a part of the contract, the statements therein contained are held to have the force of warranties. But courts are indisposed to make a paper by reference a warranty and part of the contract unless clearly obliged to.

A mere reference to an application or survey in general terms does not make the contents warranties, but only representations. And in Canada, even though the application is made a part of the policy, a misstatement or wrong answer will not in the absence of an express warranty avoid the policy unless it is material.

Insurance companies seem sometimes by indulging in overcaution, leading to the use of unnecessary stipulations regarding warranties, to defeat their own object.

Where the insured declared that he answered to the best of his knowledge and belief, and omitted to state an accident from the results of which he was in bed five weeks, it is for the jury to say whether he wilfully withheld the facts or forgot them, or honestly thought them of too little consequence to be mentioned. In the absence of proof of bad faith the fact that the person insured did not disclose in the application that he had some years before suffered from a malady which was not shewn to have affected his constitution does not make the policy void.

If there is the slightest room for doubt the courts will hold a stipulation a representation rather than a warranty.

If the company accepts an indefinite or insufficient answer it will be construed liberally in favor of the insured, as when a question as to how the premises are occupied is answered "dwelling, etc.," this will be held as notice that a saloon is kept there. The construction is always *contra proferentes*, and the policy is prepared by the company.

Where there is a discrepancy or conflict between printed and written matter in the contract the written portion prevails. The tendency of judicial decisions in England, Canada and the United States is to pay more regard to the policy and less to evidence of custom. The reason for this is that policies, especially fire and life, are drawn with more care and skill than formerly, and have been corrected in accordance with decisions and made more distinct and precise with the growth of actuarial experience.

Fire and life policies are drawn as legal and not mercantile documents, and there are not many cases in which they can be construed with reference to mercantile custom.

In short, it may be said that it has been found difficult to determine how far strict accuracy is to be exacted from the insured in the statements made by him at the time the insurance is effected. To meet this difficulty special legislation has been enacted by the Dominion Parliament (the constitutionality of which is doubtful) and by the legislatures of Ontario, Quebec, Manitoba and British Columbia. We shall consider the effect of each of these enactments *seriatim*. Under the Insurance Act of Canada no condition or stipulation or proviso modifying or impairing the effect of any policy or certificate of life insurance issued after 1st January, 1886, by any company doing business within Canada under the authority of the Parliament of Canada shall be good or valid unless such condition, stipulation or proviso is set out in full on the face or back of the policy. And no policy or certificate shall be avoided by reason of any statement contained in the application therefor being untrue unless such condition is limited to cases in which such statement is material to the contract.

And where in any contract of life insurance entered into with any company licensed to carry on business in Canada under the provisions of the Insurance Act of Canada the age of the person whose life is insured is given erroneously in any statement or warranty made for the purpose of the contract, such contract shall not be avoided by reason only of the age being other than so stated or warranted if it appears that such statement or warranty was made in good faith or without any intention to deceive; but the person entitled to recover on such a contract shall not be entitled to recover more than an amount which bears the same ratio to the sum that such person would otherwise be entitled to recover as the premium proper to the stated age of such person bears to the premium proper to the actual age of such person, the stated age and actual age being both taken, as at the date of the contract, but in no case shall the amount receivable exceed the amount stated or indicated in the contract.

As has been pointed out, the constitutionality of these provisions is doubtful. They seem *ultra vires* of the powers conferred by our constitution on the Dominion Parliament.

The Ontario Legislature has enacted a statutory condition with regard to fire insurance to the effect that if the insured describe the insured property otherwise than it really is to the prejudice of the company, or misrepresents or omits any circumstance material to be made known to the company in order to enable it to judge of the risk, such insurance shall be invalid in so far as it affects the property in regard to which the misrepresentation or omission is made; and the policy is deemed to be in accord with the application unless the company points out a difference.

It has also been enacted in Ontario that all the terms and conditions of the contract must be set out by the company in full on the face or back of the instrument, and the contract must not contain or have endorsed on it or be made subject to any provisions providing that such contract shall be avoided

by reason of any statement in the application unless such condition is limited to statements material to the contract, and the statement must be material to avoid the contract.

As to error in age, the Ontario Legislature has enacted a provision similar to that of the Dominion Act.

Under the Civil Code of Lower Canada the insured is obliged to represent to the insurer fully and fairly every fact which shews the nature and extent of the risk, and which may prevent the undertaking of it or affect the rate of premium. But representations not contained in the policy or made a part of it are not admitted to control its construction or effect.

The contract of life insurance is *uberrimae fidei*, but the insured is not obliged to represent facts known to the insurer or which from their public character or notoriety he is presumed to know, nor is he obliged to declare facts covered by warranty express or implied except in answer to inquiries made by the insurer.

Misrepresentation or concealment either by error or design of a fact of a nature to diminish the appreciation of the risk or change the object of it is a cause of nullity. The contract in such case may be annulled although the loss has not in any degree arisen from the fact misrepresented or concealed. Fraudulent misrepresentation or concealment on the part of the insurer or insured is in all cases a cause of nullity of the contract in favor of the innocent party.

The obligation of the insured with respect to representation is satisfied when the fact is substantially as represented, and there is no material concealment.

As to error in age, the Quebec enactment is that the declaration in the policy constitutes a warranty upon the correctness of which the contract depends. In view of this Quebec enactment the question of the constitutionality of the Dominion enactment is of importance. It would seem that the Dominion Legislation must be held *ultra vires*, and that in Quebec error in age is a cause of nullity at present.

Relief from this onerous position can be obtained only by the future intervention of the Quebec Legislature. Manitoba and British Columbia have enacted legislation similar to that of the Ontario statutory conditions above referred to.

As we have seen in cases regarding policies governed by the statutory conditions, the distinction between warranties and representations so much discussed ceases to have much practical significance. Whether warranty or representation it does not forfeit the contract unless material.

9. Additional Insurance.—The general doctrine that a previous or subsequent insurance without notice under a policy requiring notice of such insurance upon pain of forfeiture discharges the insurer from any obligation to pay for a loss happening under such circumstances is well settled and universally recognised. That this should be the effect of the concealment or failure to give notice, as the case may be, is not only a part of the contract and obligatory upon that ground, but the forfeiture is just and reasonable. The insurer can never know the extent of his risk unless he knows everything that bears upon it. Additional insurance no doubt increases the risk.

Owners of different interests in the same property, how-

ever, and joint owners may respectively insure their interests without risk of violating the provisions against double or additional insurance.

The problem of two policies each containing a provision against other insurance has given rise to a number of contradictory decisions in the United States. It is settled in Canada, however, that the question is simply whether double insurance has *de facto* existed, and the fact that a policy is voidable at the discretion of the insurer will not prevent its being invoked as a violation by the other insurer as long as it has not been actually voided.

Where the policy requires the company's consent in writing to double insurance the courts seem to have become more liberal in favor of the assured than formerly, and there is a tendency in the modern cases to hold the notice given to the company or its agent to which no objection is made as estopping the company from afterwards insisting on a forfeiture of the policy for want of their consent in writing.

In the absence of any special inquiry or condition as to additional insurance there is no obligation on the insured to refer to it.

The condition is strictly construed, and if it read that other insurance on any *house* or *building* insured must be notified without delay, insurance on *goods* need not be so notified.

In a recent case, the Supreme Court of Canada laid it down that over insurance must be put a stop to as much as it is in the power of the courts to do it. The judges considered that therein lay one of the greatest sources of fraud in connection with the insurance business. If the assured is not in part a co-assurer with the company, that is to say, if the parties to the contract have not common interest in the preservation of the property insured, one of the most efficient safeguards against fraud and crime is removed. Any such contract where the assured might expect to make a profit by the destruction of the property assured is in law tainted with immorality.

The insured is not relieved from giving notice of a prior insurance by the fact that the first insurance expires in a few days, and that he does not intend to renew it.

The Ontario Insurance Act, the Manitoba Fire Insurance Policy Act and the British Columbia Fire Insurance Policy Act contain statutory conditions declaring fire policies null if there is a prior or subsequent insurance without the company's consent, unless the company has had notice and has not dissented within two weeks of such notice.

In practice, while double insurance is usually stipulated against, the companies do not appear to insist upon the invalidity of policies where double insurance is effected without notice, but without fraud. In these cases each company contributes rateably.

10. Transfers and Assignments.—In Ontario, Manitoba and British Columbia, by statutory conditions, if the property insured is assigned without written permission of the company the policy becomes void, except in cases of change of title by succession, by operation of law, or by reason of death.

In Quebec a transfer of the insured property renders the policy void unless done with consent of the company, but the

policy may always be assigned with the thing insured, subject to the conditions contained in it.

Fire policies may be transferred to those only who have an insurable interest, but life policies may be transferred to parties having no insurable interest.

In Ontario, however, the interest of the assured in a policy of insurance upon chattels may before loss be validly assigned by him to a person who has no interest in the chattels at the time of the assignment, the assured remaining owner of the chattels.

11. Agents, their Powers and Duties.—The large powers given to insurance agents in the United States, where, in many cases they represent their companies for all the purposes of an insurance business, and can therefore bind them to an almost unlimited extent within the scope of such business, have caused the American cases to be considered unsafe guides in England, where powers of a much more limited character are given to the local agents of insurance companies.

In Ontario, Manitoba and British Columbia by statutory conditions any officer or agent of the company who assumes on behalf of the company to enter into any written agreement relating to any matter connected with the insurance is deemed *prima facie* to be the agent of the company for that purpose; but no condition of the policy in whole or in part shall be deemed to have been waived by the company unless the waiver is clearly expressed in writing signed by an agent of the company.

It may be said generally that the local agent of an insurance company must be treated as their officer to communicate with persons respecting insurance, and what he says or does in that capacity within the proper bounds of his authority must be held binding on the company.

12. Proofs of Loss.—The law in Quebec is that notice must be given within reasonable time or as stipulated in the policy, unless such stipulation be waived, or unless it is impossible for the assured to give notice or make the preliminary proofs within the delay specified, in which case he may take reasonable time.

In Ontario, Manitoba and British Columbia, where, by reason of necessity, accident or mistake, the condition as to proof has not been strictly complied with, or where after a statement of proof of loss has been given in good faith the company objects to the loss on other grounds than for imperfect compliance with the condition, or does not within a reasonable time objects, giving particulars of the defect, they will not be allowed to plead non-compliance as a discharge of their liability, and the court has the power to declare such forfeiture inequitable in any case, and may refuse to allow it.

It would appear that this provision is intended to apply to both the time of delivery and the insufficiency of the proofs of loss.

It has been held in Quebec that the person to whom loss is payable can give as valid a notice of loss to the insurer as the owner can. But the contrary rule prevails in Ontario, Manitoba and British Columbia; except that, in British Colum-

bia, proofs of a loss may be made by a mortgagee to whom the policy is payable with company's consent; and in Ontario a mortgagee with whom the company has dealt as such may bring an action against them, notwithstanding the statutory condition.

It has been further held in Quebec that, when the loss under a policy of fire insurance on goods is made payable to a party other than the person who effected the insurance, and such third party becomes owner of the goods, by a transfer to him of the warehouse receipts of such goods, such third party becomes thereby the party insured, and can, therefore, legally make all necessary preliminary proofs of loss.

The much disputed question of waiver of proofs on the part of the company or those acting on its behalf has received much attention from the courts, both in Canada and the United States.

Its importance has been fully recognised, and the courts seem to have endeavored to enforce not so much the letter of the law as to ascertain the spirit which prompted the enactment of the legislative safeguards thrown about the contract of insurance. A refusal to pay on other grounds is not a waiver of insufficient notice of death. This was formally decided by the Supreme Court of Canada, where the policy provided, *inter alia*, that "in the event of any accident or injury for which claim may be made under the policy, immediate notice must be given in writing, addressed to the manager of the company at Montreal, stating full name, occupation and address of the insured, with full particulars of the accident and injury; and failure to give such immediate written notice shall invalidate all claims under the policy."

The refusal by the company to entertain the loss of the insured has been held by the Court of Appeals in Quebec to be a renunciation on their part of their right to exact details of the loss before suit.

And in another Quebec case it was held that a condition of the policy, requiring a particular statement thereof to be delivered by the insured, within fifteen days after a fire, was waived and dispensed with by a distinct denial of liability, and refusal to pay on the part of the company made before the period for furnishing proofs had expired.

In another Quebec case it was ruled that a condition in a policy of insurance to the effect that all persons insured shall, as soon after a fire as possible, deliver in a particular account of their loss or damage, is waived by the fact of the agent of the company, and the person insured, each choosing valuators who make a valuation of the loss, and by the fact of the company offering the assured a less amount than the valuation in settlement, showing that they disputed the amount to be paid only.

The owner of a stock of goods destroyed by fire is entitled to receive from the insurers only the actual cash value of the goods, which value is represented by a sum equivalent to the cost of replacement. The liability of the insurers is not increased by reason of the fact that the assured had before the fire contracted to sell the goods destroyed, and that he could not replace them in time to carry out his contract.

13. Fraudulent Claims.—In Ontario, Manitoba and British Columbia, any fraud or false statement in a statutory declaration setting out proofs of loss, vitiates the claim.

There is no similar provision in Quebec, and unless stipulated it would not have that effect there; but when stipulated, it will be enforced.

Where an insurance policy is to be forfeited if the claim is in any respect fraudulent, it is not essential that the fraud should be directly proved, it is sufficient if a clear case is established by presumption or inference or by circumstantial evidence. And the assignee of the policy cannot recover on it, if fraud is established against his assignor.

14. Arbitration.—Under statutory conditions in Ontario, Manitoba and British Columbia, if any difference arises as to the value of the property insured, of the property saved, or of the amount of the loss, the same is, whether the right to recover on the policy is disputed or not, and independently of all other questions, to be submitted to arbitration. There is no such statutory enactment in Quebec.

Under the common law the courts have not hitherto favored an attempt to oust them from their jurisdiction, and to substitute a tribunal erected by the parties for the tribunal which public policy and the general laws have established and clothed with the requisite powers to make them the efficient and, upon the whole, the best means of hearing and determining controversies between individuals.

While, however, it is perfectly well settled that under the common law any agreement that contemplates the exclusion of an aggrieved party from a suit of law is invalid, there seems to be no doubt that any agreement as to the mode of adjustment or of settling the amount of loss, or the time for paying it, or any particulars of that nature, which do not go to the root of the action, but are preliminary thereto or in aid thereof, as, for instance, an agreement that at the trial of an action it shall not be lawful for either party to enter into the question of the amount of the loss, but that it shall always be settled by reference, and that the only question to be tried at law shall be the right to recover, is perfectly valid and legally binding.

15. Suicide and Death by the Hands of Justice.—Insurance effected by a person on his own life is void if he die by the hands of justice, by duelling or by suicide.

Upon the question of voluntary suicide, intentionally committed by a sane man in the possession of his faculties, knowing how to adopt means to ends, and conscious of the immorality of the act, there is not any difference of opinion, and all authorities agree that such a suicide is within the exemption and that the act voids the policy.

All the authorities likewise agree that an accidental death, as by taking poison by mistake, or shooting oneself with a pistol supposing it not to be loaded, or falling from a building, or death happening in any way by the unintended act of the party dying, is not within the exemption and does not void the policy.

But whether suicide by an insane man is also within the

exemption, has been a question in dispute, and upon this two prominent and different doctrines have been maintained.

On the one hand, it is maintained that if the act be voluntarily done in pursuance of an intelligent purpose, and intentionally and intelligently carried out by the proper adaptation of means to ends, it is suicide on the part of the insured or death by his own hands, although insanity exists to such an extent that he may not be able to appreciate the moral qualities of the act.

On the other hand, it is maintained with equal rigour that however intelligently the act may be done, if at the time the will be overpowered by an uncontrollable impulse, or the insured be unable to appreciate the moral character of the act, it is not within the meaning of the provision.

The question has not formally been passed upon by the Canadian Courts. It would probably be largely one for the jury, who would be called upon to find upon all the facts submitted whether or not the insured had violated the terms of the policy.

16. Limitation or Prescription of Action.—In Ontario, Manitoba and British Columbia by statutory conditions, actions upon a fire insurance contract are absolutely barred unless commenced within one year from the loss.

In Quebec, there is no such limitation unless it is stipulated in the policy. It was formerly held that such a stipulation was inoperative, but this decision has been over-ruled.

The Quebec Court of Appeals in 1886 appeared to have doubts as to its validity; but in the following year they held it valid, and this last decision was confirmed by the Supreme Court of Canada.

The object of the condition is not to foreclose a right and prevent a resort to the proper tribunal, but to compel a speedy resort and a termination of the controversy while the facts are fresh in the recollection of the parties and witnesses, and the proofs accessible. Claims made after they have become stale involve considerable difficulty.

Any acknowledgment of the claim or promise to pay it will operate as an interruption of the prescription.

Where there is an absolute refusal of the claim, the usual stipulation in the policy that it is payable only after 60 days is waived, and suit may be taken before the expiry of the 60 days.

17. Statutory Conditions.—In Quebec (as in the other provinces until statutory conditions were enacted in some of them) any condition, however hard or unreasonable, may be endorsed on a policy, provided always that it be not contrary to public order or good morals. Under the Ontario Insurance Act, the Manitoba Fire Insurance Policy Act and the British Columbia Fire Insurance Policy Act, 1893, statutory conditions are enacted which are deemed as against the insurers to be a part of every fire insurance contract entered into subsequent to those statutes or renewed or otherwise in force in those provinces.

There are as yet no statutory conditions in Quebec, though the Civil Code of Lower Canada contains some of the enactments found among the statutory conditions of the other provinces. An analysis of these statutory conditions shows clearly the protection they afford to the insured, and their enactment in Quebec would seem well worth the consideration of the legislature of that province. These conditions were carefully drawn in Ontario by Mr. Hunter, and their enactment there seems to have served as a basis for their adoption in Manitoba and British Columbia.

18. Winding Up of Insurance Companies.—The provisions of the Dominion Winding Up Act apply to all foreign companies doing business in Canada as well as to Canadian companies, and where a foreign company is in liquidation abroad it may still be wound up here under the Dominion Act, the effect of the winding up here being to entitle the liquidator here to realize the assets and after paying the creditors (not merely creditors within this jurisdiction, but all creditors) to remit the balance, if any, of the assets to the foreign liquidator to be applied and distributed as may be there directed by the proper forum. In other words, the winding up in Canada is subsidiary and ancillary to that instituted in the forum of the domicile of the corporation.

Under the Winding Up Act, before amendment, the Supreme Court of Canada doubted the constitutionality of Canadian legislation dealing with the winding up of foreign companies, but since the amendment, and as the Act stands to-day, there can be no doubt concerning its constitutionality and its application to foreign companies.

The Dominion Winding Up Act provides for the compulsory liquidation of companies on the application of creditors. The Winding Up Amendment Act, 1889, provides for the voluntary winding up at the instance of shareholders.

The expression "insurance company" in the Winding Up Act means a company carrying on either as a mutual or a stock company the business of insurance, whether life, fire, marine, ocean or inland marine, accident, guarantee or otherwise.

The Dominion Winding Up Act, however, does not supersede the Ontario provincial legislation regarding the appointment of a receiver. There is no general rule that a receiver already appointed must be displaced by a liquidator under the Winding Up Act, but the receiver is usually named liquidator, and conversely, where a receiver is applied for after the liquidator has been appointed, the liquidator is usually named receiver.

The Notarial Profession in the Province of Quebec.

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NOTARIES.

The position and functions of Notaries in the Province of Quebec are unique, and not generally understood, except by those who have resided for a considerable time in that Province, and have had sufficient legal work to come in contact with the profession. The Quebec Notary occupies a similar position to that of France, and one totally different from the official of similar name under English and American laws, who merely protests notes.

The notarial profession here is separate and distinct from that of its brother in the law, the Advocate, and the two professions cannot be practised by the same person. While a profession, it partakes also of the character of a public office.

Before the aspirant may inscribe the honorable affix of N.P. to his name, he must possess a University B.A. Degree or its recognized equivalent, or is obliged to pass a preliminary examination before the Incorporated Board of Notaries to show that his educational qualifications are sufficient to allow him to enter as a student in a notary's office for a period, and at the end of this time (which is five years, or shortened to four or three years, provided that he has undergone the partial or whole law course in a University); he is then obliged to pass a final examination before the Board of Notaries to determine his fitness to practice. In his course of study the notarial student, as this aspirant is called, is obliged to acquire as complete a knowledge of the law as the student for the profession of a barrister, with the exception of the procedure of contentious proceedings and the criminal law, of both of which, however, the notary has to have a general knowledge, and, in addition, a thorough knowledge of the office practice of his profession is required.

The Notarial profession is now controlled by a special Act of Legislature of the Province of Quebec, known as "The Notarial Code." Que., 46 Vic., c. 32.

The duties and functions of a notary may be summarized as follows:—Notaries are public officers, whose chief duties are (1) to draw up and execute deeds and contracts to which the parties are bound or to which they desire to give that

greater authenticity attached to acts entered into under public authority, and to assure the date thereof; (2) to preserve the same in safe keeping, and (3) to deliver copies or extracts therefrom. Notaries are appointed for life. Que. 46, c. 32, ss. 2 and 3.

They cannot be compelled to reveal even in court their professional secrets. Que. 46, c. 32, s. 5.

They may prepare, execute and present to court certain non-contentious proceedings. Que. 46, c. 32, s. 9.

No person other than practising notaries can sue for any fees for drawing up and preparing writings under private seal affecting immoveables and requiring registration. Que. 46, c. 32, s. 14.

NOTARIAL DEEDS.

Notarial deeds and copies thereof certified by the Notary are considered authentic of themselves, and make proof of their contents in law. Que. 46, c. 32, s. 33.

A deed *en brevet* is one which is completed by the signatures of the parties and that of the notary, and delivered to the parties. Of these certified copies are not granted by the notary. Only certain simple deeds may be made *en brevet*. Que. 46, c. 32, ss. 74, 75.

A deed *en minute* is that which a Notary executes and retains in his office, and he may deliver copies thereof or extracts therefrom. Notaries are bound to keep the originals of these deeds, which are numbered consecutively. Que. 46, c. 32, ss. 56 to 59. They cannot change, suppress, destroy, nor allow the originals of deeds executed *en minute* out of their possession. Changes can only be made by another deed. Que. 46, c. 32, ss. 60, 61.

On payment of their lawful fees, they are bound to give copies and communication of deeds to those entitled to them. Que. 46, c. 32, ss. 17 and 67 to 73.

Only the notary and the prothonotary who is the custodian of the originals can grant valid copies of a notarial deed, and such copies duly certified by the notary make proof of the original and of the signatures thereto. Que. 33 Vic., c. 23, ss. 1 and 2.

Certain deeds are not valid unless executed *en minute* before notaries, such as Marriage Contracts, Inventories of Estates and Successions, Hypothecs on Real Estate, Donations, Deeds of Sale under seigniorial titles (save in the District of Gaspe), etc.

The deeds and records of a Notary ceasing to practise his profession must be transferred to another practising Notary, or to the Prothonotary of the Superior Court, and at the end of 50 years must go into the office of the Prothonotary. Que. 46, c. 32, ss. 78 to 102.

Notaries are subject to severe penalties for any infraction of the rules regarding the profession, especially in cases of fraud. Que. 46, c. 32, ss. 231 to 234.

Private Bill Procedure Dominion Parliament.

CONDENSED RULES *IN RE* NOTICES FOR PRIVATE BILLS.

All applications for Private Bills, properly the subjects of legislation by the Parliament of Canada, within the purview of The British North America Act, 1867, for granting to any individual or individuals any exclusive or peculiar rights or privileges whatever, or for doing any matter or thing which, in its operation, would affect the rights or property of other parties, or relate to any particular class of the community, or for making any amendment to any former Act, shall require a notice clearly and distinctly specifying tho nature and object of the application; such notice (except in the case of existing corporations) shall be signed by, or on behalf of the applicants, and be published as follows, viz.:

In the Provinces of Quebec and Manitoba.—In the *Canada Gazette*, in the English and French languages, and in one newspaper in the English, and in one in the French language in the District affected, or in both languages in one paper, if there be but one in the said District, or if there be no paper published therein, then, in both languages, in a paper in the nearest District in which a newspaper is published.

In any other Province or Territory.—In the *Canada Gazette*, and in one newspaper published in the County or District, or Union of Counties affected, or if there be no paper published therein, then in a newspaper in the nearest County or District in which a newspaper is published. Such notices shall be continued in each case for a period of at least two months during the interval of time between the close of the next preceding Session and the consideration of the Petition. Marked copies of all the newspapers containing the first and last insertion of such notice shall be sent to the Clerk of the House, endorsed "Application for a Private Bill."

When a Petition is for leave to bring in a Private Bill for the erection of a Toll Bridge, the petitioners shall also, at the same time and in the same manner, give notice of the proposed rates of toll, the extent of the privilege, the height of the arches, the interval between the abutments or piers for the passage of rafts and vessels, and, if a drawbridge, the dimensions of the same.

Any person seeking to obtain a Private Bill shall, at least eight days before the meeting of Parliament, deposit with the Clerk of the House, in which the Bill is to originate, a copy of such Bill in the English or French language, with a sum sufficient to pay for translating and printing the same. The applicant shall also, after the second reading, and before the consideration of the Bill by any Committee, pay the Clerk of the Senate, or the Accountant of the House of Commons (as the case may be) a fee of $200, and a sum sufficient to pay the cost of printing the Act in the Statutes, and lodge the receipt of the same with the Clerk of the Committee to which such Bill is referred.

The fee of $200 payable on any Private Bill is paid only in the House in which such Bill originates; but the charges for reprinting and translation consequent thereon are paid in the House in which such charges are incurred.

No Petition for a Private Bill is received by the Senate or by the House of Commons after the first three weeks of the Session.

No Private Bill may be presented to the Senate or to the House of Commons after the first four weeks of the Session.

EDOUARD J. LANGEVIN,
Clerk of the Senate.
JOHN GEORGE BOURINOT,
Clerk of the Commons.

SPECIAL RULE OF THE SENATE.

49. (*c.*) When a Bill is to operate in more than one Province, Territory or District, the notices shall be published in the *Canada Gazette*, and in a leading newspaper published in each Province, Territory or District in which the Bill is to operate.

EDOUARD J. LANGEVIN,
Clerk of the Senate.

ADDITIONAL RULES OF THE HOUSE OF COMMONS RESPECTING PRIVATE BILLS.

All Private Bills for Acts of Incorporation shall be so framed as to incorporate by reference the *clauses* of the *General Acts* relating to the details to be provided for by such Bill;—special grounds shall be established for any proposed departure from this principle, or for the introduction of other provisions as to such details, and a note shall be appended to the Bill indicating the provisions thereof, in which the *General Act* is proposed to be departed from;—Bills which are not framed in accordance with this *Rule* shall be recast by the promoters, and reprinted at their expense, before any Committee passes upon the *Clauses*.

51*a*. All Private Bills for Acts of Incorporation of, or in amendment of Acts incorporating Railway Companies, shall be drawn in accordance with the Model Bill, copies of which may be obtained from the Clerk of the House.

(*a.*) The provisions contained in any Bill which are not in accord with the Model Bill shall be inserted between brackets, and when revised by the proper officer shall be so printed, and Bills which are not in accordance with this Rule shall be returned to the promoters to be recast before being revised and printed;

(*b.*) Any sections of existing Acts which are proposed to be amended shall be printed in full with the amendments inserted in their proper places and between brackets;

(*c.*) Any exceptional provisions that it may be proposed to insert in any Bill shall be clearly specified in the Notice of Application for the same.

51*b*. No Bill for the incorporation of a Railway Company, or for changing the route of the railway of any company

already incorporated, shall be considered by the Railway Committee until there has been filed with the Committee, at least one week before the consideration of the Bill:—

(*a.*) A Map or Plan drawn upon a scale of not less than half an inch to the mile, showing the location upon which it is intended to construct the proposed work, and showing also the lines of existing or authorized works of a similar character within, or in any way affecting the district, or any part thereof, which the proposed work is intended to serve, and such map or plan shall be signed by the Engineer or other person making the same;

(*b.*) An exhibit showing the total amount of capital proposed to be raised for the purposes of the undertaking, and the manner in which it is proposed to raise the same, whether by ordinary shares, bonds, debentures, or other securities, and the amount of each, respectively.

JOHN GEORGE BOURINOT,
Clerk of the Commons.

SPECIAL ORDER OF THE HOUSE OF COMMONS.

Resolved, That the Clerk of the House do have a copy of the new rule 49 sent to those persons giving notice in the *Canada Gazette* of their intention to apply to Parliament for the passing of a Private Bill, together with a notification that the said Rule will be strictly adhered to for the future:—

49. Petitions for Private Bills shall only be received by the House within the first *three weeks* of the session, and Private Bills may only be presented to the House within the first *four weeks* of the session, and it shall be the duty of any Committee to which any Private Bill may be referred to consider and report the same to the House with all convenient speed.

2. That it be an instruction to all Committees on Private Bills, in the event of promoters not being ready to proceed with their measures when the same have been twice called *on two separate occasions* for consideration by the Committee, that such measures shall be reported back to the House forthwith, together with a statement of the facts and with the recommendation that such Bills be withdrawn.

JOHN GEORGE BOURINOT,
Clerk of the Commons.

SUBSTANCE OF RULES OF THE SENATE RELATING TO NOTICES AND APPLICATIONS FOR BILLS OF DIVORCE.

Every applicant for a Bill of Divorce shall give notice of his or her intended application, and shall specify therein from whom and for what cause such divorce is sought, and shall cause such notice to be published during six months before the presentation of his or her petition for the said Bill, in the *Canada Gazette* and in two newspapers published in the District in Quebec, Manitoba, British Columbia or the North-west Territories, or in the County or Union of Counties in other Provinces, wherein such applicant usually resided at the time of the separation of the parties; but if the requisite number of

papers cannot be found therein, then in an adjoining District or County or Union of Counties. Notices given in the Provinces of Quebec and Manitoba are to be published in one English and one French newspaper, if there be such newspapers published in the District, but otherwise shall be published in each newspaper in both languages.

A copy of the said notice shall, not less than one month before the date of the presentation of the petition, at the instance of the applicant, be served personally on the person from whom the divorce is sought, when that can be done.

No petition for divorce shall be received after the first thirty days of each session.

The petition of an applicant for divorce must be fairly written and must be signed by the petitioner, and should briefly set forth the marriage, when, where and by whom the ceremony was performed, the grounds on which relief is asked and the nature of the relief prayed, and should also negative condonation, collusion and connivance. The allegations of the petition must be verified by declaration of the petitioner, under the Canada Evidence Act, 1893.

The applicant shall deposit with the Clerk of the Senate, eight days before the opening of Parliament, a copy, in the English or French language, of the proposed Bill of Divorce, and therewith a sum sufficient to pay for translating and printing 600 copies thereof in English and 200 copies in French.

Epitome of Canadian Law of Patents, Trade Marks, Designs and Copyrights.

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PATENT LAW AND PRACTICE.

History.—The earliest legislation on Patents in what is now the Dominion of Canada is found in 4 Geo. IV, c. 25, (1823) L.C., which was enacted in Upper Canada by 7 Geo. IV, c. 5, (1826) U.C. The first Act after the union of these Provinces was 12 Vic., c. 24, (1849) Canada.

In New Brunswick, the earliest Act was 4 Wm. IV, c. 27, (1834) N.B., and in Nova Scotia, 3 Wm. IV, c. 45, (1833) N.S.

Under Confederation the Patent Office was established by 32-33 Vic., c. 11, (1869) Can.

The present Act was passed as Chapter 61 of the Revised Statutes of Canada, 1886, to which there have since been added at various times amendments.

The Law and Practice, which are substantially similar to that of the United States, had their origin in the system adopted by that country, in 1790, by 1 Statute 109, c. 7, and subsequent Acts.

The Patent Office is a branch of the Department of Agriculture, and the Minister of Agriculture is the Commissioner of Patents. All moneys received are paid over to the Minister of Finance and Receiver General, and form part of the Consolidated Revenue Fund of Canada. The officers and clerks are appointed by the Governor in Council.

What is a Patent.—It is a contract between the Government and the Patentee, granting to the latter the exclusive property in an invention for a certain period, in consideration that the applicant for a patent shall disclose a patentable invention, and fulfil all the requirements of the Act and Rules in his application for and maintenance of such Patent.

Patentable Invention.—Any invented new and useful art, machine, manufacture or composition of matter, or any invented new and useful improvement in any art, machine, manufacture or composition of matter.

Exceptions.—Inventions with illicit objects, mere scientific principles, or abstract theorems.

INVENTION.—An addition to existing knowledge, which produces either a new or useful thing or result, or a new and useful method of producing an old thing or result.

The result of ordinary skill or judgment alone would not be invention. Simplicity is not an objection.

NOVELTY.—The invention must not have been known or used by any other person before being invented, and must not have been in public use or on sale with the owner's consent more than a year before filing the Canadian application.

Prior knowledge or use must have been public, if only secret it would not affect the Patent. See Queen vs. Laforce, 4 Ex. Ct. R., 14.

Eperimental use is not public use.

Publication or the issue of patents anywhere more than one year before application, will interfere with the novelty of an invention.

UTILITY.—The utility need not be very great.

Subject Matter.—"ART." An art process or method may be described as an act or series of acts performed upon the subject matter to be transformed and reduced to a different state or thing.

The form of the means or apparatus used may or may not be of importance.

"MACHINE."—A machine is patentable whenever a new or an old effect is produced by mechanism, new in its combinations, arrangements or mode of operation.

"MANUFACTURE."—Any new combination of materials consiituting a new result or article not being a machine.

It is not of great importance that an article be distinguished as a machine or manufacture.

"COMPOSITION OF MATTER."—A compound of two or more substances possessing properties or qualities not possessed individually by the substances.

The Patentee.—The Act uses the words "Any person." The inventor may be a British subject or alien. Minors and married women may be inventors, provided the documents are prepared and executed in legal form. Joint inventors must make a joint application. Assignees by assignment of record before the issue of the patent may become the patentees.

If the inventor dies before application, the personal representatives may apply in his stead. When the inventor dies between application and issue, the patent is granted to his personal representatives or their assignees.

The Application.—The requirements of the Act and Rules of Practice include:—

1. Petition of applicant.
2. Power of attorney when application is made by attorney.
3. Oath of inventor or of legal representative of deceased inventor.
4. Specification signed before two witnesses by inventor or legal representative of deceased inventor.
5. Drawings, if the case admits of them.
6. A copy of the claims of specification.
7. The payment of twenty dollars.

(1) THE PETITION.—This is made and signed by the applicant on one of the forms supplied. It must contain the title of the invention and a statement of novelty in the words of section 7 of the Act. It must also contain an election of domicile by the applicant of some known and specified place in Canada.

(2) POWER OF ATTORNEY.—This may be inserted in the Petition or may be separate. The employment of an attorney is not obligatory. The preparation of an application, drafting of specification and prosecution of case in the Patent Office is, however, of such importance that the whole value of the Patent when issued depends upon the care and skill exercised in obtaining it.

(3) OATH.—The oath or affirmation (when allowed) is made and signed by the inventor. It states that he verily believes that he is the inventor of the invention described and claimed in the specification, that the Petition contains the truth, and the date and number of foreign patents already issued to him for the same invention. The oath or affirmation is made before a proper official. See Section 10, sub-sec. 3 of the Act.

(4) THE SPECIFICATION.—This includes the specification proper or description, and the claim or claims. It should contain:—

(*a*) A preamble setting forth the inventor's full name, address and description, and the title of the invention.

(*b*) A general statement of the nature and object of the invention.

(*c*) A description of the drawings, if any.

(d) A detailed description of the invention giving the construction and mode of operation, application and uses thereof.

(e) The claim or claims by which the scope of the patent will be limited.

(f) Date and place of signing.

(g) Inventor's signature (name in full).

(h) Signatures of two witnesses.

(5) DRAWINGS.—These are made on tracing cloth. The sheets measuring 8 x 13 inches. Each sheet bears the words "Certified to be the drawings referred to in the specification hereunto annexed," then place where and date when signed, and signature of inventor or attorney and signatures of two witnesses thereto.

A bristol board drawing of the same size, showing the invention, is supplied the Patent Office for photo-lithographing.

(6) AN EXTRA COPY OF THE CLAIMS is furnished the Patent office for compiling the *Gazette*.

(7) THE FILING FEE of twenty dollars must be paid before the Patent Office will accept the application.

Half of this fee is refunded if the case is withdrawn or a patent refused.

Duplicate Forms.—As the Patent Office does not at present print the specification and drawings in full as is done in Great Britain, the United States and several foreign countries, duplicates are required, one of which remains in the Patent Office, the other being annexed to the Patent when issued.

Model.—Only needed when specially required by the Commissioner.

Size not to exceed 12 inches in any direction.

Samples of ingredients to be in glass bottles.

Examination.—55-56 Vic., c. 24, s. 8, requires a thorough and reliable examination of each application to be made by competent examiners.

The present organization of the Patent Office is totally unequipped to carry out an efficient examination.

When the application is found to be in the required form, the examination as to novelty and patentability is made.

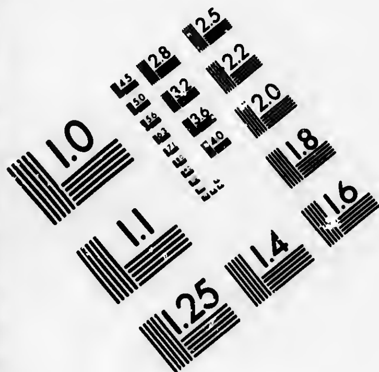
The applicant is notified of objections on these grounds, and can himself, or by his attorney, amend his case or argue the points objected to.

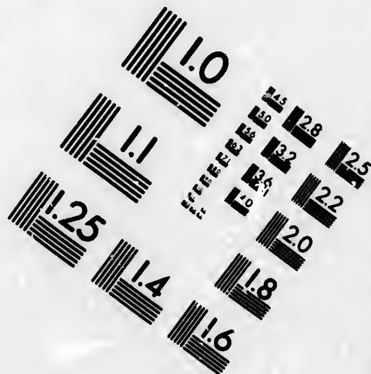
The objection may be appealed from, within six months, before the Governor in Council.

Amendments must be on separate sheets, written on one side only, and must indicate specifically the word or words to be altered. The Commissioner may require the specification to be re-written.

Conflicting Applications.—The claims of the applicants are submitted to arbitration as provided by this Act, or to the Exchequer Court.

Term.—The full term is eighteen years. The patent may be granted for a partial term of six years, and be renewed for like terms on payment of the renewal fee during current term.





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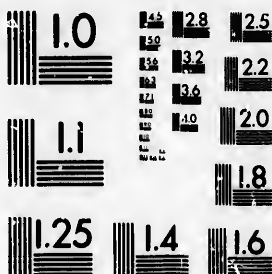

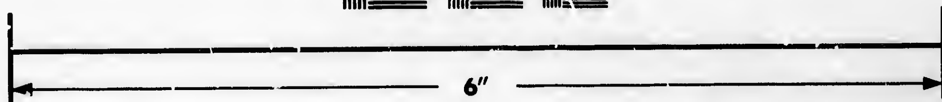

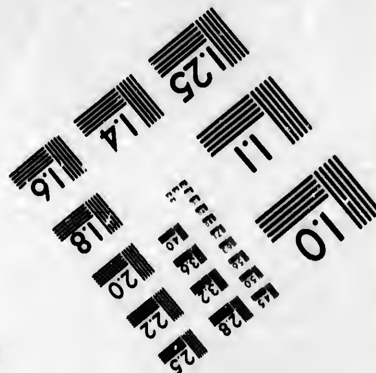

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WEBSTER, N.Y. 14580
(716) 872-4503

Lapse.—(*a*) By failure to renew.

See 55-56 Vic., c. 77, re-establishment by special Act of Parliament.

(*b*) Expiration of full term of prior foreign patent.

Working.—The patent is void if, after two years or an extension granted thereto, the owner is not able to supply or have made in Canada at a reasonable price the invention, upon request being made for the same.

This regulation limits the monopoly or exclusive use of an invention to a very short term.

The obligation to sell outright has not been enforced by the courts, and a lease has been accepted as meeting the terms of section 37 (*a*).

Importation.—The patent is void if the owner imports the invention after one year or extension granted thereto.

Process patents do not come under the regulations as to working and importation.

Extension of time to work or import.—Commissioner may grant extensions to the terms fixed for working and importation.

Amendment after issue.—

(*a*) Disclaimer.

(*b*) Re-issue.

(*c*) Judgment *pro tanto.*

Disclaimer.—Patentee may strike out of his claims any part not patentable in law, by a disclaimer filed at the Patent Office in duplicate.

Re-issue.—Where there is "insufficient description or specification, or too broad claims," an amended specification may be filed, and upon surrender of the original patent, a new patent for the same invention may be issued.

DIVISIONAL RE-ISSUES.—The original patent may be divided into two or more patents, and re-issues be granted therefor.

A re-issue is granted for the unexpired residue of the term of the original patent.

The fee is four dollars per year of such residue.

Judgment pro tanto.—When a patent is attacked before the courts, the court may, in rendering judgment, amend the patent, and copies of the judgment must be filed in the Patent Office, and be attached to the Patent by the patentee.

Infringement.—Every person who, without the consent in writing of the patentee, makes—constructs—or puts in practice—or procures from any person not authorized by the patentee to make or use—and who uses—the invention patented—shall be liable in damages.

Actions for infringement may be taken either in local courts or in Exchequer Court; the latter has jurisdiction over the whole Dominion.

Injunction.—Either party to an action for infringement of a patent may apply for an injunction, restraining the oppo-

site party from using, making, or selling the subject matter of the patent, or to allow inspection, or to render account while action is pending.

Defenses.—The defendant may plead invalidity of patent by specific fact, or default.

Validity.—Partial invalidity will not affect infringement of valid portion.

In Great Britain invalidity of part voids patent.

Impeachment of Patent. *Scire facias.*—A certified copy of patent and application documents is filed in Court, and a writ of *scire facias* issued to repeal the patent for cause to be shown in the proceedings thereunder.

A certificate of Judgment voiding patent to be filed in Patent Office.

Caveat.—A description filed in the Patent Office of an incomplete invention, kept secret, and notice given of applications which interfere. Application for patent must then be filed within three months; good for twelve months.

Marking.—Patent devices must be marked with the word "Patented," and the year of issue. Penalty for failure to mark. Fine under $100, or imprisonment not exceeding two months.

False Marking.—It is a misdemeanor, and punishable by fine under $200, or imprisonment not exceeding three months.

TRADE MARKS.

History.—24 Vic., cap. 22; at Confederation, 31 Vic., cap. 55; amended, 42 Vic., cap. 22; revised, R. S. C., cap. 63; amended, 53 Vic., cap. 14; amended, 54-55 Vic., cap. 35.

The Trade Mark Office is a branch of the Department of Agriculture, in which the Register of Trade Marks is kept.

A Trade Mark, as defined by the Act, includes:—All marks, names, brands, labels, packages, or other business devices, which are adopted for use by any person in his trade, business, ocupation or calling, for the purpose of distinguishing any manufacture, product or article of any description, manufactured, produced, compounded, packed or offered for sale by him—applied in any manner whatever, either to such manufacture, product or article, or to any package, parcel, case, box or other vessel or receptacle of any description whatsoever containing the same."

The essentials being "adoption to distinguish the owner's goods," and "application to the goods."

Section 11 (*c*) mentions essentials contained in the mark itself, such as those given in the British Act of 1883, sec. 63, viz:

(*a*) A name of an individual or firm, printed, impressed or woven in some particular manner.

(*b*) A written signature.

(*c*) A distinctive device, mark, brand, heading, label or ticket.

(*d*) An invented word or words.

(c) A word or words having no reference to the character and quality of the goods, and not being a geographical name.

General Trade Mark, when adopted to distinguish goods of various classes. Registration fee, $30.00. Term perpetual.

Specific Trade Mark, when adopted to distinguish a particular class of goods. Registration fee $25.00. Term, 25 years, renewable. Applicant must declare whether he intends to register the trade mark as general or specific.

Application for registration consists of:—

A declaration that the mark was not in use to his knowledge by others at the date of his adoption.

A description of the trade mark.

Copies of trade mark, or a drawing of same.

Registration fee.

Refusal to register may arise:—

(1) When the Minister considers applicant not to be entitled to exclusive use.

(2) When identical with or resembling a mark already registered.

(3) When the mark is likely to deceive or mislead the public.

(4) When the mark is of an immoral or scandalous nature.

(5) When the mark is not a trade mark according to law.

The Minister may refer the application to the Exchequer Court, which shall hear and determine whether and under what conditions registration may be granted.

The applicant may also proceed in the Exchequer Court to obtain an order for making, expunging or varying any entry in the Register of Trade Marks.

Cancellation.—Registered owner may petition to cancel, and after cancellation the mark shall be considered as never having been registered by such person.

Assignment.—An assignment may be registered by entry on margin of Register.

Infringement.—Marking any article with the whole or any part of a registered trade mark—refilling marked package or article—knowingly selling or offering for sale article so marked with intent to deceive, and to induce any person to believe that the article came from the owner of the trade mark.

PENALTY.—Fine from $20 to $100, payable with costs to owner.

Action for damages may also be taken for infringement.

No proceedings to prevent infringement shall be taken unless mark is registered.

DESIGNS.

A Register of Industrial Designs is kept by the Minister of Agriculture, in which the proprietor may have a design registered.

Who may Register.—The author of the design, or proprietor, if the design was executed for good and valuable consideration.

Only residents of Canada may register.

Application consists of a declaration of novelty, a drawing and description of the design in duplicate. Fee.

Novelty.—Registration can only take place before publication.

Marking.—Letters "Rd." and year of registration shall be marked on article, with name of owner.

Term.—Five years, fee $5.00.
Extension, five years at $2.00 per annum.
Licenses and assignments must be recorded.

Infringement.—A penalty of $20 to $100, and costs, recoverable by proprietor.

False Marking.—A penalty of $4 to $30 and costs, recoverable by person taking action.

What designs can be registered?—Only designs belonging to a person resident in Canada, and which is applied to a subject matter manufactured in Canada.

COPYRIGHT LAW

Imperial Act, 38-39 Vic., c. 53.
B. N. A. Act, 30 Vic., c. 3, sec. 91.
All matters of copyright to be under federal control.
Canadian Parliament passed 38 Vic., c. 88. Bill reserved for assent of Crown, and Imperial Act, 38-39 Vic., c 53, empowered Her Majesty to assent.
Imperial Act, 5 and 6 Vic., c. 45. General Copyright Act applies to Canada.
Foreign Reprints Act, 10 and 11 Vic., c. 95, prohibits importation of reprints of British copyrighted books.
Suspension by Order in Council by reason of local legislation to protect British authors.

Who may obtain a Copyright.—Any author domiciled in the Empire, or in any country having an international copyright treaty with the United Kingdom.

Term.—Twenty-eight years. Renewal, 14 years to author, widow or children.

What can be copyrighted.—Any book, map, chart, musical composition, or any original painting, drawing, statue, sculpture or photograph, or any print or engraving of an original design.
Also translations of literary works.

Conditions.—The work shall be printed and published, re-printed and re-published, or produced or re-produced in Canada.
Canadian copyright lapses with the expiration of foreign copyright.
British copyrighted works may be copyrighted when printed and published or reprinted or republished in Canada.

British copyrighted works may be imported, notwithstanding Canadian copyright.

Foreign reprints of British copyrighted works may be imported before the registration of Canadian copyright.

Works published in separate articles of a periodical may be registered, but the complete work, when published, must also be registered.

Anonymous works may be registered in publisher's name.

Interim Copyright.—Pending publication, the author may register an interim copyright, but the publication must take place within one month of original publication elsewhere.

Failure to publish after registration of an interim copyright is punishable by fine.

Unauthorized Publication of Manuscripts.—Damages can be recovered for the unauthorized publication of any manuscript not already printed in Canada or elsewhere.

License to Publish.—If the copyright edition is out of print, the Minister may, on complaint being made to owner, and neglect to provide a remedy, grant licenses to publish to others, and fix number of copies and royalty to be paid.

Scenery, Etc.—No exclusive rights to illustrate a piece of scenery or an object can be obtained by copyright.

Magazines and Newspapers.—Foreign magazines and newspapers containing British copyrighted works may be imported, if the publication is with author's consent, or under copyright law of country they come from.

Application for Copyright.—Three copies of work, and a declaration that applicant is the proprietor, that the work has been published in Canada, and a description if a work of art.

Epitome of the Law of the Province of Ontario Relating to Married Women.

BY

A. H. MARSH, Q.C.,

OF THE TORONTO BAR.

Common Law touching Married Women's Property.—In order to adequately understand the application of the doctrines of Equity and the Statutory provisions which at present govern married women's property rights in this Province, it is necessary to have some understanding of the common law of England touching the subject, which common law was introduced into the Province by the first Act of the Parliament of Upper Canada in 1792.

The mere fact of marriage operated at common law to vest in the husband certain rights in the property which was owned by the wife at the time of her marriage, or which was subsequently acquired by her during coverture. The chief ot these rights were the following,—As to her freehold real estate of which she was seised, he was entitled so long as he lived and during her lifetime to receive the rents and profits thereof for his own benefit; and if he survived her he became entitled to the rents and profits thereof during the remainder of his lifetime, provided, however, that in the latter case issue of the marriage was born alive during the wife's lifetime, which issue might by possibility have inherited the land in question.

As to her personal estate the matter was somewhat more complicated. Her personal chattels in possession vested absolutely in her husband. As to her choses in action, including all her personal chattels not in possession, he became entitled to reduce them into possession during the coverture, and if the wife predeceased him he became entitled to administer her estate, and as such administrator to reduce them into possession, in either of which cases the property became his absolutely. As to her chattels real, that is, any interest in real estate less than a freehold interest (confined in this Province to leasehold interests), he became entitled at any time during his lifetime to sell and dispose of the same for his own benefit.

Equitable Doctrine of separate use.—The unjust rigour of the common law induced the Courts of Equity in England to invent the equitable doctrine of separate use, touching married women's property, and that doctrine became part of the law of this Province when a Court of Chancery was first established here. The effect of this doctrine is that a woman may acquire an equitable estate in either real or personal property, whether the same is acquired before or after coverture, and the same is known as her equitable separate estate. Over this separate estate her husband has no power or control; but she has all the powers of enjoyment and disposition thereof which would be possessed by an unmarried woman; although, in so far as her rights depend upon this equitable doctrine, her said powers of disposition are confined, in the case of realty, to the equitable estate, and she is therefore unable, by virtue of the equitable doctrine, to sell or dispose of the legal estate in settled lands without the concurrence of the trustee in whom such legal estate is vested. If no trustee is expressly named, then a constructive trust is fastened by the court upon her husband, and he, in accordance with the doctrines of equity, becomes a trustee of the legal estate for the benefit of his wife. No technical word or set of words is necessary in order to raise a case for the application of the doctrines as to a married woman's equitable separate estate, provided always that it is made clear that her husband is not intended to have any power of enjoyment or disposition of the property in question, and that she is intended to have such power of enjoyment and disposition. A common form of words used for this purpose is "For the sole and "separate use of the said A. B. free from the custody or con-"trol of her present or any future husband."

When the Courts of Equity allowed a married woman by virtue of the doctrine aforesaid to enjoy and dispose of her separate estate for her own benefit, they also gave her the power to charge her separate estate and make it liable for the payment of debts incurred by her. Originally the court granted this power far more for the benefit of the married woman than for the protection of her creditors, and it was only her specialty debts, incurred with respect to her separate estate, which became a charge thereon. This rule became from time to time relaxed until at the present time the doctrine of the court is that where a married woman who has separate estate contracts a debt she is *prima facie* deemed in equity to have contracted it with reference to her separate estate, and, if she had the power to d[illegible] that separate estate, equity will make it liable for the payment of the said debt. See *Lawson vs. Laidlaw*, 3 App. R. 77.

The separate property may, however, be of such a character as to raise a counter presumption that her indebtedness was not contracted with reference to that separate property, as, for example, her clothes (*Leak vs. Driffield*, L. R., 24 Q. B. D. 98), or an engagement ring, or a watch of small value (*Abraham vs. Hacking*, 27 O. R. 431).

Although a married woman has the power to alienate her separate estate and to make it liable for her debts as already mentioned, yet this power may be greatly curbed by utilising, in the settlement of the property, another equity doctrine known as Restraint upon Anticipation, which doctrine will be dealt with further on in this article.

Legislation as to Married Women's Property.—If the equitable doctrines, relating to the right of a married woman to enjoy and dispose of her separate estate, had been applicable to her property generally, and had not been confined to property which was settled to her separate use, there would have been little or no need for any legislative interference with this branch of the law; but as a large proportion of the property owned by women at the time of their marriage, or subsequently acquired by them, was not settled to their separate use, it became necessary for the legislature to modify the semi-barbarous provisions of the common law, and to extend the benign doctrines of equity so as to make those doctrines, or something closely analogous thereto, apply to a more comprehensive classification of property than that falling within the definition of equitable separate estate. Accordingly the legislature intervened, and by a series of Acts, commonly spoken of as The Married Women's Property Acts, effected a legislative settlement of numerous classes of married women's property, which property so settled is now spoken of as statutory separate estate, as contra-distinguished from equitable separate estate.

This legislation has left the equitable doctrine as to separate estate untouched (see R. S. O. 1897, cap. 163, sec. 21), and the question therefore arises in each case whether the property in question is equitable separate estate, and it is only when this question is answered in the negative that an appeal is made to the legislation to discover whether it is statutory separate estate.

There is probably no other class of legislation in which the evident intent of the legislature was so completely and so persistently defeated by the narrow technical astuteness of the judges as in the case of these Acts which, though from time to time amended and re-amended and amended again. were yet by judical methods of interpretation shorn of their strength and rendered more or less ineffective. See judgment of Armour J. in *Clarke vs. Creighton*, 45 U. C. R. 518. In this sort of a struggle the legislature is sure to win in the end, and it is hoped that this happy end has now been attained in this Province. Happily the legislation upon the subject in this Province is to a large extent, since the Provincial Act of 1884, founded upon the existing English Married Women's Property Acts, and this gives the advantage of having the decisions of the English Courts as guides to the interpretation of the provincial legislation. But see *Moore vs. Jackson*, 22 S. C. R. at pages 226-232.

The legislation upon the subject in this Province is now contained in the Revised Statutes of Ontario, 1897, chapter 163.

One of the chief difficulties connected with the statute is one upon which the English authorities can afford us but little assistance, namely, the question of the varying rights and obligations of husband and wife touching her real and personal property, such variations depending upon the date of the marriage, the date of the acquisition of the property, and the fluctuation of the statutory provisions relating thereto.

It is, however, necessary for us to have some knowledge of these fluctuations to enable us to determine what are the now existing rights and obligations of some specified married woman with reference to some specified property, when she has, by reason of the date of her marriage, or by reason of the date or manner of acquiring the property, fallen under the operation of some one or more of the former statutes, which, together with the various amendments thereof, have now been consolidated into chapter 163 of the R. S. O. 1897.

The common law doctrine, modified by the doctrines of equity as aforesaid, continued in operation until the 4th day of May, 1859, when the first Married Women's Property Act came into operation. This statute gave a certain measure of protection to a woman who, without any marriage contract or settlement, was married on or before the said 4th day of May; if she was married after the said 4th day of May, without any marriage contract or settlement, the statute provided that as to her property both real and personal, and whether acquired before or after marriage, she should have, hold and enjoy the same free from the debts and obligations of her husband and free from his control or disposition without her consent, but the said provisions were not to extend to any property received by her from her husband during coverture.

These provisions are now consolidated in the R. S. O. 1897, cap. 163, sec. 5 (1), (2) and (4).

This Statute of 1859 created a new sort of estate known as statutory separate estate, but did not settle a wife's property upon her as separate estate, in the sense in which that term is used in a Court of Equity, nor did it in any way affect the

husband's rights in her real estate as tenant by the curtesy; it merely protected her in her enjoyment of the property, but did not, as to her real estate, give her the power to convey the same unless her husband joined with her in the conveyance as a granting party.

Moore vs. Jackson, 22 S. C. R. at pages 213-214 and at pages 219-220 and at pages 238-239.

Emrick vs. Sullivan, 25 U. C. R. 105.

As to her right to dispose of her personal property, see *Chamberlain vs. McDonald*, 14 Gr. 447;

Wright vs. Garden, 28 U. C. R. at page 624, and

Lawson vs. Laidlaw, 3 App. R. at page 90.

This state of the law continued until the 2nd of March, 1872, when the "Married Women's Property Act 1872," took effect, whereby it was enacted that after the passing of that Act the real estate of any married woman which was owned by her at the time of her marriage, or acquired by her in any manner during her coverture, should, without prejudice and subject to the trusts of any settlement affecting the same, be held and enjoyed by her *for her separate use*, free from any estate or claim of her husband during her lifetime or as tenant by the curtesy.

This was the first Act which expressly effected a statutory settlement upon a married woman for her *separate use*.

Chief Justice Strong is of opinion that the equitable doctrines as to separate use do not give us a safe guide for determining the rights and obligations of married women with respect to their statutory separate estate, but that they would rather tend to produce embarrassment, inasmuch as they present false and misleading analogies.

Moore vs. Jackson, 22 S. C. R. at page 217.

This Act was held to apply to all cases in which the wife acquired lands after the passing of the Act, even though the marriage took place before the passing of the Act.

Adams vs. Loomis, 22 Gr. 99; affirmed on rehearing, 24 Gr. 242.

This induced the Legislature to intervene when a revision of the Ontario Statutes was contemplated in 1877, and accordingly by 40 Vic., Cap. 7, Schedule A (156) it was provided that when the proposed revision should come into effect the said clause in the Statute of 1872 should be modified so as to make it apply to those cases only in which the woman was married after the 2nd day of March, 1872; and should be further modified by adding the provision that nothing contained in the Act of 1872 should prejudice the right of the husband as tenant by the curtesy in any real estate of the wife, which she did not dispose of *inter vivos* or by will.

The Revised Statutes of Ontario, 1877, came into force on the 31st day of December of that year, and contained in chapter 125, section 4, the said provision of the Act of 1872, modified as aforesaid (now contained in R. S. O., 1897, cap. 163, sec. 5 [3].)

It was subsequently decided that the said provision, saving the rights of the husband as tenant by the curtesy in all cases where his wife did not cut out those rights by disposing of her real estate, either during her lifetime or by her will, was merely a statutory declaration of what had always been the meaning and effect of the Statute of 1872.

Furness vs. Mitchell, 3 App. R. 510.

The effect, therefore, of the Statute of 1872 was to permit a married woman, coming under the operation thereof, to deprive her husband of any interest in her lands as tenant by the curtesy, and she might do this by disposing of the lands either in her lifetime or by her will, but if she did not so deprive him of such rights, he then retained his interest as tenant by the curtesy.

The other modification of the Statute of 1872, whereby the operation of that Statute was confined to cases in which the marriage took place after the 2nd day of March, 1872, was one of considerable importance, for, between the said 2nd day of March and the 31st day of December, 1877, when the said amendment took effect, vested rights were doubtless acquired in properties which, during that period, were settled to the separate use of married women, but which, after the latter date, would no longer have been subject to her disposal, owing to the marriage in question having taken place before the 2nd day of March, 1872; and such vested interests would not be disturbed by the amending Act of 1877.

The Married Women's Property Act, 1884 (47 Vic., cap. 19), which came into force on the 1st day of July, 1884, provided (sec. 5 and 2 [1]), that every woman married before the commencement of that Act should be entitled to have and to hold, and to dispose of by will or otherwise as her separate property, in the same manner as if she were a *feme sole*, all real and personal property, her title to which, whether vested or contingent, and whether in possession, reversion, or remainder, should accrue after the commencement of the said Act (which provision is now substantially contained in R. S. O. 1897, cap. 163, sec. 7).

The same Act of 1884 provided (sec. 3 and 2 [1]) that every woman married after the commencement of that Act should be entitled to have and to hold, and to dispose of by will or otherwise as her separate property, in the same manner as if she were a *feme sole*, all real and personal property which should belong to her at the time of her marriage, or should be acquired by or devolve upon her after marriage (which provision is now substantially contained in R. S. O. 1897, cap. 163, sec. 6 [2]).

Necessity for Husband to join in Conveyance.—Many difficult questions have arisen from time to time as to whether, under the circumstances of a given case, considering the date of the marriage and the date of the acquisition of the property in question, a married woman could make a valid conveyance of her property without her husband joining with her in the conveyance.

In all cases falling under the Statute of 1859, it was perfectly clear that the husband must join in the conveyance as a granting party, in order to make a good title, and that for two reasons:—firstly, becauce it was necessary in order to dispose of his rights as tenant by the curtesy, and, secondly, because without his concurrence the wife's conveyance was absolutely void, and would not even pass her interest in the property.

As soon, however, as the Statute of 1872 came into operation, questions arose, and from that time onward continued to arise, as to the effect of a conveyance of real estate by a wife without the concurrence of her husband, and these questions gave rise to hopelessly conflicting opinions, which have never yet been satisfactorily clarified by coercive judicial determination.

A few of these difficulties are dealt with in an Article in 7 Canadian Law Times, 166.

Fortunately, the Provincial Legislature has passed certain enactments (hereinafter mentioned), which serve in nearly all cases to quiet the titles which, but for these enactments, might have been disturbed by the questions referred to.

It may probably be taken as satisfactorily settled (apart from the enactments referred to) that any conveyance of real estate made by a married woman since the 1st day of July, 1884, is sufficient to pass her interest in the property, even though her husband did not concur therein.

That result comes about in this way:—R. S. O. 1887, cap. 127, sec. 3, provided that every married woman, being of the full age of twenty-one years, may, by deed, convey her real estate, or any interest therein, either personally or by attorney, as if she were a *feme sole*, but that no such conveyance shall be valid unless the husband is a party to and executes the deed by which the same is effected. The Married Women's Property Act, 1884 (sec. 22), repealed that portion of the lastly mentioned section which required the husband to be a party to and execute the deed, and did so in such a way as to indicate that the repeal related back to the 1st day of July, 1884, without saving any rights which might have been acquired to attack conveyances which had been made in the mean time. (The Statute as affected by such repeal is now contained in R. S. O. 1897, cap. 165, sec. 3.) The result is that the concurrence of the husband is not necessary in order to make valid a conveyance of real estate made by a married woman since the 1st day of July, 1884, and by such a conveyance she may pass all or any part of her interest therein, but she cannot affect her husband's rights therein, whether as tenant by the curtesy of otherwise.

This question was dealt with by Mr. Justice Gwynne in a case in which the woman was married in 1869, and some of the property was acquired in 1879, and some of it in 1882. He says,—" I have already expressed my opinion that section 1 of " 47 Vic., chap. 19, enabled every married woman to dispose " of her real property by will or otherwise; but apart alto- " gether from this clause, and resting solely upon the repeal " of the exception in section 3 of chap. 127 R. S. O., 1877, it is " clear that every married woman can dispose of absolutely " (by deed executed by herself alone) the whole estate which " is vested in her. So long as she lives, therefore, it cannot " be doubted that she has an absolute *jus disponendi* of all real " property which the law enables her to hold and enjoy free " from the control and disposition, and from the debts and obli- " gations of her husband."

Moore vs. Jackson, 22 S. C. R. at page 235, and see page 234, and see *per* Patterson J., at page 240.

The amendment to The Married Woman's Real Estate Act contained in 51 Vic., cap. 21, sec. 2 (now contained in R. S. O. 1897, cap. 165, sec. 9), might have been supposed to give a legislative sanction to a construction of the Married Women's Property Acts contrary to that above suggested, had it not been for the provision of the 3rd section thereof (now contained in R. S. O. 1897, cap. 165, sec. 9 [2]), that nothing contained in that Act shall be taken to imply that a married woman may not, as of right, make any conveyance of her real estate as if she were a *feme sole*.

Previous to the passing of the Married Woman's Real Estate Act, 1873 (which came into effect on the 29th of March of that year), it was not only necessary that a husband should be a party to, and should execute a conveyance of real estate other than equitable separate estate made by his wife, but it was also necessary that she should be examined apart from her husband, before a proper officer, as to her voluntary consent to the conveyance, and there had to be endorsed upon the conveyance a certificate by such officer as to such examination and such consent.

The first of the quieting title enactments above referred to was the said Married Woman's Real Estate Act, 1873, section 12 of which (now contained in R. S. O. 1897, cap. 165, sec. 6) was aimed at curing defects in conveyances executed before the 29th day of March, 1873, by married women when there had been no certificate, or an irregular certificate, or an irregular execution by the married woman.

The result thereof was to make valid certain conveyances which would otherwise have been void, subject, however, to the provision of section 13 of the Act now contained in R. S. O. 1897, cap. 165, sec. 6 [2]), that the Act shall not render valid (*a*), any conveyance not executed in good faith; (*b*), any void conveyance to the prejudice of any title, acquired from the married woman by a deed duly executed and certified, subsequently to the execution of the void conveyance, and before the passing of the Act, unless the actual possession or enjoyment of the real estate in question was, subsequently to the making the void conveyance, and continuously for three years before the passing of the Act, in the grantee under the void conveyance, or those claiming by, from, or under him, and unless he or they were in such possession at the time of the passing of the Act; (*c*), any conveyance of land of which the married woman or those claiming under her, were, at the time of the passing of the Act, in the actual possession or enjoyment contrary to the terms of such conveyance.

The phrase "Actual possession or enjoyment contrary to the terms of such conveyance" was much discussed in *Elliott vs. Brown*, 2 O. R. 352; 11 App. R. 228.

Section 14 of the said Married Woman's Real Estate Act, 1873, repealed all the former statutory provisions requiring an examination apart and certificate as aforesaid.

The next of the said quieting title enactments was 50 Vic. (1887), cap. 7, sec. 23 of which (now contained in R. S. O. 1897, cap. 165, sec. 8) was aimed at curing defects in conveyances executed on or after the 29th day of March, 1873, by a married woman affecting her real estate when the same are signed

or executed by her husband, but he has not been made a party, or has not been made a granting party thereto.

This Statute also contains a saving clause that it shall not render valid any conveyance to the prejudice of any title lawfully acquired from any married woman prior to the passing of the Act, nor render valid any conveyance from the married woman not executed in good faith, or any conveyance of any land, of which the married woman or those claiming under her was or were at the time of the passing of the said Act in actual possession or enjoyment contrary to the terms of such invalid conveyance.

The next of the said quieting title enactments was 59 Vic. (1896), cap. 41, sec. 1 of which (now contained in R. S. O. 1897, cap. 165, sec. 7) was aimed at curing defects in conveyances made before the 29th day of March, 1873, by a married woman affecting her real estate when her husband did not join therein.

This Statute also contains a saving clause (like that in The Married Woman's Real Estate Act, 1873), that it shall not validate conveyances made *mala fide;* or conveyances made to the prejudice of subsequent valid conveyances unless those claiming under the invalid conveyance have been in possession; or conveyances when the married woman, or those claiming under her, are in possession contrary to the terms of such conveyance.

These quieting title enactments appear to set at rest most of the difficult questions which have arisen with regard to the necessity for the husband to join in his wife's conveyance of real estate. In order, however, to make this beneficent legislation complete, there is need for a further enactment of a similar nature, making valid all conveyances executed by a married woman on or after the 29th of March, 1873, of or affecting her real estate, notwithstanding that her husband did not sign or execute the same.

This state of affairs is not covered by the secondly above mentioned of the quieting title enactments; and such an enactment would cover the period between the 29th day of March, 1873, and the 1st day of July, 1884 (from which latter time it appears to be clear that a married woman's conveyance does not require the concurrence of her husband), which period is left in a state of haze by the judicial authorities.

It therefore appears that one of the chief questions to be considered by the conveyancer is, when will it be necessary to see that the husband joined in a conveyance of land, made by a married woman, for the purpose of extinguishing his rights as tenant by the curtesy, whether initiate or consummate?

Married Woman as Trustee.—One curious result of the legislation touching married women's property is that, although she may without the concurrence of her husband convey her own property, yet, if she holds land as a trustee, she cannot convey it unless her husband joins in the conveyance.

Re Harkness & Allsopp's Contract, 1896, 2 Ch. 358; and see 18 Can. L. T. 134; and *Re Brooke & Fremlin's Contract*, 1898, 1 Ch. 647.

Tenancy by the Curtesy.—"Tenant by the curtesy of England is where a man marries a woman seized of an estate of inheritance, that is, of lands and tenements in fee simple or fee tail; and has by her issue, born alive, which are capable of inheriting her estate. In this case he shall, on the death of his wife, hold the lands for his life as tenant by the curtesy of England." There are four requisites necessary to make a tenant by the curtesy:—

(1) A legal marriage.

(2) "The seizin of the wife must be an actual seizin or possession of the lands; not a bare right to possess, which is a seizin in law, but an actual possession, which is a seizin in deed. And, therefore, a man shall not be a tenant by the curtesy of a remainder or reversion expectant on an estate of freehold, though it would be otherwise if expectant on an estate for years, as in the latter case the seizin of the freehold is not in the tenant for years, but in the remainderman or reversioner." This actual possession, however, is not necessary in the case of an equitable estate.

(3) The issue must be born alive, and the issue must be such as is capable of inheriting the mother's estate. "Therefore, if a woman be tenant in tail male, and hath only a daughter born, the husband is not thereby entitled to be tenant by the curtesy; because such issue female can never inherit the estate in tail male."

(4) Death of the wife.

Blackstone by Leith & Smith, 136-138.

It is submitted that the following statement sets forth all the cases in which the husband is now entitled to curtesy in his wife's property (of which he cannot be deprived by his wife's will or conveyance *inter vivos*) or to an interest therein analogous to tenancy by the curtesy:—*

(1) When a woman was married on or before the 2nd day of March, 1872, without any marriage contract or settlement, all real estate acquired by her, either before or after that date, and before the 1st day of July, 1884, is subject to curtesy; save only that between the 2nd day of March, 1872, and the 31st day of December, 1877, she was able, either by deed or will, to dispose of her property free from any claim of her husband as tenant by the curtesy.

See *Moore vs. Jackson*, 20 O. R. 652, and per Osler, J. A., 19 App. R., at page 390 *et seq.*

(2) If in such a case as firstly mentioned, there be a marriage contract or settlement, the husband retains all his common law rights in the property which the wife had at the time of the marriage and not included in the settlement (including his rights as tenant by the curtesy), but any property acquired by her after marriage, and not included in the settlement, falls within the operation of the Statute, and therefore becomes statutory separate estate, and is subject to rule number one.

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* NOTE.—Upon the question whether any such estate as tenancy by the curtesy strictly so called, still exists in this province, see the chapter on Succession.

See *Dawson vs. Moffatt*, 13 O. R. 170.

(3) So also in such a case as firstly mentioned the husband has all his common law rights (including his rights as tenant by the curtesy) in lands received by his wife from him during coverture.

In the cases indicated in clauses (1), (2) and (3), it will therefore be necessary for the husband to join in the conveyance, in order that the grantee may acquire the lands free from the husband's interest as tenant by the curtesy.

In all other cases the wife is entitled as of right to convey or devise her lands free from curtesy, but if she does not dispose of the same either *inter vivos* or by will, the husband will at her death be entitled to his rights as tenant by the curtesy, whether the property be statutory separate estate or equitable separate estate.

See R. S O. (1897), Cap. 163, Sec. 5 (3), and *Furness vs. Mitchell*, 3 App. R. 510.

It was provided by R. S. O. 1887, cap. 127, secs. 4 and 5, that in certain cases a judge might make an order that a married woman should be entitled to convey her real estate, or any interest therein, "in the same manner and with the same effect as if she were a *feme sole*." The Statute does not make any express provision as to the effect, if any, which the conveyance, made pursuant to the order, shall have upon the husband's rights as tenant by the curtesy.

In 1888 another Statute was passed (51 Vic., cap. 21, sec. 2, now contained in R. S. O. 1897, cap, 165, secs. 9 and 10), dealing more specifically with this matter, and providing that, where a husband is entitled to tenancy by the curtesy, and in any case where a wife is unable to give a valid deed of her real estate without her husband joining therein, if the husband is of unsound mind, or is unable from any other cause to execute a conveyance, or his residence is unknown, or he is in prison, or living apart from his wife by mutual consent, or under circumstances which entitle her to alimony, or if he has deserted her, or if in the opinion of a judge of the High Court there is any other cause for so doing, such judge may, upon such evidence as to him seems meet, and upon such notice to the husband as he deems requisite, except in cases where the residence of the husband is not known, when the notice shall not be necessary, make a summary order that the wife may "in the same manner, and with the same effect, as if she were a *feme sole*, and free from any estate of her husband by the curtesy, bargain, sell and convey all or any part of her estate, title and interest of, in, to, or out of," the lands in question.

What is Statutory Separate Estate?—1. Leaving out of consideration for the moment the case of women married on or before the 4th day of May, 1859, all interests in property, real or personal, held by a married woman, are statutory separate estate, which can be reached by creditors, except:—

(*a*) Where she was married between the 5th day of May, 1859, and the 2nd day of March, 1872 (both inclusive), and there was a marriage contract or settlement; in which case the property which she had at the time

of the marriage, and not included in the settlement, will be subject to the common law rights of her husband, and will not be in any sense her separate estate; but any property acquired by her after marriage, and not included in the settlement, falls within the operation of the Statute, and therefore becomes statutory separate estate.

See *Dawson vs. Moffatt*, 13 O. R. 170.

(*b*) When she was married between the said dates, and the property in question was received by her from her husband during coverture, and before the 1st day of July, 1884.

2. Where the woman was married before the 4th day of May, 1859, without any marriage contract or settlement, she has the same rights with regard to her real and personal property as a woman married between the 4th day of May, 1859, and the 2nd day of March, 1872, save only that as to any of her said property which her husband reduced into possession on or before the 4th day of May, 1859, he thereby preserved his common law rights therein, and such property is in no sense her separate estate.

Propositions 1 and 2 appear to be the effect of the various Statutes read in the light of *Moore vs. Jackson*, 20 O. R., 652, and 22 S. C. R. 210.

Restraint upon Anticipation.—One of the inventions of the Court of Chancery, whereby a married woman is prevented from assigning or charging her future income, either expressly, or by incurring debts, or by suffering judgment to be obtained against her, is the doctrine known as Restraint upon Anticipation.

If property be settled to the separate use of a married woman, and the words "without power of anticipation," or words of like import, be added, the married woman is unable to give an effective receipt for any income arising from the settled property, which is not already due and payable, nor can she by any device authorize any other person, whether he be her assignee, her creditor, or any other person, to give such a receipt. The consequence is that the person who is responsible to her for the payment of the income arising from the settled estate cannot safely pay it to any person other than the married woman herself, or to some person claiming through, or under her, whose claim, whether by assignment, judgment, or otherwise, arises after the falling due of the instalment of income in question.

A modern English writer says,—"The restraint on anticipation exists ostensibly to prevent a married woman being "'kissed or kicked' out of her property, but the area of its "usefulness is not limited to this. Skilfully used, it may be "made to produce results which would have surprised Lord "Thurlow. Thus it enables a married woman to give unlimited orders for gowns, bonnets and jewellery, and then, "when sued, to set up her incapacity to contract (*Braunstein* "*vs. Lewis*, 64 L. T. R. 265). It enables her to desert her husband without paying damages under the Matrimonial Causes

"Act, 1884 (*Mitchell vs. Mitchell*, 1891, P. [C. A.] 208). If her "husband gets a divorce from her, she has only to marry "again, thereby reviving the restraint, and the Court cannot "decree maintenance to the wronged husband and children. "This last was the device which the Court of Appeal was "invoked to frustrate in *Midwinter vs. Midwinter* (40 W. R. "33), and it did its best to do so by directing an inquiry as "to the wife's means so as to be prepared, on the decree being "made absolute, with an order to forestall her anti-marital "manoeuvres. The unique advantage of the married woman's "position is that she can use the restraint to discomfit her "enemies, and when it suits her convenience, she can get "the Court to remove it (*Re Milner's Settlement*, 1891, 3 Ch. 547)." 8 L. Q. Rev. 12.

After a considerable divergence of opinion, it has been settled that where a married woman has separate property, subject to a restraint upon anticipation, the restraint applies to income which has become due after judgment, but has not yet been paid to her; and therefore such income cannot be made available in execution, either by way of receiver, appointed by way of equitable execution, or otherwise, but it seems that it would be otherwise as to arrears of income which were due at the time of obtaining judgment, and which remained unpaid when judgment was obtained.

Whiteley vs. Edwards, 1896, 2 Q. B. 48; and see article on "The Married Woman Judgment Debtor," 13 L. Q. Rev. 406.

A plaintiff cannot by postponing the entry of his judgment make income available which accrued due after the time when he became entitled to enter judgment.

Calyer vs. Isaacs, 77 L. T. 198.

Quaere as to the effect of bringing an action upon a judgment already obtained against her so as to reach the income becoming free between the dates of the two judgments.

See 13 L. Q. Rev., at pp. 409-10.

If a husband has before marriage and with a view to marriage renounced his marital rights, he is not entitled, after the death of his wife intestate, to administration of her estate, for the right to administration follows interest, and he, by his renunciation, has stopped himself from claiming any interest in her estate.

Dorsey vs. Dorsey, 30 O. R. 183.

The restraint upon alienation can be grafted upon separate estate only, but it is sufficient if the graft be made upon a married woman's statutory separate estate, even though it be not equitable separate estate.

Re Lumley, ex-p., Hood Barrs, 1896. 2 Ch. 690.

A gift to separate use will not be implied from the mere existence of an attempted restraint upon anticipation.

Stogdon vs. Lee, 1891, 1 Q. B. 661.

It is provided by R. S. O., 1897, cap. 163, sec. 9, that, "Notwithstanding that a married woman is restrained from anticipation, the Court may, if it thinks fit, where it appears to "the Court to be for her benefit, by judgment or order, with "her consent, bind her interest in any property."

For a statement of the principles upon which the Court will act in exercising this jurisdiction, see *Paget vs. Paget*, 1898, 1 Ch., at page 55.

Personal rights and obligations of Married Women.—Before the Married Women's Property Act, 1872, a married woman bringing an action at law had to join as a co-plaintiff along with her husband, and if she brought suit in a Court of Equity, she had to sue through the medium of a next friend. If, on the other hand, she was made a defendant in respect of her separate estate, it was necessary that her husband, and usually that the trustee of her separate estate, should be made a co-defendant with her.

The Act of 1872 extended her right to sue, and her obligation to be sued, but it was held that her obligations, arising out of contract, could be enforced against only so much of the separate estate to which she was entitled, free from any restraint on anticipation, at the time when the contract was entered into, as remained at the time when judgment was given, and not against separate estate to which she became entitled after the making of the contract.

Pike vs. Fitzgibbon, 17 Chy. D. 454.

See history of the Provincial adjudications under this Act in dissenting judgment of Armour J., in *Clarke vs. Creighton*, 45 U. C. R. 514.

The married woman's contractual obligations were extended by the Act of 1884, but even under this Act it was necessary for the creditor to prove, in an action against a married woman upon her contract, that she had at the time of entering into the contract (and perhaps at the date of the judgment) some separate property, free from any restraint upon anticipation, and with reference to which she may reasonably be deemed to have contracted.

See *per* Osler J., in *McMichael vs. Wilkie*, 18 App. R. at pages 469-470; but see *per* Chief Justice Strong in *Moore vs. Jackson*, 22 S. C. R. at pages 220-223. See also Article in 8 L. Q. Rev. 62, and *Downe vs. Fletcher*. 21 Q. B. D. 11.

If the creditor succeeded in proving this he was then entitled to a judgment under which he could levy, not only upon the separate property which she had at the time of entering into the contract, but also upon any separate property thereafter acquired by her.

Stogdon vs. Lee, 1891, 1 Q. B. 661 ; and see Article in 13 L. Q. Rev. 406.

The form of judgment against a married woman, as settled in England, and followed in this Province, is as follows,—

"It is adjudged that the plaintiff do recover £ and "costs (to be taxed) against the defendant (the married woman) "such sum and costs to be payable out of her separate pro- "perty, as hereinafter mentioned, and not otherwise. And it "is ordered that execution hereon be limited to the separate "property of the defendant (the married woman) not subject "to any restriction against anticipation, unless by reason of "sec. 19 of the Married Women's Property Act, 1882, the pro- "perty shall be liable to execution, notwithstanding such "restriction." (The corresponding section of the Provincial Act, R. S. O., 1897, cap. 163, is section 21.)

Scott vs. Morley, 20 Q. B. D. 120, and at page 132.

If the action was against a married woman to recover a debt contracted by her before coverture, it was not necessary for the plaintiff to prove the existence of separate estate in order to recover judgment, which, however, would be limited in its operation in accordance with the form settled in *Scott vs. Morley*.

Downe vs. Fletcher, 21 Q. B. D. 11.

It was also held that, if a judgment were recovered against a married woman, and her husband then died, the fact of his death and her discoverture would not render her personally liable to pay the judgment debt, and that the creditor's rights in such a case were still to be limited by the form adopted in *Scott vs. Morley*.

Re Hewett, 1895, 1 Q. B. 328.
Hammond vs. Keachie, 28 O. R. 455.

On the other hand, if she enters into a contract while unmarried, and thereby becomes personally liable, her subsequent marriage before action thereon would not, in England, prevent the creditor from recovering a personal judgment against her, without any of the restrictions imposed by the form of judgment in *Scott vs. Morley*.

Robinson vs. Lynes, 1894, 2 Q. B. 577, but see Provincial Statute R. S. O., 1897, cap. 163, sec. 16.

In 1897, an Act was passed (now contained in R. S. O. 1897, cap. 163, sec. 4) still further extending the contractual obligations of a married woman. This Act provides that,—

"(1) Every contract entered into by a married woman on or after the 13th day of April, 1897, otherwise than as an agent;

(*a*) Shall be deemed to be a contract entered into with respect to, and to bind her separate property, whether she is or is not in fact possessed of or entitled to any separate property at the time when she enters into such contract, and it shall not be necessary in any proceeding to prove that she had any separate property at the time when such contract was entered into, or subsequently;

(*b*) Shall bind all separate property which she may at the time or thereafter possess, or be entitled to; and

(*c*) Shall also be enforceable by process of law against all property which she may thereafter, while discovert, possess or be entitled to.

(2) Nothing in this section contained shall render available to satisfy any liability or obligation arising out of such contract, any separate property which she is restrained from anticipating."

Rights and obligations arising out of Tort.—Before the Married Women's Property Acts a woman could not, without joining with her husband as a co-plaintiff, maintain an action for damages for a tort done to her, for, in the eye of the law, the husband and wife were one, and he was that one, and he was entitled to any such damages as might be recovered. So also it was futile to sue her for a tort done by her, because she had no property out of which damages could

be recovered, and in this case the doctrine of identity of husband and wife operated to his detriment, and he, as the all-absorbing member of the marital alliance, became personally responsible for his wife's torts.

For a history of the law relating to the respective liabilities of the husband and wife, for the torts of the wife, in all cases where the marriage took place before the 1st day of July, 1884, see *Lee vs. Hopkins*, 20 O. R. 666, and as to the modification of the husband's liability introduced by the Act of 1884, see R. S. O. 1897, cap. 163, sec. 17.

Wife's Earnings and Husband's Proprietary Interest.—R. S. O. 1897, cap. 163, sec. 6 (1), enacts that,—"every "married woman, whether married before or after the passing "of this Act, shall be entitled to have and hold as her "separate property, and to dispose of as her separate property, "the wages, earnings, money and property, gained or ac-"quired by her in any employment, trade or occupation, in "which she is engaged, or which she carries on, *and in which "her husband has no proprietary interest*, or gained or acquired by "the exercise of any literary, artistic, or scientific skill."

As to the significance of the words "in which her husband has no proprietary interest," see

Cooney vs. Sheppard, 23 App. R. 4.
Young vs. Ward, 24 App. R. 147.

Rights of Husband and Wife inter se.—"Every woman, whether married before or after this Act, shall have in her own name against all persons whomsoever, *including her husband*, the same remedies for the *protection and security of her own separate property* as if such property belonged to her, as a *feme sole*, but, *except as aforesaid, no husband or wife shall be entitled to sue the other for a tort.*"

R. S. O., cap. 163, sec. 15.

A wife may maintain an action for trespass against a third person who entered her house against her will, although he entered it with the authority of her husband; but the Court of Appeal in England treated it as an open question whether she could have maintained a similar action against her husband.

Weldon vs. De Bathe, 14 Q. B. D. 339.

The Court of Appeal in England confirmed an interim injunction, granted in an action brought by a wife against her husband, restraining him from entering her house, where he was claiming to enter. "Not for the purpose of associating or living with his wife as a husband, but for the purpose of using the house as a house for himself," and where he was claiming to be "allowed the proprietary use of the house." Lord Justice Cotton, however, said, "It must not be supposed by my concurring in what is the view of the other members of the Court—that the injunction should not be disturbed—that I look with the slightest favour on the contention of the plaintiff's Counsel that there is a right in the case of a married woman, being entitled to and living in a house settled to her separate use, to come to a Court of Equity to restrain her husband at her will and pleasure from entering there."

Symonds vs. Hallett, 24 Chy. (1), 346.

It has been held in a New Brunswick case that a wife is entitled to an injunction restraining her husband from interfering with her use and occupation of her land where she is living apart from him, not wilfully or of her own accord.

Johnston vs. Johnston, 1 N. B. Eq. 167.

It was formerly said that "The husband hath by law power and dominion over his wife, and may keep her by force, within the bounds of duty, and *may beat her*, but not in a violent or cruel manner.

Bacon's Abr. tit. Baron & Feme (B), cited with apparent approval by Coleridge, J., in *Re Cochrane*, 8 Dowl. 633.

The Courts now, however, say that when the old law writers referred to the right of a husband to administer "*Castigatio*," they meant admonition and not personal chastisement.

Queen vs. Jackson, 1891, 1 Q. B. 671; and see 25 Am. L. Rev. 551.

Accordingly, it has been held that the husband is not entitled to confine his wife to his house (by lock and key or other unapproved methods) even though he has obtained a judgment against her for restitution of conjugal rights.

Queen vs. Jackson, 1891, 1 Q. B. 671.

At the common law a man and his wife were deemed to be one person, and he was that person.

One of the results of that doctrine was that if an estate in fee were granted to a man and his wife,they were neither joint tenants nor tenants in common, but they were said to be Tenants by Entireties, so that neither the husband nor the wife could dispose of any part of the estate or any interest therein without the concurrence of the other, but the whole estate must remain to the survivor.

This estate of Tenancy by Entireties has now been abolished by operation of the Married Women's Property Acts.

Re Wilson, 20 O. R. 397.

Another result of the said common law doctrine was that estate were granted to a husband and wife and to two other men, the husband and wife took but a one-third share between them, and each of the other men took a one-third share.

It is doubtful whether this does not still remain law, notwithstanding the Married Women's Property Act.

See *Re Jupp*, 39 Chy. D. 148, holding it still to be the law; See *Contra Re Dixon*, 42 Chy. D. 306.

Another absurdity growing out of the common law doctrine of merger of identity still exists as living law, namely, that in an action for libel the fact that the defendant has disclosed the libel to his wife is not evidence of publication.

Wennhak vs. Morgan, 20 Q. B. D. 635.

The husband was at common law liable for his wife's antenuptial debts and torts, and for her postnuptial torts by reason of the merging of her personality in his, but he was not liable for her postnuptial debts, as, for the same reason, she could not contract any, save only as his agent, in which case it was his debt and not hers.

The rights and obligations of husband and wife with reference to her antenuptial contracts and torts and her post-

nuptial torts are now regulated by R. S. O., cap. 163, sections 16, 17 and 18.

Wills.—The existing statutory provisions as to married women's wills may be found in R. S. O. 1897, cap. 128, secs. 5, 9 (5) and 26 (2).

For the history of the law on the subject of married women's wills, see 8 Can. L. T. 181, and 17 Can. L. T. 192 *et seq.*

Dower.—A wife's right to dower in the lands of her husband is regulated by R. S. O. 1897, cap. 164.

Maintenance of Deserted Wives.—In addition to the right which a wife has to bring an action against her husband for alimony, a deserted wife is now provided with a summary statutory remedy, which may be granted by any Stipendiary or Police Magistrate, or any two of Her Majesty's Justices of the Peace, who are authorized to allow the wife such weekly sum, not exceeding $5.00, as the Magistrate or Justices may consider to be in accordance with the husband's means, and with any means the wife may have for her support and the support of her family.

R. S. O. 1897, cap. 167.

The Act provides that a woman shall be deemed to have been deserted within the meaning of the Act, when she is living apart from her husband because of repeated assaults or other acts of cruelty, or because of his refusal or neglect, without sufficient cause, to supply her with food and other necessaries of life when able to do so.

An Epitome of the Laws of Succession in the Province of Ontario.

BY

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The law governing intestate succession in the Province of Ontario, in so far as concerned the real estate of persons who died before the first day of July, 1834, was the common law of England.

The law governing such succession in the case of persons who died on or after the first day of July, 1834, and on or before the 31st day of December, 1851, was the statute commonly known as the Statute of William, now contained in R. S. O. 1897, cap. 127, sec. 24 *et seq.*

The law governing such succession in the case of persons who died on or after the first day of January, 1852, and before the first day of July, 1886, was the Statute commonly known as the Statute of Victoria, now contained in R. S. O. 1897, cap. 127, sec. 37 *et seq.*

During all of the periods above mentioned the law governing such successions in so far as concerned personal estate, was the statute commonly known as the Statute of Distributions (22 and 23 Car. II., cap. 10), explained by 29 Car. II., cap. 3, sec. 25, and supplemented by 1 Jac. II., cap. 17.

As to the reason for passing 29 Car. II., cap. 3, sec. 25, see *Lamb vs. Cleveland*, 19 S. C. R., at page 83 *et seq*, and at page 86 *et seq*.

The cases under the Statute of Distributions will be found in Williams on Executors (9th Ed.), 1352 *et seq*.

In the case of persons dying domiciled in Ontario on or after the 1st day of July, 1886, their estate, both real and personal, devolves upon their personal representative, subject to the payment of the debts of the decedent, and so far as the said property is not disposed of by deed, will, contract or other effectual disposition, the same is to be distributed as personal property is to be distributed; that is, there is to be no difference in the devolution of real and personal property in the case of persons dying on and after the 1st day of July, 1886, and the descent of real property after that date is to be in the same groove as the descent of personal property.

Real and personal property in this Province will therefore devolve pursuant to the provisions of the Statute of Distributions, explained and supplemented as aforesaid, and modified by the Devolution of Estates Act (R. S. O. 1897, cap. 127, sections 4, 5 and 6).

A table of descents. showing at a glance upon whom property will devolve according to the law of this Province, will be found on p. 295.

It is open to very much doubt whether any such estate as tenancy by the curtesy (strictly so called) now exists in this Province, and whether the effect of section 4 (3) of the Devolution of Estates Act is not to abolish tenancy by the curtesy, and leave in the husband in lieu thereof, an anomalous interest, which he may elect to take, and which, if he does so elect, will be analogous to the interest which, under the old law, he would have had as tenant by the curtesy.

In order to ascertain the operation and effect of section 4 (3), it is well to contrast it with the analogous section 4 (2), dealing with a widow's right to dower. The latter section provides that nothing in the Act shall be construed to take away a widow's right to dower, but that she may, by instrument in writing, attested by at least one witness (no time for executing the same being limited) elect to take her interest in her husband's undisposed of real estate, derived by her under section 4 (1) of the Act, in lieu of all claims to dower in respect of real estate, of which her husband was at any time seised, or to which at the time of his death he was beneficially entitled; and unless she so elects, she shall not be entitled to share under section 4 (1) of the Act in the said undisposed of real estate of her husband; that is, *unless the widow elects against dower she will retain her rights as doweress.*

Section 4 (3), on the other hand, provides that any husband who, *if sections 3 to 9 of the Act had not passed, would be entitled to an interest as tenant by the curtesy in any real estate of his wife*, may, by instrument in writing, executed within six months

after his wife's death, and attested by at least one witness, elect to take such interest in the real and personal estate of his deceased wife as he would have taken it the said sections of the Act had not passed, in which case the husband's interest therein shall be ascertained in all respects as if the said sections had not passed, and he shall be entitled to no further interest under the said sections from 3 to 9.

It should be noted that the husband's tenancy by the curtesy is not, like the widow's right to dower, expressly preserved, but that, on the contrary, there appears to be a necessary implication, arising from the words above italicised, that the passing of sections 3 to 9 has taken away the husband's rights as tenant by the curtesy.

The section then gives the husband the anomalous right above referred to, but it is to be observed that *if the husband does not elect in favor of this anomalous right* (including a right analogous to that formerly possessed by a tenant by the curtesy plus certain rights in his deceased wife's personal property) *he is to be confined to the rights given to him by sections 3 to 9 of the Act* (and apparently to the rights given to him by section 5 of the Act). This is an exactly opposite course to that pursued with reference to the widow's rights as doweress.

It is a general rule, that when an option in the nature of a power is given along with a provision that it is to be exercised, if at all, within a limited period, the time so mentioned is of the essence of the power. It is presumed that the husband's power to elect in favor of the said anomalous rights will fall within this general rule.

The widow on the other hand may elect to take her distributive share in lieu of dower at any time before the estate has been actually distributed, even though there has been judgment for administration and declaring her entitled to dower.

Baker vs. Stuart, 29 O. R. 388; 25 App. R. 445.

The Ontario Legislature has, by 62 Vic., cap. 9, s. 11 (*h*), recognized the estate by the curtesy as being an existing interest in lands; but if the view be correct that the said estate was abolished by previous legislation, this recognition would have no effect, for "The misapprehension of the Legislature as to the state of the laws on any particular subject would not, as was stated by Cockburn, C. J., in *Earl of Shrewsbury vs. Scott*, 29 L. J. C. P. 53, have the effect of making that the law which the Legislature had erroneously assumed it to be. So also in *Ex parte Lloyd*, Sim. N. S. 250, Lord Cranworth said:—'The Legislature are not interpreters of the law, and Courts of law are not bound by a mistake of the Legislature as to what the existing law is.' "

Per Burton, J. A., in *Re Grand Junction Ry. Co. vs. Peterborough*, 6 App. R. at pp. 343-4.

Section 5 of the Act provides that the real and personal property, whether separate or otherwise, of a married woman, in respect of which she dies intestate, shall be distributed one-third to her husband, if she leaves issue, and one-half if she leaves no issue, and, subject thereto, shall go and devolve as if her husband had predeceased her. That is, if the wife

leaves descendants of her's, the husband gets one-third of her real and personal property, while if she leaves no descendants, the husband gets one-half of her real and personal property, and the residue in each case is to be distributed between her next of kin, to be ascertained by reference to the Statute of Distributions, and Amending Acts, including sections 4 and 6 of the Devolution of Estates Act.

A considerable difference of opinion formerly existed with reference to the descent of a married woman's property, owing to a supposed conflict between the Devolution of Estates Act and one of the sections of the Married Women's Property Act.

See 29 Can. L. J. 466, 566, 545, and 13 Can. L. T. 272.

This difficulty has now been overcome by 60 Vic., cap. 14, sec. 33, which repealed sec. 23 of the Married Women's Property Act, cap. 132 of the R. S. O. 1887 (the supposedly conflicting section), and by sec. 32 of the same Act, which is now contained in sec. 5 of the Devolution of Estates Act, as aforesaid.

It must be remembered that section 5 of the Devolution of Estates Act (providing for the descent of married women's property) is liable to be over-ridden by section 4 (3) of the same Act (empowering a husband to elect in favor of the anomalous interest above referred to). This anomalous interest (in all cases in which the husband would, apart from the effect of sections 3 to 9 of the Devolution of Estates Act, have been tenant by the curtesy) would include rights similar to those formerly possessed by a tenant by the curtesy. In addition to this it would, with reference to the personal estate of an intestate wife, include the right of the surviving husband to take out letters of administration to that estate, and as such administrator to appropriate that estate for his own benefit. As to this right of the surviving husband, see

Lamb vs. Cleveland, 19 S. C. R. at page 83 *et seq,* and at page 86 *et seq.*

If a husband has before marriage, and with a view to marriage, renounced his marital rights, he is not entitled, after the death of his wife intestate, to administration of her estate, for the right to administration follows interest, and he, by his renunciation, has estopped himself from claiming any interest in her estate.

Dorsey vs. Dorsey, 30 O. R. 183.

Section 6 of the Devolution of Estates Act provides that when a person shall die without leaving issue, and intestate as to the whole or any part of his real or personal property, his father surviving shall not be entitled to any greater share under the intestacy than his mother, or any brother or sister surviving; nor shall a grandfather or grandmother of a person dying intestate share in competition with a surviving father, mother, brother or sister.

(It is believed that the following will be found to be the most complete Table of Descents ever published in this Province.)

TABLE OF DESCENTS IN THE PROVINCE OF ONTARIO.

Mem. The References to Williams on Executors are to the 9th Edition of that work.

	If the intestate dies leaving:—	His real and personal estate will beneficially devolve thus:—
1	No relatives.	All to the Crown subject to the rights of creditors. See R. S. O., Cap. 70 and Cap. 114.
2	No wife or child, or legal representative of a child.	Equally to every of the next of kindred of the intestate, who are in equal degree, and those who legally represent them:—22 and 23 Car. II. Cap. 10, ss. 3 and 4. As to legal representative, see Wms. on Ex. 1366. As to ascertaining who are the "next of kin," see Wms. on Ex. 1377 and 355, and Howell's Surrogate Practice (2nd Ed.), 126 *et seq.* and 147.
3	Wife only.	$1,000 to wife where husband dies leaving a "widow but no issue" (R. S. O. Cap. 127, sec. 12). See *Sinclair* vs. *Brown*, 29 O. R. 370. Half of balance to wife. Residue equally to every of the next of kindred of the intestate, who are in equal degree, and those who legally represent them:—22 and 23 Car. II, Cap. 10, sec. 3. As to legal representatives and next of kin, see note to No. 2 above. If no next of kin then the residue goes to the Crown. See R. S. O. Cap. 70. The wife may elect under the provisions of R. S. O. Cap. 127, sec. 4 (2) to take the interest above indicated in lieu of her dower, and unless she so elects she will not be entitled to the said interest, but will, in addition to her dower, be entitled only to the said sum of $1,000 and to her rights given her by 23 and 24 Car. II, Cap. 10, sec. 3, namely, to one-half of her husband's *personal estate*, if there are no issue, and to one third thereof if there are issue of the last or any former marriage.
4	Wife and child or children and legal representatives of deceased children.	One third to wife. Residue equally *per stirpes* to child or children and legal representatives (that is lineal descendants, see Wms. on Ex. 1366) of deceased children. Any child (not being heir at law) receiving estate by settlement or advancement in the lifetime of an intestate father (not mother) shall bring the same into hotch potch. See 22 and 23 Car. II, Cap. 10, sec. 3. As to advancement, see Wms. on Ex. 1369. As to wife's right to dower, see note to No. 3 above.

5	Wife and grandchildren.	One third to wife. Residue equally to grandchildren, see note to No. 4 above. Whether the distribution in such case would be *per stirpes* or *per capita* has not been determined by any Appellate Court. See Wms. on Ex. 1367-8, and criticism there of *Re Natt*, 37 Chy. D. 517. As to wife's right to dower see note to No. 3 above.
6	Wife and father.	Half to wife. Residue to father. See 22 and 23 Car. II, Cap. 10, sec. 3. As to wife's right to dower and her interest in $1,000, see note to No. 3 above.
7	Wife and mother.	Half to wife. Residue to mother. See 22 and 23 Car. II, Cap. 10, sec. 3; 1 Jac. II, Cap. 17, sec. 7; and Wms. on Ex. 1378 and 1380. As to wife's right to dower and her interest in $1,000, see note to No. 3 above.
8	Wife, father, brother, sister and nieces and nephews (being children of deceased brothers and sisters).	Half to wife. Residue equally to father, mother, brother and sister, and to nephews and nieces, but the nephews and nieces take *per stirpes*, each representative or set of representatives of a deceased brother or sister respectively taking that equal share which would have been taken by the brother or sister if living. See 22 and 23 Car. II, Cap. 10, ss. 3 and 4; R. S. O. Cap. 127, sec. 6; Wms. on Ex. 1378-9, 1384; *Walker* v. *Allen*, 24 App. R. 336, overruling *Re Colquhoun*, 26 O. R. 104. As to wife's right to dower and her interest in $1,000, see note to No. 3 above.
9	Wife, mother, and children of deceased brothers and sisters.	Half to wife. Residue to be equally divided between the mother and each representative or set of representatives of the deceased brothers and sisters, respectively, the said representative or set of representatives standing for this purpose in the shoes of the deceased brother or sister whom they respectively represent; but the nephews and nieces, as between themselves, take *per capita* because all of the brothers and sisters were deceased at the death of the intestate; the distribution would be *per stirpes* if some of the brothers or sisters were living and the others were dead leaving children. This solution is submitted, but is perhaps arguable. See references given in No. 8 above. As to wife's right to dower, see note to No. 3 above.
10	Wife, mother, brothers and sisters.	Half to wife. Residue to be equally divided between the mother, brothers and sisters. See references given in No. 8 above. As to wife's right to dower and her interest in $1,000, see note to No. 3 above.

11	Wife, brothers and sisters, and children of deceased brothers and sisters.	Half to wife. Residue to be equally divided between the brothers and sisters and each representative or set of representatives of the deceased brothers and sisters respectively; the brothers and sisters taking *per capita* and the nephews and nieces taking *per stirpes*. See references given in No. 8 above, and see note to No. 9 above. As to wife's right to dower and her interest in $1,000, see note to No. 3 above.
12	Husband only.	Half to husband. Residue as if husband had predeceased his wife, *i.e.*, the residue goes to the next of kindred of the intestate under the provisions of the Statute of Distributions applicable to an unmarried woman. See R. S. O. Cap. 127, sec. 5. If no next of kin then the residue goes to the Crown. See R. S O. Cap. 127, sec. 5 and Cap. 79. The above is subject to the right of a husband entitled as tenant by the curtesy to exercise the power given by R. S. O. Cap. 127, sec. 4 (3), in which case he would appear to be entitled not only to his tenancy by the curtesy, but also to administer the whole of his wife's *personalty* for his own benefit. See the said Section, and see *Lamb* vs. *Cleveland*, 19 S. C. R. at p. 83 *et seq.* and at p. 86 *et seq.*
13	Husband and child or children, or issue of deceased children.	One third to husband. Residue to be divided equally between the children. See R. S. O. Cap. 127, sec. 5. If any of the children have died leaving issue, the latter take by representation. Since the repeal of sec. 23 of Cap. 132 of R. S. O. (1887), by sec. 32 of 60 Vic., Cap. 14, it would appear that the husband, when entitled as tenant by the curtesy, may exercise the statutory powers mentioned in the answer to No. 12 above, as fully in the case where there are children living as where there are no children living, for the said power overrides the provisions of sec. 5 of R. S. O. Cap. 127. See a contrary opinion expressed in an article in 35 Can. L. J. 94, the writer of which, however, does not appear to attach sufficient importance to the fact that the power given by Sec. 4 (3) of R. S. O. Cap. 127 overrides the provisions of Sec. 5; and that Sec. 23 of the M. W. P. Act as consolidated in the revision of 1887 has now been repealed; and that the effect thereof is to throw the husband back upon his rights under the Stat. of Distributions (as explained by 29 Car. II., Cap. 3, Sec. 24), by virtue of which he is entitled to administration of her personal estate for his own benefit. See *Lamb* vs. *Cleveland*, 19 S. C. R. at p. 83 *et seq.* and at p. 86 *et seq.*
14	Child, children or their legal representatives.	All to him, her or them. "Legal representatives" in this case mean lineal descendants. Wms. on Ex. 1366. As to distribution being *per stirpes* or *per capita*, see Wms. on Ex. 1367-8. As to case where there has been a settlement or advancement by father, see note to No. 4 above.

15	Children by two wives or children by two husbands.	Equally to all, as they are equally near of kin to the intestate. As to case where there has been a settlement or advancement by father, see note to No. 4 above.
16	Child and grandchild (being child of a deceased child).	Half to child. Residue to grandchild who takes by representation. See 22 and 23 Car. II, Cap. 10, sec. 3, first clause. As to case where there has been a settlement or advancement by father, see note to No. 4, above.
17	Father only.	All. See Wms. on Ex. 1377.
18	Father and wife.	Half to father. Residue to wife. See 22 and 23 Car. II, Cap. 10, sec. 3.
19	Father and mother.	Half to father. Residue to mother. See R. S. O. Cap. 127, sec. 6.
20	Father or mother (or father and mother) and brothers and sisters.	Equally to all. See Wms. on Ex. 1378 ; and R. S. O. Cap. 127, sec. 6.
21	Father and children of deceased brothers and sisters.	To be equally divided between the father and each representative or set of representatives of the deceased brothers and sisters respectively, the said representative or set of representatives standing for this purpose in the shoes of the deceased brother or sister whom they respectively represent. The distribution as between the children would be *per capita*. See answer to No. 9 above.
22	Father and grandchildren of deceased brothers and sisters.	All to the father. By the Statute of Distributions it is provided "that there be no representatives admitted among collaterals after brother's and sister's children." 22 and 23 Car. II, Cap. 10, sec. 4 ; and see Wms. on Ex. 1383-84 ; and *Crowther* vs. *Cawthra*, 1 O. R. 128.
2	Mother only.	The mother takes the whole. See Wms. on Ex. 1380 and 1378.

24	Mother and wife.	Half to wife. Residue to mother. See No. 7 above.
25	Mother and brothers and sisters.	To be equally divided between them. See 1 Jac. II, Cap. 17, sec. 7; and see Wms. on Ex. 1373.
26	Mother and children of deceased brothers and sisters.	To be equally divided between the mother and each representative or set of representatives of the deceased brothers and sisters respectively, the said representative or set of representatives standing for this purpose in the shoes of the deceased brother or sister whom they respectively represent. The distribution between the children would be *per capita*. See answer to No. 9 above.
27	Mother and grandchildren of deceased brothers and sisters.	All to mother, for reasons given in answer to No. 22 above.
28	Brother and sister only.	Would take all as next of kin under 22 and 23 Car. II, Cap. 10, sec. 4.
29	Brothers and sisters of whole blood and brothers and sisters of half blood.	All take equally. See Wms. on Ex. 1367, 1382-3.
30	Brother or sister (posthumous) and mother.	Equally to both. See Wms. on Ex. 1378, 1367, 1383.
31	Brother or sister (posthumous) and brother or sister born in the lifetime of father.	Equally to both. See Wms. on Ex. 1367, 1383.
32	Brothers and sisters and wife.	Half to wife. Residue to brothers and sisters equally. 22 and 23 Car. II, Cap. 10, sec. 3.

33	Brothers and sisters and nephews and nieces (being children of deceased brothers and sisters).	To be divided equally between the brothers and sisters and each representative or set of representatives of the deceased brothers and sisters respectively; the brothers and sisters taking *per capita* and the nephews and nieces taking *per stirpes*. See references given in No. 8 above; and see note to No. 9 above.
34	Brother or sister and grandfather or grandmother.	The brother or sister takes all to the exclusion of the grandfather or grandmother, although they are of equal degrees of kinship. See Wms. on Ex. 1381.
35	Grandfather or grandmother (being father's mother or father) and grandfather or grandmother (being mother's father or mother).	To be equally divided between them. See Wms. on Ex. 1382.
36	Grandfather and grandmother on either father's or mother's side.	To be divided equally between them. This solution is submitted although there is apparently no reported decision on the point. Under the old law the grandfather would have taken all by virtue of his marital right in the same way that under the old law the father would have taken to the exclusion of the mother; but *cessante ratione legis cessat ipsa lex.* See 4 L. Q. Rev. 479-80.
37	Grandfather or grandmother and uncle or aunt.	All to grandfather or grandmother as being nearer of kin. See Wms. on Ex. 1382.
38	Grandfather or grandmother and brother or sister.	See answer to No. 34 above.
39	Uncles and aunts (whether on father's or mother's side or both) and nephews and nieces (being sons and daughters of deceased brothers and sisters).	To be equally divided between them, as being in equal degree of kinship. See Wms. on Ex. 1382.

	Uncles and aunts and children of deceased uncles and aunts.	All to uncles and aunts for the reason given in the answer to No. 22 above.
41	Uncles and aunts and grandfather and grandmother.	See answer to No. 37 above.
42	Nephews and nieces by deceased brother and nephew by deceased sister.	To be divided equally between them as being in equal degree of kinship, 22 and 23 Car. II. Cap. 10, sec. 4. They take *per capita* and not *per stirpes*, for reasons given in answer to No. 9 above.
43	Nephew by brother and nephew by half sister.	To be equally divided between them. See Wms. on P : 1382-3.
44	Nephews, nieces, brothers and sisters.	See No. 33 above.
45	Nephews and nieces and brother's or sister's grandson.	All to nephews and nieces equally for the reasons given in answer to No. 22 above.
46	Nephews, nieces, father and mother.	To be equally divided between the father, mother and each representative or set of representatives of the deceased brothers and sisters respectively (parents of the nephews and nieces), so that each representative or set of representatives of a deceased brother or sister shall take that equal share which would have been taken by the brother or sister if living. As between themselves the nephews and nieces take *per capita*. See references given in No. 8 above and reasons given in No. 9 above.
47	Nephews, nieces, uncles and aunts.	See No. 39 above.
48	Nephews, nieces, wife, father, mother, brother and sister.	See No. 8 above.

	Nephews, nieces, wife and mother.	See No. 9 above.
50	Cousins of same degree however remote.	Equally *per capita*. The provision in the Statute of Distributions against remoteness of representation, set forth in the answer to No. 22 above, does not apply unless there is some one nearer of kin than the one against whom the provision is invoked.
51	Cousins (being children of deceased uncles or aunts) and brother's or sister's grandchildren.	Equally *per capita*, they being in equal degree of kindred. See answer to No. 2 above and references there given. They take *per capita* [illegible] not *per stirpes* for reasons given in No. 22 above.
52	Cousins (being children of deceased uncles or aunts) and uncles and aunts.	All to uncles andaunts, for the reason given in No. 22 above.

Succession Duty.—The Succession Duty Act is now contained in R. S. O. 1897, cap. 24. It is similar to the succession duty statutes in several of the American States, notably the Pennsylvania Statute of 1887, and the New York Statute of 1892, and, therefore, American decisions and American text books (such as Dos Passos on Succession Duty) will prove useful in the elucidation of the Provincial Statute.

No duty is payable in respect of any estate which, after payment of all debts and expenses of administration, does not exceed $10,000.00 in value; nor is any duty payable upon any property given for religious, charitable, or educational purposes; nor is any duty payable upon any property passing under a will, or by intestacy, or otherwise, to the father, mother, husband, wife, child, grandchild, daughter-in-law, or son-in-law, of the deceased, where the aggregate value of the property of the deceased does not exceed $100,000.00 in value.

A question of much interest in connection with the operation of the Statute recently arose before the Surrogate Judge of the County of York, in a case where the deceased, at the time of his death, had no domicile in Ontario, but was domiciled in the Province of Quebec; the value of his property situate in Ontario was less than $100,000.00, but the value of his property in Quebec and Ontario exceeded $100,000.00; the deceased by his will left the whole of his property in Ontario to his wife and children. The Surrogate Judge held that he had jurisdiction to determine whether Succession Duty was payable, and he determined that, under the circumstances, it was not payable. He refrained from expressing any opinion as to what the result

would have been if the deceased had been domiciled in Ontario. He held that the whole object and scope of the Act is to tax "(1) "All the property of a deceased person situate in the Province, no " matter where the deceased had his domicile, and (2) To tax " in the case of a person dying, domiciled in the Province, all " personal property owned by such deceased person outside the " Province, which, in the course of administration, must be, " or ought to be, brought into the Province for administration " or distribution to persons or beneficiaries domiciled within the " Province."

Re Renfrew Estate, 34 Can. L. J. 318; The Provincial Treasurer appealed from this decision to a Divisional Court, and the appeal was dismissed, the Court holding that the Surrogate Judge has jurisdiction to deal with the question of Succession Duty, and that his decision on the merits was correct: 29 O. R. 565.

This decision, in so far as concerns the levying of duty upon property outside of the Province, has been overridden by 62 Vic., cap. 9, sec. 12; which provides that the value of property situate outside of the Province shall be included in the aggregate value of the property of the deceased as well as the value of the property situate within the Province.

Sec. 13 of the same Act provides that no foreign executor or administrator shall assign or transfer any stocks or shares in this Province standing in the name of a deceased person or in trust for him, which are liable to pay succession duty, until such duty is paid or security is given therefor; and any corporation allowing a transfer of any stocks or shares contrary to the provisions of the Section shall be liable to pay the duty in respect thereof.

By express provision of the principal Act (subject, however, to the exceptions already mentioned), duty is made payable on all property situate within the Province, passing either by will or intestacy, and whether the deceased was domiciled in Ontario or not; also on all property situate within the Province, which has been voluntarily transferred in contemplation of death of the transferor, or by any form of instrument intended to take effect in possession or enjoyment, whether in trust or otherwise, after such death.

It has recently been enacted (62 Vic., cap. 9, sec. 2) that the High Court also shall have jurisdiction to determine what property is liable to duty, and the amount thereof, and the time or times when the same is payable, and (sec. 1) that the Crown may bring action for recovery of the same, and (sec. 8) that the Court may declare the duty to be a lien upon any property which is liable to duty, and which has, previous to the death of a person whose estate is subject to duty, been conveyed or transferred to some other person.

This Statute overrides the decisions of the Court of Appeal in *Attorney-General vs. Cameron*, 26 App. R. 103.

When the aggregate value of the property of the deceased exceeds $100,000.00, and passes in whole or in part to, or for the benefit of, the father, mother, husband, wife, child, grandchild, or other lineal descendant, or daughter-in-law, or son-in-law, of the deceased, the same, or so much thereof as so

passes, is subject to a duty of $2.50 for every $100.00 of the value.

Where the aggregate value of the property exceeds $200,000.00, the whole property, which passes as aforesaid, is subject to a duty of $5.00 for every $100.00 of the value.

Where the value of the property of the deceased exceeds $10,000.00, *so much thereof as passes* to or for the benefit of the grandfather or grandmother, or any other lineal ancestor of the deceased, except the father and mother, or to any brother or sister of the deceased, or to any descendants of such brother or sister, or to a brother or sister of the father or mother of the deceased, or of any descendant of such last mentioned brother or sister, is subject to a duty of $5.00 for every $100.00 of the value.

Where the value of the property of the deceased exceeds $10,000.00, *and any part thereof passes* to or for the benefit of any person in any other degree of collateral consanguinity to the deceased than is above described, or to or for the benefit of any stranger in blood to the deceased save as aforesaid, *the same* is subject to a duty of $10.00 for every $100.00 of the value. It is, however, provided that, where the whole value of any property passing to any one person under a will or intestacy does not exceed $200.00, the same shall be exempt from Succession Duty.

62 Vic., cap. 9, sec. 11 (*g*) extends the operation of the Act so as to make it include any property over which the deceased had a general or limited power of disposition whether by instrument *inter vivos* or by will, "Including the power exercisable by a tenant in tail whether in possession or not," but excluding any "Power exercisable in a fiduciary capacity under a disposition not made by himself," and excluding any power exercisable as a mortgagee.

This section provides that it shall extend to a power over property which enables a man "to dispose of the same for the benefit of his children or some of them." This provision will give rise to nice questions as to whether in a given case a limited power of appointment to or among children is or is not a power coupled with a trust. On this point see *Re Weekes Settlement*, 1897, 1 Ch. 289.

In the absence of testamentary provision to the contrary, the succession duty should be deducted from the respective legacies, and the executors have no power to pay such duty out of the residue of the estate.

Manning vs. Robinson, 29 O. R. 483.

A Synopsis of some of the Principal Provisions of Real Estate Law in Ontario.

COMPILED BY

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Real property law is within the exclusive jurisdiction of the Provincial Legislature, except in so far as it is affected by the exercise of the powers given to the Dominion Parliament incidental to departments of legislation within its control. for example, by *The Bank Act*, Parliament restrains banks from taking mortgages except under certain conditions and circumstances. By *The Act respecting Interest*, Parliament enacts that whenever a mortgage is payable on a sinking fund plan or on any plan under which payments of principal and interest are blended, no sum beyond the amount of principal is recoverable unless the mortgage contains a statement showing the amount of principal and the rate of interest chargeable. The Act further provides that no fine or penalty shall be exacted on account of payments upon a mortgage falling into arrear. This enactment is, however, usually rendered abortive by a provision in the mortgage that interest shall be charged at the higher rate, but if paid promptly a lower rate will be allowed. The Act further provides that whenever a mortgage is payable more than five years after date, then if the mortgagor tenders or pays after the expiration of five years the amount due for principal and interest together with three months' interest as a bonus, no further interest shall be recoverable. This last provision is disregarded by many solicitors, who consider it *ultra vires* of the Dominion Parliament.

But the bulk of real property law in Ontario is enacted by Provincial Statute or founded upon Ontario and English precedents. The law has not been codified, but the statute law is conveniently collected in the Provincial Statutes, which are revised and consolidated every ten years, the last revision (R. S. O. 1897) having come into force on 31st December, 1897.

Law of England.—In 1792, the first Act of the first Session of the Parliament of Canada introduced English law. This enactment is now represented by R. S. O., cap. 111, which provides that in all matters of controversy relative to property and civil rights, resort shall continue to be had to the laws of England as they stood on the 15th October, 1792, as the rule for the decision of the same, and all matters relative to testimony and legal proof in the investigation of fact and the forms thereof in the several Courts of Ontario, and shall

continue to be regulated by the rules of evidence established in England, as they existed on the 15th October, 1792—except so far as said laws and rules have been since repealed, altered or affected by any Act of the Imperial Parliament having the force of law in Ontario or by any Ontario Act.

The English Statutes of Limitations passed previous to 1822 are in like manner in force in Ontario.

The Courts having decided that the English Act known as "The Thellusson Act" was not in force in Ontario, the law was amended in 1889, so that accumulation of property by will is restrained for any longer term than 21 years from the death of the testator, or than during the minority of any person, who, under the trusts of the will, would for the time being, if of full age, be entitled to the rents and profits or the interest of the property directed to be accumulated.

This, of course, in no way affects the estate in lands known as "Estate tail." But entailed lands may be disentailed.

Estates Tail.—By R. S. O., cap. 122, provision is made for the cheap and easy barring by the tenant in tail of the remaindermen. Although the Act covers twelve pages and contains numerous provisions, it is rarely resorted to, and its contents are not generally understood. The reason for this is that property owners in Ontario have rarely desired to create this ancient estate, and wherever the same has come into existence the tenants in tail have usually made haste to immediately abolish it entirely, consigning "Protectors of the Settlement" to the obscurity of real property text books. The simple provision is that "Every actual tenant in tail, whether in possession, remainder, contingency or otherwise, may dispose of, for an estate in fee simple absolute, or for any less estate, the lands entailed, as against all persons claiming the lands entailed."

As to Systems of Land Transfer.—Two systems obtain—Transfer by deed, and what is commonly known as "The Torrens System." The latter applies only to the County of York and City of Toronto, the County of Elgin and City of St. Thomas, the County of Ontario, and to the Districts of Muskoka, Parry Sound, Nipissing, Algoma, Manitoulin, Thunder Bay and Rainy River, with power to other municipalities to introduce the system by by-law. Even in the municipalities above named, however, the system has not been exclusively adopted, and in fact most of the land therein remains under the old system.

By the "Act to Simplify Titles and to Facilitate the Transfer of Land," commonly known as "The Land Titles Act" (which introduces the Torrens System), each successive owner's or mortgagee's title is evidenced by a certificate of the Master of Titles, and not by a succession of title deeds from former owners. It is in effect an adaptation of the copyhold system of land tenure in use in manors in England. The owner of land derives his title direct from the Crown, and his ownership is recorded in books kept by officers appointed by the Crown. There is therefore in purchasing land no necessity to

search the title behind the grantor. The forms in use are very simple. The practice of using seals in making transfers, mortgages, etc., has been done away with, and entries of ownership in the register need not be under seal. The first registration of land under *The Land Titles Act* is preceded by a careful and minute search of title by the Master of Titles, amounting in fact to the quieting of the title. The Master of Titles is a barrister of not less than ten years standing. If the title is found satisfactory, a certificate may be registered in the registry office of the municipality in which the land is situated, and thereafter *The Registry Act* ceases to apply. There is an Assurance Fund to indemnify persons who by fraud, error or misdescription may be deprived of some estate or interest. Such Assurance Fund is constituted by the payment into court of one-fourth of one per cent. of the value of land when it is first brought under the Act. If the person defrauded or injured is unable to recover from the person on whose application an erroneous registration is made, he is entitled to indemnification from the Assurance Fund if he applies within six years from the time of having been deprived of his estate or interest. This remedy against the Assurance Fund might, however, be inadequate under some circumstances. For instance, a wife's right to compensation from it for loss of dower consequent upon a fraudulent conveyance by her husband would be barred in six years after such conveyance, whereas, she has ten years after her husband's death to enforce her dower against lands registered under *The Registry Act*.

There are three kinds of title for which certificates may be given by the Master when land is brought under the Land Titles Act.

Where an "absolute title" is required and can be proved, the title is quieted absolutely and is free from all incumbrances, except those set forth in the register, and unpaid taxes.

Where, however, the applicant is able to verify his title only for a limited period and not from the grant by the Crown, or cannot adduce evidence to remove doubts under any particular instrument, a certificate may be granted him for a "qualified title," and in such case the Master, by an entry on the register, except from the effect of registration any estate right or interest arising before a specified date or arising under a specified instrument, or otherwise particularly described in the register.

Sometimes a paper title cannot be proved, and the applicant is content to take a certificate of "a possessory title," and thereafter the registration has the same effect as the registration of a person with an absolute title, except that it shall not prejudice the enforcement of any right adverse to the title of the first registered owner and subsisting at the time of registration.

The register of lease-hold land is kept separate. Persons may be registered as owners by lease-hold with a declaration that the lessor had an absolute or qualified title to grant the lease.

The Land Titles Act provides, as to land registered under its provisions, that a title to any land adverse to or in deroga-

tion of the title of the registered owner shall not be acquired by any length of possession. In other words, the ordinary Statutes of Limitations do not apply, and no one can acquire what are popularly known as "squatters' rights." The Act applies with certain qualifications to owners who cannot prove an absolute title, but whose title is such that they may be registered as owners with a qualified or possessory title. When a new certificate is granted to a new owner, the old certificate must be delivered up for cancellation. Executions in the sheriff's hands do not affect land brought under the Act unless a copy of the writ is upon demand transmitted by the Sheriff to the Master of Titles.

The forms provided by the Land Titles Act are almost mere memoranda. This may be illustrated by the form of transfer of land, and the insertion thereof here may prove useful, especially to persons living outside Ontario who may have occasion to deal with lands in Ontario which have been brought under the Land Titles Act.

LAND TITLES ACT.

I, A. B., the registered owner of the land registered in the office of Land Titles at as parcel 6, Township of (as the case may be) in consideration of $ paid to me, transfer such land to C. D., of etc.,

Dated the day of 19

Witness: (signature).

AFFIDAVIT OF EXECUTION.

AFFIDAVITS ATTESTING EXECUTION OF INSTRUMENT WHERE BAR OF DOWER AND IDENTIFYING PARTIES.

LAND TITLES ACT.

I, G. H., of etc., a solicitor of the Supreme Court of Judicature (or, as the case may be), make oath and say:

I am well acquainted with A. B. and C. D., named in the within document, and saw them sign the said document, and the signatures purporting to be their respective signatures at the foot of the said document are in their handwriting.

The said A.B. is, as I verily believe, the owner of the land within mentioned, and the said C. D. is reputed to be, and is, as I verily believe, his wife.

The said A. B. and C. D. are each of the age of 21 years or over, are each of sound mind, and signed the said document voluntarily at in the county of in the Province of Ontario (or, as the case may be).

I am a subscribing witness to the said document.

Sworn, etc.

LAND TITLES ACT.

I, A. B., above (or within) named make oath and say:—

That C. D., who executed the above (or within) instrument is my wife, and that we are both of the age of 21 years, or over (or, as the case may be).

Sworn, etc.

Affidavit Attesting Execution of Transfer of Land where Transferor Unmarried.

Land Titles Act.

I, G. H., of etc., solicitor of the Supreme Court of Judicature (or, as the case may be), make oath and say:

I am well acquainted with A. B., named in the within document, and saw him sign the said document, and the signature purporting to be his signature at the foot of the said document is in his handwriting.

The said A. B. is, as I verily believe, the owner of the land within mentioned.

The said A. B. is of the age of 21 years or over, he is reputed to be, and as I believe is, unmarried; he is of sound mind, and signed the said document voluntarily at in the County of and Province of Ontario (or, as the case may be).

I am a subscribing witness to the said document.

Sworn, etc.

Land Titles Act.

I, A. B., above (or within) named, make oath and say that I am an unmarried man and am of the age of 21 years, or over.

Sworn, etc.

Inasmuch as the title is quieted each time a transfer is made, the importance of guarding against fraud is apparent. The full affidavits above provided are intended to be a safeguard against fraud, forgery, impersonation and other offences. Indeed, when documents are executed by power of attorney, the power must be produced, verified and the same must be shown by affidavit to be unrevoked and in full force.

The accumulation of old title deeds may be avoided by the Master of Titles taking advantage of the clause in the Act enabling him to "direct the destruction of any instruments in his possession or custody, where they have become altogether superseded by entries in the register, or have ceased to have any effect." It remains to be seen whether the exercise of this power may not work a hardship on persons who may have a right to be indemnified out of the Assurance Fund, but are thus deprived of perhaps the only evidence to establish the fraud of persons dealing with the land or the mistakes of the Master of Titles.

The title to most land in the Province is registered under the provisions of what is known as "*The Registry Act*," which has been in force from the earliest times. At first "memorials," which were synopses, more or less extended, showing the purport of deeds, mortgages, etc., were deposited in the offices established in each county. But now duplicate originals are registered, and title to land appears fully without any absolute necessity for preserving unregistered duplicate original deeds. Upon such duplicate, however, the registrar places a certificate of registration, whereupon the document is received in any court as *prima facie* evidence not only of the registration, but also of the due execution of the same. A copy of a

registered document certified by the Registrar is received under certain conditions as evidence in lieu of the original.

Any document presented for registration must contain an affidavit by a witness showing due execution. A witness may be compelled by order of Court to make such affidavit. Deeds in foreign languages may be registered if translated and translation is sworn to be correct. Wills may be registered either by production of the original with affidavit of execution, and deposit of a copy, or by production of probate or exemplification and deposit of a copy with affidavit verifying such copy. Upon payment of a mortgage it is not necessary to obtain a reconveyance, though the mortgagor is entitled to demand it. The registration of a receipt in statutory form, known as a "discharge," operates as a reconveyance. Such receipt may be only a "partial discharge," and may release only a specified part of the lands mortgaged.

Mortgages.—Mortgages are usually drawn in a compendious form provided by the "Act Respecting Short Forms of Mortgages." Short clauses of a few words may be used, and are construed as if they contained the long forms. For example:—

"Provided that the said mortgagee on default of payment for months, may on notice, enter on and lease or sell the said lands," is a shortened form of a provision that in its amplified form contains over nine hundred words which, among other things, cover the following agreements between mortgagor and mortgagee.

The production of the mortgage deed is conclusive evidence of default.

Notice of intention to sell may be served on the mortgagor or his assigns either personally or at his or their usual or last place of residence within the Province.

On default, the mortgagor or his assigns may lease the whole or any part.

On default, the mortgagee may sell by public auction or private sale, or partly by both.

The mortgagee on selling shall not be responsible for any loss which may arise by reason of such leasing or sale unless the same shall happen by reason of his wilful neglect or default.

The mortgagee shall stand possessed of rents and of proceeds of sale in trust; to pay costs of sales and leases; to pay taxes, rent, insurances and repairs and all other costs in execution of trust; to pay principal and interest; to pay surplus to mortgagor or as he may direct; at cost of mortgagor to convey to him all parts of mortgaged premises that remain unsold, free from mortgage, but mortgagee shall not be compelled to travel from his usual place of abode to execute conveyances.

Notwithstanding power of sale, the mortgagee shall have right of foreclosure.

"And the said (A. B.) wife of the said mortgagor hereby bars her dower in the said lands" is a shortened form of release of all claim to dower. But by an Act passed in 1895 it is provided (R. S. O., cap. 164, s. 22) that

(*a*) An action of dower shall not be maintained where a wife on or after 16th April, 1895, has joined or hereafter joins in a deed purporting to convey the land, or has signed or signs, otherwise than as a witness, a deed by which her husband conveys or purports to convey the land, notwithstanding that the deed in either case contains no words purporting to convey or release her dower.

(*b*) An action of dower shall not be maintained where the wife did, prior to the 16th April, 18[illegible], join in or sign any such deed; but this is not to prejudice the rights of third persons claiming the land under a subsequent deed or mortgage executed by the wife prior to 16th April, 1895, and containing a release of dower.

"And that the mortgagor will execute such further assurances of the said lands as may be requisite" is a shortened form of a provision that after default in observing covenants contained in the mortgage, the mortgagor and those claiming under him will, at the expense of the mortgagee, execute such further deeds for more perfectly conveying the lands to the mortgagee and those claiming under him, as the latter, by their counsel learned in the law, shall reasonably require; but no person shall be compelled to travel from his place of abode to execute any deed.

"And that the said mortgagor will insure the buildings on the said lands to the amount of not less than currency."

This short clause includes the following provisions:

The mortgagor will forthwith insure and will keep insured in such proportions upon each building as may be required by the mortgagee, his heirs, executors and assigns, in some insurance office to be approved by the mortgagee, his heirs, etc., and will pay all premiums, and on demand will assign to mortgagee, his heirs, executors and assigns, insurance policy and receipts; if the mortgagee shall pay any premiums, the amount thereof shall be added to the mortgage debt, to bear interest at same rate. Premiums paid by mortgagee shall be payable to him by mortgagor at next date for payment of mortgage interest.

"And the said mortgagor covenants with the said mortgagee" is the short form of, and equivalent to "And the said mortgagor doth hereby for himself, his heirs, executors, and administrators, covenant, promise and agree to and with the said mortgagee, his heirs, executors, administrators, and assigns, in manner following, that is to say:"

The Short Forms Act has many advantages. There is less liability to error, as almost all mortgages are drawn according to its provisions, which have thus become very familiar. The cost of conveyancing is lessened. The tendency to verbiage in legal documents is checked. The cost of copying mortgages in the books of registry offices is reduced. This last consideration, however, is not now of so much importance owing to the provisions of the Registry Act, R. S. O., cap. 136, sec. 61.

This section provides that upon the registration of original

mortgages or assignments thereof executed on and after 5th May, 1894, the mortgagee, his solicitor or agent may endorse upon the mortgage "Not to be registered in full." In such case a uniform charge of $1.00 is made for registration, no matter what length the document may be.

The registrar keeps the record of a deed, mortgage, etc., in three **ways:**

1. By retaining a duplicate original.
2. By copying it in his books.
3. By entering full notes of it in his abstract index under the parcel of land that it affects.

Obviously the exact provisions of the mortgages of which discharges have been registered need not be so carefully preserved, so there is no necessity to copy them in full in the books. But if sale or foreclosure be had under them, they become more valuable in the chain of title. The Registrar may, at any time after registration, be required to copy the instrument in full in his books.

It is interesting to note that the English Act upon which Ontario Short Forms Acts were founded was "consigned to oblivion," whereas all the Ontario Short Forms Acts (viz., those relating to conveyances, leases and mortgages) have been in constant and general use.

It may be a convenience, especially to persons not residing in Ontario, to append copies of the forms provided.

THIS INDENTURE

made in duplicate, the day of
one thousand nine hundred
In pursuance of the Act respecting Short Forms of Mortgages,
BETWEEN,
hereinafter called the Mortgagor, of the First Part
his wife, of the Second Part
and
hereinafter called the Mortgagee, of the Third Part.

WITNESSETH, that in consideration of
of lawful
money of Canada, now paid by the said Mortgagee to the said Mortgagor (the receipt whereof is hereby acknowledged)

THE said Mortgagor Do Grant and Mortgage unto the said Mortgagee heirs, executors, administrators and assigns for ever:

ALL and SINGULAR th certain parcel or tract of land and premises situate lying and being (set out description).

AND the said wife of the said Mortgagor, hereby bars her Dower in the said Lands.

PROVIDED this mortgage to be void on
payment of
of lawful money of Canada with interest
at per cent. per annum, as follows: (set out terms) and Taxes and performance of Statute Labor.

The said Mortgagor covenant with the said Mortgagee,

THAT the Mortgagor will pay the Mortgage Money and Interest and observe the above proviso. That the Mortgagor ha a good title in fee simple to the said Lands. And that

he ha the right to convey the said lands to the said Mortgagee.

AND that, on default, the Mortgagee shall have quiet possession of the said Lands, free from all incumbrances.

AND that the said Mortgagor will execute such further assurances of the said lands as may be requisite, AND THAT the said Mortgagor ha done no act to incumber the said lands.

AND that the said Mortgagor will insure the buildings on the said lands to the amount of not less than
Currency.

AND the said Mortgagor do Release to the said Mortgagee all claims upon the said Lands subject to the said proviso, PROVIDED that the said Mortgagee on default of payment for may Notice enter on and lease or sell the said lands. Provided that the Mortgagee may distrain for arrears of interest, PROVIDED that in default of the payment of the interest hereby secured, the principal hereby secured shall become payable PROVIDED that until default of payment, the Mortgagor shall have quiet possession of the said Lands.

IN WITNESS whereof, the said parties hereto have hereunto set their hands and seals.

SIGNED, SEALED and
DELIVERED in the presence
of

County of } I,
to wit, } Make oath and say,

1. THAT I was personally present and did see the within Instrument and duplicate thereof duly signed, sealed and executed by
the parties thereto.

2. THAT the said instrument and duplicate were executed at

3. THAT I , know the said part

4. THAT I am a subscribing witness to the said instrument and duplicate.

Sworn before me, at in the
County of this
day of
in the year of our Lord
19

A Commissioner for taking Affidavits
in H. C. J., etc

In the above form the covenant against incumbrances is an absolute one, and is not confined (as in the Act respecting Short Forms of Conveyances) to the grantor's own acts.

Action on a Mortgage Covenant must now be brought within 10 years from default. In mortgages made before 1st July, 1894, the period was 20 years.

Although the clause conferring a power of sale gives the mortgagee a right of entry, this right is also conferred by the clause, "And on default the mortgagee shall have quiet possession of the said land." Under the latter clause the mortgagee may enter peaceably without notice for the purpose of keeping down interest in default. The clauses are therefore not repugnant.

The above clause providing for acceleration in case of default of payment of interest may be insisted upon strictly by the mortgagee. In some cases mortgagors have sought to obtain relief from the Court, on the ground that it may relieve against penalties and forfeitures. But it has been held that as such a provision does not provide that the amount payable shall be increased, but only provides that instead of being paid at future periods with interest up to those periods, it should become payable at once with interest up to that time.

The Legislature has from time to time passed enactments intended to relieve mortgagors. For instance, a mortgagee may, since 1886, distrain for arrears of interest only upon the goods of the mortgagor, and then only upon such as are not exempt from seizure under execution. Again, "in order to prevent the making of unnecessary and vexatious costs in respect to mortgages, it is hereby enacted that where, pursuant to any condition or proviso contained in a mortgage, there has been made or given a demand or notice either requiring payment of the moneys or any part thereof secured by such mortgage, or declaring an intention to proceed under and exercise the power of sale contained in such mortgage, no further proceedings and no action either to enforce such mortgage, or with respect to any clause, covenant or provision therein contained, or the lands of any part thereof thereby mortgaged shall, until after the lapse of the time at or after which, according to such demand or notice, payment of the moneys is to be made or the power of sale is to be exercised or proceeded under, be commenced or taken unless and until an order permitting the same shall first be had and obtained either from the judge of a County Court or from a judge of the High Court."

The time-honored rule of allowing a mortgagee to pursue all his remedies at once is thus attempted to be broken in upon. By making the demand for payment a demand for payment *forthwith*, the mortgagee may escape the delay attempted to be enforced upon him by this provision.

Where a demand for payment is not limited to a demand for overdue interest, but is made to cover the whole mortgage, whether by virtue of the acceleration clause or otherwise, the mortgagor can force the mortgagee to take payment in terms of his demand, and to at once discharge the mortgage.

A mortgagor who desires a mortgagee's demand for costs excessive, has by Statute been furnished with machinery for procuring the taxation of the costs.

Effects and Objects of Registration.—Every instrument is adjudged fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration without

actual notice, unless such instrument is registered before the registering of the instrument under which the subsequent purchaser or mortgagee claims, so that priority of registration prevails.

The original survey of the Province divides it into counties, the counties into townships, the townships into concessions, the concessions into lots. The boundaries between concessions are usually roads laid out with much regularity about one mile apart, though not with that extreme regularity which prevails in the extensive flat lands of Manitoba and the Northwest Territories. When a township lot is divided into smaller lots, the owner must deposit a surveyor's plan. Since 1893, deeds which refer to unregistered plans may not be registered unless the description is taken from a deed registered before that date. A registered plan is not binding upon an owner until some sale is made under it. Municipalities are not bound to accept roads dedicated by any such plans, and are not deemed to have accepted them until public money is spent upon them or they are taken over by the municipality in some unequivocal manner.

Quieting Titles Act.—Under R. S. O., cap. 135, provision is made for the obtaining of a certificate for registration which renders it unnecessary thereafter to search a title prior to the date of the certificate.

In counties where the Land Titles Act is in force, the Quieting Titles Act will probably fall into disuse, as no inducement in the matter of saving expense is held forth to encourage the quieting of titles. The obtaining of a full registrar's abstract, certified copies of all registered documents, etc., make the disbursements at times very heavy. If the title has few links, there is usually no object in quieting it. If it is long and intricate, the expense is proportionate. Provision is made for disposing of adverse claims, and the Judge or Referee has the like powers as the Master of Titles under the Land Titles Act.

Some statutory remedy will have to be found to shorten the proof of title to lands under the Registry Act, especially to lands in cities and towns. Blocks of land which have been subdivided into building lots, in time become the property of a great number of persons. It is impossible for each owner to possess the muniments of titles affecting the land prior to subdivision. Notarial copies are unsatisfactory, especially where the originals are not always accessible and are liable to loss and destruction. For example, where previous to subdivision, the chain of title includes a foreclosure or sale under power of sale in a mortgage, it is sometimes impossible to satisfy a requisition requiring proof of the regularity of the proceedings. To remedy this in some degree, "The Custody of Title Deeds Act" was passed, which enables land owners to deposit documents of title in the Registry Office. This Act allows the deposit not only of all documents that may be registered, but "also any certificate, affidavit, statutory declaration, or other proof as to the birth, baptism, marriage, divorce, death, burial, descendants, or pedigree of any person, or as to the existence or non-existence, happen-

ing or non-happening of any fact, event or occurrence upon which the title to land may depend, and notices of sale, or other notices necessary to the exercise of any power of sale or appointment or other powers relating to land."

The deposit is not, however, equivalent to registration. Some registrars, nevertheless, for the convenience of persons dealing with the lands, make a note of the deposit on the abstract index relating to the land, so that searchers of title may have notice of a deposit which might otherwise be overlooked or forgotten. Although the Act makes provision for indexing such deposits, it is a matter of some difficulty to obtain any satisfactory system which does not involve a reference to the lands, the title to which the deposits affect. If, therefore, the owners of the land lose, or do not keep any record of deposits of title deeds, the latter are often more safely hidden away in the registry office than they would be in the hands of private persons.

Such deposits may, however, be inspected by anyone on paying the registrar's fee. If documents have been deposited for five years, there is no provision for removing them, but within five years, the person entitled may, on special important grounds, obtain an order of the Court withdrawing them, on giving notice to all persons interested.

In England there is a fixed limit of time at which a root of title may be started, and no vendor need prove title prior thereto. Each year makes the searching of titles in Ontario more irksome. The Registry Office has preserved a record of titles for over one hundred years in the earlier settled parts of Ontario. A vendor is liable to be called upon to prove his title during all that period, and may find it extremely expensive and even impossible to adduce evidence that no dower attaches, or other facts of ancient history. If forty years or some such period were fixed by the Legislature for the length of an abstract, and all questions of title before that period were presumed, in the absence of direct and convincing evidence to the contrary, to be answered, without the necessity of proof by the vendor, the general public would be saved much expense, and the profession would not be forced to waste their energies on titles that have been searched in some cases perhaps thousands of times before.

Rights of Aliens.—Since 1849, aliens have had the same capacity to possess real estate as natural born or naturalized subjects of Her Majesty.

Real Estate in Ontario belonging to aliens descends in the same manner as other lands.

Escheats and Forfeitures.—Where lands have escheated to the Crown by reason of the person last entitled thereto having died intestate and without lawful heirs, or have become forfeited for any cause except crime, the Attorney-General may cause possession to be taken in the name of the Crown, or may bring a simple action of ejectment.

Mortmain and Charitable Uses.—In 1892 an Act was passed amending the law. It provides that land may be devised by will to or for the benefit of any charitable use,

but such land shall, notwithstanding anything in the will contained to the contrary, be sold within two years from the death of the testator, or such extended period as the Court may allow. After two years, the lands vest to the Accountant of the Supreme Court, except where the Court is satisfied they are required for actual occupation for the purposes of the charity and are not retained as an investment. This Act, however, affects only devises or legacies which, before 14th April, 1892, would have been void,

Trespasses to Land.—Where the title to land is bona fide claimed, or an easement is asserted, an action of trespass or ejectment or some other suitable civil remedy is sought. But in case of petty trespasses, the Provincial Statute provides a summary remedy, and brings the matter practically within the domain of the Criminal Law. It enacts that any person who unlawfully enters upon any land, being the property of another person, shall be liable to a penalty of not less than $1.00, and not more than $10.00, irrespective of any damage having or not having been occasioned thereby. And such penalty may be recovered with costs before any one Justice of the Peace. It must be shewn, however, that the land is wholly enclosed.

But it is specifically provided that the Act shall not apply where the title to land is called in question, or where the party trespassing acted under a fair and reasonable supposition that he had a right to do the act complained of, or to any case within the meaning of section 511 of the Criminal Code.

Extensive powers of arrest without a warrant are conferred by the Act, but they can be only exercised where any person is found committing a trespass. The arrest may be made by a peace officer; or by the owner of the property, or his servant, or by any person authorized by him.

Partition.—At one time it was thought that partition among devisees or heirs was done away with by the provision of the Devolution of Estates Act, which was passed in 1886, and provided that *notwithstanding any testamentary disposition*, real property shall devolve upon the legal personal representative. But by amendments to the Act in 1891, and subsequently, it is provided that after the lapse of one year, whether probate or letters of administration have been taken out or not, real estate shall vest in the devisees or heirs.

It certainly would have simplified titles if the Legislature had allowed the change to have been made completely and had not reverted to the old system. It would have thus well nigh abolished the distinctions between the devolution of real and personal estate.

The Partition Act (R. S. O., cap. 123) is therefore still in force for the benefit of all joint owners, whether they became such by devise, devolution or otherwise.

Dower.—The law as to dower in Ontario differs from the law in England, where the widow has a right to dower only in case the husband die legally entitled to lands without having absolutely disposed of the same by deed or will. In Ontario a woman has an inchoate right of dower to all lands

acquired or held by the husband during coverture, notwithstanding that he may have disposed of them in his lifetime or by will. If a wife bar dower in a mortgage, it is not an absolute bar, but only to a sufficient extent to give full effect to the rights of the mortgagee. If land is sold under a mortgage containing a bar of dower, dower is payable out of the surplus, the amount being one-third of the gross value of the lands. Formerly a wife had to be examined before a judge apart from her husband before she could bar her dower. Now even a wife under the age of twenty-one may bar her dower without any such formality. If a wife join in a deed or sign without being named as a party, the effect is to bar her dower even if the deed does not contain a clause barring her dower. By statute there is dower even out of equitable estates if the husband has not parted with the same in his lifetime and dies beneficially entitled. For instance, though a man who has purchased land subject to a mortgage may dispose of the same in his lifetime free from dower, his widow has a right to dower therein if he die beneficially entitled.

Where an owner of land admits a claim of dower, the dowress must pay her own costs of action and the costs of commissioners to measure the land and set apart the dower.

Since 1886 words of limitation are not necessary. For example, in a conveyance of land in fee simple, it is not necessary to express the conveyance as "to A. B. and his heirs" in order to pass an estate in fee simple, and where no words of limitation are used, a conveyance passes all the estate of the conveying party, unless a contrary intention appear.

Where lands are conveyed to two or more persons, other than executors or trustees, in fee simple, such persons take not as joint tenants but as tenants in common, unless a contrary intention appear.

A vendor does not give a warranty of title, but usually covenants that he himself has done no act other than such as may be specified to encumber the land.

As to Descent.—A great change was made in 1886 by *The Devolution of Estates Act*, which enacted that, notwithstanding any testamentary disposition, property shall devolve upon and become vested in legal personal representatives, and in so far as it is not disposed of by will or otherwise shall be distributed in the same manner as personal property. In 1891 the Act was altered so as to vest the title after the lapse of one year from the death of the testator or intestate in the devisees or heirs, without any conveyance from the executor or administrator, unless a caution is registered against the lands. Such caution is registered by executors or administrators to enable them to sell the lands for debts of the deceased, or otherwise deal with the same in the due course of administration.

As to Wills.—A will must be in writing, signed at the end thereof by the testator. The testator need not sign it himself. It is sufficient if it be signed by some other person in his presence and by his direction. The testator must write or acknowledge his signature in the presence of two

or more witnesses present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator. No form of attestation is necessary. A soldier in actual military service or a mariner or seaman at sea may dispose of personal estate, but not real estate, by oral declaration. A creditor or an executor is a competent witness. A devisee may be a witness, but the gift to him thereby becomes invalid. Since 1897, the marriage of the testator does not revoke a will if it is declared in the will that the same is made in contemplation of marriage, or if the wife or husband of the testator elects to take under the will.

If a devise lapses by the death of a devisee before the testator's death, the land devised falls into the residuary clause, if any, of the will. But a gift to a child of the testator does not lapse if such child leaves issue alive at the death of the testator.

Lands subject to a mortgage must be taken by the heir or devisee subject to such mortgage. The heir or devisee cannot require the mortgage to be paid out of the personal estate, unless a contrary intention appear by the will, deed or other document.

As to Limitation of Actions.—No person can make an entry or distress or bring any action to recover any land or rent but within ten years after the right first accrued.

A mortgagee may bring action within ten years after the last payment of any part of principal or interest, although more than ten years have elapsed since the right first accrued. This enables a mortgagee to recover possession from a trespasser where the mortgagor himself is barred, provided the mortgagor was not barred at the time of making the mortgage.

After ten years the right is extinguished, so that a subsequent acknowledgment does not revest the title.

Moneys charged upon lands and legacies are deemed satisfied at the end of ten years if no interest be paid or acknowledgment given in writing in the meantime.

No action of dower can be brought but within ten years after the death of the husband of the dowress, notwithstanding any disability.

Right by prescription to access and use of light to any dwelling house or other building is practically abolished. Any right, acquired by twenty years' use before 1880 is preserved by Statute.

If a person claiming a right is under any of the following disabilities,—infancy, idiocy, lunacy or unsoundness of mind,—he has five years after the disability has been removed, provided the whole period does not exceed twenty years.

Mechanics' Liens.—Any agreement by a laborer or person engaged in manual labor below a certain grade to waive his right to a lien upon land is null and void.

A lien must be registered within thirty days after work is completed or materials furnished. It may be registered before the work is begun or materials furnished. It must be enforced by action within ninety days after work done or

materials furnished. If a period of credit is given, and it is so stated in the lien, action must be begun before expiry of the period of credit. A lien need not be registered if action is begun within thirty days after work done or materials furnished.

Liens for wages for thirty days have priority over other liens derived through the same contractor or sub-contractor. With this exception there is no priority among lienholders of the same class.

A lienholder's right may be assigned by any instrument in writing.

A lienholder may demand of the owner or his agent the terms of the contract with the contractor and the amount due and unpaid thereon.

The taking of security, the acceptance of a promissory note or the giving of time for payment does not waive or prejudice a lien.

Married Women.—A married woman is capable of acquiring, holding and disposing of, by will or otherwise, property as her separate property in the same manner as if she were a *feme sole*. Since 13th April, 1897, it has not been necessary to prove that a married woman is possessed of separate property in order to get judgment against her on a contract entered into since that date, and a judgment will bind after acquired property, though not property which she is restrained from anticipating.

Overholding Tenants.—By the Overholding Tenants Act power has recently been given to County Court Judges to award possession to the lessor of land summarily without the necessity of an action of ejectment being brought, not only in cases where the tenancy has been determined by a notice to quit or otherwise, but also in case the tenant has made default in the payment of rent.

Disputes between husband and wife as to title to or possession of property may be tried summarily without the necessity of an action being brought. A married woman may be a trustee as if she were a *feme sole*.

An infant's interest in land may be sold, leased or otherwise disposed of with the approval of the High Court.

"Settled Estates" may be leased, sold or otherwise disposed of under direction of the Court. For example, if circumstances warrant it, land may be sold though the persons who may ultimately become entitled to it are not yet ascertainable. For instance, where land is left to A. for life, and after A.'s death, to such of A.'s children or grandchildren as may be living at A.'s death.

An Outline of the Law of Ontario relating to Assignments for the Benefit of Creditors.

PREPARED BY

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The law and procedure in reference to assignments for the benefit of creditors in Ontario are primarily regulated by chapter 147 of the Revised Statutes of that Province, which provides in theory a reasonably convenient and inexpensive method of winding up insolvent estates. The chief defect of the legislation from the creditors' point of view is that an assignment must be voluntarily made ; in other words, that a debtor cannot be compelled to make an assignment of his assets for their benefit, and from the debtor's point of view that no discharge is provided for, the creditors being entitled to take what the assets will realize and still look to the debtor for the balance of their claims.

Who may Assign.—Any person who is *sui juris* may make an assignment for the benefit of creditors. There is no restriction of the right to traders or persons engaged in particular callings. A firm or an incorporated company may also take this mode of distributing its assets.

Form of Assignment.—The statute provides that an assignment shall be valid and sufficient if the words used are " all my personal property which may be seized and sold under execution, and all my real estate, credits and effects," or words to the like effect. The assignment is as a rule made by deed between the assignor of the first part, the assignee of the second part, and the creditors (by that general term) as assenting parties of the third part, and, after a grant of assets in the above mentioned words, the trusts imposed upon the assignee usually are to realize the assets, and, after deducting the costs and statutory remuneration, to distribute the proceeds ratably and proportionately among the creditors. An assignment which is restricted in its terms to any particular assets or property is good as far as it goes, and any defect, mistake or imperfection may be amended by a judge. An assignment by parol, followed by possession, would probably be good, but it is of course always advisable to have a formal deed.

How an Assignment is to be executed.—Each person named in the instrument as an assigning party must execute it in the presence of a subscribing witness, and an affidavit proving the fact of execution by each person must be made by that witness. The assignee should also execute the instrument in the same way, though signature by him is not essential, and it is wise to have, for the purpose of showing their assent, the signature of as many as possible of the creditors. If an assignment is made by an incorporated company the common seal, attested by the hand of the proper officer, must be affixed, and no witness is necessary, and if by a firm each partner should execute in his own name, and one partner should in addition, on behalf of all, execute in the firm name. Before the assent, or at least the

knowledge, of a creditor, the assignment is revocable, and unless the assignment is made to the sheriff of the county in which the debtor carries on business, or to an assignee approved of by a majority of the creditors having claims of $100 or upwards, the debtor may make a second assignment which will supersede the first.

What passes by the Assignment.—An assignment in the words authorized by the Act vests in the assignee "all the real and personal estate, rights, property, credits and effects, whether vested or contingent, belonging at the time of the assignment to the assignor, except such as are by law exempt from seizure or sale under execution." The exemptions allowed by the law of Ontario are shortly (*a*) the beds, bedding and wearing apparel of the debtor and his family; (*b*) furniture and other household articles to the value of $150; (*c*) fuel and food to the value of $40; (*d*) tools and implements to the value of $100; and (*e*) animals to the value of $75. After acquired property is not affected by the assignment, nor is the inchoate right of dower of the wife of an assignor cut out by it.

Requisites of a valid Assignment.—An assignment must provide for ratable distribution; no preference of one creditor over another of the same class is permitted, though to a very limited extent creditors of certain classes, such, for instance, as wage-earners, are given a statutory priority, as will be noted below. Nor can the debtor make the giving of a discharge a condition of sharing in the assets or impose restrictions upon the creditors in dealing with the assets. Once made, the assignment is subject to the statutory provisions, and the distribution of the estate must be worked out as the statute provides.

Who may act as Assignee.—No person other than a permanent and *bona fide* resident of the Province may act as assignee, and no assignee may delegate his duties as assignee to any person who is not a permanent and *bona fide* resident of the Province. Subject to this condition as to residence, any person may act as assignee, and no security is required. There are no official assignees, but sheriffs are allowed to act, and as already incidentally mentioned an assignment to the sheriff does not require the creditors' assent to prevent its being superseded.

Change of Assignee.—A majority in number and value of the creditors who have proved claims to the amount of $100 or upwards may at their discretion substitute for the sheriff, or other assignee chosen by the debtor, a person residing in the county in which the debtor resided or carried on business at the time of the assignment. In case of death or refusal to act, or misconduct, a new assignee may be appointed on special application to the Court, the ordinary rules governing the appointment of new trustees in that event applying. If a new assignee is appointed, the assets vest in him without conveyance or transfer, but he must register, in the offices in which the original assignment has been registered, an affidavit proving his appointment.

Registration of the Assignment.—A counterpart or copy of every assignment must within five days from the execution thereof be registered in the office of the clerk of the county court of the county where the assignor, if a resident in Ontario, resides at the time of the execution thereof, or, if he is not a resident, then in the office of the clerk of the county court of the county where the personal property assigned, or the principal part thereof, is at the time of the execution of the assignment. Special provision is made for registration in each of the eight partially organized districts of the Province. If the assignor is the owner of land, or has any

interest therein, the assignment should also be registered in the registry office of the division in which the land is situated. Registration in the registry office is not compulsory, but unless the precaution is observed the debtor might, notwithstanding the assignment, confer a good title on a purchaser for value without notice. The omission to register, or any irregularty in registration, does not invalidate the assignment. In the event of non-registration or delay in registration, the assignor and assignee are liable to penalties, to be recovered summarily, one half going to the person applying and the other half to the estate of the assignor.

Notice of the Assignment.—Subject to the same liability to penalties notice of the assignment must, as soon as conveniently may be, be published at least once in the *Ontario Gazette*, and not less than twice in one newspaper at the least having a general circulation in the county in which the property assigned is situate. With the notice required by the statute it is usual to join a notice in the form commonly used by executors and administrators calling upon creditors to send in their claims by a certain named date. If such a notice is published for a reasonable time—usually once a week for four or five weeks—in a newspaper or newspapers circulating in the place or places where creditors are probably to be found, the assignee is protected from personal liability to creditors whose claims are not sent in, and of which he has no knowledge In addition to this public means of bringing to the notice of creditors the fact that an assignment has been made, the assignee must at once ascertain as far as he can from the debtor and his employees and books who the creditors are, and send to each within five days from the date of the assignment a registered letter giving notice of the assignment and calling the first meeting.

Meetings of Creditors.—Within five days from the date of the assignment the assignee must call a meeting of the creditors for the appointment of inspectors and the giving of directions with reference to the disposal of the estate, to be held at some convenient place within twelve days from the date of mailing the notice. Notice of the meeting must also be given in the *Ontario Gazette*. At this meeting all the creditors, or persons claiming to be creditors, are entitled to be present, and those who have claims of $100 or upwards, or their representatives authorized in writing, are entitled to vote but no creditor whose vote is disputed is entitled to vote until he has filed with the assignee an affidavit in proof of his claim, stating the amount and nature thereof. No procedure is laid down for the conduct of business at meetings. As a rule, the creditors appoint one of their number chairman and the assignee secretary. The assignee's statement is submitted and discussed, and resolutions passed directing him how to deal with the estate and inspectors are then generally appointed to supervise the winding up with power to settle all matters of detail. A second meeting is seldom necessary, but if it is, the assignee may voluntarily call one, by notice and advertisement as before, or may be compelled to do so on requisition of a majority (according to the statutory scale) of the creditors who have proved claims of $100 or upwards. If the meeting is insufficiently attended, or if directions are not given as to the disposal of the assets, the assignee may, if he see fit, apply to the court for advice. Apart from any special directions, his plain duty is to at once take possession of and insure the assets, and then to realize them as quickly and advantageously as possible.

Votes of Creditors.—All questions, except that of the change of an assignee, are decided by a majority of votes, as follows : For every claim of $100 and not exceeding $200, one vote ; $200 and not exceeding $500, two votes ; $500 and not exceeding $1,000, three votes ; and for each additional

$1,000 or fraction thereof, one vote. To change an assignee, there must be not only a majority in (statutory) value, but also a majority in number of the creditors who have proved claims. The assignee in the event of a tie has a casting vote.

Preferred Claims.—Rent, wages, taxes and certain costs are to a limited extent allowed priority. In the absence of special agreement, the landlord, if at the time of the assignment there are distrainable effects upon the demised premises, is entitled to the arrears of rent falling due during the year preceding the assignment—not necessarily a year's rent. An acceleration clause providing for rent in advance upon the making of an, assignment for the benefit of creditors is a usual feature in leases in Ontario; such a provision is not wholly invalid as a fraud upon creditors, but it would seem that the landlord cannot by this device get more than three months' rent in advance; it is also usual to insert in leases in Ontario a condition that, upon an assignment for creditors, or any assignment without leave, being made, the lessor may avoid the lease. An assignee for the benefit of creditors has by the Act, notwithstanding any condition of this kind, the right to elect within one month from the execution of the assignment to retain the premises occupied by the assignor at the time of the assignment, for the unexpired term or such portion thereof as he may see fit. Apart from election, the assignee may be recognized by the lessor as assignee of the lease, and made liable as such assignee for rent. This liability can, in the absence of provision to the contrary in the lease, be put an end to by further assigning the lease, but as a rule, the purchaser of the assets makes a new arrangement with the lessor.

The assignee must pay in priority to the claims of ordinary creditors the wages or salary of all persons in the employ of the assignor at the time of the making of the assignment, or within one month before the making thereof, not exceeding three months' wages or salary, and such persons rank as ordinary creditors for the balance of their claims. The priority obtains "whether the employment be by the day, by the week, by the job or piece, or otherwise, and payment is to be made, if the estate is sufficient, within one month from the time the assignee gets possession of the assets."

Goods in the assignee's possession are liable to distress for taxes due by the assignor, and taxes due in respect of premises in which the goods were at the time of the assignment, and thereafter while the assignee occupies the premises or the goods remain thereon.

If at the time of an assignment for the benefit of creditors an execution against the assignor is in the sheriff's hands, the execution creditor, or the first execution creditor if more than one, has a lien for all the costs for which execution has been issued. This is, however, a lien, and not strictly speaking a preferred claim, and may be lost by abandonment of the execution. If, under an execution issued out of a division court, a bailiff is in possession of the defendant's goods at the time of his assignment, he has a lien for his fees.

With these preferred claims must not be confounded the costs and expenses of winding up the estate, which are a first charge on the assets. These are very often inaccurately spoken of, and even referred to in assignees' statements as preferred claims.

Ordinary Claims.—The Act and the assignment founded upon it are for the benefit of creditors, and only creditors strictly so called, having claims due or accruing due at the time of the assignment, are entitled to rank. Claims for unliquidated damages are not admissible, even though a right of action has accrued before the assignment and is prosecuted to judgment thereafter before the assets are distributed. If the possible damages to

accrue in the event of a certain contingency are liquidated and the contingency happens before the assignment, proof could probably be made. Foreign creditors rank equally with those residing in the Province, and there is no priority for debts due to the Crown or to *cestuis que trust.*

Secured Claims.—If a creditor holds any portion of the assets of the assignor as collateral security for his claim, or holds security from some person for whom the assignor is only secondarily liable, the creditor must in his proof of claim put a value upon the security, and then ranks for and votes upon the balance of the claim. Within a reasonable time the assignee may elect to take over the security, and in that event must pay to the secured creditor, when the security is realized, the specified value together with a bonus of ten per cent. If an election is not made by the assignee within a reasonable time, the creditor retains the security absolutely at the specified value, and may make what he can out of it. Summary proceedings may be taken to compel a creditor to place a value on his security. If the security is of such a nature that its value cannot at the time be reasonably ascertained, the creditor may reserve his right to value and afterwards amend his proof, but, after definitely valuing the security without reservation, the creditor would have great difficulty in obtaining leave to amend.

If a creditor has a claim based upon negotiable instruments upon which the debtor is only indirectly or secondarily liable, and not matured, he is considered to hold security, and is bound to value the liability of the person primarily liable, and after maturity he is entitled to amend. If the creditor, however, holds security from any third person, such for instance as a letter of guaranty, he is not bound to value, but is entitled to rank for the full amount of his claim, and to receive from both sources not more than one hundred cents on the dollar.

Proof of Claims.—Claims must be proved by affidavit, to be made by the creditor or his duly authorized agent, and such vouchers as are possible must be produced. The affidavit, if made in Ontario, may be sworn to before any person authorized to administer oaths, and, if made out of Ontario, must be sworn to before a notary public, who must authenticate his signature by affixing his official seal. An affidavit in the following form is sufficient :—

In the matter of an Act respecting Assignments and Preferences by Insolvent Persons. R. S. O., 1897, c. 147.

And in the matter of A. B. of the Town of X., in the Province of Ontario, Debtor, and C. D. of the Town of Y., in the Province of Z., Claimant.

I., E. F., of the Town of Y., in the Province of Z., bookkeeper, make oath and say :—

1. I am the bookkeeper and duly authorized agent of the above-named claimant, C. D.

2. The above-named debtor, A. B., is justly and truly indebted to the above-named claimant, C. D., in the sum of two hundred and seventy-nine 22-100 dollars, and the particulars of the indebtedness are set out in the statement hereto annexed.

3. The claimant holds no security whatsoever for the said claim or any part thereof.

[If security is held, the affidavit must state what it is, and give its value.]

Sworn before me at the Town of Y.
in the Province of Z., the 2nd day
of January, A. D. 1899. } E. F.

(Notarial Seal.) G. H.
A Notary Public in and for the Province of Z.

If the assignee knows of a claim, he cannot ignore it because it has not been proved, but he can by summary application compel proof or have the claim barred.

Dividing Claims.—No person is entitled to vote upon a claim acquired after the assignment unless the entire claim is acquired, but this does not apply to persons acquiring notes, bills or other securities upon which they are liable. Claims cannot be divided before the assignment for the purpose of obtaining voting power, but division in good faith is permissible.

Contestation of Claims.—At any time after the assignee receives from any person claiming to be entitled to rank on the estate proof of his claim, notice of contestation of the claim may be served by him upon the claimant, and unless the claimant brings an action to establish the claim within thirty days thereafter, or within such further time as may be allowed by the Court upon special application made before the thirty days expire, the claim is, as against the estate, barred, though as far as the debtor is concerned its validity is not affected. Claims which before the assignment have passed into judgment may be disputed on the ground of fraud, while to ordinary claims any defence that would be open to a resisting defendant may be raised, and the assignee, as trustee, is not entitled to waive even technical defences, though he may in good faith make a compromise.

A claimant cannot improve his position as against the assignee by taking, after the assignment, proceedings against the assignor; the assignee is not bound unless he is a party. If the assignee is satisfied as to a claim and the assignor is not satisfied, the latter may, upon certain conditions, dispute the claim.

Setting aside Transactions.—Not only may the assignee contest claims made against the estate, but he may also sue for the rescission of transactions entered into before the assignment in fraud of creditors or in violation of the Act, and he has in the first place the exclusive right of action. If, however, any creditor thinks any transaction should be attacked and the assignee declines to take action, the creditor may, by leave of the Court, take proceedings in the assignee's name upon indemnifying him against costs, and any benefit derived from the proceedings shall in that case, to the extent of his claim and full costs, belong exclusively to the creditor suing. Any number of creditors may join in the attack, and the attacked defendant may himself join as one of the attacking body, so that in the event of judgment going against him he may lessen the bitterness of defeat by sharing to some extent in the fruits of victory.

Fraudulent and Preferential Transactions.—As to the general rules in reference to fraudulent and voluntary conveyances, it is unnecessary to speak, but some special provisions of the Ontario Assignments' Act may be alluded to. From time to time the Legislature has made unsuccessful efforts to secure ratable distribution of an insolvent debtor's assets. The common law doctrine of first come first served has been done away with, and there is no longer anything to be gained by scrambling for judgments, but except in this respect very little advance has been made. Every gift, conveyance, transfer, etc., of any property made by a person when he is in insolvent circumstances or on the eve of insolvency, with intent to defeat, hinder, delay, or prejudice his creditors or any of them, or with intent to give any creditor an unjust preference over his other creditors, is declared to be void. But the enactment has been emasculated by judicial decision, and any *bona fide* pressure—danger of criminal proceedings, or of special loss, demand for payment—has been held sufficient to rebut any inference of intent, so that only the plainest cases of unfair preference could be successfully impeached. By an amending

clause of the Act, however, preferential transactions entered into within sixty days of the time of the making of an assignment for the benefit of creditors, or attacked within sixty days, are to be presumed *prima facie* to have been made with the prohibited intent, whether made voluntarily or under pressure. What this means has not yet been satisfactorily settled, but, as the decisions stand, it would seem that, given a case of preference by an insolvent and an assignment or an attack within sixty days, the creditor desiring to uphold the transaction has thrown upon him the almost hopeless burden of showing his absolute ignorance of the assignor's precarious position. To be valid, a chattel mortgage or agreement for a chattel mortgage must be registered within five days, and registration is at once followed by publication in the mercantile change sheets, with consequent attack if the transaction is at all suspicious. Preferential security of this kind is therefore of little use. Book debts, due or to accrue due, may be assigned, and real estate may be conveyed, without registration, and security, if taken at all, is as a rule taken in this way.

Money may be paid at any time by a debtor to his creditor, and the debtor may at any time mortgage or sell his assets to a lender or purchaser in good faith and pay the money to a favoured creditor. He cannot, however, in form mortgage or sell to a third person, but really to the creditor himself.

Special protection is given by the Act to *bona fide* sales, advances, etc.

Examination of insolvent and his employees.—Summary procedure for the examination on oath of the insolvent and his employees is provided, and in this way the advisability of attacking suspicious transactions can very often be conveniently determined.

Accounts.—Upon the expiration of one month from the first meeting of creditors, and from time to time thereafter, the assignee is to prepare and keep constantly accessible to the creditors accounts and statements of his doings as assignee and of the position of the estate. If a creditor lives at a distance, the assignee must give him all reasonable information by letter whenever required, and must also, at the creditor's expense, furnish him with copies of any accounts that may be asked for.

Deposit of Moneys and preservation of Assets.—The assignee must not remove from the Province any portion of the assets without the order of the Court, and he must deposit in an incorporated bank in the Province all moneys received, and these are not to be withdrawn without the order of the Court except in payment of dividends and other charges incidental to the winding up of the estate.

Inspectors.—The duties and position of inspectors are not fully defined by the Act. The appointment of inspectors is not directed, but if appointed they have by the Act certain powers, such as for instance fixing the assignee's remuneration, directing the payment of dividends, ordering the examination of the assignor, etc., but as a rule the creditors by resolution, as they may, leave all matters in their hands. Generally three or four inspectors are appointed, and they are not entitled to remuneration unless it is specially voted to them by the creditors.

Assignee's Commission and Charges.—No scale of commission is fixed by the Act, though it must not exceed five per cent. of the cash receipts. The creditors, or failing them the inspectors, have the right to fix the amount, and if not fixed the assignee may retain the statutory maximum. In the event of dispute, a summary application to the Court may be made to settle the amount.

Unfortunately, this summary jurisdiction does not extend to disputes as to expenses or disbursements, and when these arise the delay and costs of an administration action have to be faced. The costs of a solicitor employed by the assignee may, however, be taxed by any creditor.

Dividends.—Having realized the assets and settled the disputes, the assignee takes the last and most important step of paying the dividend. As large a dividend as can with safety be paid must be paid within twelve months from the date of the assignment, or earlier if required by the inspectors ; and thereafter, a further dividend must be paid every six months, and more frequently if required by the inspectors, until the estate is wound up and disposed of.

A copy of the dividend sheet, with an abstract of receipts and disbursements, must be posted to each creditor, and after the expiry of eight days, if no objection be made, the dividend must be paid.

If objections be made, they may be summarily disposed of by the Court, and pending their disposition partial distribution may, if practicable, be authorized.

If the dividend is not paid to a creditor who has duly proved a claim not objected to, an action will lie for its recovery, and the assignee is personally liable for interest and costs.

Partnership and Separate Creditors.—If the assignor owes debts both individually and as a member of a co-partnership, the claims rank first upon the estate by which the debts were respectively contracted, and upon the other only after all the creditors of such other estate have been paid in full.

But this rule does not apply unless there are actually being administered partnership and separate assets, and, therefore, creditors having claims against an assignor as a partner in a dissolved firm are entitled to rank *pari passu* with his subsequent individual creditors.

Composition and Discharge.—While no provision is made in the Act for the discharge of the assignor, the creditors very often give a discharge or accept a composition. As to this, it is only necessary to say that no creditor can be compelled to do either, and that all creditors who do agree to join in either step must act with the utmost good faith, not receiving any secret advantage by way of payment or security.

Synopsis of Quebec Civil Law.

PREPARED BY

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CANADA LIFE BUILDING, MONTREAL.

Absentee.—One who, having had a domicile in Lower Canada, has disappeared, without anyone having received intelligence of his existence.

Curator appointed if (*a*) necessary for administration of property, and (*b*) no attorney, or attorney unknown or refusing to act—at instance of interested party, on advice of family council homologated by court, judge, or prothonotary ; makes oath to discharge duties faithfully and to account - causes notarial inventory and valuation of the property to be made ; liable as tutor (guardian) ; is only administrator ; cannot alienate, pledge or hypothecate absentee's property ; ceases to act if absentee returns, sends power of attorney, or if heirs take provisional possession.

Provisional possession of property given to presumptive heirs of absentee, or consort if no heirs at date of departure or latest intelligence, by court or judge, on giving security, after 5 years, or before, if strong presumption of death ; will cease if absentee reappears or his existence is proved. Possessors administer estate, and are sued for absentee's debts ; bound to account to absentee, his heirs or legal representatives, to make notarial inventory of moveables and title deeds, and to cause immoveables to be visited by skilled persons, who report to court or judge on their condition, and are paid out of estate. Moveables may be sold on order of court or judge ; price of sale, rents, issues and profits accrued to be invested. His immoveables are only hypothecated by judgment, or for the causes and subject to formalities established by law.

Absolute possession after 30 years since disappearance or latest intelligence, or 100 since birth (death presumed from such dates, unless proof to the contrary) ; sureties discharged ; partition of property may be demanded. If date of death known, heirs at that date claim property. If absentee reappears or his existence is proved after time stated, he recovers his property as it is, with price of things sold or investments. Same right given to children and direct descendants, within 30 years from absolute possession.

Effects of absence : no right accruing to absentee recognized if no proof of his existence made. Successions devolve to co-heirs exclusively or successors of absentee, who take all profits received in good faith before his return or action on his behalf ; actions belong to him, his heirs and legal representatives, until outlawed. Consort cannot marry again until positive proof of death ; after 5 years community provisionally dissolved, from day of demand by presumptive heirs, or of action by consort ; liquidation or partition of community property obtainable by them ; covenants and rights dependent on its dissolution become effective and absolute.

Absentee's wife may obtain all matrimonial advantages resulting from law or marriage contract on giving security to account for or restore property on his return ; needs judicial authorization to appear in judicial proceedings, contract, obligate herself or bind community property, even to establish the children ; has care of children, and exercises all rights of husband as to their person and property until tutor appointed. Such appointment is made after disappearance, if wife dead or unable to administer.

Abuse of enjoyment.—By usufructuary: consists in his committing waste on property or allowing depreciation by want of care, may cause usufruct to cease. His creditors may intervene in contestations, to preserve their rights, and may offer to repair injury and give security for future. (See Usufruct.)

By dowager : may cause forfeiture of dower.

By emphyteutic lessee. (See Emphyteusis.)

Acceptance.—(See Community, Gifts, Successions, Legacies, Transfer.)

Accession.—(See Ownership, Successions, Legacies, Gifts.)

Accessories.—In legacies include necessary dependencies ; are included in sale of thing ; sale of debt comprises securities, privileges and hypothecs.

Accidents.—(See Responsibility, Prescription.)

Account.—(See Community, Successions, Tutors, and Laws of Procedure.

Accretion.—(See Ownership.)

Acknowledgment.—By debtor, interrupts prescription even as regards surety ; no effect in commercial matters in which sum or value exceeds $50, unless writing signed by debtor.

Of illegitimate child by father or mother, gives child right of maintenance.

Acquisition.—Of rights of property. (See Ownership.)

Actions.—(See Maintenance, Prescription, Sale, Hypothec, Minors, Partition, Emphyteusis, Gifts, Separation from bed and board, Separation of property, Wages, Partnership and Laws of Procedure.)

Acts.—To be done by more than two, may validly be done by majority.

Of civil status :—Entries made in registers kept according to law, to establish births, marriages and burials ; must only contain what parties bound to declare ; read by public officers to parties or special attorneys (if not forbidden), and witnesses ; inscribed in two registers of same tenor kept for each church, mission, congregation, etc. (See Registers.)

Of birth :—Set forth day of child's birth, baptism if performed, child's sex, and the names given to it ; names, surnames, occupation and domicile of father, mother, and sponsors, if any, or mention that father or mother or both unknown ; signed in both registers by officer, father and mother if present, sponsors if any, or declaration that cannot sign entered. If no baptism or registration, father or mother cause birth to be registered within 4 months at office of secretary-treasurer or clerk of municipality or city at domicile or with nearest justice of peace, latter to report to former within first two weeks of January of each year ; statement of such births to be transmitted to Provincial Secretary during January by such secretary or clerk.

Of marriage :—Before it can be solemnized, officer must be furnished with certificate of publication of bans signed by publishing officer, containing names, surnames, qualities or occupation and domicile of parties to be married, and whether they are of age or minors ; names, surnames and domicile of parents, or name of former consort or license dispensing with certificate for Protestants, licenses issued by Provincial Secretary under hand and seal of Lieutenant-Governor ; then no liability of officer for impediment, unless aware of it ; publications one year old must be renewed. Disallowance of opposition to marriage which is not founded on a promise to marry, must be obtained before solemnization.

Marriage is solemnized at place of domicile of either party (acquired by 6 months' residence), otherwise parties must be identified.

Act signed by solemnizing officer, parties, two witnesses present (declaration of incapacity to sign) ; sets forth day of marriage, essentials of certificate (*Cf. Sup.*), publication of bans, or license, consent of father, mother, tutor, curator, or advice of family council, names of witnesses and their relation to parties, opposition or disallowance thereof. If officer unauthorized to keep registers, sends copy of act with solemn declaration, within 30 days, to prothonotary of district.

Of burial :—No burial within 24 hours after decease, under penalty of $20 for those taking part therein, except if police regulation to the contrary. Roman Catholic ecclesiastical authorities designate place of burial of Catholics, and can order civil burial in special ground.

Act mentions day of burial, of death if known, names, surnames and quality or occupation of deceased ; signed by person performing service and two of nearest relations or friends present. Previous inspection and authorization of coroner if death possibly caused by violence or happened in prison, asylum (save lunatic) or place of confinement. Disinterment allowed except if Provincial Board of Health defends; only after 5 years if death due to contagious disease.

Of religious profession.—If solemn and perpetual vows made ; set

forth names, surnames and age of person making it and father and mother; signed by party, bishop or performing ecclesiastic, two nearest relatives or friends.

Entirely omitted in registers; omission supplied by judgment rendered after interested parties notified, and registered. (See Registers.)

Administration.—(See Community, Guardian, Tutor, Curator, Wills.)
Voluntary: (*Negotiorum gestio*). (See Administrators.)

Administrators.—Cannot buy property in their charge; of estates of deceased persons, nominated by will only. (See Testamentary Executor; Trust.)

Admissions.—Cannot be divided against party making them except, according to circumstances, and subject to discretion of Court, if (*a*) contain facts foreign to issue, or in contradiction with each other, or (*b*) part objected to improbable, invalidated by indications of fraud or bad faith, or by contrary evidence. Extra judicial, must be proved by writing or oath of party against whom set up, except in cases where testimony admissible (see Proof); judicial, complete proof against party making it; cannot be revoked unless proved to be made through error of fact.

Adultery.—By wife, ground of separation; by husband, only if he keep his concubine in the common habitation.

Advocates.—Subject to rules of mandate, in so far as applicable, and to their special laws:—R. S. Q., Arts. 3504 *et seq.*, amended 52 Vict., ch. 37 and 38, and 54 Vict., ch. 32, sect. 1 and 2.—Their oath makes proof as to requisition, nature and duration of services, but may be contradicted like any other evidence. Services and disbursements prescribed by 5 years from each final judgment; recovery of papers and titles confided to them prescribed by 5 years from termination of proceedings in which used.

Affinity.—Cause of incompetency of notary to will (if in the direct line, or brother, uncle or nephew), but not to witness to will nor in suit, although credibility may be affected. (See Marriage.)

Affirmation (Solemn.)—Replaces oath for Quakers.

Age.—Of majority giving capacity to perform all civil acts, 21 full years for either sex; at which marriage may be contracted, 14 full years for men and 12 for women. (See Marriage, Minors.) Creates presumptions of survivorship when several persons, called to each other's succession, perish by same accident. (See Successions.)

Alienation.—Contract for, makes purchaser owner of thing by consent alone, although no delivery made; for rent, payable in money or in kind; of immoveable, equivalent to sale; obligation to pay personal, not extinguished by abandonment or destruction of property. (See Prohibition to alienate.)

Aliens.—When here, even non-domiciled, governed by laws of Lower Canada relative to persons, but subject to the laws of their country as to their status and capacity; may acquire and transmit by gratuitous or onerous title, succession or will; may be witnesses to wills; even non-residents may be sued in L. C. for fulfilment of obligations contracted even in foreign countries; may be compelled, when suing here, to give security and power of attorney, if non resident. (See Synopsis of Procedure.) Cannot be advocates, notaries or jurors. Acquire by naturalization all rights and privileges of British born subjects. (See British subject, Naturalization.)

Alimentary Allowance.—(See Maintenance.)

Alimentary Provision—Not liable to seizure; cannot be compensated.

Alluvions.—Deposits of earth and augmentations gradually and impeceptibly formed on land contiguous to stream or river; become property of owner of adjacent land, subject to obligation of leaving a foot-road or tow-path, if water navigable; do not take place on border of private lakes and ponds; if considerable and distinguishable land carried away by water, may be reclaimed within one year by proprietor; enjoyed by usufructuary.

Alterations.—(See Registers, Leases.)

Animals.—Causing damages: owner responsible, whether under his or his servants' care, or strayed, or escaped from it. *Id.* the user while in his service · found straying at large, on public highways or elsewhere, in unnavigable rivers, even on property of others, and otherwise without a known owner, subject to special laws as to public notices to be given owner's right to claim them, indemnification of finder, sale and appro priation of price; in absence of such provisions, owner who has not volun tarily abandoned them may claim them, subject to payment, when due, of an indemnity to person who found and preserved them, and to whom they belong by right of occupancy, if not claimed.

Appeal.—(See Tutorship, Emancipation, Interdiction, Oppositions to Marriage and Synopsis of Procedure.)

Apprentices.—Artisans responsible for acts of, while under their care; wages prescribed by 1 year. (See Prescription.) 3 months' arrears before seizure or death of employer privileged upon merchandise and effects contained in the store, shop or workshop in which their services were required.

Apprenticeship.—Expenses of, not subject to be returned by heir.

Appropriation.—Of property for public purposes (see Expropriation) Ownership); of payments (see Imputation).

Architects.—Discharged after 10 years from warranty of work done or directed; if superintending work, responsible jointly and severally with builder within 10 years for total and partial loss of building; consort, ascendant and descendant, relations of person injured by defective building, and dying without indemnity or satisfaction, have right to claim damages within 1 year after death.

Arrears of Rent and Interest.—Prescribed by 5 years, even if capital imprescriptible; also prescribed with capital; of 5 years, and o current year preserved by registration of deed constituting life rent; interest of two years and the current year preserved by registration of other claim; hypothec for remainder from date of registration of claim or memorial of amount due and claimed; due at time of first registration preserved thereby. Due to Crown, prescribed by 30 years.

Artisans.—(See Apprentices, Workmen.)

Ascendants.—(See Maintenance, Successions.)

Assessments—For erection and repair of churches parsonages and church-yards, payable by usufructuary; privileged upon immoveables specially assessed.

Assignee—Of right of succession may be excluded from partition by co-heir reimbursing price of assignment; of litigious right, discharged by payment of price and incidental expenses of sale, with interest from its date.

Assignment.—(See Sale, Litigious rights, Leases.)

Attainder.—(See Civil death.)

Attachment.—(See Sale, Lease and Synopsis of Procedure.)

Attorney.—(See Advocates; power f: see Mandate, and Synopsis of Procedure.)

Auction Sale.—Voluntary, must be made by licensed auctioneer, except sale (1) of goods belonging to Crown, or seized by public officer under process of court or as being forfeited; (2) of goods of minors, by licitation; (3) for religious or charitable purposes; (4) of goods and effects of deceased persons, or belonging to any dissolution of community of property, or to any church; (5) by inhabitants of rural districts, not for trading purposes, of their furniture, grain, cattle and other property, not being merchandise and stock in trade, when changing their residence or finally disposing of the same; (6) of farm animals exhibited by agricultural societies at exhibitions; (7) for municipal taxes under act respecting municipalities (but see 53 Vict. (Q.), c. 16); contrary to those provisions, not null, but subjects contravening parties to penalties; completed by adjudication of a thing to any person on his bid or offer, and entry of his name in auctioneer's sale-book, subject to conditions of sale announced; recommenced after customary and reasonable notice if purchaser does not pay price of thing adjudged, in conformity with conditions; purchaser pays difference in price and expenses of resale, but not entitled to bid, and surplus, if any, goes to seller. Forced (see Expropriation, and Synopsis of Procedure).

Avoidance.—Of contracts and payments made in fraud of creditors refused unless (1) debtor intends to defraud and injures creditors, (2) party making onerous contract with debtor is in bad faith, (3) subsequent creditor demanding it is subrogated in rights of anterior creditor, (4) suit brought within one year from knowledge of fraud, or appointment of assignees or representatives of creditors collectively.

Presumption of fraud in gratuitous contracts if debtor insolvent, in onerous contracts if contracting party aware of insolvency.

Bad Faith.—Must always be proved by party alleging it. (See Improvements.)

Bailiffs.—Subject to the by-laws of their order, approved by the Council of the Bar of their district. Cannot buy litigious rights falling within jurisdiction of Court in which their functions exercised.

Bankruptcy.—Condition of a trader who has discontinued his payments. Effects: (See Avoidance of contracts.) Registration of title conferring real rights in or upon immoveable property of person within 30 days previous to bankruptcy, is without effect; same if delay given for such registration is not expired. (See Registration; Quebec Insolvency law.)

Bank Stock.—Is a moveable.

Bans.—(See Acts of Civil Status; Marriage.)

Bastard.—(See Illegitimate.)

Baths (floating) are moveables.

Beaches.—Rules of acquisition of objects obstructing them same as for animals found straying (*Cf. supra*); the grass upon them belongs to him who cuts it unless Crown has disposed of it; at certain places of the river St. Lawrence, it is granted by special laws or particular titles to riparian proprietor.

Beams.—Their restoration considered greater repairs (see Usufruct); within common walls may be of 4 inches, but must be reduced to half thickness of wall if co-proprietor so desires.

Bees.—Free, property of discoverer; having left hive may be reclaimed anywhere by proprietor proving title, or his substitute, provided proprietor of land where found, notified and compensated for damages; settling in swarm already occupied, become property of owner of swarm; unfollowed, property of owner of land on which swarm settles; unpursued, not settling, may be secured by first comer, unless owner of land objects.

Bets.—Give rise to no action; paid by loser; cannot be recovered unless fraud proved; exception for exercises promoting skill in use of arms, horse and foot races, and lawful games requiring activity and address; court then reduces sum if excessive.

Boarding House-keepers.—Charges prescribed by one year; responsible for things brought by travellers lodging in their houses, if stolen or damaged by their servants or agents, or by strangers coming and going in the house, but only to the extent of $200, provided those provisions are printed in plain type and kept conspicuously posted in the office or public rooms, and in every bed-room. Responsible for full value: 1, of horse or other live animal, or gear appertaining thereto, or carriage; 2, if goods stolen, lost or injured through their wilful act, default or neglect, or of any servant in their employ; 3, if goods expressly deposited for safe custody with them; but they may require these to be deposited in receptacle fastened and sealed by depositor. Not responsible for theft by force of arms, damage caused by irresistible force or by stranger through guest's carelessness. Have lien on baggage and property of guests for value or price of food or accommodation furnished; may also, if amount unpaid for 3 months, sell it by public auction on giving one week's notice of intended sale in newspaper of the municipality, or, if none, nearest to it, stating name of guest and auctioneer, amount due, description of property to be sold, time and place of sale; surplus on sale and expenses, payable to person entitled thereto on application.

Boarding School.—Charges prescribed by 2 years.

Boats.—Are moveables.

Boilers.—Are moveables. Placed by proprietor on his real property for permanency, or incorporated therewith by him, are immoveable so long as they remain there.

Borrower.—Is bound to bestow the care of a prudent administrator in the safe-keeping and preservation of the thing loaned; liable for loss even by fortuitous event if he applies it to use not intended by its nature or agreement, or if he keeps it after time agreed upon; or if he might have saved it by using his own, or if unable to save both things, he saves his own; not responsible for deterioration by use alone for which thing was lent, without fault; cannot retain it for debt due him by lender, unless due for necessary expenses of preservation of thing; not entitled to recover from lender expense made in order to use thing lent; liable jointly and severally with co-borrowers toward lender.

Boundaries.—Must be settled if neighbour requires (costs common); may be determined either by mutual consent between neighbours, and by their mere act, or by intervention of judicial authority, the costs of suit being in the discretion of the court; fences may also be required at common cost.

Branches—Overhanging must be cut.

British Subjects.—Those born in any part of British Empire, even of an alien; those born in a foreign country, if father or grandfather by father's side British subject, saving exceptions resulting from special laws of the empire; alien women having married British subjects are, as regards enjoyment of civil rights in Lower Canada, on same footing as those born therein, saving special rules relating to domicile (See Naturalization.)

Brothers.—Cannot marry sisters, whether legitimate or natural. (See Successions.)

Brother-in-law.—Cannot marry sister-in-law, but may marry deceased wife's sister.

Builder.—(See Workmen, Architects, Privileges, Registration.)

Buildings.—May be erected by proprietor of soil at will, provided he observes laws regarding distances and views, and, if made underground, laws of police and relating to mines; presumed to be made by proprietor of soil at his own cost, without prejudice to rights acquired by prescription; constructed by proprietor of soil with another's materials: he must pay value of materials and damages, if any, but is not bound to give back materials (See Good faith and Bad faith).

Burials.—(See Acts of Civil Status, *Burial* and art. 3458 *et seq.* R. S. Q.)

Buyer.—Obliged to pay price of thing sold, at time and place of delivery if no agreement; interest, 1st, if agreement; 2d, if thing sold susceptible of producing revenues, from time of entering into possession or from expiration of term, if any appointed; 3d, from putting in default, if thing unproductive; if disturbed in possession or have just cause to fear action hypothecary or in revendication, may delay payment until seller causes disturbance to cease or gives security, unless stipulation to the contrary; if sale dissolved by non-payment, may retain thing until reimbursed for price paid, costs of necessary repairs and of improvements having increased value of thing, to the amount of increased value; may be compelled to remove such improvements if removeable; obliged to restore thing with fruits and profits received, or such portion thereof as corresponds with part of price remaining unpaid; answerable for deteriorations caused by his fault; of moveable, preferred, if in possession, to other buyer from same seller, even if his title posterior, provided he be in good faith; obliged to take things away at time and place at which deliverable; if price not paid, dissolution of sale takes place without suit at expiration of delay to take things away or after putting in default, if no agreement as to such delay; without prejudice to seller's claim for damages.

Cadastral Plans.—Correct copy furnished to each registry office by commissioner of Crown Lands; must show distinctly all lots of land within registration division and be accompanied by copy of a book of reference, setting forth general description of each lot of land on plan, name of its owner and explanatory remarks, come into force on day fixed by proclamation of Lieutenant-Governor in Council; cannot be corrected by registrar, who must report to Commissioner of Crown Lands, whose corrections must not change number of lots.

Canada Gazette—Makes proof of official announcements contained therein.

Cancellation.—Of contracts for contracts for works at fixed price; may be made by owner, although work begun, on indemnifying workman for actual expenses and labor, and paying damages according to circumstances.

Of registration of real rights: by consent of parties (authentic or under private signature, before two witnesses and accompanied by affidavit), acquittance of a debt (notary and creditor bound to cause registration of acquittance; costs payable by party requiring it), or by final judgment, served upon defendant, obtained by debtor or subsequent hypothecary creditor with damages, when sequestration or renewal bond upon void or informal title, or right annulled.

Capacity.—To contract (see Obligations); is the rule; exceptions: 1° Minors (*Cf. inf.*), except if trader (see Synopsis of Commercial Law); 2°, interdicts (see Interdiction), incapacity set up by them alone; 2*a* persons under judicial adviser-under certain conditions; 3°, wives, except for acts of administration if separate as to property; 4°, persons civilly dead (see Civil Death); 5°, persons affected with serious mental troubles; 6°, persons forbidden by law by reason of their relation to each other or of the object of the contract. (See Gifts, Wills, Marriage.)

Carriers.—(See Synopsis of Commercial Law.)

Cattle.—Object of usufruct: if perish entirely by accident or disease without fault of usufructuary, latter only obliged to account to proprietor for skins; otherwise usufructuary obliged to replace dead animals, up to number of increase. Lease of, on shares: contract whereby party delivers to the other a stock of any kind of animals susceptible of increase, or profit in agriculture or commerce, upon certain conditions regulated by convention or usage of place where animals kept.

Cause—(Of Contracts). Immediate object of obligation; necessary in contracts; must be licit and valid; is one with object in bilateral contracts; contract not invalid because expressed incorrectly.

Charges—(See Usufruct. Emphyteusis, Dower.)

Child.—Born of unknown parents, registered as such. (See Acts of Civil Status, Birth, and Registers.) Legitimate if born on or after 180th day after marriage solemnized, or within 300 days after its dissolution; illegitimate if born after latter period. May be disowned by husband if born before 180th day after marriage solemnized, except (*a*) if he knew of the pregnancy before the marriage; (*b*) if present at act of birth and signed it, or declared he cannot sign; (*c*) if child declared not viable; (*d*) if allows 2 months to lapse after birth if present, after return if absent, or after discovery of fraud if birth concealed; (same time allowed to heirs of husband dying within delays for so doing, running from child taking possession of husband's property or disturbing heirs in possession thereof); disavowal must be made by action against tutor or tutor *ad hoc* if child minor, mother being made a party thereto; disavowal impossible, even for adultery, if child born during marriage, unless birth concealed; for impotency, unless not existing at time of marriage; except if husband prevented by distance, or physical impossibility, from meeting wife.

Children.—Minor, whose father has disappeared, are under care of mother who has all his powers, and administers property until tutor appointed; if mother dead or incapable, provisional or permanent tutor appointed; maintained by father and mother, even after separation; during action in separation from bed and board, are under father's provisional care, unless judge orders otherwise; entrusted to party having obtained separation, unless otherwise ordered; not deprived by separation of any advantages given by law or marriage covenants, the opening of these rights, however, not being advanced thereby; subject until majority or emancipation, to parental authority, exercised by father alone during marriage, and cannot leave

father's house without his permission; may be corrected by father or mother and those delegated by them; born out of marriage, are legitimated by the subsequent marriage of their father and mother (except the issue of incestuous or adulterous connection); *idem* for their issue; have then same rights as if legitimate; have right to demand maintenance from parents if acknowledged; illegitimate can establish claim to paternity or maternity (but see *Proof*); incestuous or adulterine, can only receive maintenance by gifts; issue of concubinage can only receive gifts made in marriage contract of concubinaries; not yet born, may receive gifts by marriage contract of future parents and by will, if in existence at time of testator's death, and subsequently born viable; include grandchildren and descendants in prohibition to alienate, substitutions, gifts and legacies.

Chimneys.—Near a common wall or a wall belonging to neighbour, subject to municipal regulations or court's decisions. Chimney backs and casings to be repaired by tenant.

Church.—Subject to ordinary laws regarding prescription.—(See Assessments, Privileges.)

Civil Death.—Results from condemnation to death or corporal punishment for life, and from solemn and perpetual vows made in certain Catholic religious communities (women's only), recognized at the time of the cession of Canada to England, and subsequently approved; incurred from time of sentence or vows; carries loss of property which is confiscated to the Crown; deprives of right to receive or dispose of property, to be a party in a lawsuit, a juror, witness, tutor or curator, or to marry. Does not deprive of maintenance. Pardon, liberation, remission or commutation, restore civil ability, but without retroactive effect, except by an act of Parliament; does not affect consort's property or share in community; obliges consort to make inventory (see Inventory, Marriage Covenants); preciput suspended, if no stipulation in marriage contract, in hands of representatives of party civilly dead.

Clergymen.—(See Acts of Civil Status, Registers, Marriage, Ministers' Tithes, and Synopsis of Civil Procedure, *Vo.* Civil Imprisonment); can receive by gifts or will; undue influence is no longer presumed, and must be proved. Can execute wills under certain conditions, in the district of Gaspé, instead of notaries. Elsewhere, cannot be more than ordinary witnesses thereto.

Clerks.—Wages privileged for 3 months' arrears previous to seizure or death, on merchandise and effects contained in store, shop or workshop in which services required (see Privileges); prescribed by one year; of notaries cannot be witnesses to authentic wills; of court cannot buy litigious rights falling under jurisdiction of court in which they exercise their functions.

Codicils.—(See Wills.)

Cohabitation.—(See Marriage.)

Commencement of Proof in writing.—Necessary, if no strong presumptions, for the admission of testimony in the proof of filiation, in default of the act of birth and of an uninterrupted possession, or if the child has been described under false names, or as being the child of unknown parents; results then from title deeds of family, registers and papers of father and mother, public or even private writings proceeding from party engaged in contestation, or who would have had an interest therein if alive. Enables to make proof by testimony. (See Proof.)

Common Property.—1, Of walls, presumed if they separate, (*a*) buildings up to the required height, (*b*) yards and gardens, (*c*) enclosed fields, (*d*) if no title, mark or legal proof to the contrary. Does not exist if wall on one side only has a straight and plumb summit or a coping, or mouldings, or corbels of stone; repair chargeable in proportion to right, unless right renounced to; gives right to place joists and beams within 4 inches without permission (save right of joint owner to ½ if he wishes to place beams or build chimney) and to raise wall by paying costs, repairs of raising, and 1-6 of value of superstructure as indemnity; but not to make recess or apply work, if no permission or settlement by experts, nor to make openings without permission; obliges to rebuild wall if superstructure too heavy, the excess of thickness to be taken on side of rebuilder; may be acquired by paying ½ cost and ½ value of ground; of ditches between neighbouring properties, presumed unless contrary title or earth thrown on one side only. Repairs at common expenses. Of hedges separating land presumed, unless only one land enclosed, or contrary title or possession.

Community of Property:—1. *Legal:* Governs consorts in the absence of covenants; or if there is a declaration to that effect. Assets:—1. Moveables, present or future, unless the donor thereof decided otherwise. 2. Fruits, revenues, interests and arrears falling due or received during marriage and arising from property of consorts, product of mines and quarries of one consort, if opened before marriage; 3. Immoveables acquired during marriage (right previous to marriage or exclusive is to be proved) or between the contract and the ceremony, unless such purchase in execution of a clause of the contract; gifts made to consorts jointly by others than ascendants, Excluded from community:—1. Immoveables possessed by one consort before marriage, or accruing to him afterwards, by succession or equivalent title; 2. Gifts by contract of marriage, during marriage, or legacies made by ascendants, private property of consort entitled to inherit, unless expressly declared; 3. Immoveables given to consort by ascendant, in satisfaction of his debts, or subject to payment of strangers, saving compensation or indemnity; 4. Immoveables acquired during marriage in exchange for others, belonging to one consort, saving difference paid; 5. Purchase of immoveable in which undivided share owned, save indemnity. If husband buys for himself whole or part of immoveable in which wife had undivided share, she can, at dissolution, abandon immoveable and claim price of share, or take it back and refund community purchase price. Liabilities:—1. All moveable debts of consorts when marriage solemnized, or of successions falling to them during its continuance, saving compensation for debts connected with immoveables belonging exclusively to one consort; 2. Debts contracted by husband during community, or wife with his consent, saving compensation if due; 3. Arrears and interests of debts personal to consorts; 4. Usufructuary repairs of immoveables not falling in community; 5. Maintenance of consorts, support and education of children, and all charges of marriage. No liability for debts of wife during marriage, unless date regularly proved; no repayment to husband who pays such debt. Debts of immoveable succession falling to consorts not payable by community,—saving creditors right to be paid out of immoveables of succession; falling to husband, enforceable by creditors on either private or community property, saving in latter case, compensation to wife or her heirs; falling to wife, accepting with husband's consent, payable out of her property; if wife judicially authorized on husband's refusal, creditors have no recourse, if succession insufficient, until dissolution. Mixed successions governed by same rules, proportional value of moveables and immoveables being indicated by inventory, to be made by husband, responsible for prejudice towards wife or her heirs, who can prove value of moveables even by general rumor. Creditors

of mixed succession may enforce claims against community property, unless wife judicially authorized to accept, and inventory made; then succession only liable, and balance only payable after dissolution. Same rules for gifts. No recourse against wife's personal property for debts contracted by her with husband's authorization.

Administration by husband alone, who can dispose of community property by gifts, if not fraudulent. Bequest by consort of more than his share null for balance (see Wills); of thing falling in his share, valid. Pecuniary condemnations incurred for criminal offences or misdemeanours by husband, recoverable out of community property; by wife, out of her own, after dissolution. Civil death of consort affects only his private property and share of community. Acts of wife, even judicially authorized, done without husband's consent, do not affect community property beyond amount of benefit derived by it therefrom; unless she contracts as a public trader, and for purposes of her trade. Wife cannot, without judicial authorization, obligate herself nor bind community property, even to release husband from prison, or establish the common children in his absence. Husband administers wife's property; can exercise alone all moveable and possessory actions belonging to her; cannot dispose of her immoveables without her consent; responsible for deteriorations of her property through absence of conservatory acts; cannot lease alone her property for more than 9 years. She is not bound to maintain longer leases after dissolution, nor short leases renewed more than one year before expiration, unless coming into operation before dissolution. Wife cannot bind herself, either with or for her husband, otherwise than as being common as to property. Husband obliging himself for wife's affairs has recourse against her for such obligations. If private immoveable sold and price paid to community and not reinvested, or if community receives private property of one consort, the latter may pretake such price or value of thing. If community moneys used for exclusive benefit of one consort, the other may pretake an equal sum from community property. Replacement perfect for husband if he so declares, for wife if she formally accepts, it before dissolution. Compensation for price of immoveable belonging to husband can be claimed only out of mass of community; to wife, out of property of husband, if community property insufficient; consists in sale price, not in real or conventional value of immoveable. Benefit conferred to common child by consorts deemed equal; if taken from private property of one consort, such consort can claim one half from the other; by husband chargeable to community, unless contrary declared.

Dissolution:—causes:—natural or civil death, separation from bed and board or of property (see those words), absence of consort (see Absentee). Re-establishment (see separation from bed and board, and separation of property).

Surviving consort has, if no will of deceased to the contrary, enjoyment of community property coming to children, until each is 18 or emancipated, subject to obligations: 1, of usufructuary (see usufruct); 2, of giving foods maintenance and education of children, according to fortune; 3, of paying arrears or interest on capital, and, 4, funeral expenses and cost of last illness of predeceased; 5, of making inventory of common property of effects, within 3 months after death of consort, in authentic form, in presence of person qualified to contest, judicially closed within 3 months after completion, unless judge enlarges delay. Subrogate tutor who has not compelled the making of such inventory, liable with survivor towards minors; may demand enjoyment to cease for non-fulfilment of obligations, or, in his default, tutor *ad hoc* may be appointed on demand of a cousin german of minors or nearer relation.

Acceptance or renunciation: Inalienable right of the wife or her heirs or legal representatives. Renunciation interdicted to wife who has inter-

meddled with the property (acts of mere administration, or of a conservatory nature do not constitute intermeddling), abstracts or conceals part of it (*idem* for her heirs), or who being of full age has once assumed the quality of common as to property (except if fraud by heirs of husband); acceptance by wife under age must be made with assistance of curator and authorization of a judge upon advice of family council; it is then irrevocable. Surviving wife must, within 3 months from husband's death, cause inventory of community property to be made in presence of husband's heirs, or after having summoned them (*cf. supra*); may accept or repudiate within 40 days from expiration of the 3 months or closing of inventory; delay may be extended by court; renunciation to be made by act in notarial form or declaration recorded by court. Inventory or renunciation possible after delays if no intermeddling, but wife can be sued as common until renunciation, and liable for costs then incurred. Widow may renounce without inventory (*a*) when dissolution takes place during husband's lifetime (*b*) when his heirs are in possession of all the property, (*c*) when inventory made at their instance, or shortly before husband's death; (*d*) when general seizure and sale of community property, or return of *nulla bona* recently made. Heirs of wife dying without inventory made or completed have 3 months and 40 days from death, and 40 days if inventory completed; may renounce in same forms as wife. Fraudulent renunciation may be annulled on demand of creditors, to amount of claims, but for them only. Widow may, during delays, sustain herself and domestics, and contract reasonable loans therefor, and owes no rent for occupation of husband's house, lease paid by community. Same rules apply if wife dies first, but her heirs not obliged to make inventory.

Partition after acceptance 1°.—Assets—The consorts or their heirs first return to the mass all compensations or indemnities due to it by them, the sums drawn from community, value of property taken to endow child of another marriage, or common child personally, and pretake: 1, private property not entered in community, or acquired in replacement thereof: 2, price of their immoveables alienated during community, and not replaced; 3, indemnities due them by community. Pretakings of wife have precedence, and are effected, as regards property no longer existing in kind: 1, upon ready money; 2, upon immoveables of community, as chosen by her or heirs; 3, upon husband's property, if community insufficient; husband pretakes only on community property. Replacements, compensations and indemnities bear interest from day of dissolution. After pretakings effected and debts paid, remainder equally divided. If heirs of wife divided, those who have accepted have no more than if none had renounced, husband taking residue and being liable toward renouncing heirs for rights of wife to the extent only of hereditary share of each. For rules of partition, see Partition and Successions. Consort who has abstracted or concealed community property loses share therein. Claims for gifts due by consort to the other, taken from debtor's share or private property. Mourning of wife, regulated by husband's fortune, due, even if she renounces, by heirs of deceased husband.

2°. Liabilities including costs divided equally between consorts. Wife having made inventory and rendered account not liable beyond benefit derived. Husband liable toward creditors for whole of community debts contracted by himself, saving recourse against wife or heirs accepting or benefiting, but only for half of wife's debts chargeable to community, unless her share insufficient; wife may be sued for such debts, saving recourse for half, if she accept, and for the whole if she renounce. Wife who during community binds herself for or together with husband, held to have done so only as common as to property; liable for half of debt

if accept, not liable if renounce. Wife who paid more than half of community debt can only recover surplus from husband or his heirs, unless receipt shows that she paid for her half. Consort sued for the whole of community debt by reason of enforcing of hypothec upon immoveable fallen to his share has recourse for one half against consort or heirs, except if charged by partition with whole, or more than one half of debts.

All above rules apply to heirs of consorts.

Renunciation of wife gives her only wearing apparel and linen in use for herself and her wedding presents; she may take back: 1, immoveables belonging to her or replacement or price thereof; 2, indemnities due her by community. Wife then freed from contribution to community debts, but not from debts attributable to herself, saving recourse; rights enforceable against husband's or community's property, purely personal, not transmitted to heirs.

II. *Conventional.*—Governed by rules of legal when not implicitly or explicitly departed from by contract. Principal forms:—1. Realization in whole or part of moveables which would otherwise fall into it; presumed, when each puts into community moveables to extent of a certain sum or determinate value for remainder; consort obliged to pay community amount of contribution, which is sufficiently substantiated, as regards husband, by declaration of value; as regards wife, by discharge of husband to her or parties making the endowment, presumed for wife if unclaimed 10 years, unless contrary proved; after dissolution, each consort can take back, before partition out of community property, value of moveables brought into it at marriage or accrued to him since over promised share; accrued property to be established by inventory or equivalent title; in default of same, husband forfeits rights, wife or her heirs admitted to prove property accrued by titles, witnesses or common rumor.

2. Mobilization in whole or in part, of present or future immoveables: general, if consorts declare that all their property or all successions falling to them shall fall into community; particular when only some determinate immoveables brought into community; determinate when declaration applies to a certain immoveable, wholly or to the extent of a certain sum; immoveables so brought regarded as moveables alienable by husband; if immoveable contributed only to the extent of a certain sum; wife's consent required for alienation, but not for hypothecation up to that sum; indeterminate if consort's immoveables brought to the extent of a certain sum; included in the mass to that extent at time of dissolution; not owned by community; cannot be alienated in whole or part without wife's consent, but can be hypothecated by husband to extent of mobilization. Consort having contributed immoveables, or his heirs may retain it at dissolution, on account of his share at the price it is then worth.

3. Separation of consorts' personal debts: obliges them to account to community at dissolution, for debts paid by it for them; if their moveable property not established by inventory or authentic statement, creditors of each may be paid of such property; sums or objects brought in community presumed unincumbered, and incumbrances must be accounted for; interest and arrears accrued since marriage chargeable to community; when community sued for debt of consort declared by the contract to be free and clear from all debts anterior to marriage, other consort entitled to indemnity taken out of share of community, or private property of indebted consort, and in case of insufficiency such indemnity may be prosecuted by way of warranty against parties having declared consort to be free and clear; if wife is the debtor husband may exercise such right during community saving warrantor's right to be reimbursed by wife or her heirs after dissolution.

4. Right of wife to take back free and clear what she brought into the

community cannot extend beyond things specified nor persons designated, viz.: to similar property owned during marriage, or to wife's children, ascendants or collateral heirs; community first reimbursed for her private debts which it paid.

5. Conventional preciput: clause by which surviving consort authorized to pretake before partition, a certain quantity of moveables in kind; does not take effect in favor of wife renouncing to community, unless so reserved; nor taken from private property of predeceased consort, unless stipulated; is a marriage covenant not subject to formalities of gifts; opened *ipso jure* by natural death, not by civil death or separation, but remains in suspense; may be sold by creditors of community, saving recourse of consort.

6. Unequal shares.—It may be stipulated that surviving consort or his heirs shall have less than half of community, or only a fixed sum in lieu of all rights, or that survivor or one of the consorts shall have the entire community; consort whose share is reduced liable for his portion of community debts and that only; all agreements to the contrary are void; when fixed sum stipulated for one consort, other consort's heirs bound to pay same even if community insufficient; if agreement made only for one consort, the other entitled to partition by halves; husband or his heirs to whom the whole community awarded bound to pay all his debts, creditors having then no action against wife; if wife gets the whole upon paying a stipulated sum, she may pay it and become liable for all the debts, or renounce community and abandon to husband's heirs both property and debts; when whole community belongs to survivor, heirs of others may take back what others brought into it; marriage covenant not subject to formalities of gifts.

7. Community by general title may be established as to moveables and to immoveables, or as to present and future property or as to either.

8. Other agreements forbidden in acts *inter vivos*, but not contrary to law and good morals. (See Marriage Covenants.)

9. Conventional dower. (See Dower.)

10. Exclusion of community (*Cf. Inf.*)

Communities (Religious).—(See Acts of Civil Status, Registers, Civil Death.)

Compensation.—(See Set-off, Community.)

Complicity.—Of legatee or donee in death of testator or donor: ground for revocation of legacy or gift.

Concealment.—(See Community.)

Concubines.—Gifts between—limited to maintenance.

Conditions.—(See Contracts, Obligations.)

Confiscation.—(See Civil Death.)

Consent, Consideration.—(See Contracts.)

Consorts.—(See Marriage, Absentee, Community, Maintenance.)

Contempt of Court.—Renders liable to imprisonment.

Contractors.—See Builder, Lease and Hire; Workmen.)

Contracts—Requisites.—1, capable parties (see capacity); 2, legal consent, express or implied; 3, an object; 4, consideration, even incorrectly expressed not prohibited by law or good morals; annulled for error, fraud violence and lesion (see those words); produce, discharge, or modify obligations, bind heirs and representatives, but not third parties, except if a party obliges himself to procure another's work, or stipulates for the benefit of

another who accepts; may be impeached by creditors if injurious and made with fraudulent intent. Fraud presumed in gratuitous contracts if debtor then insolvent, in onerous if other party aware of insolvency. Contract cannot be voided except within one year from knowledge of fraud or appointment of assignee or representatives. (See Avoidance; Creditors; Interpretation; Obligations.)

Contribution.—(See Community; Insolvency; Partnership.)

Corporations.—Artificial or ideal persons whose existence and succession are perpetual, and sometimes for a fixed period only, and which are capable of enjoying certain rights and subject to certain obligations constituted by act of parliament, royal charter or prescription. Existing at time of session of the country, legal if since continued and recognized by competent authority. Are aggregate or sole, religious (all public) or secular, public or private, political; governed by public law, and only controlled in some cases by civil law,—or civil: governed by law affecting individuals, saving special provisions.

Rights.—Have a corporate name, under which they are known and designated, sue and are sued, and exercise all the rights; have all rights necessary to attain object and those conferred by title, or general law applying to their particular kind; elect officers whose number and denominations determined by instrument of creation, or by-laws and regulations, who represent them in all acts, contracts or suits, and bind them in all matters *intra vires*; may make by-laws and regulations binding on members if properly passed. (See Disabilities, *inf.*).

Privileges.—Members' responsibility limited to interest possessed in corporation; no personal liability for payment of obligations contracted by corporation within the scope of its powers and with the formalities required. Others are granted by title of creation or special laws.

Disabilities.—Cannot be tutors (save superintendents of certain hospitals receiving foundlings), curators, members of family councils, guardians, judicial sequestrators, executors of wills, witnesses or jurors, nor accept any administration necessitating an oath, imposing personal responsibility or entailing imprisonment; cannot hold real estate for a larger amount than that fixed by charter; cannot be summoned personally, appear in judicial proceedings otherwise than by attorney, be sued for assault or battery, or other violence to the person; do banking business, unless specially authorized to do so. (But see Private Bills passed by Parliament.)

Dissolution.—By: 1. Act of Legislature declaring it. 2. Expiration of term of accomplishment of object for which formed, or happening of condition attached to their creation. 3. Forfeiture legally incurred. 4. Death or diminution of number of members or other cause interrupting corporate existence when right of succession not provided for. 5. Mutual consent of all members, saving rights of their parties, and accompanied by formal and legal surrender or authority of legislature for public corporations not formed for mutual existence of members, banks, railway, canal, telegraph, toll-bridge and turnpike companies, and private corporations having obtained privileges which are exclusive or exceed those resulting by law for incorporation. 6. Voluntary liquidations similar to that of vacant successions. (See Curators).

See Partnership, Joint Stock Companies' Act, Costs (law), Secured by hypothec, Privileged. (See Privilege and Code of Procedure.)

Covenants.—(See Marriage Covenants.)

Coverture.—(See Capacity.)

Creditors.—May exercise impersonal rights and actions of their debtor when to their prejudice he refuses or neglects to do so ; may in their own name impeach acts of their debtor in fraud of their rights, if there be (*a*) intent to defraud, and (*b*) injury to them. (See Avoidance, Contracts, Fraud, Insolvency.) Of usufructuary may intervene in contestations for the preservation of their rights ; may offer to repair injury done by usufructuary committing waste or allowing depreciation on property, and give security for the future ; may have his denunciation annulled if made to their prejudice ; if joint and several each can exact performance of the whole obligation and thereupon discharge debtor ; each may receive payment so long as another of them has not taken suit ; can only release debtor for their part ; interrupt prescription for one another ; claiming together property of debtor; share its price rateably, unless preferred on account of privileges and hypothecs. (See these words.) No preference for judgment creditors except as to costs. (See Costs, Privileges.)

Crown.—Means King or Queen of United Kingdom of Great Britain and Ireland ; acquires things having no owner or confiscated. (See Prescription, Privilege, Hypothec.)

Curators.—Appointed, 1. To *persons:* (*a*) interdicted (see Interdiction); other than consort, may resign after 10 years ; (*b*) emancipated minors (see Emancipation) ; (*c*) children conceived but not yet born, administer until birth. If interests opposed to those of wards, special curator appointed. Officers of Court subject to same obligations as tutors. (see Tutors.)

2. To *property:* (*a*) of absentees (see Absentees) : (*b*) of extinct corporations (see Corporations) ; (*c*) of insolvents (see Quebec Insolvency Law) ; (*d*) substituted (see Substitutions) ; (*e*) vacant estates ; (*f*) accepted under benefit of inventory (see Successions) ; must be sworn before entering duties.

Damages—Due for fault, imprudence, neglect or want of skill, by person capable of discerning right from wrong, by father or mother of minor, by curator of insane, tutors, schoolmasters, artisans, if able to prevent act, masters and employers for servants and workmen in performance of work, owner or user of animal, owner of defective building, for contravention of obligation not to do, for inexecution of obligations if debtor put in default, and if not caused by fortuitous event or irresistible force, unless clause to that effect ; equivalent to loss sustained and profits not made such as could be foreseen when obligation contracted, and resulting directly and immediately from inexecution ; covenant fixing amount to be paid for inexecution must be followed if possible ; for delay : interest, legal or agreed upon, on sums due (see Obligations) ; due by mandatary for inexecution of mandate ; by him who detains hypothecated immoveable, for deteriorations thereto ; for torts, tort feasors jointly and severally responsible. (See Prescription of *Cf. inf.*)

Deaf Mutes.—May make authentic wills by writing instructions for notary, and reading will drawn and giving written declaration of its fidelity ; may make holograph wills or wills under English form.

Debtors.—(See Creditors ; Joint and Several.)

Deeds.—Notarial, authentic if signed by all the parties, or inability to sign attested by witnesses. Notifications, protests, summonses, etc., may be signed by the party and served by notary, or made by notary alone if answer required. Make complete proof between parties of obligation and recital expressed ; may be contradicted by improbation.

Defects.—(See Sale.)

Degrees.—Of relationship equal to number of generations, not including common ancestor. After twelfth degree relations do not inherit.

Delivery.—(See Sale.)

Deposit.—Gratuitous contract, formed by delivery of moveable; voluntary, made with incapable, gives right to reclaim thing or benefit; obliges to care of prudent administrator, to restore thing without imputable deteriorations, and profits received thereby, at place agreed upon or where thing is, and before time fixed, if demanded, unless depositor has right of retention for expenses and losses; gives no right to use things without consent.

Necessary—Made under pressing necessity arising from accident or irresistible force, or with inn or boarding-house keepers; latter responsible for acts of agents and also of strangers, unless depositor careless, but not for irresistible force.

Destination.—(See Immoveables; Servitudes; Disabilities; Capacity; Corporations; Tutors.)

Disappearance.—(See Absentee.)

Disavowal.—(See Child.)

Disinheritance.—Must be made by act clothed with formalities of wills.

Dissolution.—(See Marriage, Community, Sale, Partnership.)

Divorce.—Granted only by Act of Parliament. (But see Separation.)

Documents.—(See Deeds, Writings.)

Domicile.—Determines civil rights of person; established by 6 months' residence for purposes of marriage; for civil purposes, is at place of principal establishment of a person; changed by actual residence in another place coupled with intention to make it seat of principal establishment; retained while temporary or revocable public office filled, unless contrary intention; of wife not separated as to bed and board; with husband; of interdict for insanity; with curator, minor, father, mother or tutor; of major servants with employer, if reside in same house; elected for a deed, governs all relating thereto.

Dower.—1°. Legal, established by law alone, by mere act of marriage, in favor of wife as usufructuary, and of children as owners, of one-half of immoveables belonging to husband at time of marriage, or accrued to him during marriage from ascendants; 2°. Conventional, dating from celebration, excludes legal, is taken from husband's private property; is real right; may be renounced; not affected by alienation, sheriff's sale; subject to registration laws. Wife's (see Usufruct) cancelled for adultery or desertion, if husband had taken action, not followed by reconciliation. Children's subject to their capacity to succeed to father at time of his death, to returns of benefits received from him; does not oblige to pay father's debts contracted during marriage; divided as succession and refused to those who assume the quality of heirs to father, take property when another's rights forfeited, renounced or expired.

Dowry.—Given back to wife obtaining separation from bed and board; cannot be secured by wife of institute against property of substitutions.

Drunkards.—(Habitual) may be interdicted, if squander property or injure health, by petition to a judge of the Superior Court by relation or friends, served on respondent (who may contest it), or at domicile; family council

summoned to give advice; proceedings summary, and judgment without appeal, may order confinement in asylum. Relieved after same formalities if sober during one year. (See Capacity.)

Ejectment.—(See Lease and Hire.)

Emancipation.—Of minors, takes place of right by marriage; without it, granted by prothonotary, judge or court petitioned, after advice of family council. Curator appointed to assist when tutor accounts, when minor party to real action, borrows, consents leases for more than 9 years. Advice of family council, homologated by judge, required to hypothecate, sell or alienate immoveables.

Emphyteusis.—Contract whereby proprietor of immoveable conveys it for more than 9 and not more than 99 years to lessee who subjects himself to make improvements, pay annual rent, and stipulated charges, and enjoys all rights and incurs all obligations of proprietor. Terminates by, 1°, expiration of time fixed or of 99 years; 2°, forfeiture judicially pronounced for non-payment of rent during 3 years, or important waste committed; 3°, total loss of estate leased; 4°, abandonment after all obligations fulfilled; new title to be furnished after 29 years; rent immoveable, prescribed by 5 years.

Error.—Cause of nullity in contracts, if occurs in its nature, substance of object, or principal consideration. As to the person, marriage may be attacked by erring party; of law, does not annul transactions; of calculation in transactions may be reformed; in payment gives claim to recover; of fact, in judicial admissions, ground of revocation.

Evidence.—(See Proof.)

Exchange.—Contract, effected by consent, whereby parties respectively give to each other one thing for another; gives evicted party right to damages or to recover thing exchanged; governed by rules of sale.

Exclusion of Community.—Marriage covenant whereby husband administers wife's property and receives moveables, saving restitution after dissolution or separation; wife may receive revenues in whole or in part, for personal wants, if stipulated; wife's immoveables cannot be alienated without husband's consent or a judicial authorization.

Executors—(Testamentary).—Appointed by testator, and by court or judge if so provided; none appointed, heir or legatee acts as such, unless testator decided the contrary. May be creditors of deceased; married women if husband consent or court authorize when separate as to property; single women, widows, emancipated minors, if estate unimportant, persons belonging to corporations. Not compelled to accept; can renounce for cause, with authorization of court or judge, heirs being called. Receive no salary, unless so provided; if refuse, must renounce legacy left in remuneration of execution. Not bound to be sworn, nor to give security, unless such condition accepted; not liable to coercive imprisonment. One acts alone if co-executors die or refuse, unless provided for replacing. Duties—see to funerals, verification of an authentic will and registration thereof if immoveables left, cause inventory to be made at once, make conservatory acts, act as attorneys, pay debts and legacies of deceased; functions terminate by death, complete execution, due renunciation and judicial destitution for waste negligence or bad administration.

Expropriation.—Takes place for purposes of public utility only, and after payment of just indemnity; forces owner of immoveable to sell; acquirer cannot be evicted; extinguishes hypothecs, saving recourse of creditors; formalities governed by special laws.

Family Papers and registers make proof against writer when, 1o, declare payment received; 2o, contain express mention that minute made to supply defect of title to person in whose favor obligation declared to exist. Are commmencements of proof in writing in matters of legitimation, and in actions to establish paternity.

Farmer, on shares—Cannot sublet or assign lease, unless so stipulated, under pain of ejectment and damages; obliged to furnish farm with sufficient stock and implements, and to cultivate it skilfully; to notify lessor of any encroachment upon farm; presumed to have leased for one year, reckoning from October; exempt from payment of rent, if, having leased for 1 year only, most of harvest destroyed by fortuitous event or irresistible force before its separation from the land; must leave, when lease ended, manure, straw, etc.; landlord's privilege includes all effects and fruits.

Father.—(See Child—Damages.)

Fear.—Reasonable and present, of serious injury to contracting party, his consort, near kindred and sometimes strangers, or legal constraint for unjust and illegal cause to extort consent, gives right to annul contract.

Filiation.—(See Child.)

Fines.—(See Penalties.)

Fire.—Presumed to be caused by lessees, but only as against lessor; loss payable by all lessees in proportion to rent, except those who can prove innocence.

Fishing.—Governed by particular laws, subject to acquired rights.

Fortuitous Event.—One which is unforeseen, caused by superior force which impossible to resist; extinguishes contracts without damages; destroying thing sold, dispenses from delivery; borrower responsible if applies thing borrowed to use not intended, or for a longer time than agreed upon; destruction of harvest, yearly lessee discharged from rent; receiver of thing not due who is in bad faith responsible therefor.

Fraud—When proved annuls contract; how determined: see Contract.

Funeral Expenses.—(See Privileges.)

Gaming Contracts.—(See Bets.)

Gifts—*Inter vivos*: contracts whereby donor divests himself, by gratuitous title, of the ownership of a thing in favor of the donee, whose acceptance, revocable only in cases provided by law or under valid resolutive condition, perfects contract; governed by general rules as to capacity; voided by immoral, illegal or impossible condition; cannot be made by consorts during marriage; must be in notarial form, except gifts of moveable property accompanied by delivery; must be of present property only; perfect by acceptance without delivery; void if revocable at mere will of donor or if made subject to payment of future debts without determined amount; acceptance may be implied; those born may accept for others not yet born; must be made while donor still living and capable of giving; heirs cannot accept after death of donee. No warranty unless stipulated, but donor must pay damages suffered by evicted donee; universal donees or donees by universal title, proportionately responsible for donor's debts, unless inventory made and property abandoned; fraudulent, voidable by creditors; must be registered except if made by marriage contract or of moveables, and followed by actual delivery and public possession by the donee; damages awarded against party charged to register, when neglects to do so

Revocable, 1, if the donee (*a*) have attempted life of donor, (*b*) have been guilty towards him of ill-usage, crimes or grievous injuries, (*c*) refuse him reasonable maintenance and revocation demanded within one year from knowledge of offence ; revocation comprises giving back fruits since date of demand; does not prejudice alienations nor hypothecs previous to judgment; 2, if resolutory condition ; 3, like other contracts. Special favors for gifts by marriage contract.

In contemplation of death.—Void unless made by marriage contract or available as wills ; subject to above rules and to some special provisions.

Good Faith.—Always presumed ; ceases for possessor when defects of title or resolutory cause made known to him byproceedings at law. (See Buyer, Improvements, Prescription.)

Ground Rents.—Cannot be created for more than 99 years or the life of three persons consecutively ; redeemable as constituted rents, or at a stipulated period not exceeding 30 years.

Guardian.—(See Curator, Sequestrator, Tutor.)

Habitation.—Right of use applied to house (see Use) ; confined to what is necessary for habitation of party to whom granted, and family ; cannot be assigned nor leased.

Harbours.—Are dependencies of the Crown domain.

Harvest.—(See Lease, Privileges.)

Heir.—He to whom a succession devolves, by law or testament ; seized thereof by law alone ; may accept expressly or impliedly, purely and simply, or under benefit of inventory, so long as no other has accepted ; deemed to have never been such if renounces ; loses rights if abstracts or conceals succession property ; may be appointed by marriage contract ; bound to discharge all succession debts proportionately to share received; subrogated to hypothecary creditors whom he pays ; his creditors not preferred to those of succession, and cannot ask separation of property. *Beneficiary* must petition Court for benefit of inventory, make notarial inventory and deliberate within 3 months and 40 days ; may sell, in meantime, perishable articles ; can claim benefit after delays if has not performed acts of heirship, or been condemned as unconditional heir, and has not concealed property ; administers the estate ; must have moveables sold publicly ; responsible only for negligence if produce them in kind ; pays succession debts to extent of value received ; prescription of his claims against succession suspended ; must render account to creditors and legatees, amicably, if all consent, and is thereafter freed ; may become unconditional heir if prefers. (See Deposit, Community.)

Highways.—(See Harbours.)

Hire.—(See Lease.)

Hotel-Keepers.—(See Boarding-house keepers, Innkeepers.)

Hunting Laws.—(See Fishing Laws.)

Hypothec.—Real and indivisible right upon immoveables made liable for the fulfilment of an obligation, in virtue of which the creditors may cause them to be sold in the hands of whomsoever they may be, and have a preference upon the proceeds of the sale in order of date ; extends over subsequent improvements ; extinguished with the claim which it secures, and by expropriation for purposes of public utility, saving recourse and sub-

ject to expropriation laws; upon portion of immoveable, only subsists if debtor remains owner thereof (but see Partition); does not continue after novation, and not transferred to property of new debtor; cannot be acquired to the prejudice of existing creditors, upon immoveables of persons notoriously insolvent, or of traders within 30 days previous to bankruptcy.

Legal, affecting immoveables of debtors as registered: 1°, of married women, for all claims or demands which they have against husbands on account of whatever they may have received or acquired by succession, inheritance or gift; 2°, of minors and interdicts upon immoveables of their tutors or curators, appointed in Lower Canada, for balance of account; 3°, of Crown, in cases where it exists; 4°, of mutual fire insurance companies upon immoveables mentioned in policy for payment of assessments upon deposit notes, ranking from date of notes; valid without registration.

Judicial, resulting from judgments of the courts of the province, or any other judicial act obliging to pay a specific sum of money, interest and costs, or from act of suretyship judicially entered into; must be registered.

Conventional, granted only by persons who can alienate the immoveable; must be by authentic act (exception if lands held in free and common soccage, and in certain counties), describing immoveable and determining sum for which granted.

Ranks from registration, saving special provisions; does not divest the debtor, who can enjoy or alienate property subject thereto, but may be sued before claim payable and also in damages if deteriorates immoveable; extinguished like privileges. (*Cf. inf.*)

Hypothecary Action.—Given to creditors whose claims are liquidated and exigible, against holder of immoveable (proprietor, usufructuary, institute), to have him condemned to surrender it unless he pays debt, interest as per registration, and costs, or arrears and costs. Holder may call vendor in warranty, and ask, if not charged with hypothec nor personally liable, try to destroy hypothec: 1°, that creditor sell property of debtors personally bound, provided holder indicates it and advances costs, except if hypothec is for payment of rent created for price of land; 2°, that creditor warrant him if bound; 3°, that he be subrogated to creditor; 4°, that his expenses on immoveable be first refunded; 5°, that creditor give security where holder has privilege or prior claim; his alienation is of no effect against creditor, unless purchaser deposits amount equal to debt, interest and costs; may surrender immoveable before judgment within delay fixed; may be condemned personally to pay moneys received, and damages caused by him since service of process; retains ownership even after surrender; surrender may be declared inoperative on demand of warrantors.

Immoveables.—(See *Passim.*)

Impediments, Impotency.—(See Marriage.)

Improvements.—Made by possessor, must be paid by proprietor of land, if necessary or made in good faith (price or value); if made in bad faith, and unnecessary, proprietor may keep them by paying cost or value, permit owner to take them away, keep them if cannot be removed without deteriorating land, or abandon right of property in consideration of price. (See Hypothec, Usufruct, Lease, etc.)

Imprudence.—(See Damages.)

Infants.—Not viable when born, do not inherit.

Inferences.—(See Presumptions.)

Influence (undue)—Not presumed in gifts or bequests to medical or spiritual advisers.

Ingratitude.—(See Gifts.)

Inheritance.—Consists of all the property of the deceased, independently of its nature and origin.

Injuries (bodily).—Prescribed by one year, from death if it follow, or according to special laws.

Inn-Keepers.—Responsibility (see Boarding-house keepers); verbal testimony of loss admitted; have a right of pledge or retention over effects of guests (see Privileges); have no action for price of intoxicating liquors to be drunk on the spot by non-travellers.

Insanity—Imbecility.—(See Interdiction, Marriage.)

Insolvency.—(See Bankruptcy and Quebec Insolvency Law.)

Interdiction.—Of imbeciles, insane, madmen, prodigals or habitual drunkards (*Cf. Sup.*), major or emancipated, may be demanded by relatives, by those allied or by consort; application of court or prothonotary granted if sufficient cause shown, upon advice of family counsel; annuls anterior acts, except for prodigals, if cause of interdiction notorious when done; curator (*Cf. inf.*) appointed who assists and represents interdict; does not prevent from receiving by will; ceases with its causes on judgment moving; may be changed into appointment of judicial adviser. Special provisions as to drunkards (*Cf. Sup.*).

Insurance.—Is generally a commercial contract (but see Mutual Insurance); for benefit of wife and children; allowed husband during marriage. (See Gifts, Marriage Covenants and Commercial Law of Quebec.)

Interest.—6 per cent. per year if none other stipulated per year; banks cannot recover more than 7 p.c., but not subject to any penalties for usury; other corporations cannot receive more than a certain rate; on balance due by tutor to minor runs from closing of account; by minor to tutor, from putting in default; comprised in term "civil fruits"; is the only damage due for non-payment of money; presumed to be paid when principal debt acquitted; due by consorts from dissolution of community for replacements or compensations due by community to them, or compensation and indemnities due by them to community, and according to ordinary rules for their personal claims against each other; by buyer on price if (*a*) special agreement from terms fixed thereby; (*b*) and being productive of revenues, and no term stipulated; (*c*) putting in default; by mandatory on mandator's moneys used by him, from date of used, and on others, from putting in default; by mandator, on moneys advanced for execution of mandate, from day they are advanced; by partner, on sums he agreed to pay to partnership, or withdrawn therefrom by him for his own benefit from date of such acts: paid first by fruits of immoveable pledge; imputed by creditor of debt given in pledge, on payment of interest, if debt bears interest; otherwise on capital; five years, and current one, secured by registration of deed of sale; arrears, by registration of memorial, specifying amount due and accompanied by affidavit; due to Crown, prescribed by 30 years, in all other cases, and on judgment, by 5 years; prescribed with capital.

Interpretation—Of contracts. Governed by rules taken from Roman law.

Interruption.—(See Prescription.)

Investments.—(See Tutors, Trustees, Community of Property.)

Islands.—Belong to Crown if no contrary title; in unnavigable and unfloatable rivers, belong to proprietors of banks on both sides, divided by middle of river; formed in river or stream cutting a riparian owner's land: his property.

Joint Stock Companies.—(See Corporations, Partnership and Special Acts.)

Judgments.—(See Hypothec, Foreign.) (See Synopsis of Procedure.)

Judicial Adviser.—Given to persons of weak intellect, or inclined to prodigality. (See Curator, Interdiction.) Persons under judicial adviser cannot, unless powers defined by judgment appointing judicial adviser, plead transact, borrow, receive capital and give discharge therefor, alienate or hypothecate property without adviser's assistance; but may dispose of property by will.

Judicial Demand.—Not necessary to seize wife and children of dower; properly brought before competent court interrupts prescription.

Landlord, Tenant.—(See Lease.)

Lands.—Reclaimed from sea are dependency of Crown domain; formerly used for military purposes, belong to Crown unless validly alienated; owner presumed to own what is above and below them; carried away by sudden force, may be reclaimed within one year. (See Improvements.)

Lease and Hire.—1. *Of things:* contract whereby lessor grants lessee enjoyment of a thing during a certain time, in consideration of a price. Lessor must deliver thing in good state of repairs; suffers reduction of price if disturbance or partial destruction; privilege on effects found on premises even those of under-tenant in so far as indebted to lessee, and those of third parties consenting, but not if accidentally there or notice of ownership given to landlord; privilege extends until eight days after lease expired; has action, 1°, to rescind lease if lessee (*a*) does not furnish premises sufficiently to secure rent; (*b*) commits waste thereon; (*c*) uses them for purposes contrary to intent or illegal; 2o recover possession if contract rescindible, or lessee remain after expiry or without paying rent as stipulated; 3°, in damages for violation of obligations; may also demand rent and attach as necessary. Lessee responsible for injuries, even by family or subtenants, presumed to be guilty in case of fire (*Cf. Sup.*) and to have received thing in good condition; obliged to suffer repairs, unless necessary before lease made or lasting more than 40 days; to make smaller repairs, as defined by usage or law, unless rendered necessary by age or irresistible force; may sublet or assign lease unless forbidden; may sue lessor, 1°, to compel him to make necessary repairs; 2°, to rescind lease for non-fulfilment of obligations by lessor; 3°, in damages. Lease of houses is presumed made from May to May, if rent at so much a year, and then according to terms of payment; of farms (see Farmer). Terminates as all obligations, or by notice given according to law if unwritten lease, by total destruction of thing, by redemption, saving damages; not by death of lessor or lessee, nor by alienation, unless stipulated; but if lease for more than a year, must be registered.

2. *Of personal services* can only be for limited term, or for determinate undertaking; tacitly renewable; terminated by death or inability of party hired; oath of master proves terms of engagement of servants and payment if no written proof. (See Carriers, Workmen.)

3. *Of Cattle on Shares.*—(See Cattle.)

Legacies.—Testamentary dispositions of property: that which is not legally disposed of by will passes to lawful abintestate heirs may be repu-

diated so long as not accepted in same manner as successions (*Cf. inf.*). Lapsed accretion takes place in favor of legatees of thing indivisible without deterioration or mentioned in same disposition without a share being assigned Life rents or pensions bequeathed by way of maintenance accrue from testator's death ; fruits and interest from putting in default or judicial demand unless otherwise ordered. Revocable as wills (*Cf. inf.*).

1. *Universal.*—Comprise whole of property left. Acceptance and liability of legatees governed by rules of successions, and usufruct in certain cases (*Cf. inf.*) ; must be registered ; creditors of succession can demand separation of property against legatee, for portion of death of which liable.

2. *By general title.*—Bequests of aliquot part of testator's property, or a universality or aliquot part thereof. Same rules as above.

3. *Particulars.*—Paid after testator's debts, by heirs, universal legatees, etc., in the proportion in which liable ; give legatee right to demand separation of property ; do not carry hypothec upon succession's property, unless testator secured special hypothecation, which was registered ; of another's and being void, unless equivalent to charge of procuring it or paying its value; if comprise universality of assets and liabilities legatee held personally and alone for all debts connected therewith, without prejudice to rights of creditors against heirs and universal legatees ; preferred, paid first in case of insufficiency of property ; remainder divided ratably ; reduced by creditors having discussed heir or legatee personally bound, and obtained in time separation of property, for share only, legatees freeing themselves by giving up thing bequeathed or its value ; creditors of succession preferred to those of legatees ; legatee suffering reduction has recourse ; include buildings, embellishments and improvements, but not further acquisitions, unless declared ; bear usufruct or hypothec established on property bequeathed ; but benefit of division may be claimed of legatee and succession if hypothecary debt of third person, of which testator ignorant, affects both properties ; in favor of creditor or servant, not presumed to be in compensation of claim or wages.

Legatees.—(See Legacies, Corporations, Interdiction) ; may be merely fiduciary or simply trustees ; obtain fruits or legacies, as a rule, from putting in default or judicial demand (but *Cf. Sup.*) ; seized, by death of testator, of the right to the thing bequeathed, in the condition in which it then is, with all dependencies, and all rights resulting from legacy without being obliged to obtain legal delivery.

Legitimation.—Of children, by subsequent marriage retroactive ; assimilates them to children born of marriage.

Lesion.—(See Minors.)

Letters Patent.—Subject to special acts ; make proof of themselves.

Letters of Verification.—May be obtained in case of intestate successions, devolving in Lower Canada, having property situate outside of its limits or debts due by non-residents. Formalities governed by Code of Procedure.

Libel.—Action prescribed by one year.

Licenses.—(See Marriage.)

Life-rents.—Of no effect if constituted upon life of person dead or dangerously ill, dying within 20 days ; affecting real estate, extinct after 99 years or three successive lives ; non-payment of arrears is not ground for recovering money paid ; may become charge on immoveable against which registered ;

cannot be discharged by reimbursement of capital and waiver of payments made; due only for number of days of life of person on which constituted unless payable in advance; unseizable if so provided and constituted by gratuitous title; continue if person on whom constituted is attainted; estimated by amount exigible by life insurance company for like annuity; begin from date of testator's death.

Limited.—(See Partnership.)

Liquidation.—(See Corporations, Partnerships.)

Liquors.—(See Inn-keepers.)

Litigious Rights.—Rights uncertain, disputed or disputable, if action pending or necessary for its recovery; discharged by debtor paying all costs of purchase, and interest since sale, except if made to co-heir or co-proprietor of right, or to creditor in payment of claim, or to possessor of litigious property, or when court has affirmed or is ready to affirm it; cannot be bought by judges, attorneys, advocates, sheriffs, bailiffs and other officers of the court under the jurisdiction of which they fall.

Loan.—1. For use, exists on things that can be leased; borrower must be prudent and cannot change use of thing; liable for loss arising from any cause, if he does so; liable also for fortuitous event if might have saved thing loaned by losing his own; cannot retain it for lender's debts, except for expenses of preservation. Lender cannot take back thing before expiry of agreement, except if court so orders in case of pressing need; bound to reimburse extraordinary expenses of preservation; responsible for damage caused by known defects of thing. (See Borrower.)

2. For consumption. Borrower becomes owner of thing lent, and responsible for loss; obliged to return a like quantity of things of same kind and quality or value thereof, at time agreed upon or fixed by court, and interest if defaults.

3. Upon interest. (See Interest.) Special provisions as to corporations and banks; acquittance of capital infers that of interest, unless latter reserved.

Lying-in Expenses.—Prescribed by 2 years.

Madness.—(See Interdiction.)

Maintenance.—Due by father, mother, children and grandchildren reciprocally in proportion to needs and means; by sons-in-law and daughters-in-law, until, 1o, mother-in-law remarries; 2o, consort creating affinity, and children issue of marriage dead; replaced by the lodging and maintaining of party claiming it if party obliged cannot pay or is parent of claimant by husband during marriage; by separated consorts; to illegitimate children and persons civilly dead; can be given to concubine; refused to donor; may cause revocation of gift; party owing it may demand discharge or reduction thereof, if needs or means have changed.

Majority.—Attained at the full age of 21.

Mandate.—Contract, gratuitous (unless otherwise agreed), by which mandator commits a lawful business to mandatary, whose acceptance obliges him to perform it, and may be implied; must be express for the purpose of alienation and hypothecation; general includes only acts of administration; recourse against married women and emancipated minors mandators, subject to provisions regarding them. Mandatary liable in damages for non-execution; must act prudently; responsible for acts of substitute if notoriously unfit or if substitution not allowed; obliged, after extinction,

to do all whatever flows necessarily from previous acts, to account for administration, to deliver whatever he received less his expenses, and to pay interest after being put in default, and on moneys employed for his own use; liable to party with whom contracts if exceeds powers, or if acts in his own name. Mandator bound: 1o, to indemnify mandatary for all obligations *intra vires* or ratified, or contracted after expiry of mandate when ignorant of extinction, and, 2o, pay salary stipulated, unless mandatary in fault; latter privileged for salary and disbursements on things in his hands or proceeds of their sale; 3o, pay interest on advances; 4o, reimburse losses; liable towards third parties for all legal acts and fault of mandatary and to parties whom he has allowed to mistake the mandatary. Terminates: 1o, by revocation; 2o, renunciation; 3o, death of either party; 4o, his change of status; 5o, accomplishment; 6o, expiration of term fixed; 7o, cessation of mandator's authority; 8o, causes of extinction of obligations (See Advocates, Attorneys, Notaries and Commercial Laws.)

Marriage.—Void if no consent; may be contracted at 14 by men, 12 by women; annulable within 3 years on demand of consort, if other party manifestly impotent when it took place; consent of father or of widowed mother required for minors, of tutor *ad hoc* for natural children, of tutor, with advice of family council, for orphans, of curator, if orphans emancipated; prohibited between certain relatives; must be solemnized openly by officer authorized to keep registers of acts of civil status who is not compelled to act if his religion forbid it; publication of dispensation from bans required; of one or two Lower Canadians, solemnized out of Province, valid if formalities of place conformed to and no intention to avoid Quebec law. Can be attacked by party led into error, or whose consent was not free, by those whose consent was required, unless approbation given or six months elapsed; by any interested party if parties related or allied to prohibited degrees; cannot be attacked for youth if proper age attained since six months, or wife conceived before that period, or consent given. May be contested if not solemnized before proper officer; officer liable to penalty of $500 for any contravention to rules; certificate required; when null produces civil effects for party in good faith; confers mutual obligations of fidelity, succor and assistance, of protection by husband, reverence and co-residence by wife; only dissolved by natural death of parties. (See Acts of Civil Status, Married Women, Oppositions to Marriage, Absentee, Gifts, Separation of Property, Separation from bed and board, Maintenance, Civil Death, Community of Property.)

Marriage Contracts.—Irrevocable after marriage; must be in notarial form; may contain any provisions not contrary to good morals or marital authority; minors must be assisted thereto by tutors and have parents' consent; they are subject to rules governing them. (See Minors.)

Married Woman.—Cannot appear in judicial proceedings without husband's authorization, except in matters of administration where separate as to property, nor, under same reserve, give, accept, alienate, contract, or bind herself or become a trader; may be authorized by judge if husband refuse or is absent or interdicted; want of authorization, where required, is a radical nullity; may make will without authorization. (See Community and Separation of Property, Exclusion of Community, Marriage etc.)

Materials.—(See Possession, Privilege.)

Mines and Quarries.—(See Usufruct.) Fall into community if operated before marriage.

Mining Rights.—Their sale, lease or transfer preserved and take date, if title authentic, by its registration within 60 days from date, even if no actual possession.

Ministers.—(See Clergymen.)

Minors.—Attain majority at 21, subject to parents' authority until emancipation; cannot leave father's house without his permission; more than 14, may bring alone actions for wages, and for hire of services, when authorized by judge; cannot be testamentary executors; incapable of contracting, but that incapacity established in their favor only; simple lesion annuls contracts made without tutor (guardian), except if minor trader, or if lesion caused by unforeseen event; not relievable from stipulations of marriage contract, when valid consent obtained, nor from obligations resulting from his offences or quasi-offences, nor from obligations ratified after majority; contracts affecting immoveables made without proper formalities, may be avoided without proof of lesion; have legal hypothec upon immoveables of tutors for balance of account; prescriptions of 5 years or less run against them; their action for restitution, for lesion and against tutors, relating to acts of tutorship, prescribed by 10 years from majority. (See Emancipation, Tutors, Registration, Marriage.)

Mortgage.—(See Hypothec.)

Mortmain.—(See Corporations, Prescription.)

Moveables.—By nature, all bodies which can be moved from place to place either by themselves or by extrinsic force. By determination of law, mobilized immoveables, shares in financial companies, rents, conventional dower; cannot be mortgaged, but are subject to privileges (*Cf. inf.*); corporeal, acquired by 3 years' possession in good faith; cannot be revendicated if bought in good faith at a fair, market, public sale, or from trader dealing in similar articles except if purchaser reimburse price paid; governed by law of owner's domicile, and on minor questions, by laws of Lower Canada, when situated here.

Mutual Insurance.—Is not commercial; governed by special statutes; companies have legal hypothec for amount which insured contributes; valid without registration. (See Hypothec.)

Naturalization.—Conditions: 1. Residence in Canada or service under Government of Canada or of one of the provinces, during 3 years at least, with intention to continue such residence or service; 2. Taking oath of residence or service, and of allegiance; 3. Obtaining from Circuit Court certificate of naturalization. Of women, by marriage with British subject. Confers all the rights of Canadian born subjects. Regulated by Federal Act, R. S. C., c. 113. (See Alien.)

Notaries.—Governed by special laws; may make authentic acts (see Deeds); cannot receive legacies from party whose will they draw; can alone make marriage contracts and deeds of gift, or hypothec; bound to register discharges of latter; action for services prescribed by 5 years.

Novation.—Mode of extinguishing obligations, by substituting: 1°, new debt to old one; 2°, new debtor to former; 3°, new creditor, through new contract; never presumed; privileges and hypothecs do not pass to new debt, unless reserved.

Nullity.—See Contracts, Avoidance.

Oath.—Includes solemn affirmation ; admitted : of master, in actions for wages, as to terms of engagement and payment ; of ravellers, as to value of baggage lost in transportation or hotels ; of advocates, physicians and surgeons, as to value and duration of services, and as to requisition thereof ; put officially, see Synopsis of Civil Procedure.

Obligations.—Must have cause, object and persons between whom exist ; arise from contracts, quasi-contracts, offences, quasi-offences and law. Object must be something which a party must give, do or not do ; in commerce determinable as to kind, must be legal and moral. Inexecution, after putting in default, renders liable in damages. May be under suspensive or resolutive condition, alternative, joint and several, divisible and indivisible, with or without term or penal clause. Extinguished by payment novation, release, compensation, confusion, impossibility of performance, judgment of nullity or rescission, effect of resolutive condition, prescription expiration of time, death of creditor or debtor in certain cases and particular causes.

Offences—And quasi-offences produce obligations (see Damages) prescribed by two years generally and by one year in particular cases.

Oppositions to Marriage.—May be made by person already married to contracting party, by relatives or guardians of marrying minor , formalities in Code of Civil Procedure.

Ownership.—Must not contravene law or regulations ; acquired by occupation, accession, contract, descent, wills, effect of law or of obligations and prescription. Must be given up if expropriation for public purposes, but only on payment of indemnity.

Papers.—(See Family Papers.)

Partition.—May always be demanded by capable person ; must be judicial if some heirs be absent, unwilling, minors or interdicted ; immoveables valued by experts ; moveables may be sold ; preceded by returns of debts and gifts, but not of expenses of maintenance and education ; shares formed, co-partitioners may be bound to warrant one another in some cases, and if privilege registered ; rescindable for ordinary causes, but not for omission of some object.

Partnership.—Universal or particular, civil unless contracted for trading or manufacturing or other commercial purposes ; for construction of roads, colonization, settlement, land traffic, etc., must be registered ; all partners liable for equal shares. (See Synopsis of Commercial Law.)

Pawning.—Pledge of moveable property ; gives creditor right to be paid by privilege and preference over others while thing pawned remains in his hands or of party appointed ; pawn brokers only may dispose of thing pawned ; debtor obliged to repay expenses of preservation ; cannot claim thing before having paid debt, interest and costs in full.

Payments.—Made to ostensible heir are valid.

Penalties.—For contraventions to law, recoverable before civil courts by process of law in the name of Her Majesty alone, or with private prosecutor.

Persons.—Include bodies politic and corporate, and heirs of contracting party, unless such meaning illegal or inconsistent ; being in Quebec, although domiciled elsewhere, governed by its laws, save as to status and capacity.

Petition of Right.—Interrupts prescription running in favor of Crown. (See Synopsis of Procedure and Special Acts.)

Physician.—Services prescribed by 5 years ; oath proves their nature and duration ; privileged for expenses of last illness ; may receive by gift or will.

Pledge.—Contract whereby thing placed in hands of creditor or retained by him with owner's consent, in security for his debt. Immoveables may be pledged. (See Pawning.)

Ports.—Dependencies of Crown domain.

Possession.—Detention of thing or enjoyment of right by a person for himself or through another ; to give title by prescription, must be continuous, uninterrupted, peaceable, public, unequivocal and as proprietor ; cannot be founded on acts merely facultative, or of sufferance, or of violence, or clandestinity ; may be invoked by successors ; in good faith, under translatory title, gives ownership after 10 years ; of corporeal moveables, creates presumption of ownership, which takes place after 3 years. (See Good faith and Bad faith) ; of Moveables (*Cf. Sup.*)

Power of Attorney.—(See Mandate, Alien, Advocates.)

Prescription.—Means of acquiring (acquisitive) or of being discharged (extinctive), by lapse of time and subject to conditions established by law ; may be renounced, even tacitly, by persons who can alienate, but not by anticipation ; as regards immoveables, governed by law where situated ; as regards moveables and personal actions, debtor can invoke one or more of the following: 1. prescription entirely acquired under foreign law, when cause of action did not arise, and debt not stipulated in Lower Canada ; 2. entirely acquired in Lower Canada from maturity of obligation or acquisition of domicile by debtor ; 3. any prescription resulting from lapse of successive periods, when first elapsed under foreign law.

Acquisition.—(See Possession). Does not take place against Crown, except for arrears or property escheated, but takes place against the Church, save as to rights to tithes and rate thereof. Interrupted naturally, when possession deprived of enjoyment of thing during more than one year ; civilly, by judicial demand in proper form, before competent court ; suspended—except short prescriptions—in favor of incapable persons and consorts ; fixed to 30 years, as a rule ; 5 years for fruits and interest (not on judgments) ; 10 years for subsequent purchaser in good faith under translatory title ; action in restitution of minors for lesion, rectification of tutors' accounts and rescission of contracts ; 5 years for professional services and commercial acts generally ; 2 years for wages of workmen, salaries of school masters, offences and quasi-offences ; 1 year for slander and libel, bodily injuries, wages of workmen hired at short periods less than a year ; hotel and boarding-house charges. Corporeal moveables (*Cf. sup.*).

Presumptions.—Established by law or arise from facts ; legal exempt from other proof ; and in some cases exclude proof to the contrary, *i.e.*, authority of a final judgment if identity of cause parties and things. Of survivorship are established by law when several persons perish by same accident ; of payment of interest on loan when principal acquitted ; of notaries not established by their furnishing deeds.

Priests.—(See Clergymen, Tithes.)

Privilege.—Legal right of a creditor of being preferred to others according to origin of claim. On moveables, by rank ; 1°, law costs incurred for seizure and sale of property, and of judicial proceedings for enabling

creditors generally to be paid; 2°, Tithes, on crops subject to them; 3° claim of vendor who may, 1st, revendicate thing if (*a*) sale for cash, (*b*) thing entire and in same condition, (*c*) not in hands of third party having paid for it, (*d*) exercised within 8 days after delivery (30 if insolvent trader); 2nd, be preferred on price within same delay; 4°, pledge or retention, as follows: (*a*) carriers, (*b*) hotel keepers, (*c*) mandataries or consignees, (*d*) borrowers for use, (*e*) depositaries, (*f*) pledgees, (*g*) workmen on things repaired, or on timber, if right still subsisting, or claimable at time of seizure; 5°, reasonable funeral expenses and mourning of widow; 6°, expenses of last illness, for 6 months in chronic diseases; 7°, municipal taxes on person or property, or privileged by statute; 8°, claim of lessor for rent due and to become due if lease in authentic form; for 3 overdue instalments and remainder of current year if lease not authentic; restricted in cases of insolvency; 9°, owner of thing lent, leased, or pledged, who has not prevented its sale, or stolen, who could still revendicate it, had it not been judicially sold; 10°, domestic servants, for one year's wages; clerks, apprentices and journeymen for 3 months on merchandise contained in place where they worked; *id* railwaymen on company's moveables; suppliers of provisions for 12 months Fishermen, mutual fire insurance companies and timber cutters are privileged in certain cases. Upon immoveables: 1°, law costs, as above; 2°, funeral expenses as above, when moveables insufficient; 3°, expenses of last illness, under same restriction; 4°, tilling and sowing; to extent of additional value given thereby upon price of immoveables sold before harvest gathered; 5°, (*a*) assessments for building and repairing schools, parsonages and churchyards; (*b*) school rates, municipal rates, for 5 years and the current one; 6°, companies for stoning roads; 7°, seigniorial dues, and arrears for 5 years and the current one; 8°, claim of (*a*) laborer, (*b*) workman, (*c*) architect, (*d*) builder, under special provisions; 9°, claim of vendor; 10°, servants' wages, if moveables insufficient.

Probate.—(See Wills.)

Prodigality.—(See Interdiction.)

Prohibition to Alienate.—(See Substitutions.)

Proof.—Falls to party claiming performance, avoidance or extinction of an obligation, must be the best of which case susceptible; secondary or inferior cannot be received unless shown that primary impossible. **Modes**: 1°, By writings: (*a*) authentic, official or notarial (*Cf. Sup.*), and true copies thereof; made outside of Province, no additional proof required for exemplifications of wills or judgments, certificates of baptism, birth, marriage or burial, and powers of attorney; (*b*) private, including defective authentic acts: date and signature to be proved if denied, except if registration, death of subscribing party or witness, or setting forth in authentic deeds (see Family Papers); 2°, By testimony: (*a*) if principal sum of money or value in question does not exceed $50; (*b*) in cases where real property held by permission of proprietor without lease; (*c*) in cases of necessary deposits, or made by travellers in inns, etc. (*Cf. Sup.*); (*d*) in cases of obligations arising from offences or quasi-offences, or if claimant cannot get written proof; (*e*) if written proof lost by unforeseen accident, or is in possession of adversary or of third party not colluding; (*f*) when commencement of proof in writing exists (*Cf. Sup.*) (special provisions concerning commercial matters); cannot contradict or vary valid written instrument (see Witness); 3°, presumptions (*Cf. Sup.*); 4° by oath (*Cf. Sup.*) and Synopsis of Procedure; 5°, by admissions which are indivisible and revocable only for error of fact; extra-judicial admissions must be proved by writing, except in cases where testimony admissible (*Cf. Sup.*).

Proprietor.—Of land enjoys alluvion, increase by retiring of waters ; presumed to have built and at his own cost. (See Possession, Ownership.)

Purchaser.—(See Buyer.)

Quakers.—Not compellable to take oaths ; make solemn affirmation ; may be compelled to furnish proof of creed.

Quasi-Contracts.—Create obligations, *i.e.*, management of affairs of another without latter's knowledge when no prohibition to contract ; undue payment.

Quasi-Offences.—(See Obligations, Damages, Responsibility.)

Registers.—Family (see Family Papers) ; of Civil Status ; kept by officers (see Acts of Civil Status) who are liable to penalty of $8 to $80 ; subject to certain formalities.

Registration.—Gives effect to real rights, which then take effect against subsequent creditors, except when delay allowed by law to register. Required for gifts, sales of immoveables or mining rights, wills concerning immoveables, claims for funeral expenses and expenses of last illness, substitutions, hypothecs, dower, renunciations, etc. (See *Passim.*) Is effected at length or by memorial ; may be renewed without interrupting prescription. Cancelled by consent of parties or final judgment.

Registry Offices.—For registration of real rights or affecting immoveables within county where situate, and other acts requiring registration. Regulated by special statutes.

Release.—Express or tacit, extinguishes obligations.

Responsibility.—(See Obligations.)

Revendication.—By unpaid vendor. (See Sale, Privileges and Quebec Insolvency Law.)

Rivers.—Navigable and floatable, are Crown dependencies ; alluvion produced belongs to owner of adjacent land.

Sale.—Is commercial if, 1°, object moveable ; 2°, made with intent to benefit ; and 3°, by a person who is in the habit of selling such things. (See Buyer, and Synopsis of Commercial Law.)

Schoolmasters.—Responsible for damage caused by their pupils where under their care ; claims for tuition, board and lodging prescribed by years.

Separation of Property.—Wife must contribute, in proportion to means, to expenses of household and education of common children ; has uncontrolled administration of her property ; may dispose of and alienate her moveables ; cannot alienate her immoveables without marital or judicial authorization ; husband responsible for omission to invest or replace price of wife's immoveable sold, if sale made in his presence and with his consent, and if sale authorized judicially, and he has been party to contract, or received moneys or benefited therefrom. If not contractual, must be obtained judicially on wife's demand, before court of domicile, when wife's interests imperiled and disordered state of husband's affairs gives reason to fear that his property will not satisfy wife's claims. No effect so long as not carried into execution by actual payment of wife's claims, established by authentic act, or proceedings instituted to recover them ; nor against third parties so long as judgment not inscribed in Prothonotary's office ; has then retroactive effect. Wife's creditors may exercise

debtor's rights, but husband's may intervene in fraudulent action. Community may be re-established by consent.

Separation from Bed and Board.—Grounds: outrage, ill-usage, insult, wife's adultery, husband's, if he keep his concubine in the common habitation; never by mutual consent. Action before court of domicile, admissions forbidden; wife petitions to be authorized to sue, and to reside elsewhere during suit; if action dismissed, for reconciliation or otherwise, parties bound to resume common domicile. Children left with father, unless court orders otherwise; wife may retire, demand necessary clothing and alimentary pension, subject to be forfeited if she leaves indicated place. Wife may have community goods attached; all alienations thereof by husband, and obligations contracted, annulable if fraudulent to wife. Marriage tie not dissolved; obligation of living together ceases; separation of property takes place; wife resumes dowry and property brought in marriage, gifts, etc., made by marriage contract (except if guilty of adultery), and rights of survivorship if stipulated; may demand partition of property; husband bound to make inventory; wife may sue and be sued, and contract alone; leave of judge required for alienation of immoveables; advantages retained by winning party; alimentary allowance claimable; children given to either party, or to third party on family council's advice to court; maintained and educated by father and mother; rights not changed. Dissolved by re-union, which re-establishes community of property.

Sequestration.—Conventional: deposit by two or more persons of thing in dispute in hands of a third person, obliging himself to restore it after contest to party to whom adjudged; subject to rules of lease and deposit, but not essentially gratuitous; terminated by adjudication, consent of parties or order of court. Judicial: objects, 1, moveables attached or taken in execution of judgment; 2, money and things tendered by debtor *pendente lite*; 3, thing in dispute; also takes place when usufructuary cannot give security, or when substitute put in possession, or institute committing waste. Sequestrator bound to be prudent, to produce and deliver thing when judgment rendered, to render account whenever court orders. Sequestrated property cannot be leased to contesting party; sequestrator discharged after 3 years, unless functions continued or for cause shown.

Servants.—Can only lease their services for a limited term, or for a determinate undertaking; engagement ends by their death or disability, and sometimes by death of hiring party; wages privileged without registration, prescriptible by one year, and by two years if not domestics and engaged for one year or more. (See Domicile, Lease, Oath, etc.)

Servitudes (real).—Charges imposed on one real estate for the benefit of another belonging to a different proprietor; arise either from natural position of property, *i.e.*, receiving waters flowing naturally or from law, *i.e.*, right of view, of way, etc., common property (*Cf. sup.*), or established by act of man, *i. e.*, from title; extinguished by impossibility of use, confusion, non-user for 30 years by persons of full age and not privileged.

Set-off.—Extinguishes obligations by sole effect of law if both debts equally liquidated and demandable, and having for object money or things of same kind and quality, not prevented by term granted by indulgence; does not take place to the prejudice of rights acquired by third parties; takes place whatever be the cause of debts except (*a*) for demand in restitution of deposit, or thing of which the owner was unjustly deprived; (*b*) for debt having for its object an unseizable alimentary provision.

Subrogate-Tutor.—Appointed and removed same as the tutor; duties: to cause the act of tutorship to be registered, to be present at inventory, to watch over administration of tutor, to cause his removal and replacing, to act for interest of minor whenever opposed to those of tutor.

Subrogation.—Conventional, when expressed by creditor receiving payment from third party, or when debtor borrows to pay his debt and accepts lender as creditor by act before notary or two witnesses. Legal: in favor, 1, of creditor who pays a preferred claim; 2, of purchaser of immoveable discharging hypothec; 3, of party paying a joint debt; 4, of beneficiary heir paying succession debt; 5, of consort paying community debt. Takes effect as regards sureties; creditor paid in part only preferred to party who has paid him.

Substitution.—Vulgar: Disposition of wills or gifts whereby a person (substitute) is called to take the benefit of a disposition in the event of its failure in respect to the person (institute) in whose favor it is first made; fiduciary (which includes the other), that in which person receiving thing is charged to deliver it over to another either at his death or at some other time, takes effect without delivery; may exist although the term usufruct used, if such be the intention; irrevocable if made by marriage contract; by other gifts *inter vivos*, revocable until accepted by institute; governed by rules of legacies in so far as applicable; must always be registered; want of registration may be invoked by all but grantor, institute, or their heirs or universal legatees; institute, substitute of age charged to deliver over, tutors or curators of institute or substitutes, curator to substitution, and husband for wife so bound, must register. Institute acts as proprietor; must cause appointment of curator to substitution if some substitutes not born; must within 3 months make inventory in the presence of interested parties; is responsible administrator; may give property to substitute before term. Substitute may transfer his eventual right; does not transmit if dies before opening. A prohibition to alienate may be connected with or constitute a substitution; includes prohibition to hypothecate; all its terms must be broadly interpreted, must be registered.

Successions.—Transmissions by law (abintestate) or by will of man (testamentary), to one or more persons (heirs) of property and transmissible rights of deceased person; also universality of things thus transmitted. Devolve at domicile, by natural or civil death. Heir must be civilly in existence at time of devolution, and not declared unworthy. Children divide equally estate of ascendants; if no issue left, father and mother, or survivor of them take one half, brothers and sisters, and their children if deceased (dividing equally share which would have accrued to parent, if living) the other; they take the whole if both father and mother dead; if only ascendants other than father and mother, ascendants of paternal line divide equally one half, and ascendants of maternal line the other, the nearest in degree excluding all others; collateral inherit by head when no ascendants under same conditions; if no relation within 12th degree, wife inherits, and in her default the Crown, both having to be judicially put in possession of estate. Heir may accept by assuming title in authentic or private act, or by performing act not merely conservatory. Renunciation effected by notarial deed, or judicial declaration recorded; must be registered; is retroactive: share accrues to co-heirs or next in degree; may be annulled if fraudulent to creditors; may be made at any time before acceptance; not valid if heir has abstracted or concealed property. Benefit of inventory may be demanded by petition to court or judge to free heir from succession debts exceeding amount received and avoid confusion of estates; inventory must be made; sureties given if required, notice of

quality, and account to creditors and legatees. Vacant when no heirs known or coming forward after delay for inventory; curator appointed. (See Partition.)

Suretyship.—Act by which a person (surety) engages to fulfil another's obligation in case of non-fulfilment by the latter; may take place without debtor's knowledge, may be for natural obligation or of a minor's act; obligation of sureties passes to heirs, except liability to imprisonment, when it exists; debtor bound to offer surety must offer one having sufficient real property in Lower Canada, and domiciled there, and replace him in case of insolvency. Prior discussion of debtor may be demanded by surety not jointly and severally bound, who points out clear property of debtor in Lower Canada, and advances costs, he may also ask benefit of division if more than one surety. Surety bound with consent of debtor may recover from him principal, interest, all costs, and damages if any, and even before paying if, 1, sued; 2, debtor insolvent; 3, discharge promised within a certain time; 4, term for payment of debt expired; 5, after 10 years, if no determinate period; surety bound without debtor's consent recovers what he would have paid and costs subsequent to notice of payment by surety. Sureties of public officers discharged after notice given unless otherwise agreed. Subject to causes of extinction of obligations. Judicial must not be exempt from civil imprisonment (*id.* surety required by law); cannot demand discussion of principal debtor.

Tender.—May be made when creditor refuses payment; valid when: 1. Made to creditor capable of receiving or person having authority for him; 2. By person capable of paying; 3. Of the whole sum due in current coin, if of money; 4. Term of payment expired, when in favor of creditor; 5. Condition of debt fulfilled; 6. At place where payment should be made.

Testimony.—(See Proof, Witness.)

Tithes.—Right to, imprescriptible, but arrears demandable for one year only; payable at rector's residence. (See Privileges.)

Transaction.—Contract by which parties terminate or prevent law suit by concessions; parties must be capable and tutor authorized; gives authority of final judgment; not annulable by error of law; annulable if based upon writings since found to be false, or in execution of title null, unless made to cover nullity.

Trustees.—May be appointed by donor or testator; depositaries and administrators for the benefit of donees or legatees during time stipulated; may be removed for waste or negligence, and replaced by Superior Court; majority may act, unless otherwise provided; expenses only paid, if no stipulation; liable for bad faith only, may renounce trust; render joint account when trust ends; liable to coercive imprisonment for balance due. Heirs do not continue administration, but render account.

Tutors.—(Guardians). Appointed to minors by court, judge or prothonotary, on advice of family council convened and composed according to law. Causes of refusal of charge: 1, Default of convocation at family council; 2. Default of relationship or alliance, if there are relatives or allies who could accept; 3. Age, (70); 4. Serious and habitual infirmities; 5. Two tutorships (do not dispense from that of children); 6. 5 legitimate children, living or dead, having left issue; 7. Certain public offices; must be stated at once. Cannot be: 1, minors, except if father or mother; 2, interdicts; 3, women, except mother and female ascendants; 4, parties having law suit

against minor ; 5, those condemned to infamous punishment ; 6, those whose misconduct or incapacity is notorious. Must take oath and make inventory, sell moveables by auction, invest moneys, represent and take prudent care of ward. Must ask advice of family council homologated by judge, to borrow, hypothecate, alienate immoveables, sell incorporeal moveables, accept or renounce succession, appeal from a judgment, or transact. Cannot accept succession for minor without asking for benefit of inventory, make gifts for minor, buy or rent his property, accept assignment of a right or claims against minor, or demand definitive partition of immoveables. Must render account when tutorship terminated, and from time to time when asked. (See Subrogate-Tutor.)

Use.—Right to enjoy another's thing and takes its fruits, only to meet requirements of user and family. (See Usufruct.)

Usufruct.—Right of enjoying things of another as proprietor, but subject to obligation of preserving the substance thereof. Begins by inventory and giving of security : otherwise sequestrator appointed. Usufructuary responsible for lesser repairs and all which are a consequence of his enjoyment. Ends by : 1. Natural or civil death of usufructuary, expiration of time fixed ; 2. Usufructuary becoming proprietor ; 3. Non-user during 30 years, and prescription acquired by third parties ; 4. Total loss of thing subject to it ; 5. Abuse of enjoyment ; 6. Resolution of right of party creating it ; 7. Renunciation.

Wages.—(See Servants, Prescription, Minors.)

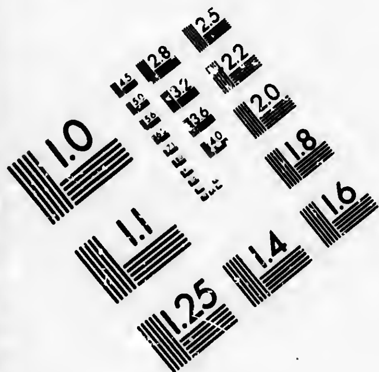
Widow.—Has full exercise of her rights ; may be tutrix to her children deprived of tutorship if remarries.

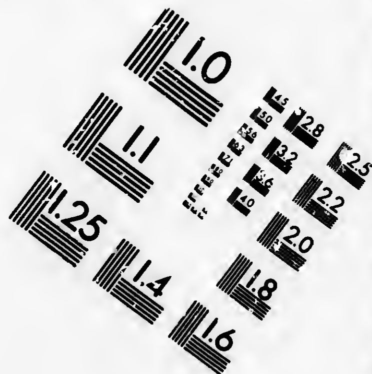
Wills.—Condition impossible or immoral considered as not written, and does not void disposition ; may be made by any person of full age and sound intellect, in favor of any one ; not by minors, or prodigals ; made after interdiction, may be confirmed or not according to circumstances ; annulled by civil death. Corporations, minors and interdicts, infants conceived, may receive. Presumptions of undue influence abolished ; cannot be made jointly by two or more persons. May be made : 1. In authentic form, before two notaries or one notary and two witnesses of full age and of the male sex, not in employ of notaries and receiving nothing by will, read to and signed by testator before parties ; original remains with notary ; cannot be dictated by signs (see Deaf-mutes, Notaries) ; need no probate ; 2. Holograph, wholly written and signed by testator ; 3. In the English form : writing signed by testator and two witnesses of either sex, who cannot receive ; 4. According to laws of England for military men in active service out of garrison, and mariners during voyages, on board ship or in hospital. Probate made under oath by competent witnesses before court, judge or prothonotary ; depositions attached to will, which is left at court.

Witnesses.—To wills cannot receive by wills ; may be related to testator or notary ; may be remunerated executors. (See Wills.)

Workmen.—Working by contract reputed contractors ; may claim wages if thing perish before reception of work by defect in materials or fault of owner. (See Privilege, Cancellation, etc.)

Writings.—(See Proof.)





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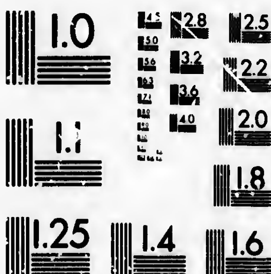

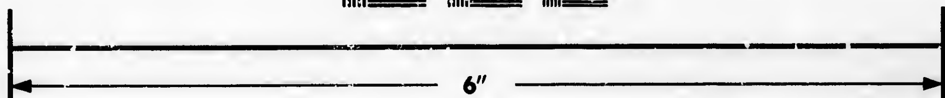

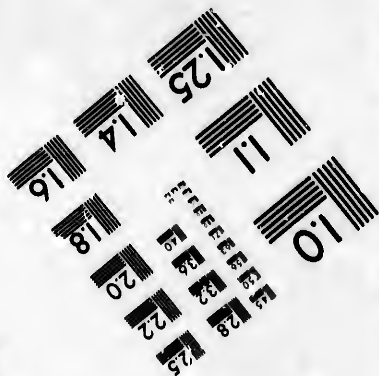

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An Outline of the Insolvency Law of the Province of Quebec.

BY

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In the absence of an insolvency law, the power to enact which, is vested by sec. 91, subsec. 21 of the British North America Act in the Parliament of Canada, the law of abandonment of property laid down in the Code of Civil Procedure of the Province of Quebec is made to serve the purpose as far as possible. No discharge can be given the insolvent under this law if the full amount of the latter's indebtedness be not made good.

Abandonment of Property, according to the articles of the Code of Procedure, can be made judicially only on a demand to that effect by a creditor. A debtor, however, can make a *voluntary abandonment* of his estate for the benefit of his creditors by dispossessing himself of his property to a trustee who realizes upon it for the benefit of the creditors and distributes the proceeds among them *pro rata*. Creditors only who have agreed to an abandonment of this kind can be bound by it, and this form of abandonment cannot prejudice the right of a creditor who is not a party thereto to compel the debtor to make a judicial abandonment in court if the sum due gives him that right.

The persons who can make a *judicial abandonment* of their property for the benefit of their creditors are:

(1) A debtor who has been arrested under a writ of *capias ad respondendum.*

(2) A trader who has ceased his payments and upon whom a demand of abandonment has been made by any creditor whose claim is unsecured for a sum of two hundred dollars and upwards.

Who may be arrested under a Writ of Capias ad Respondendum.—(*i*) A debtor indebted for a personal debt amounting to fifty dollars or upwards, created or made payable within the limits of the Provinces of Quebec and Ontario, where such debtor (*a*) is immediately about to leave the Provinces of Quebec and Ontario with intent to defraud his creditors in general or the plaintiff in particular, and the plaintiff will thereby be deprived of his recourse against the defendant; (*b*) is secreting or making away with, has secreted or made away with, or is immediately about to secrete or make away with, his property, with intent to defraud his creditors in general or the plaintiff in particular, and the plaintiff will thereby be deprived of his recourse against the debtor; or (*c*) is a trader who has ceased his payments and has refused to make a judicial abandonment of his property for the benefit of his creditors although duly required to do so.

See *Gault vs. Clouthier*, R. J. O. 7 Q. B.

Parties against whom a Writ of Capias ad Respondendum cannot issue.—(*a*) Priests or ministers of any religious denomination, (*b*) septuagenarians, and (*c*) women are not liable to arrest under writs of

capias ad respondendum; and in the case where a demand of assignment is made upon a woman carrying on the business of a public trader, and such woman refuses to assign, or where the debtor is a trader who has ceased his payments and has left the Province, or is a septuagenarian who refuses to assign, the creditor's remedy is to secure an order from the judge for the appointment of a provisional guardian until a meeting of the creditors is called by the judge to assist in the appointment of a curator.

Form of Demand of Abandonment.—The demand of abandonment must be signed by the creditor or his agent specially authorized in that behalf, and is served in the same way as ordinary summons; after service of the same it is filed in the office of the court with the claim under oath accompanied by vouchers.

Abandonment, how made.—If the debtor does not contest the demand of abandonment, he must, within two days after the service upon him, file at the place where by law the abandonment must be made, *i.e.*, the office of the Superior Court where he has his principal place of business, and in defau't ot such p ace, where he is domiciled, a declaration that he consents to ab ndon all his property to his creditors. The debtor must also within four days from the date of his declaration deposit a sworn statement in court showing (*a*) all his property liable to seizure in his possession, (*b*) the names and addresses of his creditors, the amount ot their respective claims and the nature of these claims.

Provisional Guardian.—A provisional guardian is appointed as soon as the debtor declares that he consents to assign. Preference is given, in making this appointment, to the most interested creditor. The provisional guardian takes possession of all the debtor's property liable to seizure, and may take conservatory measures under the judge's direction.

Meeting to appoint Curator.—A meeting of the creditors is called to take place before the judge, by a registered notice to the address of each of them, and also inserted in a newspaper published in the district. This meeting must be held between the fifth and the fifteenth day after the publication of the notice calling it. The judge must appoint as curator the person chosen by the *majority* in number and value of the creditors present, or represented at the meeting, who have filed sworn claims. Where the majority in number does not agree with the majority in value, the judge decides between them as he thinks proper. The inspectors are appointed from among the largest creditors, and their duties consist in advising the curator on all matters concerning the administration of the estate.

Seizures and Attachments are suspended after Abandonment.—All proceedings in the nature of seizures, attachments for rent or seizures in execution against the debtor's moveable property are suspended, and the guardian or curator takes possession of the goods seized.

Notice of Curator's Appointment.—The curator makes his appointment known by an advertisement in the Quebec *Official Gazette* and by a registered notice posted to the address of each creditor. The creditors are called upon in this notice to file their sworn claims within a delay of thirty days.

Curator to give Security.—The curator may be required by the judge to give security, the amount of such security being fixed by the judge. This security may be given to the creditors generally without mentioning their names.

Powers of the Curator.—The curator may, with the leave of the judge upon the advice of the creditors or inspectors, exercise all the right of action of the debtor and all the actions possessed by the mass of the creditors. He must sell moveable property of the debtor under the judge's direction upon the advice of the parties interested or of the inspectors; as to immoveables, the judge may authorize the curator to sell the same in such manner and after such notices as the court may direct, or the curator may require an order to issue what is known as a curator's warrant to the sheriff to dispose of the insolvent's immoveable property, and after the sale and the payment of hypothecary and other privileged claims upon the property, the surplus is remitted to the curator for distribution among the ordinary creditors.

Dividends.—The moneys realized from the property of the debtor must be distributed by the curator among the creditors by means of dividend sheets prepared after thirty days from the notice to the creditors calling upon them to file their claims. Notice of the preparation of such dividend sheets must be given by advertisement in the Quebec *Official Gazette*, and a copy of the dividend sheets must be sent to all the creditors whose claims have been filed or have been mentioned in the statement made by the debtor. Fifteen days after the observance of these formalities the dividends are payable.

Contestation of Dividends or Claims.—The dividends or claims may be contested by any party interested, or by the curator at the expense of the estate if he is so instructed by the inspectors. The judge may, however, allow the payments, in whole or in part, of any claims or dividends which are not contested, upon being satisfied that a sufficient sum is retained to meet the contestation.

Preferred Claims on moveable Property.—Privileged claims when they come together take precedence in the following order:—

1. Law costs and all expenses incurred in the interest of the mass of the creditors. Law costs are those incurred for the sale of the property and the costs of judicial proceedings for enabling creditors generally to obtain payment of their claims. The expenses incurred in the interest of the mass of the creditors include such as have served for the preservation of their common pledge.

2. Tithes carry with them a privilege upon such crops as are subject to them.

3. The claims of the vendor. The latter has two privileged rights (*a*) a right to revendicate or replevy; (*b*) a right of preference upon its price. In the case of insolvent traders, these rights must be exercised within thirty days after *delivery*. The right to revendicate or replevy the article sold is subject to the following conditions:

(*a*) The sale must not have been made on credit.

(*b*) The thing must still be entire and in the same condition.

(*c*) The thing must not have passed into the hands of a third party who has paid for it.

If the thing be still in the same condition, but the vendor be no longer within the delay or have given credit, he has a privilege upon the proceeds, and our courts have held that a conservatory seizure will lie to resiliate the sale and recover possession of goods which have been delivered within thirty days of the debtor's insolvency.

Thibaudeau & Mills, 29 L. C. J. 149.

Levi vs. *Heimerdinger*, 1 Q. P. R. 94.

4. Creditors who have a right of pledge or retention. These are the fol-

lowing: carriers, hotel-keepers, mandataries or consignees, borrowers in loan for use, depositaries, pledges, workmen upon things repaired by them, purchasers against whom the right of redemption is exercised for the reimbursement of the price laid out upon the property.

5. Funeral expenses.

6. The expense of the last illness.

7. Municipal taxes. These are limited to taxes on persons and personal property imposed by municipalities, and taxes to which a like privilege is attached by special statutes.

8. The claim of the lessor. In the case of the liquidation of property abandoned by an insolvent trader, who has made an abandonment in favor of his creditors, the lessor's privilege extends to twelve months' rent due, and the rent to become due during the current year if there remain more than four months to complete the year; if there remain less than four months to complete the year, to the twelve months' rent due and to the rent of the current year and the whole of the following year. If the lease be not in authentic form, the privilege can only be claimed for three overdue instalments and the remainder of the current year.

8*a*. The owner of a thing who has lent, leased or pledged it, and who has not prevented its sale, has a right to be paid the proceeds of its sale after the law costs mentioned in paragraphs 1 and 2 and the lessor's claim have been satisfied.

9. Servants' wages. Domestic servants and hired persons are next entitled to be collocated for whatever wages may be due to them for a period not exceeding one year. Clerks, apprentices and journeymen are entitled to the same preference, but only upon the merchandise and effects contained in the store, shop or workshop in which their services were required for three months' arrears.

Parties who have supplied provisions have a privilege for such provisions concurrently with hired persons for the supplies furnished during the last twelve months.

Preferred Claims on Immoveable Property.—The privileged claims on immoveable property are.

1. Law costs and the expenses incurred for the common interest of all the creditors.

2. Funeral expenses when the proceeds of the moveable property have proved insufficient to pay them.

3. The expense of the last illness subject to the same restriction as funeral expenses.

4. The expenses of sowing and tilling: the privilege for this expense attaches upon the price of immoveables sold before the harvest is gathered to the extent only of the additional value given by such tilling and sowing.

5. Assessments and rates. These consist of the following:

(*a*) Assessment for building or repairing churches, parsonages and church yards.

(*b*) School rates.

(*c*) Municipal rates: five years of arrears only, besides the current year, can be claimed. These claims are privileged only upon the immoveables specially assessed.

6. Seigniorial dues, five years' arrears and current year.

7. The claim of the laborer, workman, architect and builder. Provisions regarding the privilege mentioned in this section are to be found in 59 Vic. (Que.), cap. 42 (1895).

8. The claim of the vendor.

9. Servants' wages under the same restrictions as funeral expenses.

Examination of Insolvent and others.—After the filing of the statement by the insolvent, the latter may be summoned by any creditor or by the curator, properly authorized, to appear before the court to be examined on oath concerning the statement made in court at the time of the abandonment and the condition of his affairs, and provision is also made for the examination of the insolvent's consort or of any other person whom the court deems capable of furnishing information in regard to the general affairs of the insolvent's estate

Contestation of Statement.—The curator properly authorized, or any creditor, may contest the insolvent's statement by reason :—

1. Of the fraudulent omission to mention property of the value of one hundred dollars.

2. Of fraudulent misrepresentation in the statement with respect to the number of creditors or the nature or amount of their claims.

3. Of secretion by the debtor, within the year immediately preceding the filing of the statement, or since, of any portion of his property with intent to defraud his creditors. The contestation must be made within four months from the day on which the advertisement of the curator's appointment appears in the Quebec *Official Gazette*. If the contesting party establishes any one of the offences mentioned, the judge may condemn the debtor to imprisonment for a term not exceeding one year.

Register to be kept by Curator.—The curator must keep a register containing full particulars concerning the estate as to proceeds of sale of assets, disbursements, dividends, etc. This register may be consulted by any creditor, and within two months from the payment of the last dividend must be deposited in court.

Synopsis of Nova Scotia Laws.

Acknowledgments.—(See Deeds and Conveyances.)

Attachment of Debts.—Any person having a judgment may, upon affidavit of himself or his solicitor, obtain an order from the Court for attachment of debts due judgment debtor.

If the garnishee disputes his liability, the court may order an issue determining his liability to be tried, in the same manner as an issue in any action.

Attachment of Property.—The property of an absent or absconding debtor may be attached. A writ of summons in the usual form is issued, a copy of which must be left at defendant's last place of abode. The plaintiff may sue out attachment at or after the commencement of the action on making an affidavit showing a cause of action in the Supreme Court for eighty dollars and upwards, and in the County Court for twenty dollars to $400.00, stating the amount of debt or damage sustained, and that defendant is absent or absconding. The sum so sworn must be endorsed on the writ of attachment. The sheriff to whom the writ of attachment is directed shall levy for the amount endorsed on the writ, together with one hundred and twenty dollars in causes over eighty dollars, and twenty-eight dollars in causes under eighty dollars, for probable costs. Defendant's property is appraised by two sworn appraisers, and is not bound by attachment till levy is made.

Perishable goods may be sold by order of the court, unless security for their value is given within three days after notice of appraisement.

Any party having a title to the property attached may, by application to the Court, on affidavit setting out his claim and the facts, move to set aside attachment. A trial of the facts may be directed, and the court may set aside the attachment in whole or in part. If no appearance is entered within six months from attachment of property or service of an agent, unless a later appearance be allowed by the court or judge, the debt or damage may be assessed by a judge, and judgment may thereupon be entered up and execution issued thereon. Execution may be granted against an agent or trustee of defendant's who has been summoned and proved to have goods or credits of defendant's in his hands. The defendant is entitled to a re-hearing within three years.

Actions.—(See Courts.)

Affidavits.—Affidavits must be entitled in the cause in which they are used, and must contain facts known to deponent of his own knowledge, except on interlocutory motions, where matters of relief may be sworn to. The time and place of swearing and before whom sworn must be stated in the jurat. Affidavits should be drawn in the first person and contain a description of deponent, and where there is more than one deponent, the names of such deponents should be separately inserted in the jurat. Interlineations and alterations should be initialed by the person before whom affidavits are sworn, and erasures should be written in the margin and initialed. Where the deponent is illiterate or blind, the jurat should state that it was read over and explained and that he seemed perfectly to understand it. Exhibits should be certified as being such, and identified with the affidavit. Actions may be tried on affidavits. Affidavits may be sworn within the Province before a commissioner or judge, without the Province in the dominion of Her Majesty before a judge, court, notary public, or person lawfully authorised to administer oaths in said Dominion, or before any of Her Majesty's consuls or vice-consuls in foreign countries or a commissioner for Nova Scotia for taking affidavits.

Arrests.—When plaintiff believes defendant is leaving the province, he may upon affidavit of himself or some other person having knowledge of the facts, obtain an order for his arrest. The affidavit must show:—

1st. Defendant's indebtedness.

2nd. Nature of claim.

3rd. That plaintiff has probable cause for believing and does believe that defendant is about to leave the province unless he be arrested, and that he believes the debt will be lost unless the defendant be forthwith arrested.

The defendant on arrest may give security. In the Supreme Court the lowest amount for which defendant can be arrested is eighty dollars, and in the County Court twenty dollars.

Bills and Notes.—The law of bills and notes was codified by a Dominion statute entitled "The Bills of Exchange Act, 1890." It is chiefly a codification of the principles of common law on the subject. When a note is not payable on demand, but is payable on sight or time, three days of grace is allowed. Whenever the last day of grace falls on a legal holiday, then the day next following, not being itself a legal holiday, shall be the last day of grace. The following are the legal holidays: Sundays, New Year's Day, Good Friday, Easter Monday, Christmas Day, the birthday of the reigning Sovereign, the first day of July (Dominion Day), Labour Day, also any day appointed by the Governor-General or Lieutenant-Governor, and the next

day following New Year's Day, and Christmas Day, Dominion Day and Sovereign's birthday when those days fall on Sunday. Only foreign bills and notes require to be protested.

Bills of Sale.—Every bill of sale of personal chattels, and every schedrule annexed thereto or referred to therein, or a true copy of such bill of sale and schedule, must be filed with the registrar of deeds of the county or district where the maker resides; and in case a copy be filed, it must be accompanied by an affidavit of the execution of the original bill of sale, otherwise it shall only take effect and have priority from the date of filing the affidavit. If the bill of sale be subject to any defeasance, the defeasance is considered part of the bill of sale, and the defeasance or a copy of it must be filed with the bill of sale or copy, otherwise the bill of sale is null and void to the same extent as if not filed. Every bill of sale or chattel mortgage of personal property, other than mortgages to secure future advances or mortgages for securing the mortgagee against any liability for the mortgagor, must be accompanied with an affidavit of the grantor that the amount set forth therein as the consideration thereof is justly and honestly due and owing by the grantor to the grantee; that the bill of sale was executed in good faith, and not for the purpose of protecting the property of the grantor from his creditors or for preventing his creditors obtaining payment of any claims against the grantor, otherwise the bill of sale is null and void against such creditors.

Chattel Mortgages.—(See Bills of Sale.)

Collection Act, 1894.—Imprisonment for debt is abolished by this Act.

Any creditor who has obtained a judgment of the Supreme, County or Probate Courts, and has been unable to obtain satisfaction thereof, may, on obtaining a certificate from the sheriff that he has endeavored and has been unable to obtain satisfaction of the same by execution, apply to a commissioner of the Supreme Court for the county in which the defendant resides or may be found at date of said application, on affidavit of himself or his solicitor or agent, setting forth the judgment, date of recovery, name and residence of debtor, accompanied by said certificate of the sheriff, for an order for the examination of said debtor.

If debtor does not appear at time and place fixed in order for examination and no sufficient cause for non-appearance is shown, the commissioner may upon affidavit of service of order for examination, order arrest and committment of debtor pending the examination.

On appearance of debtor, commissioner hears evidence under oath, and debtor may be fully examined respecting "the contracting of the debt, and disposition of his property, his present circumstances and his present or prospective means of paying the debt." Subpœnas may be issued and a warrant if necessary to compel attendance of witnesses.

If at the conclusion of such examination it shall appear :—

(*a*) That the debt was fraudulently contracted, or credit obtained under false pretences or without the debtor having at the time any reasonable expectation of being able to pay debt, or any other fraudulent circumstances occurred in connection with the contracting of the debt; or

(*b*) That debtor has made any fraudulent disposition of his property; or

(*c*) In case of tort or breach of contract that the tort or breach was wilful and malicious; then in any or all such cases the commissioner may commit debtor to jail under his warrant setting forth grounds of committment for a period not exceeding 12 months.

Commissioner may at conclusion of examination order debtor to execute assignment of all his real or personal estate (except such as is exempt from levy under execution). He may order him to pay debt by instalments. On failure of debtor to pay instalments ordered, Commissioner may order an execution to issue "to take the body" of debtor.

If debtor about to leave province, creditor may apply on affidavit to commissioner for order for arrest.

In case of judgments in stipendiary magistrate's court, the duties of commissioner may be performed by commissioner or stipendiary magistrate, where judgment obtained in justice's court, by a justice of the county where debtor resides or may be found.

The act does not apply:

1. Where judgment is for a penalty, not as an ordinary debt, or a sum in the nature of a fine imposed, or where in default of payment or penalty imprisonment is ordered.

2. Warrants for collection of rates and taxes for municipal, county, poor and school purposes.

Appeal from the order of commissioner may be taken, on notice stating date of hearing and ground of appeal, within 48 hours from date of order, to a judge of Supreme Court or judge of County Court having jurisdiction in the county in which debtor resides or was examined. The judge on appeal may have witnesses examined and make such order as may seem just.

Conveyances.—All deeds, judgments and attachments affecting lands must be registered in the registry office of the county in which the lands lie. All deeds, dockets of judgment, or any copy of a writ of attachment, with the description and appraisement, are accounted registered from the date of their being duly lodged for registry. The registry of a deed executed under power of attorney is void unless such power, or a deed subsequently confirming the authority given thereby, is duly registered. Deeds or mortgages of land duly executed but not registered are void against any subsequent purchaser or mortgagee for valuable consideration who has first registered his deed or mortgage of such land. In order that a lease may be effectual, it must be recorded as other deeds. Leases of land for more than three years are void against subsequent purchasers or mortgagees for valuable consideration and judgment creditors, unless they have been registered and a reasonable rent received in good faith thereon. All grants of lands since March 31, 1854, must be recorded in the registry of deeds office for the county in which the lands lie. (For deeds of Married Women, see Married Women's Property Act.)

Courts, Jurisdiction of.—The County Court does not have cognizance of any action: 1. When the title to land is brought in question 2. In which the validity of any devise, bequest or limitation is disputed, except in certain specified cases. 3. For criminal conversation or seduction. 4. For breach of promise of marriage.

The County Court has original jurisdiction in all actions *ex contractu* where the debt or damage does not exceed four hundred dollars, and in case of debt where the debt or damage is not less than twenty dollars. In other actions where the damages claimed do not exceed four hundred dollars, in all actions on bail bonds to the sheriff in any case in the County Court whatever may be the penalty or amount sought to be recovered, and in all actions for nonfeasance and misfeasance of sheriff in connection with any matter in the County Courts. The jurisdiction of the County Court is concurrent with that of the Supreme Court in actions for sums between $80.00 and $400.00.

Depositions.—Upon any motion, petition or summons, evidence may be given by affidavit, but the court on application by other parties may order the attendance for cross-examination of the person making such affidavit. Persons about to leave the province, or who are aged, infirm or otherwise incapacitated from attending court, may be examined on oath, and the person to be examined stands in the same position as a witness in court, provided the examination takes place within the jurisdiction. The evidence is taken by the person appointed in the presence of the parties and their counsel. The depositions are taken in writing and signed by the witness after being read over to him. If the witness refuses to sign, the examiner may sign for him. The Supreme Court will order the examination of witnesses under commissions from courts abroad, if satisfied of the competency of the jurisdiction of such courts, the authenticity of the commission or order and the propriety of the examination. Parties to a cause may consent in writing to examination of witnesses residing abroad. Either party to a cause may move the court or judge for a writ of commission for the examination of witnesses residing abroad.

Descent of Real and Personal Property.—(*a*) When persons die possessed of or entitled to real estate, not having devised the same, it shall descend to their children in equal shares, and if there be no child then to their legal descendants, such representatives to take the share of deceased parent in equal proportions, and if there be no child of the intestate living at the time of his death, to his other lineal descendants; and if all the descendants shall be in the same degree of kindred, they shall share the estate equally, otherwise they shall take according to the right of representation.

(*b*) When there is no issue, one-half goes to the father and the other half to the widow of deceased in lieu of dower

(*c*) When there is no issue or father, one half goes to the widow and the other half to the mother, brothers and sisters and the children of any deceased brother or sister by right of representation.

(*d*) If there is no widow, the whole goes to the mother, brothers and sisters and to the children of any deceased brother or sister.

(*e*) Where there is no issue, widow, father, mother, brother or sister-or children of any deceased brother or sister, it shall go to the next of kin in equal degree, excepting that where there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor shall be preferred to those claiming through on ancestor who is more remote; but in no case shall representatives be admitted among collaterals after brothers' and sisters' children. The degrees ai kindred shall be computed according to the rules of the civil law, and the kindred of the half-blood shall inherit equally with those ot the whole blood in the same degree. In distribution of personalty, one-third goes to the widow and the balance to those entitled to real estate, and if there is no widow, then such person takes the whole of personalty. Posthumous child ren are entitled to an equal share of their father's estate.

Dower.—(See Married Women's Property Act.)

The widow is entitled to one-third interest in the realty of her husband. She can enforce her claim to dower by actions specially provided for that purpose, and may obtain damages for the wrongful withholding of her dower.

Estate of Deceased Persons.—All claims against estates of deceased persons should be rendered to the executor or administrator, accompanied by a sworn declaration of the claimant of the justice and accuracy of the account. Executors and administrators are allowed 18 months for the settlement of the estate and the payment of all claims against it.

Evidence.—Evidence may be given,

(*a*) *Viva voce* before a judge,

(*b*) by affidavit,

(*c*) under commissioner appointed for that purpose.

Persons wishing to perpetuate the testimony of any witness must commence an action for that purpose. No person is an incompetent witness by reason of incapacity from crime or from interest, except where an action is brought against an executor or administrator; in such case neither the party bringing the action nor his wife can give evidence on behalf of such party, of any dealing, agreement or transaction with the deceased, or of any statement or acknowledgment made or words spoken by him or of any conversation with him, provided, however, that such party is competent to give evidence for such executor or administrator.

Execution.—Execution may issue immediately after judgment unless otherwise ordered by the Court, and remains in force for one year. It may be renewed at any time before the expiration of the year and so continued from time to time. Execution cannot issue in the following cases without permission of the court, viz.:

(*a*) Where 6 years have elapsed from the date of the judgment without execution having previously issued; or

(*b*) Where any change has taken place in the parties by death or otherwise;

(*c*) Where a husband is entitled or liable to execution upon a judgment or order for or against his wife;

(*d*) Party entitled to judgment of assets in future;

(*e*) Where party is entitled to execution against any of the shareholders of a joint stock company.

Executions issued against real estate carry six years' interest at 6 p.c.; against personalty twenty years' interest at 6 p.c.

Exemptions from Levy under Executions.—The necessary wearing apparel and bedsteads and bedding of debtor and his family, and the tools and instruments of his trade or calling to the value of $30. One stove and his last cow, 2 sheep, 1 hog, and food therefor for thirty days. Fuel and food for family use for 30 days, not exceeding $40 in value. One set cooking utensils, tongs, 6 knives, 6 forks, 6 plates, 6 teacups, 6 saucers, 1 shovel, 1 table, 6 chairs, 1 milk jug, 1 teapot, 6 spoons, 1 spinning wheel, 1 weaving loom, 10 volumes of religious books, water bucket, axe, saw, and fishing nets in use to the value of $20.

Garnishment.—(See Attachment.)

Insolvency.

CHAPTER 11, ACTS 1898.

An Act respecting Assignments of and Preferences by Insolvent Persons.

1. In case any person, at the time in insolvent circumstances, or unable to pay his debts in full, or knowing himself to be on the eve of insolvency, voluntarily, or in collusion with a creditor or creditors, gives a confession of judgment, *cognovit actionem*, or warrant of attorney to confess judgment with intent in giving such confession, *cognovit actionem* or warrant of attorney to confess judgment, to defeat or delay his creditors wholly or in part, or with intent thereby to give one or more of the creditors of such person a preference over his other creditors, or over any one or more of such creditors, every such confession, *cognovit actionem* or warrant of attorney to confess judgment shall be deemed and taken to be null and void

as against the creditors of the party giving the same, and shall be invalid and ineffectual to support any judgment or writ of execution.

2. (1) Gifts, conveyances, assignments, transfers, delivery and payment of goods, bills, bonds, shares, etc., and any other property, real or personal made by persons in insolvent circumstances, etc., with intent to defeat, etc., to be void as against the person defeated, etc.

(3) All such gifts, conveyances etc., as mentioned in paragraph 2 (1) made to or for a creditor with intent to give such creditor an unjust preference over other creditors, to be void as against the creditor delayed, prejudiced, etc.

(*a*) If the transaction has the effect of giving a preference, and an action be brought within sixty days to set it aside, or if the debtor assigns within sixty days from the date of the transaction, the transaction is presumed to have been made with intent to give a preference, etc.

(*b*) Where the word "creditor" means creditor to whom a preference is given, it shall include surety or endorser who upon payment of the debt would become a creditor.

4. Nothing in the preceding section shall apply to any assignment made to an official assignee appointed by the Governor-in-Council for the county in which the debtor resides or carries on business, for the purpose of paying ratably and proportionately, and without preference or priority over all the creditors of the debtor, their just debts; nor to any *bona fide* sale or payment made in the ordinary course of trade or calling to innocent purchasers or parties; nor to any payment of money to a creditor, nor to any *bona fide* gift, conveyance, assignment, transfer or delivery over of any goods, securities or property of any kind, as above mentioned, which is made in consideration of any present actual *bona fide* payment in money, or by way of security for any present actual *bona fide* advance of money, or which is made in consideration of any present actual *bona fide* sale or delivery of goods or other property, provided that the money paid, or the goods or other property sold or delivered, bear a fair and reasonable relative value to the consideration therefor.

The assignee or his deputy must be a permanent and *bona fide* resident of the Province.

Property assigned cannot be removed out of the Province without order of a judge, and moneys of estate must be deposited in incorporated bank, and shall not be removed, excepting to pay dividends, without judge's order under penalty of $400.00.

Ranking of Claims.—If the assignor owes debts individually or as a partner in one or two different co-partnerships, the claims rank first upon the estate by which the debts were contracted, and only rank on the other after all the creditors of the other have been paid in full.

(Note.—It is difficult to see why the phrase "*two* different co-partnerships" is used, instead of different co-partnerships as in the Ontario Act.)

Priority of Claims.—The wages or salaries of persons in the employ of assignor at the time of making assignment, or within one month before, not exceeding three months' wages or salary, are paid in priority to claims of general creditors, and such persons are entitled to rank as general creditors for the balance of their claim.

A majority in number and value of claims of $100 and upwards may substitute an assignee for the official assignee. The estate shall vest without further conveyance or transfer. An assignee may be removed and another substituted, or an additional assignee appointed by an order of a judge.

The assignee has power to sue, but a creditor may take proceedings in

the name of the assignee for the benefit of the estate on such terms as the judge may order.

The remuneration of the assignee is fixed by the creditors after a declaration of the first dividend, subject to review by a judge at the instance of the assignee or creditors.

Notice of Assignment.—Notice of assignment to be published in the *Royal Gazette* and one newspaper published in the county in which the property assigned is situated, which shall be respectively issued after five days from the execution of the assignment. Copy of the assignment and an affidavit of witnesses of execution thereof to be registered in the office of the Registrar of Deeds where the assignor, if a resident, resides, and if not a resident, then in the office of the Registrar of Deeds where the personal property so assigned or the principal part thereof is at the time of the execution of assignment. The omission to publish or register shall not invalidate the assignment, and no advantage shall be taken or gained by any creditor of any mistake, defect or imperfection in the assignment if the same can be amended on application to a judge.

It is the duty of the assignee to call a meeting of the creditors within five days of the assignment. Votes may be given in person or by proxy. The order of voting is as follows :

For every claim over $ 100	not exceeding $ 200,	one vote	
" " " " 200	" " 500,	two votes	
" " " " 500	" " 1,000,	three votes	
" " additional 1,000	or fraction thereof,	one vote	

In case of a tie, assignee has casting vote.

Proof of Claims.—Particulars of claims must be furnished and proved by affidavit. and such vouchers as the case admits of.

Every creditor in his proof of claim shall state if he holds security for his claim, and place a valuation thereon. The assignee under the authority of the creditors may allow him to rank for the balance of his claim after deducting such valuation, or he may take an assignment of such security at an advance of 10 p.c. upon its specified value to be paid out of the estate when the security is realized upon. In the latter case the difference between the value at which the security is retained and the amount of the gross claim is the amount for which the creditor shall rank and vote.

Where the claim is upon a negotiable instrument upon which the assignor is secondarily liable and which has not matured, the creditor shall set a value on the liability of the persons primarily liable, and the difference between such valuation and the amount of his gross claim is the amount for which he shall rank. A judge can order a creditor to prove his claim, and in case of default bar the claim.

Where a claim has not matured, the creditor can prove and vote, but a deduction for interest shall be made for the time which the claim has to run before it becomes due.

Any creditor can request a claim to be contested and proved by action.

Within one month and not more than three months after the first meeting of creditors, and from time to time at intervals of not more than three months, the assignee shall prepare and keep accessible to creditors accounts and statements of the estate, and declare dividends whenever the moneys of the estate justify one, or on a majority vote of the creditors. He shall also furnish creditors with an abstract of the receipts and disbursements, shewing what interest has been received by him on moneys in hand and a copy of the dividend sheet, noting the claims objected to and whether any reservation has been made for them, and after eight days from the date of mailing such notice, etc., dividends on all claims not objected to shall be paid.

The law of set off shall apply in the same manner as if the assignor was plaintiff or defendant, except in so far as any claim shall be affected by the provisions of this or any other Act respecting fraud or unjust preferences.

Affidavits under this Act may be sworn before any person authorized to administer oaths or affidavits in the Supreme Court, or before a justice of the peace.

Official assignees are appointed by the Governor-in-Council.

(Note.—It is doubtful if this Act will accomplish the object for which it was enacted, namely to prevent preferences, and as it is provincial legislation, the creditors of a person in insolvent circumstances cannot compel an assignment.)

Interest.—Where no rate is specified, 6 p.c. is by law chargeable and recoverable. A creditor whose debt does not carry interest, who comes in and establishes the same before a judge in chambers, is entitled to interest from the date of the judgment or order out of any assets which remain after satisfying the costs of the cause or matter, the debts established and the interest of such debts as by law carry interest. Where there is an order for an account of legacies, interest runs at 5 p.c. per annum from the end of one year after testator's death, unless otherwise ordered or unless otherwise directed by the will. Where the security is real estate or chattels real, the parties may stipulate in writing for 7 p c. interest; and when the security consists only of personal security or personal responsibility, ten p.c. may be stipulated for by parties in like manner as above.

Judgments.—(See Deeds.) Judgments duly recorded in the Registry of Deeds bind real estate for 20 years.

Limitations of Actions.—Actions of assumpsit, trespass, *quare clausum fregit*, detinue, trover, replevin, debt grounded upon any lending or contract without specialty, or for rent account, or upon the case, must be brought within six years next after the cause of action. All actions of account concerning the trade of merchandise must be sued within six years next after the cause of such action arises, and no claim arising more than six years before action is enforceable on the ground only that some other matter of claim comprised in the same account has arisen within six years before the commencement of such action. Actions of trespass, for assault, battery, wounding or imprisonment, and actions on the case for words, or actions or prosecutions for taking illegal interest, must be brought within one year next after the cause of action. No action can be brought to recover any sum of money secured by any mortgage, judgment or lien, or otherwise charged upon or payable out of any land or rent, at law or in equity, after twenty years from the time right of action accrued, unless there have been some part of debt or interest paid in the meantime, or a competent acknowledgment given, in which case the twenty years commence to run from the date of such payment or acknowledgment.

"Married Woman's Property Act, 1898."

Comes into force 1st January, 1899.

Under this Act, a married woman can

(*a*) Acquire, hold and dispose of, by will or otherwise, real and personal property.

(*b*) Enter into and render herself liable in respect of, and to extent of her separate property, sue and be sued, in contract or tort, or otherwise. Her husband need not be joined as plaintiff or defendant. Any damages or costs recovered shall be her separate property, and any damages or costs against her shall be paid out of her separate estate.

Every contract entered into by a married woman after 1st May, 1899, otherwise than as agent:

1. Shall be deemed to be contract with respect to her separate property whether or not at the time she is possessed of or entitled to any.

2. Shall bind her separate property, which she may at the time of transfer be possessed of or entitled to.

3. Shall be enforcible against property which she may thereafter, while be possessed of or entitled to.

Every woman who marries after 1st January, 1899, shall be entitled to hold and dispose of as her separate property, all real and personal property belonging to her at time of marriage or acquired or devolved upon her after marriage, including wages so acquired by her in any employment, trade or occupation in which she is engaged separately from her husband, or by the exercise of any literary, artistic or scientific skill.

Proviso. (*a*) In order to carry on business separately from her husband, the consent of the husband must be filed in the Registry of Deeds for the district or county where the wife resides and does business.

(*b*) In addition to this consent she shall record in the office of the clerk of the city or town in which she does or proposes to do business, or of the clerk of the municipality, if such business is not carried on in a city or incorporated town, a certificate setting forth:

1. Her name.
2. Name of husband.
3. Place of business, giving street and number, if practicable. If any change is made a new certificate is necessary.

(*c*) If a married woman fails to file certificates, the husband may, but if neither do, the property is liable to be taken on execution issued against husband, and husband is liable on contract in respect of said business.

Money lent by wife to husband treated as assets of husband, and in case of assignment of husband for benefit of creditors, she can only claim dividend as creditor after all claims of other creditors for valuable consideration have been paid.

The execution of a general power by will by a married woman makes the property appointed liable in the same manner as her separate estate.

Every married woman married before 1st January, 1898, shall be entitled to hold and dispose of property, title to which is acquired after said date, including wages, etc.

All deposits in post office, savings or other banks, annuities, shares, stocks, debentures, debenture stock or other interest in any corporation company or public body, municipal or otherwise, or in any industrial, provident, friendly, benefit, building or loan society which at the 1st January, 1899, stood in the name of married woman, shall be deemed to be her separate property till the contrary is shown.

There is a similar provision for deposits, stocks, etc., acquired by married woman after 1st January, 1899, and it is not necessary for husband to join in transfer of such deposits, stock, etc.

Any investment of husband's money by wife without his consent may be ordered by court to be transferred to husband. Any gift by husband to wife of property which continues to be in the "order and disposition of reputed ownership of husband," or any deposit, etc., made to wife in fraud of creditors shall not have validity against creditors.

A married woman may effect policy of insurance on her own or her husband's life for her separate use.

Every married woman, whether married before or after the 1st January, 1899, shall have civil and criminal remedies against all persons, including her husband, for protection of her *separate property*.

A married woman is liable to extent of her separate property, and her husband is liable to extent of all property which he shall acquire through his wife, for all debts contracted, contracts entered into and wrongs committed by wife before marriage.

Then follow a number of sections dealing with decrees for alimony, protection, order, etc.

DEEDS BARRING DOWER AND RIGHTS OF MARRIED WOMEN IN THEIR HUSBANDS' ESTATES.

Chapter 23, Acts of 1898.

Any deed executed under power of attorney, or otherwise, by a married woman, jointly with her husband, or concurred in by a separate conveyance executed by him, whether of dower or other interests, shall, if acknowledged before a judge of the Supreme Court, justice of the peace, notary public, or barrister of the Supreme Court of Nova Scotia, to be her own free act and deed, etc., have the same effect as if made by a married woman.

If executed without the Province, the certificate or acknowledgment may be taken before the mayor of any city, notary public, justice of the peace, or before any public minister, ambassador, Consul or Vice-Consul of Great Britain,

Such acknowledgment to bar dower must be registered with the deed or power of attorney.

The wife may at any time after husband has executed deed, execute deeds of release of her interest, so too husband in reference to wife's estate.

Dower in Husband's Estate. — The wife may elect to take provision in husband's will or dower one-half to third interest in husband's real estate.

Where husband dies beneficially entitled to interest in land (other than estate in joint tenure), which would not entitle widow to dower at common law, the widow shall be entitled to dower.

Where husband has been entitled to right of entry or action in land, wife may sue for dower even though husband did not recover possession.

Wife entitled to dower in surplus proceeds of land sold under mortgage or judgment.

Wills of Married Women.—If made without consent of husband, he can elect between provision in will and tenancy by the curtesy in wife's real estate.

No will of wife, under which husband takes greater interest than if she died intestate, shall be valid, unless it is executed when husband not present, and unless at time of execution she declares in presence of witnesses it is her own act, or her own free will, etc., and such declaration must be embodied in affidavit or other evidence of execution of the will.

Intestacy.—(1) Where married woman dies intestate leaving issue :

(*a*) Husband takes interest as tenant by curtesy and third personal property.

(*b*) Balance equally among issue.

2. Without issue.

(*a*) Half real and personal estate to husband.

(*b*) Half real and personal estate to father.

3. If no father surviving :

(*a*) To her mother, brothers and sisters in equal shares.

(*b*) The issue of deceased brother or sister, taking father or mother's share.

4. If no father, mother, brother or sister, the whole goes to husband.

Mortgages.—Mortgages take effect as against third parties from date of recording, otherwise they are void against subsequent purchasers, or

mortgagees for valuable consideration who shall first register his deed or mortgage of such land.

Redemption.—Mortgaged lands may be redeemed at any time within twenty years, unless the equity of redemption is barred by foreclosure and sale under the mortgage.

Replevin.—Personal property may be replevined under an order from the court. Such order may be obtained upon an affidavit showing:

First. That the person or corporation claiming the property is owner of it, or entitled to possession of it, and that it is unjustly detained from him and also describing property.

Second.—The value of the property to the best of his belief.

Service of Process.—All writs are served by the sheriff, but all subsequent process may be served by any person. The defendant may accept service of writ personally, but before judgment can be entered an affidavit of service, identifying signature of defendant, must be filed.

Statute of Frauds.—All leases for less than three years, of any interest etc., in land, have the force of leases at will. All interest in lands, etc., is assignable only by deed or note in writing. Declarations or creation of trusts in land, etc., must be in writing, except implied or constructive trusts, or those transferred or extinguished by operation of law. Assignments of trusts must be in writing. The following contracts must be in writing:

(*a*) Promises of executor, etc., to answer damages out of his own estate.

(*b*) Any promise to answer for the debt, default or miscarriage of another.

(*c*) Promise of marriage.

(*d*) Sale of lands.

(*e*) Any agreement not to be performed within a year.

Contracts for the sale of goods of the value of forty dollars and upwards shall not be enforced unless the buyer accept part of the goods, and actually receive the same or give something in earnest to bind the bargain, or in part payment, or that some note or memorandum in writing of the bargain be made and signed by the parties to be charged by the contract, or their agents This applies to goods to be delivered *in futuro*.

Stay of Execution.—Execution may be stayed by order of the court or a judge.

Synopsis of the Laws of New Brunswick.

COMPILED BY

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Attachment.—Under Chapter 44 of the Consolidated Statutes, proceedings by way of attachment may be taken against the property of debtors indebted in a sum greater than $40, who depart from or keep themselves concealed within the Province with intent to defraud their creditors, on an affidavit of the amount of the indebtedness, that such sum is due over and above all discounts, and that the defendant is departed the Province or concealed within it, with intent

to defraud the creditors of their just dues or to avoid being arrested. The departure or concealment must be verified by the affidavit of two witnesses to the satisfaction of the judge. Notice of the attachment is given in the "Royal Gazette," and if the debtor does not return within three months of the publication of such notice, trustees are appointed in whom vests all the estate of the debtor; they having power to sue for and recover the same in their own names, and, after fourteen days' notice of the time and place of sale, to sell the estate by public auction. Within eighteen months' after their appointment, the trustees call a meeting of the creditors to examine and pass their accounts, after which they are to distribute the residue of the estate without preference among the creditors in proportion to their respective demands, including therein debts not due on rebate of interest. If the whole estate is not then settled, the trustees within one year shall make a second dividend and so on from year to year, until the estate is closed, any surplus to be paid to the debtor. If the debtor return to the Province within three months of the publication of the notice of attachment, he may pay all claims which have been filed against him, and a judge, on being satisfied that he has done so, may grant a supersedeas of the warrant of attachment. Any creditor residing out of the Province is entitled to all the benefits of the Act, and the attorney of such creditor, on producing a power from him duly authenticated with legal proofs of the debt, may, in all respects, act for such creditor as if he were personally present.

Acknowledgments.—The Registry Act, 57th Vict., c. 20, provides that, with the exception of leases for a term not exceeding three years, every instrument whereby lands or real estate may be disposed of, transferred, charged, encumbered or affected, may be registered in the counties where the lands lie, and if not so registered shall be fraudulent and void against subsequent purchasers for valuable consideration whose conveyances are previously registered. Before the registry of any instrument, its execution must be either acknowledged by the person executing, or be proved by the oath of a subscribing witness.

The acknowledgment of instruments requiring to be acknowledged before being registered, if taken within the Province, may be taken before a judge of the Supreme or County Courts, any member of the Executive Council, any registrar or deputy registrar of deeds, any notary public, any justice of the peace in the county where the conveyance is to be registered. If the acknowledgment is taken out of the Province, it may be taken by any notary public, certified under his hand and official seal, the mayor or chief magistrate of any city, any judge of the High Court of Great Britain, any judge or lord of session in Scotland, any judge of a court of supreme jurisdiction in any British Colony, any British minister, ambassador, consul, vice-consul, etc., exercising functions in any foreign place, and the governor of any State.

If the execution of any instrument is proved instead of being acknowledged, such proof, if taken within the Province, may be taken before a judge of the Supreme or County Court.

member of the Executive Council, any registrar or deputy registrar of deeds, any notary public appointed and residing in the Provnce; if out of the Province, it may be taken by any commissioner for taking affidavits out of the Province, any notary public, mayor or chief magistrate of any city, any judge of the High Court of Great Britain, any judge or lord of session in Scotland, any judge of a court of supreme jurisdiction in any British Colony, any British minister, ambassador, consul, vice-consul, etc., exercising his functions in any foreign place, or the governor of the State.

Actions.—In the Supreme Court actions may be brought for any amount. The practice is based on the English Common Law Procedure Act, which with subsequent amendments governs the procedure of this court. If the defendant is resident within the jurisdiction, and the action is upon a bill of exchange, promissory note, cheque, bond, or contract under seal, for payment of a liquidated amount of money, the writ may be specially indorsed. When the writ of summons is so indorsed, and the defendant does not appear to the action, the plaintiff may sign final judgment for the amount so indorsed at the expiration of twenty days after service of the summons (60th Vic., cap. 24, sec. 71). If the defendant appears to the action, application may be made to a judge for leave to sign summary judgment on an affidavit by the plaintiff, or any one who can swear positively to the debt or cause of action, and stating that the defendant has in his belief no defence to the action. If the writ of summons is not specially indorsed as above, and the defendant does not appear to the action, final judgment may be signed at the expiration of 40 days after the filing of the declaration, which may be done immediately after service of the summons. The defendant may appear at any time before interlocutory judgment is signed. When he so appears, the declaration may be served upon him immediately, and he then has 20 days in which to plead. The plaintiff has 10 days in which to reply to the defendant's pleading. After issue has been joined the cause may be brought down to trial at any of the Circuit Courts where venue is laid on giving fourteen days notice thereof. Circuit Courts are held in each one of the counties at stated periods. If on the trial the plaintiff does not recover an amount greater than he might have recovered in the County Court, he shall only be entitled to County Court costs, unless he can obtain from the judge who tried the cause a certificate that he had reasonable cause for bringing the action in the Supreme Court. The County Courts have jurisdiction in all actions of debt, covenant and assumpsit when the debt or damages do not exceed the sum of $400.00, in all actions of tort when the damages claimed do not exceed $200.00, but they have no jurisdiction in any case when the title of land is brought in question, or when the validity of any devise, bequest or limitation is disputed, and the Saint John County Court has no jurisdiction in any cause in which the City Court of Saint John has jurisdiction.

When the defendant appears to an action in these courts upon a bill of exchange, promissory note, cheque, or any bond, or contract under seal for payment of a liquidated amount of

money, the same proceedings may be taken for setting aside his appearance, and obtaining leave to sign summary judgment as may be had in the like case in the Supreme Court when the writ is specially indorsed. If the defendant does not appear to the action, interlocutory judgment may be signed at the expiration of twenty days after the service of the summons, and final judgment in ten days after the signing of interlocutory judgment, and execution may be issued immediately. If the appearance cannot be set aside the case goes down to trial on fourteen days' notice previous to the next sitting of the County Court.

Execution may be issued, and when delivered to the sheriff it binds the goods and lands of the party from the time when it was so delivered.

A defendant cannot be arrested for debt after judgment.

Any person who has obtained a judgment in the Supreme Court or in the County Court or City Court of Saint John or in any Parish Court may apply to a judge of any County Court for an order that the judgment debtor shall be orally examined on oath before such judge as to what property he has, which by law is liable to be taken in execution. Actions may be brought in Parish Courts which are established in the different Provinces throughout the parish for actions of debt when the sum demanded does not exceed $80.00, and in actions of tort to real and personal property when the damages claimed do not exceed $32.00. These courts have no jurisdiction unless a plaintiff or defendant resides in the parish where the commissioner of the courts resides, or unless a plaintiff or defendant is a non-resident of the County.

Appeals—Supreme Court.—There is an appeal from a judgment at *Nisi Prius* in the form of a motion to the Court *in banc;* and an appeal lies from such judgment to the Supreme Court of Canada governed by the rules of that Court.

Chattels.—(See Conditional Sales).

County Court Appeals.—An appeal lies to the Supreme Court from the decision of a County Court judge in case any party to the cause is dissatisfied with the decision upon any point of law, or with a charge to the jury, from his decision upon a motion for non-suit or a new trial, etc. The party wishing to appeal must enter into a bond by himself with two sureties to the satisfaction of the clerk of the court to the opposite party in the sum of $100.00, conditioned for the payment of the costs of the appeal awarded by the Supremo Court if the judgment or decision of the judge be affirmed, At the request of either party wishing to appeal, the judge will stay the proceedings until the bond is given, and then grant a further stay until the appeal has been heard.

Affidavits.—In New Brunswick affidavits within the Province are taken before a commissioner appointed for that purpose, or before any justice of any court in which, or before a judge of which, the same is to be used, or by any person before whom the party is by law authorized or required to make any statement on oath; a justice of the peace may also administer an oath, or take an affirmation or declaration in

any matter over which he has jurisdiction; may swear appraisers, petitioners on petitions to any public individual or body, or inventories or accounts rendered to the executors of an estate, insurance proofs, or the like. Any person holding an enquiry by authority of an Act of Assembly, or of the Government, may also administer an oath, declaration, or affirmation, if directed. Judges of the Supreme and County Courts, and commissioners for taking affidavits to be read in the Supreme Court, may administer any oath, declaration, or affirmation, or take an affidavit to be used in any cause, matter or proceeding in any court in this Province, or authorized to be administered or taken by any law in force in this Province.

When affidavits are sworn out of the Province, they may be sworn before any commissioner who has been appointed to take affidavits to be read in the courts of the Province of New Brunswick or before any commissioner authorized by the Lord Chancellor to administer oaths in Chancery in England; or before any notary public certified under his hand and official seal; or before the mayor or chief magistrate of any city, borough, municipality or town corporate, and certified under the common or corporate seal of such city, borough, municipality or town corporate, or the seal of such mayor or chief magistrate; or before any judge of the Court of Queen's Bench, or Common Pleas, or baron of the Exchequer in Great Britain or Ireland, or master in chancery in England or Ireland, or any judge or lord of session in Scotland, the handwritings of any such judge, baron, master or lord of session being authenticated under the seal of a notary public, or before a judge of any court of supreme jurisdiction in any Colony belonging to the Crown of Great Britain and Ireland, or any dependency thereof; or before any British minister, ambassador, consul, vice-consul, acting-consul, pro-consul, or consular agent of Her Majesty, exercising his functions in any foreign place; or before the governor of a State, and certified under the hand and seal of office of such minister, ambassador, consul, vice-consul, acting-consul, pro-consul, consular agent, or governor.

Arrest.—On an affidavit of indebtedness made by plaintiff or his agent, a defendant can be arrested on a capias where the sum is certain, and in actions of tort an arrest can be made on an order from a judge. After action is started the paintiff's affidavit to hold to bail must state that he has good reason to believe and does believe that the defendant is immediately about to leave the Province.

There is no arrest for debt after judgment except in the petty courts having jurisdiction under $80.00.

In these smaller courts a defendant can be held to bail, and after judgment obtained can be arrested on an execution. On arrest of any debtor he may deposit with the sheriff the amount for which he is held to bail, together with costs, or he may give notice of his intention to apply for examination to the county court judge, or commissioner, and such notice shall be served not less than 48 hours before the time of making such disclosure. If the judge or commissioner be satisfied that

the disclosure is a full one, and that the defendant has not transferred any property intending to defraud the plaintiff, or since his arrest given a preference to any other creditor, and that he has no property other than property liable to be taken in execution out of the Court in which he was arrested, he may by order discharge the debtor from arrest.

Assignments.—In this Province assignments for the benefit of creditors are regulated by the provisions of Chapter 6 of the Acts of Assembly, 58th Victoria with amendments 59th and 60th Victoria. In its main provisions the Act is similar to the Assignments Act of Ontario. There is no way of compelling a debtor to assign, provision only being made for voluntary assignments. The assignment must be without preferences and must be made to the sheriff of the county in which the debtor resides, or with the consent of a majority of the creditors who have proved claims to the amount of $100.00 or upwards to some other person. No discharge is provided for, the creditors being entitled to hold the debtor for the balance of their claims after the realization and distribution of all his assets. Within five days of its execution, the assignment must be registered in the office of the Registrar of Deeds of the County where the assignor resides and notice of the assignment published in the "Royal Gazette" or some newspaper having a circulation in the county in which the property assigned is situate. A meeting of the creditors is to be called by the assignee within five days of the date of the assignment. By the Amending Act, Chapter 36 of the 59th Victoria, all questions discussed at meetings of the creditors are to be decided by a majority of the votes computed as follows:—For every claim of $100, one vote; for every additional $100, one vote. The assignment takes precedence of all judgments and executions not completely executed by payment. The only preferred claims are those which come within the Act 57th Victoria, Chapter 25, entituled "An Act for the Protection of Wage Earners". This Act provides that when an assignment is made for the benefit of creditors, the wages or salary of all persons in the employment of the assignor or who have been in his employment within one month before the making of the assignment, shall be paid in priority to the claims of the ordinary or general creditors not exceeding three months' wages or salary, and such persons may rank as ordinary creditors for the balance of their claims. Every person claiming to be entitled to rank on the estate assigned must furnish to the assignee particulars of his claim proved by affidavit, and such vouchers as the nature of the case admits of.

Bill of Sale or Chattel Mortgage.—By Act 56th Victoria, cap. 5, with several minor amendments, every mortgage or conveyance intended to operate as a mortgage of goods and chattels, which is not accompanied by immediate delivery, and an actual and continued change of possession, must be filed in the office of the Registrar of Deeds within 30 days after execution, together with the affidavit of a witness of its execution, and the affidavit of the mortgagee, or one of several

mortgagees, or the agent of a mortgagee duly authorized in writing stating that the mortgagor is justly and fully indebted to the mortgagee in the sum mentioned in the mortgage, and that it was executed in good faith and for the express purpose of securing the payment of money justly due or accruing due, and not for the purpose of protecting the goods and chattels therein mentioned against the creditors of the mortgagor, or of preventing the creditors of such mortgagor from obtaining payments of any claims against him.

A chattel mortgage is required to be renewed before the expiration of one year from the filing thereof by the filing of a statement showing the amount still due for principal and interest thereon, with an affidavit that the statement is true, and that the mortgage has not been kept on foot for any fraudulent purpose. The Act provides that, in failure to file such statement, any creditor may by a written notice served upon a mortgagee require him to file such statement, which, if not done within 30 days after service of such notice, such mortgage shall cease to be valid as against any execution against the goods and chattels of the mortgagor issued at the suit of such creditor.

Conditional Sales of Chattels.—In the case of conditional sales of manufactured goods or chattels where the condition of the bailment is such that the possession of the chattel passes without any ownership being acquired by the purchaser or bailee until payment of the purchase money or some part thereof, three statutory requisites must be complied with in order that any receipt notes, hire receipts or orders given by the purchaser or bailee shall be good as against subsequent purchasers or mortgagees without notice in good faith for valuable consideration:—1st. The name and address of the manufacturer, bailor or vendor must be painted, printed, stamped or engraved on the chattel or otherwise plainly attached thereto. 2nd. The receipt note, hire receipt, order or other instrument evidencing such sale conditional shall be filed in the Registry Office of the county in which the purchaser resides within ten days from the execution of the same. 3rd. The manufacturer, bailor or vendor shall leave a copy of such receipt note, hire receipt, order or other instrument by which a lien on the chattel is retained, or which provides for a conditional sale with the vendee at the time of execution or within twenty days after. The Act also provides that every manufacturer, bailor or vendor shall, on demand of any creditor or interested person, file with the Registrar within twenty days from the making of such demand a sworn statement of the amount due thereon, and on failure to so file such statement shall forfeit all rights under same as against such creditor or interested person.

When the manufacturer or vendor takes possession for breach of condition, the purchaser or vendee or his successor in interest may redeem the same within twenty days on payment of the full amount in arrears together with interest and costs.

When the chattel has been originally sold or bailed for more than $30, and possession has been taken for a breach

of condition, five days' notice of sale must be given to the original vendee or his successor in interest.

Deeds.—Deeds must be under seal, and should be registered in order to protect the purchaser from a subsequent conveyance. In order to be registered, a deed must be acknowledged in the manner hereinbefore described under the title "Acknowledgments". Instead of being acknowledged a deed may be proved by the oath of a subscribing witness. An acknowledgment made by a married woman must in addition state that she was examined separate and apart from her husband, and that she executed the deed freely and voluntarily without any threat, fear or compulsion by, of, or from her husband.

Depositions and Commissions.—Directions for executing commissions and taking depositions are fully set out in the commission, and the form of oath to be taken by the commissioner, etc., is endorsed on the commission.

Descent and Distribution of Property.—The real estate of a person dying intestate is divided equally among the intestate's children or their legal representatives, and in case there be no children, then to the next of kindred and their representatives, including those of the half blood and their representatives. Children advanced by settlements or portions not equal to other shares shall have so much of the surplusage as shall make the estate of all equal. In the case of Doe dem Wood *vs.* DeForest, decided by the Supreme Court of New Brunswick, it was held that the insertion of the words "next of kindred" in the Statute had altered the old Common Law rule of descent, by which the title to land could never ascend, because those words (next of kindred) must be held to include the parents of an intestate. It was therefore held that in the case in question, the mother of the intestate inherited to the exclusion of the intestate's uncles and aunts, as the mother was nearer of kindred than said uncles and aunts.

Personal property is divided as follows:—Where there are no children one-half goes to the widow, and where there are children one-third to the widow and the balance to the children, and in default to the next of kin. The husband gets one-half of his wife's personal property if she dies intestate leaving children; otherwise he gets all.

Divorce.—There is a Provincial Divorce Court, and divorce is granted for the following causes:—Adultery, consanguinity within the terms prohibited by Act of Parliament made in 32nd year of Henry VIII., and impotence.

Dower.—The widow has the common law right to dower.

Executions.—Personal property must be exhausted under execution before lands can be sold, but an execution binds all defendant's property, including his land, from the time of delivery to the sheriff.

Garnishment.—It is provided by cap. 17 of the Acts of Assembly of 1882, that proceedings for garnishment of a debt may be taken by any person who has obtained a judgment

of the Supreme or County Courts when the amount remaining due on such judgment exceeds the sum of $80.00, but in cases where the judgment was obtained for debt the judgment exclusive of costs must exceed $40.00, provided that no person can be adjudged garnishee in either of the following cases:—

1st. By reason of having drawn and accepted, made or endorsed, any bill, draft or note or other negotiable security when either is payable on time and is not overdue.

2nd. By reason of any money or other thing due from such garnishee to the judgment debtor unless it is due absolutely without depending on any contingency.

3rd. By reason of anybody having in his hands as an officer of the Crown any money payable to any individual by the Crown.

4th. Wages due the judgment debtor for his personal services to the extent of $20.00 are exempt from garnishment.

In order to obtain an attachment, application is made to a County Court judge *ex parte* on behalf of the judgment creditor for an order attaching any debt or debts due to the judgment debtor. The affidavit on which the attachment is granted must state that the judgment was recovered and when, and that whole or some part and how much thereof remains unpaid, and that the deponent has reason to believe that some one or more parties (naming them, or state that he is unable to name them) is or are within the Province, and is or are indebted to or liable to pay a sum of money to the judgment debtor, and that it is necessary in the interests of justice that the attaching order should be issued within 20 days after the issuing of this attachment. The judgment debtor or the garnishee may obtain from the judge a summons calling upon the plaintiff to show cause why the attaching order should not be set aside or altered, or why the debt attached should not be released.

At any time after granting the attaching order the judge, on application of the plaintiff, may grant a summons calling upon the garnishee to show cause why he should not pay to the creditor the sum of money or debt owing from him to the judgment debtor. If the garnishee does not appear at the return of the said summons, or if he do appear and do not dispute the debt or sum of money due from him to the judgment debtor, the judge may give judgment against the garnishee for the amount owing from him, and order execution to issue against him for an amount sufficient to satisfy plaintiff's judgment. If the garnishee appears and disputes his liability, the judge will order that the creditor proceed by way of summons, calling upon him to show cause why an execution should not be issued against him to levy the said debt. This summons will be issued out of the Supreme or out of the County Court, according as the amount sought to be recovered is within the jurisdiction of either of the said courts respectively.

The defendant must appear to this summons as in an ordinary suit, and the case then goes down to hearing on return of the summons. A notice of all proceedings taken under the Act must be given to the judgment debtor unless the judge otherwise orders on satisfactory proof that he has

absconded or keeps concealed for the purpose of avoiding service of process or for other good cause.

Insurance.—Provision is made by Chapter 25 of the Acts 58th Victoria for securing to wives and children the benefit of life insurance. The Act provides that in case of a policy of life insurance effected by a man on his life is expressed upon the face of it to be for the benefit of his wife, or of his wife and children, or any of them, or of his children alone, or any of them, or in case he has heretofore endorsed or may hereafter endorse, or by any writing identifying the policy by its number or otherwise, has made or may hereafter make a declaration that the policy is for the benefit of his wife, or of his wife and children, or any of them, or of his children alone, or any of them, such policy shall enure and be deemed a trust for the benefit of his wife for her separate use, or of his wife and children, or of his children, or any of them, according to the intent so expressed or declared, and so long as any object of the trust remains the money payable under the policy shall not be subject to the control of the husband or his creditors except as hereinafter provided, or form part of his estate when the sum secured by the policy becomes payable; but this shall not be held to interfere with any pledge of the policy to any person prior to such declaration.

The insured may, by an instrument in writing, vary the policy, or a declaration of an apportionment previously made so as to restrict or extend the benefits of the policy to the wife alone or the children, or to one or more of them, and when the insurance money becomes due and payable, it shall be paid according to the terms of the policy or of any such declaration or instrument free from the claims of any creditors of the insured.

Judgments.—A judgment is good for twenty years, and execution can be issued on it during that time. Judgments rank with other claims where assignment is made for benefit of creditors.

Limitation of Personal Action.—Actions on contracts, notes and debts must be commenced within six years after cause of action arose. Action of tort shall be commenced within two years. In case of plaintiff being under disability of infancy, lunacy, etc., the time runs from removal of disability. Con. Stat., cap. 85.

Real Actions.—Actions to recover land must be brought within twenty years after right of action accrues. Persons under disability of infancy, etc., or absence from the Province, and their representatives are allowed ten years from the termination of their disability or death, notwithstanding the expiration of the period of twenty years in which to bring the action, but no such action shall be brought except within 40 years after right of action accrued. Con. Stat., cap. 84.

Liens.—Mechanics' Act, 57 Vic., cap. 23, gives the lien to mechanic, machinist, laborer, contractor or other person doing work upon or furnishing materials to be used in the construc-

tion, alteration, or repair of any building or erection, or erecting, furnishing or placing machinery of any kind in, upon, or in connection with any building for the price of the work, machinery or materials upon such building and the lands occupied thereby.

Married Women's Property Act.—By the Married Women's Property Act, 28 Vict., c. 24, married women shall be capable of acquiring, holding and disposing by will or otherwise, of any real or personal property as her separate property in the same manner as if she were a *feme sole* without the intervention of any trustee. She shall also be capable of entering into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued as if she were a *feme sole*, and the husband need not be joined with her as plaintiff or defendant.

In any proceedings brought by or taken against any married woman on any contract entered into by her otherwise than agent, such contract is deemed to be entered into by her in respect to, and to bind her separate property, whether she is or is not in fact possessed of any separate property at the time she enters into such contract, and such contract shall bind separate property, which she may at that time or any time afterwards become entitled to.

By sec. 4 of the Act, women married before the commencement of the Act may hold and dispose of all their real estate whether belonging to them before marriage or acquired after marriage (otherwise than from their husband) free from the consent of the wife, in as full a manner as if they were a debts and obligations or control and disposition without the *feme sole* and unmarried.

The real estate of any married woman after the commencement of the Act, and the rents, issues and profits thereof, shall be held and enjoyed by her for her separate use, free from any estate therein of her husband during her lifetime, and from his debts and obligations, or from his control or disposition, without her consent in the same manner as if she were *feme sole* and unmarried.

As regards personal property, a married woman, whether married before or after the Act, shall have, hold, enjoy and dispose of it free from all the debts and obligations of her husband, and from his control and disposition; but this does not apply to property received by a married woman from her husband.

Section 4, sub-section 4, of the Act expressly declares that nothing in the Act shall be taken to prejudice the husband's tenancy or right to tenancy by the curtesy in any real estate of his wife.

Partnership.—Limited partnerships may be formed under cap. 4 of the Act of 1889. The statutory conditions are that the persons forming the partnerships shall sign a certificate containing the name and firm of the partnership, the names and places of the residence of the general and special partners (distinguishing general from special), the amount of capital contributed by each, the general nature of the business to

be transacted, the time when the partnership is to commence and to terminate. This certificate to be acknowledged by the partners and registered in the Office of the Registrar of Deeds of the County where the principal place of business of the partnership is, and if the partnership has place of business in different counties, a certified copy has to be registered in each county. A copy of this certificate is to be published in a newspaper published in the county where the principal place of business is situated for the space of three months.

The name of any special partner shall not appear in the name of the firm unless with the addition of the words (limited partner) or (special partner) or words to that effect.

A special partner shall not withdraw any part of the capital stock contributed by him. He may examine into the state and progress of the partnership concerns, and advise as to their management, and loan money to and pay money for the partnership, and hold their drafts, notes and acceptances as security for the repayment of such money, with these exceptions:— he shall not transact any business on account of the partnership or be liable for that purpose as agent. If he does he is to be deemed a general partner.

Suits against a partnership formed under this Act are prosecuted against the general partners only. A partnership may be dissolved otherwise than by lapse of the time limited in the original certificate by the registering of a notice of the dissolution in the same manner as the original certificate of partnership, and such notice shall be published for six consecutive weeks in some newspaper in the county where the certificate was published.

Special partners in limited partnerships complying with the conditions of the Statute are not personally liable for the partnership debts. Upon non-compliance with the Statute, they are deemed general partners.

Joint Stock Companies.—By 56th Vict., c. 7, the Lieutenant-Governor in Council may grant Letters Patent to any number of persons not less than five, constituting them a body corporate and politic for any purposes to which the legislative authority of the Legislature of New Brunswick extends, except for the construction and working of railways, business of insurance, or management of trades' unions, friendly societies, building societies or other associations of like character. The procedure for obtaining such Letters Patent is by publishing for two consecutive weeks in the "Royal Gazette" a notice stating:—

(a) The proposed name of the company.

(b) The object for which its incorporation is sought.

(c) The name of the place where its office or chief place of business is to be established.

(d) The amount of its capital stock, which shall not be less than $2,000.

(e) The number of shares, the amount of each share.

(f) The name, address and calling of each of the applicants, with special mention of three who are to be provisional directors.

If the capital stock of the proposed company shall not

exceed $5,000, the publication of this notice is not required. A petition is then presented to the Lieutenant-Governor through the Provincial Secretary setting forth:—

(1) The facts set forth in the notice, and the amount of stock taken by each applicant.

(2) Whether the stock has been paid for in cash, or how otherwise.

This petition may ask for the embodying in the Letters Patent of any provisions which otherwise might under the Act be made by the by-laws of the company, and such provision shall then not be subject to repeal or alteration by a by-law.

The proposed corporate name of the company shall not in any case be the name of any other known incorporated or unincorporated company. Upon the granting of the Letters Patent, notice is given in the "Royal Gazette" by the Provincial Secretary, and from the date of such notice the persons therein named and their successors are constituted a body corporate and politic by the name mentioned therein.

Sales.—(See Conditional Sales.)

Security for Costs.—Where the plaintiff resides out of the Province and has no property therein, the defendant can demand security for his costs. In the Supreme Court he is entitled to security for $200, in the County Court for $80, and in the Magistrate's Court in an amount in the discretion of the magistrate; in the Supreme Court in Equity for $500.

Succession Duties. (See Wills.)

Replevin.—Whenever any personal property has been wrongly distrained or otherwise wrongly taken or detained, it may be replevied under writ issued, upon the plaintiff giving a bond to the sheriff in double the value of the property.

Wage Earners.—Chapter 25 of the Act 57th Victoria, intituled "An Act for the Protection of Wage Earners," provides that when an assignment is made for the benefit of creditors or in the distribution of assets under the provisions of the Act to facilitate the Winding-up of the Affairs of Incorporated Companies, or in the distribution of the assets of deceased persons by an executor or administrator, the wages or salary of all persons in the employment of the assignor or the deceased, or who have been in his employment within one month before the making of the assignment or of the death, shall be paid in priority to the claims of ordinary or general creditors, not exceeding three months' wages or salary, and such persons shall be entitled to rank as ordinary or general creditors for the residue of their claims. A similar provision is made for the payment of the wages of persons in the employment of an execution debtor, or in the employ of persons proceeded against under the Absconding Debtors' Act, or in the employ of a railway sold under foreclosure proceedings.

Wills.—Wills must be in writing, signed at the foot or end thereof by the testator (or by some other person in his

presence and by his direction), in the presence of two attesting witnesses, both present at the same time, who shall attest and subscribe the will in the presence of the testator and in the presence of each other. No form of attestation is necessary.

An executor is a competent witness, but any devise or legacy to a witness or to the husband or wife of a witness is void, though the execution of the will itself is good.

Persons under the age of twenty-one years cannot make a valid will. It is still an unsettled question whether a married woman can make a will without the consent of her husband, such consent being indorsed thereon. But she can revoke the will at any time without the consent of her husband.

Every will is revoked by marriage except a will made in the exercise of a power of appointment where the estate appointed could not in default of appointment pass to the testator, heirs or next akin.

Succession duties payable to the Crown are regulated by the provisions of Chapter 24 of the Act 59th Victoria as follows:—

No succession duty is payable on any estate, the value of which, after payment of all debts and expenses of administration, does not exceed $5,000, nor on property given, devised or bequeatehd for religious, charitable or ecclesiastical purposes, nor on property passing under a will or intestacy for the use of a father, mother, husband, wife, child, daughter-in-law or son-in-law of the deceased when the value of the property so passing does not exceed $50,000.

With the above exceptions, the following succession duties are payable:—

(*a*) Where the aggregate value of the property of the deceased exceeds $50,000, and passes in manner aforesaid to or for the benefit of the father, mother, husband, wife, child, brother, sister, daughter-in-law or son-in-law of the deceased, the same or so much thereof as so passes shall be subject to a duty of $1.25 for every $100 of the value up to the $50,000, and to $2.25 for every $100 of the value in excess of $50,000.

(*b*) Where the aggregate value of the property exceeds $200,000, the whole property shall be subject to a duty of $5,00 for every $100 of the value.

(*c*) Where the aggregate value of the property of the deceased exceeds $10,000, so much thereof as passes to or for the benefit of the grandfather, grandmother or any other lineal ancestor of the deceased except the father or mother, or to any descendant of a brother or sister of a father or mother of the deceased, or any descendant of such last mentioned brother or sister, shall be subject to a duty of $5.00 for every $100 of the value.

(*d*) Where the value of the property of the deceased exceeds $5,000 and any part thereof passes to or for the benefit of any person in any other degree of collateral consanguinity to the deceased than is above described, or to or for the benefit of any stranger in blood of the deceased, such part shall be subject to a duty of ten per cent. on the value.

(*e*) Provided that where the whole value of the property devised, bequeathed or passing to any one person under a will

or intestacy does not exceed $200, the same shall be exempt from the payment of duty as above.

(f) Where the property of a deceased person liable to succession duty under this Act, or any legacy, charge or annuity payable out of the same goes to any person residing out of the Province, the duty payable on the amount or portion going to such person shall be double the amount specified.

Synopsis of Prince Edward Island Laws.

PREPARED BY

GEO. S. INMAN,

OF THE PRINCE EDWARD ISLAND BAR.

Absent or Absconding Debtors.—In all cases where the debt is $33.00 and upwards, and the debtor is absent or absconding from the Province, his real and personal property may be attached in the first instance to answer the said claim. Lands and goods thus attached are bound from the time the attachment is made.

Arrest.—In the Supreme Court any non-resident may be arrested and held to bail before judgment at the suit of any person who shows to the satisfaction of a judge that he has a cause of action.

Any person may be arrested and held to bail on a cause of action against him being shown to the satisfaction of a judge in any of the following cases:—Trespass, assault, criminal conversation, seduction, libel, slander and breach of promise of marriage.

Any person may be arrested and held to bail on a cause of action being shown, and facts and circumstances to satisfy the judge that the defendant is about to quit the Province with intent to defraud his creditors generally, or the plaintiff in particular.

No person shall be liable to arrest for non-payment of costs, and no married woman shall be liable to arrest on either *mesne* or final process.

After final judgment, the debtor can be arrested if it can be shown to the satisfaction of a judge that there is good and probable cause for believing that the defendant is about to quit the Province to defraud his creditors; or that the defendant has parted with his property, or made a fraudulent conveyance thereof to prevent its being taken in execution.

Barristers.—A barrister of any court in Great Britain or Ireland, or an attorney, solicitor or barrister of any British Province or Colony, who shall have resided in this Province twelve months previous to making application for admission, shall be entitled to be admitted to practice at the bar of this Province. He must also produce a certificate from a judge of the court to which he belongs, of his being on the rolls of

the court from which such certificate is granted, and that he is a person of good moral character, and in good standing at the Bar.

Bills of Sale and Chattel Mortgages.—It is necessary that the original shall be filed in the office of the Prothonotary of the Supreme Court in the county where the goods are, and shall be accompanied by an affidavit of the grantee or his agent, setting forth the *bona fides* of the transaction, and that the debt is justly and truly owing, otherwise it shall be void as against assignee for creditors, purchasers, and execution creditors.

Commercial Travellers.—(See "Contracts.")

Conditional Sales.—In the conditional sale or bailment of chattels, where a lien note or hire receipt is taken, and the property or right of ownership in the chattel remains in the manufacturer, vendor or bailor, the manufacturer, vendor or bailor, in order to protect himself against subsequent purchasers or mortgagers, in good faith, without notice for valuable consideration, must do one of two things:

(1) Print, stamp, or otherwise attach their name and address to the chattel; or

(2) File a copy of the lien note or hire receipt in the office of the Prothonotary, or Deputy Prothonotary.

This does not apply to household furniture, but the term "household furniture" does not include pianos, organs, or other musical instruments.

Contracts.—No action can be brought against an infant on any promise made after full age to pay a debt contracted during infancy, unless the same be in writing and signed by the party to be charged.

No action can be brought to charge a person on any representation made regarding the character or credit of a third party, nor upon any special promise to answer for the debt, default, or miscarriage of another, unless the same be in writing, and signed by the party to be charged. The consideration for such last mentioned promise need not be in writing.

Contracts for the sale of goods of $30.00 and upwards require part payment, delivery, or memo. thereof signed by the party to be charged in order that the contract may be enforced. This also applies to the sale of goods, though at the time of the contract being made they were incomplete and unfit for delivery.

All firms resident without the Province who sell their goods in this Province by their agents, commercial travellers, cannot enforce any of their contracts of sale made by such commercial traveller or agent unless *at the time when the sale was made* their commercial traveller or agent had a commercial **traveller's license for this Province. For such license a fee of $25.00 is paid to the Provincial Government.**

Debts not attachable.—(See "Garnishment.")

Distribution of Estates.—

REALTY

If the interstate die leaving :—

Wife and child or children....	Wife gets her dower or one-third interest for life ; remainder equally divided among children or their legal representatives.
Wife only..........	Subject to wife's dower land goes to next of kindred in equal degree and their representatives, but no representative after brothers' and sisters' children.
No wife or child	Next of kin and their legal representatives not beyond brothers' and sisters' children.
Child, children or their representatives......	All to him, her or them.
Father, or father and mother, or father, mother, brothers or sisters. ..., ...	Whole to father.
Mother and brother or sister.	—Whole to them equally.
Husband and child or children	Whole to husband for life, remainder to children or their representatives.
Husband only................	Husband takes no interest, whole goes to intestate's legal representatives.
Brothers and sisters of whole blood or half blood, or partly the one and partly the other.	Divided equally.

The descent in all cases is to be traced from the person last entitled to the land.

PERSONAL ESTATE

The distribution of the personal estate follows that of the real estate except that the widow gets one-third and the husband gets the whole on the death of the wife (where it has been reduced into possession).

Dower.—The widow has her common law right of dower.

An action to recover dower or free-bench may be commenced by writ of summons issued out of the Supreme Court of the Province in the same manner and form as the writ of summons in an ordinary action, and upon such writ shall be endorsed a notice that the plaintiff intends to declare in dower or free-bench.

Estates tail.—Estates tail may be barred by a deed of conveyance, made in due form of law by the tenant in tail, and acknowledged before a judge of the Supreme Court of Judicature. Such deed shall be effectual and valid to convey and pass all the grantor's estate, in the land conveyed, to the grantee and his heirs, as well as to defeat and cut off all estates tail, reversions and remainders in the said lands.

Evidence.—(See "Witnesses and Evidence.")

Execution.—Execution may issue on the entry of a judgment in the Supreme Court (except when entered on a warrant of attorney, and the defeasance thereof gives time for payment).

Execution issued out of the Supreme Court binds the goods and chattels of the defendant from the time of delivery into the hands of the sheriff.

The lands of a judgment debtor are bound by the filing of a minute with the judgment; such lands may be sold at any time, under a statute execution after six months from the issue thereof. A minute of judgment must be filed every ten years in order to keep the land bound as

against subsequent purchasers and encumbrancers. Execution issued out of the County Court only takes effect from tho time of the levy made thereunder.

Examination of Judgment Debtor.—A judgment debtor in the Supreme Court may be summoned before such person as a judge may appoint, to be specially examined touching his estate and effects; as to how much property he had when he contracted the debt, and as to what property he has to satisfy the judgment creditor. If the judgment debtor refuses to attend, and be examined, he may be arrested and put in jail.

Garnishment.—Debts due the debtor may be attached in the Supreme and County Courts, both before and after judgment.

The following debts are not attachable:—

Wages due, or accruing due, to a debtor for his personal labor and service on a hiring to the extent of one-half part of such wages, shall be exempt from garnishment.

No person shall be adjudged a garnishee in any of the following cases:—

(1) By reason of having drawn, accepted, made or endorsed any negotiable bill, draft, note or other negotiable security, when either is payable on time, or is not overdue.

(2) By reason of any debtor money due from or in the hands of such garnishee to or for the judgment or primary debtor, unless it is due from or held absolutely, and without depending on any contingency.

Intestacy.—The estate of a person dying intestate is administered by the Surrogate Court. In the Court administration is granted first to the widow or next of kin, but if they do not take it may be granted to a creditor. The administrator is required to file a bond with sureties, and also an inventory of both the real and personal estates of the deceased. Creditors of the estate are required to file their accounts with the administrator duly attested to. An estate may also be administered in the Court of Chancery.

Judgments.—In actions in the Supreme Court to which the defendant does not appear, judgment may be entered after eight days after service of the writ, when the cause of action is liquidated debt or money claim, and where the writ has been specially endorsed. In cases where the writ has not been specially endorsed (if for debt), and where no appearance has been entered, judgment may be entered at the expiration of sixteen days from the day of service of the writ.

Where the action is for damages, and the defendant does not appear, damages must be assessed.

The jurisdiction of the Supreme Court is $32.00, and upwards, and the jurisdiction of the County Court is from one dollar up to $150.00.

The only judgments that bind land are judgments of the Supreme Court.

Juries.—All civil cases in the Supreme Court are tried by a Judge without a jury, provided, however, that either party in the cause has the right to demand a jury on paying the Prothonotary of the Supreme Court three dollars, and giving notice of the same to the other party to the suit at least seven days before the first day of the term for which the case stands for trial.

Jurisdiction of Courts.— Supreme Court has jurisdiction in all actions for debt or damage for $32.00 and upwards.

The County Court has jurisdiction in all actions of debt or damage up to $150.00; but the County Court has no jurisdiction in the following actions:—Detinue, replevin or ejectment; criminal conversation or seduction, breach of promise of marriage; an action in which the validity of any bequest or devise is disputed; an action against a J. P. for anything done by him in the execution of his office; an action brought against an executor or administrator, and an action upon a judgment in the Supreme Court.

The Court of Probate has jurisdiction throughout the Province over the estates of deceased persons, and has power to grant letters testamentary and letters of administration.

City and Police Courts are established in Charlottetown and Summerside, and are presided over by Stipendary Magistrates exercising a civil and criminal jurisdiction. There is also a stipendary magistrate for each county in the Province, who has criminal jurisdiction outside the town.

Limitation of Actions.—Actions of trespass, detinue, trover, replevin and debt, within six years. Assault and battery, within one year. Actions on the case for words, within six months next after the words are spoken. The statute of limitation does not run as against minors, married women, and persons *non compos mentis* until after the removal of such disability.

Actions for the recovery of lands, moneys secured by mortgage, judgment or lien, or otherwise chargeable upon any land, and actions upon any deed, covenant or instrument under seal, shall be brought within twenty years.

Married Women.—A married woman can acquire, hold, and dispose of real or personal property in the same way as though she were a *feme sole.*

A married woman is capable of rendering herself liable on any contract in respect of, and to the extent of her separate property. She may sue and be sued in her own name. No married woman is entitled to her own earnings during coverture without obtaining a protection order. She has the right of dower in her husband's lands.

Promissory Notes.—All notes in writing, payable in specific articles, whether for a sum certain or otherwise, shall be deemed and held *prima facie*, to import that they were given for a valuable consideration, in like manner as promissory notes for payment of money.

Registry.—Deeds executed in the Province must be executed in the presence of one witness, who shall make oath of its

execution before the registrar of deeds or a commissioner for taking acknowledgments to deeds, or the party executing the deed may acknowledge the same before any of the said functionaries.

Deeds executed outside the Province may be proved by the oath of a subscribing witness, to be administered by a commissioner for taking acknowledgments to deeds out of the Province, by a judge of a Court of Record, by a mayor of any city, or by a notary public; or the grantor may acknowledge the execution thereof before any of the said officials. In order to bind lands, deeds must be registered; otherwise they will not be valid as against subsequent purchasers or encumbrancers without notice.

Security for Costs.—Where a plaintiff residing without the Province and owning no property therein commences an action in the Supreme Court, the defendant can demand and is entitled to security for costs subject to the following conditions:—

(1) That the defendant shall file an affidavit stating that he has a good defence upon the merits;

(2) That the defendant shall have made no admission of the claim, and made no payment on account thereof;

Seduction.—When an unmarried woman has given birth to an illegitimate child, and is desirous of suing the father thereof for any damages she has sustained thereby, as well as for aid towards the support of such child, she may either by her attorney or in person apply to a Judge of the Supreme Court for an order in writing, nominating any one, two or three of Her Majesty's Justices of the Peace to hear and determine such suit, and such Justice or Justices may hear and determine such suit, and give judgment therein with or without costs to either party.

If the Justices find against the defendant, they may adjudge such sum against the defendant as may seem reasonable, not exceeding, however, the sum of two hundred dollars.

From the decision of the Justice or Justices there is an appeal to the Supreme Court.

Wills.—No person under the age of twenty-one can make a valid will. All wills must be witnessed by two persons, who must see the testator sign, or have him acknowledge his signature; the witnesses must sign in the presence of the testator, and in the presence of each other. A will does not become invalid by reason of one of the witnesses afterwards becoming incompetent to prove the will. A legacy to an attesting witness is void. A creditor or an executor may be a witness to a will.

An executor must present the will for registration within thirty days after the death of the testator, under a penalty.

Witnesses and Evidence.—No person offered as a witness shall be excluded by reason of any incapacity from crime or interest from giving evidence according to the practice of the Court on the trial of any action. Parties to a suit and the husbands and wives of such parties are competent witnesses,

and may be compelled to give evidence on behalf of themselves or of either or any of the parties to the said suit.

No person is compelled to answer any question tending to criminate himself, or to subject him to prosecution for any penalty.

Parties to an action for breach of promise of marriage shall be competent to give evidence in the cause. No verdict shall be given for the plaintiff in such cause unless his or her evidence is corroborated by some material evidence in support of the promise.

Husband and wife not compelled to disclose communications made during marriage.

If any witness from conscientious motives refuses to be sworn, and the Court or Judge is satisfied as to the sincerity of such objection, it shall be lawful for the Court or Judge to take a solemn affirmation or declaration from such witness in the form following:—"I, A.B., do solemnly, sincerely and truly affirm and declare that the taking of any oath is according to my religious belief unlawful, and I do also solemnly, sincerely and truly affirm and declare, etc.," which declaration shall be of the same force and effect as if such person had taken an oath in the usual form.

The following shall be taken and received as *prima facie* evidence of the contents thereof:—

(*a*) A vertificate of marriage or of baptism or burial under the hand of the officiating clergyman, priest or minister;

(*b*) An extract from any register kept for the registration of marriages, baptisms or burials, certified by the clergyman, priest, minister or public officer being the legal custodian thereof;

(*c*) An exemplification of a will under the seal of any Court whether in this Province of elsewhere in Her Majesty's Dominions.

(*d*) The Seal of any Foreign State and the certificate of any one of the Secretaries of State or of the Executive Government thereof;

(*e*) A certificate of the registry of a British ship in pursuance of any of the Acts relating thereto, and purporting to be signed according to law;

(*f*) The transcript or copy of the record of any vote, resolution or proceeding of the Executive Council of this Province relating to grants or titles to lands attested as a true copy or extract from such record, and purporting to be signed by the Clerk of the Council;

(*g*) A copy of the *Canada Gazette*. A copy of a proclamation, order, regulation or appointment purporting to be printed by the Queen's Printer for Canada;

(*h*) All protests of bills of exchange and promissory notes.

(*i*) A copy of the registry of a deed or mortgage duly registered, certified by the Registrar of Deeds;

(*j*) Any deed or mortgage purporting to have been executed abroad by any or all of the parties, and having endorsed thereon or annexed thereto the certificate or certificates and affidavits of proof required for the registration thereof, and having endorsed thereon the Registrar's certificate of its due regulation.

A Synopsis of the Laws of the Province of Manitoba.

PREPARED BY

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Origin and Source.—As to property and civil rights, and all matters over which, under the British North America Act and The Manitoba Act, the Provincial Legislature has jurisdiction, at its first session it was provided that the laws of England as they stood on the 15th day of July, 1870, and the practice and procedure in the Courts should be the laws, practice and procedure prevailing in this Province until modified, altered, or repealed by the Legislature.

The Courts.—There is only one Superior Court, the Court of Queen's Bench, composed of the Chief Justice and three puisne Justices having original and appellate jurisdiction, civil and criminal, legal and equitable. The two systems of common law and equity were fused into one, and the practice and procedure in all actions and suits made uniform by "The Queen's Bench Act, 1895." There is an appeal from any decision of a single judge, or of a jury at a trial, to the Full Court, which generally consists of the three other judges of the Court, although in certain cases the judge whose decision is appealed from may take part in the hearing of the appeal. The seat of the Court is at Winnipeg, but there are spring and fall sittings at Brandon and Portage la Prairie for the trial of cases, both civil and criminal, presided over by the judges of the court in turn, There are also the County Courts, of which there are about thirty-six, each for a separate territorial division, presided over by the County Court Judges. There is one for the Western Judicial District, who resides at Brandon, one for the Central District, who resides at Portage la Prairie, and four in the Eastern Judicial District, of whom Judge Walker, the Senior Judge, resides at Winnipeg. The County Courts have jurisdiction in all actions for legal or equitable claims and demands of debt, account, or breach of contract, or covenant, or money demand, whether payable in money or otherwise, where the amount or balance payable does not exceed $400, and in actions of tort for damages to the extent of $250, and for replevin of goods not exceeding $250 in value, but they cannot entertain actions of ejectment, or in which the right or title to any corporeal or incorporeal hereditaments, or any toll, custom or franchise, or in which the validity of any devise, bequest, or limitation under any will, comes in question, nor have they any jurisdiction in criminal cases.

There is also a Surrogate Court for each judicial district, presided over by the County Court Judge, and having jurisdiction over grants of probate, letters of administration, guardianship of infants, and such like matters.

Finally, justices of the peace and magistrates have civil jurisdiction in cases of claims for wages to the extent of $100, when proceedings are taken within six months, and of course they have the usual jurisdiction in criminal matters.

The principal matters in respect to which our statute law differs from that of Ontario, or has been altered by our Legislature since 1870, are here dealt with in alphabetical order.

Administration of Estates.—See Trustees, Executors, and Administrators.

Under the Surrogate Courts Amending Act of 1893, there is an Official Admininstrator for each judicial district, appointed by the Government, who may, on the application of any person interested in the estate of any deceased person, be appointed administrator of such estate without giving any security. On his appointment to office, however, he has to give a bond applicable to all estates in his hands, and to such amount as may be fixed by Order in Council.

Affidavits.—See Oaths.

The Registry Act, R. S. M., c. 135; the Real Property Act, R. S. M., c. 133; The Bills of Sale Act, R. S. M., c. 10; The County Courts Act, R. S. M., c. 33; The Mechanics' Lien Act, 1898, c. 29, all make provisions as to the persons before whom affidavits may be sworn for the respective purposes mentioned in them.

Assignments for Creditors.—Except under special circumstances, all assignments for the benefit of creditors generally, must be made to one or other of the two Official Assignees appointed by the Government, but the creditors may afterwards appoint any other person to wind up the estate. Creditors must value their securities, and can only rank for dividend upon any excess of claim over the amount of the valuation, but the assignee is entitled to take over the security at the valuation specified, with an addition of ten per cent. thereof. The wages or salaries of workmen, clerks or employees, not exceeding three months, are privileged claims under any such assignment.

Such an assignment takes precedence of all judgments and of all executions not completely executed by payment, subject to the lien, if any, of execution creditors for their costs.

Attachment of Property.—Any property or interest therein belonging to a debtor, may be placed under seizure before judgment by the issue of an order for an attachment in an action commenced by statement of claim in the following cases:

(*a*) When a debtor absconds or keeps concealed to avoid service of process, or to defeat or defraud his creditors.

(*b*) When the debtor is a non-resident, and the creditor a resident, with certain restrictions as to the nature of the cause of action.

(*c*) Where a debtor is about to remove or transfer any of

his property or effects from the Province, or has assigned, transferred, disposed of or secreted, or is about to assign, transfer, dispose of, or secrete any of his property, with intent to delay, defeat or defraud his creditors.

Attorneys and Barristers.—See Law Society.

Bills of Sale.—See Chattel Mortgages.

Capias.—Arrest for debt was completely abolished by the Queen's Bench Act, 1895, whether the debtor is about to leave the Province or not; but an attachment against the person may be issued in certain cases against trustees, attorneys, or officers of the courts for breach of trust or of some duty, or against any person for contempt of court.

Chattel Mortgages.—Take effect from and after the day and time of filing, and not before, as against execution creditors of the mortgagor, and as against purchasers or mortgagees in good faith for valuable consideration. They must be renewed, in the manner pointed out by the Act, every two years, or they cease to be valid as against creditors, purchasers, and mortgagees as above.

It is immaterial that a creditor or mortgagee had notice of a prior unfiled or unrenewed chattel mortgage: *Roff vs. Krecker*, 8 M. R. 230.

Companies.—By "The Foreign Corporations Act," R. S. M., c. 24, and amendments, it is provided that any company, not incorporated under Provincial legislation, but duly authorized to carry out or effect any of the purposes or objects to which the legislative authority of the Manitoba Legislature extends, may obtain a license from the Government of the Province authorizing it to carry on its business within Manitoba on compliance with the provisions of the Act, when such company shall have the same power and privileges in Manitoba as if it were incorporated under a Provincial Statute.

Section 13 of the Act says that no company, corporation, or other institution not incorporated under the provisions of the Statutes of the Province shall be capable of taking, holding, or acquiring any real estate in Manitoba, unless under license from the Provincial Secretary, or the Lieutenant-Governor in Council, under any Statute of the Province in that behalf.

Creditors' Relief.—By the Queen's Bench Act, 1895, provisions were made for the *pro rata* distribution amongst execution creditors by a sheriff of any money realized by him on an execution against goods, and by 61 Vict., c. 12, similar provisions were made in the case of several County Court executions in the hands of a bailiff, but the latter statute only applies when the defendant is a trader, commission merchant, or manufacturer.

Descent, Devolution of Estates, and Dower.—A widow is not entitled to dower in her deceased husband's real estate, and a widower has no tenancy by the curtesy in his deceased wife's lands.

"From and after the first day of July, 1885, land in the Province, whatever the estate or interest therein, went, and hereafter shall go, to the personal representative of de-

ceased owners thereof, in the same manner as personal estate goes; and the personal representative shall have power to dispose of, and otherwise deal with all land so vested in him, with all the like incidents, but subject to all the like rights, equities, and obligations, as if the same were personal property vested in him." R. S. M., c. 45, s. 21.

In cases of intestacy, one-third of the estate, real and personal, goes to the widow, and two-thirds to the child or children in equal shares; but if there be no issue, the widow takes the whole, and if there be no widow or issue, the whole shall go to the father. If no widow, children or father, then to the mother, brothers and sisters in equal shares. The separate property of a married woman dying intestate shall be distributed in the same proportions and in the same manner as the property of a husband dying intestate.

An administrator may sell or mortgage real estate vested in him, whether in trust for infants or otherwise, subject to the regulations and restrictions contained in 58 and 59 Vict., c. 10, and 61 Vict., c. 15.

Distress for Rent.—The right of mortgagees to distrain for interest due upon mortgages, shall be limited to the goods and chattels of the mortgagor only, and as to such goods and chattels to such only as are not exempt from seizure under execution. R. S. M., c 46, s. 2.

Except as otherwise provided by "The County Courts Act," no person shall be at liberty to claim as against any writ of execution or attachment issued out of any Court of this Province, or to distrain as against the tenant or any other person for more than three months' arrears of rent, where the same is payable quarterly or more frequently, nor for more than one year's arrears, where the same is payable less frequently than quarterly. R. S. M., c. 46, s. 3.

By an amendment passed in 1896, ch. 6, the right of distress for rent is limited to goods belonging to the tenant himself, with certain exceptions, and before this statute, a boarder or lodger whose goods were seized for rent might pay anything he owed for board or lodging to the superior landlord, and thereby entitle himself to have the seizure withdrawn.

Drunkards.—A person may be interdicted from obtaining liquor by an order of a police magistrate or two justices of the peace, if it shall be made to appear that, by excessive drinking, he mis-spends, wastes or lessens his estate, or greatly injures his health, or endangers or interrupts the peace and happiness of his family; and, after notice of the order, it is a punishable offence to supply liquor to any such person. R. S. M., c. 90, ss. 154-156.

Certain persons nearly related or connected with any person who has contracted the habit of drinking to excess, or any two clergymen or two justices of the peace, may require the inspector for the district to give notice in writing to any person licensed to sell liquor, that he is not to sell or deliver any liquor to the person named, and if such notice be disregarded the license holder may be fined $100. R. S. M., c. 90, ss. 157-8.

Habitual drunkards may also, by order of a judge of the Queen's Bench, be deprived of the right to manage their affairs

or to dispose of any real or personal estate, and declared incompetent to transact any business whatever, and curators may be appointed to manage their business and estate for them. While the interdict lasts, any contract, bargain, sale or business transaction entered into with the person interdicted shall be null and void, and of no effect. R. S. M., c. 92, ss. 24-34.

Employers' Liability.—See Workmen's Compensation for Injuries.

Evidence.—In "The Manitoba Evidence Act," c. 11 of the Statutes of 1894, are collected in thirty-six sections all the previous enactments of the Legislature respecting witnesses and evidence, and the principal statutory provisions in force in England in respect thereof.

No person is incompetent to give evidence by reason of interest or crime. s. 3.

No person shall be excused from answering any question on the ground that the answer to such question may tend to criminate him; provided, however, that no evidence so given shall be used or receivable in evidence against such person in any proceeding thereafter instituted against him. s. 5.

Quaere.—If the witness did not make any objection on such ground, could he afterwards claim the benefit of this provision? The decisions of the Court on similar legislation of the Dominion Parliament are very contradictory. See *Queen vs. Hammond*, 1 C. C. C. 373, and cap. 53 of Stat. of Can., 1898.

When a party intends to put in evidence a copy of or extract from any book or document as provided in the Act, he must give the opposite party reasonable notice of such intention. The reasonableness of the notice shall be determined by the Court or Judge, but it must not be less than ten days. s. 20.

A witness may affirm instead of taking the usual oath in giving oral testimony. He may also make a solemn affirmation instead of an affidavit. ss. 27 and 28.

The evidence of a child may be taken without oath, if he does not appear to understand the nature of an oath, but such evidence requires corroboration. s. 29.

Section 30 provides for statutory declaration in the same form as set out in "The Canada Evidence Act, 1893."

The amendment of 1898, ch. 17, provides for compelling the attendance of witnesses or commissions sent here from abroad to take evidence.

Executions and Exemptions.—Executions against lands were abolished in 1889, except as to writs then in force, and to bind land by a judgment it is necessary to register a certificate thereof.

Employees have priority in respect of three months' arrears of wages or salary, as against any writ of execution in the sheriff's hands.

The principal exemptions in favor of a judgment debtor are as follows:—

(*a*) The household furniture and effects not exceeding $500 in value, also the necessary and ordinary clothing of the debtor and his family.

(*c*) Twelve volumes of books and all the books of a professional man.

(*d*) The necessary food and provisions for the debtor and his family for eleven months, restricted to what may be in his possession at the time of seizure.

(*e*) Three horses, mules or oxen, six cows, ten sheep, fifty fowls, and food for the same during eleven months; the exemption as to horses over four years old only applying in case they are used by the debtor in earning his living.

(*f*) The tools, agricultural implements, and necessaries used by the judgment debtor in the practice of his trade, profession or occupation, to the value of $500.

(*h*) The land upon which the judgment debtor or his family actually resides, or which he cultivates, either wholly or in part, or which he actually uses for grazing or other purposes; provided the same be not more than 160 acres; in case it be more, the surplus may be sold, subject to any lien or incumbrance thereon.

(*i*) The house, stables, barns and fences on the judgment debtor's land, subject as aforesaid.

(*j*) All the necessary seeds of various varieties, or roots for the proper seeding and cultivation of 80 acres.

(*k*) The actual residence or house of any person, other than a farmer, to the extent of $1,500 in value.

(*l*) Any insurance money due to the debtor in case of loss by fire of any exempted property.

No exemptions can be claimed by or on behalf of a debtor who is in the act of removing with his family from the Province, or is about to do so, or who has absconded, taking his family with him. R. S. M., c. 53, s. 45.

There is no exemption of anything the purchase price of which was the subject of the judgment proceeded upon. R. S. M., c. 53, s. 48.

Exemptions cannot be waived beforehand by any agreement or contract. R. S. M., c. 53, s. 51.

It is forbidden to a sheriff or bailiff to seize or take in execution any goods, chattels, or effects declared to be exempt. R. S. M., c. 53, s. 52.

No sale of any growing crops, whether grain or roots, shall take place until after the same have been harvested or taken and removed from the ground. R. S. M., c. 53, s. 49.

Whenever any mechanic, artisan, machinist, builder, contractor or other person shall have furnished or procured any materials for use in the construction, alteration, or repair of any building or erection, such materials shall not be subject to execution or other process to enforce any debt, other than for the purchase thereof, due by the person furnishing or procuring such materials, and whether the same be or not, in whole or in part, worked into or made part of such building or erection. R. S. M., c. 53, s. 50.

The exemption of real estate from the lien of a registered judgment only extends to protect it from proceedings to realize the judgment until the debtor ceases to reside upon the land. R. S. M., c. 80, s. 12.

Fire Insurance Policies.—The Statute, R. S. M., c. 59, was passed to secure uniform conditions in policies of fire insurance. This Act is similar to corresponding legislation in Ontario.

Game Laws.—The following summary of the game laws is taken from Waghorn's "Guide":

CLOSE SEASON FOR GAME—Manitoba.

None of the animals or birds hereinafter mentioned shall be shot at, hunted, trapped, taken or killed on any Sunday, nor in any year within the periods hereinafter limited, nor shall any of the said animals or birds be carried, in whole or in part, by any common carrier during the said periods.

(a) All kinds of deer including cabri and antelope, elk or wapiti, moose, reindeer or cariboo, or the fawns of such animals, between the 15th December and the 15th October next following, and the animals mentioned are not to be taken, hunted or killed at any time for sale or barter. Limit, two deer each person any one season. This does not apply to deer the private property of any person and are taken or killed by him or with his consent, on his own premises. (b) All varieties of grouse, including prairie chickens, pheasants and partridges, between 15th November and 1st day of October next following, and none of the birds mentioned shall be exposed or offered for sale or sold, and no person shall kill more than [illegible] in one season nor more than 20 in one day. (c) Woodcock, plover (except the upland plover and the golden plover), snipe and sandpipers, between 1st of January and 1st August. (d) Upland plover between 1st January and 15th July. (e) Any kind of wild duck, sea duck, widgeon, teal, between 1st of May and 1st September. (f) Otter, fisher or pekan, and sable, between 15th May and 1st October. Muskrat between 1st of May and 1st December. (g) Marten between 15th April and 1st November. (h) Beaver shall not be shot at, hunted, trapped, taken or killed.

None of the said animals or birds (except the animals in sections f an g) shall be trapped or taken by means of traps, nets, snares, gins, baited lines or other similar contrivances, nor shall such be set.

Batteries, swivel guns, sunken punts, night lights, or spring guns, shall not be used or be in the possession of any person, at any time, to kill or destroy any animal mentioned. Animals may be kept for domestication, but permit is required for same from Minister of Agriculture. Heads of deer, for mounting or stuffing may be held by taxidermists if not taken during close season, or if imported must be accompanied by a declaration of owner showing that imported for said purpose and not taken during close season of place from whence imported.

No poison or poisonous substance shall be used or exposed to kill or take any animal or bird protected by this Act.

No person shall have in his possession any of the said animals or birds, or parts thereof, no matter where procured, with the exception of the skin of animals that have not been killed during the close season, during the period in which the same is protected. Animals may be kept for domestication if a permit is secured from the Minister of Agriculture and Immigration for same. Birds killed during the open season may be kept for food for fifteen days only after close of season.

The eggs of any of the said birds shall not be taken, destroyed, or had in possession at any time, nor the nests disturbed.

No person, either on his own behalf or as agent for others, shall purchase, barter or trade for any skin or pelt of any furbearing animal above mentioned which has been killed during close season.

The export of the said birds and animals out of the Province is prohibited—except only by special permit two live animals or birds for purposes of domestication.

A license fee of $50 is required by all persons not domiciled in Manitoba to hunt and shoot in the Province, to be had of the Minister of Agriculture, Winnipeg, good for the year. Permission from owner, agent or occupier of land or of enclosed ground is required. Trained or sporting dogs shall not be allowed to run at large unaccompanied. Offences against the Act shall be punished by summary conviction on information or complaint before a J. P. or Magistrate.

Garnishment.—The government of the Province of Manitoba may be garnished under the provisions of any Act of the Legislature, the same as ordinary persons, with regard to moneys due or accruing due to all persons employed or paid by the Government of Manitoba; but this section shall not apply to members of the Legislative Assembly or Ministers of the Crown. R. S. M., c. 64, s. 4.

Such garnishment process shall be served upon the Provincial Auditor in his office. R. S. M., c. 64, s. 5.

Any debt due or accruing due to any mechanic, laborer, servant, clerk or employee for wages or salary, shall be exempt from seizure or attachment under process issued either out of the Court of Queen's Bench or out of any of the County Courts to the extent of the sum of twenty-five dollars. In case at the time of the process taking effect upon the garnishee there is less than one month's salary or wages due, the extent of the exemption shall be at the rate of $25 per month for the time such salary or wages are due or accruing due. s. 7.

An attachment or garnishee order may be issued at any time after the commencement of an action in any of the courts, and the creditor does not need to wait until the recovery of judgment to do so.

Hotel and Boarding House Keepers' Lien.—The "Innkeepers' Act," R. S. M., c. 73, provides that every hotel, boarding or lodging house keeper shall have a lien on the baggage and property of his guest, boarder or lodger for the value or price of any food or accommodation furnished, except wines or spirituous liquors, and that he may after three months sell the goods detained by public auction to realize his claim. In order to have the benefit of the Act, he must keep conspicuously posted in the office and public rooms, and in every bedroom, a copy of the Act, printed in plain type.

Infants.—Where a minor over the age of sixteen years, who has no parent or legal guardian, or who does not reside with his parents or guardian, enters into an agreement, written or verbal, to perform any service or work, he is liable upon the same and entitled to the benefit thereof the same as if he had been of legal age. R. S. M., c. 72, s. 3.

The right of appointing guardians of infants, not having a father living or any legal guardian authorized by law to take

care of their persons, and the charge of their estate, belongs to the Surrogate Courts of the Province, and letters of appointment may be obtained as in case of letters of administration. R. S. M., c. 72, s. 6.

Upon petition of the mother of an infant whose father is dead, she, or some other person may be appointed guardian of the person of the infant, notwithstanding any testamentary provision to the contrary, or any appointment of another person as guardian by the father, if it shall appear just and proper to the Court, and the Court may give effect to the testamentary appointment by the mother, of guardians of infants, either as respects the person or estate, or both, notwithstanding a previous appointment of guardians by the father's will, if it shall seem advisable and in the interest of the infants to do so; and the Court may also, upon the written application of any infant, or the friend or friends of any infant residing in the Province, and upon notice to the mother if living in Manitoba, a proper case being made out, appoint some suitable and discreet person or persons to be guardian or guardians of such infant. R. S. M., c. 72, ss. 7, 8 and 11.

Where an infant domiciled in Manitoba, whose father is still living, is entitled to or possessed of any estate in his own right, either within or outside of Manitoba, the father may be appointed the guardian of such infant, and the Surrogate Court may grant to him letters of guardianship of the person and estate of such infant. Stat. of 1895, c. 20.

The official administrator for the Judicial District in which any infant resides may be appointed guardian of the infant without giving any special security as such guardian, but the security given by him for the due performance of his duties as official administrator shall enure and be held to have been given for the due performance of all duties as such guardian. Statutes of 1895, c. 19.

Application may be made at any time to the Court of Queen's Bench or a judge thereof to authorize a sale, mortgage, lease or other disposition of any real estate in which an infant is interested. The application must be made in the name of the infant by his next friend or his guardian, but the infant's consent is required, unless he is under the age of 14 years.

Upon such application the Court or Judge may make any orders or provisions deemed to be in the interest of the infant.

Joint Tenancy.—Whenever, by any letters patent, conveyance, assurance, will, or other instrument executed after the seventh day of July, 1883, land is granted, conveyed, or devised to two or more persons, other than executors or trustees, in fee simple, or for any other estate, legal or equitable, such persons take as tenants in common, and not as joint tenants, unless an intention sufficiently appears on the face of such letters patent, conveyance, assurance, will or other instrument that they take as joint tenants. R. S. M., c. 79, s. 2.

Judgments.—The registration of a certificate of judgment must be renewed every two years in order that the lien or charge upon any lands bound by it may be kept in force.

The lands of a deceased testator or intestate may be bound and sold by and under a judgment recovered against his ex-

ecutor or administrator as such, or recovered against such testator or intestate in his lifetime, without revivor, in the same mannner and by the same proceedings in and by which such lands could be bound and sold by and under a judgment recovered against the deceased if living. R. S. M., c. 80, s. 11.

It is not now necessary to commence a new action for the purpose of realizing a judgment out of lands bound by the registration of a certificate thereof, but on motion in chambers an order for sale may be made for the purpose.—Queen's Bench Act, 1895, rule 804.

Jury Trials.—Actions for libel, slander, breach of promise of marriage, illegal or excessive distress, illegal or excessive seizure, criminal conversation, seduction, malicious arrest, malicious prosecution, false imprisonment, breach of warranty, and for the recovery of damages under "The Workmen's Compensation for Injuries Act," shall be tried by jury, unless the parties in person or by their solicitors or counsel expressly waive such trial.

(2) Except in cases of libel and slander, the right to a jury shall be held to be abandoned, and the case shall be tried without a jury, unless a jury fee of fifteen dollars in Law Stamps be paid in advance to the Prothonotary or Deputy Clerk of the Crown and Pleas.

(3) Subject to the provisions of this section, all actions, causes, matters and issues shall be tried by a judge without a jury, unless otherwise ordered by a judge. Q. B. Act, 1895, s. 49.

Notwithstanding anything in the next preceding section contained, a judge presiding at a trial, may, in his discretion, direct that the action or issue shall be tried, or the damages assessed by a jury. Q. B. Act, 1895, s. 50.

An order for trial of an action by a "special" instead of a common jury may be obtained on application, in chambers.

Law Society Act.—The following persons may be admitted as attorneys:—

(1) Articled clerks who have served five years, or, in case of graduates of any of the Universities of Great Britain or Ireland, or any Province of Canada, three years, under articles with a practising attorney, and passed the necessary examinations, and paid the fees prescribed by the rules of the Society.

(2) Retired judges of any Superior Court in Canada, or of any County Court here.

(3) Attorneys or solicitors of any of the Superior Courts in Great Britain or Ireland, or of any Province or Territories of Canada, who have passed a satisfactory examination in the Statute Laws of the Province and the practice of the Court, on payment of a fee of $100.

The following persons may be called to the bar as barristers, and practice as such in any of the Courts.

(1) Retired judges as above.

(2) Students at law of five years, or in the case of graduates as above, three years' standing on the books of the Society as such, upon passing the necessary examinations and payment of the required fees.

(3) Barristers of any of the Provinces or Territories of Canada in which the same privilege would be extended to barristers from Manitoba, and barristers from Great Britain or

Ireland, on production of sufficient evidence of their standing and testimonials of good character and conduct, and on payment of a fee of $150.

A barrister is entitled to sue for his fees. An attorney may sue for his fees at any time after services rendered, without the formal rendering of a detailed bill of costs before the commencement of the action, but his bills are liable to be taxed as formerly.

Notwithstanding any law or usage to the contrary, any attorney-at-law, solicitor in equity, or barrister in this Province may contract, either under seal or otherwise, with any person or persons or corporation whatsoever as to the remuneration to be paid him for services rendered or to be rendered, in lieu of or in addition to the costs which by any tariff in force are allowed to the said attorney or solicitor, and the contract entered into may provide that such attorney or solicitor is to receive a portion of the proceeds of the subject matter of the action or suit in which any such attorney or solicitor is or is to be employed, or a portion of the moneys or property for which such solicitor or attorney may be retained, whether an action or suit has been brought for the same or a defence has been entered, and such remuneration may also be in the way of commission or percentage on the amount recovered or defended, or on the value of the property, about which any action, suit or transaction is concerned. R. S. M., c. 83, s. 68.

Libel.—All reports of proceedings in any Court of Justice published in any public newspaper or other periodical publication, shall be privileged, provided that they contain only fair and authentic reports, without comments. R. S. M., c. 85, s. 3.

Any report published in any public newspaper or other periodical publication of the proceedings of a public meeting shall be privileged, if such meeting was lawfully convened for a lawful purpose, and open to the public, and if such report was fair and accurate, and published without malice, and if the publication of the matter complained of was for the public benefit:

Provided, always, that the protection intended to be afforded by this section shall not be available as a defence in any proceeding, if the plaintiff can show that the defendant has refused to insert in the newspaper in which the matter complained of appeared, a reasonable letter or statement of explanation or contradiction by or on behalf of such plaintiff. R. S. M., c. 85, s. 4.

No action shall lie for a libel contained in any public newspaper or other periodical publication, unless and until the plaintiff shall have given the defendant notice in writing distinctly specifying the language complained of, for three clear days in case of a daily newspaper, and for ten clear days in case of a weekly publication, in order to give the defendant an opportunity to publish a full apology for the said libel, and if the Court or jury find that a full apology was published before the commencement of the action, the plaintiff shall not recover therein without proving special damage or actual malice. R. S. M., c. 85, s. 5.

Evidence of a written or printed apology having been made or tendered to the plaintiff may be given in mitigation of damages.

A plea that there was no actual malice or gross negligence in publishing the libel, and that a full apology was printed before the commencement of the action, or at the earliest opportunity afterwards, may be put in accompanied by payment into court of a sum of money by way of amends for the injury sustained, and shall have the same effect as payment into court in other cases. R. S. M., c. 85, ss. 8 and 9.

Security for costs may be ordered to be given by a plaintiff, although a resident of the Province, if defendant swears that he has a good defence on the merits, and that in his belief the plaintiff is not responsible for costs in case of the action being dismissed.

No costs can be awarded to the plaintiff when he recovers merely nominal damages.

Printers and publishers are not entitled to the benefits of the Libel Act, unless they have complied with "The Newspaper Act." R. S. M., c. 107.

Lien Notes and Hire Receipts.—"On and after the day upon which this Act comes into force, no lien notes, hire receipts, orders for chattels, or documents or instruments which contain as a portion thereof or have annnexed thereto or endorsed thereon, an order, contract or agreement for the purchase or delivery of any chattel or chattels, shall be registered in any Registry Office or Land Titles Office in the Province of Manitoba, anything contained in any statute of the Province of Manitoba to the contrary notwithstanding.

(2) This section shall apply to caveats registered under "The Real Property Act," and no caveat shall be registered or filed in any Land Titles Office which has annexed thereto or endorsed thereon, or which refers to or is founded upon any instrument or document, or part thereof, the registration of which is prohibited by this section." Statutes of 1893, c. 17, s. 1.

"It is hereby declared that every lien note, hire receipt, order for chattels, or document or instrument the registration of which was or is prohibited by chapter seventeen of the Statutes of 1893, was and is since the eleventh day of March, 1893, and shall hereafter be, in so far as the same purports to affect land, absolutely null and void as against any person or corporation claiming an interest or estate in lands under a registered instrument." Statutes of 1894, c. 14, s. 1.

"No notice, past, present, or future, actual or constructive, to the person or corporation claiming under such registered instrument, shall avail to prevent the operation of the preceding section. Notice, whether actual or constructive, in such cases shall be void and of no effect whatever." Statutes of 1894, c. 14, s. 2.

In *Case vs. Bartlett*, 12 M. R. 280, 34 C. L. J. 474, it was held that, notwithstanding these statutes, a registered judgment creditor's claim cannot rank prior to a lien or charge on the debtor's land created by a machine agreement, which, though earlier in date, could not be registered.

Life Assurance.—The Province has legislation contained in chapter 88 of the Revised Statutes, and in the amendments of 1895, c. 26, 1898, c. 25, and 1899, c. 17, respecting life assurance for the benefit of wives and children, similar to that of Ontario,

and providing that such insurance policies and the moneys secured thereby shall be free from the claims of creditors, either of the insured or any of the persons to be benefited.

Limitation of Actions.—Our law respecting the limitation of suits relating to real property is similar to that of Ontario.

A person may acquire a title to land by length of possession for ten years after the right of action to recover possession first accrued to the holder of the title or the person through whom he claims.

Ten years is also the prescribed time within which, (1) a mortgagor may bring an action for redemption against a mortgagee in possession; (2) a mortgagee may bring an action of foreclosure, etc., against a mortgagor in possession who has made no payments or given any acknowledgment; (3) any person may bring an action, suit or other proceeding to recover any sum of money secured by any mortgage, judgment or lien, or otherwise charged upon or payable out of any land or rent, or any legacy, unless in the meantime some part of the principal money, or some interest thereon has been paid, or some written acknowledgment has been given, and in such case the party entitled has ten years from the last of such payments or acknowledgments within which to bring his action.

That money is secured by an express trust makes no difference in the time within which an action to recover it must be brought. R. S. M., c. 89, s. 25.

No person can acquire a right by prescription to the access and use of light to any dwelling house, workshop or other building. R. S. M., c. 89, s. 34.

A person under the disability of lunacy or infancy, or any person claiming through him, is allowed five years after the removal of the disability or the death of the party under disability, whichever of those two events first happened, to bring his action; provided that in no case can a longer period than twenty-five years be allowed next after the time at which the right of action first accrued; and no extra time can be allowed because of a succession of disabilities in the persons entitled. R. S. M., c. 89, ss. 35-37.

Livery Stable Keepers.—And keepers of boarding and sale stables are given, by ch. 91 R. S. M., a lien on any animal, vehicle, harness, furnishings, or other gear appertaining thereto, or any personal effects of any person who is indebted for stabling, boarding, or caring for such animal, and the right to sell the same by public auction after one month to realize the claim, if it be not sooner paid, but they must keep a copy of the Act conspicuously posted up in the office and at least two other places in the stables.

By 62 and 63 Vic., c. 18, the lien of a stable keeper on any animal has priority over any other existing lien, and over any chattel mortgage, bill of sale or other charge or incumbrance affecting such animal.

If any such animals, vehicles, etc., are seized for rent due by the stable keeper, the owner may secure their release by paying the landlord anything he owes to the stable keeper for the care and keep of the property.

Lunatics.—Jurisdiction over the persons and estates of lunatics, idiots and persons of unsound mind, belongs to the Court of Queen's Bench, and the law and practice in respect to them are similar to that obtaining in Ontario.

The Inspector of Public Institutions appointed to hold that office under "The Manitoba Public Works Act," R. S. M., c. 128, shall, by his name of office, be the committee of any lunatic who has no other committee, and who is detained in any public asylum in Manitoba, whenever directed by order in council to act as such, and whilst he continues to be such committee he shall have all the powers of a committee appointed by the Court; but the Court may supersede the Inspector by appointing another person as such committee at any time. 56 Vict., c. 20.

The Court or a Judge may appoint the official administrator for the Judicial District in which any lunatic resides, or in which any property of the lunatic, real or personal, is situated, to be the committee of the estate of the lunatic in case it appears to the Court or Judge that it is in the interest of such lunatic that such appointment should be made. In such case the official administrator shall not be required to give any security for the proper performance of his duties as such committee, but the security given by him for the due performance of his duties as official administrator shall enure and be held to be given for the due performance of all duties which may devolve upon him under this Act. Statutes of 1898, c. 28.

Magistrates.—The Provincial Government may appoint Police Magistrates, and define the territorial limits of their respective jurisdictions. A Police Magistrate has all the powers of two or more justices of the peace sitting and acting together.

Justices of the Peace are appointed also by the Government, and generally have jurisdiction anywhere in the Province.

Married Women.—Every woman who married on or after the fourteenth day of May, 1875, or shall hereafter marry, without in either such case any marriage contract or settlement, shall and may, notwithstanding her coverture, have, hold, and enjoy all her real and personal property, whether belonging to her before marriage, or acquired by her by inheritance, devise, bequest or gift, or as next of kin to an intestate, or in any other way, after marriage, free from the debts and obligations of her husband, and from his control and disposition without her consent, in as full and ample a manner as if she continued sole and unmarried, any law, usage, or custom to the contrary notwithstanding; but this section shall not extend to any property received by a married woman from her husband during coverture. R. S. M., c. 95, s 2.

Every woman who, before the fourteenth day of May, 1875, married without any marriage settlement or contract, shall and may from and after the said date and hereafter, notwithstanding her coverture, have, hold and enjoy all her real estate not at the said date taken possession of by her husband himself or his tenants, and all her personal property not at said date reduced into the possession of her husband, whether belonging

to her before her marriage or in any way acquired by her after marriage, free from his debts and obligations, and from his control and disposition without her consent, in as full and ample a manner as if she were sole and unmarried, any law, usage, or custom to the contrary notwithstanding. R. S. M., c. 95, s. 3.

Nothing herein contained shall be construed to protect the property of a married woman from seizure and sale on any execution against her husband for her torts; and in such case execution shall first be levied on her separate property. R. S. M., c. 95, s. 4.

The real estate and property mentioned in the second and third sections of this Act, and the rents, issues and profits thereof shall, without any prejudice and subject to the trusts of any settlement affecting the same, be held and enjoyed by any married woman, for her separate use, free from any estate or claim therein or thereto of her husband as tenant by the curtesy or otherwise; and her receipts alone shall be a discharge for any rents, issues, or profits of any such real estate or property; and any married woman may, by herself alone, enter into any contracts whatsoever in respect of such real estate or property, or the management of the same, or the proceeds and issues thereof, and the investment or re-investment of the same, the making of promissory notes or bills of exchange, the drawing of cheques, and the doing of all other acts, matters and things requisite or expedient, in or about the management and handling of, and the dealing with, all and singular the premises, without any assent or concurrence on the part of her husband, as if she were a *feme sole;* and no possession, whether actual or constructive, of the husband of any property, real or personal, of a married woman, shall give the husband any title thereto, as against his wife, during her lifetime, or render the same liable for his debts. R. S. M., c. 95, s. 5.

All the wages and personal earnings of a married woman, and any acquisition therefrom, and all proceeds or profits of or from any occupation or trade which she carries on separately from her husband, or derived from any literary, artistic or scientific skill, and all investments of such wages, earnings, moneys or property are free from the debts and dispositions of her husband; and shall be held and enjoyed by her and disposed of without her husband's consent as fully as if she were a *feme sole*; and no order for protection is necessary in respect of any such earnings or acquisitions; and the possession, whether actual or constructive, of the husband of any personal property of any married woman shall not render the same liable for his debts. R. S. M., c. 95, s. 14.

Every married woman, being of the full age of twenty-one years, may as fully and effectually as she could so do if she were a *feme sole*, and without any concurrence of her husband or father or other formality, and without any examination or acknowledgment, convey, demise or mortgage by a proper instrument her real estate, or convey, demise, mortgage, release, surrender, disclaim or extinguish, by a proper instrument, any interest therein, or release or extinguish, by a proper instrument, any power which may be vested in or limited or

reserved to her in regard to real estate, or appoint by deed an attorney or attorneys for the purposes aforesaid, and every of them. R. S. M., c. 95, s. 17.

A man may make a valid conveyance or transfer of his land to his wife, and a woman may make a valid conveyance or transfer of her land to her husband without in either case the intervention of a trustee. R. S. M., c. 95, s. 21.

From and after the fourteenth day of May, 1875, every married woman might, and hereafter she may, by devise or bequest executed in the presence of two or more witnesses, neither of whom is her husband, make any devise and bequest of her separate property, real or personal, or of any rights therein, whether such property was or be acquired before or after marriage, to or among her child or children, issue of any marriage, and, failing there being any issue, then to her husband, or as she might or may see fit, in the same manner as if she were sole and unmarried. R. S. M., c. 95, s. 27.

Brown vs. Peace, 11 M. R. 409, decided in 1897 by the Full Court, is a very instructive case in which an ante-nuptial settlement and a bill of sale of the husband's furniture, made in pursuance thereof, were both held void and set aside as against execution creditors.

It was held in *Wishart vs. McManus*, 1 M. R. 213, decided by the Full Court, in 1884, that, under the above statutes, debts contracted by a married woman in carrying on a business or employment, occupation or trade, on her own behalf, or separately from her husband, may be sued for as if she were an unmarried woman, that is, without regard to separate estate. This was followed in *Velie vs. Rutherford*, 8 M. R. 168, decided by the Full Court in 1892.

Merchants' Bank vs. Carley, 8 M. R. 258, decided by the Full Court in 1892, shows that when a mercantile business is carried on in the name of a married woman, whose husband manages it for her on a weekly salary, and she takes no part in the management, although it was started with her capital, the business cannot be said to be carried on by the wife separately from her husband, and the profits of it belong to him, so that a creditor of the husband is entitled to inquire as to the profits made in the business, and he is bound to make full discovery on his examination as a judgment debtor.

Dall vs. Comboy (1893), 9 M. R. 185, is a case in which it was held, following *Dominion Savings Co. vs. Gilroy*, 15 A. R. 487, that when the wife of an execution debtor sets up a jewelry business in her own name, and buys a stock of goods on credit from wholesale dealers, and takes an active, though not the principal, part in the work of the shop, the goods cannot be taken and sold by creditors of her husband.

In *Goggin vs. Kidd* (1895), 10 M. R. 448, certain crops raised upon land which had been *bona fide* leased to the wife by the mortgagees after the husband's failure to meet the payments, were held by a majority of the Full Court to be the property of the husband as between his execution creditors and the wife, although the trial judge had found as facts that the farming operations, by which the crops had been raised, constituted a separate occupation of the land by the wife, and

were her separate business, that she had made a contract with her husband to act as her servant for wages, that she was actually the farmer, that it was intended between herself and her husband and the mortgagees that she should have the possession and use of the premises, and that the horses and cattle by the work of which the farming operations had been carried on were *bona fide* the property of the wife. The majority of the Court based its decision upon the following circumstances:—The plaintiff, when she undertook to farm for herself, had no means of her own. The lands on which the crops claimed were grown had, in the preceding autumn, been ploughed and prepared for planting by the husband, and some of the seed sown in the spring belonged to him. After she leased the land, the plaintiff and her husband and the family continued to live on the homestead as before, and the actual farming work on the land was done for the most part by the husband and two men who had worked for him before the lease was made to the plaintiff. The majority also held (Dubuc, J., dissenting), that clear and unequivocal evidence should be required of the reality of the alleged separate occupation on the part of the wife, and of the hiring of the husband as a farm servant by the plaintiff; and, there being no other evidence as to these matters except that of the plaintiff and her husband, with which they did not feel satisfied, that the evidence was insufficient to establish any separate occupation of the lands by the wife, or that the h[illegible]ing of the husband as a farm servant was more than an emp[illegible]orm, and colourable, or that the farming business carrie[illegible]was her separate business.

Ady vs. Harris (1893), 9 M. R. 127, and *Streimer vs. Merchants' Bank* (1893), 9 M. R. 546, are cases in which there were similar holdings.

Slingerland vs. Massey Manufacturing Co. (1894), 10 M. R. 21, is another decision of the Full Court in a case of crops of grain and hay claimed by a farmer's wife as grown on her land, as against execution creditors of the husband, where it was held that the grain must be considered to be the husband's property, but that the hay, being the natural product of the land, of which the wife was the tenant, came under the description of issues and profits of her separate estate referred to in section 5 of the Married Women's Act (*vide supra*), and that the wife was entitled to it as against the defendants.

In *Nicol vs. Gocher*, 12 M. R. 177, 34 C. L. J. 362, it became necessary to decide whether the husband had taken such a part in the farming business carried on by the wife as to prevent the finding of a separate business. The plaintiff's claim was against the wife for wages as a farm laborer in her employ. He had been employed as her servant, and it was understood between them and the defendant's husband that the farm was hers, and that the farming operations were being carried on as hers. The negotiations for the employment of the plaintiff were conducted by the husband, though partly in the defendant's presence; and it was the husband who was consulted by the plaintiff in all matters of importance relating to the farm, though at times the defendant was present.

The husband gave defendant the benefit of his advice and assistance, and also acted as bookkeeper for her in a banking business carried on in her name at the same time, but it did not appear that he had any fixed salary, or what was the arrangement, if any, between him and defendant.

Held, that such participation by the husband would not, in the case of an outsider contracting with the wife, absolutely prevent the finding that the business was carried on by the wife separately from her husband, and that on the evidence such finding was the proper one in this case. If, however, the defendant, on the same state of facts, were claiming the profits or proceeds of the farming operations as against her husband's creditors, it would be impossible to hold it sufficiently proved that the business was *bona fide* intended to be that of the wife alone. It depends on the circumstances of each particular case what is the degree or nature of the participation by the husband which prevents the finding of a separate business. *Merchants' Bank vs. Carley*, 8 M. R. 258, and *Goggin vs. Kidd*, 10 M. R. 448, distinguished.

Master and Servant.—An employee, in addition to all other remedies for the recovery of his wages, may take summary proceedings before a justice of the peace or police magistrate within six months after his cause of complaint has arisen, provided the amount claimed does not exceed $100. If the master is found to be indebted in such a case, the magistrate may issue a warrant of distress to levy the amount with costs, and household furniture and effects are not exempt from seizure and sale under such warrant.

Such warrant shall take priority over landlord's warrants and mortgages, bills of sale, chattel mortgages executed after the labor in respect of which proceedings were taken was commenced, and all process issued by any Court in this Province, as to the crop grown on the premises where the labor of the servant was performed; provided, however, that the provisions of this sub-section shall not apply to a claim for wages by any person related to, or connected by marriage with the master, and that the amount recoverable hereunder shall not exceed $75. Stat. of 1897, c. 16.

By ch. 20 of 62 and 63 Vict., it is provided that the justice or magistrate may take into account any damages or loss alleged to have been occasioned to the master by reason of any wilful or malicious act or neglect of the servant or workman during the period of the employment in respect of which the cause of complaint arose, or of any breach committed by the servant or workman of the contract of service between them.

Mechanics' Liens.—"The Mechanics' and Wage Earners' Lien Act, 1898," consolidates and amends the former statutes on this subject, and provides very full and complete remedies for mechanics, material men and wage earners of all kinds.

Following recent legislation in Ontario, registration is not necessary to the creation and continuance of the lien for a period of thirty days, so that owners, purchasers, or lenders are now bound to inquire as to the existence of liens, and cannot safely pay over their money on finding that no liens are registered.

The mode of realizing a lien is by an action in the Court of Queen's Bench.

When the total amount of the claims of the plaintiff and other persons claiming liens is $100 or less, there is no appeal from the decision of the trial judge, but if over $100, an appeal may be made to the Full Court in term. Costs are limited to twenty-five per cent. of the amount of the judgment, besides actual disbursements, or if costs are awarded against the plaintiff or other persons claiming the lien, twenty-five per cent. of the total claims, besides actual disbursements.

In addition to all other remedies, the Act respecting builders and workmen, R. S. M., c. 13, makes a proprietor personally liable for the wages of all workmen employed by any contractor or sub-contractor on any building or erection being put up for him, to the extent of the original contract price. The liability may be enforced by a personal action against the proprietor. Several unpaid workmen may join in the same action, and where there is not enough money to satisfy all such claims, the workmen share *pro rata*, according to the amounts of their respective claims.

Mortgages.—The purchaser in good faith of a mortgage may, to the extent of the mortgage, and except as against the mortgagor, his heirs, executors or administrators, set up the defence of purchase for value without notice, in the same manner as a purchaser of the property mortgaged might do. It shall in no case be necessary, in order to maintain the defence of purchase for value without notice, to prove payment of the purchase money or any part thereof. R. S. M., c. 99, ss. 1 and 2.

The rule or law under which a mortgagee is entitled to demand and receive six months' notice or a bonus of six months' interest, in case the principal of his mortgage be not paid on the day it falls due, is repealed and declared not to be in force in the Province of Manitoba: Provided that this section shall not be construed to affect any contract. R. S. M., c. 99, s. 4.

No covenant in any mortgage whereby any party agrees to waive any exemption that otherwise such party would be entitled to under any Statute of Manitoba, shall be valid or of any effect, unless the witness shall have made an affidavit that such covenant was read over and its effect fully explained to such party. R. S. M., c. 99, s. 5.

By ch. 31 of the Statutes of 1895 (q. v.), mortgagees not advancing the whole of the mortgage money at the time of registration are protected against subsequent claimants under instruments registered before the actual advance.

Municipalities.—For municipal purposes, the Province is divided into Cities, Towns, Incorporated Villages, and Rural Municipalities, but there are no Township or County Corporations as in Ontario.

There are, therefore, no "counties" properly so called in Manitoba, although the Province is arranged by Divisions for County Court purposes, and the few districts or divisions not included in any Land Titles District for registration purposes are sometimes called counties.

Travelling on highways is regulated by sections 628 to 638 of The Municipal Act, as re-enacted by section 32, chapter 31, of the Statutes of 1898.

It is worth noting that this statute requires that any person in charge of a vehicle or riding a bicycle or tricycle, who is overtaken by another vehicle or bicycle, should quietly turn out to the *left*, and the person who overtakes the other should pass by the *right*. The rule in Ontario in case of bicycles or tricycles seems to be the reverse of this.

Newspapers.—Publishers of newspapers are required by "The Newspaper Act," R. S. M., c. 107, under a penalty of $20, to make and file an affidavit setting forth the various residences and descriptions of all the printers, publishers, and proprietors of the newspaper, the true description of the place of printing, and the title of the paper.

Such affidavit must be filed in the Court of Queen's Bench.

An affidavit of the like import shall be made, signed, and given in like manner, as often as any of the printers, publishers or proprietors named in such affidavit are changed, or change their respective places of abode, or their printing house or place of business, and as often as the title of the newspaper, pamphlet, or other paper is changed. R. S. M., c. 107, s. 8.

In some part of every newspaper, pamphlet, or other such paper aforesaid, there shall be printed the real name, addition and place of abode of every printer and publisher thereof, and also a true description of the place where the same is printed. The penalty for a violation of this section is a fine of eighty dollars. R. S. M., c. 107, s. 10.

No person or persons or corporation, who has not or have not complied with the provisions of this Act shall be entitled to the benefit of any of the provisions of "The Libel Act." R. S. M., c. 107, s. 16.

A certified copy of the affidavit required may be put in as *prima facie* evidence of its contents, and the matters contained therein will be conclusive evidence against the deponents and all persons named therein as printers and publishers of the newspaper in all cases or proceedings touching or concerning any newspaper or anything contained therein.

Proof of publication in actions for libel, etc., is much simplified in cases where the Act has been complied with. R. S. M., c. 107, s. 12.

Oaths.—Commissioners for taking affidavits in the Province for use in any of the Courts may be appointed, either by the Lieutenant-Governor in Council, or by the Judges of the Court of Queen's Bench, or any three of them, and such commissioners may act everywhere in the Province. Commissioners resident abroad for taking affidavits for use in Manitoba are appointed by the Lieutenant-Governor in Council. Affidavits for use in any of the Courts or required by the Registry Act or the Real Property Act, or any other Provincial Statute, may be sworn to out of the Province before a notary public, under his hand and official seal.

Oaths, affidavits affirmations or declarations may be sworn, affirmed or made out of the Province of Manitoba before any

commissioner for oaths appointed by the Lord Chancellor in England, or before any notary public, certified under his hand and seal, or before the mayor or chief magistrate of any city, borough, or town corporate, in Great Britain or Ireland, or in any of Her Majesty's dominions without Manitoba, or in any foreign country, and certified under the common seal of such city, borough, or town corporate, or before a Judge of any Court of superior jurisdiction in any of Her Majesty's dominions without Manitoba, or any dependency thereof, or before a consular agent of Her Majesty, exercising his functions in any foreign place. R. S. M., c 110, s. 11.

Partnerships.—Persons associated in partnership for trading, manufacturing, or mining purposes, must file in the Queen's Bench office for the proper Judicial District, a declaration signed by each, showing their full names and residences, the firm name, the time during which the partnership has existed or is to exist, and that there are no other members of such co-partnership. Such declaration must be filed within six months after the formation of the partnership, and a similar declaration must be filed in like manner whenever any dissolution or any change in the membership, or in the name of the firm, or in the place of residence of any member, takes place.

Every person engaged in any trading, manufacturing or mining business, who has no partner, but uses, as his business style, some name or designation other than his own name, or who in such business uses his own name with the addition of "and Company," or some other word or phrase indicating a plurality of members in the concern, shall, within the same time, cause to be filed in the proper office, a declaration signed by him, showing his name, addition, and residence, the firm or business name used, and that no other person is associated with him in partnership. "The Partnerships Act," R. S. M., c. 114. A penalty of $100 is incurred in case of failure to comply with the Act. The statements in any such declaration are not controvertible by any person who has signed it, nor, as against any outside party, by any person who was really a member of the partnership at the time such declaration was made. R. S. M., c. 114, s. 13.

Limited partnerships may be formed for carrying on any business except banking or insurance. Such partnerships may consist of "general partners," who shall be fully responsible for all the obligations of the partnership, and "special partners," contributing in actual cash payments specific sums as capital to the common stock, who shall not be liable beyond the amounts respectively contributed by them. Only general partners are authorized to transact business, and sign for the partnership, and to bind the same.

For the mode of formation and formalities to be observed, see the statute, ss. 20-29.

In case of the insolvency or bankruptcy of the partnership, no special partner shall, under any circumstances, be allowed to claim as a creditor until the claims of all the other creditors of the partnership have been satisfied. R. S. M., c. 114, s. 33.

The general law of partnership has been codified by "The

Partnership Act, 1897," which repeals section 4 of "The Mercantile Law Amendment Act, 1856," and the whole of 28 and 29 Vict., c. 86, substituting similar provisions.

Public Schools.—Are entirely non-sectarian, and no religious exercises or teaching is allowed, except in accordance with the regulations prescribed by the Advisory Board.

Government and municipal aid are given only to such schools as are conducted strictly according to the law.

Real Property Act, R. S. M., c. 133.—This is the Act which, with its schedules, contains the law as to the Torrens system of land transfer and registration of title. There are four Land Titles Districts, viz., those of Winnipeg, Portage la Prairie, Brandon and Morden, comprising the greater part of the area of the Province, but there are still six Old System registry offices and districts or "counties." Applications for Torrens titles for lands in any of these counties may be made to the Winnipeg office.

A distinguishing feature of the Act is that if there is any mortgage or incumbrance on the property, the certificate of title is retained in the Land Titles Office for the security and convenience of all parties. A mortgagee, however, may obtain a certificate of charge in respect of his mortgage, and the owner can procure a certified copy of his certificate of title. The Land Titles offices carry on both the old system and the new for their respective districts, and the bringing of land under the new system is entirely optional.

Registration of Deeds.—The Registry Act, R. S. M., c. 135, regulates the practice and prescribes the law of the old system of registration of deeds and other instruments affecting lands. It is modelled on the Ontario Statute. The District Registrars under the Torrens system are also Registras under the Registry Act for their respective districts.

Rule of the Road.—See Municipalities.

Sale of Goods.—The law relating to the sale of goods has been codified by chapter 25 of the Statutes of 1896, and the following English enactments are repealed so far as they apply in Manitoba:—The Act against Brokers, 1 Jas. I, c. 21; sections 15 and 16 (commonly cited as ss. 16 and 17) of the Statute of Frauds, 29 Chas. II, c. 3; Section 7 of Lord Tenterden's Act, 9 Geo. IV. c. 14; Sections 1 and 2 of "The MercantileLaw Amendment Act, 1856," but similar provisions are embodied in the code. See also the amending Act of 1899, c. 36.

Securities.—Chapter 26 of the Statutes of 1896 makes special provisions for taking the bonds or interim receipts of guarantee companies as security for the due performance of the duties of persons holding any office or position of trust, also for applications by sureties or their representatives to the Court calling on trustees, committees, guardians, assignees, liquidators, executors or administrators, for whom they are sureties, to account, and for relief from further liability.

Seed Grain Mortgages.—Mortgages taken by the Dominion Government for advances to farmers for provisions and

seed grain were filed in the Dominion Land Office at Winnipeg, and the Act, chapter 138 R. S. M., provides that such filing shall have the same effect and confer the same rights upon the mortgagee, as if the mortgage had been duly registered in the ordinary manner under the provisions of any statute of the Province.

Search must therefore always be made for any such mortgages upon lands in the older settled parts of the Province, in addition to the ordinary searches at the Registry Office.

Short Forms of Indentures.—The Province has legislation on this subject (R. S. M., c. 141), similar to that of Ontario. All instruments intended to take effect under the Act should be expressed to be made "In pursuance of the Act respecting Short Forms of Indentures." This applies equally to deeds, mortgages and leases.

Succession Duties.—Are provided for by chapter 31 of the Statutes of 1893, as amended by ch. 27 of the Statutes of 1896. The legislation is similar to that of Ontario.

No duty is chargeable in any case when the value of the estate, after payment of all debts and expenses of administration, does not exceed $4,000, and when there is a child, husband, wife, father, mother, grandchild, daughter-in-law or son-in-law of the deceased, who is to receive any benefit from the estate, the limit is $25,000, and when the share of any of such persons does not exceed $10,000, no duty is payable.

The following is the graded schedule:—

Up to $25,000	1	per cent.
$25,000 to $50,000	2	" "
$50,000 to $100,000	3	" "
$100,000 to $250,000	4	" "
$250,000 to $500,000	5	" "
$500,000 to $600,000	6	" "
$600,000 to $700,000	7	" "
$700,000 to $800,000	8	" "
$800,000 to $1,000,000	9	" "
$1,000,000 or more	10	" "

Threshers' Lien.—In every case in which any person threshes, or causes to be threshed, grain of any kind for another person, at or for a fixed price or rate of remuneration, the person who so threshes said grain, or causes the same to be threshed, shall have a right to retain a quantity of such grain for the purpose of securing payment of the said price or remuneration. Statutes of 1894, c. 36, s. 1.

The quantity of grain which may be so retained shall be a sufficient amount computed at the fair market value thereof, less the reasonable cost of hauling to and delivering at the nearest available market, to pay, when sold, for the threshing of all grain threshed by, or by the servants or agents of, the person so retaining the said grain, for the owner within thirty days prior to the date when such right of retention is asserted. s. 2.

Such grain shall be held to be still in the possession of the person by whom or by whose servants or agents it is threshed, and subject to the right of retention herein provided for,

although the same has been piled up or placed in bags or other receptacles, unless and until said grain is sold and delivered to a *bona fide* purchaser, and value received therefor, and removed from the premises and vicinity where the said grain was threshed, and out of the possession of the person for whom the threshing was done. s. 3.

Section 5 of the Act provides for the sale of such grain to realize the lien. The sale must be made within 30 days from the retainer, unless the owner consents to a longer delay.

Trustees, Executors and Administrators.—The Trustee Act, R. S. M., c. 146, provides for the duties, liabilities, and functions of trustees, executors and administrators, their remuneration, and as to what investments they may make of the funds in their charge. The provisions are generally the same as in Ontario. In the case of all persons dying after 28th May, 1886, priority of claims is abolished, and all debts rank *pari passu* as against the assets of the estate.

Wills.—Are regulated by "The Manitoba Wills Act," R. S. M.. c. 150.

A will must be in writing, and signed at the foot by the testator, or by some other person in his presence and by his direction, in the presence of two or more witnesses, present at the same time, and the witnesses must attest and subscribe the will in the presence of the testator; but no form of attestation is necessary. The testator must not be under 21 years of age.

If a married woman has a child or children, she is restricted by section 27 of "The Married Women's Act," R. S. M., c. 95, in making a devise or bequest of her separate property, and must leave it "to or among her child or children, issue of any marriage." Her husband is not a competent witness to any will of a married woman.

A holograph will, wholly written and signed by the testator himself, is subject to no particular form, nor does it require any attesting witness

Since 1st July, 1885, no devise is valid or effectual as against the personal representative of the testator until the land affected thereby is conveyed to the devisee by the personal representative.

In other respects the law regarding wills is similar to that of Ontario.

Witnesses.—See Evidence.

Woodman's Lien.—Any person performing any labor or service in connection with any logs or timber within this Province, shall have a lien thereon for the amount due, not exceeding the sum of $250, for such labor or service, and the same shall be deemed a first lien or charge on such logs or timber, and shall have precedence of all other claims or liens thereon, except any claim which the Crown may have upon such logs or timber for or in respect of any dues or charges. Statutes of 1893, c. 38. s. 3.

The Statute provides that a statement of the lien must be filed in the proper County Court office, and prescribes the necessary contents of the statement, the time for filing, the mode of enforcing the lien, and the procedure in case a writ of attachment is necessary

Workmen's Compensation for Injuries.—"The Workmen's Compensation for Injuries Act," ch. 39 of the Statutes of 1893, as amended by ch. 48 of the Statutes of 1895, and ch. 51 of 1898, provides for the recovery of damages for an injury suffered by a workman, notwithstanding it was caused by the negligence of a fellow workman or employee, and for injuries caused by certain defects in railways, or in the condition of the ways, works, machinery, plant, buildings or premises connected with or used in the business of the employer. The Act contains provisions for limiting the amount of compensation, preventing the effect of any contract or agreement barring the right to compensation, preventing the recovery of any penalty under any statute in addition to the compensation prescribing the procedure in actions, and limiting the time for commencing an action.

North-West Territories Law Digest.

PREPARED BY

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REGINA, NORTH WEST TERRITORIES.

General.—The laws of England, as the same existed on July 15, 1870, are in force so far as applicable, and so far as they have not been, or are not hereafter, repealed, altered or affected by any Act of Parliament of the United Kingdom applicable to the Territories, or of the Parliament of Canada, or by any Ordinance of the North-West Territories.

Affidavits.—Must be made in first person, and divided into paragraphs. must state place of above, and description of deponent. Jurat must show time when and place where sworn. Interlineations, alterations or erasures in either affidavit or jurat must be initialled by the officer before whom sworn. Documents referred to in the affidavit must be referred to as exhibits, and not as annexed. (See "Real Property"—"Attestation").

Appeal.—(See "Courts," "Real Property.")

Arrest.—There are no provisions for arrest under civil process.

Attachment.—Property not exempt from seizure under execution may be attached at or after the commencement of an action wherein the claim is for the recovery of a debt from the defendant to the plaintiff, upon the affidavit of the plaintiff or his agent, verifying the claim, and stating that the debtor has absconded from the Territories, leaving personal property liable to seizure, or has attempted to remove same with intent to defraud his creditors generally, or the plaintiff in particular, or keeps concealed to avoid service of process, and also that, in the belief of the deponent, without the benefit of

the attachment, the plaintiff will lose his debt or sustain damage; and upon the affidavit of one other credible person that he is well acquainted with the defendant, and has good reason to believe (giving such reasons) that the defendant has absconded or attempted to remove his personal property out of the Territories, or to sell or dispose of the same, or keeps concealed to avoid service as aforesaid.

The two affidavits being filed with the clerk of the Court, the clerk issues a writ of attachment, directed to the sheriff, to attach and keep all the personal property of the defendant liable to seizure for debt. But where the debtor has actually absconded from the Territories, leaving no wife or family behind, no property of defendant is exempt from seizure. The amount of the debt is stated in the writ of attachment, and the sheriff levies for the amount thereof and the costs of the proceedings.

A writ of attachment may be set aside by a judge upon sufficient proof by affidavit that the same was issued without reasonable cause.

Attestation.—(See "Real Property," "Affidavits.")

Bills of Sale and Chattel Mortgages.—Every mortgage of goods and chattels which is not accompanied by an immediate delivery, and an actual change of possession of the things mortgaged, must, within thirty days from execution, be registered, with the affidavit of a witness thereto, of the due execution thereof, and with an affidavit of the mortgagee, or his agent, stating that the mortgagor is justly and truly indebted to the mortgagee in the sum mentioned in the mortgage, that it was executed in good faith, and for the express purpose of securing the payment of money justly due or accruing due, and not for the purpose of protecting the goods and chattels therein named against the creditors of the mortgagor, or of preventing the creditors of such mortgagor from obtaining payment of any claim against him. A mortgage to secure future advances or to indemnify endorsers, etc., is valid if duly registered. Every sale of goods not accompanied by an immediate delivery, and followed by an actual change of possession of the goods, shall bo in writing, accompanied by an affidavit of a witness thereto of the due execution thereof, and an affidavit of the purchaser, or his agent, that the sale is *bona fide*, and for good consideration as set forth, and not for the purpose of holding or enabling the purchaser to hold the goods mentioned against any creditors of the vendor, and must be registered within thirty days from the execution thereof,otherwise the sale is void as against the creditors of the vendor or subsequent purchasers of mortgagees in good faith. If a mortgage or bill of sale and affidavits are not registered as above, or if the consideration is not clearly expressed, the mortgage or conveyance is null and void as against creditors of the mortgagor and subsequent purchasers in good faith for value. Every chattel mortgago and bill of sale must contain such sufficient and full description of the goods and chattels that the same may be readily and easily known and distinguished. Chattel mortgages and bills of sale must be registered in the

Registration District in which the property is at the time of execution of the instrument. Every chattel mortgage expires at the expiration of two years from the date of registration thereof, unless within thirty days next preceding the expiration of such two years, a statement is filed exhibiting the interest of the mortgagee in the property, and a full statement of the amount still due for principal and interest, and of all payments made on account, with an affidavit of the mortgagee, or his agent, stating that such statements are true, and that the mortgage has not been kept on foot for any fraudulent purpose. A further renewal statement requires to be filed every year after the first renewal, within the thirty days next preceding the expiration of the year.

Where mortgaged goods are removed from one Registration District to another, a certified copy of the mortgage and affidavits must be filed in the District to which the goods are removed, within three weeks from such removal, otherwise the goods are liable to seizure and sale under execution, and the mortgage is null and void as against subsequent purchasers and mortgagees in good faith for value. Registration fee, fifty cents. A mortgage or bill of sale on a growing crop is void unless given as security for the purchase price of seed grain, in which case the affidavit of *bona fides* must contain a statement that the mortgage is taken to secure the payment of the purchase price of seed grain. The crop must be sown within one year from the date of the mortgage. The Registration Districts are:—

REGISTRATION DISTRICTS.

For Registration of Lien Notes and of Chattel Mortgages and other transfers of personal property in the Territories.

Fee registr. hi e receipt notes and orders for chattels, 25c.

MOOSOMIN—Comprising townships 1 to 20 (inclusive), range 1 to 10 (inclusive), and townships 21 and 22, ranges 8, 9, 10 w2. Clerk, Oliver Neff, Clerk of Court, Moosomin.

YORKTON—That part of Assiniboia lying north of the Moosomin district. C. J. McFarlane, Reg. Clerk, W. D. Dunlop, Dep. Clerk. W. Simpson, Dep. Sheriff, Yorkton.

REGINA—That part of Assiniboia from range 11 to range 23, both inclusive, west of 2nd meridian. Registration Clerk, Dixie Watson, Clerk of Court, Regina.

MOOSE JAW—That part of Assiniboia from range 24 inclusive, west of 2nd meridian, to range 23 inclusive, west of 3rd meridian. Registration Clerk, Seymour Green, Deputy Clerk of Court, Moose Jaw.

MEDICINE HAT—That part of Assiniboia from range 24 inclusive, west of 3rd meridian to range 10 inclusive, west of 4th meridian, Registration Clerk, W. Cousins, Clerk, Medicine Hat.

MACLEOD—That part of Alberta lying south of township 17. Registration Clerk, C. N. Campbell, Clerk of Court, Fort Macleod.

CALGARY—That part of Alberta lying between townships 16 and 43. Registration Clerk, E. R. Rogers, Clerk of Court, Calgary.

EDMONTON—That part of Alberta lying north of township 42. Registration Clerk, Alex. Taylor, Dep. Clerk of Court, Edmonton.

BATTLEFORD—That part of Saskatchewan lying west of the 5th range of townships west of 3rd meridian. Registration Clerk, L. P. O. Noel, Deputy Clerk of Court, Battleford.

PRINCE ALBERT—That part of Saskatchewan lying east of the Battleford Registration District. Registration Clerk, C. De La Gorgendiere, Clerk of Court, Prince Albert.

Civil Justice.—The practice of the Supreme Court is regulated by "The Judicature Ordinance" and rules promulgated by the Court, and is founded chiefly upon the Rules of the Supreme Court of Judicature in England.

Courts.—See page 42.

Jury.—In actions on torts, where claim exceeds $500.00, or on contract, where claim exceeds $1,000.00, or for the recovery of real property, either party may demand a jury of six.

Vacation extends from August 1st to September 30th. (See "Courts"—"Judicial Districts.")

Claims against Estates of Deceased Persons.—If probate or administration has not been granted, the creditor can call upon the Public Administrator to take out letters of administration, and administer the estate.

Criminal Law.—No grand jury is summoned in the Territories.

When accused is charged with:—

(*a*) Theft, embezzlement, obtaining by false pretences, or receiving stolen property, when the value of the whole property does not exceed $200.00, or

(*b*) Aggravated assault, or

(*c*) Assault upon a female under age of 14 years, not being an assault with intent to commit rape, or

(*d*) Having escaped from custody, or molested an officer in the performance of his duty,

the charge is tried in a summary way without a jury; in other cases, with a jury of six, but accused may, with his own consent, be tried summarily. (See "Justices of the Peace.")

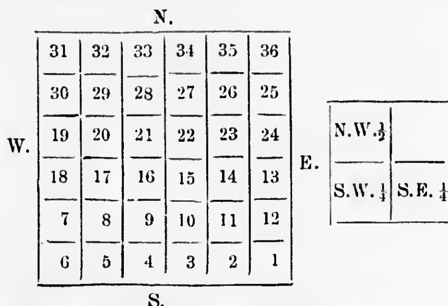
Deeds.—(See "Real Property.")

Depositions.—(See "Affidavits"—"Evidence.")

Descent.—The laws relating to both real and personal property are the same. If the intestate leaves a widow and any child or children, or descendant of any child, the widow shall take a third part. If he leaves no child, nor descendant of any child, she shall take one-half. The husband of a married woman

is entitled to the whole of her effects. If the intestate leaves children, two-thirds of his whole estate, if he leaves a widow, shall be equally divided amongst them, or, if but one, to such one child. If the intestate leaves no children or representative of them, his father, if living, takes the whole, or if the intestate should have left a widow, one-half. If the father be dead, the mother, brothers and sisters of the intestate shall take in equal shares, subject to the widow's right to one-half, as aforesaid.

Dominion Lands.—The following diagrams show a township divided into thirty-six sections of one square mile, or 640 acres each, and each section divided into four quarter-sections of 160 acres each:—



Homesteads.—The only way of obtaining a free homestead is by the "Three Year System." Entry for the proposed quarter-section must be made in the land office of the district, the fee for which is $10.00. Actual residence on the land for not less than six months in each of three consecutive years, and cultivation of at least fifteen acres, are required. Six months' grace is allowed after making entry, before going to reside on land. If entry is made after August 31st, residence need not begin till June 1st of the following year. The residence need not be for six *continuous* months in any year.

Second Homesteads.—Settlers who completed their homestead duties before June, 1889, are entitled to enter for a second homestead.

Pre-emptions.—After receiving his recommendation for a Patent, a homesteader has the right to purchase from the Government one of the quarter-sections adjoining his homestead, provided it is vacant, at $2.50 per acre. He is required to pay one-quarter of the money down, and the balance in three equal instalments, with interest at 6 per cent. A right of pre-emption may be sold.

Assignment.—A homestead right cannot be assigned. After a settler his received his certificate of recommendation for a patent he can assign his land. The assignment must be sent to the Department of the Interior at Ottawa for registration, for which a fee of $2.00 is charged.

Hay Permits.—Permits to cut hay on Dominion land may be obtained from the agent of the district in which the land is situated. Forty acres of hay land may also be leased for a term of five years at a rental of 25 cents per acre per annum.
Grazing land may be secured under lease at a rental of two cents per acre per annum.

Timber and Fuel.—A homesteader having no timber on his homestead may obtain a permit to cut what he requires for building, fencing and fuel for use on his homestead, not exceeding 3,000 lineal feet building timber, not exceeding 12 inches at butt, 400 roof poles, 2,000 poplar fence rails, not exceeding 5 inches at butt, and 30 cords of dry wood.

Land Districts and Agents.—

District.	Name of Agent.	Post Office Address.
Battleford	R. F. Chisholm	Battleford, Saskatchewan
Calgary	W. Sutherland	Calgary, Alberta.
Coteau	D. A. McEwen	Alameda, Assiniboia.
Edmonton	R. A. Ruttan	Edmonton, Alberta.
Kamloops	E. A. Nash.	Kamloops, B.C.
Dauphin	F. K. Herchmer	Dauphin, Man.
Lethbridge	W. H. Cottingham	Lethbridge, Alberta.
Little Saskatchewan	John Flesher	Minnedosa, Man.
New Westminster	John McKenzie	New Westminster, B.C.
Prince Albert	John McTaggart	Prince Albert, Saskat.
Qu'Appelle	A. J. Fraser	Regina, Assiniboia.
Red Deer	J. G. Jessup	Red Deer, Alberta.
Souris	W. H. Hiam	Brandon, Man.
Swift Current	Business transacted at	Regina, Assiniboia.
Touchwood	R. Gunne	Yorkton, Assiniboia.
Winnipeg	E. F. Stephenson	Winnipeg, Man.

Dower.—There is no dower.

Evidence.—Witnesses are examined *viva voce* in open court, but the judge may order that any particular fact may be proved by affidavit, or that the affidavit of any person may be read on the trial, or may order that any witness, whose attendance

in court, through some sufficient reason, ought to be dispensed with, may be examined by interrogatories, or before a commissioner or examiner. A judge may also order the examination of any witness or person before the court or judge, or any officer of the court, or before any other person, and at any place, and that such examination may be given in evidence at trial. Any evidence taken in one cause may, by leave of the judge, be read in any other cause or matter.

Execution.—Writs of execution may be issued immediately after judgment, and expire in two years, unless renewed. There is no priority among execution creditors. Issue of execution may be stayed on special grounds on motion to a judge, subject to such terms as to security, etc., as may be imposed. (See "Real Property.")

Exemptions.—The following are exempt from seizure under writs of execution:—

(1) The necessary and ordinary clothing of the defendant and his family;

(2) The furniture, household furnishings, dairy utensils, swine and poultry belonging to the defendant and his family to the extent of $500.00;

(3) The necessary food for the defendant's family during six months, which may include grain and flour, or vegetables and meat, either prepared for use or on foot;

(4) Three oxen, horses or mules, or any three of them, six cows, six sheep, three pigs, and fifty domestic fowls, besides the animals the defendant may have chosen to keep for food purposes, and food for the same for the months of November, December, January, February, March and April, or for such of these months or portions thereof as may follow the date of seizure, provided such seizure be made between the first day of August and the thirtieth day of April next ensuing;

(5) The harness necessary for three animals, one waggon or two carts, one mower or cradle and scythe, one breaking plough, one cross plough, one set harrows, one horse rake, one sewing machine, one reaper or binder, one set sleighs and one seed drill;

(6) The books of a professional man;

(7) The tools and necessary instruments to the extent of $200.00 used by the defendant in the practice of his trade or profession.

(8) Seed grain sufficient to seed all his land under cultivation, not exceeding eighty acres, at the rate of two bushels per acre, defendant to have choice of seed, and fourteen bushels of potatoes;

(9) The homestead of the defendant, provided the same be not more than one hundred and sixty acres; in case it be more, the surplus may be sold subject to any lien or incumbrance thereon;

(10) The house and buildings occupied by the defendant, and also the lot or lots on which the same are situate, according to the registered plan of the same, to the extent of fifteen hundred dollars.

Any article except for the food, clothing and bedding of

the defendant and his family, the price of which forms the subject matter of the judgment upon which execution issued, is not exempt.

In case of death, the exemptions may be claimed by the widow, children, executor, administrator, or other personal representative of the deceased.

Fish.—Close seasons are as follows:—

For pickerel, pike, gold eyes, mullet, maskinonge and dore, from April 15th to May 15th.

For sturgeon, from May 15th to July 15th.

For speckled trout, from September 15th to May 1st.

For salmon trout, lake trout and whitefish, from October 5th to December 15th.

Game.—Close seasons are as follows:—

For elk, moose, cariboo, antelope, deer, mountain sheep and goat, from February 1st to October 1st.

(No person may kill more than six head in any one season, except for food purposes.)

For grouse, partridge, pheasant and prairie chicken, from December 15th to September 15th.

(No person may kill more than twenty birds in any one day.)

For wild duck, from May 8th to August 23rd.

For plover, snipe and sand piper, from January 1st to August 1st.

For mink, martin and fisher, from April 15th to November 1st.

For otter and beaver, from May 15th to October 1st.

(In East Riding of Assiniboia, beaver may not be taken till November 1st, 1901.)

For musk-rat, from May 15th to November 1st.

No eggs of game birds may be disturbed, injured or taken at any time.

No swivel guns, batteries, sunken punts or night lights may be used for taking wild fowl, nor grain or food steeped in opium, alcohol or other narcotic.

No game birds (except geese) may be snared or trapped.

Grouse, partridge, pheasant, prairie chicken, elk, moose, cariboo or antelope may not be exported.

No person may offer for sale, barter or exchange any prairie chicken caught or killed by any person other than himself.

No person may sell, barter, buy or obtain any mountain sheep or goat, or part thereof.

Non-residents must obtain from the Commissioner of Agriculture a license to hunt or shoot, the fee for which is $15.00. A license may be granted free to a guest of a resident for a term of not more than five days.

Garnishment.—Any plaintiff in an action for debt or liquidated demand before judgment, and any person who has obtained a judgment, may garnishee any debt due or accruing due from the garnishee to the defendant or judgment debtor.

The garnishee issues upon the plaintiff or judgment creditor, his advocate or agent, filing an affidavit showing the nature and amount of the claim or judgment, and swearing positively

of the indebtedness of the defendant or judgment debtor, and further stating that to the best of deponent's information and belief, the proposed garnishee (naming him) is indebted to the defendant or judgment debtor. A copy of the garnishee summons must be served on the defendant or judgment debtor, or his advocate, within ten days after service on the garnishee.

A garnishee paying money into court is entitled to deduct therefrom his necessary disbursements and costs (not exceeding $5.00), except when the debt due from him to the defendant or judgment debtor is larger than the amount of plaintiff's claim and costs, in which case the garnishee may deduct such costs and disbursements out of the balance in his hands. If the garnishee does not pay the money into court, and does not dispute the debt due from him to the defendant, or if he does not appear to the summons, a judge may, after judgment has been entered against the primary debtor, order that judgment be entered against the garnishee, and that execution issue.

No debt due or accruing due to a mechanic, workman, laborer, servant, clerk or employee for or in respect to his wages or salary, is liable to be garnisheed, unless the same exceeds $25.00, and then only to the extent of the excess, but this provision does not apply to a case where the debt has been contracted for board or lodging.

The Government of the North-West Territories may be garnisheed with regard to moneys due or accruing due to all persons permanently employed by the Government of the Territories, provided that the cause of action arose after September 1st, 1894. The garnishee summons must be served upon the Clerk of the Legislative Assembly in his office.

Homesteads.—(See "Dominion Lands.")

Insolvency and Bankruptcy Laws.—There are no bankruptcy or insolvency laws. Debtors may make a voluntary assignment to a trustee for the benefit of their creditors, but are not thereby discharged from any balance of debts remaining due after distribution of the assigned estate.

Interest.—Six per cent. is the legal rate of interest. Overdue notes and bills and judgment debts bear interest at this rate.

Justices of the Peace.—Justices of the Peace exercise the ordinary power of such officials throughout the Territories.

Land.—(See "Real Property.")

Land Registration Districts.—

Inspector of Land Titles Offices in N. W. Ter.—H. W. Newlands.

Assiniboia—Includes all the provisional districts of East and West Assiniboia, from the International boundary line on the south to and inclusive of township 34 north; on the west by the line between ranges 10 and 11 west of the 4th principal meridian; on the east by the western boundary of Manitoba.

Registrar—H. W. Newlands, Regina. F. F. Forbes, Dep. Registrar.

NORTH ALBERTA—Includes all that part of the provisional district of Alberta bounded on the south by the 9th correction line between townships 34 and 35; on the west by the eastern boundary of British Columbia; on the east by the line between ranges 10 and 11 west of the 4th principal meridian. Registrar—George Roy, Edmonton.

SOUTH ALBERTA—Includes all that part of the provisional district of Alberta bounded on the south by the International boundary line; on the west by the eastern boundary of British Columbia; on the north by the 9th correction line between townships 34 and 35, and on the east by the line between ranges 10 and 11 west of the 4th principal meridian. Registrar—Horace Harvey, LL.B., Calgary.

EAST SASKATCHEWAN—Includes all that part of the provisional district of Saskatchewan bounded on the east by the Western boundary of Manitoba; on the west by the line between ranges 10 and 11 west of the 3rd principal meridian; on the south by the line between townships 34 and 35; on the north by the 18th correction line, D. G. Surveys. Registrar—S. Brewster, Prince Albert.

WEST SASKATCHEWAN—Includes all that part of the provisional district of Saskatchewan bounded on the east by the line between ranges 10 and 11 west of the 3rd principal meridian; on the west by the line between ranges 10 and 11 west of the 4th principal meridian; on the south by the line between townships 34 and 35; on the north by townships surveyed. Registrar—R. F. Chisholm, Battleford.

Leases.—(See "Real Property.")

Liens.—(See "Mechanics' Liens," "Lien Notes.")

Lien Notes.—When on a sale of goods of the value of $15.00 or over, it is agreed or provided that the right of property or right of possession shall remain in the vendor pending payment of the purchase price, or a part thereof, or the performance of some condition, by the purchaser, notwithstanding that the actual possession of the goods passes to the purchaser, such sale, with such agreement or condition, must be in writing, signed by the purchaser or his agent, and such writing, or a true copy thereof, must be registered in the office of the registration clerk for chattel mortgages in the registration district within which the purchaser resides within thirty days from the sale, and also in the registration district in which the goods are delivered, or to which they may be removed, within fifteen days from such delivery or removal, verified by affidavit of the vendor, or his agent, stating that the writing (or copy) truly sets forth the agreement, and that the same is *bona fide*, and not to protect the goods in question against the creditors of the purchaser; otherwise the vendor's lien is void as against any purchaser or mortgagee in good faith for value, or as against judgments, executions, or attachments against the purchaser. Such lien expires at the expiration of two years from date of registration unless renewed. In case the

vendor retakes possession of the goods, he must retain the same for twenty days for redemption by the purchaser, and must give the purchaser five days' notice before selling. The fee for registration is 25 cents.

Limitations of Actions.—Actions on accounts, bills, notes and actions on debt grounded upon any contract without specialty must be commenced within six years after the cause of action arises; actions on contracts under seal within twenty years; actions for the recovery of land within twelve years. Judgments are outlawed after the expiration of twenty years from recovery.

Married Women.—A married woman, is respect of personal property, is under no disabilities, but has, in respect of the same, all the rights, and is subject to all the liabilities, of a *feme sole*.

All wages and personal earnings of a married woman, and acquisitions therefrom, and all profits of any occupation or trade carried on by her, separate from her husband, or derived from any literary or artistic skill, and all investments of the same, are free from the debts or dispositions of her husband, and are held and disposed of by such married woman without her husband's consent, as fully as if she were a *feme sole*. No order for the protection of the same is necessary. Possession by the husband of the personal property of a married woman does not render the same liable for his debts. A husband is not, by reason of marriage, liable for the debts of his wife contracted before marriage, but the wife and her separate property are liable therefor as though she had continued unmarried. Nor is a husband liable for debts of his wife in respect of her separate employment or business, or of her own contracts. A married woman may sue in respect to her separate property as though unmarried, and may be sued separately in respect of her separate debts, contracts or torts as though unmarried. (See "Real Property.")

Mechanics' Liens.—Every mechanic, builder, laborer and contractor, or other person doing work upon or furnishing material for the construction, alteration or repair of any building, or erecting or furnishing machinery upon or in connection with any building or mine, has a lien for the price of such work, material or machinery upon the estate of the owner in the building and land occupied therewith. Every mechanic, laborer or other person performing labor for wages upon the construction, alteration or repair of any building, or in placing machinery upon or in connection with any building or mine, has also a lien for such wages, not exceeding thirty days' wages, upon the estate of the owner in the building and land. Such lien must be registered in the Land Titles Office for the Registration District in which the land is situated, within thirty days from the completion of the work or supplying or placing of the machinery, and expires in ninety days from such completion of work or supplying of machinery, unless proceedings are instituted, and a certificate thereof registered.

Mortgages.—(See "Real Property." "Chattel Mortgages.")

Notes and Bills.—Three days of grace are allowed on all notes and bills other than those payable on demand. In case of dishonor, notice thereof must be mailed to any endorsee, or else he is released from liability. Notes and bills falling due on a legal holiday are payable the day ofter. No stamps are required.

Power of Attorney.—(See "Real Property.")

Pre-emption.—(See "Dominion Lands.")

Proof of Claims.—The particulars of open accounts must be furnished. If the claim is contested, evidence may be taken by commission or order to take evidence abroad. A plaintiff out of the jurisdiction may be required to furnish security for costs.

Real Property.—"The Land Titles Act, 1894." (57-58 Vic., ch. 28.)

DESCENT.—Land goes to the personal representative of the deceased in the same manner as personal estate, and is dealt with and distributed as personal estate.

WORDS OF LIMITATION are necessary in an instrument transferring land, but such instrument, unless it expresses a contrary intention, transfers all the right and title of the transferror.

DOWER.—Where a husband died after January 1st, 1887, his widow is not entitled to dower in the land, but has the same right in such land as if it were personal property.

TENANCY BY COURTESY.—Where a wife died after January 1st, 1887, her husband is not entitled to any estate by courtesy in the land, but has the same right therein as a wife has in the personal property of her deceased husband.

TRANSFERS BETWEEN CONSORTS.—A man may transfer land to his wife, and a woman to her husband, without the intervention of a trustee.

ESTATE TAIL is abolished. A devise or limitation which would formerly have created an estate tail now transfers all the estate or interest of the devisor or transferror.

MARRIED WOMEN, in respect of land acquired after January 1st, 1887, have all the rights, and are subject to all the liabilities, of a *feme sole*, and may, in all respects, deal with the land as though unmarried.

ADULTERY and desertion by husband or wife debars from taking any part of the land of deceased consort.

ILLEGITIMATE CHILDREN inherit land from the mother, as though legitimate, and through the mother, if dead. Where an illegitimate child dies intestate and without issue, the mother inherits the land.

REGISTRATION.—All instruments relating to land under the Act are registered, and take privity according to the time of registration, and take effect upon registration.

The owner of land for which a certificate of title has not issued may apply in writing to have his title registered. The application, which may be made by the owner or his agent, must be in writing, in form "F," verified by affidavit in form "G," and must be accompanied by all deeds in possession of the applicant, and a certificate from the sheriff of the judicial district in which the land is situated, showing that there are no executions in his hands against the applicant's lands. If the applicant has a good title, a certificate of title issues, subject to such mortgages, encumbrances and leases as are of record at the time of application, and a duplicate certificate of title is delivered to the owner. When the Registrar entertains any doubt as to the title, he refers the application to a judge, who determines the applicant's title.

Land mentioned in any certificate of title is subject by implication to:

(*a*) Any reservations contained in the original grant from the Crown;

(*b*) Any taxes;

(*c*) Any public highway or other public easement;

(*d*) Any lease or agreement for lease for a period not exceeding three years, when there is actual occupation under the same;

(*e*) Any decrees or executions which have been registered and kept in force against the owner;

(*f*) Any right of expropriation which may, by statute or ordinance, be vested in any person, body corporate, or Her Majesty.

A certificate of title is conclusive evidence of title.

TRUSTS, express implied or constructive, are not recognized, but trustees are deemed to be the absolute and beneficial owners.

TRANSFERS.—Transfer of land is effected by execution of a transfer in form "J." Upon registration of the transfer and production of duplicate certificate of title, a certificate of title issues to the transferree, and the certificate of title of the transferror is cancelled either wholly or in part, as the case may be; if only partially, it is thereupon returned to the transferror. In every instrument transferring land, for which a certificate of title has issued, subject to mortgage or encumbrance, there is implied a covenant by the transferree to satisfy the mortgage or encumbrance.

LEASE for a life or lives, or for more than three years, must be made in form "K," and is subject to implied covenants by lessee to pay the rent and taxes, and to keep and deliver up the premises in good repair, accidents, damage by fire or tempest, and reasonable wear and tear excepted, and to implied powers in lessor to enter and view state of repair, and to re-enter and take possession in case of non-payment of rent for two months, or default for two months in the fulfillment of any covenant, express or implied. The lease must be registered and note upon duplicate certificate of title, which must be produced for that purpose. A lease or agreement for lease for a term of less than three years, where there is actual occupation under the same, need not be in writing.

Mortgages and Encumbrances are in forms "N" and "O" respectively, and must be registered and noted upon duplicate certificate of title, which must be produced for that purpose. A mortgage or encumbrance has effect as security, but does not operate as a transfer of the land. Upon default, sale or foreclosure is obtained cheaply and expeditiously by an action instituted in court. Upon registration of the order of foreclosure, and production of the duplicate certificate of title and duplicate mortgage, a certificate of title issues to the mortgagee for all the estate and interest of the mortgagor in the land, free from all equity of redemption on the part of the mortgagor or of any person claiming under him.. Discharge of mortgage or encumbrance in form "I," and must be registered. Mortgage or encumbrance may be wholly or partially transferred by forms "P" and "Q," respectively. In every mortgage there is implied against a mortgagor remaining in possession a covenant to keep buildings in repair, and that mortgagee may enter and view state of repair. A party rightfully in possession of land prior to the issue of the crown grant therefor may give a valid mortgage or encumbrance thereon, which will be registered if accompanied by an affidavit (in special form) of the mortgagor or encumbrancer, showing the grounds upon which he claims to be rightfully in possession.

Power of Attorney to deal with land—either in form "S," or in general form—must be registered before attorney can act. If registered in one Registration District, a copy thereof, certified by the Registrar of such District, will be accepted in any other Registration District. Revocation of power of attorney, in form "T," must be registered.

Transmission.—When the owner of land, for which a certificate of title has been granted, dies, such land vests in the personal representative, who, before dealing with the land, must make written application to be registered as owner, and produce the probate or letters of administration, or a certified copy thereof. The duplicate certificate of title in name of deceased must be delivered up to be cancelled, and a new certificate of title issues to the executor or administrator as such. The executor or administrator is deemed to be the owner, and his title relates back to the date of death of deceased.

Executions.—An execution against lands is registered by the sheriff transmitting to the registrar a certified copy of the writ, whereupon all lands of the execution debtor are bound as long as the writ is legally in force. The land is released from the writ by registration of a sheriff's certificate of satisfaction, expiration or withdrawal.

Sheriff's Sale must be confirmed by a judge. The sheriff executes a transfer, in special form, which is registered with an order confirming the sale. At the expiration of four weeks from registration, a certificate of title issues to the purchaser. The transfer must be registered within two months from the date of the order confirming the sale, otherwise it becomes void.

Tax Sale must be confirmed by a judge, and transfer by proper officer, with an order confirming the sale, registered.

Marriage of Female Owner.—Upon production of the du-

plicate certificate of title issued to a female, with a statement in writing of her marriage subsequent to the issue thereof, giving the date of marriage and place where solemnized, and husband's full name, residence and occupation, verified by oath, and the production of the marriage certificate, the existing certificate of title is cancelled, and a new one issued to the owner in her newly-acquired surname.

CAVEAT in form "V," verified by affidavit, may be filled, and binds land. It lapses, unless, before the expiration of three months, proceedings are taken by the caveator, and an injunction obtained.

ATTESTATION.—Every instrument other than instruments under the seal of a corporation, caveats, judge's orders and executions, must be witnessed by one person, who must make an affidavit in following form:

I, (A. B.), of , in the , make oath and say:

1. I was personally present and did see named in the (within or annexed) instrument, who is personally known to me to be the person named therein, duly sign and execute the same for the purposes made therein;

2. That the same was executed at the , in , and that I am the subscribing witness thereto;

3. That I know the said , and he is in my belief of the full age of twenty-one years.

Sworn before me, at , in the
, this day
of A. D. 19 . (Signature).

If the affidavit is made in the Territories, it may be sworn before the inspector of land titles offices, the registrar or deputy registrar of the district in which the land lies, a judge, magistrate, notary public, commissioner or justice of the peace; if made in any Province of Canada, before a judge of any court of record, a commissioner to take affidavits in such Province for use in the Territories, or a notary public under his seal; if made in Great Britain or Ireland, before a judge of the Supreme Court of Judicature in England or Ireland, or of the Court of Sessions or Judiciary Court in Scotland, a judge of any of the County Courts within his county, the mayor of any city or incorporated town under the common seal of such city or town, any commissioner in Great Britain or Ireland authorized to take affidavits therein for use in the Territories, or a notary public under his seal; if made in any British colony or possession out of Canada, before a judge of any court of record, the mayor of any city or incorporated town under the common seal of such city or town, or a notary public under his seal; if made in any foreign country, before the mayor of any city or incorporated town under the common seal of such city or town, the British consul, vice-consul or consular agent residing therein, a judge of any court of record, or a notary public under his seal.

REMEDIAL.—Any person sustaining loss or damage through omission or mistake of any registrar, or any of his clerks, may sue the registrar for damages, which, if awarded, are paid out

of the assurance fund. Any person dissatisfied with any act, omission, refusal or decision of a registrar, may appeal by petition to a judge, who may make such order as he thinks fit. A registrar may refer any question regarding his duty, the construction or validity of any instrument, the persons entitled, or the nature of any estate, right or interest claimed, to a judge, who may hear all parties, and decide such question. In any proceeding respecting land or respecting any instrument, a judge may direct the registrar to cancel, correct or issue any duplicate certificate of title, make any entry, or do any necessary act. Where a duplicate certificate of title is accidentally lost or destroyed, the registrar is empowered to issue a fresh one in lieu thereof. Where land is subdivided into town lots, the owner must register a plan, which is not binding, but may be altered or amended by a judge.

APPEAL.—An appeal lies from any order or decision of a judge to the Superior Court in Banc.

ASSURANCE FUND.—Upon the registration of every grant of encumbered land, and upon every transfer of land after the issue of the first certificate of title therefor, a fee is charged of one-fifth of one per cent. of the value up to $5,000.00, and one-tenth of one per cent. of the additional value; and upon every subsequent transfer, a like fee upon the increase of value since the date of the last certificate of title.

FEES are, approximately, as follows:—

Registration of transfer of unencumbered land—$4.35, plus assurance fee.

Registration of mortgage..	$1.50
Registration of discharge of mortgage..	1.50
Registration of writ of execution..	1.00
Registration of caveat..	2.00

FORMS —

FORM F.

Application to bring land under the operation of "The Land Titles Act, 1894."

To the registrar of registration district:

I (*insert name and addition*) hereby apply to have the land hereinafter described, brought under the operation of "The Land Titles Act, 1894." And I declare:—

1. That I am the owner (*or* agent for , the owner) of an estate in fee-simple in possession (*or* of an estate of freehold in possession for my life, *or otherwise, as the case may require*) in all that piece of land, being (*here describe the land*).

2. That such land, including all buildings and other improvements thereon, is of the value of dollars, and no more.

3. That there are no documents or evidences of title affecting such land in my possession, or under my control, other than those included in the schedule hereto.

4. That I am not aware of any mortgage or encumbrance affecting the said land, or that any other person has any estate or interest therein at law or in equity, in possession,

remainder, reversions or expectancy (*if there be any, add:* other than as follows, *and set the same forth*).

6. That the said land is now occupied (*if unoccupied, prefix* **un** *to occupied; if occupied, add by whom, and state the name and addition of the occupant, and the nature of his occupancy*).

6. That the names and addresses, so far as known to me, of the occupants of all lands contiguous to the said land, are as follows:—

7. That the names and addresses, so far as known to me, of the owners of all lands contiguous to the said land, are as follows:—

(*If the certificate of title is not to be granted to the applicant, add:* And I direct the certificate of title to be granted in the name of [*insert name and addition*].)

Dated this day of , 19 .

Made and subscribed at
in the presence of (Signature.)

FORM G.

Schedule of Documents referred to.

Affidavit.

North-West Territories of Canada. District of
TO WIT:

I of make oath and say:—

1. That I am the applicant named in the application hereto annexed.

2. That the several statements contained in the said application are true, to the best of my knowledge and belief.

Sworn before me at the of
in the of , this
day of , A. D. 19 . (Signature).

FORM J.

Transfer.

I, A. B., being registered owner of an estate (state the nature of estate), subject, however, to such encumbrances, liens and interests as are notified by memorandum underwritten (*or* endorsed hereon), in all that certain tract of land containing acres, more or less, and being (part of) section, township , range , in the (*or as the case may be*), (*here state rights of way, privileges, easements, if any, intended to be conveyed along with the land, and if the land dealt with contains all included in the original grant, refer thereto for descriptions of parcels and diagrams; otherwise set forth the boundaries, and accompany the description by a diagram*), do hereby, in consideration of the sum of dollars, paid to me by E. F., the receipt of which sum I hereby acknowledge, transfer to the said E. F. all my estate and interest in the said piece of land. (*When a lesser estate, describe such lesser estate.*)

In witness whereof, I have hereunto subscribed my name this day of , 19 .

Signed by the said A. B., in the
presence of (Signature.)

FORM K.

Lease.

I, A. B., being registered as owner, subject, however, to such mortgages and encumbrances as are notified by memorandum underwritten (*or* endorsed hereon), of that piece of land (*describe it*), part of , section , township , range , (*or as the case may be*), containing acres, more or less (*here state rights of way, privileges, easements, if any, intended to be conveyed along with the land, and if the land dealt with contains all included in the original grant or certificate of title or lease, refer thereto for description and diagram, otherwise set forth the boundaries by metes and bounds*) do hereby lease to E.F., of (*here insert description*), all the said land, to be held by him, the said E. F., as tenant, for the space of years, from (*here state the date and term*), at the yearly rental of dollars, payable (*here insert terms of payment of rent*), subject to the covenants and powers implied (*also set forth any special covenants or modifications of implied covenants*).

I, E. F., of (*here insert description*), do hereby accept this lease of the above described land, to be held by me as tenant, and subject to the conditions, restrictions and covenants above set forth.

Dated this day of

Signed by above A. B.,
as lessor, and E. F., as lessee,
in presence of .

(Signature of lessor.)
(Signature of lessee.)

(Here insert memorandum of mortgages and encumbrances.)

FORM N.

Mortgage.

I, A. B., being registered as owner of an estate (*here state nature of interest*), subject, however, to such encumbrances, liens and interests as are notified by memorandum underwritten (*or* endorsed hereon), of that piece of land (*description*) part of section , township , range , (*or as the case may be*) containing acres, be the same more or less (*here state rights of way, privileges, easements, if any, intended to be conveyed along with the land, and if the land dealt with contains all included in the original grants, refer thereto for description of parcels and diagrams, otherwise set forth the boundaries, and accompany the description by a diagram*), in consideration of the sum of dollars lent to me by E. F., (*here insert description*), the receipt of which sum I do hereby acknowledge, covenant with the said E. F.:—

Firstly. That I will pay to him, the said E. F., the above sum of dollars, on the day of

Secondly. That I will pay interest on the said sum at the rate of on the dollar, in the year, by equal payments on the day of , and on the day of in every year.

Thirdly. (*Here set forth special covenants, if any.*)

And for the better securing of the said E. F. the repayment, in manner aforesaid, of the principal sum and interest, I hereby mortgage to the said E. F. my estate and interest in the land above described.

In witness whereof, I have hereunto signed my name this day of , 19

Signed by the above-named A. B., as mortgagor, in presence of (Signature of mortgagor.)

(Insert memorandum of mortgages and encumbrances.)

FORM O.

Encumbrance.

I, A. B., being registered as owner of an estate (*state nature of estate*), subject, however, to such mortgages and encumbrances as are notified by memorandum underwritten (*or* endorsed hereon), of that piece of land (*description*) part of section , township , range , (*or as the case may be*), containing acres, more or less (*here state rights of way, privileges, easements, if any, intended to be conveyed along with the land, and if the land dealt with contains all included in the original grant or certificate of title, refer thereto for description of parcels and diagrams, otherwise set forth the boundaries, and accompany the description by a diagram*), and desiring to render the said land available for the purpose of securing to and for the benefit of C. D., of (*description*) the (sum of money, annuity *or* rent charge) hereinafter mentioned; do hereby encumber the said land for the benefit of the said C. D., with the (sum, annuity *or* rent charge) of to be paid at the times and in the manner following, that is to say: (*here state the times appointed for the payment of the sum, annuity or rent charge intended to be secured, the interest, if any, and the events in which such sum, annuity or rent charge shall become and cease to be payable, also any special covenants or powers, and any modification of the powers or remedies given to an encumbrance by this Act*);

And, subject as aforesaid, the said C. D. shall be entitled to all powers and remedies given to an encumbrance by The Land Titles Act, 1894.

Signed by the above-named in the presence of (Signature of encumbrancer.)

(Insert memorandum of mortgages and encumbrances.)

FORM P.

Transfer of Mortgage, Encumbrance, or Lease.

I, C. D., the mortgagee (encumbrancee *or* lessee *as the case may be*), in consideration of dollars, this day paid to me by X. Y., of , the receipt of which sum I do hereby acknowledge, hereby transfer to him the mortgage (encumbrance *or* lease, *as the case may be, describe the instrument fully*), together with all my rights, powers, title, and interest therein.

In witness whereof, I have hereunto subscribed my name this day of , 19 .

Signed by the said
in presence of

C. D., Transferror.
Accepted, X. Y., Transferee.

FORM Q.

Transfer of Part of Mortgage or Encumbrance.

I, C. D., the mortgagee (*or* encumbrancee, *or as the case may be*) in consideration of dollars, this day paid to me by X. Y., of , the receipt of which sum I do hereby acknowledge, hereby transfer to him dollars of the mortgage (*or* encumbrance, *or as the case may be, describe the instrument fully*), together with all my rights, powers, title, and interest therein, and the sum so transferred shall be preferred (*or* deferred *or* rank equally, *as the case may be,*) to the remaining sum secured by the mortgage (*or* encumbrance).

In witness whereof, I have hereunto subscribed my name this day of , 19

Signed by the said
in the presence of

C. D., Transferror.
Accepted, X. Y., Transferee.

FORM S.

Power of Attorney.

I, A. B., being registered owner of an estate (*here state nature of the estate or interest*) subject, however, to such encumbrances, liens and interests as are notified by memorandum underwritten (*or* endorsed hereon), (*here refer to schedule for description and contents of the several parcels of land intended to be affected, which schedule must contain reference to the existing certificate of title or lease of each parcel*), do hereby appoint C. D. attorney on my behalf to (*here state the nature and extent of the powers intended to be conferred, as to sell, lease, mortgage, etc.*), the land in the said schedule described, and to execute all such instruments, and do all such acts, matters and things as may be necessary for carrying out the powers hereby given, and for the recovery of all rents and sums of money that may become or are now due, or owing to me in respect of the said lands, and for the enforcement of all contracts, covenants or conditions binding upon any lessee or occupier of the said lands, or upon any other person in respect of the same, and for the taking and maintaining possession of the said lands, and for protecting the same from waste, damage or trespass.

In witness whereof, I have hereunto subscribed my name this day of , 19

Signed by the above-named A. B.,
in the presence of

(Signature).

FORM T.

Revocation of Power of Attorney.

I, A. B., of ,hereby revoke the power of attorney, given by me to , dated the day of

In witness whereof, I have hereunto subscribed my name **this** day of , 19

Signed by the above-named A. B.,
in the presence of

(Signature).

FORM V.

Form of Caveat forbidding Registration or Dealing with Lands.

To the Registrar of District:

Take notice that I, A. B., of (*insert description*), claiming (*here state the nature of the estate or interest claimed, and the grounds upon which such claim is founded*) in (*here describe land, and refer to certificate of title*), forbid the registration of any transfer effecting such land, or the granting of a certificate of title thereto, except subject to the claim herein set forth.

My address is:—

Dated this day of , 19 .

Signed by the above-named
in the presence of

(Signature of caveator or his agent.)

I, the above-named A. B. (or C. D., agent for the above A. B.,) of (*residence and description*) make oath (*or affirm, as the case may be*), and say, that all allegations in the abo caveat are true in subsiance and in fact (*and if no personal knowledge, add*, as I have been informed and verily believe.)

Sworn, etc.

(Signature).

(See "Land Registration Districts.")

Recording Deeds; Registration.—(See "Real Property.")

Replevin.—A plaintiff claiming that any of his personal property has been unlawfully taken, or is unlawfully detained, may obtain a writ of replevin for the delivery of the property to him upon filing an affidavit of himself or his agent stating where the property is, giving a description and the value thereof, and asserting that the plaintiff is the owner or is entitled to the possession thereof. If possession of the property was obtained under color of distress for rent, or damage feasant, the affidavit must so state; if by fraud, the affi-

davit must give full particulars of the fraud. Plaintiff must also enter into a bond with two sureties in double the value of the property. The defendant may apply to a judge for an order allowing him to retain possession of the property upon his giving security.

Service of Process.—Writs must generally be served personally by any party other than the plaintiff. Orders for substitutional service by advertisement or otherwise may be obtained in certain cases. Where the defendant resides without the Territories, a judge may order a writ to issue for service *ex juris.*

Small Debt Procedure.—All claims and demands for debt where claim does not exceed $100.00 are sued under special practice, which is speedy and simple; if an account, three copies itemized, should be furnished; if a bill, note, order or other written instrument, three copies thereof should be furnished.

Statute of Frauds.—The Imperial Statute is in force.

Stay of Execution.—(See "Execution.")

Supplementary Proceedings.—A judgment debtor may be examined as to what debts are owing him, and what property or means he has of satisfying the judgment. In the case of a corporation, any official thereof may be examined.

Taxes.—Land is subject to taxation only if within a municipality, school district or statute labor district. Land may be sold for arrears of taxes, and must be redeemed within a specified time, otherwise, upon confirmation of the tax sale, the title vests in the purchaser. (See "Real Property.")

Testimony.—(See "Evidence.")

Wills.—Every person over the age of 21 years may dispose by will of all real and personal property to which he is entitled at the time of his death. A will must be in writing, signed at the foot or end thereof by the testator, or by some other person in his presence, and by his direction; and such signature must be made or acknowledged by the testator in the presence of (at least) two witnesses present at the same time, who shall attest and subscribe the will in the presence of the testator. A devise to a witness, or to the wife or husband of a witness, is void, but the witness may prove the will notwithstanding such devise. A will or codicil, or part thereof, may be revoked by writing executed as above, or by intentional destruction thereof by the testator, or by some person in his presence and by his direction. A will is construed as though it had been executed immediately before the death of the testator. A devise of real property without words of limitation is construed to pass the fee simple or other whole estate or interest of the testator in the same.

British Columbia Abstract of Laws.

PREPARED AND REVISED BY

McPHILLIPS & WILLIAMS,

Barristers, Solicitors, etc.,

VANCOUVER, B.C.

Absconding Debtor.—If a person residing in British Columbia and in debt to any creditor to an amount greater than one hundred dollars ($100), departs from the Province with intent to defraud his creditors, his goods may be seized under a writ of attachment.

Any judge of the Supreme or County Court (according to jurisdiction), upon being satisfied that the plaintiff has such claim, and that the debtor has left the Province to escape arrest or service of process or to defraud the plaintiff, may direct such writ of attachment to issue and appoint in the order the time within which the defendant shall put in special bail.

Actions.—Actions in the Supreme Court begin with a writ of summons. Defendant, if personally served in the Province, must appear within eight days after service. If defendant is out of the Province and a British subject, a judge's order must be obtained to issue the writ, the time for appearance thereto being fixed by the Judge. If the defendant out of the Province is not a British subject, notice of the writ must be served upon him.

In actions for debt or liquidated demand the writ may be specially indorsed, and in default of appearance to such a writ, judgment may be entered up. If the defendant appears to a specially endorsed writ, the plaintiff may move for judgment on four days' notice. When the writ is not specially endorsed, and the defendant appears, if he wishes a statement of claim, he must give notice to the plaintiff within eight days, and the plaintiff must deliver, within three weeks from the date of receiving such notice, his statement of claim. Ten days are allowed for putting in defense, set-off, or counter claim.

The plaintiff having replied to the defence, issue is joined, and the action goes to trial. A plaintiff resident out of the Province is generally required to deposit in Court security for defendant's costs.

Actions in County Court are begun by the plaintiff's filing with the Registrar the particulars of his claim, whereupon the summons is issued. In the Small Debts Court the plaintiff likewise files the particulars of his claim, whereupon the summons is issued.

Acknowledgments and Affidavits.—Within the Province affidavits are taken before a commissioner appointed to administer affidavits, a stipendiary magistrate, a notary public, or a justice of the peace. (Affirmations may, in certain cases, be made instead of affidavits; while statutory declarations are provided for under the Canada Evidence Act, 1893). Affidavits made out of the Province for use in Provincial courts may be made before a commissioner authorized to administer oaths in the Supreme Court of Judicature of England; a judge of the Supreme Court in England, Scotland, or Ireland; a County Court Judge in England or Ireland (within his county); Scottish sheriff or his substitute (within his county); a notary public of any British Dominion; the mayor of any city, borough, or town (certified under the corporate seal); a judge of any Court of record in British dominions or elsewhere; a British consul; or (if in Canada) a judge, prothonotary, notary public, or commissioner for taking affidavits or administering oaths in, or the clerk of a Court of Record in the Dominion of Canada or any Province thereof.

Administration of Estates.—The County Court has jurisdiction (concurrently with the Supreme Court) in matters of testacy or intestacy within its own district where the personal estate does not exceed $2,500.00, and has power to grant probate of wills, or deeds to administer under the Official Administrator's Act, and letters of administration of the personal estate and effects of persons dying within the territorial limits of its county, and to take order for the due passing of the accounts of the executors and administrators of such deceased persons, and for the proper custody of the personal estate and effects of such deceased persons, and for the delivery of the same to the persons entitled thereto. Where no one is willing or qualified to act as administrator, administration of the personal estate may be vested in the official administrator, who may obtain a judge's order to sell or otherwise dispose of the real estate. Creditors rank equally upon estates of deceased persons, subject to any lien, charge, or other security that a creditor may have. When acting under the directions of a court, executors and administrators are not subject to liability as to the estate they represent. If a creditor is dissatisfied with the administration, he may petition the court. Probate or letters of administration of any Probate Court of the United Kingdom, or any British possession, on being produced and a copy thereof filed in the Provincial Probate Court, with the original sealed, have the same force as if granted by such court, provided the Legislature of such Kingdom or possession has made a similar provision for the recognition of probates and letters of administration granted by the Courts of this Province.

Aliens.—Aliens may acquire, hold, and dispose of real estate in the same way and to the same extent as may British subjects.

Appeals.—From the Magistrates' Court (dealing with certain criminal matters or under the jurisdiction of the Small Debts Court) an appeal lies to a judge of the County Court or

a judge of the Supreme Court, whence the conviction or ruling may be taken by certiorari to the Supreme Court. From the County Court, if the amount involved exceeds $100.00, an appeal lies to the Supreme Court. For a smaller amount such an appeal lies only upon a question of law. From a judge of the Supreme Court there is an appeal to the full court of the Province, from which there is an appeal to the Supreme Court of Canada at Ottawa.

From the latter the cause may in certain circumstances be taken to the Privy Council at London, which is the final Court of Appeal in the Empire. A stay of proceedings may be granted upon an appeal, the appellant furnishing proper security.

Arrest.—Where a plaintiff shows to the satisfaction of a judge that he has a good cause of action against a defendant to the amount of $100.00 or upwards, or has sustained damages to that amount, and that there is probable cause for believing that the defendant is about to quit the Province unless he be apprehended, the judge may order the arrest of such defendant and his detention until bail be furnished. Further, a judgment debtor may be arrested and detained where he does not attend or where he gives unsatisfactory answers upon an order for examination, or where it appears that he has concealed or made away with his property with intent to defraud his creditors. Where arrest and detention is upon a Supreme Court order for examination, the limit of imprisonment is twelve months. In the County Court, upon a similar order for the examination of a judgment debtor, the judge may make an order for the defendant's arrest where it appears that the debt was incurred by false pretences or fraud or by breach of trust, or was wilfully contracted without reasonable expectation of being able to pay, or where the debtor appears to have the means to pay and has refused to do so. The limit of imprisonment in the County Court is forty days. In cases of arrest, maintenance money must be paid to the sheriff at the rate of $3.50 a week.

Assignments.—An assignment may, under "The Creditor's Trust Deed Act," be made of all property, real and personal, to satisfy ratably all creditors; but it may be set aside for fraud. The assignment must be executed by the trustee within seven days after its execution by the debtor; and it takes effect when deposited in the Land Registry Office of the district in which the debtor resides or carries on business, a copy being sent to each of the other Provincial Land Registry Offices. Within fourteen days of the execution of the assignment by the debtor, the trustee shall cause notice of such assignment to be published in the British Columbia Gazette and a local paper for the space of one month. Upon cause shown the trustee under the assignment may be replaced by another trustee. All questions arising at creditors' meetings (which are to be duly called by the trustee) are to be decided by a majority of votes, arranged by the Act upon a sliding scale according to the amounts of claims. There is a preference given by the Act to all persons in the employment

of the assignor at the time of the making of such assignment or within one month before, for three months' wages or salary.

An assignment for creditors takes precedence of all judgments and attachments not completely executed by payment, subject, however, to the lien of a registered judgment creditor.

Attachment and Garnishment.—In the Supreme Court and the Small Debts Court, debts due to the debtor may be garnished only after a judgment has been obtained against him by the plaintiff. In the County Court they may be garnished before or after judgment. The Acts make provisions for the exemption, under certain circumstances and to a certain extent, of wages and salary. Writs of attachment may issue against the goods of absconding debtors (see "Absconding Debtors").

Bills, Notes and Cheques.—These come under Dominion Acts.

Bills of Sale and Chattel Mortgages.—Bills of sale and chattel mortgages, not accompanied by immediate delivery of the goods and chattels, must be verified by affidavit and registered in the office of the Registrar of the County Court where the goods and chattels are situate, within twenty-one days of the date of the execution of the instrument (East of the Cascades thirty days are allowed); otherwise they are void as against the assignee of the estate of the grantor and as against sheriff's officers and others seizing goods in execution, and as against subsequent purchasers and mortgagees in good faith for valuable consideration. A bill of sale or chattel mortgage must set forth any defeasance, condition, or declaration of trust subject to which it has been given; and it must be renewed every five years by an affidavit that it is still a subsisting security.

Claims against Estates of Deceased Persons.—These may be enforced against the executor or administrator, judgment debts having priority over ordinary debts.

Companies and Corporations.—Corporations are incorporated by Act of Parliament, or by special charter, or under the general law relating to the incorporation of joint-stock companies. Under the law corporations may be organized for any lawful purpose upon filing with the Registrar of Joint-Stock Companies a memorandum of association signed by not fewer than five members. The liability of the shareholders may be limited to the amount of shares, or limited by guarantee, or unlimited. A company may acquire and hold real estate by gift, purchase, mortgage or otherwise, and may alienate the same as fully and freely as may private individuals. Provision is made by the Companies' Act for the licensing and registration of extra-provincial companies; and for the voluntary winding-up of companies upon petition to a judge setting forth that it is the desire of two-thirds of the shareholders to dissolve and that all liabilities have been discharged.

Conditional Sales.—Receipt notes, hire receipts, or orders for chattels given by a bailor of chattels where the condition

of the bailment is such that possession passes without ownership until the payment of the whole or some stated part of the purchase money, are void as against subsequent purchasers or mortgagees for value without notice, unless a true copy of such receipt note, hire receipt, or order for chattels be filed, within twenty-one days of its execution, with the officer with whom a bill of sale of goods situate where the bailee resides would require to be registered. Upon request the manufacturer, bailor, or vendor is required under penalty to furnish a proposed purchaser or other interested person full particulars as to time of payment and amount due. A bailee or his successor in interest has twenty days, after seizure of the chattel for breach of condition, in which to redeem; and when the goods were bailed or conditionally sold for more than $30.00, five days' notice of the sale must be given.

Courts and their Jurisdiction.—The Supreme Court consists of five judges, who preside over the various district courts, and who, *en banc*, form the Court of Appeal. There are seven judicial districts in the Province. The Supreme Court has jurisdiction in all matters, civil and criminal, and possesses all powers both of Common Law and of Chancery. The County Court has jurisdiction in personal actions where the debt or damage claimed does not exceed $1,000.00; in ejectment where the annual rental does not exceed $300.00; in replevin where the value of the goods does not exceed $1,000.00; and in the execution of trusts, spec[illegible]formance, foreclosure, trusts, infancy, and other equity matters in which the value of the property involved does not exceed $2,500. It has also jurisdiction, concurrently with the Supreme Court, in various mining matters. In most cases however, the Supreme is preferred to the County Court. The County Judge's Criminal Court may try, at any time, without a jury, persons committed to gaol upon charge of any offence (with certain statutory exceptions) for which they may be tried at a Court of Oyer and Terminer or general gaol delivery, and for which such persons consent to be so tried before the County Judge without a jury. The Province is divided into County Court Districts, over each of which a judge presides. Such judges are also local judges of the Supreme Court for certain purposes within their respective districts. The Small Debts, or Magistrate's Court has cognizance of actions in debt and contract up to $100.00. In addition to these Provincial Courts, the Supreme Court of Canada and the Exchequer Court have, or the Supreme Court alone has, jurisdiction in matters in which there has been raised the question of the validity of an Act of the Dominion Parliament or of the Provincial Legislature, as also in controversies between the Dominion and the Province. The Exchequer Court of Canada, British Columbia Admiralty District, has jurisdiction also in all matters of shipping, navigation, trade and commerce of which cognizance is taken in any Colonial Court of Admiralty under "The Colonial Court of Admiralty Act, 1890."

Deeds.—Conveyances of real estate must be under seal, and should be attested by a witness. There is a [illegible] statu-

tory form for such conveyances, taking the place of a previous long form. Acknowledgments and proofs of execution are required for registration. These are made by the party executing, the secretary of a corporation when the secretary executes, a subscribing witness, or the attorney in fact when the instrument is executed by an attorney in fact. A married woman may dispose of her separate property as if she were unmarried; but, for purposes of registration, there must be an acknowledgment from her, examined apart from her husband, that she understands the contents of the instrument, that she has executed voluntarily, etc.

Depositions.—Under special circumstances (illness, approaching death, etc.) depositions are allowed to be put in at the trial of the cause. These are obtained, upon the application of either party to the action, by means of a commission issued in pursuance of the order of the Court. Full instructions, however, must accompany the commission, and an opportunity must be given for cross-examination. The form of oath to be taken by the Commissioner, witness, clerk, and interpreter, is indorsed on the commission along with other directions.

Descent and Distribution of Property.—The personal estate is first liable for the payment of debts and funeral expenses, before resort can be had to the real estate, which latter can be interfered with only by special order of a court. The surplusage of the personal estate of an intestate is divided according to the Administration Act, that is to say: One-third to the widow, and the remainder among the descendants per stirpes equally, unless portions have been advanced in the lifetime of the deceased. If no descendants, then half to the widow and half to next of kin in equal degree. If no widow, then whole equally among descendants per stirpes. If neither widow nor descendants, then equally among next of kin of same degree. Real estate of an intestate descends, after payment of dower (see "Dower") as follows: (1) To lineal descendants per stirpes; (2) failing children, to father, unless estate came on the part of mother; (3) failing father, to mother; (4) failing father and mother, to collateral relatives, subject to certain rules and regulations of the "Inheritance Act." Descendants, however remote, share per stirpes; and relatives of the half blood share equally with those of the whole blood.

Divorce.—Jurisdiction is assumed and exercised by the Supreme Court in divorce proceedings to the extent of the power and scope of the English Divorce Act, 20 and 21 Vic. This jurisdiction is claimed by the Supreme Court by virtue of the Ordinance of the Provincial Legislature passed in 1867 introducing English Law (see "English Law"). Doubt has been expressed, however, whether the Supreme Court has divorce jurisdiction under the English Act.

Dower.—A widow is not entitled to dower in any land which her husband disposed of absolutely in his life or by his will. She is entitled to dower only in lands to which he, dying intestate, was beneficially entitled at his death. A bequest of land to her by her husband may, however, deprive

her of dower in all other lands. The right to tenancy by the curtesy still exists.

Evidence.—See Statutes of B.C., 57 Vict., cap. 13, and Statutes of Canada, 56 Vict., cap. 31. The accused is a competent witness in his own behalf on a criminal charge. Wives and husbands are also, under certain restrictions, competent witnesses. The plaintiff in an action for breach of promise of marriage must be corroborated in his evidence by material testimony. Children of tender years and Indians (being uncivilized) may be heard as witnesses and their testimony received, in the discretion of the judge.

Execution.—In the Supreme Court execution against goods may issue forthwith after judgment. Execution against lands now abolished. (See "Judgment.")

In the County Court an execution against goods may issue forthwith after judgment. A writ of execution requires renewal every year.

Delivery of property other than money or land may be enforced by writs of attachment, delivery or sequestration.

Exemptions.—Goods and chattels, to be selected by the debtor, to the value of $500.00 are exempt under execution. This does not apply, however, to stock in trade, or to goods or chattels seized in satisfaction of a debt contracted for such identical goods or chattels.

Land to the value of $2,500.00 may be registered as a homestead, and is then exempt to that extent from seizure under any legal process. Under distress for rent lodgers' goods are exempt; and there is an exemption in the case of goods sold conditionally to the tenant.

Garnishee.—See "Attachment."

Infants.—Infants sue or are sued by a guardian or next friend. An infant may, however, sue in the County Court in his own name for wages up to $500.00.

Interest.—By the Dominion Act six per cent. is the legal rate, although by agreement any rate may be charged.

Judgments.—A certificate of judgment may be registered in any and all of the Land Registry Offices in the Province, and from the time of registering the same the judgment so recorded shall form a lien and charge on all the lands of the judgment debtor in the several districts in the Land Registry Offices. Where a judgment creditor has registered a certificate of such judgment he may make application to the Supreme Court, or a Judge thereof, calling upon the debtor, or other person having legal estate in the land in question, to show cause why any land in the Land Registry District in which such certificate of judgment is registered, or interest therein of the debtor, or a competent part of the land, shall not be sold to realize amount payable under judgment, and the Judge may order a sale of the said lands by the Registrar of the Court or District Registrar thereof, according to the usual practice.

Laws.—The Civil Laws of England, as they were on November 19th, 1858, and so far as the same are not inapplicable by reason of local circumstances, shall be in force in all parts of British Columbia. Provided, however, that the said laws shall be held to be modified and altered by all legislation still having force of law of the Province of British Columbia or of any former colony comprised within the geographical limits thereof.

Libel.—In mitigation of damages evidence may be given that a written apology was offered to the plaintiff before the action was instituted. Only actual damages can be recovered when the defendant proves that the libel was inserted in the newspaper without actual malice or gross negligence, in good faith, and for the public benefit; that it did not involve a criminal charge; and that, before the commencement of the action or as soon thereafter as possible, an ample apology was published. Security for costs is generally required from the plaintiff.

Liens.—Every contractor, sub-contractor, or laborer has a lien for his labor in connection with the erection or repair of buildings or other erections. The lien must be registered within 31 days after the completion of the work; and within 30 days after such filing, an action to enforce the lien must be commenced. Otherwise the lien ceases. A woodman has a lien for wages on logs and timber. A mechanic has a lien for the work, skill, and materials bestowed upon any chattel; and if unpaid for three months, he may, after advertising for three weeks, sell the chattel.

Limitations of Actions.—The British Columbia Law embodies the English law on this subject. All actions for the recovery of rent upon an indenture of demise, and all actions of covenant or debt upon any bond or other specialty, and all actions of debt upon any recognizance shall be commenced within twenty years after the cause of action arose, unless in the meantime there has been a payment on account or some acknowledgment in writing. All actions for detinue, trover, and replevin, for taking away goods or chattels; and all actions for account or actions for debt without specialty must, unless as above, be begun within six years after the cause of action arose. The claim of a *cestui que trust* against his trustee in an express trust is not barred. In cases of disability, time runs from the removal of such disability. A foreign statute of limitation is recognized as a good defence in a suit in this Province upon a cause of action that arose in the foreign country.

Married Women.—A married woman may now contract, hold, enjoy, and dispose of her separate property, real or personal, and may sue and be sued with reference thereto, as freely as if unmarried. All contracts made by her are presumed to be made with reference to her separate property; and she is liable on her ante-nuptial debts to the extent of her separate property. She is entitled to dower out of real property to

which her husband, dying intestate, was beneficially entitled (see "Dower").

Mining and Mineral Lands.—Any person of eighteen years of age or more may take out a free miner's license, which is in force for one year, and thereupon he becomes entitled to prospect, locate and mine (other than placer mining) upon Crown lands for all minerals other than coal. For placer mining every person who is not less than eighteen years of age, and is a British subject, shall be entitled to all the rights and privileges of a free miner upon taking out a free miner's certificate, which certificate shall not be transferable. No Joint Stock Company or Corporation shall be entitled to take out a free miner's certificate for placer mining unless the same has been incorporated under the laws of this Province, and is authorized to take out a free miner's certificate by the Lieutenant-Governor in Council, which authorization may at any time be cancelled, and in case of such cancellation such Company or Corporation shall not be entitled to take out a free miner's certificate under the Placer Mining Act, but any free miner's certificate already taken out shall remain in force until its expiry.

No free miner shall hold any claim under the Placer Mining Act or any interest therein, as trustee or otherwise for any person who is not a British subject, or for any Corporation not authorized to take out a free miner's certificate.

The above provision as to aliens does not apply to persons to whom the Lieutenant-Governor in Council may, under the provisions of the Placer Mining Act, grant a lease for dredging and for what is known as hydraulic mining as distinguished from ordinary placer sluicing.

All free miners' certificates shall expire on the 31st day of May in each year.

A free miner may at any time prior to but not later than the 31st day of May (or if that be a holiday, then on the next day which is not a holiday) obtain from the proper officer, on payment of the proper fee, a free miner's certificate running from midnight on the 31st day of May in any year to midnight on the 31st day of May next thereafter, or any subsequent 31st day of May.

In case any person should allow his free miner's certificate to expire, he may obtain from the proper officer, upon payment of a fee of $15.00, a special free miner's certificate; such special certificate shall have the effect of reviving the title of the person to whom it is issued to all mineral claims which such person owned at the time of the lapse of his former certificate, except such as under the provisions of the Placer Mining Act had become the property of some other person at the time of the issue of such special certificate.

In the case of a Company the fee for such special certificate shall be $300.00.

The size of placer claims varies according to location; but in general they are one hundred feet square or of one hundred feet frontage. Other claims are 1,500 feet long by 1,500 feet wide, and must be, as nearly as possible, rectangular in form. They must be carefully marked out, the

governing line for measurements being "the location line," which runs through the spot where mineral has been found "in place," and which is marked by a "discovery post." At each end of the "location line," which has a length of 1,500 feet, is a post, such posts being marked number One and number Two respectively. Upon these posts are marked the name of the claim, the name of the locator, and the date of the location; and upon post number One are given, in addition, the compass bearing of post number Two and the number of feet lying to right and left of "the location line." Particulars of the claim must be filed with the Mining Recorder of the District. Work upon the claim to the amount of $100.00 must be performed each year; and when work to the extent of $500.00 has been performed, the miner, upon complying with certain regulations as to the publication of notice, the discovery of a vein or lode, and so on, is entitled to a certificate of improvements, upon which he may obtain the Crown grant. No more than one claim may be held by the same miner upon the same lode or vein. The locator of a placer claim must, unless he obtain leave of absence from the Gold Commissioner, work his claim continuously during working hours, and he is entitled to record his claim for one or more years upon payment of fees and compliance with Governmental regulations. Leases of land for hydraulic mining are issued upon certain conditions, as are also coal-prospecting licenses.

Mortgages.—Mortgages must be under seal, their form being prescribed by statute, which shortens the wording, while preserving the force and effect of the old long form. Upon breach foreclosure may be enforced, or the mortgagor may be sued upon the covenants. Mortgages are registered in the District Land Registry Office, and the charge is cancelled by the production to the registrar of a release duly executed by the mortgagee.

Practice of the Courts.—The practice is the same as the English practice, modified to a certain extent, however, by statutory provisions and rules of court.

Registration.—Conveyances of, and charges upon land are registered in the Land Registry Office in which the land is situated, upon the presentation of an application to register giving brief particulars of the land and conveyance or charge. A purchaser for value is not affected by notice of an unregistered title other than a lease for a term not exceeding three years. Certificates of title, certificates of charges, and abstracts are furnished by the Land Registrars upon payment of specified fees.

Replevin.—Whenever any personal property has been wrongfully distrained or otherwise wrongfully detained, it may be replevied by the owner under a writ of replevin upon his giving to the sheriff a bond in double the value of the property. Goods seized in execution, however, cannot be replevied.

Service.—Service of a writ of summons should be personal whenever practicable; but the court may, upon cause shewn, order substitutional service by advertisement or otherwise.

The Statute of Frauds.—This statute is in force in the Province.

Taxes.—In municipalities by-laws may be passed for the sale of lands on which municipal taxes have been in arrears for two years prior to the passing of such by-laws. The owner may redeem within one year from the date of the order confirming the sale, or before the delivery of the conveyance to the purchaser at the tax sale. Unpaid taxes may also be recovered by an action on the part of the municipality. Taxes are a special lien on the land, and take priority over any claim thereto except that of the Crown. In municipal districts distress may be levied upon the goods of anyone in default, or the land may be sold, the owner having the right to redeem within two years from date of sale.

Wills.—Wills shall be signed at the foot or end thereof by the testator or some person in his presence and by his direction; and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and such witnesses shall subscribe the will in the presence of the testator. An executor or a devisee is a competent witness, but the devise to an attesting witness is void. Marriage revokes a will, and persons under twenty-one years of age cannot make a valid will. A will shall be construed to speak from the death of the testator.

Synopsis of Mercantile Law of Canada.

(Exclusive of the Province of Quebec)*

PREPARED BY

R. B. HENDERSON,

Of the Ontario Bar.

TORONTO.

The law relating to mercantile contracts is, of course, a part of the general Law of Contract, but it is only a part. It is not proposed therefore to treat here of the Law of Contract generally. It will, however, be necessary to set out some of the principles of the General Law of Contract before considering the law relating to the sales of personalty with which the Mercantile Law is more peculiarly concerned.

Contract Generally.—It is not necessary for our purpose to define or classify contracts, but the distinction between a contract under seal and a simple contract should be noticed.

A contract under seal must be in writing, and must be signed, sealed and delivered. It is the most solemn form of

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* NOTE.—The expression "In all the Provinces" is meant to be exclusive of the Province of Quebec.

The Revision of the Nova Scotia Statutes was in progress when this Article was compiled. See Synopsis of Nova Scotia Laws in accordance with the Revision.

Revision postponed till 31 December, 1899.

contract known to the English Law, and it always imports consideration.

A simple contract may be either written or verbal. It may also be express or implied.

There are, however, certain Statutory enactments which require some simple contracts to be in writing, the most important of these are the 4th and 17th sections of the Statute of Frauds, 29 Carl. II, cap. 3.

The 17th section will be considered under the sales of goods. The provisions of the 4th section are:

1. No action shall be brought to charge an executor or administrator upon any promise to answer a debt out of his own estate, or

2. To charge a defendant upon a promise to answer for the debt, default or miscarriage of another person, or

3. To charge any person upon any agreement of marriage, or

4. Upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning the same, or

5. Upon any agreement that is not to be performed within the space of one year, unless the agreement or memorandum or note thereof shall be in writing signed by the party to be charged, or his agent duly authorized.

This is the same in all the provinces, either by virtue of special Act or because of General Law of England having been adopted.

Parol evidence is inadmissible to contradict the terms of a written instrument, but it is admissible to explain it.

The essential elements to a valid contract are:—

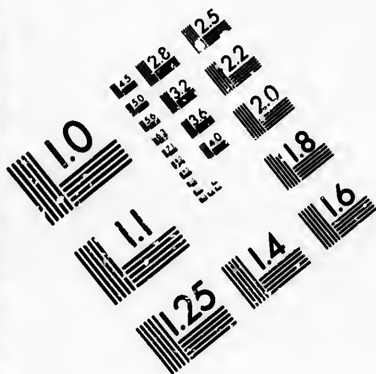
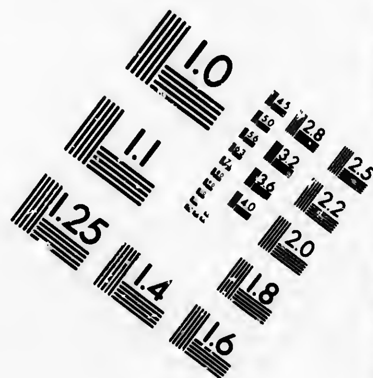
1. Parties capable of contracting.
2. Mutual assent communicated by the one to the other.
3. Consideration, which will, however, be implied if the contract is made under Seal.
4. It must be "An act in the law," i. e., it must be made in contemplation of legal consequences.
5. Its object must not be illegal.

I. *Parties capable of contracting.*—There are certain classes of persons who are held according to the English Law incapable of contracting. Infants, married women, lunatics and drunkards are all under disabilities, and cannot enter into a contract which will be binding on them.

(A) INFANTS.—An infant cannot make a valid contract, unless it be for necessaries. What are to be deemed necessaries will vary with the circumstances of each case. The contract of an infant, however, is not void as in the case of married women, but voidable at his option, either before or after his coming of age. If, however, he ratifies upon coming of age, it will be no longer voidable.

INFANTS' RELIEF ACT.—By the English Act 37 and 38 Vict., c. 62, contracts with infants (except for necessaries, or other contracts which he can make by Statute or are known in Equity), are made absolutely void, instead of simply voidable, and further, an infant cannot ratify a contract after he attains his majority.

This provision is not in force in any of the provinces here,

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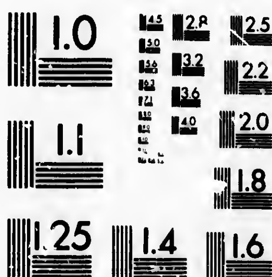
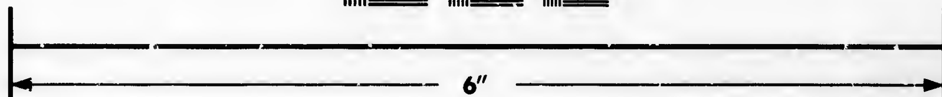

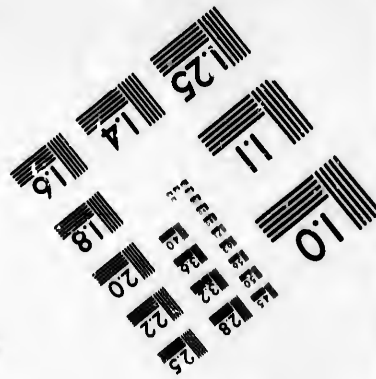

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except in British Columbia (R. S. B.C., cap. 95, ss. 2 and 3, being taken entire from the English Act). The law in Manitoba is the same as it was in England, immediately prior to 37 and 38 Vict., c. 62, and is practically the same as in Ontario.

The provision in the Ontario Statutes is contained in R. S. O. cap 146, sec. 6, which provides that no action shall be maintained on any promise made after full age to pay any debt contracted during infancy, or of any ratification after full age of any promise or simple contract made during infancy, unless the promise be in writing, signed by the party to be charged or his duly authorized agent.

Con. Stat., N. B., cap. 76, sec. 6, contains same provision as the Ontario Statute, but agent not mentioned.

The Statutes of Nova Scotia do not appear to contain any corresponding provision.

(B) MARRIED WOMEN.—"At the Common Law a married woman is incapable of making a valid contract so as to render herself liable thereon, and any attempted contract made with her, unlike those made with lunatics and drunkards, is absolutely void, and therefore incapable of being ratified by her, after her coverture has ceased."

Courts of Equity, however, have evolved the doctrine of separate estate, and in Equity it was held that a married woman might contract in respect of the separate estate possessed by her at the time when the contract was entered into.

If she had no separate estate at the time the contract was made, she was not deemed to have intended to contract with reference to her separate estate, and any which was afterwards acquired was, therefore, not bound.

In England, and in most countries where the principles of English Law are in force, Statutes have been passed, giving the married woman wider powers of contracting, and also conferring on her greater powers of holding, acquiring, and disposing of property in general.

In Ontario, Nova Scotia and British Columbia, a recent amendment, as to her power of contract, has been adopted from the English Act. It provides that every contract entered into by a married woman otherwise than as an agent should be deemed to be entered into by her with respect to, and to bind her separate property, whether she is in fact possessed of anything at the date of the contract or not. It shall bind all *separate* property which she may at the time, or thereafter, possess, and shall be enforcible against all *property* which she may thereafter possess while discovert. She cannot, however, deal with property which she is restrained from anticipating.

One effect of this provision is to make property acquired by a woman after the death of her husband liable to satisfy a judgment on a contract entered into while under coverture. Under the former Acts only separate property would be bound, and this is still the rule in Manitoba.

This provision applies in Ontario to every contract entered into by a married woman after April 13th, 1897. R. S. O. cap. 163, s. 4.

In Nova Scotia, it was introduced by 60 Vict., cap. 37 (1st March, 1897).*

In British Columbia, by R. S. B.C., cap. 130.

The New Brunswick Stat., 58 Vict., cap. 24, 1st Jan., 1896, is the same, except that it relates only to separate property.

The above provision has not been adopted in Manitoba. The law in that Province as to the property of married women is contained in R. S. M., cap. 95. It has been held under that Statute that one of two things must be proved in order to bind a married woman's property.

1. Either that she is carrying on a business separate from her husband, and that the liability arose out of, or through, a contract in connection with that separate business, or

2. That she is possessed of a separate property upon which it may be presumed she intended the liability incurred should attach.

(C) LUNATICS.—The contract of a lunatic will not bind him, if it can be shewn that when he made it he did not understand what he was doing, but if it be unknown to the party with whom he was contracting that he was of unsound mind, and the contract is in other respects a fair one, the lunatic will be bound, as in the case of an infant.

The contract of a lunatic is not void, but voidable.

(D) DRUNKARDS.—The same rule as applies to lunatics applies to drunkards. Their contracts are voidable, not void.

II. *Mutual Assent.*—Both parties must assent in the same terms, or as it is sometimes expressed, there must be a "*consensus ad idem.*" This assent must be communicated. In the case of the terms of a contract being assented to by letter, the assent will take effect and the contract be deemed complete when the letter containing the assent has been posted.

If an offer is made by one party, there is no contract till it is accepted by the other party, and consequently it can be revoked at any time before acceptance. An acceptance, in order to turn an offer into a contract, must "be absolute and identical with the terms of the offer."

III. *Consideration.*—Consideration as we have seen above is necessary to the validity of any contract not made under Seal. It has been defined as follows :—

"A valuable consideration in the sense of the law may consist, either in some right, interest, or profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered, or undertaken by the other."

The Courts will not inquire into the adequacy of the consideration. It is sufficient if it be valuable.

It must be legal.

A cheque given in payment of a bet is an instance of an illegal consideration.

A past consideration, i. e., one which confers no present or future benefit, is not good. The consideration necessary to the validity of a contract must be present or future.

IV. *It must be an act in the law.*

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* See Synopsis of Nova Scotia Laws.

V. *Its object must not be illegal.*—The object may be illegal, because,

1. It is forbidden by Statute, or

2. It constitutes under the Common Law an indictable offence or civil wrong, or is contrary to public policy.

(Anson, 8th edition, p. 225.)

Another point in connection with the Law of Contracts generally, which must be noticed, is the effect on Contracts of Mistake, Misrepresentation, and Fraud.

I. *Mistake.*—As a general rule, mistake has no effect whatever in law. As mentioned above, however, a "*consensus ad idem*" is a necessary requisite to a valid contract. If, therefore, such "consensus" be prevented by mistake, there can be no contract, or as it is generally expressed, the contract is void.

Such a mistake as will prevent "*consensus ad idem*" may be :—

1. Mistake as to the person with whom the contract is made. In this case, however, it must be shewn that the personalty of the party contracted with was an element in the contract.

2. Mistake as to the subject matter. Such a mistake may arise when there are two things answering the same description, and each party is contracting with reference to a different thing.

3. Mistake as to the nature of the contract. As when a man endorsed a bill of exchange, thinking it was a guarantee.

When parties have come to a real agreement, but by mistake have wrongly expressed the agreement come to, the document may be rectified so as to conform to the real agreement.

Money paid under a mistake of fact may be recovered.

Except in some such cases as those above mentioned, the general rule will prevail that if a man express himself in such a manner as to induce another party to think he meant one thing, he cannot afterwards be heard to say that he meant another, though he shew that his having so expressed himself was the result of a *bona fide* mistake.

The mistake must be one of fact, not of law, but this means the general law, and mistake as to a private right may be given effect to.

II. *Misrepresentation.*—Misrepresentation as distinguished from fraud, is an innocent mis-statement of facts not known to be false, or a non-disclosure of facts not intended to deceive. *Anson.*

As distinguished from warranty condition, etc., it is a statement which is an inducement to enter into a contract, not a term in the contract itself.

The Courts of Common Law held that a misrepresentation could have no legal effect unless it were part of the contract. They, however, when a misrepresentation went to the root of the contract, generally tried to import it into the terms of the contract.

Courts of Equity, on the other hand, treated a material misrepresentation as a ground for the recession of a contract.

In those provinces, therefore, in which the rules of Equity prevail, misrepresentation may be a ground for rescinding a contract.

III. *Fraud*—Fraud is defined by Anson to be a false representation of fact, made with knowledge of its falsehood, or recklessly, without belief in its truth with the intention that it should be acted upon by the complaining party, and actually inducing him to act on it.

A person who has been induced to enter into a contract by fraud may either affirm the contract, and sue for any damages he may have sustained by non-fulfilment of its terms, or he may have the contract rescinded, or may set up the fraud as a defence to an action on the contract.

He may also have an action in tort for damages apart from the contract.

For the law of contract generally, see the following works, Pollock, Anson, Leake and Addison.

Sale of Goods.—The class of contract with which the Mercantile Law is principally concerned is that class which relates to personal property, generally known as Contracts of Sale of Goods.

In England the law as to sales of goods, has been codified, and the English code has been substantially adopted by the Legislatures of Manitoba and British Columbia, and the Northwest Territories.

Speaking generally, these acts are simply declaratory, and most of their provisions will be found to be a correct statement of the law in the other provinces.

Contracts of Sale of Goods may be divided into:—

1. Executory Contracts or agreements for sale.
2. Contracts of Bargain and Sale.

The former being those in which property does not pass till some future time, and the latter those in which the property passes immediately—which operate as conveyances, in addition to being contracts.

Possession and property are terms which should be carefully distinguished. The possession may pass without the property passing, and the property may pass without the possession passing.

1. Change of *property* without the *possession* passing.

In Ontario, by virtue of R. S. O., cap. 148, Bills of Sales Act, every sale not accompanied by immediate delivery, and followed by actual and continued change of possession, shall be, by bill of sale, to be registered in accordance with the provisions of the Act.

Provisions substantially the same are to be found in the New Brunswick Statutes, 56 Vict., cap. 5, in the Manitoba Statutes, R. S. M. (1891), cap. 10, in C. Ordinances, 1898, cap. 43, N. W. T. and in R. S. B. C., cap. 32.

The provision in Nova Scotia is contained in R. S. N. S. cap. 92.

2. Change of possession without property passing.

If there is change *of possession* without the *property* passing, then in Ontario the provisions contained in R. S. O. 148, sec. 41, and R. S. O. 149, must be complied with in order that the

vendor may preserve his lien against creditors, and subsequent purchasers or mortgagees for value.

Sec. 1 of R. S. O., c. 149, provides that in such case, receipt notes, lien receipts, and orders for chattels given by the bailees of chattels, shall only be valid against subsequent purchasers or mortgages in good faith without notice for valuable consideration, in the case of manufactured goods or chattels, when the name and address of the manufacturer, bailor or vendor is at the time possession is given, painted, printed, stamped, engraved, or otherwise plainly attached to the chattel, and the bailment must also be evidenced in writing.

This provision does not apply to household furniture other than musical instruments, nor does it apply when the receipt, note, or other instrument is filed as required by the Act within ten days from execution.

R. S. O. cap. 148, sec. 41, provides that in the case of an agreement for the sale or transfer of merchandise of any kind, to a trader or other person for the purpose of re-sale by him in the course of business, when the agreement provides that the possession shall pass without the ownership, such sale shall, as against creditors, purchasers, or mortgagees be deemed absolute unless the agreement be in writing, signed by the parties or their agents, and such writing be filed as required by the Act. And even then such agreement shall not affect purchasers from the trader or other person in the usual course of his business.

The Sales of Goods Act, B. C., sect. 25, contains a provision that receipt notes, etc., in such case must be filed, and no such conditional sale shall be valid unless evidenced in writing, signed by the bailee or conditional purchaser or his agent.

In Nova Scotia, R. S. N. S., 93, s. 3, provides that every agreement for sale of goods and a hiring and lease where there is change of possession without property passing, must be in writing, etc., with affidavit setting forth contract, and be registered as a bill of sale or chattel mortgage. In N. B., by cap. 12, 62 Vic. (1899), provisions similar to those in force in Ontario are enacted.

It is often difficult to determine the time when the property in the goods passes. The general rule is, that it is determined by the intention of the parties, but when such intention cannot be ascertained, the following rules will govern.

1. In the case of specific goods to which nothing is required to be done before delivery, the property passes at the time of the contract, whether the possession is changed or not, or whether the time for payment has arrived or not.

2. In the case of specific goods, when the seller is bound to do something to the goods, in order to make them properly deliverable, the property will not pass till such things are done.

3. When there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test, or do some other act or thing, in order to ascertain the price, the property does not pass till such act is done, and the purchaser has notice of it.

(If, however, the goods have to be weighed or measured by

the buyer, solely for his own satisfaction, or if the seller have left the matter to be determined by the buyer, the property passes.)

4. When goods are unascertained or not yet made, the property passes when some act has been done by one party in pursuance of the terms of the contract, showing an intention to appropriate certain specific goods to the contract, and such act has been adopted by the other party.

5. When goods have been delivered to the buyer on approval, or sale and return, the property passes to the buyer when he signifies his approval or retains the goods without giving notice of rejection, either beyond the time fixed for return, or if there is no time fixed, beyond a reasonable time.

6. Delivery will, as a rule, pass the property, unless there is a stipulation to the contrary, and as against creditors, etc., (in some of the provinces, as we have seen above), unless certain statutory provisions have been complied with.

As soon as the property passes, the goods are at the risk of the purchaser, and it would seem that even when the property had not passed, but the purchaser had been put in possession, the goods would be at the risk of the purchaser.

When the vendor by his own act stipulates that the property shall remain in him until payment, as in the case of his instructing his agent not to hand over the bill of lading until payment of draft, the property remains at his risk, and if the goods are destroyed between acceptance and maturity of the draft, he must bear the loss. The vendee, in the absence of any stipulation to the contrary, has no right to possession until payment, unless the sale be on credit, when he is entitled to immediate delivery.

The contract of sale may be either by parol or in writing, but by 17th sec. of Statutes of Frauds or re-enactments if the goods are of the value of $40.00, or (in some of the provinces $50.00) or upwards, the contract will not be enforcible by action, unless the buyer accepts part, and actually receives the same, or gives something in earnest to bind the bargain, or in part payment, or unless there be some memorandum of the contract in writing, signed by the party to be charged or his agent.

This provision applies, notwitstanding that the goods are to be delivered at some future date, or are not at the time of the contract actually made.

The note or memorandum in writing must show the names or descriptions of the parties, the terms of the contract, and price, if any price has been agreed upon. If not, it will be presumed that a reasonable price was agreed upon.

It may be contained in several separate documents, provided there is something to connect the one with the other. It has been recently held, for instance, that it is sufficient if the name of one of the parties be only contained on the envelope. Evidence of latent ambiguity may be given to connect such separate documents.

The memorandum must be signed by the party to be charged, or his agent duly authorized; the agent need not be authorized by writing.

The signature need not necessarily be at the end of the document, it may be in the beginning, or in the body if it ap-

pears to have been intended as a recognition of the contract.

It may be by printing or stamping the name or by the mark or initials if they be intended as a signature. A letter repudiating the contract may be a sufficient note or memorandum under the Statute.

An auctioneer is an agent for both parties for the purpose of the Statute. A broker, too, is generally considered the agent of both parties.

In most of the Provinces the above Statute has been re-enacted or extended.

Representation, condition, warranty.—A representation is a statement made prior to the contract by one of the parties to another. It does not affect the contract, and the fact of its being untrue gives no cause for action unless it were made fraudulently. If, however, it be made recklessly, without the party making it taking the trouble to ascertain whether it were true or false, it will be held to have been made fraudulently. But see the different rules in Common Law and Equity, at p. 418 *supra.*

A condition subsequent is a condition upon the happening of which the parties will be relieved from some or all of the duties under the contract.

C. O. N.W.T., 1898, cap. 44 provides that whenever on sale or bailment of goods of the value of $15, or over, it is agreed that property shall remain in bailor or vendor; such sale or bailment to be in writing and registered.

A condition concurrent is a condition which must be performed concurrently with some other condition or term of the contract.

A condition precedent is one which it is imperative should be performed before the contract can be enforced by the party who is to perform the condition, or, as it is sometimes expressed, it is a condition upon which the contract is dependent.

Non-performance of it will give a right to rescind.

It is often difficult to distinguish between such a condition and a condition which is independent or merely collateral.

This latter is generally called a warranty. It must form part of the contract or it will be a mere representation on which no action will lie. But see Common Law and Equity rule, *supra* p. 418.

The breach of a warranty gives a right to an action for damages but not to rescission of the contract. A warranty given subsequent to the contract will be void unless there be some new consideration.

A warranty may be expressed or implied. The following warranties will be implied in the sale of goods:—

(A) TITLE.—In an executory contract of sale there is an implied warranty that the vendor has title to the goods which he promises to sell.

In the sale of an ascertained specific chattel, it is doubtful whether the mere act of sale simply transfers such title as the vendor has, or whether there is an implied warranty that an absolute title will be transferred, but if the vendor asserts, either by his words or by his conduct, that he is the owner, there is an implied warranty. The trend

of the recent authorities is to imply a warranty unless the circumstances are such as to show that the vendor merely intended to sell only such property as he may have.

American authorities distinguish between the cases when a party is in possession and when not.

The rule that a mere sale carries a warranty of title is adopted in the English, British Columbia, Manitoba and N. W. T. Acts.

(B) QUALITY.—As a rule, no warranty as to quality will be implied.

When the sale is of an existing chattel which may be inspected by the buyer, there is no warranty of quality implied.

When there is a sale by sample there is an implied warranty that the bulk will correspond to the sample, and that the buyer shall have a reasonable opportunity of comparing the bulk with the sample, and if the sale be by a manufacturer, there is an implied warranty that the sample is free from any latent defect.

When a known, described and defined thing is ordered of a manufacturer, though the purchaser states that he requires it for a particular purpose, there is no implied warranty that it will be fit for that purpose, unless the circumstances are such that the purchaser necessarily trusts to the judgment or skill of the manufacturer or dealer, in which case there will be an implied warranty that the article produced by the manufacturer, or dealt in by the dealer, will be reasonably fit for the purpose to which the buyer states it is to be applied.

And when a manufacturer or other person whose business it is to supply goods of a particular description undertakes to supply such goods, and the vendor has had no opportunity of inspecting them, there is an implied warranty that he shall supply a merchantable article.

A warranty may be implied by the usage of trade

In the case of the sale of goods by description, it is a condition precedent and not a warranty that the goods shall correspond with the description, and if they do not do so, the contract may be rescinded, and the buyer, if he have paid his money, may recover it back as on a consideration which has wholly failed.

When there is a warranty as to quality, and the property has not passed, if the warranty is broken the purchaser may reject the goods and rescind the contract, unless he has accepted them.

When the property has passed or the purchaser has accepted, he cannot reject the goods, but in an action by the vendor for the price, he may offset the breach of warranty against the price, or he may bring an action for damages for the breach of warranty.

If he have offset the breach in an action for the price, this would not prevent him from maintaining an action for special damage.

Delivery.—As pointed out by Benjamin, 4th Ed., pp. 677 *et seq.*, the term delivery is used in several different senses, but it will be sufficient here to confine our attention to delivery in performance of the contract.

Delivery and payment are as a rule concurrent conditions,

but if the sale be on credit the buyer is entitled to possession before payment. In such case the property is vested in him and he has the right to possession. This right to possession may, however, be defeated on his becoming insolvent before the actual delivery to him, the vendor being entitled to stop the goods in transition, if they have been despatched, or to refuse to give them up till payment, if he have not parted with them.

In the absence of contrary agreement express or implied, the vendor is not bound to send or carry the goods to the buyer. It will be a sufficient delivery if they be left for the buyer at the seller's place of business, so that the buyer may remove them without obstruction.

If, however, the goods are specific goods, and are known to the parties to be at some other place at the time the contract is made, such place will be the place of delivery. "If the seller have no place of business, then his residence will be the place of delivery. See Imp. B. C. and Man. Acts, which it is submitted contain a correct statement of the Canadian Law, though Benjamin says that, in the absence of stipulation, the place at which goods are at the time of sale is the place of delivery.

"Delivery F. O. B. 'Free on board,' means that the seller is to put the goods on board at his own expense, on account of the person for whom they are shipped, and the goods are at the risk of the buyer from the time when they are so put on board."

When the goods are in the possession of a third person, there is no delivery till that third person attorns or becomes the bailee of the purchaser, but see below as to effect of endorsement of bill of lading, or document having similar effect.

When under the contract the seller is bound to send the goods, and nothing is said as to time of delivery, he must send them within a reasonable time.

When the time and place of delivery have been fixed, the purchaser is not bound to stay at such place to receive the tender after reasonable business hours, but if the vendor find him there, a tender of delivery at any time before midnight on the last day will be a good tender, provided there be a sufficient time for conveniently weighing the goods or doing other such act necessary to complete the delivery.

Delivery must be of the exact amount contracted for. If a less quantity is delivered, the purchaser may return it, and so he can if more is sent, or if the goods purchased are mixed with goods of a different description, because he is not bound to separate those he has bought from the others, though he may do so if he wish, returning the excess. If, however, in any of the above cases he wants to keep the goods, he must pay for them at the current price.

The expression, "more or less," or some similar expression is often used, and this entitles the vendor to a reasonable variation from the amount specified in the contract.

When the vendor is bound to send the goods to the purchaser it is a good delivery if he deliver them to a common carrier, or to one designated by the purchaser, unless, of course, the vendor have agreed to deliver them at a distant

place, when he would be responsible for them till they had been delivered by the carrier. But, even in this latter case, he is not liable for deterioration necessarily incident to the transit. The vendor must make a reasonable contract with the carrier, and take the usual precautions to ensure a safe delivery, having regard to the circumstances of the case.

The purchaser must be afforded an opportunity to inspect the goods before he is bound to accept them on delivery being tendered.

A purchaser will be deemed to have accepted goods when he has done any act which he would have no right to do if he were not owner, such as pawning them, or if he do not, within a reasonable time after receiving them, notify the vendor that he rejects them. He need not return them to the vendor.

Delivery by Instalments.—Purchaser need not accept delivery by instalments unless the contract provide for such delivery. When the contract is for delivery by instalments, a question often arises whether, when there is a failure to deliver or pay for any instalment or any part of an instalment, the party aggrieved has a right to rescind the contract, or has only an action for damages. Whether he has or not must depend on whether the delivery of the instalments regularly, or the payment on such delivery is a condition precedent or not.

VENDOR'S LIEN, ETC.—When the property has not passed the vendor cannot be said to have a lien or the right of stoppage in transitu, because he has the property itself in the goods, and may on default re-sell or deal with them in any other way he may choose, and if he have parted with the possession he may on default resume it. When there was a provision that the property should not pass till payment in full, and that the vendor would be entitled to resume possession on default, it was held by the Court of Appeal for Ontario that a re-sale by the vendor rescinded the contract, and the vendor could not sue for the price crediting the amount of the re-sale, and it was further held that this is so even if there be an express reservation of the right to re-sell unless there is a provision that the purchase money is to be applied "*pro tanto*" on what is due on the contract, and the purchaser is to remain liable for the difference.

When, however, the property in the goods has passed, a re-sale will not rescind the contract, though it may give the purchaser a right to sue for conversion. But, if there be an express reservation of the right to re-sell, it would seem that, even where the property has passed, a re-sale will rescind the contract though the exercise of the right of lien or stoppage will not.

Whether the property has passed or not, vendor may, if he has delivered part, refuse to deliver the remainder.

If the property has passed and the vendor has parted with possession he loses his lien.

If he has not parted with possession he still has his lien though the property has passed.

If the goods are in transit he can exercise his right of stoppage in transitu, though the property has passed.

Transit is at an end when the purchaser has obtained possession of the goods.

If the vendor sells on credit he has waived his lien though the goods are left in his possession, but if the purchaser become bankrupt before the vendor has parted with the actual possession, his lien revives even though the period of credit has not expired, or if he has not parted with the actual possession and the period of credit has expired, his lien revives.

It makes no difference that the purchaser has sold to a third party, unless a bill of lading, or in some Provinces a document having a like effect, has been transferred to the third party, or the vendor has been estopped from disputing his title.

In England it has be n enacted (52 and 53 Vict., cap. 45, sec. 10) that when any "document of title has been lawfully endorsed, or otherwise transferred to such third person, such endorsement or transfer has the same effect of defeating the vendor's lien or "right of stoppage in transitu" as the transfer of a bill of lading has for defeating the right of stoppage in transitu.

The Statutes of British Columbia have the same provision. R. S. B. C. cap. 4, sect. 11.

The provision contained in 59 Vict., cap. 25, sect. 44, Man., R. S. B. C. 169, sect. 57, and in the Eng. Act, 56 and 57, cap. 71, sect. 47, although worded differently, has the same effect.

Document of title is defined to be any bill of lading, dock warrant, warehouse keeper's certificate and warrant. or order for the delivery of goods, and any other document used in the ordinary course of business, as proof of the possession or control of goods or authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented.

This definition is very much the same as in the Ontario Factors' Act, R. S. O. 150, but there is no provision in the Ont. Statutes corresponding with the above, except those contained in R. S. O., chap. 145.

By sect. 7 of that Act it is provided that certain documents, (cove receipts, bills of lading, specifications of timber, etc., see Act), may by endorsement be transferred to any private person as collateral security for any debt due to him, and being so endorsed shall vest in him from the date of the endorsement all the right and title of the endorser to or in the goods represented by such document, subject to the endorser's right to have the same re-transferred if the debt is paid.

The expression "private party" is explained by the fact that the section originally applied to banks, and the words "private parties" were used in contradistinction to "bank." The provisions of this section are contained in a modified form in the present Bank Act

Section 8 of the same Act extends the same powers of endorsement to cases when persons specified in the preceding section are owners of the goods, or entitled to receive them otherwise than in the capacity of cove keeper, etc.

This section was passed because it had been held that any of the persons specified in section 7 must, in order to come within its provisions, have been a bailee of the goods, and not himself the owner. The Bank Act does not contain a corresponding section.

Section 11 provides that:—"All advances made on the security of any such cove receipt, bill of lading, specification receipt, acknowledgment or certificate as aforesaid, shall give and be held to give to the person making the advances a claim for the re-payment of such advances on the cereal grains, goods, wares or merchandise therein mentioned prior to, and by preference over, the claim of any unpaid vendor or other creditor save and except claims for wages of labour performed in making and transporting such timber, boards, deals, staves, or other lumber."

Except as above modified, the old Common Law rule which enables the buyer, if the seller have wrongfully resold the goods, to follow them into the hands of an innocent purchaser, is still in force.

Principal and Agent.—An agent may as a rule be appointed without any special formality. The mere fact that a man by his conduct recognizes another as his agent is sufficient to constitute him such. In the following cases, however, some formality is generally required.

1. An agent appointed for any of the purposes specified in the First, Second or Third Sections of the Statute of Frauds, must be appointed in writing.

2. An agent appointed to execute a deed must be appointed by deed.

3. A person appointed an agent to a corporation other than a trading corporation must in general be appointed by deed.

The writing required by the 4th and 17th Sections of the Statute of Frauds may be signed by an agent duly authorized, but he need not be authorized or appointed by writing.

An infant, though unable to make a contract which will bind himself, may yet act for a principal, and bind his principal.

An agent may not employ sub-agents unless it is customary in the ordinary course of trade, or unless the circumstances render it reasonable that he should do so.

Partners are agents for each other, and the act of one will bind the others if he be acting within the scope of the partner's business.

Agents may be special agents, general agents, or universal agents. The last is not necessary to notice here.

Special and general agents.

(*a*) A special agent is an agent who is given authority to do some specified act or set of acts, and the principal will not be bound if he exceed his authority.

(*b*) A general agent is an agent authorized to do all acts necessary for the carrying on of some particular trade, business, or employment; or who, from the conduct of the principal, must be taken to be so authorized. The principal will be bound even if the agent exceed his authority, provided the agent is acting within the ordinary scope of his employment, and provided the parties dealing with him were dealing with him as general agent, and had no notice that he was exceeding his authority.

It may, therefore, be stated generally that a purchaser buying goods from an agent, or a person advancing money on the security of goods, must, in order to bind the principal and

thus acquire a good title to the goods, deal with a special agent acting strictly within the scope of his authority, or a general agent acting in the ordinary course of his business.

As a great deal of business is done through agents, such as factors or commission merchants, much inconvenience was caused to the mercantile world by this rule of the Common Law, and the Imperial Legislature has at different times passed Acts protecting innocent third parties in dealing with agents to whom goods were entrusted. The latest of these is 52 and 53 Vict., c. 45. The effect of the Statutory provisions will be found set out in Smith's Mercantile Law, 10th ed., pp. 145 *et seq.* An Act practically identical with the English Act has been passed in British Columbia, R. S. B.C., cap. 4.

The provisions of the Ontario Act seem to be substantially the same as one of the earlier Imperial Acts, 5 and 6 Vict., cap. 39, the later English legislation not having been adopted.

The present law in Ontario is the same as that which was in force in England when the cases of Johnson v. Credit Lyonais, 3 C. P D., and Fuentes v. Montis, L. R., 3 C. P. 268, were decided, and a third party dealing with an agent whose authority had been revoked would probably not be protected by the Ontario Act.

It has been held that the Ontario Act applies only to persons whose employment corresponds to some known class of commercial agent, such as the class of factors or commission merchants, and does not apply to men servants or caretakers, or to one who has possession of goods for carriage, safe custody, or other such purpose, or to a person not being a regular agent to whom an article is sent for some specific purpose, even though that purpose be to effect a particular sale.

Manitoba Sales of Goods Act, sec. 24, contains the same provision as the English Factors' Act, 52 and 53 Vic., cap. 45, secs. 8 and 9. Subject to any statutory enactment of this Province, the Factors' Acts passed up to and including the 5 and 6 Vic., c. 39, and in particular therein.

See Vendors' Lien, *infra*.

Principal disclosed or undisclosed.

(*a*) If an agent is known to be an agent, and his principal is disclosed, the contract is made with the principal.

It often happens that an agent, when making a contract, does not disclose the name of his principal, or does not even disclose that he is acting as agent. In either case the party with whom he is dealing may elect as to whether he will hold the principal or agent, unless the state of accounts between principal or agent would make it unjust that the principal should be bound—if, for instance, the principal has paid the agent, and the agent is bankrupt—provided (it would seem) that such payment or settling accounts between principal and agent may be fairly attributable to the laches or other conduct of the party dealing with the agent.

When a person represents himself to be an agent, but is not in fact an agent, and has no principal, he will be liable either on the contract as principal or on an action for damages for his misrepresentation, unless he had had at one time

authority, and it had been determined without its being possible for him to know of such determination.

When an agent contracts for a foreign principal, the agent will be *prima facie* liable.

It should be remembered that the above rules are all subject to the broader rule that it is the intention of the parties which determines who is to be liable, but in the absence of evidence of intention or usages of trade the above rules will govern.

Notice to the agent, or knowledge of the agent, is in general notice to or knowledge by the principal.

The principal will also be liable for torts or wrongs committed by his agent in the course of his employment.

The authority of an agent may, as a rule, be revoked at any time, and death generally revokes it. If, however, the authority has been partly executed, and cannot be withdrawn without injuring the agent, or if the authority be coupled with an interest or given for valuable consideration, it cannot be revoked at will, though it would seem that even in these cases it will be revoked by death.

By R. S. O. (1897), c. 116, ss. 1-2, and R. S. Man., c. 146, ss. 44 and 45, it is enacted that:

When it is provided by power of attorney that it shall not be revoked by death of person executing, such power shall be valid and effectual. Independently of such power, every payment made, and any act done under a power of attorney or agency, express or implied, after death or revocation, shall, as respects every person who did not know of the fact of such death or revocation, be valid. The British Columbia Statutes have not this provision, but they provide that power of attorney shall be valid till a declaration of the death, bankruptcy, insolvency or (if a female) marriage of the principal of any such power shall be filed.

The amount of an agent's commission is regulated either by express contract, implied contract, or usage of trade. In the case of implied contract if there be no usage of trade to fix the amount, it is a matter to be ascertained by the jury.

Limitations of Actions.—At Common Law, when a right of action had accrued, the action could be brought at any time. This right to bring an action at any time has, however, been modified by various statutory enactments. 21 Jac. I., cap. 16, sect. 3, provides that "all actions of account and upon the case, all actions of debt grounded upon any lending or contract without specialty, and all actions of debt for arrearages of rent shall be sued within 6 years next after the cause of such action or suit, and not after."

In Ontario, R. S. O., cap. 111, section 2, provides how far this statute shall be applicable to that province

R. S. O. cap. 72, section 2, provides that all actions of account or for not accounting, or for such accounts as concern the trade of merchandise between merchant and merchant, their factors and servants, shall be brought within 6 years, and the time will not be interrupted by reason only of some matter or claim comprised in the same account having arisen within the 6 years. This same provision is contained in the Statutes of

British Columbia, R.S.B.C. cap. 123, sect. 4, and also in the Statutes of Nova Scotia, R. S. N. S. cap. 112, sect. 6.

The New Brunswick Statute has no corresponding provision, but Consolidated Statutes N. B., cap. 85, after certain provisions as to actions on judgments, recognizances, bonds or other specialties, and for actions for penalties under a Statute, and for assault, battery, wounding, imprisonments or words, enacts that no other action shall be commenced, but within 6 years.

In Manitoba, there is no Statute relating to limitation of personal actions, but as the law in force in England on the 15th of July, 1870, so far as applicable, is in force in Manitoba, the 21 Jac. I., cap. 16, above referred to, would be in force there.

It is further provided by R. S. O. cap. 72, that if a person is under disability by reason of being a minor or *non compos mentis*, the time begins to run from the time the disability is removed. The residence of the plaintiff out of the province will not constitute a disability; if, however, the defendant is out of the province at the time the right of action accrues, the Statute will run from the time of his return.

In the case of joint debtors, the absence of one from the province will not stop the Statute running against the other or others, but the recovery of judgment against those within the jurisdiction will not be a bar to an action against the other on his return.

Acknowledgment or part payment will take the case out of the Statute, and the time will commence to run afresh from the date of such part payment or acknowledgment.

By R. S. O., cap. 146, sect. 1, in the case of an action for account, and upon the case other than such as concern the trade of merchandise between merchant and merchant, their factors and servants on simple contract, or of debt grounded upon any lending or contract without specialty, and of debt for arrears of rent, the acknowledgment must be in writing, and may be signed either by the party chargeable, or his agent duly authorized.

In the case of two joint contractors, acknowledgments by one will not remove the bar as to the other.

No endorsement made on a bill or note by or on behalf of the party to whom the payment has been made shall be deemed sufficient to take the debt out of the Statute.

Similar provisions as to disability, residence of the defendant out of the province, joint contractors, and acknowledgment or part payment, including the provision as to endorsement on a bill or note, are contained in the Statutes of British Columbia, R. S. B. C., cap. 123.

These differences may, however, be noted.

The acknowledgment in writing which may be signed by the party or his agent, extends to all cases of debt, or upon the case, founded on any simple contract, and is not limited as in R. S. O. cap. 146, sect. 1, above set out.

The same remarks apply to New Brunswick Con. Statutes, N. B., cap. 85, except that there is no provision that the acknowledgement in writing may be signed by an agent, and no provision as to action against one joint contractor when the other is out of the province.

The Ontario Statute is the only one which has the pro-

vision that residence of the plaintiff out of the province will not constitute a disability, but it is presumed the same rule applies in the other provinces.

(The practical result is that in all the above mentioned provinces, an ordinary debt is barred within 6 years, unless it is taken out of the Statute, by part payment, or an acknowledgment in writing.)

Interest.—By sec. 91 of the B. N. A. Act, interest is one of the things to which the exclusive legislative authority of the Dominion extends.

By R. S. C., c. 127, section 1:—

Any person may stipulate for any rate of interest which is agreed upon.

Section 2:—When no rate is agreed upon or fixed by law, the rate shall be 6 p.c. per annum.

The other sections of the Act still in force relate to interest upon mortgages. The act originally contained sections making special provisions for the provinces of Ontario, Quebec, New Brunswick, Nova Scotia and Prince Edward Island; these, however, have been repealed by 53 Vict., cap. 34, section 2 (Dom.). One of the effects of this amendment is to abolish the provisions as to usury which were formerly in force in some of the provinces.

The Act has been further amended by 60 and 61 Vict., cap. 8 (Dom.).

The effect of this amendment is to make it compulsory to show the rate of interest per annum on the face of the instrument; if this is not done, but the rate fixed at so much per day, week, month, etc., only 6 p.c. per annum can be recovered.

Any excess of interest over 6 p.c. per annum paid on any agreement which does not comply with the above provision may be recovered back. This Act does not apply to mortgages on real estate. Another amendment is contained in 57 and 58 Vict., cap. 22, which applies, however, to British Columbia only, and deals with interest on judgment debts.

It has been laid down by some of the authorities that, apart from statute, interest cannot be allowed by way of damages, unless it be stipulated for in the contract. It is submitted, however, that interest may be allowed in the way of damages whenever payment of a just debt has been withheld.

In Ontario, by R. S. O. cap. 51, sections 113 and 114, it is enacted that interest shall be payable in all cases, in which it is now payable by law, or in which it has been usual for a jury to allow it.

Also, that it may be allowed upon any debt, or sum certain, payable by virtue of a written instrument at a certain time, from the time when the debt or sum became payable. If payable otherwise than by a written instrument, from the time that a demand of payment is made in writing, informing the debtor that interest will be claimed from that date.

These provisions were taken from the Statute of Upper Canada, 7 William IV, cap. 3, sec. 20, which in turn was copied from the Imperial Act, 3 and 4 William IV, cap. 42, sections 28 and 29.

These provisions do not appear to be contained in the Statutes of the other Provinces, but will presumably be in force in the Provinces in which the English law was adopted subsequent to 7 William IV., cap. 3.

Partnership.—Partnership is defined in the Manitoba Code as:—The relation which subsists between parties carrying on a business in common, with a view to profit.

But the relationship between any incorporated company or association is not a partnership.

This definition will be found applicable to all the provinces, except that the British Columbia Act limits the exception to certain registered companies and companies formed or incorporated by or in pursuance of any Statutes, Letters Patent or Royal Charter.

It used to be thought that the fact of sharing in profits would in itself constitute a partnership, but the rule is now settled that, though it is evidence of a partnership, it is not conclusive evidence. This rule was settled by decisions of the Courts in England, before the passing of the Partnership Act, and it has been adopted in that Act, and also in the Manitoba and British Columbia Acts, R. S. B. C., c. 150, and 60 Vict. (Man.), cap. 24. Apart, however, from Statutory provisions the rule is as above stated, and is in force not only in Manitoba and British Columbia, but in all the other provinces.

It is to be found in sec. 2 of the English Act, sec. 3 of the British Columbia Act, and sec. 2 of the Manitoba Act.

These sections provide, *inter alia*, that the sharing of gross returns will not of itself constitute a partnership, and that receipt by a person of a share of the profits of a business is *prima facie* evidence that he is a partner in the business, but the receipt of such a share or of a payment contingent on or varying with the profits does not of itself make him a partner in the business. The section then goes on to give the following particular instances in which a person sharing in the profits is not necessarily a partner; the receipt by a person of a debt or other liquidated amount by instalments out of the accruing profits of a business; a contract for the remuneration of a servant by a share in the profits; the case of a widow or child of a deceased partner receiving by way of annuity a share of profits; the advance of money interest on which is to vary with the profits (provided such contract is in writing signed by or on behalf of the parties); a person receiving profits by way of annuity in consideration of sale of good will. In none of these cases is the person receiving a share of the profits necessarily a partner.

By sec. 3 of the English Act, sec. 4 of the British Columbia Act, and sec. 3 of the Manitoba Act, it is provided that in the event of any person to whom money has been lent in the way above specified or any person who has given an annuity out of a share of the profits, becoming bankrupt, etc., the person advancing the money or entitled to the annuity shall not be entitled to recover anything till the claims of the other creditors have been satisfied.

The above provisions were originally contained in the Act known as Bovills' Act, and as pointed out by Pollock, 6th Ed., p. 17, that act was an attempt to introduce in a modified de-

gree the principles of limited partnerships such as are recognized in this country. In this country, limited partnerships are fully recognized.

In Ontario the provisions relating to Limited Partnerships are contained in R. S. O. 151. By sec. 1 of that Act it is provided that limited partnerships for the transaction of any mercantile, mechanical, manufacturing or other business within Ontario may be formed by two or more persons, but partnerships for banking, construction and working of railways or making insurance are prohibited, these being matters for the Dominion Legislature.

The Act then distinguishes between general and special partners, and provides that any such partnership may consist partly of one and partly of the other.

A special partner is one who contributes capital, but does not take any active part in the business. The Act provides that special partners shall not be liable beyond the amounts contributed by them, but general partners shall be jointly and severally liable. Only the general partners shall be authorized to transact business, sign for the partnership and bind the same, and the business shall be conducted under a name or firm in which only the names of the general partners shall be used. If a special partner allows his name to be used, he shall be deemed a general partner.

The persons desirous of forming such a partnership must sign a certificate setting out the name of the firm, the names of the general or special partners, showing which are general and which are special, and their places of residence; the amount of capital stock which each special partner has contributed; and the time of commencement and termination of the partnership.

The amount of stock contributed by special partner shall not, at any time, be reduced below the original amount, but he may receive lawful interest and a share of the profits, provided such receipt of profits does not diminish the original amount contributed.

The special partner is not to transact any of the business of the partnership, or be employed as agent, attorney or otherwise, or he will be deemed a general partner.

As in the English Act, his claim in the event of insolvency is postponed to the claims of the other creditors.

The Brit. Col. Act, R. S. B. C. 150 contains provisions substantially the same as the English Act, and also embodies the provisions of the above Ontario Act.

In Manitoba, as above mentioned, the provisions of the Ontario Act are embodied in the R. S. M., cap. 114, and those of the English Act in 60 Vict., cap. 24.

In New Brunswick, 52 Vict., cap. 4 (which was substituted for 45 Vict., cap. 24), contains practically the same provisions as the Ontario Act, as does the Nova Scotia Act, R. S. N. S., cap. 83.

The following differences in the Acts may be noted:—In Ontario, New Brunswick and Manitoba, "general partners are jointly and severally liable, as general partners are by law."

In the corresponding section of the British Columbia Act, section 49 R. S. B. C. 150, the words "general partners are jointly and severally liable," etc., are omitted, presumably

leaving the rule as to ordinary partnership, contained in sec. 10 of the same act to apply to this class of case.

This rule as to ordinary partnerships was settled in England by *Kendall vs. Hamilton*, 4 A. C. 504, and is that the liability is joint except only as to the estate of a deceased partner in due course of administration, and except in certain cases of misapplication to be noticed hereafter.

In Ontario this was held to be the rule as to ordinary partnerships. See *Gildersleeve vs. Balfour*, 15 Pr. 283.

R. S. Man., c. 114, sec. 18, has the same rule as to limited partnerships as the Ontario Act, i. e., jointly and severally liable. While sec. 9 of 60 Vict., cap. 24, Manitoba has the same provision as to ordinary partnerships as is contained in the English Act, i. e., liability joint only.

The Nova Scotia Act provides in dealing with these limited partnerships that "general partners shall be responsible as general partners are now."

The result may, we think, be safely stated as follows. In the case of ordinary partnerships, the rule in all the provinces is, that the partnership liability is joint only, except in case of the deceased partner, and in certain cases of misapplication as above mentioned.

In the case of limited partnerships:—In Ontario, New Brunswick and Manitoba the liability of general partners is joint and several, while in the other provinces, which recognize limited partnerships, the rule as to ordinary partnerships applies also to this class.

It is suggested that this above-mentioned provision in the Ontario, New Brunswick and Manitoba Acts was passed under a misconception of the law as to ordinary partnerships, and that the provision has through inadvertence, not been altered in the revisions.

Pollock points out, in his 6th Ed., and it was also pointed out in the Judgments in *Kendall vs. Hamilton*, that it used to be thought before the decision of that case that by the English rule of equity, partnership debts were joint and several, and that misconception may have become crystalized in these Acts.

In all the provinces acts are in force providing for the registration of co-partnerships.

These acts make it compulsory to register a declaration or certificate showing the persons from time to time comprising any partnership for trading, manufacturing or mining purposes.

In Ontario, these provisions are contained in R. S. O., cap. 152.

In New Brunswick in Con. St. N. B., cap. 97, part II.

In Nova Scotia in R. S. N. S., cap. 83.

In Manitoba R. S. M., cap. 114.

In British Coumbia R. S. B. C., cap. 150.

In N. W. T., cap. 46 of Revised Ordinance.

The provisions in British Columbia, Manitoba, Ontario, N. W. T. and Nova Scotia are substantially the same, and the acts in these provinces also make it compulsory for any person not in partnership engaged in business for trading, manufacturing or mining purposes, who uses some other name than his own, or uses his own name with the addition of Co. or some other word or phrase indicating plurality in number, to file a declaration showing the real circumstances of the case

The Nova Scotia Act contains the words "or other purposes" after "trading, manufacturing or mining."

The following general rules, taken principally from the above acts, will be found applicable in the other provinces.

As stated at p. 422, if a general agent is acting within the apparent scope of his business, his principal will be bound by his acts. Every partner is a general agent of the other partners for the purpose of the business of the partnership, and the general rules as to principal and agent apply, so that if a partner is acting within the apparent scope of the partnership business, the other partners will be bound by his acts, unless he has in fact no authority, and the person with whom he is dealing either has notice that he has no authority, or does not believe him to be a partner.

The acts by which a partner can bind the firm will depend upon the nature of the business. Every partner will be deemed to have any power which is necessarily or usually incident to the exigencies of the business, and the exercise of any such power by one partner will bind the rest.

Thus the acceptance and making of bills, notes, and other negotiable instruments, or borrowing money, are usual and necessary incidents to a trading partnership, so that in such a partnership the acceptance by one partner of a bill or note will bind the others.

If, however, the partnership were one to which these powers were not necessarily or usually incident, the other partners would not be bound by an Act of one unless he had express authority.

Pollock, 6th Ed., page 29, gives a number of examples of Acts by which one partner may bind the others, and see Lindley, 6th Ed., page 140, *et seq.*

One partner has no implied authority to bind the others by deed. In order to do so he must have express authority which must itself be under seal.

Just as a general agent cannot bind his principal if acting outside the scope of his usual business, so a partner cannot bind his co-partners by acts which are apparently not within the scope of the partnership business, unless he is specially authorized to do so. Thus a firm cheque given by one partner in satisfaction of a private debt will not bind the firm, unless he has express authority, or the other partners by their acts are estopped from denying his authority.

Every partner is jointly and severally liable where one partner acting within the apparent scope of his authority, receives money of a third party and misapplies it, or where the firm receives money of a third person in the ordinary course of its business, and it is mis-applied by one of the partners.

If a man holds himself out, or permits himself to be held out as a partner, he will be estopped from denying the liability of a partner, but in the case of a partner dying, his estate will not be held liable by reason only of the firm continuing to use his name.

Pollock, in his 6th Ed., says:—

"It makes no difference even if the creditor knows of the existence of an agreement between the apparent partners that

the party lending his name to the firm shall not have the rights, or incur the liabilities of a partner."

The Court of Appeal for Ontario has held, (in a case where a certificate had been filed showing that there was only one partner) that where the creditor knows that the person lending his name is not in fact a partner, there will be no estoppel.

A new partner does not necessarily become liable for debts contracted before he was a partner, nor does a retiring partner necessarily cease to be liable for such debts. Novation is a contract of substituted liability. It arises in connection with partnerships when the new firm has assumed the liability of the old firm, and the creditor has agreed to accept the new as its debtors, and discharge the old one. *Cf.* Pollock, 6th Ed.

It has been held by the Supreme Court that an agreement between an incoming and continuing partner, that the incoming partner shall assume the liabilities of the business does not make the latter trustee of the former's property for the payment of his liabilities.

A continuing guaranty given either to a firm or to a third person in respect of the transactions of a firm is revoked as to future transactions by any change in the constitution of a firm.

No majority of partners can expel any partner unless a power to do so has been expressly conferred by the articles of partnership, or otherwise.

A partnership is dissolved by the death or bankruptcy of any of the partners.

If it has been entered into for a fixed term, it is dissolved by the expiration of that term.

If entered into for a single adventure or undertaking, it is ended by the termination of that adventure or undertaking.

If it is entered into for an undefined time, it is terminated by any partner giving to the others notice of his intention to dissolve.

Common Carriers.

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Common carriers.—This term is applied in law to certain persons or companies who undertake the duties of transportation for hire, and by holding themselves out to the public as willing to undertake this duty, assume certain obligations as to the manner in which their duties are to be performed. The term is applied to carriers of goods, not passengers, and implies an actual moving of the property from one place to another. If, owing to some fault of the sender or receiver, the carrier is unable to begin this transportation or to complete it, or the goods remain undelivered at the end of their jour-

ney, the liability becomes that of warehouseman, and is not so great. If these conditions are not present then the full liability as carrier attaches, and in the absence of statute or agreement to the contrary, is as follows:—He must convey all goods offered which he expressly or impliedly professes to carry, and which are not contraband or unusually dangerous, to the full extent of his carrying capacity, provided the fare (which must be reasonable, though not the same for all customers) is paid, he must use all care, and provide all known means to which prudent carriers of his class ordinarily resort to ensure safety in transportation, and is liable far their value no matter how difficult or impossible it was to prevent any damage, destruction or loss which they suffered, unless the latter were occasioned by the act of God, (any irresistible operation of nature which the carrier could not reasonably forsee), or some rebellion or foreign enemy, or where the damage has arisen from some inherent vice or defect in the thing itself, not existing in ordinary articles of the same description, or from the fault of the sender, such as goods improperly packed, where the defect is not apparent on the face of it. Railway companies, state-coach owners, and express companies, are very usual examples of common carriers to whom these rules apply, unless some agreement or statute alters them. Where, however, the sender or consignee retains some control over them during transit, and the damage happens through his fault or negligence, and not that of the carrier or his servants, the former cannot recover, as where a passenger takes his luggage with him into the car or carriage, and through his carelessness loses or injures it, the carrier is not liable.

Ship-owners are common carriers, and must provide sufficiently seaworthy vessels, and proper accommodation, and navigate properly, and failing in any of these points will be liable for resulting damage.

CANADIAN AND MANITOBAN STATUTES.

Notices and agreements limiting liability.—Freedom of contract is regarded as sacred by the English Law, and unless the parties contravene the express provisions of a statute or some rule of law based on public policy, there is scarcely any general rule which they cannot modify or abrogate by a special contract. By this means, the stringent liability of carriers may, in any particular instance, be avoided or altered in nearly any way the parties choose, provided it is clear that they have expressly agreed to do so, and naturally enough, it is generally done, either by a general or by a special contract.

If a carrier hangs up a notice in his office so that a shipper may see it if ordinarily observant, whereby his liability is limited in any special manner, then the shipper will be bound by its terms, and if loss occurs in any manner in which the former has declined to accept the risk, the latter cannot recover on the grounds that he knew, or ought to have known, the terms on which the goods were shipped, and cannot afterwards depart from them. So with contracts such as written or printed bills of lading. If the shipper knew, or might

reasonably find out that goods are shipped on certain terms limiting the carriers liability, he is bound, and even though the contract or notice relieves the carrier from the consequences of his own, or his employees' negligence, the shipper cannot recover provided its terms are precise enough. It may be remarked that as this is a departure from the general rule of law, it will be strictly construed, and the shipper will be given the benefit of any doubt arising from ambiguous wording.

STATUTES GOVERNING (*a*) *Railway Companies.*—As may be supposed, carriers extended the effects of their notices and agreements lessening their liability so that practically no liability remained, and to reduce the evil consequences of this, Parliament has, in some cases, intervened to prevent too ready an escape. The chief Statutory restriction relates to Railway Companies; the Dominion Railway Act, which controls Canadian Railways, providing (sec. 246, ss. 3), that no railway shall be relieved by any notice, condition or declaration if the damage arises from any negligence or omission of the company or its servants. This applies to the carriage of either passengers or goods, but, while it cannot by agreement escape from the consequence of its own negligence, it may limit the amount of its liability to any reasonable amount that may be agreed upon before the goods are shipped. The terms of this statute are embodied in the various provincial acts that govern purely local railways.

(*b*) *Carriers by water.*—The liability of such carriers is controlled by Dominion Act, R. S. C., cap. 82, which enacts that they must, in the absence of sufficient cause preventing them, convey any class of passengers or freight, which they by public notice hold themselves out as willing to carry, and shall be responsible for all goods so received on board their vessels or delivered to them for the purpose of being put on board, and must use due care and diligence to provide for safe keeping and punctual delivery, and will be liable for all damages or loss to goods so delivered to them, but are not liable for losses by fire, dangers of navigation, robbery, or irresistible force which happened without their actual fault or privity or that of their employees or agents, nor are they to be liable for robbery, theft, embezzlement, or the secreting of goods of great value (such as precious stones or securities), unless the value has been declared when delivered to them, and entered in the bill of lading or otherwise by writing. They are also liable for loss or damage to personal baggage of passengers, the extent of which shall, until contradicted, be proved by a statutory declaration of the passenger, but the liability shall not exceed $500.00 unless the value of any articles, such as precious stones or exceedingly valuable goods had been notified to the shipper before loss as before provided.

(*c*) *Carriers of cattle.*—The Public Health Act of Manitoba (R. S. M., cap. 5, secs. 45 to 47) provides that vessels, cars or other conveyances used in transporting cattle shall be disinfected, swept, scrubbed and lime-washed, after any consignment of cattle has been unloaded.

(*d*) *Cruelty to animals.*—The Dominion Act (R. S. C., cap. 172, sec. 8-13) provides as regards railways running from the

States to Canada, or from one province to another, that cattle must be unloaded at least every 28 hours for a space of 5 hours to rest, water and feed them, unless prevented by unavoidable delays or other obstacles, and the cattle must be fed, watered and the cars cleaned out. Any railway disobeying this will be liable to a fine of $100.00.

Bills of Lading and shipping receipts.—These are the terms generally applied to the acknowledgments given by a carrier when receiving goods, and they contain the terms upon which the carrier agrees to receive and carry them. These terms are binding on all parties, subject to the statutory restrictions already mentioned. To some extent these bills or receipts become a symbol of property, and pass the ownership of goods from one to another, but with this carriers have nothing to do, provided they are careful to deliver the goods to the person designated in the bill. If deliverable only to the consignor, he alone can receive them unless he makes some other valid disposition of the bill. If deliverable to consignee, he is the one to receive; if to be delivered to the order of any one, an endorsement of the name of the person to whom they are consigned will entitle the holders of the bill to receive the goods. If consigned to bearer, the holder of the bill is entitled to the goods on presentation and delivering up of the bill, and payment of all proper charges.

It is important that in all cases the bill or receipt be produced and delivered up by the person claiming the goods, and if goods are delivered without requiring this, and any one else shows himself, and proves the rightful holder, the carrier will be liable to him for the value of the goods.

In Ontario, by R. S. O., cap. 145, sec. 5, sec. 3, no one giving a bill of lading can deny afterwards that he has received the goods unless the owner was expressly notified that they were not on hand.

Stoppage in transitu.—Where goods are consigned by a vendor to a purchaser who has not paid for them, and before delivery to the latter or before he has legally assigned the bill in good faith and for value, the purchaser fails, the vendor may require the carrier to hold the goods, and deliver to him on payment of all charges.

Warehousemen.—This subject is closely allied to that of carriers, but the difference in liability is important, for a warehouseman, is bound to use only ordinary care, and if by reason of fire, tempest, theft, or any other accidents, the goods of another are damaged without any negligence or wrong-doing on his own or his servants' part, he is not liable. The distinction then between this liability and that of the carrier is that the carrier is liable though not negligent, while the warehouseman who merely stores goods is not liable if he is not negligent, and has not done wrong. When goods have been properly conveyed to their destination, and through some fault of the sender or consignee are not taken away or accepted, the carrier then becomes a warehouseman, and is subject to the lesser liability only. Warehousemen often issue warehouse receipts, and these pass from hand to hand, either by delivery or endorsement, according to whether the goods are

held for the order of the owner or on receipt transferable to bearer. The goods can only be safely delivered upon presentation of the receipt properly endorsed. If payable to order, the Bank Act has certain special provisions governing these documents. (See Banks and Banking for a statement of them.) In Ontario by R. S. O., cap. 145, sec. 6, 7, and 8), it is provided that a warehouse receipt may be transferred by endorsement by the owner by way of security to any private person, and the right to them vests in the transferee, who may deal with, and sell the goods if the debt is not paid, subject, however, to the claim of the transferor to have the receipt for the goods re-delivered to him, on paying the debt, but (except in the case of lumber, which may be held by the warehousemen for 12 months), no such goods may be held in pledge for more than 6 months. The debt must also be contracted when the receipt is transferred, and if any sale is made, 10 days' notice by advertisement must first be given, and the sale must be by public auction.

Carriers of Passengers.—The liability towards passengers is not as great as that due the owners of goods. In such case, the owner must use all proper precautions; his appliances must be in proper order, and while the very latest precautions for safety need not be adopted, such measures must be taken as are employed by other prudent carriers of the same kind in their business. More than ordinary care must be exercised, but, if an accident happens from any latent defect which no ordinary vigilance could detect, the carrier will not be liable. If the carrier has been negligent, but the passenger has, by his contributory negligence, suffered an injury which he might otherwise avoid, the carrier will not be liable, and if the injury has been brought about by the passenger disobeying proper rules of the company which he knew or might have known, he must suffer the consequences of his own neglect. Where the person injured travels on a pass, the carrier may make such restrictions upon his liability as he pleases, and a person accepting a pass upon these conditions will be bound by them, and cannot recover, even for negligence on the carrier's part, if the latter has expressly stipulated that he will not be liable, but, in the absence of any agreement so limiting his liability, a carrier will be liable to any one injured, while being rightfully carried by him, even though no fare has been paid, and no contract with the injured man, to carry him, exists.

Epitome of the Laws of Contracts, Sale, Agency, Partnership, Suretyship, Prescription, Carriers and Affreightment of the Province of Quebec,

PREPARED BY

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CONTRACTS.

Requisites to the Validity of Contracts are (1), parties legally capable of contracting; (2), their consent legally given; (3), something which forms the object of the contract; (4), and a lawful cause or consideration, these terms being synonymous. A simple agreement is, therefore, not a contract, unless it contains the above requisites.

Legal Capacity to Contract,—All persons may contract save those legally incapable. These are minors, except in certain cases, interdicted persons, married women, except in certain cases, the insane, or those suffering from a temporary derangement of intellect arising from disease, accident, drunkenness or other cause, or who, by reason of weakness of understanding, are unable to give a valid consent; those persons who are civilly dead, as for instance certain nuns, and those who, by special provisions of law, are prohibited from contracting by reason of their relation to each other, or of the object of the contract, as, for instance, a tutor and minor, etc.

A minor's contract is only voidable. He must prove that he is injured by it, or, in other words, prove lesion. A minor engaged in trade, however, is reputed of full age for all acts relating to his trade. He can, therefore, contract in regard to it. Interdicted persons, on the other hand, are totally unable to contract. Contracts by a married woman are absolutely void unless they are authorized by her husband. If the married woman is engaged in trade in her own name, a general authorization by her husband to do so enables her to make valid contracts in regard to all that relates to her commerce.

Consent may be either express or implied. It may be invalidated by the following: (1) *Error* in the nature of the contract itself, or in the substance of the thing which is the object of the contract, or in something which is a principal consideration in making it. Error as to quality, however, does not vitiate the contract. The party in error is responsible for loss to the innocent party. Error of law is a cause of nullity, but it is difficult to prove. (2) *Fraud*, when the artifices practiced by one party or with his knowledge, are such that the other party would not have contracted without them. It is never presumed, and must be proved. (3) *Violence and fear*, whether prac-

tised or produced by the party for whose benefit the contract is made or by any other person. The fear must be a reasonable and present fear of serious injury. The age, sex, character and condition of the party are to be taken into consideration. The degree of the fear and violence and its effect is a question for judge or jury. The fear may be of injury to oneself, wife children or other kindred. Error, Fraud, Violence and Fear are not causes of absolute nullity. They only give a right of action to annul contracts. (4) *Lesion* or injury, but only in the case of minors, and then with certain restrictions.

Effects of Contracts.—Contracts have effect only between the contracting parties, save as respects creditors of either, whose rights they affect. No delivery is necessary in order to pass to the purchaser the property in a thing certain and determinate. The consent of the parties alone is sufficient. If the thing to be delivered be uncertain or indeterminate, the creditor does not become the owner of it until it is made certain and determinate, and he has been legally notified that it is so.

Contracts in Fraud of Creditors.—If a contract is made by a debtor with intent to defraud and will have the effect of injuring the creditor, it may be attacked by the latter and its annulment obtained. A gratuitous contract is deemed to be made by the debtor with intent to defraud, if the debtor be insolvent at the time of making it; so, also, is an onerous contract made by an insolvent debtor with a person who knows him to be insolvent. Every payment by an insolvent debtor to a creditor knowing his insolvency is deemed to be made with intent to defraud, and the creditor may be compelled to restore the amount or thing received or the value thereof, for the benefit of the creditors according to their respective rights. An onerous contract made with intent to defraud on the part of the debtor, but in good faith on the part of the person with whom he contracts, is not voidable Actions in relation to the above must be taken within one year, if by a cre ditor, from the time of his obtaining a knowledge of the contract or payment or, if by an assignee, from the time of his appointment.

Defaults.—In all contracts of a commercial nature in which the time of performance is fixed, the debtor is put in default by the mere lapse of such time. When there is no time fixed, he is likewise put in default when the thing which he has obliged himself to give or to do could only have been given or done within a certain time, which he has allowed to expire. Otherwise he must be put in default by a demand at his domicile before suit.

SALE.

Sale en bloc.—In the sale of things in their entirety the contract is perfected by the consent alone of the parties. But it may be agreed that the property shall not pass until certain conditions are fulfilled, *e.g.*, until the last instalment of the price be paid. (M. L. R., 4 S. C., p. 313.) The vendor can revendicate the thing sold even in the hands of a third party, if the conditions be not fulfilled. (19 R. L. p. 578.)

Sale by Weight, etc.—When things moveable are sold by weight, number or measure, and not in the lump, the sale is not perfect until they have been weighed, counted or measured; but the buyer may demand the delivery of them or damages, according to circumstances. However, the property in a thing sold by weight remains with the vendor, and the thing is at his risk and peril so long as it has not been weighed. (19 Can. S. C. R, p. 227.)

When the vendor becomes insolvent before the final measurement has been completed, the recourse of the purchaser, who has paid the price, against the insolvent estate is not by way of revendication, but is merely for the recovery of damages (R. J. Q., 1 B. R., p. 136.)

Although the sale may not be perfect until the goods are weighed, numbered or measured, the buyer must pay the price according to agreement. (12 R. L., p. 303.)

Sale on Trial.—The sale of a thing upon trial is presumed to be made under a suspensive condition when the intention of the parties to the contrary is not apparent. The sale remains suspended, and is either perfected, or lapses after trial. If the purchaser declares after trial that he is not satisfied, and refuses to accept, the sale is not perfect, and does not transfer the property to the purchaser. (R. J. Q., 5 C. S., p. 423.)

The delay for trial depends on circumstances. If there be no delay fixed by the parties and the time taken be unreasonable, the vendor may notify purchaser to give a decision within a certain time. If he fail to do so, he is held to acquiesce.

Things which may be sold.—Everything may be sold which is not excluded from commerce by nature, by destination or by special provision of law.

Generally, the sale of a thing not belonging to the seller is null; but it is valid, and no recourse lies against the purchaser, if the sale be commercial, if the vendor afterwards become owner of the thing or if the thing be sold under authority of law. However, if a thing *lost or stolen* be bought in good faith in a fair or market or at a public sale, the owner can reclaim, but he must reimburse the buyer the price paid. (4 R. L., p. 565.)

Obligations of the Seller.—(*a*) Delivery. He must transfer the thing sold into the power and possession of the buyer. The obligation ceases if the purchaser becomes insolvent before the price is paid. Delivery must be made within a reasonable delay. What is a reasonable delay depends on circumstances. (4 L. N., p. 139.)

(*b*) Warranty. It is legal or conventional. Conventional warranty excludes legal. (4 R. L. p. 645.)

Its objects are: (*i*) eviction or dispossession of the buyer from the whole or part of the thing sold. In case of eviction, the purchaser claims from the seller (1) restitution of the price, (2) restitution of the fruits in case he is obliged to pay them to the party who evicts him, (3) the expenses incurred as well in his action of warranty against the seller as in the original action (4) damages, interest and all expenses of the contract.

(ii) Latent defects. These are such as render the thing sold unfit for its intended use or so diminish its usefulness that the purchaser would not have bought it, or would not have given so large a price if he had known them. The seller is not bound for defects which are quite evident; but he is for those which are not known to him, unless he stipulates against them. If he knows of the defects, he must restore the price and pay damages; as also when he is legally presumed to know them, as in commercial matters.

Obligations of the Buyer.—(*a*) Payment of the price. If the delivery be partial, the buyer pays for each instalment as delivered. If the buyer be disturbed in his possession or has cause to fear he will be disturbed, he may delay payment until the seller causes the disturbance to cease, or gives security. But the buyer, though he may delay the payment, must pay interest on the price. (25 L. C. J., p. 22.)

(*b*) Acceptance of the thing bought. The buyer must take the thing away at the time and place at which it is deliverable. If he does not do so within the delay or after he is put in default, the vendor may resell the goods and sue the buyer for any damages sustained.

Remedies of the Seller.—If the buyer refuse to accept the goods, the seller can sue for any damage sustained. If the goods have been delivered,

he can sue for the price by the assumpsit action. In a sale for cash the seller can revendicate the thing sold if the buyer fail to pay. But the goods must be entire and not have passed into the hands of a third party who has paid for them, and the right must be exercised within 8 days after delivery, and in the case of insolvent traders within 30 days. If the thing be sold by the purchaser before revendication by the vendor, the latter has a privilege over other creditors for the price if the conditions requisite for revendication exist. A bank to which warehouse receipts have been transferred for advances, has a claim to the goods covered thereby prior to and in preference over the claim of the unpaid vendor, provided the bank when it acquired the warehouse receipts had no knowledge of the vendor's lien.

Remedies of the Buyer.—If the goods have not been delivered and where the contract is executory, the buyer can bring an action for damages sustained or can sue for specific performance.

If the goods have been delivered, the buyer has an action either to dissolve the sale and recover the price or an action to reduce the price. These must be brought with reasonable diligence.

Sale by Auction.—Must be by a licensed auctioneer with certain exceptions. The adjudication of each several lot is a separate contract. (20 L. C. J., p. 255.)

The entry of the buyer's name in the salebook of the auctioneer completes the sale to him. The auctioneer, or his clerk, on writing the buyer's name, acts as the latter's agent, and binds him. If the auctioneer does not mention his principal, he becomes directly bound to the purchaser. (2 R. de L., p. 79.)

Sale of Debts and Rights of Action against Third Parties is perfected between seller and buyer by the completion of the title, if it be notarial, or the delivery of it, if under private signature. But the buyer has no available possession against third parties until signification of the act of sale has been given to the debtor ; that is to say, the transferee has no right of action against the debtor so long as the transfer has not been signified to him, or he has not accepted. (24 Can. S. C. R., p. 668.)

But in the dissolution of partnerships, if one partner has transferred his rights to the other partners, the transfer need not be signified to the debtors. (1 L. N. p. 52.)

Signification to the debtor holds good for his sureties. (R. J. Q., 7 C. S. p. 114.)

If the debtor pay before signification, he is discharged.

Signification to the debtor is not necessary in the case of bills, notes or bank-checks payable to order or to bearer ; nor for debentures for the payment of money, nor for transfers of shares in the capital stock of incorporated companies.

Notes for the delivery of grain or other things, or for the payment of money and payable to order or to bearer, may be transferred by endorsement or delivery, without notice, whether they are payable absolutely or subject to a condition.

Proof of Sale.—All matters under the value of $50 may be proved by verbal testimony ; but when the value exceeds $50 in any contract for the sale of goods there is no action against a party or his representative unless there is a writing signed by the former. But if the buyer has accepted or received part of the goods, or given earnest to bind the bargain, oral proof is admitted.

AGENCY.

Definition and Character.—Agency or mandate is a contract by which a person (principal or mandator) commits a lawful business to the

management of another (agent or mandatary) who by his acceptance obliges himself to perform it. The acceptance may be implied from the acts of the agent, and in some cases from his silence. Agency is gratuitous unless there is an agreement or an established usage to the contrary. The agent can do nothing beyond the authority given or implied. He may do all acts which are incidental to such authority and necessary for the execution of the agency.

Who may be Agents.—Some persons may be agents who cannot always act in their own capacity, for instance a minor or a married woman.

Agent, Appointment of.—An agent may in general be appointed by bare words, or such appointment may be inferred from the conduct of his supposed principal respecting him. In some cases, however, the nomination must be express, for instance, that of an agent to hypothecate or alienate real estate.

Factors and Brokers.—The principal kinds of commercial agents are brokers and factors. A broker is one who exercises the trade and calling of negotiating between parties the business of buying and selling or any other lawful transactions. He is not put in the possession of the goods. He may be the agent of both parties and bind both by his acts in the business for which he is engaged by them.

A factor or commission agent is entrusted with the possession as well as the disposal of the property. A foreign factor, or one whose principal resides in another country, is personally liable to third persons with whom he contracts, whether the name of the principal be known or not. The principal is not liable on such contracts to third parties, unless it is proved that the credit was given to both principal and factor or to the principal alone.

Rights of Principal against Agent or Sub-agent.—The agent is obliged to execute the mandate accepted, and he is liable for damages resulting from his non-execution of it while his authority continues. He is obliged, after the extinction of the mandate to do whatever is a necessary consequence of acts done before, and if the extinction be by the death of the principal he is obliged to complete business which is urgent and cannot be delayed without risk of loss or injury. He is bound to exercise reasonable skill and all the care of a prudent administrator. He is answerable for the person whom he substitutes in the execution of the mandate, when he is not empowered to do so; and if the principal be injured by reason of the substitution he may repudiate the acts of the sub-agent. The agent is answerable in like manner when he is empowered to substitute without designation of the sub-agent and he appoints one who is notoriously unfit. In these cases the principal has a direct action against the sub-agent. The agent is bound to render an account of his administration and to deliver and pay over all that he has received under the authority of the mandate even if it were not due; subject nevertheless to his right to deduct therefrom the amount of his disbursements and charges in the execution of the mandate. If he has received a determinate thing, he is entitled to retain it until such disbursements and charges are paid.

Rights of Agent against Principal. Indemnity and Compensation.—The principal is obliged to indemnify the agent who is not in fault for losses caused to him by the execution of the mandate; also, for all obligations contracted by him towards third parties, within the limit of his powers; and for acts exceeding such powers, whenever they have been expressly or tacitly ratified. He is bound to reimburse the expenses and charges which the agent has incurred, and to pay him the commission or remuneration to which he may be entitled. He must pay interest on money advanced by the agent computed from the day of advance.

Rights of Third Persons against Principal.—The principal is bound in favor of third persons for all the acts of his agent done in execution and within the powers of the mandate, except in cases wherein by agreement or the usage of trade the latter alone is bound ; for instance, a foreign factor. The general rule is that the authority given must be strictly pursued in order to bind the principal. But the principal is answerable for acts which exceed such power if he has ratified them expressly or tacitly. The principal or his legal representative is bound toward third persons for all acts of the agent done in execution and within the powers of the mandate after it has been extinguished, if its execution be not known to such third persons.

The principal is also bound for acts of the agent done in execution and within the powers of the mandate after its extinction, when such acts are a necessary consequence of a business already begun. He is also bound for acts of the agent done after the extinction of the mandate by death or cessation of authority in principal, for the completion of a business, where loss or injury might have been caused by delay.

The principal is liable to third parties who in good faith contract with a person not his agent under the belief that he is so, when the principal has given reasonable cause for such belief. He is liable for damages caused by fault of the agent, according to the ordinary rules.

Agents and Documents of Title.—The possession of documents of title, for instance bills of lading, warehouse receipts, orders for delivery of goods and the like, gives possession of the goods themselves, provided there be no fraud on the part of the transferee.

An agent in possession of the documents of title, notwithstanding the fact that the person with whom he deals has notice that he is contracting only with an agent, may bind the principal in a contract for the sale of goods. The consignee of goods consigned by such agent has a lien thereon for any money or negotiable security advanced or given by him to or for the use of such agent, or received for him by such agent for the use of the consignee, in like manner as if such agent were the sole owner of the goods. The agent may also validly pledge or grant a lien upon the goods, and such contract binds the owner of the goods and all other persons interested therein, notwithstanding the person claiming such pledge or lien had notice that he was contracting only with an agent.

Right of Owner to redeem.—The owner may, however, redeem any goods or documents of title so pledged, at any time before the same have been sold, upon repayment of the amount of the lien thereon, or restoration of the securities in respect of which the lien exists, and upon payment or satisfaction to the agent of any sum for or in respect of which such agent is entitled to retain the goods or documents by way of lien again such owner; or he may recover from the person with whom any goods or documents have been pledged, or who has any lien thereon, any balance or sum of money remaining in his hands as the produce of the sale of the goods, after deducting the amount of the lien under the contract.

Rights of the Principal against Third Parties.—As the principal is bound by the acts and contracts of his authorized agent, so he may take advantage of them ; and if one person contract even without authority, in the name of another, that other, though he may repudiate the contract, may, if he thinks fit, adopt and enforce it.

An undisclosed principal is entitled to sue in his own name on contracts made by his agents (5 L. N., p. 309) ; but he must prove clearly that he is the principal. But in case of an undisclosed principal, the person contracting

with the agent will have the right of setting off any claims he may have against the agent, even if the agent in selling in his own name is contravening his instructions. But if at any time during the transaction he knows or have means of knowing that the person with whom he deals is not a principal, this rule of set-off does not apply.

Rights of Agents against Third Persons.—The general rule is that an agent cannot sue and be sued upon a contract avowedly made by him solely on behalf of a principal. But a factor or other agent, who has made a contract, in the subject matter of which he has a special property, may maintain an action thereon in his own name, and that whether he professed to contract in his own name or not. For instance, an auctioneer may sue in his own name for the price of goods sold by him on the owner's premises, or elsewhere, and known to be his property.

An agent may also sue upon any contract made in his own name for an undisclosed principal.

Rights of Third Parties against the Agent.—The general rule is that an agent acting in the name of the principal, and within the limits of the authority given, is not personally liable to third persons with whom he contracts. This suffers exception in the case of factors and the case of contracts made by the master of a ship for her use. An agent who acts in his own name is liable to the third party with whom he contracts without prejudice to the rights of the latter against the principal also. He is liable in like manner when he exceeds his authority, unless he has given the party with whom he contracts sufficient communication of its extent. He is always liable for offences and quasi-offences committed while acting for the principal.

PARTNERSHIP.

Meaning.—It is essential to this contract that it should be for the common profit of the partners, each of whom must contribute to it property, credit, skill or industry. Community of profit is essential, though the shares may be unequal. It may, however, be agreed that the one partner shall be exempt from liability for the losses of the partnership, and this stipulation holds good as between the partners, but as to third parties it is null.

Different Kinds of Partnerships. General Partnerships.—General partnerships are those contracted for the purpose of carrying on business under a collective name or firm consisting ordinarily of the names of the partners, or of one or more of them, all of whom are jointly and severally liable for the obligations of the partnership.

Anonymous Partnerships.—In partnerships having no name or firm, whether they are general or confined to a single object or adventure, the partners are subject to the same liabilities in favor of third persons as in ordinary partnerships under a collective name.

Limited Partnerships or Partnerships en Commandite consist of one or more persons called general partners, and of one or more persons who contribute in cash payment a specific sum or capital to the common stock and who are called special partners. The general partners are jointly and severally responsible in the same manner as ordinary partners under a collective name; but special partners are not liable for the debts of the partnership beyond the amounts contributed by them to the capital. The general partner alone transact the business.

Formation of Partnership.—The partners may carry on business under what name they please, but the designation must not be such as will

deceive the public. The constitution of the partnership is not necessarily in writing, but may be verbal or inferred from the acts of the parties. The contract is made by the intervention of all the parties to be bound. The executors of a deceased partner do not occupy his place, unless it be expressly stipulated to that effect in the contract of partnership.

Certificate of Formation.—In all commercial partnerships a declaration must be signed by the several members of the partnership and filed with the prothonotary of the district and the registrar of the county, within sixty days after the formation of the partnership. Such declaration must contain the names, surname and residence of every partner, and the name, style or firm under which they carry on or intend to carry on such business, and must state the time during which the partnership has existed, and declare that the persons therein named are the only members of such partnership. Failure to comply with this provision is punishable by a penalty of $200, recovered by a *qui tam* action.

Articles of Partnership.—If the contract be made in writing, it is known as the Articles of Partnership. They generally contain the objects of the partnership, the time at which it is to commence and end; the amount of capital, and the proportions in which it is to be advanced by each partner; the proportions of the profits accruing to each partner, provisions for the management of the business, and the like.

Dissolution.—The partnership ends by the lapse of time, when the contract provides that it shall last for a fixed period, but its dissolution may be demanded by one of the partners before the expiration of the stipulated term, upon just cause shown, or when another partner fails to fulfil his engagement, or is guilty of gross misconduct, or from habitual infirmity or physical impossibility is unable to attend to the business of the partnership, or when his condition and status are essentially changed, and in other cases of a like nature. The dissolution is declared by the court in these cases.

If no limit is fixed, it is a partnership at will, and may be dissolved at the will of anyone of the partners by the notice to all the others of his renunciation. Such renunciation must be in good faith, and not made at a time unfavorable for the partnership. Commercial partnerships are also terminated by judgment maintaining at the instance of a creditor of one of the partners the seizure of such partner's share in the stock of the partnership, or at the instance of one of the partners after such seizure (60 Vic., c. 50, s. 32). Other causes of dissolution are: bankruptcy, interdiction or death of one of the partners; marriage of a female partner (2 R. de L., p. 74); the business becoming impossible or unlawful, loss of partnership property.

Effects of Dissolution.—The mandate and powers of the partners to act for the partnership cease with its dissolution, except for such acts as are a necessary consequence of business already begun; nevertheless whatever is done in the usual course of dealing and business of the partnership by a partner acting in good faith and in ignorance of the dissolution, binds the other parties in the same manner as if the partnership existed.

The dissolution does not as a rule affect the rights of third persons dealing afterwards with any of the partners on account of the partnership firm, except in certain cases; for instance when notice of dissolution as required by law or usage is given, or when the transaction is not within the usual course of dealing and business of the partnership. A certificate of dissolution is filed with the prothonotary and registrar similar to the certificate of formation.

Action to Account.—At the dissolution, each partner or his legal representative may demand of his co-partners an account and partition of the property of the partnership.

Rights and Liabilities of Partners among themselves.—Each partner is a debtor to the partnership for all that he has agreed to contribute to it. When such contribution consists of a certain thing, and the partnership is evicted of it, the partner is subject to warranty in the same manner as a seller is in favour of the buyer. A partner who fails to pay any sum of money which he has agreed to contribute to the partnership, is liable for interest on such sum from the day of his default. He is also liable for interest on any sum taken by him from the partnership funds for his particular benefit from the day that he has withdrawn it.

A partner cannot carry on privately any business or adventure which deprives the partnership of a portion of the skill, industry or capital which he is bound to employ therein. If he does so, he is obliged to account to the partnership for the profits of such business.

Each partner is liable for damages caused by his fault. He cannot set up in compensation of such damages the profits which the partnership has derived from his industry in other affairs.

He is entitled to recover money disbursed by him for the partnership, as well as to be indemnified for obligations contracted by him in good faith in the business of the partnership, and for the risk inseparable from his management. In the absence of any stipulation as to the management of the business, each partner is the agent of the rest, and binds them in all contracts within the scope of the partnership business.

Rights of Third Persons against Partners.—The general rule is that each partner is the accredited agent of the rest, and has authority as such to bind them, either by contracts respecting the goods or usual business of the firm or negotiable instruments circulated in its behalf to any person dealing *bona fide*. The partners are in this case bound jointly and severally. Dormant or unknown partners are, during the continuance of the partnership, subject to the same liabilities toward third persons as ordinary partners.

Power of Partner to bind Firm contrary to Agreement.—Even if the partners agree among themselves that one shall have no authority to bind the firm, yet they will be bound unless the party dealing with him have notice of the arrangement, but the party dealing with the partner must be in good faith, and the obligation so contracted must be in the usual course of dealing and business of the partnership.

Firm not bound by Individual Contract.—The partners are not liable for an obligation contracted by one of them in his own name unless it was for the partnership business.

When Partnership Liability commences.—The liability of each partner to third persons in respect of the engagement of others commences with the partnership. He is not liable for contracts previously made.

Rights of Partners against Third Persons.—Partners are agents one of the other, and the rules of agency apply. Payment to one partner is payment to all.

SURETYSHIP.

Nature and Extent.—Suretyship is an accessory contract by which a person engages to fulfil the obligation of another, in case of its non-fulfillment by the latter. It may be for the fulfilment of a valid obligation; of an annullable obligation; for instance, that undertaken by a minor or mar-

ried woman (14 Q. L. R., p. 184); or of a natural obligation, as a debt prescribed. It cannot be undertaken for a debt that has no existence. But future debts may be secured by a surety. In this case the suretyship is conditional and takes effect with the debt (1 L. C. R., p. 41). It cannot be contracted for a greater sum nor under more onerous conditions than the principal obligation, but it may be contracted for a part only of the debt, or under conditions less onerous. The suretyship which exceeds the debt or is contracted under more onerous conditions, is not null; it is only reducible to the measure of the principal obligation.

Effect of Suretyship.—The surety is liable only upon the default of the debtor to pay. When called upon to pay, the surety has the benefits of discussion and division, and the right of subrogation.

Discussion.—By this term is meant the application of the property of the principal debtor to the payment of the debt. But in order to have this benefit, the surety, when he is first sued, must demand it, must point out to the creditor the property of the principal debtor, and advance the money necessary to obtain the discussion. He must not indicate property situated out of the province, nor litigious property, nor property hypothecated for the debt and no longer in the hands of the debtor. The surety may, however, renounce the benefit of discussion either expressly or tacitly. Binding himself jointly and severally with the principal debtor is a tacit renunciation. A judicial surety, or one ordered by the court, cannot demand discussion.

Division.—When there are several sureties of the same debtor for the same debt, each is bound for the whole debt. Nevertheless, each of them may, unless he has renounced the benefit of division, require the creditor to divide his action and reduce it to the share and proportion of each surety. If at the time that one of the sureties obtained judgment of division some of them were insolvent, such surety is proportionately liable for their insolvency, but he cannot be made liable for insolvencies happening after the division.

Remedies of the Surety.—The surety who has paid the debt has either a personal recourse against the debtor, or by subrogation, the action of the original creditor with all its accessories.

Personal Recourse.—The surety who has bound himself with the consent of the debtor, sues on a contract of agency, and may recover from him all that he has paid for him in principal, interest and costs, together with the costs incurred against him and those legally incurred by him in notifying the debtor, and subsequently to such notification.

He has also a claim for damages if there be ground for it.

The surety who has bound himself without the consent of the debtor, sues on the quasi-contract of *gestion d'affaires*, and has no remedy for what he has paid, beyond what the debtor would have been obliged to pay, had the suretyship not been entered into, saving the costs subsequent to the notice of payment by the surety which are borne by the debtor. The surety has also his recourse for such damages as the debtor would have been liable for in the absence of such suretyship.

Subrogation.—The surety who has paid the debt is subrogated in all the rights which the creditor had against the debtor.

Co-sureties.—When several persons become sureties for the same debtor and the same debt, the surety who discharges the debt has his remedy against the other sureties, each for an equal share.

Cases in which no Remedy lies.—The surety who has paid first has no remedy against the principal debtor who has paid a second time without being notified of the first payment, saving his right to recover back from the creditor.

When the surety has paid before being sued and has not notified the principal debtor, he loses his remedy against such debtor, if, at the time of the payment, the latter had the means of having the debt declared extinct, saving his right to recover back from the creditor.

Cases in which the surety who has bound himself with the debtor's consent may, even before paying, proceed against the latter to be indemnified:

1. When he is sued for the payment.
2. When the debtor becomes bankrupt or insolvent.
3. When the debtor has obliged himself to effect his discharge within a certain time.
4. When the debt becomes payable by the expiration of the stipulated term, without regard to the delay given by the creditor to the debtor without the consent of the surety.
5. After ten years, when the term of the principal obligation is not fixed, unless the principal obligation, such as that of a tutor, is of a nature not to be discharged before a determinate period

Extinction.—Suretyship being an accessory obligation is extinguished with the principal obligation.

The surety may set up against the creditor all the exceptions which belong to the principal debtor, and are inherent to the debt, but he cannot set up exceptions that are purely personal to the debtor, minority for instance.

The suretyship is at an end when by the act of the creditor the surety can no longer be subrogated in the rights, hypothecs and privileges of such creditor. (M. L. R., 3 S. C., p. 459.)

When the creditor voluntarily accepts an immoveable or any object whatever in payment of the principal debt, the surety is discharged, though such creditor should afterwards be evicted of it.

The surety who has become bound with the consent of the debtor is not discharged by the delay given to such debtor by the creditor. He may in the case of such delay sue the debtor in order to compel him to pay.

If the surety becomes heir of the creditor, or *vice versa*, there is extinction by confusion. So also if the principal debtor becomes heir of his surety, and *vice versa*, but in this case the confusion does not destroy the action of the creditor against the surety of such surety.

PRESCRIPTION.

Prescription—Is of two kinds, acquisitive or positive, and extinctive or negative. In acquisitive prescription, the title is presumed or confirmed, and ownership is transferred to a possessor by the continuance of his possession.

Extinctive prescription is a bar to and in some cases precludes any action for the fulfilment of an obligation or the acknowledgment of a right when the creditor has not preferred his claim within the time fixed by law.

Acquisitive prescription results from possession and lapse of time; extinctive, from lapse of time and the inaction of the creditor. The latter mainly concerns commercial matters.

Renunciation of Prescription.—The debtor man renounce prescription already acquired; but prescription cannot be renounced by anticipation.

It may, however, be validly stipulated that an action shall be brought within a certain delay, which delay is less than the time allowed by law; *i.e.* the debtor cannot stipulate to enlarge the delay to prescribe, but the creditor may stipulate to shorten that delay (15 Can. S. C. R., p. 488). Renunciation may be either in express terms or implied from the debtor's acts, as when he pays in whole or in part the prescribed debt, or when he asks for a delay, or gives a surety to the creditor.

Prescription acquired may be invoked in spite of renunciation on the part of the debtor or possessor, by any interested party, by joint debtors, by sureties, by third parties who have acquired in good faith, and in some cases by creditors when the debtor has renounced to their prejudice.

Law governing Prescription.—As regards moveable property and personal actions, even in matters of bills of exchange and promissory notes and commercial matters generally, one or more of the following prescriptions may be invoked :—

1. Prescription entirely acquired under a foreign law, when the cause of action did not arise or the debt was not stipulated to be paid in the Province of Quebec, and such prescription has been so acquired before the possessor or the debtor had his domicile therein ;

2. Prescription entirely acquired in the Province of Quebec, reckoning from the date of the maturity of the obligation, when the cause of action arose or the debt was stipulated to be paid therein, or the debtor had his domicile therein at the time of such maturity; and in other cases from the time when the debtor or possessor becomes domiciled therein (14 R. L. 466) ;

3. If prescription be begun under a foreign law, then in order to complete it in the Province of Quebec, the time acquired under the foreign law is added to the time acquired in P. Q. (18 L. C. J. 69.)

Possession.—For purposes of acquisitive prescription, the possession of a person must be continuous, peaceable, public, unequivocal and as proprietor.

Precarious possessors, or those who possess for another or under acknowledgment of a superior domain, depositaries for instance, never prescribe. But prescription runs if there be interversion, or a new title of acquisition, for instance the change from precarious possession to possession as proprietor.

Interruption of Prescription—Takes place during the course of prescription, the effect of which is to render useless and as though non-existent the time which has elapsed, but without preventing the debtor or possessor from prescribing again, and without changing, at least in general, the conditions of prescription.

In acquisitive prescription, interruption results from the cessation of possession, from a claim legally put forward by the owner against the possessor, or from an acknowledgment of the owner's right by possessor; in liberative prescription, from the exercise of the right subject to extinction for non-usage, from a demand legally made by the owner or from an acknowledgment of the creditor's right by the debtor.

As a rule interruption profits or prejudices those only who have made or obtained it, not third parties; but in joint and several debts, and in indivisible debts interruption against one debtor holds good against all. Also, in debts with a surety, interruption against the principal is valid as against the surety. The same acts against or by a surety interrupt prescription as regards the principal debtor.

Suspension of Prescription—Is a temporary hindrance preventing the prescription from beginning or continuing, but without rendering useless

the time of prescription already elapsed. Suspension takes place in favor of those who are not born, of minors, idiots, madmen or insane persons with or without tutors or curators; but not in favor of those to whom a judicial adviser is given, or of those who are interdicted for prodigality. But this suspension takes place only in case of the long prescription of 30 years; in the commercial prescription of 5 years and under, prescription runs against all. Husband and wife cannot prescribe against each other. Prescription as a rule runs against a married woman. Prescription of personal actions does not run with respect to debts depending on a condition, until such condition happens; with respect to actions in warranty, until the eviction takes place; with respect to debts with a term, until the term has expired.

Effect of Prescription.—Acquisitive prescription does not operate *de plano;* it must be invoked by the possessor. In extinctive prescription of five years and under, the debt is absolutely extinguished, and no action can be maintained after the delay for prescription has expired. The courts will dismiss even if prescription be not pleaded. (15 R. L., p. 513.)

Duration of Plea of Prescription.—Any person who is in possession as proprietor of a thing or a right preserves by reason of such possession this right to set up by plea against any demand in revendication of such thing or right all such grounds of nullity or other grounds as tend to defeat the action, although his right to do so by direct action may have been prescribed.

In personal actions likewise the defendant may effectively plead all grounds tending to defeat the action, although the time during which he could urge such grounds by direct action may have elapsed.

The foregoing provisions apply only to such grounds of exception as strike at the principle of the action and destroyed it at a time when no acquired prescription could prevent them from doing so. Thus a claim prescribed cannot be pleaded in compensation, unless the compensation had taken effect before it was prescribed, and then it may be pleaded, whether the claim be for a debt of a commercial nature, or for any other cause. The adoption of the grounds of such plea does not revive the right to urge them by direct action.

Possession vaut titre.—Prescription in moveables is acquired by the sole effect of possession. It is dispensed from the lapse of time. But for the maxim "possession vaut titre" to prevail, there must be good faith (error, not fraud), a just title; also the possessor, for instance, a depositary or borrower, must not be personally bound to restore the thing he possesses. Exceptions to the maxim are things lost or stolen in hands of third parties who have acquired even in good faith. These may be revendicated, but the revendication is prescribed by three years, reckoning from the time of loss or theft. But things, lost or stolen, bought in good faith in a fair, market or at a public sale, cannot be revendicated unless the buyer be reimbursed the price.

Time required to Prescribe.—Prescription is reckoned by days and not by hours. It is acquired when the last day of the term has expired; the day on which it commenced is not counted.

Thirty Years.—Things, rights and actions, not otherwise regulated things in bad title and in bad faith.

Ten Years.—The action in rescission of contracts for error, fraud, violence and fear; actions in restitution of minors for lesion, reckoning from the day when the violence or fear ceased or the fraud or error was discovered; action against architects and contractors for warranty of work done.

Five Years.—Fruits, natural and civil; arrears of interest; actions of advocates, notaries, officers of justice, physicians, surgeons for professional services; actions upon promissory notes and bills of exchange; upon sales of moveable effects between non-traders or between traders and non-traders; actions for hire of labor, or for the price of manual, professional work and materials furnished; municipal assessments.

Three Years.—Moveables acquired in good faith.

Two Years.—Actions for seduction or lying-in expenses; for damages resulting from offences or quasi offences; for wages of workmen not reputed domestics, who are hired for a year or more; for sums due schoolmasters and teachers for tuition and board and lodging furnished by them.

One Year.—Actions for slander and libel, for bodily injuries, for wages of domestic or farm servants, merchants' clerks and other employees who are hired by the day, week or month or for less than a year; for hotel or boarding house charges.

Six Months.—Actions for any damage or injury sustained by reason of the railway, reckoning from the time when such supposed damage is sustained, or if there is continuation of damage from the time the doing or committing of such damage ceases.

CONTRACTS WITH CARRIERS.

Who are Carriers.—A common carrier is one who undertakes for hire to transport the persons or goods of such as choose to employ him from place to place.

Obligations of Carriers.—Carriers are obliged to receive and convey, at the time fixed by public notice, all persons applying for passage, if the conveyance of passengers be a part of their accustomed business, and all goods offered for transportation; unless, in either case, there is a reasonable and sufficient cause of refusal, for instance the dangerous nature of the goods.

Liabilities of.—Carriers are liable for losses caused by delay in transportation and delivery, as well as for loss or damage of things entrusted to them, unless they can prove that such delay, loss or damage was caused by a fortuitous event or irresistible force, or has arisen from a defect in the thing itself. Their responsibility is greater for goods than for persons. For injuries to persons carried, they are liable only when they result from negligence or want of due care, skill or reasonable foresight and prudence on the part of the carriers. (22 Can. S. C. R., p. 721.)

When Liabilities begin.—Carriers' responsibility begins from the time the goods have been delivered to them at the port or place of deposit, to be put in their carriage or vessel. It is not necessary that the goods be already in the waggon or ship.

When they end.—The reception of the thing transported and payment of the carriage or freight, without protest, extinguish all right of action against the carrier; unless the loss or damage could not then be known, in which case the claim must be made without delay after the loss or damage becomes known to the claimant. The carrier's responsibility also ceases when he has given notice to the consignee of the arrival of the goods, and the latter has had reasonable time to remove them. The carrier is then only liable as a depositary.

Limitation of, by notice.—Notice by carriers of special conditions limiting their liability is binding only upon persons to whom it is made known; and, notwithstanding such notice and the knowledge thereof, carriers are liable whenever it is proved that the damage is caused by their fault or the fault of those for whom they are responsible.

Limitation of, by express contract.—Nevertheless, the Supreme Court has decided that the carrier may by express contract validly stipulate against responsibility for the negligent acts of his agents or servants. (28 Can. S. C. R., p. 146.)

Limitation of, by law—Declaration of value.—Carriers are not liable for large sums of money or bills or other securities, or for gold, or silver, or precious stones, or other articles of an extraordinary value, contained in any package received for transportation, unless it is declared that the package contains such money or other articles. This rule, nevertheless, does not apply to the personal baggage of passengers, when the money or the value of the articles lost is only of a moderate amount, and suitable to the circumstances of the traveller, and the traveller is entitled to be examined upon oath in proof of the value of the things composing such baggage.

Recourse of Carrier.—The carrier has a right to retain the thing transported, until he is paid for the carriage or freight of it.

Connecting Carriers.—When carriers receive goods to be forwarded partly over their own line and partly over lines in connection, there may be a question as to responsibility for loss or damage. The rule is that, in the absence of any express contract limiting his liability, the receiving carrier is liable.

CONTRACTS OF AFFREIGHTMENT.

Contracts of Affreightment or contracts for the carriage of goods in ships are either by charter party or for the conveyance of goods in general ship.

Principles of Contract.—The ship with her equipments are bound to the obligations of the master or owner and the cargo to the performance of the obligations of the shipper.

By whom made.—The contract may be made by the owner or the master of the ship or by the ship's husband as agent of the former. If made by the master, it binds himself and also the owner of the ship, unless it is made at a place where the owner or ship's husband is present and they disavow the contract, in which case it binds the master only.

Charter Party.—By this contract the whole ship or some principal part of it is let for the conveyance of goods for a determined voyage or a specified time. The contract is generally made in writing, but may be verbal. It is interpreted according to the usage of trade. The memorandum of the charter party usually specifies the name and burden of the ship, with the stipulation that she is tight and staunch and well furnished and equipped for the voyage. It also contains stipulations as to the time and place of loading, the day of sailing, the rate and payment of freight and the conditions of demurrage, with a declaration of the fortuitous events which exempt the lessor from liability and such other covenants as the parties may see fit to add.

Contract for Conveyance of Goods in a general Ship—Is that by which the master or the owner of a ship destined for a particular voyage engages separately with various persons, unconnected with each other, to convey their respective goods according to the bill of lading to the place of their destination, and there to deliver them.

Bill of Lading.—The bill of lading is the instrument which generally contains the terms of the contract. It is signed and delivered by the master or purser in three or more parts or copies, of which the master retains one, the shipper also keeps one and sends one to the consignee. It is a document of title, transference of which by means of endorsement and delivery operates as a transference of the goods to the endorsee.

Obligations of Owners.—The owner must provide a ship of the stipulated burthen, tight and staunch, furnished with all tackle and apparel necessary for the voyage, and with a competent and sufficient number of persons of skill and ability to navigate her and so to keep her to the end of the voyage.

Obligations of Masters.—Stowage of Goods.—The master is obliged to receive the goods and carefully arrange and stow them in the ship, and to sign such bills of lading as may be required by the shipper or lessee upon receiving from him the receipts for the goods.

Prosecution of Voyage.—The ship must sail at the stipulated time, or, if no time be fixed, within a reasonable delay, and must proceed to her destination without deviation. The master is obliged to exercise all needful care of the cargo, and in case of wreck, or other obstruction to the voyage by a fortuitous event or irresistible force, he is obliged to use the diligence and care of a prudent administrator for the preservation of the goods, and for their conveyance to the place of destination, and for that purpose to engage another ship, if it be necessary.

His Duty on completion of the Voyage is to deliver the goods without delay to the consignee or his assignee on production of the bill of lading and payment of the freight and other charges due in respect of it.

Liabilities of Owners and Masters.—In general, the rules of liability as regards carriers prevail. Owners or masters are not exempt from responsibility, notwithstanding that their vessel was in charge of a qualified pilot.

Limitation of.—A stipulation in the bill of lading that the shipowners shall not be liable for negligence on the part of the masters or mariners or their other servants or agents, is valid. (28 Can. S. C. R. 146.)

The owner of a seagoing ship is not liable for the loss or damage occasioned to any goods, wares or merchandise of any kind on board any such vessel, or delivered to him for conveyance therein, without his actual fault or privity or the fault or neglect of his agents, servants,

1. By reason of fire or the dangers of navigation.
2. By reason of any defect in or the nature of the goods themselves, or from armed robbery or other irresistible force, or
3. By reason of any robbery, theft, embezzlement, removal or secreting of any gold, silver, diamonds, watches, jewels, or precious stones, money or valuable securities or articles of great value, not being ordinary merchandise unless the true nature and value thereof have, at the time of their delivery for conveyance, been declared by the owner or shipper thereof to the carrier or agent, or servant, and entered in the bill of lading or otherwise in writing.

In any case of loss of life or personal injury, damage or loss to anything on board of a seagoing ship without any actual fault or privity on the part of the owner of the vessel, on board of which or through the fault of which the loss happened, such owner is not responsible for the damage or loss occasioned to an amount exceeding the sum of thirty-eight dollars and ninety-two cents per ton of the ship's registered tonnage in the case of sailing vessels, and of the gross tonnage, without deduction of the engine room, in the case of steam vessels.

The owner, however, always remains responsible in the same manner, for every such loss and damage arising on distinct occasions to the same extent as if no other loss or damage had arisen.

Obligations of the Shipper or Lessee.—1. He must load the ship with the stipulated cargo and within the time specified by the contract, or if no time be specified within a reasonable delay. He cannot put on board any prohibited or unaccustomed goods, by which the ship may be subjected to detention, or ferfeiture, or goods of a dangerous nature, without notice to the master or owner.

2. He must pay the freight with primage, average and demurrage, when any is due.

Freight.—Freight is the recompense payable for the lease of the ship or for the carrying of goods upon a lawful voyage to the place of their destination.

When earned.—As a rule, it is not due until the carriage of goods is completely performed; and it has been held that the master cannot exact payment of freight before delivery of goods upon the wharf. (17 L. C. J., p. 15.)

Effect of Detention, Peril of the Sea, etc.—If the ship be detained by order of a sovereign power, freight payable by time does not continue to run during such detention. If it be obliged to return with her cargo, by reason of a prohibition of trade occurring during the voyage, with the country to which she is bound, freight is due upon the outward voyage only, although a return cargo has been stipulated. If the goods are cast overboard for the ship's preservation, the shipper must pay freight, but is repaid by general average contribution. If part of the goods be sold for necessary repairs to the ship or to provide provisions and urgent necessaries, the shippers pay the freight, but receive the value of goods from the owner. Freight is not due upon goods lost by shipwreck, taken by pirates, or captured by a public enemy, or which, without the fault of the shipper, have wholly perished by a fortuitous event, jettison excepted. If the freight or any portion have been paid in advance, the master is bound to return it, unless there is an agreement to the contrary.

Amount of Freight.—This is regulated by the agreement in the charter party, or bill of lading, at a gross sum for the whole ship, or a certain part of it, or at a fixed rate per ton, or package, or otherwise.

If not regulated by agreement, the rate is estimated upon the value of the service performed, according to the usage of trade.

The amount is not affected by the longer or shorter duration of the voyage, unless the agreement to pay a certain sum by the month or week, or other division of time, in which case the freight begins to run, if not otherwise stipulated, from the commencement of the voyage, and so continues as well during its course as during all unavoidable delay not occasioned by the fault of the master or owner, save in the case of detention by a sovereign power.

Lien for Freight.—The owner or master has a lien on the goods until payment of the freight, with primage and accustomed average, as expressed in the bill of lading. He cannot keep the goods in his ship in default of payment; but at the time of unloading he may prevent them from being carried away or cause them to be seized.

Primage is a small customary payment to the master for his care and trouble.

Average denotes several petty charges, towage, beaconage, etc.

Demurrage is the compensation to be paid by the shipper for the detention of the ship beyond the time agreed upon, or allowed by usage for loading and discharging. If expressly stipulated, it is due for all delays which are not caused by the ship owner or his agents. It does not begin to be computed until the goods are ready to be discharged, after which, if the stipulated time has expired, a further reasonable time must be allowed for their discharge. If the time, conditions and rate of demurrage be not agreed upon, they are regulated by the law and usage of the port where the claim arises.

General Average Loss.—By this is meant a loss sustained by one or more shippers for the benefit of the ship and of all the other shippers; for instance, loss by jettison. If it be incurred voluntarily, be necessary and successful in the result, then it is made good by general average contributions. These are made up from the ship, the freight and the cargo; but not from the ship's warlike stores and provisions, nor from the baggage of passengers.

Bills of Exchange, Cheques, and Promissory Notes.

53 VICTORIA, *Chap.* 33 (1890).

ANNOTATED BY

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Advocate,

MECHANICS BUILDING, MONTREAL.

The Bills of Exchange Act is a codifying Act, and the rule for its construction was thus stated by Lord Herschell in the case of The Bank of England *v.* Vagliano [1891], A. C., at p. 144:—

"The proper course is, in the first instance, to examine the language of the statute, and to ask what is its natural meaning, uninfluenced by any considerations derived from the previous state of the law, and not to start with inquiring how the law previously stood, and then, assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with this view. If a statute intended to embody in a code a particular branch of the law is to be treated in this fashion, it appears to me that its utility will be almost entirely destroyed, and the very object with which it was enacted will be frustrated. The purpose of such a statute surely was that on any point specifically dealt with by it the law should be ascertained by interpret-

ing the language used, instead of, as before, by roaming over a vast number of authorities in order to discover what the law was, extracting it by a minute critical examination of the prior decisions, dependent upon a knowledge of the exact effect even of an obsolete proceeding, such as a demurrer to evidence. I am, of course, far from asserting that resort may never be had to the previous state of the law for the purpose of aiding in the construction of the provisions of the code. If, for example, a provision be of doubtful import, such resort would be perfectly legitimate. Or, again, if in a code of the law of negotiable instruments, words be found which have previously acquired a technical meaning, or been used in a sense other than their ordinary one, in relation to such instruments, the same interpretation might well be put upon them in the code. I give these as examples merely; they, of course, do not exhaust the category."

[Assented to 16th May, 1890.]

PART I.

PRELIMINARY.

1. This Act may be cited as "*The Bills of Exchange Act*, 1890."

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

(*a.*) The expression "Acceptance" means an acceptance completed by delivery or notification;

As to the requisites of a valid acceptance, see section 17, and as to delivery or notification necessary to complete an acceptance, see section 21.

(*b.*) The expression "Action" includes counter-claim and set off;

See sections 24, 30, 52, 69, 86 and 93, which require this definition.

(*c.*) The expression "Bank" means an incorporated bank or savings bank carrying on business in Canada;

(*d.*) The expression "Bearer" means the person in possession of a bill or note which is payable to bearer;

For operative definition of bearer see sections 7 (3) and 8 (3).

The possessor of a bill or note payable to order is not technically the "bearer" of it: *Day* v. *Longhurst*, W. N., p. 3. As to the rights of a person who has given value for a bill payable to the order of some other person, see section 31 (4).

(*e.*) The expression "Bill" means bill of exchange and "Note" means promissory note;

A Bill of Exchange is defined in section 3, a Promissory Note in section 82, and a Cheque in section 72.

(*f*.) The expression "Delivery" means transfer of possession, actual or constructive, from one person to another;

Actual delivery is made by delivering the bill to the indorsee or to his agent, or by transmitting it to either of them by post.
Constructive delivery takes place when the person in possession of a note retains it in another quality, and there is no change of actual possession.
As to the necessity for delivery to complete the contract on a bill or note, see section 21.
A delivery by mistake may be revoked by mutual consent: *Ex parte Cote*, L. R. 9 Ch. 27.

(*g*.) The expression "Holder" means the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof;

The rights and powers of the holder of a bill are given in section 38.
See also "holder for value" defined by section 27 (2) and "holder in due course" by section 29.
The term "holder" includes alike the payee, the indorsee, and the bearer of a bill. It signifies the mercantile owner of the instrument, who may or may not be the legal owner of it. It is generally used, however, to denote the lawful holder or holder in due course. But "holder" in this sub-section is also used to denote an unlawful holder; that is, the person to whom a bill is by its terms payable, whose possession is unlawful, (*e, g.*, the finder of a bill indorsed in blank), but who nevertheless can give a valid discharge to a person who pays in good faith, and also a good title to a person who takes it before maturity in good faith and for value; see section 38. An unlawful holder must be distinguished from a mere wrongful possessor, *e. g.*, a person holding under a forged indorsement, or a person who has stolen a bill payable to the order of another. *Cf. Smith* v. *Union Bank*, L. R. 10, Q. B. 295. Such person has no rights and can give none: see section 24. (Chalmers, p. 5.)

(*h*.) The expression "Indorsement" means an indorsement completed by delivery;

The requisites of a valid indorsement are set out in section 32. See section 21 as to delivery required to complete same.
The term "indorsee" is used to denote not only the person to whom the bill is specially indorsed, but also the bearer of a bill indorsed in blank, *i. e.*, any person who makes title to a bill through an indorsement: *Barber* v. *Richards*, 6 Exch. at p. 65.

The term "indorser" primarily denotes the holder of a bill who indorses it, but it is also used to denote any person who backs a bill with his signature, and thereby incurs the liability by an indorser, see section 56 (Chalmers, p. 6). In the province of Quebec such person is spoken of as the giver of an "aval."

(*i*.) The expression "Issue" means the first delivery of a bill or note, complete in form, to a person who takes it as a holder;

See sections 9, 12 and 71, which require this definition. A bill is complete in form when it complies with section 3, and a note when it complies with section 82. An accommodation bill or note is not "issued" until it comes into the hands of some one who has given value for it.

(*j*.) The expression "Value" means valuable consideration.

The term "valuable consideration" is defined in section 27.

(*k*.) The expression "Defence" includes counter-claim.

"*Person*," "*written*" and "*writing*," which are all used in the Bills of Exchange Act in a peculiar sense, are defined in the general Interpretation Act, R. S. C., c. 1, sec. 7, as follows:
"(22) The expression 'person' includes any body corporate and politic, or party, and the heirs, executors, administrators or other legal representatives of such person, to whom the context can apply according to the law of that part of Canada to which such context extends."

"(23) The expression 'writing,' 'written,' or any term of like import includes words printed, painted, engraved, lithographed, or otherwise traced or copied."

PART II.

BILLS OF EXCHANGE.

Form and Interpretation.

3. A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay, on demand or at a fixed or determinable future time, a sum certain in money to or to the order of a specified person, or to bearer:

2. An instrument which does not comply with the conditions, or which orders any act to be done in addition to the payment of money, is not, except as hereinafter provided, a bill of exchange:

The words "except as hereinafter provided" refer principally to those bills in which the drawer and the drawee are the same person, which, strictly speaking, are not addressed by one person to another (Maclaren, p. 44).

FORM OF A BILL OF EXCHANGE.

Permissive.—A Bill of Exchange may be written in pencil, *Geary* v. *Physic*, 5 B. and C. 238 (1826), and drawn in any language, *re Marseilles Co.*, 30 Ch. D. 598 (1885). No special form of words is essential, *Ellison* v. *Collingridge*, 9 C. B. 570 (1850), provided the foregoing statutory definition is complied with. Where an instrument is so ambiguously worded that it is doubtful whether it was intended for a bill or note, the holder may treat it at his option as either: *Edis* v. *Bury*, 6 B. and C. 433 (1827). Also in the cases mentioned in section 5 (2).

Essential.—(1) A bill is an "order." *Its terms must be imperative, not precative*, but the insertion of mere words of courtesy will not make it precative. Thus, an instrument running "Mr. B. will much oblige Mr. A. by paying to the order of C., etc.," was held good as a bill: *Ruff* v. *Webb*, 1 Esp. 129 (1794), but an instrument running "*Please* let bearer have £100 and you will much oblige me," was held not to be a bill: *Little* v. *Slackford*, 1 M. and M. 171 (1828).

(2) *The requisites of a Bill must appear on its face with reasonable certainty;*—Concerning the certainty required as to the drawee, see section 6; as to the payee, see section 7; as to the sum payable, see section 9, and as to the time when payable, see sections 10 and 11.

(3) *The Bill must be payable in money alone*, but it may be the money of any country: *Third National Bank* v. *Cosby*, 41 U. C. Q. B. 408 (1877). *It must not order anything to be done in addition to the payment of money.* (Story, section 45), therefore an order requiring payment of a certain sum "and to take up a note for the drawer" was held to be invalid as a bill: *Irvine* v. *Lowry*, 14 Peters (U.S.), 293 (1840). Money in Canada would be specie or Dominion Notes, see R.S.C., c. 30.

(4) *The order to pay must be unconditional.*—A bill drawn payable in the common form "as per advice" is unconditional (Story, section 65), but a bill payable so many days "after the arrival" of a certain ship is conditional and invalid, for the ship may never arrive: *Palmer* v. *Pratt*, 2 Bing. 185 (1824). As to the instruments payable on a contingency, see sections 11 and 82.

3. An order to pay out of a particular fund is not unconditional within the meaning of this section; but an unqualified

order to pay, coupled with (*a*) an indication of a particular fund out of which the drawee is to re-imburse himself, or a particular account to be debited with the amount, or (*b*) a statement of the transaction which gives rise to the bill, is unconditional:

This prohibition of a bill being paid out of a particular fund arises from the fact that the fund may prove insufficient. It would be restrictive instead ofbeing merely directive.

An order to pay "on the sale or produce when sold of the X Hotel" was declared invalid, *Hill* v. *Halford*, 2 B. and P. 413, Ex. Ch. (1801); but an order to pay a sum mentioned "which you will please charge to my account and credit according to a registered letter I have addressed to you" was held to be valid under the above sub-section: *Re Boyse*, 33 Ch. D. 612 (1886).

Although a bill may not be *drawn* conditionally, it may be accepted conditionally (section 19), indorsed conditionally (section 33, or, as between immediate parties, delivered conditionally (section 21).

(5) *The Bill must be signed by the person giving it.*—The drawer may sign a blank paper which may be subsequently filled up, section 20, or it may be accepted first and signed by the drawer afterwards, section 18; but even if accepted it is not a bill if it lack the drawer's signature: *Reg.* v. *Harper*, 7 Q. B. D. 78 (1881). The drawer may sign on any part of the bill so long as he signs as drawer (*Byles*, p. 97). It has been held in France that, where a bill payable to drawer's order was indorsed by him, though he omitted to sign it on the face, this was sufficient (*Noughier*, section 199). The drawer may sign in pencil, or with a cross or mark; *Coupal* v. *Coupal*, 5 R. L. 465 (1873). Initials, a trade or assumed name, a stamp or a printed or engraved signature, are valid, where it is clear that the parties intended to adopt them as their signatures: *Exparte Birmingham Banking Co.*, L. R. 3 Ch. 653 (1868). In the case of a Corporation the signature of any authorized agent, officer or servant would bind them, or the seal alone would be sufficient. The signature of a party need not be written with his own hand. It is sufficient if it be by some other person by or under his authority, see sections 25 and 90 (Maclaren, p. 39).

IRREGULARITIES IN BILLS WHICH DO NOT INVALIDATE THEM.

4. A bill is not invalid by reason—

(*a*.) That it is not dated;

(*b*.) That it does not specify the value given, or that any value has been given therefor;

(*c*.) That it does not specify the place where it is drawn or the place where it is payable.

A bill without a date is irregular, although not invalid; such a bill is presumed to be dated on the day of the delivery, *Giles* v. *Bourne*, 6 M. & S. 73. As to filling in the date in the case of an undated bill or acceptance, see sections 12 and 20. The alteration of the date is a material alteration, section 63.

In the case of an accepted bill payable to drawer's order, the words "value received" mean value received by the acceptor: *Higmore* v. *Primrose*, 5 M. & S. 65 (1816); while, in a bill payable to a third party, they mean *prima facie* value received by the drawer: *Grant* v. *Da Costa* (1815), 3 M. and S. 351 (1815).

If no place of payment is specified the bill is payable generally. It may be payable at either of two places at the option of the holder. *Beeching* v. *Gower*, Holt N. P. C. 313 (1816). As to presentment for payment when no place of payment is specified and the address of the drawee is not given, see section 45 (4). The addition of, or change in, a place of payment is a material alteration, section 63.

PROOF ADMISSIBLE IN ACTIONS ON BILLS AND NOTES.

The contracts on a bill are contracts in writing, and, subject to the provisions of section 21 (2), parole evidence is not admissible to vary the rights and obligations of the

parties as appearing upon the face of the instrument, except to shew (1) that the date of the bill or note is not the true date, section 13, or (2) that the delivery is incomplete and conditional only, so that the contract is not operative, section 21 (3), or (3) to impeach the consideration for the contract and prove its absence, failure, or illegality: *Northfield* v. *Lawrence*, M. L. R., 7 S. C. 148 (1891): *Abrey* v. *Crux*, L. R., 5 C. P. 37 (1869); or (4) to show that the contract has been discharged by payment, release or otherwise: *Hamilton* v. *Perry*, Q. R., 5 S. C. 76 (1894), but see section 61.

POSSIBLE LEGAL EFFECT OF INSTRUMENTS INVALID AS BILLS.

(1) An instrument invalid as a bill may be valid as an agreement if it is otherwise conformable to the general law as to contracts, *Brice* v. *Bannister*, 3 Q. B. D. 569 (1878); or (2) an order to pay out of a particular fund may be valid as an assignment of the fund or a part of it and operate without acceptance by the debtor, *Buck* v. *Robson*, 3 Q. B. D. 686 (1878); or (3) an accepted bill in the hands f the drawer, unsigned by him, may be a security for the payment of money within section 326 (*d*) or section 353 of the Criminal Code, 1892 (Maclaren, p. 38).

FORM OF FOREIGN BILLS OF EXCHANGE.

The validity of a bill as regards requisites in form is determined by the law of the place of issue, section 71 (*a*), but if it conforms to Canadian Law as regards requisites in form it is valid, in Canada, as between all persons who become parties to it there, section 71 (2).

The laws of the countries mentioned below are most stringent as to form, and the following essential requirements are in addition to those necessary under the Canadian Act:—

A Bill must be dated.—French Code, Art. 110; German Ex. Law, Art. 4; Netherlands, Art. 100; Italy, Art. 251.

The nature of the consideration must be stated.—French Code, Art. 110; Netherlands, Art. 100.

The Bill must be drawn payable to order.—A bill payable to bearer is invalid. French Code, Art. 110; Spanish Code, Art. 430; Russian Code, Art. 295.

The payee must be named.—German Exchange Law, Art. 4.

The place where the Bill is drawn must be stated.—French Code, Art. 110.

The place of payment must be stated.—French Code, Art. 110; Italian, Art. 251; German Exchange Law, Art. 4.

4. An inland bill is a bill which is, or on the face of it purports to be, (*a*) both drawn and payable within Canada, or (*b*) drawn within Canada upon some person resident therein. Any other bill is a foreign bill:

2. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill.

Dishonored foreign bills must all be protested, section 48. Dishonored inland bills need only be protested in the Province of Quebec, section 51. Dishonored foreign notes are governed by section 88 (4).

The place of payment may be determined by the acceptance, section 19 (2) (*a*). Where no place of payment is specified in a bill, it is payable at the address of the drawee or acceptor, section 45 (2) (*d*) (3) (5). As to the measure of damages when a bill is dishonored abroad; see section 57 (3) (*b*), and as to conflict of laws see section 71.

5. A bill may be drawn payable to, or to the order of, the drawer; or it may be drawn payable to, or to the order of, the drawee:

A bill payable to "………. order," which is indorsed by the drawer, is deemed to be payable to drawer's order: *Chamberlain* v. *Young* (1893), 2 Q. B. 206, C. A. A bill payable to the drawer's order may be treated either as a bill or note: *Golding* v. *Water-*

house, 16 N. B. (3 Pugs.) 313 (1876). A bill payable to the order of the drawee cannot be enforced until the acceptor has indorsed it and delivered it to some other person: *Witte* v. *Williams*, 8 S. Car. 290 (1876).

2. Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or as a promissory note.

Where the drawer and the drawee are the same person, notice of dishonor is dispensed with as regards the drawer, section 50 (2) (*c*). As to persons "not having capacity to contract," see section 22. As to fictitious drawer, see section 55 (2). Where a bill is drawn upon a fictitious person or a person not having capacity to contract by bill, presentment for acceptance is excused, section 41 (2) (*a*). Also presentment for payment, section 46 (2) (*b*). Notice of dishonor is in such cases dispensed with as regards the drawer, section 50 (2) (*c*), and also as regards an indorser who was aware of the fact at the time he indorsed the bill, section 50 (2) (*d*). If both drawer and drawee are fictitious persons, the bill might, perhaps, be treated as a note made by the first indorser (Chalmers, p. 18).

6. The drawee must be named or otherwise indicated in a bill with reasonable certainty:

ILLUSTRATIONS.—(1) Instrument in the form of a bill, but addressed to no one. B. writes an acceptance thereon. This is not a bill, and B. is not liable as an acceptor, *Peto* v. *Reynolds* (1855), 11 Exch. 418, Ex. Ch., but he may be liable as the maker of a note: *Fielder* v. *Marshall* (1861), 30 L. J. C. P. 158.

(2) Instrument in the form of a bill payable to drawer's order, not containing the name of a drawee, but expressed to be payable "at No. 1 Union Street, London." B., who lives there, accepts it. This is a bill, and B. is liable as acceptor: *Gray* v. *Milner* (1819), 8 Taunt. 739.

As to a fictitious drawee, see section 5 (2).

2. A bill may be addressed to two or more drawees, whether they are partners or not; but an order addressed to two drawees in the alternative, or to two or more drawees in succession is not a bill of exchange.

Where a bill is addressed to two or more drawees, it must be accepted by all, or it is a qualified acceptance, section 19 (2) (*d*), but those who accept are bound even if the others do not (Maclaren, p. 56).

Though a bill may not be addressed to two drawees in succession, or in the alternative, it may name a drawee in case of need, see section 15; but his status is wholly different from that of an ordinary drawee. Alternative or successive drawees would give rise to difficulty as to the recourse if the bill was dishonored. This difficulty does not arise in the case of a note, consequently the makers of a note may be liable jointly, or jointly and severally, according to its tenor (section 84) while the acceptors of a bill can only be liable jointly. A note payable in the alternative by one of two makers is invalid: *Ferris* v. *Bond* (1821), 4 B. & Ald. 679. (Chalmers, p. 19.)

7. Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty:

The payee need not be mentioned by name. It is sufficient that he be indicated so that he can be clearly identified. Extrinsic evidence is admissible to identify the payee when misnamed, or when designated by description only, but not to explain away an uncertainty patent on the bill: *Soares* v. *Glyn* (1845), 8 Q. B. 24, Ex. Ch. Thus, if a bill is payable "to the

order of the Treasurer of Portugal," evidence is admissible to show that C. was the treasurer when the bill was issued. *Cf. Holmes* v. *Jacques* (1886), L. R., 1 Q. B. 376; and if the bill is payable "to the order of J. Smythe," evidence is admissible to show that T. Smith is the person intended to be described thereby: *Willis* v. *Barrett* (1816), 2 Stark 29. But if a bill be drawn in the form "Pay........or order," evidence is not admissible to show that C. was intended to be the payee: *R.* v. *Randall* (1811), R. & R. 195. In a New York case a note payable "to the order of the indorser" was held good as being payable to any holder who might indorse it: *United States* v. *White* (1841), 2 Hill, R. 59. By section 32 (2), where the payee is wrongly designated or his name is mis-spelt, he may endorse the bill as therein described, adding, if he think fit, his proper signature. If the name of the payee be left in blank, the legal holder of the bill may fill up blank, C. C., art. 2282. *Bagley* v. *Ellison* (1890), 16 V. L. R. 263.

2. A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. A bill may also be made payable to the holder of an office for the time being:

When a bill is made payable in the alternative to one of two payees, it passes by the indorsement of either: *Spaulding* v. *Evans*, 2 McLean, 139, (1840).

3. Where the payee is a fictitious or non-existing person, the bill may be treated as payable to bearer.

Real persons are considered fictitious when they are the nominal payees of a forged bill: *Bank of England* v. *Vagliano* (1891), A. C., 105 H. L. It is not necessary for the payee to be fictitious or non-existing to the knowledge of the drawer or acceptor to bring it within the Act. A cheque drawn to the order of a fictitious person may be treated as payable to bearer, although the drawer believes and intends the cheque to be payable to the order of a real person: *Clutton* v. *Attenborough & Son*, A. C. (1897), 90 H. L. (E.), but the onus is on the holder to prove that the payee is fictitious or non-existing. The holder in good faith of a bill payable to a fictitious or non-existing person should indorse the fictitious name and add his own, and the signature of the name of the fictitious payee in such a case is distinguished from the forgery of the signature of a real person. A man may use a fictitious name for the purposes of his business, and sign accordingly, but signing the name of a non-existing or fictitious person *with fraudulent intent* is forgery. By section 34 (3) the provisions of the Act relating to a payee apply, with the necessary modifications, to an indorsee under a special indorsement. As to the estoppels which bind an acceptor as such, see section 54 (3), and as to the estoppels which bind a drawer or indorser as such, see section 55 (*b*). As to estoppel by negligence, see section 24 (1).

Where a bill is drawn payable to a deceased person in ignorance of his death, his personal representatives may enforce the bill: *Murray* v. *East India Co.* (1821), 5 B. & Ald. 204.

8. When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but it is not negotiable:

2. A negotiable bill may be payable either to order or to bearer:

This sub-section must be read with sub-section (4). As to when a bill negotiable in its origin ceases to be negotiable, see sections 35 and 36.

A bill or cheque payable to order or bearer cannot be deprived of the negotiable character of such instruments except by restrictive indorsement or by statutory provisions made for that purpose, exactly complied with. A cheque drawn payable to the order of M. and crossed "account of M. National Bank,"

held not to be thereby made not negotiable: *Smith* v. *Union Bank of London*, 1 Q. B. D. 32; *National Bank* v. *Silke* (1891), 1 Q. B. 435. The Statutory provisions referred to are sections 75 and 80. (Campbell's Ruling Cases, Vol. IV., B. of E. Rules 27 and 28).

3. A bill is payable to bearer which is expressed to be so payable, or on which the only or last indorsement is an indorsement in blank:

See "bearer" defined by section 2. See section 34 (1) as to blank indorsements and converting blank indorsements into special indorsements.

4. A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable:

If the acceptor of a bill payable to drawer or order when accepting it strikes out the words "or order" and writes over his acceptance the words "in favor of drawer only," the alteration is immaterial, and the negotiability of the bill is not affected: *Decroix* v. *Meyer* (1890), 25 Q. B. D. 343, C. A. affirmed (1891), A. C. 520, H. L. A *bon* made payable to a party therein named is negotiable though the words "or order" are omitted: *Desy* v. *Daly*, 3 Rev., de Jur. 492 (1897).

5. Where a bill, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order, at his option.

9. The sum payable by a bill is a sum certain within the meaning of this Act, although it is required to be paid—

(*a.*) With interest;

(*b.*) By stated instalments;

(*c.*) By stated instalments, with a provision that upon default in payment of any instalment the whole shall become due;

(*d.*) According to an indicated rate of exchange, or according to a rate of exchange to be ascertained as directed by the bill:

Sum Certain.—Instruments such as the following would be invalid as bills or notes, as not being for sums certain within the meaning of section 3, namely:—An order to pay C. "$100, and all other sums which may be due to him," *Smith* v. *Nightingale* (1818), 2 Stark 375; or an order to pay C. "the proceeds of a shipment of goods, value $2,000, consigned by me to you." *Jones* v. *Simpson* (1823), 2 B. & C. 318; or an order to pay C. "the balance due to me for building the Baptist College Chapel:" *Crowfoot* v. *Gurney* (1832), 9 Bing. 372.

Interest.—A bill payable "with lawful interest" is valid: *Cf. Warrington* v. *Early* (1853), 2 E. & B. 763, 23 L. J. Q. B. 47. The legal rate in Canada is 6 per cent., but the parties may agree upon any higher or lower rate (R. S. C., c. 127, ss. 1 and 2), *provided* that if the bill or note is made payable at any rate or percentage for any period less than a year, any interest exceeding 6 per cent. per annum shall not be chargeable, payable or recoverable unless the bill or note contains an express statement of the yearly percentage of interest to which the rate charged is equivalent, and any sum paid on account of interest not chargeable may be recovered back or deducted from any amount remaining due, 60-61 Vict., c. 8, s. 1 and 2.

Instalments.—The instalments may be either with or without interest. Each instalment is treated as a separate bill with regard to days of grace, presentment and notice of dishonor. A bill payable "by two equal instalments due 1st January and 1st

July" is valid, *Gaskin* v. *Davis* (1860), 2 F. & F. 294; but a bill payable "by instalments," not specifying dates or amounts or payable "by equal instalments to cease on the death of X," would be invalid: *Moffatt* v. *Edwards* (1841), Car. & M. 16; *Worley* v. *Harrison* (1835), 3 A. & E. 669.

Exchange.—Where a bill is to be paid in one country, and the sum is expressed in the currency of another, the amount is determined according to the rate of exchange on the day the bill is payable: *Hirschfield* v. *Smith*, L.R., 1 C.P. 340 (1866). A bill payable "at exchange as per last indorsement," or "according to the course of exchange upon Paris," would be valid: *Cf. Pollard* v. *Herries* 1803), 3 B. and P. 335.

The indorsement of a rate of exchange without authority is a material alteration which may avoid the bill: *Hirschfield* v. *Smith, supra.*

2. Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable:

The rule in this sub-section is so binding that when the figures in the margin differ from the amount in words, evidence is inadmissible to show that the amount in figures is the correct one: *Saunderson* v. *Piper*, 5 Bing. N. C. 425; but when the words are not distinct, the figures in the margin may be looked at to explain them: *Beardsley* v. *Hill*, 61 Ill. 354 (1871).

3. Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated, from the issue thereof.

See "issue" defined by section 2. Interest proper, payable by the instrument itself, must be distinguished from interest by way of damages, payable on its dishonor. As to the latter, see section 57.

If a wrong date is inserted in a bill which comes into the hands of a holder in due course he can collect interest from the date inserted, even if it be previous to the true date of issue. Sections 12 and 20.

10. A bill is payable on demand—

(*a.*) Which is expressed to be payable on demand, or on presentation; or—

(*b.*) In which no time for payment is expressed:

Bills payable on demand are not entitled to days of grace, but bills payable at a determinable future time are entitled to three days' grace. See section 14.

As regards instruments payable on demand, see section 36 (3), when overdue; section 45 (2) (*b*), presentment for payment; section 72, cheque; and section 85 as to notes.

2. Where a bill is accepted or indorsed when it is overdue, it shall, as regards the acceptor who so accepts, or any indorser who so indorses it, be deemed a bill payable on demand.

As to the rights of a transferee of an overdue bill against parties liable thereon before its maturity, see section 36.

11. A bill is payable at a determinable future time, within the meaning of this Act, which is expressed to be payable—

(*a.*) At sight, or (*b*), at a fixed period after date or sight:

There is no limitation as to length of time. "If a bill of exchange be made payable at never so distant a day, if it be a day that must come, it is no objection to the bill." Per Willes, C. J., in *Colchan* v. *Cooke*, Willes 396.

See section 44 (2) (3) as to fixing the due date of bills in ordinary cases, and section 64 (5) as to the due date when accepted for honor. "After sight," in a bill means after acceptance or noting for protest for non-acceptance, *i.e.*, sight evidenced on the bill.

(*b.*) On or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening is uncertain:

Among other things death has been held to be an event certain to happen, and bills and notes payable upon, or a specified time after, the death of a person have been declared valid, *vide Cooke* v. *Colehan*, 3 Str. 1217 (1742); *Roffey* v. *Greenwell* (1839), 10 A. and E. 222; but notes payable "when I marry X," *Pearson* v. *Garrett* (1689), 4 Mod. 242, "when I am in good circumstances," *Ex parte Tootell* (1789), 4 Ves. 372, and "ninety days after the dissolution of partnership between C. and X., and the settling of the books," *Sackett* v. *Palmer* (1857), 25 New York R. 179, have been declared invalid. A bill, however, may be made payable at a particular fair or exhibition, though the day on which it will be held is not known: *Colehan* v. *Cooke*, *supra*.

2. An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect.

12. Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill payable at sight or (1) at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly;

Provided that (*a*) where the holder in good faith and by mistake inserts a wrong date, and (*b*) in every case where a wrong date is inserted, if the bill subsequently comes into the hands of a holder in due course, the bill shall not be void thereby, but shall operate and be payable as if the date so inserted had been the true date.

See "issue" and "holder" defined by section 2, "good faith" by section 89, and "holder in due course" by section 29.

This presumption of authorization to insert true date of issue or acceptance is now extended, as regards the kind of bills named, to any payee or indorsee in possession of the bill and to the bearer (Maclaren, p. 84).

See section 20, for the general rule as to material omissions in a bill, and the consequences of supplying them, and section 63 as to material alterations.

Where the acceptance is not dated, the bill is presumed to have been accepted a few days after its date: *Roberts* v. *Bethell* (1852), 12 C. B. 778.

13. Where a bill or an acceptance, or any indorsement on a bill, is dated, the date shall, unless contrary is proved, be deemed to be the true date of the drawing, acceptance, or indorsement, as the case may be:

Parole evidence is admissible to show that the date on the bill is not the true date: *Biggs* v. *Piper*, 86 Tenn. 589 (1888).

If a bill be dated on an impossible day, such as the 31st September, the law adopts the nearest day by the doctrine of cy pres, and the computation will be from the 30th September: *Wagner* v. *Kenner*, 2 Robinson (La.) 120 (1842).

2. A bill is not invalid by reason only that it is ante-dated or post-dated, or that it bears date on a Sunday or other non-juridical day.

Time is computed on ante-dated or post-dated bills from the actual date they bear, and the fact that a cheque is post-dated does not make it irregular within the meaning of section 29 (1)

so as to charge the holder with equities of which he had no notice: *Hitchcock* v. *Edwards* (1889), 60 L. T. N. S. 636. To antedate a deed in order to defraud a third party is a forgery; and the same principle would doubtless apply to bills and notes (Chalmers, p. 34). The death of one of the parties to a post-dated bill before the day of its date does not prevent title being derived through him on its being shewn that it was post-dated: *Passmore* v. *North* (1811), 13 East 517.

Sunday.—If a bill is given in pursuance of a contract declared by statute to be illegal as being made on a Sunday in the course of a man's ordinary calling, it would be void as between the immediate parties and as to any person who takes it with notice, but the mere fact of its being dated on a Sunday would not be such notice: *Crombie* v. *Overholtzer*, 11 U. C. Q. B. 55.

14. Where a bill is not payable on demand, the day on which it falls due is determined as follows:

(*a*.) Three days, called days of grace, are, in every case where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace: Provided that—

1. Whenever the last day of grace falls on a legal holiday or non-juridical day in the Province where any such bill is payable, then the day next following, not being a legal holiday or non-juridical day in such Province, shall be the last day of grace:

This sub-section applies only to bills payable in Canada. Those payable elsewhere are governed as to their due date by the law of the place where they are payable. Section 71, ss. 2 (e).

Where a bill is payable by instalments, days of grace are allowed on each instalment: *Oridge* v. *Sherborne*, 11 M. & W. 374 (1843).

Non-negotiable notes not payable on demand are entitled to days of grace: *Smith* v. *Kendall*, 6 T. R. 123 (1794).

2. In all matters relating to bills of exchange the following and no other shall be observed as legal holidays or non-juridical days, that is to say:

(*a*.) In all the Provinces of Canada, except the Province of Quebec—

Sundays;
New Year's Day;
Good Friday;
Easter Monday;
Christmas Day;

The birthday (or the day fixed by proclamation for the celebration of the birthday) of the reigning Sovereign; and if such birthday is a Sunday, then the following day;

The first day of July (Dominion Day), and if that day is a Sunday, then the second day of July as the same holiday;

Any day appointed by proclamation for a public holiday, or for a general fast, or a general thanksgiving throughout Canada; and the day next following New Year's day and Christmas Day, when those days respectively fall on Sunday;

The first Monday in September, to be called "Labour Day."

(*b*.) And in the Province of Quebec the said days, and also—

The Epiphany;
The Ascension;
All Saints' Day;
Conception Day;

(c.) And also, in any one of the Provinces of Canada, any day appointed by proclamation of the Lieutenant-Governor of such Province for a public holiday, or for a fast or thanksgiving within the same, or being a non-juridical day by virtue of a statute of such Province:

A notice of dishonor received on one of the above days is treated as having been received on the following business day.

3. Where a bill is payable at sight, or at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment:

4. Where a bill is payable at sight or a fixed period after sight, the time begins to run from the date of the acceptance if the bill is accepted, and from the date of noting or protest if the bill is noted or protested for non-acceptance, or for non-delivery:

See sections 42, 51 (8), & 64 (5).

5. The term "Month" in a bill means the calendar month:

6. Every bill which is made payable at a month or months after date becomes due on the same numbered day of the month in which it is made payable as the day on which it is dated—unless there is no such day in the month in which it is made payable, in which case it becomes due on the last day of that month—with the addition, in all cases, of the days of grace.

15. The drawer of a bill and any indorser may insert therein the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonored by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not, as he thinks fit.

In the United States presentment to the referee is, perhaps, obligatory. (Story, section 65).

Before a bill is presented to the referee in case of need it must have been protested for non-payment, section 66, or at least have been noted for non-payment, section 92.

16. The drawer of a bill, and any indorser, may insert therein an express stipulation—

(a.) Negativing or limiting his own liability to the holder;

Compare sections 33 and 35 as to conditional and restrictive indorsements. It has been held in the United States that an indorser "without recourse" is responsible to the same extent that a transferer by delivery is responsible, *e.g.*, where the bill is a forgery. *Hannum* v. *Richardson* (1875), 21 Amer. R. 152. As to the ordinary liability of an indorser, see section 55 (2), and as to the liability of a transferor by delivery, see section 58. As to indorsements or guarantees by parties who have never been holders, see section 56.

The provisions of this section are limited to the drawer or indorser. An acceptor may accept conditionally, see section 19, but he cannot accept so as to make himself secondarily, and not primarily, liable on the bill (Chalmers, p. 40).

(b.) Waiving, as regards himself, some or all of the holder's duties.

Chalmers gives the following illustration, p. 40:—C., the holder of a bill indorses it to D, adding the words "notice of dishonor waived." No subsequent party is obliged to give notice of dishonor to C. Such an indorsement relates only to the indorser's liability, and does not otherwise affect the negotiation of the bill.

In the United States it has been held that an indorsement in the above form dispenses with the necessity of notice to all subsequent indorsers, *Parshley* v. *Heath* (1879), 31 Amer. R. 246 (Daniell, section 1090), but the English and Canadian Acts appear to contemplate the restriction of the waiver to the drawer or indorser who expressly waives any of the holder's duties "as regards himself." (Chalmers, p. 40, Maclaren, p. 95).

17. The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer:

2. An acceptance is invalid unless it complies with the following conditions, namely:—

(*a.*) It must be written on the bill and be signed by the drawee. The mere signature of the drawee without additional words is sufficient;

(*b.*) It must not express that the drawee will perform his promise by any other means than the payment of money;

3. Where in a bill the drawee is wrongly designated or his name is mis-spelt, he may accept the bill as therein described, adding, if he thinks fit, his proper signature, or he may accept by his proper signature.

The acceptance may be written on any part of the bill, provided it is clear that an acceptance was intended: *Young* v. *Glover*, 3 Jur. N. S. 637 (1857). It need not be dated, but it ought to be when the bill is at sight or so many days after sight. The drawee must accept upon presentment or at least within two days thereafter (sections 42 and 43). He may revoke his acceptance at any time before he delivers it or gives notice that he has accepted, but afterwards his act is irrevocable (section 21). His liability under the acceptance is set out in section 54. A promise to accept is not an acceptance, and the acceptance to pay by another bill is invalid. *Russell* v. *Phillips*, 14 Q. B. 891. No person except the drawee or authorized agent can be liable as acceptor of a bill (*Steele* v. *McKinlay*, 5 App. Cas. 770) save the referee in case of need (section 14) or the acceptor for honor (section 64). Where a bill is addressed to a firm, the signature of one of the partners or an agent binds the firm (section 23). If the partner signing adds also his own name, it is the acceptance of the firm and not of himself personally, re *Barnard, Edwards* v. *Barnard* (1886), 32 Ch. D. 447, C. A.; but if he accepts simply in his own name, he is personally liable and the firm is not bound: *Owen* v. *Von Oster* (1850), 10 C. B. 318. If a partner accepts in the firm name a bill addressed to himself, the firm is not bound, but he is personally liable, as the firm name is merely a compendious form of expressing the individual names or signatures of all the partners: *Nicholls* v. *Diamond* (1853), 9 Exch. 154. An agent who signs a bill for his principal without authority, though not liable on the instrument, may be liable to the holder in an action for falsely representing that he had authority: *West London Bank* v. *Kitson* (1884), 13 Q. B. D. 360, C.A. A bill drawn on a Corporation should be addressed to the Company and not to its directors or officers, as it is frequently difficult to decide whether the drawee is the Company or the directors or officers individually. (See cases in Maclaren, p. 96-98). A note or bill is deemed to have been made, accepted or indorsed on behalf of a Company if made, accepted or indorsed (*a*) in the name of the Company by any person acting under the authority of the Company, or (*b*) by or on behalf of or on account of the Company by any person acting under its authority. The accurate and full name of the Company is important. Where a Company is "limited," that word forms a part of its name, and any acceptance omitting this does not bind the Company: *Atkins* v. *Wardle*, 58 L. J. Q. B. 377 (1889).

18. A bill may be accepted—

(*a.*) Before it has been signed by the drawer, or while otherwise incomplete;

See section 20 as to acceptance in blank.

(*b.*) When it is overdue, or after it has been dishonored by a previous refusal to accept, or by non-payment:

The holder may treat a bill as dishonored by non-acceptance if it turns out that the drawee was incompetent to contract. (Maclaren, p. 102).

A bill accepted when overdue is payable on demand, section 10 (2). After a bill has been refused acceptance, and notice of dishonor has been given, the holder may apply to the referee in case of need if there be one named in the bill, section 15; or it may be accepted for honor by a third party, section 64; or the drawer may change his mind and accept. If he should do so the date from which time should run is fixed by the next sub-section.

2. When a bill payable at sight, or (1) after sight, is dishonored by non-acceptance, and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance.

If the holder took an acceptance of a later date it would be a qualified acceptance, and he would do so at his own risk (section 44). (Maclaren, p. 103).

Unless the contrary appear by its terms, a bill of exchange is *prima facie* deemed to have been accepted before maturity and within a reasonable time after its issue, but there is no presumption as to the exact time of acceptance. For example: B. accepts, without dating, a bill drawn payable three months after date. He attains his majority the day before the bill matures. This is *prima facie* evidence that B. accepted it while an infant: *Roberts* v. *Bethell* (1852), 12 C. B. 778.

19. An acceptance is either (*a*) general, or (*b*) qualified: a general acceptance assents without qualification to the order of the drawer; a qualified acceptance in express terms varies the effect of the bill as drawn:

By section 44 the holder may refuse to take a qualified acceptance. If he takes it, he must give notice to the drawer and indorsers, who may decline to be bound by it, but they must express their dissent within a reasonable time, or their acquiescence is presumed. If no notice is given, the drawer and indorsers are discharged, unless they have authorized the taking of the qualified acceptance.

2. In particular, an acceptance is qualified which is—

(*a.*) Conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated; but an acceptance to pay at a particular specified place is not conditional or qualified.

Words importing a conditional or qualified acceptance will be construed most strongly against the restriction of the acceptor's liability, and to have effect must show in clear and unequivocal terms, on the face of the bill, that the acceptance is so qualified: *Smith* v. *Virtue*, 30 L. J. C. P. 60. Where a bill was payable to drawer's order and the acceptor struck out the words "or order" and wrote over his acceptance the words "in favor of the drawer only," it was held that the acceptance was not qualified and that an indorsee could sue the acceptor: *Meyer* v. *DeCroix* (1891), App. Cases 520. In *Fanshawe* v. *Peet* (1857), 26 L. J. Ex. 314, it was held that a mere memorandum, such as a wrong due date, introduced into the acceptance, contrary to the tenor of the bill, formed no part of the acceptance, and,

therefore, did not make it qualified (Campbell's Ruling Cases, Vol. IV, Rules 8, 9 and 10). If the bill as drawn specified a particular place of payment, and the acceptance names a different one, this would be such a variance as would make the acceptance a qualified one: *Rowe* v. *Young*, 2 B. & B. 165 (1820).

Where the acceptance on a bill is unconditional, parole evidence cannot be received to show that it was accepted conditionally: *Bradbury* v. *Oliver*, 5 U. C. O. S. 703.

The following are examples of conditional acceptances:—

(1) "If a certain house shall be finished:" *Dufresne* v. *Jacques Cartier Building Society*, 5 R. L. 235 (1873).

(2) "When certain debentures are sold:" *Ontario Bank* v. *McArthur*, 5 Man. 381 (1889).

(3) "When certain debentures are sold;" *Russell* v. *Phillips*, 14 Q. B. 891.

(*b.*) Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;

As to partial acceptances, see further section 44 (2).

(*c.*) Qualified as to time;

The acceptor may vary the time of payment named by the bill, and if none be named he may fix a time, and he will be bound by it: *Russell* v. *Phillips*, *supra*.

(*d.*) The acceptance of some one or more of the drawees, but not of all.

If there are several drawees and they do not all accept, those who do are bound. A partner may accept in his own name a bill addressed to his firm, and it is a valid acceptance: *Owen* v. *Von Uster*, 10 C. B. 318 (1850).

20. Where a simple signature on a blank paper is delivered by the signer in order that it may be converted into a bill, it operates as a *prima facie* authority to fill it up as a complete bill for any amount, using the signature for that of the drawer, or the acceptor, or an indorser, and, in like manner, when a bill is wanting in any material particular, the person in possession of it has a *prima facie* authority to fill up the omission in any way he thinks fit:

2. In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time, and strictly in accordance with the authority given; reasonable time for this purpose is a question of fact:

The onus of proving the delivery of the blank paper by the signer in order that it might be converted into a bill or note is on the holder. Once it is proved that it was so delivered, the onus is shifted, and it is then for the signer to prove that it was not filled up within a reasonable time or in accordance with the authority given.

Extrinsic evidence of all the material circumstances is admissible to determine what is a reasonable time: *Hales & London & North Western Railway*, 4 B. & S. 66. It is for the party seeking to enforce the bill to account for the delay if it has been unusual, but when the signer seeks to escape liability on the ground that the authority given has been exceeded, the onus of proof is upon him as the holder has *prima facie* authority to fill it up as he sees fit.

Death revokes the authority to fill up a bill unless the holder be a holder for value.

Provided, that if any such instrument, after completion, is negotiated to a holder in due course, it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given.

The instrument so taken must have been originally delivered as a bill or delivered in an incomplete state in order that it might be converted into a bill. When a bill or note is written over a signature given for other purposes, the signer is not liable: *Ford* v. *Auger*, 18 L. C. J. 296; *Banque Jacques Cartier* v. *Lescard*, 13 Q. L. R. 39. If a blank acceptance is stolen from the signer and filled up, he is not liable to a holder in due course: *Baxendale* v. *Bennett*, 3 Q. B. D. 525. The liability of the signer begins when the bill is first issued complete in form, and not when he signs: *Ex parte Hayward* (1871), L. R. 6 Ch. 546.

An indorser of a note who signs before the maker or payee, and before the amount is filled up, is liable on the note as completed: *Rossin* v. *McCarthy*, 7 U. C. Q. B. 100 (1849).

21. Every contract on a bill, whether it is the drawer's, the acceptor's or an indorser's, is incomplete and revocable, until delivery of the instrument in order to give effect thereto:

Provided, that where an acceptance is written on a bill, and the drawee gives notice to, or according to the directions of, the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable:

The acceptance must be in writing, but the notification may be either written or verbal.

Delivery is necessary also to render the contract of the maker or indorser of a promissory note complete and irrevocable. The mailing of the bill to the party to whom it is addressed constitutes delivery: *Ex parte Cote* (1873), L. R. 9 Ch. 27.

If the indorser of a bill or note delivers it to his own agent, he can recover it; if to the agent of the indorsee, he cannot recover it. A delivery by mistake may be revoked by mutual consent: *Ex parte Cote, supra.*

2. As between immediate parties, and as regards a remote party, other than a holder in due course, the delivery—

(*a.*) In order to be effectual must be made either by or under the authority of the party drawing, accepting or indorsing, as the case may be;

(*b.*) May be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill;

But if the bill is in the hands of a holder in due course, a valid delivery of the bill by all parties prior to him, so as to make them liable to him, is conclusively presumed:

3. Where a bill is no longer in the possession of a party who has signed it as drawer, acceptor or indorser, a valid and unconditional delivery by him is presumed until the contrary is proved.

Where a bill has been delivered conditionally or for a special purpose only, and the person who has so received it violates his trust, the owner may recover the bill or its amount from such person or anyone who has taken it with notice: *Muttyloll Seal* v. *Dent*, 8 Moore P. C. 319 (1853).

A bill or note may be delivered conditionally, and upon the happening of the event or fulfilment of the condition, no further delivery is necessary. What was before a mere paper writing becomes a valid bill. The death of the parties liable does not prevent the bill taking effect: *Giddings* v. *Giddings*, 51 Vt. 227 (1878).

As between immediate parties, a contemporaneous agreement, *Cf. Brown* v. *Langley* (1842), 4 M. & Gr. 466, or a subsequent written agreement, *McManus* v. *Bark* (1870), L. R. 5 Ex. 65, but not an oral agreement, *New London Credit Syndicate, L.D.* v. *Neale*, C. A. (1898), 2 Q. B. 487, may control the effect of a bill, subject to same conditions as would be requisite in an ordinary contract; but the mere fact that a bill refers to a collateral writing or agreement which is conditional in its terms will not viti-

ate the bill in the hands of a person who has no notice of its contents: *Lindley* v. *Lacey* (1864), 34 L. J. C. P. 9. (See English and American cases reviewed, *Taylor* v. *Curry* [1871], 109 Massachusetts 36).

Capacity and Authority of Parties.

22. Capacity to incur liability as a party to a bill is coextensive with capacity to contract:

Provided, that nothing in this section shall enable a corporation to make itself liable as drawer, acceptor or indorser of a bill, unless it is competent to it so to do under the law for the time being in force relating to such corporation:

2. Where a bill is drawn or indorsed by an infant, minor, or corporation having no capacity or power to incur liability on a bill, the drawing or indorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto.

Capacity to contract is regulated by law and cannot be altered by private agreement.

Questions of capacity are determined according to the laws in force in each Province, and, when these conflict are governed in Quebec according to the law of the domicile of the contracting party (C. C. Art. 6), and though the law of the other provinces is not settled, the leaning appears to be towards the same rule (Maclaren, p. 120). In the United States, on the other hand, the law of the place of the contract is generally followed (Story on Conflict of Laws, s. 102). In England capacity is perhaps determined according to the *lex domicilii* of the contracting party (Chalmers, p. 61, citing *Sottomayer* v. *De Barros* [1877], 3 P. D. 1, at p. 5: C. A. & Westlake, 3rd ed., p. 41). (See, also MacLaren, p. 120 and 121.)

Capacity to incur liability must be distinguished from (*a*) capacity to enforce rights; (*b*) capacity to transfer; and (*c*) capacity to contract on behalf of another, as a person who cannot himself be held liable may be able to bind others, or to make a legal transfer, or to act as agent when duly authorized.

The incapacity of one or more parties to a bill in no way diminishes the liability of the other parties thereto: *Cf. Grey* v. *Cooper* (1872), 3 Dougl. 65. Thus the acceptor cannot set up the incapacity of the drawer, section 54 (2), the drawer cannot set up the incapacity of the acceptor or payee, nor can the indorser set up the incapacity of the drawer or a previous indorser (section 55).

The principal classes without full capacity to contract are:—

(*a*) *Natural incapables.*—Those persons who, from natural infirmity, are entirely incapable of efficiently looking after their own interests, viz.: idiots and lunatics.

(*b*) *Temporary incapables.*—This class includes minors, drunken persons and those whose mental faculties are impaired for the time being on account of age, accident or sickness.

(*c*) *Artificial incapables.*—Those persons who, though perfectly able to protect their own interests, are forbidden by some special law from entering into contracts. This class includes persons civilly dead, non-trading corporations and married women whose domicile is in the Province of Quebec.

Minors.—No person in Canada under the age of 21 years can incur liability on a bill of exchange or note, except under the law of the Province of Quebec, which allows minors emancipated by marriage or by the Court to sign bills and notes in the performance of all acts of pure administration (C. C. Arts. 314-322), and minors engaged in trade or business to bind themselves by bills and notes relating to such trade or business (Art. 323), (*City Bank* v. *Lafleur*, 20 L. C. J. 131), but a minor domiciled and engaged in business in Ontario cannot bind himself by a note payable in Quebec, the law of Ontario governing as to his capacity: *Jones* v. *Dickinson*, Q. R., 7 S. C. 313 (1895). A minor is not

bound on a bill or note given by him for necessaries, although he may be liable on the consideration: *Ex parte Marquette Re Soltykoff* (1891), 1 Q. B. 413, C. A., but the action cannot be taken on such consideration until after the due date of the note. If an adult person becomes acceptor of a bill, the mere fact that it was drawn and dated while he was under age will not be a good defence. *Chalmers* gives the following illustrations as to the liability of minors (p. 62):

(*a*) B., an infant, within three months of attaining his majority, accepts a bill payable six months after date. He ratifies the transaction on attaining his majority, and the bill is negotiated. B. is not liable on his acceptance: *Ex parte* Kibble (1875), L. R. 10, Ch. 373.

(*b*) B., after attaining his majority, accepts a bill to pay a debt contracted before his majority. The bill is indorsed to a holder in due course. The holder can sue B: *Belfast Banking Co.* v. *Doherty* (1870), 4 Ir. L. R. Q. B. D. 124.

(*c*.) B., after attaining his majority, accepts a bill to compromise a joint liability on a bill which he accepted during his minority. He is not liable to a holder with notice: *Smith* v. *King* (1892), 2 Q. B. 543.

If an infant be a party, jointly with an adult, to a negotiable instrument, the owner may sue the adult alone, without taking notice of the infant: *Burgess* v. *Merrill*, 4 Taunt. 468.

Where an infant is partner in a firm, unless, on coming of age, he notifies the discontinuance of the partnership, he is liable for contracts made by the firm after his majority: *Good* v. *Harrison*, 5 B. & Ald. 147.

Rights of Minor as Holder of Bill.—A minor may transfer, or sue, on a bill which he holds, whether he is the drawer or not, for, though he is not bound, other parties may be bound to him.

Idiots, Lunatics, etc.—In Quebec persons interdicted for imbecility, madness, insanity, prodigality or drunkenness, cannot bind themselves by bill or note (C. C. Art. 987). Bills and notes made by such persons when not interdicted are valid, but may be annulled if injurious to them, provided their condition was notorious or known to the other party at the time of the execution of the instrument. (C. C. Arts. 334, 335).

In the other Provinces of the Dominion the rule is that the contract of a lunatic or drunken man who, by reason of lunacy or drunkenness, is not capable of understanding the terms or forming a rational judgment of its effect upon his interest is not void but only voidable at his option, and this only if his state is known to the other party. Pollock on Contracts, p. 91 (adopted by Maclaren, p. 121.) See *Robertson* v. *Kelly*, 2 O. R. 163 (1883), *Imperial Loan Co.* v. *Stone*, 1 Q. B. 599 (1892); *Gore* v. *Gibson*, 13 M. & W. 623.

Married Women.—A married woman having separate property may by bill, note or otherwise bind the separate property which she has or may acquire in all respects as if she were *feme sole*, except in the Province of Quebec, where the general rule is that a wife cannot contract without the authorization of her husband (C. C. Arts. 176, 296 and 986), *Danziger* v. *Ritchie*, 8 L. C. J. 103 (1864); but in the case of a note such authorization is sufficiently proved by the indorsement of the husband, *Johnson* v. *Scott*, 3 L. N. 171 (1880), or by his signing a note as witness to the signature of his wife, *Kearney* v. *Gervais*, R. J. Q., 3 S. C. 496. If the married woman is separate as to property by marriage contract (C. C. Art. 1422), or if she be granted by the Court a separation from bed and board (C. C. Art. 210), or even a separation as to property only (C. C. Art. 177), she may administer her own property and give bills and notes when necessary for such administration. If she is a public trader she may bind herself without the authorization of her husband for all that relates to her commerce, *Beaubien* v. *Husson*, 12 L. C. R. 47 (1862), and (C. C. Art. 179); but in such a case even a holder in due course would have to clearly prove that the bill was for an obligation contracted in the course of her trade, *Banque Ville Marie* v. *Mayrand*, Q. R., 10 S. C. 460 (1897), as a bill made by a married woman without authorization is not "complete and regular on the face of it" and *caveat emptor*. A woman cannot bind her separate property in any contract with or for her hus-

band otherwise than as being common as to property (C. C. Art. 1301), neither for his debt, *Thibaudeau* v. *Burke*, 20 R. L. 85 (1890), nor for his benefit, *Ricard* v. *Banque Nationale*, Q. R., 3 Q. B. 161 (1893), nor as a surety for him, *Martin* v. *Guyot*, M. L. R. 1 S. C. 181 (1885) nor together with him, *Leclerc* v. *Ouimet*, 19 R. L. 78 (1890). She cannot even indorse a note given by her husband for necessaries for their common support. *Bruneau & Burnes*, 25 L. C. J. 245 (1880), but a note made by a wife separate as to property in favor of her husband and indorsed by him for necessaries purchased by her is valid without proof of express authority to her to sign the same: *Cholet* v. *Duplessis*, 6 L. C. J. 81 (1862). A woman may incur a debt or become surety for a third person, with the authorization of her husband. The principles of Quebec law applying to the incapacity of married women to contract have always been held to be matters of public policy (Girouard, p. 59).

A woman who is divorced, or whose husband is civilly dead, has full power to contract.

Rights of Women as Holders of Bills and Notes.—If a married woman is the holder of a bill or note, she may sue on it in her own name except in Quebec, where the husband alone can collect and sue upon it, if there be community of property (C. C. Art. 1298). If the wife is separate as to property, it forms part of her separate estate, but she cannot sue upon it without the authorization on her husband (C. C. Art. 176), nor can she validly pass the property in a bill payable to her order without such authorization, except as against an acceptor, drawer or indorser, who is precluded from denying it under sections 54 and 55 (Maclaren, p. 131). If the bill or note be given to a married woman, *marchande publique*, in the course of her trade, she may indorse it alone, but a suit for its recovery must be taken in her name, assisted by her husband (C. C. Art. 176).

Corporations.—Those corporations can become parties to notes and bills which are given special authority to do so by their charters or by the general laws by which they are governed. Also when it is absolutely necessary to enable them to carry on their business or attain the objects of their creation. In the case of a trading corporation, the fact of incorporation for the purpose of trade would give capacity. In the case of non-trading corporations, the power must be expressly given, or there must be terms in the charter wide enough to include it (Chalmers, p. 64). The bill of a company lacking capacity is, as regards the company, incurably bad, for a contract *ultra vires* of a corporation cannot be ratified. The capacity of a company ceases when a resolution to wind it up has been passed.

Companies incorporated by Letters Patent of the Dominion or Provinces of Nova Scotia and British Columbia, are required to add the word "limited" after the name on every bill, note or cheque, and if they fail to do so are liable to a penalty.

Other incapable persons.—Persons civilly dead have no capacity to contract. These include persons in the Province of Quebec who take solemn and perpetual vows in a religious community recognized at the time of the cession of Canada to England, and subsequently approved (Art. 34 C. C.).

23. No person is liable as drawer, indorser, or acceptor of a bill who has not signed it as such: Provided that—

(*a*.) Where a person signs a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name;

The first part of this section should be read in conjunction with section 56. If an agent becomes a party to a bill or note in his own name his undisclosed principal cannot be made liable on the bill: *Adansonia Co.*, 43 L. J. Ch., p. 734, but as between immediate parties he may nevertheless be liable on the consideration.

(*b*) The signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm.

The persons liable under this sub-section are (1) working, (2) dormant or secret partners, *Pooley* v. *Driver* (1876) 5 Ch. D. 458, and (3) those who, although not really partners, have held themselves out as such: *Gurney* v. *Evans* (1858), 27 L. J. Ex. 166.

The partners in trading or commercial firms are presumed to have given each other authority to bind the firm by drawing, indorsing or accepting bills in the firm name for partnership purposes, but not otherwise. *Federal Bank* v. *Northwood*, 7 C. R 389 (1884); and after the bill gets into the hands of a holder in due course, the presumption of authority becomes absolute: *Henderson* v. *Carveth*, 16 U. C. Q. B. 324.

In civil or non-trading partnerships there is no such presumption of authority. The partner who signs is bound, and so are his co-partners if they have authorized his act, or if they subsequently ratify it, but not otherwise: *Wilson* v. *Brown*, 6 Ont. A. R. 411 (1881). The holder must show authority, actual or ostensible, to bind a non-trading firm (Lindley, 5th ed., p. 130). Partnerships, such as professional partnerships, mining partnerships, agricultural partnerships, and commission agencies, have been held non-trading; but banking is a trading partnership (Chalmers, p. 69).

Where the name of a firm, and the name of one of the partners in it is the same, and that partner draws, indorses or accepts a bill in the common name, the signature is *prima facie* deemed to be the signature of the firm, if the firm carried on business and the individual does not, but the presumption may be rebutted by showing that the bill was not given for partnership purposes or under the authority of the firm: *Yorkshire Banking Co.* v. *Beatson* (1880), 5 C. P. D. 109, C. A.

When a bill payable to the order of the firm is indorsed by a partner in the firm name in fraud of his co-partners, the property therein does not pass to an indorsee with notice: *Heilbut* v. *Nevill* (1870), L. R., 5 C. P. 478, Ex. Ch.

The mandate and powers of the partners to bind the partnership by bill or note cease with its dissolution, even though the bill or note be given in connection with a transaction begun before such dissolution. Such bills or notes would require special authority from the co-partners: *Bank of Montreal* v. *Page*, 98 Ill. 110 (1881). But if a partner retires from the firm, and gives no notice of his retirement, he is liable on a bill accepted by the firm subsequent to his retirement. (Pollock, p. 52; Lindley, 5th ed., p. 181).

24. Subject to the provisions of this Act, where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorized signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof, against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority:

Provided, that nothing in this section shall affect the ratification of an unauthorized signature not amounting to a forgery; And provided also, that if a cheque, payable to order, is paid by the drawee upon a forged indorsement out of the funds of the drawer, or is so paid and charged to his account, the drawer shall have no right of action against the drawee for the recovery back of the amount so paid, or no defence to any claim made by the drawee for the amount so paid, as the case may be, unless he gives notice in writing of such forgery to the drawee within one year after he has acquired notice of such forgery; and in case of failure by the drawer to give such notice within the said period, such cheque shall be held to have been paid in due course as respects every other party thereto or named therein, who has not previously instituted proceedings for the protection of his rights.

The words "subject to the provisions of this Act" apply to sections 54-55, relating to the parties precluded from setting up forgery or want of authority, and sections 79 and 81, relating to the payment of crossed cheques by a Bank.

Forgery is the making of a false document knowing it to be false, with the intention that it shall in any way be used or acted upon as genuine to the prejudice of any one, and any person committing this crime is liable to imprisonment for life. The following acts have been decided to amount to forgery if done with fraudulent intent:—(1) The writing by one man the name of another; (2) writing the name of a fictitious person; (3) writing a man's own name with intent that it should pass for another's; (4) filling up a blank cheque with an unauthorized sum; (5) obliterating, adding to, or altering the crossing of any cheque; (6) altering a bill, note or cheque, whether by addition, subtraction, or substitution; (7) writing a bill or note over a genuine signature not given for that purpose. Where several join in a forgery, each forges the whole instrument. The following acts do not amount to forgery; (*a*) writing words amounting to a bill or note over the signature of another, purposely given; (*b*) drawing a bill upon a person with false addition or description to that person's name; and (*c*) writing another's name with or without the words "per procuration" under a mistaken belief of having authority. See cases cited in Maclaren, p. 145, 147.

A forgery cannot be ratified, *Merchants Bank* v. *Lucas* 18 S. C. Can. 704, but a person whose signature has been forged may by his conduct be estopped from denying its genuineness to an innocent holder: *Union Bank* v. *Farnsworth*, 19 N. S. 82 (1882); *Scott* v. *Bank of New Brunswick*, 31 N. B. 21 (1891) as to when the fact of becoming a party is an estoppel from setting up that the signatures of other parties thereto are forged or unauthorized. See as to drawer, section 55 (1); maker of note, section 87 (b); indorser, section 55 (2); acceptor, section 54; acceptor for honor, section 55; fictitious payee, section 7 (3); fictitious drawee, section 5 (2).

2. If a bill bearing a forged or unauthorized indorsement is paid in good faith and in the ordinary course of business, by or on behalf of the drawee or acceptor, the person by whom or on whose behalf such payment is made shall have the right to recover the amount so paid from the person to whom it was so paid, or from any indorser who has indorsed the bill subsequently to the forged or unauthorized indorsement, provided that notice of the indorsement being a forged or unauthorized indorsement is given to each such subsequent indorser within the time and in the manner hereinafter mentioned : and any such person or indorser from whom said amount has been recovered shall have the like right of recovery against any prior indorser subsequent to the forged or unauthorized indorsement.

3. The notice of the indorsement being a forged or unauthorized indorsement shall be given within a reasonable time after the person seeking to recover the amount has acquired notice that the indorsement is forged or unauthorized, and may be given in the same manner, and if sent by post may be addressed in the same way, as notice of protest or dishonor of a bill may be given or addressed under this Act.

The principle of law that money paid under mistake of *fact* may be recovered, regulates the dealings with forged instruments. If a person is induced to discount a bill by a signature which he afterwards discovers to be forged, whether he takes through the signature or independently of it, that is, whether he has a good title to the bill or not, he may at once recover the money from the person who brought the bill for discount. So, if such a bill was given for the price of goods or other consideration, the receiver might, on discovering the forgery, at once sue on the consideration.

A bill held under a forged signature must be distinguished

from a bill with genuine signatures which has been fraudulently altered, though such alteration may amount to the crime of forgery. See section 63.

25. A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is bound by such signature only if the agent in so signing was acting within the actual limits of his authority.

Where an agent draws, accepts, makes or indorses "per pro," the taker of such a bill or note is bound to inquire as to the extent of the agent's authority. Where an agent has authority, the abuse of it does not affect a *bona fide* holder for value. The apparent authority is the real authority: *Bryant* v. *Quebec Bank* (1893), A. C. 170.

Subsequent recognition of an agent's acts is equivalent to previous authority, provided the agent, when he acted, assumed to act as agent. *Saunderson* v. *Griffiths*, 5 B. & C. 909.

Authority to indorse does not include authority to draw, and *vice versa*, and neither amounts to an authority to accept. All are, however, included in a power of general agency: *Bryant* v. *Quebec Bank* (1893), A. C. 179. A power of attorney to draw, indorse or accept bills does not authorize the agent to become a party to accommodation paper, *German National Bank* v. *Studley*, 1 Mo. App. 260 (1876), but the principal would be liable to a holder in due course: *Edwards* v. *Thomas*, 66 Mo. 469 (1877).

An agent appointed to wind up the business of a firm has not authority to accept bills drawn on the firm: *Odell* v. *Cormack*, 19 Q. B. D. 223 (1887).

A person who, without authority, signs the name of another to a bill, either simply or by procuration signature, is not liable on the instrument: *Polhill* v. *Walter* (1832), 3 B. & Ad. 114. He would, however, be liable for any loss arising from the false representation: *West London Commercial Bank* v. *Kitson*, 13 Q. B. D. 362 (1884). If the alleged principal be a fictitious or non-existing person, the signer is liable on the bill: *Cf. Kelner* v. *Baxter* (1866), L. R., 2 C. P. 174, and guilty of forgery. See section 23 (1).

26. Where a person signs a bill as drawer, indorser or acceptor, and adds words to his signature indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon; but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability:

The principle is that the terms, agent, manager, etc., attached to a signature are regarded as mere *designatio personae*, and unless the signer sets forth clearly that he subscribes it for another he is liable: *Leadbitter* v. *Farrow* (1816), 5 M. & S. at p. 349.

As to liability of agent signing his principal's name without authority, see note to last section.

By section 31 (5), a representative who is compelled to indorse may do so in such terms as to negative personal liability.

The case of an executor or administrator often gives rise to difficulty. Where an executor merely winds up a transaction commenced by the testator it is right that he should be able to protect himself from personal liability, but where he carries on the business and engages in fresh transactions, it is clear that the fact that he is an executor will not enable him to carry it on as a limited liability concern (Chalmers, p. 79).

2. In determining whether a signature on a bill is that of the principal or that of the agent by whose hand it is written, the construction most favorable to the validity of the instrument shall be adopted.

Authority to execute and negotiate bills and notes in the name of the principal will be implied from the appointment to a particular clerkship or office where the customary duties are to execute and negotiate bills in the name of the principal.

Where a principal has repeatedly recognized or ratified the act of the agent by payment of bills or notes, or in any other way, an implied authority will be presumed, or, at least, the principal will be estopped in the future from denying the authority of the agent.

27. Valuable consideration for a bill may be constituted by—

(*a.*) Any consideration sufficient to support a simple contract;

The subject of contract is within the jurisdiction of the local legislatures, and where Provincial laws conflict as to contracts on bills and notes, the principles governing conflict of laws will be applied.

It was held by the Privy Council, in the case of *McGreevy* v. *Russell*, 56 L. T. N. S. 501 (1887), that there is no difference between French (Quebec) law and English law as to the necessity for a valuable consideration for the validity of a contract.

A consideration sufficient to support a simple contract may consist either in some right, interest, profit or benefit accruing to the one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other: *Currie* v. *Misa*, L. R. 10 Ex. 162 (1875). The payment of money, however small the sum, and the sale of goods, however low the value—if there is an absence of fraud—will enable the holder to recover against prior parties. The Courts do not enquire into the adequacy of a *bona fide* consideration, *Jones* v. *Gordon* (1877), 2 App. Cas. 616 H. L.; but inadequacy of consideration may be evidence of bad faith or fraud: *Simon* v. *Cridland* (1862), 5 L. T. N. S. 524. A cross acceptance, *Burden* v. *Benton* (1847), 9 Q. B. 843; a forbearance of the debt of a third person, *Crears* v. *Hunter* (1887), 19 Q. B. D. 241; the compromise of a disputed claim, although it afterwards appears that the claim was wholly unfounded, *Callisher* v. *Bischoffsheim*, L. R., 5 Q. B. 449 (1870); a promise to give up a bill thought to be invalid, *Smith* v. *Smith*, 13 C. B. N. S. 418 (1863); a debt barred by the Statute of Limitations, *Wright* v. *Wright*, 6 Ont. P. R. 295 (1876); the obligation on the part of a thief to restore stolen property, *London & County Bank* v. *River Plate Bank* (1888), 21 Q. B. D. 535 C. A.; the obligation to recompense the father for injury done to his minor son, *Hubley* v. *Morash*, 27 N. S. 281 (1894), constitute value; but the signing of a deed of composition, *Bury* v. *Nowell*, Q. R., 10 S. C. 537 (1897); a debt represented to be due though not really due, *Southall* v. *Rigg*, 11 C. B. 481 (1851); the giving up of a void note, *Coward* v. *Hughes*, 1 K. & J. 443 (1855); a voluntary gift of money, *Hill* v. *Wilson*, L. R., 8 Ch. 894 (1873); buying the supposed patent rights to what proves not to be a new and useful invention, *Almour* v. *Cable*, Ramsay A. C. 87 (1886), do not constitute value.

A fluctuating balance may form a consideration for a bill. *Pease* v. *Hirst*, 10 B. & C. 122.

(*b.*) An antecedent debt or liability; such a debt or liability is deemed valuable consideration, whether the bill is payable on demand or at a future time;

A bill must not be expressed to be given for a future consideration, for this would render it conditional and invalid, 16 M. & W. 146, but notes given to an insurance company for premiums subsequently earned are valid: *Wood* v. *Shaw*, 3 L. C. J. 169 (1858).

2. Where value has at any time been given for a bill, the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time:

Chalmers (p. 83) illustrates this sub-section by the following case: B. owes C. £50. In order to pay C., A. at B.'s request draws a bill on B. for £50 in favor of C. C. is a holder for value and can sue A., though A. has received no value: *Scott* v. *Lifford* (1808), 1 Camp. 246.

3. Where the holder of a bill has a lien on it, arising either from contract or by implication of law, he is deemed to be a

holder for value to the extent of the sum for which he has a lien.

Where bills and notes are deposited as collateral security for a debt, the creditor acquires a lien upon them by contract. *Ex parte* Schofield, 12 Ch. D. 337 (1879).

If, while they are in the possession of the creditor, the debtor contracts other debts, he will have, in the absence of agreement to the contrary, a lien on them by implication of law for the payment of these new debts, C. C. Art. 1975 (Maclaren, p. 172).

In England a banker has a lien by implication of law on all bills or notes received from his customers in the ordinary course of banking business to secure any balance that may be due, *London Chartered Bank of Australia* v. *White*, 4 App. Cas. 413 (1879); but if the banker knows that the bills do not belong to his customer, no lien can attach: *Ex parte* Kingston (1871), L. R. 6 Ch. 632.

If the amount of the lien is less than the note, the holder is a trustee for the pledger for the difference: *Reid* v. *Furnival*, 1 Cr. & M. 538 (1833).

28. An accommodation party to a bill is a person who has signed a bill as drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person:

An accommodation bill is a bill whereof the acceptor is in substance a mere surety for some other person who may or may not be a party thereto: *Cf. Oriental Financial Corp.* v. *Overend* (1871), L. R., 7 Ch. 142, but where there is a running account between the drawer and the drawee, and a bill is accepted, it is not an accommodation bill, even although the account was against the drawer at the time of acceptance: *re Overend, Gurney & Co. Ex parte Swan*, L. R. 6 Eq. 356 (1868).

An accommodation bill is not issued within the meaning of section 63 of the Act until it comes into possession of some person who can sue upon it: *Engel* v. *Stourton*, 5 T. L. R. 444 (1889).

Where an accommodation bill is paid in due course by the party accommodated, the bill is discharged, section 59 (3). If accepted for the benefit of a drawer or indorser he is liable without presentment for payment, protest or notice of dishonor, section 46 (2) (*c*) and (*d*), section 50 (2) (c 4) and (d 3) and section 51 (9). As to negotiation of an overdue accommodation bill, see section 36 (2).

2. An accommodation party is liable on the bill to a holder for value; and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not.

Conversely, an accommodation party, known to be such, may avail himself of any defence, arising out of the bill transaction, which the person accommodated could have set up: *Bechervaise* v. *Lewis* (1872), L. R., 7 C. P. 377. He may also be released by the holder giving time to the principal, if the holder is aware of the relation between them.

29. A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions, namely:—

(*a*.) That he became the holder of it before it was overdue and without notice that it had been previously dishonored, if such was the fact;

(*b*.) That he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it;

The bill must be "complete and regular on the face of it," and meet all the requirements of section 3. If the bill itself conveys a warning, *caveat emptor*. The holder, however honest,

can acquire no better title than the person had from whom he took it. Thus if the holder takes a blank acceptance (section 20), or a bill wanting in any material particular, such as an undated bill, etc., he takes it at his peril, *Awde* v. *Dixon* (1851), 6 Exch. 869; but the fact of a bill being post-dated does not prevent its being regular within the meaning of this section: *Carpenter* v. *Street*, 6 T. L. R. 410 (1890). The holder also takes at his risk a bill which has been torn and the pieces pasted together, if the tears appear to show an intention to cancel it: *Ingham* v. *Primrose* (1859), 7 C. B. N. S. 82.

For bills overdue, see sections 14, 36 (3) and 85.

"Notice" means actual, though not formal notice, that is to say, either knowledge of the facts, or a suspicion of something wrong, combined with a wilful disregard of the means of knowledge: *Raphael* v. *Bank of England* (1885), 17 C. B. 174; but mere negligence does not fix a holder with the defective title of the person passing it to him. The fact that a bill is overdue, or that there is an irregularity patent on the face of it, operates as notice.

Notice to the principal is notice to the agent, and notice to the agent is notice to the principal, subject to the proviso (1) that when the agent is himself a party to the fraud he is not to be taken to have disclosed it to his principal, *Ex parte* Oriental Bank (1870), L. R. 5 Ch. 358 (1870); and (2) where a bill is negotiated to an agent and notice is given to the principal, or *vice versa*, there must be a reasonable time for communication: *Cf. Willis* v. *Bank of England* (1835), 4 A. & E. 39.

As to "good faith" and the tests thereof, see section 89. "For value," see section 27.

2. In particular, the title of a person who negotiates a bill is defective within the meaning of this Act when he obtained the bill, or the acceptance thereof, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud:

Fraud.—A bill is affected with fraud when the issue or any subsequent negotiation of it is obtained by some misrepresentations or untrue statements intentionally made for that purpose, *McCollum* v. *Church;* or when it was negotiated in breach of faith, *Lloyd* v. *Howard* (1850), 15 Q. B. 995; or in fraud of third parties: *Bonisteel* v. *Saylor*, 17 Ont. A. R. 505 (1890); *Jones* v. *Gordon* (1877), 2 App. Cas. 616, H. L. Fraud is never presumed; it must be proved: C. C. Art. 993.

Duress.—May consist in actual violence or in threats thereof: *Duncan* v. *Scott* (1807), 1 Camp. 100.

Violence or Fear is a cause of nullity whether practiced or produced by the party for whose benefit the contract is made or by any other person: C. C. Art. 994. *Macfarlane* v. *Dewey*, 15 L. C. J. 85 (1870).

Illegal Consideration.—The consideration for a bill is illegal which is wholly or in part immoral, contrary to public policy, or forbidden by statute. Promissory notes to creditors for the balance of their claim for signing a deed of composition or discharge, *Garneau* v. *Lariviere*, Q. R., 1 S. C. 491 (1892); notes given in satisfaction of a wager on an election, *Dufresne* v. *Guevremont*, 5 L. C. J. 278 (1859); or as a subscription to an election fund, *Dansereau* v. *St. Louis*, 18 S. C. Can. 587 (1890); or in settlement of a "bucket shop" transaction, *Dalglish* v. *Bond*, M. L. R., 7 S. C. 400 (1890); or to a hotel keeper in payment for liquor, *Benard* v. *McKay*, 9 Man. 156 (1893), are void. A renewal or substitution of a new instrument for the old would not cure the defect arising from illegal consideration (Maclaren, p. 185).

The test whether a bill or note be contaminated with an illegal transaction is this: "Does the plaintiff require any aid from the illegal transaction to establish his case?" *Simpson* v. *Bloss*, 7 Taunt. 246.

Contracts with a public enemy are illegal: and a bill drawn by an alien enemy on his debtor here, and indorsed to the plaintiff, a British subject resident in the hostile country, cannot be recovered on, though the plaintiff do not sue until

the return of peace, and though he were resident at the time of taking the bill in a hostile country. *Willison* v. *Pattison*, 7 Taunt. 440. But where a British prisoner in France drew a bill on an English subject, and indorsed it to the plaintiff, then an alien enemy, it was held that after the return of peace the plaintiff might recover. *Antoine* v. *Morshead*, 6 Taunt. 237. A bill drawn by a British prisoner in favor of an alien enemy cannot be enforced by the payee. Byles, 14th ed, p. 159.

3. A holder, whether for value or not, who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder.

Previous notice or knowledge of the original defect in the bill is not sufficient to preclude him from acquiring all the rights and privileges of a holder in due course: *May* v. *Chapman* (1847), 16 M. & W. 355; *Embrey* v. *Jemison*, 131 U. S. 336 (1888).

30. Every party whose signature appears on a bill is *prima facie* deemed to have become a party thereto for value:

Extrinsic evidence is admissible between immediate parties to prove absence, failure or illegality of consideration, but when a particular consideration is expressed extrinsic evidence is not admissible to prove a different consideration.

2. And every holder of a bill is *prima facie* deemed to be a holder in due course; but if, in an action on a bill, it is admitted or proved that the acceptance, issue or subsequent negotiation of the bill is affected with fraud, duress, or force and fear, or illegality, the burden of proof that he is such holder in due course shall be on him, unless and until he proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill by some other holder in due course:

IMPEACHMENT OF VALUE.—Chalmers, p. 95-101, lays down the following rules as to the impeachment of value.

Rule 1.—Any defence available against an immediate party is available against a remote party who is in privity with such immediate party.

Privity is created in all cases by want of consideration, and in some cases by notice; it may also be created by agreement.

Rule 2.—Mere absence of consideration, total or partial, is matter of defence against an immediate party, or a remote party, who is not a holder for value, but it is not a defence against a remote party who is a holder for value: *Cf. Foreman* v. *Wright* (1851); 11 C. B. 492. An accommodation party is liable to a holder for value, who takes a bill knowing him to be such: *Petty* v. *Cooke* (1871), L. R., 6 Q. B. 790, and section 28 (2).

Rule 3.—Total failure of consideration is a defence against an immediate party, or even against remote parties with notice, provided value has not been given for the bill, but is not a defence against a remote party, who is a holder in due course. *Robinson* v. *Reynolds* (1841), 2 Q. B. 211, Ex. Ch., unless he has notice: *Oulds* v. *Harrison* (1854), 10 Exch. 579.

Rule 4.—Partial failure of consideration is a defence in England and in Ontario *pro tanto* against an immediate party when the failure is an ascertained and liquidated amount but not otherwise: *Day* v. *Nix* (1824), 9 Moore 159. It is not a defence against a remote party who is a holder for value: *Archer* v. *Bamford* (1822), 3 Stark 175.

Rule.—Fraud is an offence against an immediate party, and against a remote party who is not a holder in due course: *Whistler* v. *Forster* (1863), 14 C. B. S. 258.

The holder of a bill subsequent to a fraud, who is not a holder in due course, cannot enforce payment against a holder party thereto, neither can he retain the bill against the true owner: *Lloyd* v. *Howard* (1850), 15 Q. B. 995.

Rule 6.—Illegality of consideration, total or partial, is a defence against an immediate party, but not against a holder in due course: *Hay* v. *Ayling* (1851), 16 Q. B. 431.

Rule 7.—When a bill is given for a consideration which, by statute, expressly makes it void, it is, as against the party who gave it, void in the hands of all parties either immediate or remote: *Edwards* v. *Dick* (1821), 4 B. and Ald. 212.

3. No bill, although given for a usurious consideration or upon a usurious contract, is void in the hands of a holder, unless such holder had at the time of its transfer to him actual knowledge that it was originally given for a usurious consideration, or upon a usurious contract:

A bill or note made payable for any period less than a year at a rate of interest exceeding 6 p. c. per annum without containing an express statement of the yearly percentage of interest to which such rate is equivalent in accordance with 60-61 Vic., ch. 8, s. 1 and 2, would not be "complete and regular on the face of it," and the omission would be notice to a holder that no greater interest than 6 p. c. per annum was payable on the note.

4. Every bill or note the consideration of which consists, in whole or in part, of the purchase money of a patent right, or of a partial interest, limited geographically or otherwise, in a patent right, shall have written or printed prominently and legibly across the face thereof, before the same is issued, the words "given for a patent right:" and without such words thereon such instrument and any renewal thereof shall be void, except in the hands of a holder in due course without notice of such consideration:

5. The indorsee or other transferee of any such instrument having the words aforesaid so printed or written thereon, shall take the same subject to any defence or set-off in respect of the whole or any part thereof which would have existed between the original parties:

6. Every one who issues, sells or transfers, by indorsement or delivery, any such instrument not having the words "given for a patent right" printed or written in manner aforesaid across the face thereof, knowing the consideration of such instrument to have consisted, in whole or in part, of the purchase money of a patent right, or of a partial interest, limited geographically or otherwise, in a patent right, is guilty of a misdemeanor, and liable to imprisonment for any term not exceeding one year, or to such fine, not exceeding two hundred dollars, as the court thinks fit.

Negotiation of Bills.

31. A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill:

See holder defined by section 2.
So long as a bill remains in the ownership of the payee it is not "negotiated:" *Hall* v. *Cordell*, 142 U. S. 116 (1891).

2. A bill payable to bearer is negotiated by delivery:

See "bearer" and "delivery" defined by sec. 2. As to delivery for a special purpose, see sec. 21.

3. A bill payable to order is negotiated by the indorsement of the holder completed by delivery:

As to indorsement, see sec. 2 and sec. 32. As to "bill payable to order" see sec. 8 (4). As to restrictive indorsements, see sec. 35. An individual who personates the holder or who makes title through a forged indorsement is not the holder: *Smith* v. *Union Bank* (1875), L. R., 10 Q. B. 295.

The indorsement and delivery must be made or authorized by the same person, sec. 21 (2) (*a*). Where the payee of a note indorsed it in blank before his death, and his executors delivered it to plaintiff, it was held that the latter could not recover: *Bromage* v. *Lloyd*, 1 Ex. 32 (1847).

On the death of the holder of a bill payable to his order, all his rights pass to his executors or personal representatives, who may negotiate it by indorsement: *Robinson* v. *Stone*, 2 Str. 1260 (1746). So also if a bill be made payable to a dead man in ignorance of his death: *Murray* v. *E. I. Co.*, 5 B. and Ald. 204 (1821).

4. Where the holder of a bill payable to his order transfers it for value without indorsing it, the transfer gives the transferee such title as the transferrer had in the bill, and the transferree in addition acquires the right to have the indorsement of the transferrer:

If the tranferrer should die before indorsing, his personal representatives would be subject to the same obligation: *Day* v. *Longhurst*, 62 L. J. Ch. 334 (1893).

When indorsement is subsequently obtained, the transfer takes effect as a negotiation from the time when the indorsement is given: *Whistler* v. *Forster* (1863), 14 C. B. N. S. 258. Where a note is not indorsed by the payee, the presumption is that it is still his property: *Demers* v. *Hogle*, Q. R., 7 S. C. 476 (1895).

5. Where any person is under obligation to indorse a bill in a representative capacity, he may indorse the bill in such terms as to negative personal liability.

See sec. 16 (1) as to indorsements limiting or negativing liability, and sec. 26.

32. An indorsement in order to operate as a negotiation must comply with the following conditions, namely:—

(*a*.) It must be written on the bill itself and be signed by the indorser. The simple signature of the indorser on the bill, without additional words, is sufficient;

An indorsement written on an allonge, or on a "copy" of a bill issued or negotiated in a country where "copies" are recognized, is deemed to be written on the bill itself;

The indorser need not sign with his own hand. His signature may be written by some one authorized by him, sections 25 and 90. The indorsement and signature may be in pencil and may be on any part of the bill, even on the face: *Young* v. *Glover* (1857), 3 Jur. N. S. Q. B. 637. As to indorsement of bill drawn in a set, see sec. 70 (2).

An *allonge* is a paper attached to the bill to receive indorsements when there is no longer room for them on the bill itself.

(*b*.) It must be an indorsement of the entire bill. A partial indorsement, that is to say, an indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the bill to two or more indorsees severally, does not operate as a negotiation of the bill;

There may be a partial acceptance of a bill, sec. 19 (2b), and an indorsement of such a bill would be valid, as it would be an indorsement of the entire bill as accepted (Maclaren, p. 204). While invalid as a negotiation, a partial indorsement, purporting to split the right of action on a bill, may operate as an authority to receive payment of the amount thereby specified: *Heilbut* v. *Nevill*, L. R., 4 C. P. 358 (1869).

(c.) Where a bill is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others:

2. Where, in a bill payable to order, the payee or indorsee is wrongly designated, or his name is misspelt, he may indorse the bill as therein described, adding his proper signature; or he may indorse by his own proper signature:

3. When there are two or more indorsements on a bill, each indorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved:

4. An indorsement may be made in blank or special. It may also contain terms making it restrictive.

See sections 34 and 35.

33. Where a bill purports to be indorsed conditionally, the condition may be disregarded by the payer, and payment to the indorsee is valid, whether the condition has been fulfilled or not.

Thus "Pay E. F. upon my being elected Fellow of St. Paul's College" does not *oblige* the acceptor or maker to refuse payment if the election has not taken place.

If the condition is not fulfilled, the holder who receives payment may be responsible to the prior indorser, who made a conditional indorsement (Maclaren, p. 208).

34. An indorsement in blank specifies no indorsee, and a bill so indorsed becomes payable to bearer:

By sect. 31 a bill payable to bearer is negotiated by delivery.

2. A special indorsement specifies the person to whom, or to whose order, the bill is to be payable:

Such a bill can only be negotiated by the person designated. Under sec. 8, a special indorsement following an indorsement in blank controls the effect of the indorsement in blank.

3. The provisions of this Act relating to a payee apply, with the necessary modifications, to an indorsee under a special indorsement:

See sections 7 and 8 as to payee.

4. Where a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the indorser's signature a direction to pay the bill to or to the order of himself or some other person.

In such a case the indorsee takes the bill as specially indorsed to him by the last indorser, and the person giving him the bill would incur the liability only of a transferor by delivery (Maclaren, p. 211).

If there are several blank indorsements, the holder may convert the first into a special indorsement without discharging the subsequent indorsers: *Bank of British N. A.* v. *Ellis*, 2 Federal Reporter 46 (1880). He may also strike out any number of blank indorsements, but any indorser subsequent to one struck out is discharged; *aliter* if the indorsement be struck out by mistake: *Wilkinson* v. *Johnson* (1824), 3 B. and C. 428. The holder may in some cases make title through a person whose name is struck out, *Fairclough* v. *Pavia* (1854), 9 Exch. 695; but *cf. Bartlett* v. *Benson* (1845), 14 M. and W. 733. Indorsements for collection may be struck out by the owner of the bill, and if the indorser of a bill takes it up or pays it when dishonored, he may strike out his own and all subsequent indorsements whether blank or special: *Callow* v. *Lawrence* (1814), 3 M. and S. 95. The possession of a bill after dishonor by an indorser with his special indorse-

ment struck out is *prima facie* evidence that he took up the bill on its dishonor, although there was no re-indorsement to him: *Black* v. *Strickland*, 3 O. R. 217 (1883).

35. An indorsement is restrictive which prohibits the further negotiation of the bill, or which expresses that is a mere authority to deal with the bill as thereby directed, and not a transfer of the ownership thereof, as, for example, if a bill is indorsed "Pay D. only," or "Pay D. for the account of X," or "Pay D, or order, for collection:"

A statement in an indorsement that the value for it has been furnished by some person other then the indorsee does not make it restrictive, *e. g.*, Bill indorsed "Pay D., or order, value in account with X.," is not restrictive, but in effect a simple indorsement to D. or order: *Buckley* v. *Jackson* (1868), L. R., 3 Ex. 135. The mere omission to add words of negotiability to a special indorsement does not make it restrictive, see sec. 8 (1) (4).

2. A restrictive indorsement gives the indorsee the right to receive payment of the bill and to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee unless it expressly authorizes him to do so:

3. Where a restrictive indorsement authorizes further transfer, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement.

If the restrictive indorsement be in favor of the indorser "or order," this gives him authority to transfer the bill, but always subject to the same restriction as in the indorsement to himself: *Munroe* v. *Cox*, 30 U. C. Q. B. 363 (1870).

The relation between the restrictive indorser and indorsee is that of principal and agent, so that if the acceptor pay the indorser, the indorsee cannot recover from him, although he may have given value for the bill: *Williams* v. *Shadbolt*, 1 C. & E. 529 (1885).

36. Where a bill is negotiable in its origin, it continues to be negotiable until it has been (*a*) restrictively indorsed, or (*b*) discharged by payment or otherwise:

As to bills negotiable in their origin, see sect. 8. See sects. 58-63 as to discharges, and sect. 35 as to restrictive indorsements. In the case of *The Exchange Bank* v. *Quebec Bank*, M. L. R., 6 S. C. 10 (1890), where a cheque payable to C. M. & S., or bearer, was indorsed by them and stamped for deposit to their credit in the bank where they kept their account, and their clerk, instead of depositing it, took it to the bank on which it was drawn and received payment, the teller not noticing the writing on the back, it was held that such a cheque could not be restrictively indorsed. The check was payable to bearer, and the Court decided that no indorsement other than that by the payee could stop the negotiability of the bill, under Art. 2288 of the Quebec Civil Code.

As to transfer of an incomplete bill, see sect. 20.

2. Where an overdue bill is negotiated, it can be negotiated only subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which had the person from whom he took it:

A time bill or note is overdue after the expiration of the last day of grace: *Cf. Leftley* v. *Mills* (1791), 4 T. R. 170.

As to the term "defect of title," see sect. 29 (2) and sect. 30 (4). Mere absence of consideration is not an equity which attaches to a bill, *Sturtevant* v. *Ford* (1842), 4 M. & Gr. 101; but that

if there be an agreement, express or implied, not to negotiate an accommodation bill after maturity, *Grant* v. *Winstanley*, 21 U. C. C. P. 257 (1171), or touse a note only for a particular purpose, *MacArthur* v. *MacDowell*, B. S. C. Can. 571 (1893), the agreement constitutes an equity attaching to such bill and note.

3. A bill payable on demand is deemed to be overdue within the meaning and for the purposes of this section, when it appears on the face of it to have been in circulation for an unreasonable length of time; what is an unreasonable length of time for this purpose is a question of fact:

Compare sect. 40 (3) as to test of reasonable time.

By section 35 (3) notes payable on demand which have been negotiated, being regarded as continuing securities, are exempted from this sub-section, but it applies to cheques; see sect. 72.

The tendency, however, seems to be to treat cheques with more leniency than bills, especially if the latter be payable at a fixed period, and an interval of six or eight days has been held not to be an unreasonable length of time. *Rothschild* v. *Corney*, 1 D. & L. 325. *London & County Bank* v. *Groom*, L. R. 8 Q. B. D. 228, but a cheque taken two months after date has been held to be stale. *Serrell* v. *Derbyshire Railway Co.*, 9 C. B. 811.

4. Except where an indorsement bears date after the maturity of the bill, every negotiation is *prima facie* deemed to have been effected before the bill was overdue:

In any of such cases the contrary may be proved: *Bounsall* v. *Harrison* (1836), 1 M. & W. 611.

5. Where a bill which is not overdue has been dishonored any person who takes it with notice of the dishonor takes it subject to any defect of title attaching thereto at the time of dishonor; but nothing in this sub-section shall affect the rights of a holder in due course.

As to notice and holders in due course, see sections 29 and 38. As to dishonor by non-acceptance, see sect. 43.

37. Where a bill is negotiated back to the drawer, or to a prior indorser, or to the acceptor, such party may, subject to the provisions of this Act, re-issue and further negotiate the bill, but he is not entitled to enforce the payment of the bill against any intervening party to whom he was previously liable.

38. The rights and powers of the holder of a bill are as follows:—

(*a*.) He may sue on the bill in his own name;

The right to sue upon a bill accrues upon its dishonor for non-acceptance, sect. 43 (2); or for non-payment, sect. 47 (2).

Chalmers, p. 123, gives the following rules as to rights of action:—

Rule 1.—The holder of a bill is entitled to maintain an action thereon in his own name against all or any of the parties liable thereon, unless it be shown that he holds the bill adversely to the true owner: *Jones* v. *Broadhurst* (1850), 9 C. B. 173.

If a holder sues on a note, and he is not the owner, but is merely acting for another, any defence that could be set up against the real owner is available against him, *Biron* v. *Brossard*, M. L. R., 2 S. C. 105 (1880); but where a person holds a bill as agent or trustee for another, he cannot use it as a set-off against a claim made against him individually: *London & Bombay Bank* v. *Narraway* (1872), L. R., 15 Eq. 93.

Rule 2.—Subject to the rules as to transmission by act of law, when a bill is payable to a particular person or persons, or to his or their order, an action thereon must be brought in the

name of such person or persons: *Attwood* v. *Rattenbury* (1822), 6 Moore 583.

Rule 3.—Subject to Rule 1, when a bill is payable to bearer, an action may be brought in the name of any person who has either the actual or constructive possession thereof, and constructive possession jointly with others is sufficient to entitle the possessor to sue alone: *Jenkins* v. *Tongue* (1860), 29 L. J. Ex. 147.

A bill or a cheque may be seized under a writ of execution. *Watts* vs. *Jefferies*, 3 Mac. & G. 422.

On the death of a holder of a bill the title thereto passes to his personal representatives: Williams on Executors, 7th ed., 786.

Each one of the heirs of the creditor of a bill or note may sue for and recover his share of it: *Ex-parte Desharnais*, Q. R., 11 S. C. 484 (1897).

In case of insolvency the title to the debtors' bills and notes, and the right to sue thereon, passes to the assignee or trustee (Maclaren, p. 222).

An executor or administrator who indorses a bill may, in express terms, exclude personal liability, see sect. 31 (5); and as he is not the agent of the deceased he cannot by his delivery complete an indorsement written by the latter. He must indorse it *de novo*. When there are two or more executors, the indorsement of one is probably sufficient to transfer the property in the bill. (Chalmers, p. 127).

(*b*.) Where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill:

The principal defects of title arise from the causes mentioned in sect. 29. "Mere personal defences" include, in addition to these, set-off, compensation, etc. They would not include want of capacity, want of authority, the defence of forgery, or the like (Maclaren, p. 225).

(*c*.) Where his title is defective, (1) if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill, and (2) if he obtains payment of the bill the person who pays him in due course gets a valid discharge for the bill.

If a bill be made payable to bearer or indorsed in blank, the person in possession may be presumed to be entitled to receive payment in due course, and payment to him is valid if made in good faith, although he may be a thief, finder or fraudulent holder (Byles, p. 293).

In order to vitiate such a payment, bad faith must be clearly shown. Proof of suspicious circumstances would not suffice. *Ferrie* v. *Wardens of the House of Industry*, 1 Rev. de Leg. 27 (1845).

39. Where a bill is payable at sight or after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument.

2. Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee, it must be presented for acceptance before it can be presented for payment:

3. In no other case is presentment for acceptance necessary in order to render liable any party to the bill:

As to due date of bills payable at and after sight, see sect. 14 (3 and 4).

Where presentment is optional, the object of presenting is (1) to obtain the acceptance of the drawee, and thereby secure his liability as a party to the bill; and (2) to obtain an imme-

diate right of recourse against antecedent parties in case the bill is dishonored by non-acceptance. An agent is bound to use due diligence in presenting for acceptance, even when presentment is optional for the purposes of the Act, and he is liable to his principal for damage resulting from his negligence: *Bank of Van Diemen's Land* v. *Victoria Bank* (1871), L. R., 3 P. C. 542. A bill in the form "Pay without acceptance" is valid: *R.* v. *Kinnear* (1838), 2 M. & R. 117.

Subject to sect. 40 (2) the question of due presentment is only material when acceptance cannot be obtained. If acceptance is obtained, the informality of the presentment is immaterial (Chalmers, p. 132).

For persons to whom presentment should be made, see sect. 41.

For place and hour of presentment, see sect. 45 and note to sect. 41.

4. Where the holder of a bill, drawn payable elsewhere than at the place of business or residence of the drawee, has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and indorsers.

What is reasonable diligence will depend upon the facts and circumstances of each particular case.

40. Subject to the provisions of this Act, when a bill payable at sight, or (1) after sight, is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time:

2. If he does not do so, the drawer and all indorsers prior to that holder are discharged:

3. In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case.

The provisions of the Act to which this section is subject are those found in sect. 41 (2) relating to excuses for presentment.

Reasonable time is a mixed question of law and fact, and in determining it regard must be had to the interests of the holder as well as to the interests of the drawer and indorsers: *Ramchurn Mullick* v. *L. Radakissen* (1854), 9 Moore P. C. 46.

41. A bill is duly presented for acceptance which is presented in accordance with the following rules:

(*a*.) The presentment must be made by or on behalf of the holder to the drawee or to some person authorized to accept or refuse acceptance on his behalf, at a reasonable hour on a business day and before the bill is overdue;

The holder by whom or on whose behalf the bill is presented need not be the owner or even a lawful holder: *Cf. Morrison* v. *Buchanan* (1833), 6 C. & P. 18; *Noughier*, sect. 462. He must actually exhibit the bill: *Fall River U. Bank* v. *Willard*, 5 Metcalf (Mass.) 216 (1842). Presentment to a servant of the drawee who opened the door of his residence would not be sufficient (Chitty on Bills, 11 ed., p. 196), but presentment to a clerk in his office would be valid. Reasonable diligence must be used to find the drawee or some person authorized to act for him. When the drawee is a trader, presentment should be made to him at his place of business, if possible. As to what is a reasonable hour, the rule may be stated as follows:—If a bill be payable at a bank, it must be presented within banking hours: *Waters* v. *Reiffenstein*, 16 L. C. R. 297 (1866). If at a trader's place of business, than within ordinary business hours. Presentment at 5

p.m. at the door of a store which was found closed held sufficient: *Reed* v. *Kavanagh*, 9 N. B. (4 Allen) 457 (1859). If at a private house, probably a presentment up to bed-time would be sufficient. In the U. S. presentments at 8 a.m. and 11 p.m. have been held unreasonable (Daniel, p. 448), but presentment at the maker's residence at 9 p.m. was held sufficient, although he and his family had retired: *Farnsworth* v. *Allen*, 4 Gray 453 (1855).

Any day is a business day except those mentioned in sect. 14. See sect. 91.

A bill should be presented for acceptance before maturity. If accepted after maturity it becomes a bill payable on demand, and should then be presented for payment within a reasonable time so as to bind indorsers after acceptance: sec. 45 (2 *b*) (Maclaren, p. 235).

(*b*.) Where a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, when presentment may be made to him only:

If all the drawees do not accept, the acceptance is a qualified one, sect. 19 (2 *d*). As to the consequences of a qualified acceptance, see sect. 44.

(*c*.) Where the drawee is dead, presentment may be made to his personal representative;

(*d*.) Where authorized by agreement or usage, a presentment through the post office is sufficient:

No such usage it is believed has yet been established in Canada (Maclaren, p. 236).

For presentment for payment through the post or at the post office, see sect. 45 (6) and (7).

2. Presentment in accordance with these rules is excused, and a bill may be treated as dishonored by non-acceptance—

(*a*.) Where the drawee is dead, (1) or is a fictitious person or a person not having capacity to contract by bill;

As to a fictitious drawee, see sect. 5 (2), and for capacity to contract by bill, see sect. 22.

(*b*.) Where, after the exercise of reasonable diligence, such presentment cannot be effected;

See section 45 (2) and sect. 50 (2 *a*).

(*c*.) Where, although the presentment has been irregular, acceptance has been refused on some other ground:

3. The fact that the holder has reason to believe that the bill, on presentment, will be dishonored does not excuse presentment.

42. When a bill is duly presented for acceptance and is not accepted on the day of presentment or within two days thereafter, the person presenting it must treat it as dishonored by non-acceptance. If he does not, the holder shall lose his right of recourse against the drawer and indorsers.

The person who presents a bill of exchange for acceptance must deliver it up to the drawee if required so to do. The drawee is entitled to retain it for two business days, but after expiration of this time he must re-deliver it accepted or unaccepted: *Bank of Van Diemen's Land* v. *Victoria Bank* (1871), L. R., 3 P. C. 542. It is the duty of the party who leaves it to call again for it, and to enquire whether it has been accepted or not. It is not the duty of the other person to send it to him, unless there is a usual course of dealing between the individuals concerned so to do: *Jeune* v. *Ward* (1818), 1 B. & Ald. 659.

If the bill be retained or destroyed by the drawee, protest may be made on a copy or written particulars of the bill, sect. 51 (8).

43. A bill is dishonored by non-acceptance—

(*a*.) When it is duly presented for acceptance, and such an acceptance as is prescribed by this Act is refused or cannot be obtained; or—

(*b*.) When presentment for acceptance is excused and the bill is not accepted:

As to presentment for acceptance, see sect. 41; as to the requisites of a valid acceptance, see sects. 17 and 19. By sect. 44 (1), the holder has an option to take or refuse a qualified acceptance. See also last section. As to excuses for not presenting for acceptance, see sect. 41 (2).

2. Subject to the provisions of this Act, when a bill is dishonored by non-acceptance an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary.

The provisions referred to in this sub-sect. are those relating to acceptance and payment for honor; sects. 64-67. If a referee in case of need has been named (sect. 15), and the holder exercises his option of applying to him instead of proceeding immediately against the parties liable, he must await the maturity of the bill to see whether it will be paid.

If, after dishonor, the drawee is willing to accept, the holder may allow him to do so; but such acceptance, if the bill is payable at or after sight, should bear the date of the first presentment; sect. 18.

The holder has an immediate *right of recourse* on non-acceptance, but no right of *action* arises until he has performed the conditions precedent by giving notice of dishonor and protesting, when necessary (Chalmers, 140).

44. The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance may treat the bill as dishonored by non-acceptance:

For definition of a qualified acceptance, see sect. 19.

2. Where a qualified acceptance is taken, and the drawer or an indorser has not expressly or impliedly authorized the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or indorser is discharged from his liability on the bill;

The provisions of this subsection do not apply to a partial acceptance, whereof due notice has been given. Where a foreign bill has been accepted as to part, it must be protested as to the balance:

If the holder is willing to accept the offer, he should then give notice of its exact terms to all the antecedent parties, and state his readiness to accept the offer if they will respectively consent: Daniel, sect. 510.

3. When the drawer or indorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder, he shall be deemed to have assented thereto.

As to what is a reasonable time see next section, sub-section 2.

45. Subject to the provisions of this Act, a bill must be duly presented for payment. If it is not so presented, the drawer and indorsers shall be discharged:

The provisions of the Act referred to are sect. 39 (4), sect. 43 (2), and sect. 46.

In presenting a bill it should be exhibited, sect. 52 (4), and upon payment being made delivered up to the party paying. As to presentment of cheques, see sect. 73.

A drawer or indorser who is discharged from his liability on the bill is also discharged from his liability on the consideration therefor: *Hart* v. *McDougall*, 25 N. S. 38 (1892). No presentment is necessary as against the acceptor, who is the primary debtor, but if the bill be payable in a specified place and be sued before presentment, the costs are in the discretion of the Court: sect. 51. See *McLellan* v. *McLennan*, 17 U. C. C. P. 109 (1866).

The rules applicable to the drawer or indorser of a bill apply equally to the indorser of a note or cheque, but they do not apply to the maker of a note, and they are modified as to time as regards the drawer of a cheque: sect. 73.

2. A bill is duly presented for payment which is presented in accordance with the following rules:—

(*a*.) Where the bill is not payable on demand, presentment must be made on the day it falls due;

The rules as to the due date of bills not payable on demand are given in section 14.

Presentment must be made on the third day of grace, unless that be a non-business day, when it must be presented on the next business day: *McLellan* v. *McLellan* (*supra*). Presentment on the second day of grace is a nullity: *Riffen* v. *Roberts*, 1 Exp. 262 (1795).

(*b*). Where the bill is payable on demand, then, subject to the provisions of this Act, presentment must be made within a reasonable time after its issue, in order to render the drawer liable, and within a reasonable time after its indorsement, in order to render the indorser liable;

In determining what is a reasonable time, regard shall be had to the nature of the bill, the usage of trade with regard to similar bills, and the facts of the particular case;

As to when a bill is in legal effect payable on demand, see sect. 10. The modifying provision referred to is that relating to cheques, which are bills of exchange payable on demand: sect. 72. The drawer of a cheque is not discharged by failure in punctual presentment, unless he is prejudiced by the delay.

As to the delay for presenting for payment promissory notes payable on demand, see sect. 85, and for rules as to the presentment of a cheque, see sect. 73.

(*c*) Presentment must be made by the holder or by some person authorized to receive payment on his behalf, at the proper place, as hereinafter defined, either to the person designated by the bill as payer or to his representative or some person authorized to pay or refuse payment on his behalf, if, with the exercise of reasonable diligence, such person can there be found;

As to presentment through the Post Office, see sub-sect. 8. If the bill be lost, a copy should be presented and an indemnity tendered, but there is some doubt as to the sufficiency of this (Chalmers, p. 143). A protest can be made on a copy: sect. 51 (8). As to the parts of a set, see sect. 70. As to non-business days, sect. 91.

Duties of Agent.—A collecting agent is, of course, liable to his principal if he does not use due diligence in presenting a bill

for payment and take the proper proceedings on dishonor: *Cf. Lubbock* v. *Tribe* (1838), 3 M. & W. 612, and see *Deverill* v. *Burnell* (1873), L. R., 8 C. P. 475, as to measure of damages. The same rule applies to a pledgee or person holding a bill as collateral security: *Peacock* v. *Pursell* (1863). 32 L. J. C. P. 266. An agent is, as a rule, responsible for the default of a sub-agent whom he employs, but there is perhaps an exception in the case of a notary, on the ground that he is a public officer (Daniels, p. 343; Parsons, p. 480.)

(*d.*) A bill is presented at the proper place:—

(1) Where a place of payment is specified in the bill or acceptance, and the bill is there presented;

The place of payment may be specified either by the drawer or acceptor. Where a person accepts a bill payable at his own bank, it is in effect an order to the bank to pay it, unless notified to the contrary, and to charge it to his account: *Bank of England* v. *Vagliano* (1891), A. C. 107.

(2.) Where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented;

(3.) Where no place of payment is specified and no address given, and the bill is presented at the drawee's or acceptor's place of business, if known, and if not, at his ordinary residence, if known;

(4.) In any other case, if presented to the drawee or acceptor wherever he can be found, or if presented at his last known place of business or residence;

3. Where a bill is presented at the proper place, and, after the exercise of reasonable diligence, no person authorized to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required:

4. Where a bill is drawn upon, or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all:

Presentment should be made according to sub-sect. 2 (*d*) (2) (3) (4) ante. If they are in different places so that presentment cannot be made to all on the day of maturity, the bill should be presented to at least one on that day and to the others as soon as practicable (Maclaren, p. 250). Of course if one pays, or in refusing payment acts as agent of the others, that is enough (Chalmers, p. 146).

5. Where the drawee or acceptor of a bill is dead, and no place of payment is specified, presentment must be made to a personal representative, if such there is, and with the exercise of reasonable diligence he can be found:

Presentment for acceptance in such a case is excused, but may be made: sect. 41.

6. Where authorized by agreement or usage, a presentment through the post office is sufficient:

7. Where the place of payment specified in the bill or acceptance is any city, town or village, and no place therein is specified, and the bill is presented at the drawee's or acceptor's known place of business or known ordinary residence therein, and, if there is no such place of business or residence, the bill is presented at the post office, or principal post office in such city, town or village, such presentment is sufficient.

If a bill is payable at a bank in a town where there is a clearing house it has been held that presentment through the clearing house is sufficient: *Reynolds* v. *Chettle*, 2 Camp. 696 (1811). If alternative places are named, it is sufficient to present it at one: *Beeching* v. *Gower*, *Holt*, N. P. C. 313 (1816).

The person who presents a bill for payment must produce it, and must be ready and willing to deliver it upon receiving payment: sect. 52 (4). As to the hour of presentment, see notes to sect. 41.

46. Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence:

The death of the holder just before the bill matures, *Rothschild* v. *Currie* (1841), 1 Q. B. 47; a state of siege or war rendering presentment impracticable, *Patience* v. *Townley* (1805), 2 Smith 223, and delay in transmission through the Post Office, where it was mailed in ample time, *Pier* v. *Heinrichshoffer* (1877), 29 Amer. R. 501, have been held to excuse delay. If presentment is delayed at the request of the drawer or indorser sought to be charged, the delay is presumably excused: *Burnett* v. *Monaghan*, 1 R. C. 473 (1871).

2. Presentment for payment is dispensed with—

(*a*.) Where, after the exercise of reasonable diligence, presentment, as required by this Act, cannot be effected;

The fact that the holder has reason to believe that the bill will, on presentment, be dishonored, does not dispense with the necessity for presentment;

(*b*.) Where the drawee is a fictitious person;

When the drawer is a fictitious or an incapable person, the holder may treat the instrument as a promissory note: sect. 5 (2).

The fact that the drawee is a person not having capacity to contract does not excuse presentment for payment unless the case falls within the next clause, though it does excuse presentment for acceptance, see sect. 41 (2) (*a*).

(*c*.) As regards the drawer, where the drawee or acceptor is not bound, as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented;

A bill accepted for the accommodation of the drawer need not be presented in order to charge him where he has not provided funds to meet it, but should be presented to charge the indorsers: *Knapp* v. *Bank of Montreal*, 1 L. C. R. 252 (1850).

(*d*.) As regards an indorser, where the bill was accepted or made for the accommodation of that indorser, and he has no reason to expect that the bill would be paid if presented;

Prior indorsers are not liable without presentment: *Turner* v. *Samson*, 2 Q. B. D. 23 (1876).

(*e*.) By waiver of presentment, express or implied.

Waiver is binding without consideration. It may be either before or after the time for presentment; in writing, or verbal, or inferred from conduct or circumstances. As to express waiver, see sect. 16 (*b*).

Waiver of notice of dishonor does not include a waiver of presentment for payment: *Hill* v. *Heap* (1823), D. and R. N. P. C. 57.

47. A bill is dishonored by non-payment (*a*) when it is duly presented for payment and payment is refused or cannot be obtained, or (*b*) when presentment is excused and the bill is overdue and unpaid;

As to presentment for payment, see section 45; and as to when it is excused, sect. 46. As to when a bill is overdue, see sections 10 and 14.

2. Subject to the provisions of this Act, when a bill is dishonored by non-payment, an immediate right of recourse against the drawer, acceptor and indorsers accrues to the holder.

The provisions of the Act referred to in this section are sects. 48 to 51, and 64 to 67.

As a general rule the holder's right of *action* against a drawer or indorser dates from the time when notice of dishonor is or ought to be received, and not from the time when it is sent, *Castrique* v. *Bernabo* (1844), 2 Q. B. 498, and in any case there is no right of action till the day after dishonor. The right of recourse must be distinguished from the right of action: *Kennedy* v. *Thomas* (1894), 2 Q. B. 759 C. A. An action instituted in the afternoon of the last day of grace, after dishonor, is premature: *Demers* v. *Rousseau*, Q. R., 1 S. C. 440 (1892).

In Quebec the insolvency of the acceptor before the maturity of the bill makes it immediately exigible as against him, *Ontario Bank* v. *Foster*, 6 L. N. 398 (1883), but not as against an indorser: *Guilbault* v. *Migue*, 20 R. L. 597 (1891). Prescription does not, however, begin to run until the time fixed for the maturity of the bill: *Whitley* v. *Pinkerton*, Q. R., 2 S. C. 256 (1892).

Where the acceptance is conditional, the condition must be fulfilled or the acceptor is not liable: *Dufresne* v. *Jacques Cartier Building Society*, 5 R. L. 235 (1873).

In an action on a bill or note payable at a particular place, it is not necessary to show that there were not sufficient funds at the place named; all that is necessary, even as against an indorser, is to show presentment, non-payment and notice of dishonor: *McDonald* v. *McArthur*, 8 Ont. A. R. 553 (1883).

48. Subject to the provisions of this Act, when a bill has been dishonored by non-acceptance or by non-payment, notice of dishonor must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged; Provided that—

(*a.*) Where a bill is dishonored by non-acceptance, and notice of dishonor is not given, the rights of a holder in due course subsequent to the omission shall not be prejudiced by the omission;

(*b.*) Where a bill is dishonored by non-acceptance, and due notice of dishonor is given, it shall not be necessary to give notice of a subsequent dishonor by non-payment, unless the bill shall in the meantime have been accepted.

The provisions of the Act which dispense with notice of dishonor in certain cases, and excuse delay in giving notice in others, are in section 50.

49. Notice of dishonor in order to be valid and effectual, must be given in accordance with the following rules:—

(*a.*) The notice must be given by or on behalf of the holder, or by or on behalf of an indorser who, at the time of giving it, is himself liable on the bill;

(*b.*) Notice of dishonor may be given by an agent either in his own name, or in the name of any party entitled to give notice, whether that party is his principal or not;

(*c.*) Where the notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior indorsers who have a right of recourse against the party to whom it is given;

(*d.*) Where notice is given by or on behalf of an indorser entitled to give notice as hereinbefore provided, it enures for the benefit of the holder and all indorsers subsequent to the party to whom notice is given;

(*e.*) The notice may be given in writing or by personal communication, and may be given in any terms which sufficiently identify the bill and intimate that the bill has been dishonored by non-acceptance or non-payment;

(*f.*) The return of a dishonored bill to the drawer or an indorser is, in point of form, deemed a sufficient notice of dishonor:

It is not prudent to give notice by returning the bill, for that is to hand over to the person liable the chief evidence of his liability.

(*g.*) A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the bill shall not vitiate the notice, unless the party to whom the notice is given is in fact misled thereby;

A notice to the drawer which describes the bill as payable at the "S. Bank," when in fact it was payable at the "T. Bank," *Bromage v. Vaughan* (1846), 16 L. J. Q. B. 10; or which describes a bill of exchange as a note, *Stockman* v. *Parr* (1843), 11 M. & W. 809; or which transposes the names of drawer and acceptor, *Mellersh* v. *Rippen* (1852), 7 Exch. 578; or which describes the acceptor by a wrong name. *Harpham* v. *Child* (1859), 1 F. & F. 652, may be sufficient.

(*h.*) Where notice of dishonor is required to be given to any person, it may be given either to the party himself, or to his agent in that behalf;

The agent should be some person designated for that purpose by the party, or in charge or employed at his office, or representing him at his residence. A verbal or written notice of dishonor given to or left with a clerk at the drawer or indorser's place of business, *Allan* v. *Edmundson* (1848), 2 Exch. 724; or given to the wife of the drawer at his house during his absence, *Housego* v. *Cowne* (1837), 2 M. & W. 348, were held sufficient; it being the duty of the drawer or indorser of a bill if he be absent from his place of business or residence to see that there is some person there to receive notice on his behalf.

(*i.*) Where the drawer or indorser is dead, and the party giving notice knows it, the notice must be given to a personal representative, if such there is and, with the exercise of reasonable diligence, he can be found;

(*j.*) Where there are two or more drawers or indorsers who are not partners, notice must be given to each of them, unless one of them has authority to receive such notice for the others;

(*k.*) The notice may be given as soon as the bill is dishonored, and must be given not later than the next following juridical or business day;

2. Where a bill, when dishonored, is in the hands of an agent, he may either himself give notice to the parties liable on the bill, or he may give notice to his principal. If he gives notice to his principal, he must do so within the same time as if he were the holder, and the principal, upon receipt of

such notice, has himself the same time for giving notice as if the agent had been an independent holder:

3. Where a party to a bill receives due notice of dishonor, he has, after the receipt of such notice, the same period of time for giving notice to antecedent parties that the holder has after the dishonor:

Each party receiving notice of dishonor has the whole of the following business day to send notice to any party to the bill whom he desires to hold liable.

As the usage in Canada has been for the holder to give notice to all parties entitled to it, he should either do so still, or let the parties whom he notifies know that he is not giving notice to the others, so that they may take steps to protect themselves if necessary: Maclaren, p. 270.

4. Notice of the protest or dishonor of any bill payable in Canada shall, notwithstanding anything in this section contained, be sufficiently given if it is addressed in due time to any party to such bill entitled to such notice, at his customary address or place of residence or at the place at which such bill is dated, unless any such party has, under his signature, designated another place; and in such latter case such notice shall be sufficiently given if addressed to him in due time at such other place; and such notice so addressed shall be sufficient, although the place of residence of such party is other than either of such above-mentioned places; and such notice shall be deemed to have been duly served and given for all purposes if it is deposited in any post office, with the postage paid thereon, at any time during the day on which such protest or presentment has been made, or on the next following juridical or business day; such notice shall not be invalid by reason of the fact that the party to whom it is addressed is dead:

5. Where a notice of dishonor is duly addressed and posted, as above provided, the sender is deemed to have given due notice of dishonor, notwithstanding any miscarriage by the post office.

It lies on the sender to prove that the letter containing the notice was duly addressed and posted: *Hawkes* v. *Salter* (1828), 4 Bing. 715. The sufficiency of the direction on the letter is a question of reasonable diligence (Chalmers, p. 155).

Indorsers who may wish to look to prior parties should be careful to see (1) that their proper address is given, and (2) that notice of dishonor has been given to such prior parties, and if not to give it themselves within the legal delay (Maclaren, p. 273).

50. Delay in giving notice of dishonor is excused where the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his default, misconduct, or negligence; when the cause of delay ceases to operate the notice must be given with reasonable diligence;

If an indorser gives a wrong address, delay caused by his doing so would be excused, *Hewitt* v. *Thompson* (1836), 1 M. & Robb. 541; and if the holder does not know an indorser's address, delay occupied in making inquiries would be excused: *Baldwin* v. *Richardson* (1823), 1 B. & C. 245.

When the delay is caused by the party to whom notice is sent, he cannot give an effectual notice to antecedent parties, but is liable himself: *Cf. Shelton* v. *Braithwaite* (1841), 8 M. & W. 254.

2. Notice of dishonor is dispensed with—

(*a*.) When, after the exercise of reasonable diligence, notice as required by this Act cannot be given to or does not reach the drawer or indorser sought to be charged;

(*b*.) By waiver express or implied; notice of dishonor may be waived before the time of giving notice has arrived, or after the omission to give due notice;

Waiver or notice of dishonor in favor of the holder enures for the benefit of parties prior to such holder as well as subsequent holders: *Rabey* v. *Gilbert* (1861), 30 L. J. Ex. 170. Waiver of notice of dishonor by an indorser does not affect parties prior to such indorser: *Turner* v. *Leech* (1821), 4 B. & Ald. 451.

An acknowledgment of liability must be made with full knowledge of the facts in order to operate as a waiver of notice of dishonor: *Goodhall* v. *Dolley* (1787), 1 T. R. 712. Thus, a bill is refused payment at maturity. The indorser promises the holder to pay it, not knowing that it had been previously dishonored by non-acceptance. This is no waiver. Again, a waiver of notice of dishonor may not include a waiver of presentment for payment: *Keith* v. *Burke* (1885), 1 C. & E. 551.

In the United States it has been held that verbal waiver of notice may be revoked before the time for giving notice has expired: *Second National Bank* v. *Maguire* (1877), 31 Amer. R. 539.

(*c*.) As regards the drawer, in the following cases, namely, (1) where drawer and drawee are the same person, (2) where the drawee is a fictitious person or a person not having capacity to contract, (3) where the drawer is the person to whom the bill is presented for payment, (4) where the drawee or acceptor is, as between himself and the drawer, under no obligation to accept or pay the bill, (5) where the drawer has countermanded payment;

Prima facie the acceptor is, as between himself and the drawer, the person bound to pay it; but evidence is admissible to shew that he is in reality a mere surety for the drawer or some other party: *Cook* v. *Lister* (1863), 32 L. J. C. P. 127.

(*d*.) As regards the indorser, in the following cases, namely, (1) where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he endorsed the bill, (2) where the indorser is the person to whom the bill is presented for payment, (3) where the bill was accepted or made for his accommodation.

Notice of dishonor is not dispensed with because presentment is dispensed with, or because the drawer or indorser has reason to believe the bill will not be paid, or because the acceptor is dead and no representative can be found: *Carew* v. *Duckworth*, L. R. 4 Ex. 319 (1869): *Caunt* v. *Thompson*, 7 C. B. 400 (1849); or because the drawer or indorser is dead: section 49 (1), (Maclaren, p. 279).

Liability of persons not parties.—The liability of persons who are not parties to a bill, but who may be guarantors of the bill or some of the parties to it, or who may be liable on the consideration for which the bill is given, is not affected by the act, but will remain subject to the laws in force in the several provinces (Maclaren, p. 282).

A person who has given a guarantee for the payment of a bill is liable without notice of dishonor, *Palmer* v. *Baker*, 22 U. C. C. P. 59 (1871); also if he guarantees the payment of the price of goods for which the bill is given, *Anderson* v. *Archibald*, 9 N. S. (3 G. & O.), 88 (1872); or probably if he is liable on the consideration for the bill (Chalmers, p. 170, and cases there cited); but if the goods are for the drawer of the bill the guarantor is entitled to notice: *Phillips* v. *Astling*, 2 Taunt. 206 (1809).

As to those who have placed their names on bills in Quebec "*pour aval*" or as warrantors elsewhere, see section 56.

51. Where an inland bill has been dishonored it may, if the holder thinks fit, be noted and protested for non-acceptance or non-payment, as the case may be; but, subject to the provisions of this Act with respect to notice of dishonor, it shall not, except in the Province of Quebec, be necessary to note or protest any such bill in order to preserve the recourse against the drawer or indorser; but in the case of a bill drawn upon any person in the Province of Quebec, or payable or accepted at any place therein, in default of protest for non-acceptance or non-payment, as the case may be, and of notice thereof, the parties liable on the bill other than the acceptor are discharged, subject, nevertheless, to the exceptions in this section hereinafter contained;

By section 72 this provision applies to cheques, and by section 88 to promissory notes. By section 57 (3) the expenses of noting can be recovered as liquidated damages.

The protesting of inland bills for non-acceptance or for better security, elsewhere than in Quebec, is only compulsory as a preliminary to an acceptance *supra* protest for honor, section 64, and a protest for non-payment, only as a preliminary to presentment for payment to the acceptor for honor, or referee in case of need: section 66.

2. Where a foreign bill, appearing on the face of it to be such, has been dishonored by non-acceptance, it must be duly protested for non-acceptance, and where such a bill, which has not been previously dishonored by non acceptance, is dishonored by non-payment, it must be duly protested for non-payment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on the face of it to be a foreign bill, protest thereof in case of dishonor, except as in this section provided, is unnecessary:

See foreign bill defined by section 4. Foreign notes as well as bills should be protested in order to bind the indorsers: section 88 (4). By section 52 (3) protest is not necessary in order to charge the acceptor of a bill.

3. A bill which has been protested for non-acceptance, or a bill of which protest for non-acceptance has been waived, may be subsequently protested for non-payment:

Protest in such case might be necessary for the purpose of charging a foreign drawer or indorser in his own country (Chalmers, p. 172).

4. Subject to the provisions of this Act, when a bill is protested, the protest must be made or noted on the day of its dishonor. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting:

The provisions of this sub-section as to the extension of the protest are supplemented by section 92.

5. Where the acceptor of a bill (1) suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and indorsers:

6. A bill must be protested at the place where it is dishonored, or at some other place in Canada situate within five miles of the place of presentment and dishonor of such bill: Provided that—

(*a*.) When a bill is presented through the post office, and returned by post dishonored, it may be protested at the place to which it is returned, not later than on the day of its return or the next juridical days;

Every day is a juridical day, except the legal holidays mentioned in section 14 (2).

(*b.*) Every protest for dishonor, either for non-acceptance or non-payment, may be made on the day of such dishonor at any time after non-acceptance, or in case of non-payment, at any time after three o'clock in the afternoon:

For notarial forms of protest, see First Schedule to the Act, forms B, C, D, E & F.

7. A protest must contain a copy of the bill, or the original bill may be annexed thereto, and the protest must be signed by the notary making it, and must specify—

(*a.*) The person at whose request the bill is protested;

(*b.*) The place and date of protest, the cause or reason for protesting the bill, the demand made, and the answer given, if any, or the fact that the drawee or acceptor could not be found:

In the case of foreign bills, at least, it is well for a notary to use his seal, as in some countries a protest will not be received in evidence without an official seal (Maclaren, p. 295).

8. Where a bill is lost or destroyed, or is wrongly or accidentally detained from the person entitled to hold it, or is accidentally retained in a place other than where payable, protest may be made on a copy or written particulars thereof:

9. Protest is dispensed with by any circumstances which would dispense with notice of dishonor. [illegible]elay in noting or protesting is excused when the delay is c[illegible] by circumstances beyond the control of the holder, and n[illegible]putable to his default, misconduct, or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.

See section 50 (2) as to excuses for non-notice and delay, and section 16 (*b*) as to indorsements waiving protest.

10. No clerk, teller or agent of any bank shall act as a notary in the protesting of any bill or note payable at the bank or at any of the branches of the bank in which he is employed.

The present section applies to promissory notes, as well as to bills and cheques, with the modifications mentioned in section 88 (Maclaren, p. 285).

52. When no place of payment is specified in the bill or acceptance, presentment for payment is not necessary in order to render the acceptor liable:

2. When a place of payment is specified in the bill or acceptance, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures, but if any suit or action be instituted thereon before presentation the costs thereof shall be in the discretion of the court:

When a bill is accepted payable at a particular place, and there only, the acceptor's position is for many purposes analogous to that of the drawer of a cheque: *Ramchurn Mullick* v. *L. Radakissen* (1851), 9 Moore P. C., at p. 70. If, then, he could show that he was damnified by the holder's omission to present on the proper day, he would probably be discharged: *Cf. Alexander* v. *Burchfield* (1842), 7 M. & Gr. 1061.

3. In order to render the acceptor of a bill liable, it is not necessary to protest it, or that notice of dishonor should be given to him:

The same rule applies to the maker of a note; section 88 (2).

4. Where the holder of a bill presents it for payment, he shall exhibit the bill to the person from whom he demands payment, and when a bill is paid the holder shall forthwith deliver it up to the party paying it.

If on demand of payment the bill is not asked for and payment is refused on some other ground, or inability to pay is acknowledged, exhibition of the bill is waived: *Chandler* v. *Beckwith*, 2 N. B. (Berton), 423 (1838).

If a bill is payable at a bank or other particular place, and is lying there on the day of maturity, no special form of presentment is necessary: *Harris* v. *Perry*, 8 U. C. C. P. 409 (1858).

As to the case of a lost bill or note, see note to section 69.

Liabilities of Parties.

53. A bill, of itself, does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept as required by this Act is not liable on the instrument.

Subject to the rule that a customer is entitled to draw cheques on his banker, a creditor, as such, is not entitled to draw on his debtor in respect of his debt; and the drawee of an unaccepted bill of exchange is under no obligation to accept or pay it unless he has for valuable consideration expressly or impliedly agreed to do so: Chitty, p. 200. *Cf. Goodwin* v. *Robarts* (1875), L. R. 10 Ex. at p. 351.

It is usual, but not necessary, for the drawer to advise the drawee of drafts drawn on him by letter of advice: *Arnold* v. *Cheque Bank* (1876), 1 C. P. D. 586. If, says Story, section 68, a bill is drawn "as per advice," then the drawee is not bound to accept or pay without such advice, and if he does it is at his own peril.

When the drawee contracts with the drawer to accept his draft, and dishonors it, the consequences reasonably resulting from the breach of contract constitute the measure of damage: *Prehn* v. *Royal Bank of Liverpool* (1870), L. R. 5 Ex. 92.

54. The acceptor of a bill, by accepting it—

(*a.*) Engages that he will pay it according to the tenor of his acceptance;

See section 17 as to form of valid acceptance; section 19 as to general and qualified acceptances, and section 52, as to presentment to charge acceptor. As to variation of the acceptor's liability by *ex post facto* legislation, *e. g.*, a French *"loi moratoire,"* see *Rouquette* v. *Overmann* (1875), L. R., 10 Q. B. 525. As to measure of damages, see section 57. The drawee of a bill by accepting it becomes the party primarily liable thereon to the holder. See the primary, and in general, absolute, liability of an acceptor distinguished from the secondary and conditional liability of a drawer or indorser by Bayley, J., in *Rowe* v. *Young* (1820), 2 Bligh H. L. at p. 467. As to the relations *inter se* of joint acceptors who are not partners, see per Wilde, C. J in *Harmer* v. *Steele* (1849), 4 Ex. Ch. 13.

Drawees who have promised to accept, or who have knowingly accepted the benefit of funds obtained on a representation that they would accept, have been held liable: *Torrance* v. *Bank of British North America*, L. R., 5 P. C. (1873); *Bank of Montreal* v. *Thomas*, 16 O. R. 503 (1888).

See section 26 as to an acceptor signing as an agent or in a representative character.

A plea, by the acceptor, of tender after maturity is bad: *Cf. Leake* on Contracts, ed. 3, p. 861.

(*b.*) Is precluded from denying to a holder in due course—

(1.) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill;

(2.) In the case of a bill payable to drawer's order, the then capacity of the drawer to indorse, but not the genuineness or validity of his indorsement;

(3.) In the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his indorsement.

This section deals only with estoppels arising on the bill. There may, of course, be other estoppels arising on evidence. See section 24, which is modified by this section.

If the bill be materially altered the acceptor is not precluded from setting this up: *White* v. *Central National Bank* (1876), 64 New York R. 316, and see section 63. But where a bank issued a draft for $25.00 on one of its branches without advice, and the holder raised it to $5,000 and deposited it in another bank which drew the money, and the forgery was discovered six days later, it was held that the bank which had paid could not recover: *Union Bank* v. *Ontario Bank*, 2 L. N. 386, 24 L. C. J. 309 (1880).

The acceptor may of course decline to pay on the ground that the payee's signature has been forged, or his signature not authorized. If, however, the payee be a fictitious person, the holder is entitled to treat the bill as if drawn payable to bearer. See section 7 (3) and notes thereon.

55. The drawer of a bill, by drawing it—

(*a.*) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it is dishonored he will compensate the holder or any indorser who is compelled to pay it, provided that the requisite proceedings on dishonor are duly taken;

As to "dishonor," see sects. 43 and 47. The liability of the drawer of an accepted bill must in general be measured by that of the acceptor, their relation for most, but not all, purposes resembling principal and surety: *Rouquette* v. *Overmann* (1875), L. R. 10 Q. B. at page 536-537. As to express stipulations in the bill restricting the ordinary liability of the drawer, or releasing the holder from the performance of his ordinary duties, see sect. 16. As to measure of damages, see sect. 57. For effect of incapacity of drawer, see sect. 22 (2), and for compensation due by him to the indorser who pays, see sect. 57.

(*b.*) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse:

The drawer is not precluded from denying the genuineness or validity of the indorsement by the payee (Maclaren, p. 302).

2. The indorser of a bill, by indorsing it—

(*a.*) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it is dishonored he will compensate the holder or a subsequent indorser who is compelled to pay it, provided that the requisite proceedings on dishonor are duly taken;

(*b.*) Is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous indorsements;

(*c.*) Is precluded from denying to his immediate or a subsequent indorsee that the bill was, at the time of his indorsement, a valid and subsisting bill, and that he had then a good title thereto.

A person who puts his name on a bill before it is complete and regular on the face of it is not liable as an indorser. *Jenkins & Sons* v. *Coomber*, Div. Ct. (1898), 2 Q. B. 168.

The indorser of a bill in his relations with the holder is in the nature of a new drawer, *Steele* v. *McKinley* (1880), 5 App. Cas. at pp. 767, 768 (see also Pothier, No. 79), and he may, like the drawer, vary his obligation in different ways. See sections 16, 31 and 32.

As to the nature of the contract of indorsement, see the remarks of Maule, J., in *Castrique* v. *Buttigieg*, 10 Moore P. C. at p. 108 (1855).

The indorsers may have an agreement varying as between themselves the undertaking in this section, and even reversing the order in which they are to be liable to each other. If two or more persons indorse a bill or note to accommodate the acceptor or maker, their relation to each other is that of co-sureties, irrespective of the order in which they have indorsed: *Macdonald* v. *Whitfield*, 8 App. Cas. 733 (1883). See *Small* v. *Riddel*, 31 U. C. C. P. 373 (1880).

The drawer and indorsers of a bill are jointly and severally responsible to the holder for the due acceptance and payment thereof, and if it be dishonored the latter may enforce payment from all or any of the parties liable on the bill.

56. Where a person signs a bill otherwise than as a drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course, and is subject to all the provisions of this act respecting indorsers.

An indorsement by way of receipt does not come within this rule.

It is only to a holder in due course that the person signing a bill otherwise than as drawer or acceptor is said to incur the liabilities of an indorser. See sect. 55 (2), which defines what these liabilities are. They may be varied as provided in sect. 16.

57. Where a bill is dishonored, the measure of damages which shall be deemed to be liquidated damages, shall be as follows:—

(*a*.) The holder may recover from any party liable on the bill, the drawer who has been compelled to pay the bill may recover from the acceptor, and an indorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior indorser—

(1.) The amount of the bill;

(2.) Interest thereon from the time of presentment for payment, if the bill is payable on demand, and from the maturity of the bill in any other case;

This section applies when a bill is dishonored either by non-acceptance, sect. 43, or by non-payment, sect. 47, and the parties have no valid defence. Bills dishonored abroad fall exclusively under the next sub-sect.: *re* Commercial Bank of South Australia (1887), 36 Ch. D. 522.

Amount of the Bill.—If the bill bears interest from its date or issue, this would be included, section 9: *Crouse* v. *Park*, 3 U. C. Q. B. 458 (1847). So would exchange if indicated in the bill, sect. 9 (*d*), sect. 71 (2) (*d*).

Interest.—This clause applies only to interest allowed as damages for non-payment of the bill at maturity. As to interest provided for by the bill itself, which forms part of the bill or debt, see sect. 9, and notes thereon.

Expenses.—As to these see sect. 93 (2 and 3). Under this term the expense of protesting for better security is not included, nor is commission: *re* English Bank of the River Plate, *Ex-parte* The Bank of Brazil (1893), 2 Ch. 438.

(3). The expenses of noting and protest;

(*b.*) In the case of a bill which has been dishonored abroad, in addition to the above damages, the holder may recover from the drawer or any indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange with interest thereon until the time of payment.

Re-exchange is the amount which the party who has been compelled to pay the dishonored bill would have to pay for a sight bill, drawn at the time and place of dishonor at the then current rate of exchange on the place where the drawer or indorser sought to be charged resides, to cover the amount of the dishonored bill with interest and expenses: *Williams* v. *Ayers* 3 App. Cas. 146 (1877). (Maclaren, p. 313).

58. Where the holder of a bill payable to bearer negotiates it by delivery without indorsing it, he is called a "transferrer by delivery:"

See holder defined by sect. 2, bill payable to bearer by sect. 8, and negotiation by sect. 31.

2. A transferrer by delivery is not liable on the instrument :

No person is liable as drawer, indorser or acceptor of a bill who has not signed it as such: sect. 23.

3. A transferrer by delivery who negotiates a bill thereby warrants to his immediate transferree, being a holder for value, that the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact which renders it valueless.

The transferrer by delivery, although not liable on the instrument itself, may in certain cases, in the event of its dishonor, be liable on the consideration for which the bill has been transferred: *Merchants' Bank* v. *Whidden*, 19 S. C. Can. 53 (1891). This is the case if the bill was given for an antecedent debt *Mitchell* v. *Holland*, 16 S. C. Can. 687 (1889); or if the delivery was not intended to operate a full and final discharge of the liability of the transferrer, *Van Wart* v. *Wooley*, 3 B. & C. 446. Where a person changes bank notes or cashes a cheque payable to bearer to oblige the holder, he can recover the money if the bank has stopped payment or if the cheque is dishonored, *Conn.* v. *Merchants' Bank*, 30 U. C. C. P. 380 (1879); but in all the above cases the transferee, in order to hold the transferrer liable, must act with reasonable diligence in seeking to obtain payment, and in giving notice of dishonor or repudiating the transaction. (Maclaren, p. 314).

Discharge of Bill.

59. A bill is discharged by payment in due course by or on behalf of the drawee or acceptor:

"Payment in due course" means payment made at or after the maturity of the bill to the holder thereof in good faith and without notice that his title to the bill is defective:

A bill may be discharged by payment, release, prescription, compensation or set-off, confusion, novation, by being merged in a security of a higher nature, such as a bond, mortgage or the like, and by judgment—the indebtedness on the bill being merged in the judgment.

A party to a bill may be released and discharged under the circumstances mentioned in sects. 48 and 61 (2).

Form of Payment.—The holder of a bill is entitled to be paid in legal tender, which consists in Canada of British sovereigns and half sovereigns, United States Eagles and multiples and half of said Eagles, Dominion notes, Dominion silver to the amount of ten dollars and Dominion copper coins to the amount of twenty-five cents. It is provided by 34 Vic., c. 4, s.

7, that the holder of the notes of any person to the amount of more than $10 shall not be bound to receive more than that in silver coins in payment of such notes presented for payment at one time, although any of such notes be for a less sum. The holder may, however, receive satisfaction in some other form than by way of legal tender. Anything which would operate as a discharge in the case of an ordinary contract to pay money is equally effectual in the case of a bill, and, as provided by sect. 61, a bill may even be satisfied in a manner which would not be sufficient in the case of ordinary contracts.

Amount of Payment.—If payment be made at maturity the full amount of the bill must be tendered, but if made thereafter it must also cover the damages specified in sect. 57. Part payment of a bill in due course operates as a discharge *pro tanto.*

Time of Payment.—Payment to operate as a discharge must be made at or after the maturity of the instrument, but premature payment or any other premature discharge is of course valid between the parties (Chalmers, p. 203). If payment be made before maturity the payer should see that the bill is delivered up. Payment by the drawee or acceptor before maturity operates as a mere purchase of the instrument, and, subject to sect. 61, if the form of the bill permit, it may be re-issued and further negotiated by the person paying. If premature payment is made by an indorser, he may wait until maturity to recover from other parties liable, or at once re-negotiate the bill. No payment can be forced before maturity, except in the Province of Quebec, when the debtor is insolvent or en deconfiture, *Lovell* v. *Meikle*, 2 L. C. R. 69, and then only against the debtor's estate, the other parties to the bill not becoming liable until maturity. Owing to compensation differing in Quebec from that of other Provinces, a bill transferred there after maturity would be subject to any money claim which the acceptor might have against any prior holder at or after maturity (Maclaren, p. 324).

Place of Payment.—Payment must be made at the place indicated in the bill. When no place is specified, presentment for payment must be made in accordance with section 45. The indication of a bank as a place of payment by one of its customers is a sufficient authority to the bank to pay the bill, although not bound to do so in the absence of special agreement: *Roberts* v. *Tucker* (1851), 16 Q. B. 579.

Holders' Identity.—In England possession is *prima facie* evidence of identity, *Cf. Bulkeley* v. *Butler*, 2 B. & C., at p. 441: and if the payer doubts the identity of the person presenting, or the genuineness of the instrument, he must pay or refuse payment at his own risk (Chalmers, p. 203).

Renewal Bill.—When a renewal bill is taken the original one is not discharged, unless there is a special agreement to that effect. It is a mere conditional payment. So where the bill of a third party is taken, the remedy on the original bill is suspended until the maturity of the new one. If that is is paid or discharged, so is the original. If the new bill is dishonored, the original liability revives, except as to parties who are merely sureties, and who may have been discharged by the delay granted to the principal debtor (Maclaren, p. 319).

Payment of Bills in a Set and Lost Bills.—See Sects. 69 and 70, (5), (6).

Recovery by Payer of Money Paid by Mistake.—Every payment presupposes a debt, and what has been paid by error may be recovered: C. C. Arts. 1047, 1048 and 1049.

The following rules are laid down by Chalmers, p. 206:

(1) The payer of a forged, altered or cancelled bill, who has been led to pay it by the negligence of his correspondent or customer, and has not himself been guilty of negligence, can recover the money so paid from such correspondent or customer.

(2.) The payer can recover the money from the person who received it when such person did not act *bona fide* in demanding payment of the bill: *Kendal* v. *Wood* (1871), L. R., 6 Ex. 243.

(3) Subject to the provisions of the Act as to a collecting banker, in the case of a crossed cheque (section 81), the payer can recover the money paid from the person who received it,

when such person acted *bona fide* in demanding payment of the bill, provided (*a*) that the payer was not guilty of negligence in making the payment, and probably (*b*) that the position of the party receiving payment has not been altered before the discovery of the mistake and notification thereof.

Prescription.—The rights of the parties with regard to prescription are governed by the local laws of each province. In Quebec the time required is five years reckoned from maturity: C. C. Art. 2260 (4). The debt is then absolutely extinguished, and no action can be maintained after the delay for prescription is acquired: C. C. Art. 2267. In the other provinces of the Dominion, and in England, the time required for prescription is six years.

No indorsement of a bill or note made by a person receiving payment will take it out of the operation of the law relating to prescription: Art. 1229, Que. C. C.; R. S. Ontario, c. 123; R. S. Nova Scotia, c. 112; C. S. New Brunswick, c. 85. The debtor should write the memorandum of part payment, whether of principal or interest, on the back of the bill or note, and he and the creditor should sign it, but if this is not done, payment on account may be proved like any other fact.

No promise or acknowledgment is sufficient to prevent prescription unless in writing and signed by the party making the promise, R. S. O., R. S. N. S., and C. S. N. B., *supra* (unless the amount is under $50.00, Que. C. C. Art. 1235). A simple acknowledgment of a sum due is presumed to mean a promise to pay, though it may be written without any such intention, but the promise of payment must not be repelled by any expressions in the acknowledgment.

No person is liable on account of the act or promise of his co-contractor or debtor, and one may be liable and may be sued without the other: R. S. O., R. S. N. S., and C. S. N. B., *supra*.

In Quebec, prescription cannot be renounced by anticipation, but time acquired may be renounced: C. C. Art. 2184. Renunciation by one person does not prejudice his co-debtors, his sureties, or third persons: Art. 2229.

Time when Prescription commences to run.—Prescription begins to run on bills and notes from the first day an action could be brought upon them. As regards the acceptor, time begins to run from the maturity of the bill, unless (1) presentment for payment is necessary in order to charge the acceptor, in which case time (probably) runs from the date of such presentment, section 72 (2); or (2) the bill is accepted after its maturity in which case time (probably) runs from the date of acceptance, section 10 (2). As regards a drawer or indorser, time (generally) begins to run from date when notice of dishonor is received: *Cf. Castrique* v. *Barnabo* (1844), 6 Q. B. 498, and section 43. When an action is brought against a party to a bill to enforce an obligation collateral to the bill, though arising out of the bill transaction, the nature of the particular transaction determines the period from which time begins to run: Chalmers, p. 292. Time does not run with respect to debts depending on a condition until the condition happens, or on debts with a term until the term has expired: Art. 2236, Que. C. C.

In Quebec, prescription runs against absentees, Art. 2232; also against married women, minors, idiots and insane persons, saving their recourse against those who legally represent them, Arts. 2234, 2269 C. C.; but in all the other provinces, prescription only commences to run from the date of the return of the absentee, and in the case of minors, idiots and other incapable persons from the time of the removal of the impediment. The Ontario Revised Statutes, ch. 60, provide, however, that time shall run in favor of a joint debtor, although one or more of the joint debtors may be out of the Province.

Any one or more of the following prescriptions may be invoked in Quebec:—(1) Any prescription entirely acquired under a foreign law, on a bill payable outside of Quebec, in favor of a person living abroad. (2) Any prescription entirely acquired in Quebec, reckoned from maturity, on a bill payable there, when the party was domiciled there at maturity; in other cases from the time he became domiciled there. (3) Any prescription resulting from the lapse of successive periods in the preceding

cases, when the first period elapsed under the foreign law: Art. 2190. The court cannot of its own motion supply the defence resulting from prescription except in cases where the right of action is denied: Art. 2188. See Maclaren, p. 326-333, and cases there cited.

As to conflict of the above laws, see section 71.

2. Subject to the provisions hereinafter contained, when a bill is paid by the drawer or an indorser, it is not discharged, but—

(*a*.) Where a bill payable to, or to the order of, a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill:

(*b*.) Where a bill is paid by an indorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent indorsements, and again negotiate the bill:

If a bill be paid by an indorser he is entitled to the benefit of all securities deposited with the holder by the acceptor or any other party prior to himself: See *Boyc* v. *McDonald*, 16 L. C. R. 191; *Duncan Fox & Co.* v. *New South Wales Bank* (1880), App. Cas. H. L. and Que. C. C. Art. 1156.

The provision to which the foregoing sub-section is subject is the following (3).

3. Where an accommodation bill is paid in due course by the party accommodated, the bill is discharged.

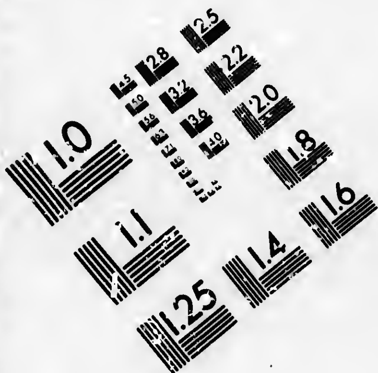
For a definition of an accommodation party and his liabilities, see section 28, and see sections 36 (2) and 37.

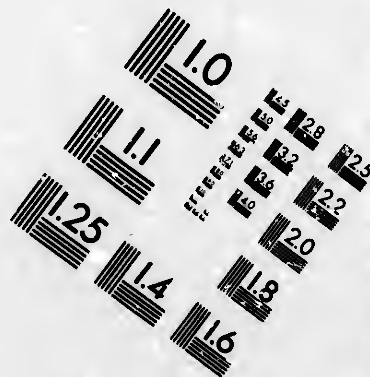
Though the right of action on the bill is discharged, the accommodation acceptor has a personal right of action for indemnity (Chalmers, p. 199), and prescription only commences to run in favor of the drawer from the time the accommodation acceptor paid the money due on the bill. If several persons endorse a bill or note for the accommodation of the acceptor or maker, and one of them pays it, the whole circumstances attendant upon its making, issue and transference may be legitimately referred to for the purpose of ascertaining the true relation to each other of the parties who put their signatures upon it, and reasonable inferences from these facts and circumstances are admitted to the effect of qualifying, altering, or even inverting the relative liabilities which the law merchant would otherwise assign to them. See *Macdonald* v. *Whitfield*, 8 App. Cas. 733 (1883).

Where an action against the indorser of a note had been dismissed, on the ground that he had indorsed for the accommodation of the plaintiffs, this was held to be an answer to an action seeking to hold him responsible as a partner by estoppel in the firm which made the note: *Ray* v. *Isbister* (1896), 26 S. C. Can.

60. When the acceptor of a bill is or becomes the holder of it at or after its maturity, in his own right, the bill is discharged.

Whenever the acceptor or maker of a bill or note is discharged, all the other parties are discharged, and the instrument ceases to be a bill or note. If the acceptor becomes the holder of the bill before its maturity, it is not discharged, and he may re-issue and further negotiate it; but he is not entitled to enforce payment of it against any intervening party to whom he was previously liable, section 37. If he becomes holder at maturity in the capacity of executor, administrator, trustee, assignee, tutor, curator or the like, the bill is not discharged. He must hold the bill "in his own right" (Maclaren, p. 337).





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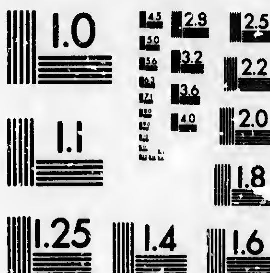

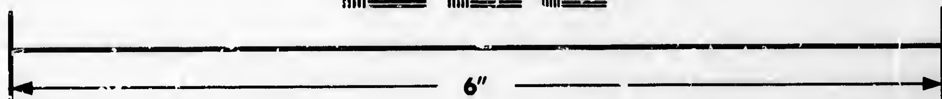

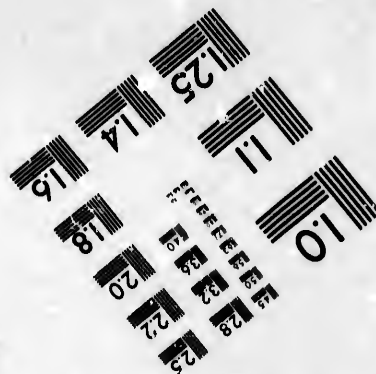

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If a bill accepted by two or more joint acceptors, is held by one of them at or after maturity, it is discharged; but such acceptor does not thereby lose his recourse or right of contribution against his co-acceptors: *Harmer* v. *Steele*, 4 Ex. 1 (1849).

61. When the holder of a bill at or after its maturity absolutely and unconditionally renounces his rights against the acceptor, the bill is discharged; the renunciation must be in writing, unless the bill is delivered up to the acceptor:

The best kind of writing would be a memorandum on the bill signed by the holder relinquishing all claim against a party named; for this would be notice to anyone afterwards taking the bill, if still current.

The bill is discharged only when the renunciation by the acceptor is at or after maturity, and when it is absolute and unconditional. See *re George Francis* v. *Bruce*, 44 Ch. D. 627 (1890). A bill or note payable at demand is "at maturity" immediately on its being made, and the holder in desiring to renounce all rights in it, when delivering it to any person other than the acceptor, must make his renunciation in writing: *Edwards* v. *Walters*, W.N., Feb. 15, 1896, p. 15.

Where there is a payment of a sum less than the amount of the bill, the bill may, in Quebec and Ontario, be discharged under the provisions of the present section; or it may be considered as discharged by payment under section 59 (Maclaren, p. 339).

2. The liabilities of any party to a bill may in like manner be renounced by the holder before, at or after its maturity, but nothing in this section shall affect the rights of a holder in due course without notice of renunciation.

An accommodation party to a bill, whether drawer, acceptor or indorser, is a surety for the party accommodated, who is the principal debtor, and if the holder, being aware of the accommodation, grants a discharge to the principal debtor or gives him time, the sureties are discharged, unless the holder has expressly reserved his rights against the sureties, or has reserved their rights against the principal debtor: *Holiday* v. *Jackson*, 22 S. C. Can. 479 (1894). In Quebec suretyship becomes extinct by the same causes as other obligations: C. C. Art. 1956. The discharge of the principal debtor discharges the surety, C. C. Art. 1958; but delay given to the principal debtor does not discharge the surety, who may in case of such delay sue the debtor in order to compel him to pay: C. C. Art. 1961. The suretyship is also at an end when by the act of the creditor the surety can no longer be subrogated in the rights, hypothecs and privileges of such creditor: C. C. Art. 1959. As to the effect of the conflict between the law of Quebec and that of the other provinces, see notes on section 71, and section 8 of the Amending Act of 1891. (See also Maclaren, p. 343 and 344, and cases there cited).

62. Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged:

2. In like manner, any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent. In such case, any indorser who would have had a right of recourse against the party whose signature is cancelled is also discharged:

As to striking out indorsements, see section 59 (2) (*b*). Prior parties are not released by the cancellation of a signature: *Barthe* v. *Armstrong*, 5 R. L. 213 (1869); *Biggs* v. *Wood*, 2 Man. 272 (1885).

3. A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative; but where a bill or any signature thereon appears to have been cancelled, the burden of proof lies on the party who alleges

that the cancellation was made unintentionally, or under a mistake, or without authority.

If a banker cancel a bill by mistake, without any want of due care, he does not incur any liability; but if there is negligence, and any loss result therefrom, he may be held liable: *Bank of Scotland* v. *Dominion Bank, Toronto* (1891), A. C. 592.

63. Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is voided, except as against a party who has himself made, authorized, or assented to the alteration, and subsequent indorsers:

Provided, that where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenor:

An alteration is material which in any way alters the operation of the bill and the liabilities of the parties, whether the change be prejudicial or beneficial, or which would alter its effect if used for business purposes: *Carrique* v. *Beaty*, 24 Ont. A. R. 302 (1897).

Where a bill appears to have been altered, or there are marks of erasure on it, the party seeking to enforce the instrument is bound to give evidence to show that it is not avoided thereby: *Knight* v. *Clements* (1838), 8 A. and E. 215.

2. In particular, the following alterations are material, namely, any alteration of the date, the sum payable, the time of payment, the place of payment, and where a bill has been accepted generally, the addition of a place of payment without the acceptor's assent.

The following alterations in bills and notes have been held to be material:—Alteration of the date, *Meredith* v. *Culver*, 5 U. C. Q. B. 218 (1848); alteration of the sum payable, *Halcrow* v. *Kelly*, 28 U. C. C. P. 551 (1878); alteration of the time of payment, *Meredith* v. *Culver*, *supra;* alteration of the place of payment, *McQueen* v. *McIntyre*, 30 U. C. C. P. 426 (1879); adding a place of payment, *Calvert* v. *Baker*, 4 M. and W. 417 (1838); making a "joint" note, "joint and several," *Samson* v. *Yager*, 4 U. C. O. S. 3 (1834); by striking out or clipping off a condition indorsed, *Campbell* v. *McKinnon*, 18 U. C. Q. B. 612 (1859); by adding "or order" to make the note negotiable, *Lawton* v. *Millidge*, 4 N. B. (2 Kerr), 520 (1844), but see *contra Byron* v. *Thompson*, 11 A. and E. 31 (1839); by adding a new maker after issue, *Reid* v. *Humphrey*, 6 Ont. A. R. 403 (1881); erasing the signature of one of two joint makers, *Nicholson* v. *Revill*, 4 A. and E. 675 (1836); changing "I" to "We," *Draper* v. *Wood*, 112 Mass. 315 (1873); changing "order" to "bearer," *re Commercial Bank*, 10 Man. 171 (1894).

The following alterations have been held not to be material:

Inserting the word "months" where inadvertently omitted, *Laine* v. *Clarke*, 3 Rev. de Leg. 434 (1816); writing the words "*pour aval*" over the signature of the first indorser, when he had in fact indorsed the note above the payee, and as an "*aval*," *Abbott* v. *Wurtele*, Q. R., 6 S. C. 204 (1894); a memorandum at the foot declaring the note to be payable at a particular place, *Cunard* v. *Tozer*, 4 N. B. (2 Kerr) 365 (1844); changing the name of the drawees from S. C. & Co. to S. & C. their proper firm name, *Farquhar* v. *Southey*, 1 M. and M. 14 (1826); adding "on demand" where no due time was mentioned, *Aldous* v. *Cornwell*, L. R., 3 Q. B. 573 (1868); inserting the dollar mark before the numerals, *Houghton* v. *Francis*, 29 Ill. 244 (1862); correcting a name incorrectly written, *Cole* v. *Hills*, 44 N. H. 227 (1863); *Derby* v. *Thrall*, 44 Vt. 413 (1872); adding an erroneous due date to a bill, *Fanshawe* v. *Peet* (1857), 26 L. J. Ex. 314; the striking out of the words "or order" by the acceptor in the case of a bill payable to "D." or order," *Decroix* v. *Meyer* (1890), 25 Q. B. D. 343 C. A.

There are, however, two cases in which an alteration in a material part will not vacate the instrument: (1) where such alteration is made before the bill or note is issued or becomes an available instrument, and (2) where the bill is altered to correct a mistake, and in furtherance of the original intention of the parties: *Brutt* v. *Picard* (1824), R. & M. 37.

Subject to two exceptions, the holder of a bill, which has been avoided by a material alteration, cannot sue on the consideration in respect of which it was negotiated to him: *Alderson* v. *Langdale* (1832), 3 B. and Ad. 660.

Exception 1. If the bill was negotiated to him after the alteration was made, and he was not privy to the alteration, he may sue on the consideration: *Burchfield* v. *Moore* (1854), 23 L. J. Q. B. 261.

Exception 2. If the bill was altered while in his custody or under his control, he can still recover, provided (*a*) that he did not intend to commit a fraud by the alteration. *Hunt* v. *Gray* (1871), 10 Amer. R. 232, and (*b*) that the party sued would not have had any remedy over on the bill if it had not been altered (Chalmers, p. 217).

Whether an alteration is material or not is a question of law.

Acceptance and Payment for Honor.

64. Where a bill of exchange has been protested for dishonor by non-acceptance, or protested for better security, and is not overdue, any person, not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill *supra* protest, for the honor of any party liable thereon, or for the honor of the person for whose account the bill is drawn.

The holder may refuse to allow an acceptance *supra* protest. He may prefer an immediate recourse against the parties liable to him on the bill under sect. 43 (2), but if he accepts he is bound to wait until the maturity of the bill.

The drawee may also change his mind and accept *supra* protest. If the acceptor *supra* protest should fail, there might be a *second* acceptance for honor (Story, sec. 122) after a protest for better security.

It is not necessary that the protest should be extended before acceptance *supra* protest; it is sufficient that the bill has been noted: sec. 92.

2. A bill may be accepted for honor for part only of the sum for which it is drawn:

3. An acceptance for honor *supra* protest, in order to be valid, must—

(*a*.) Be written on the bill, and indicate that it is an acceptance for honor;

(*b*.) Be signed by the acceptor for honor:

4. Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer:

5. Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of protesting for non-acceptance, and not from the date of the acceptance for honor.

An acceptance for part only is qualified, sec. 19 (2 *b*), but does not require the assent of the drawer or indorsers, sec. 44 (2). Where a foreign bill has been accepted as to part, it must be protested as to the balance.

Payment by the acceptor for honor is conditional upon non-payment by the drawee. The bill must still be presented at

maturity to the drawee, and protested for non-payment before being presented to the acceptor for honor, who is in the position of a surety, rather than as being primarily liable: secs. 66, 67 (5).

65. The acceptor for honor of a bill by accepting it engages that he will, on due presentment, pay the bill according to the tenor of his acceptance, if it is not paid by the drawee, provided it has been duly presented for payment and protested for non-payment, and that he receives notice of these facts:

If a place of payment is specified in the bill, it should be presented there: sect. 45 (2, d. 1.)

2. The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.

An acceptor for honor is bound by the estoppels which bind an ordinary acceptor, and also by the estoppels which would bind the party for whose honor he accepted; as to which see sects. 54, 55.

The acceptor for honor is only secondarily liable on the bill. If he pays the bill he has a recourse for re-payment to the person for whose honor he made the acceptance, and to all other persons who are liable to that person.

66. Where a dishonored bill has been accepted for honor *supra* protest, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honor, or referee in case of need:

2. Where the address of the acceptor for honor is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity; and where the address of the acceptor for honor is in some place other than the place where it was protested for non-payment, the bill must be forwarded not later than the day following its maturity for presentment to him:

The day following would mean the next business day: sec. 91.

3. Delay in presentment or non-presentment is excused by any circumstances which would excuse delay in presentment for payment or non-presentment for payment:

For the circumstances which excuse delay in presentment for payment or which dispense with presentment for payment, see sec. 46.

4. When a bill of exchange is dishonored by the acceptor for honor, it must be protested for non-payment by him.

Notice of dishonor should be sent to each of the parties.

67. Where a bill has been protested for non-payment, any person may intervene and pay it *supra* protest for the honor of any party liable thereon, or for the honor of the person for whose account the bill is drawn:

When a bill has been paid *supra* protest it ceases to be negotiable: *Ex-parte Swan* (1868), L. R., 6 Eq. 344, Noughier, sec. 1026 and Pothier Nos. 113, 114.

2. Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill shall have the preference:

3. Payment for honor *supra* protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honor, which may be appended to the protest or form an extension of it:

For form of notarial act of honor, see Appendix.

4. The notarial act of honor must be founded on a declaration made by the payer for honor, or his agent in that behalf, declaring his intention to pay the bill for honor, and for whose honor he pays:

5. Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for and succeeds to both the rights and duties of the holder as regards the party for whose honor he pays, and all parties liable to that party:

If the holder is a holder in due course, or if any party to the bill subsequent to the party for whose honor the bill has been paid was a holder in due course, the payer for honor acquires their right in this respect. Among the duties to which the payer for honor succeeds is that of giving notice of dishonor: *Goodhall* v. *Polhill*, 14 L. J. C. P. 145 (1845).

6. The payer for honor, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest. If the holder does not on demand deliver them up, he shall be liable to the payer for honor in damages:

"Protest in this sub-section means the protest for non-payment by the acceptor, which is necessary in order to charge the acceptor for honor.

7. Where the holder of a bill refuses to receive payment *supra* protest, he shall lose his right of recourse against any party who would have been discharged by such payment.

Lost Instruments.

68. Where a bill has been lost before it is overdue, the person who was holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again:

2. If the drawer, on request as aforesaid, refuses to give such duplicate bill, he may be compelled to do so.

The loss or destruction of the bill does not relieve from the duty of demanding payment. A copy should be presented in accordance with sec. 45. This should be accompanied by an offer of indemnity, and if payment is refused, protest may be made on the copy or written particulars, sec. 51 (2), and notice of dishonour must be given. Neglect to offer indemnity to the maker or acceptor on demand of payment does not deprive the payee of his right of action, but it will prevent him from recovering costs, and will compel him to bear any special damages resulting from the neglect on his subsequent suit: 2 Daniel, sec. 1465. See *Thackray* v. *Blackett*, 3 Camp. 164 (1812).

69. In any action or proceeding upon a bill, the court or a judge may order that the loss of the instrument shall not be set up, provided an indemnity is given to the satisfaction of the court or judge against the claims of any other person upon the instrument in question.

No indemnity is required if the bill is not negotiable: *Cooley* v. *Dominion Building Society*, 24 L. C. J. 111 (1878).

Where proof is made of the loss of the bill and a bond of indemnity offered, all parties to the bill will be held liable.

Where a bill is one of a set, the acceptor is entitled to indemnity if the part containing his acceptance be lost.

Bill in a Set.

70. Where a bill is drawn in a set, each part of the set being numbered, and containing a reference to the other parts, the whole of the parts constitute one bill:

If one part of a set does not contain a reference to the other parts, a *bona fide* holder for value may recover on it as a separate bill: *Davidson* v. *Robertson*, 3 Dow 218 (1815).

2. Where the holder of a set indorses two or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed as if the said parts were separate bills:

3. Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is, as between such holders, deemed the true owner of the bill; but nothing in this subsection shall affect the rights of a person who in due course accepts or pays the part first presented to him:

A person who negotiates one part of a set does not warrant that he has the others: *Pinard* v. *Klockman*, 3 B. & S. 388 (1863).

4. The acceptance may be written on any part, and it must be written on one part only:

5. If the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill:

6. When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof:

7. Subject to the preceding rules, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

As to how a bill may be discharged, see sects. 59 to 63 inclusive. The acceptor should be careful not to pay unless the part he has accepted be surrendered to him.

In an action against the drawer or indorsers, the part of the set which was protested must be produced.

Conflict of Laws.

71. Where a bill drawn in one country is negotiated, accepted or payable in another, the rights, duties and liabilities of the parties thereto are determined as follows:

(*a*) The validity of a bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of the supervening contracts, such as acceptance, or indorsement, or acceptance *supra* pro-

test, is determined by the law of the place where such contract was made:

Form of Bill.—Chalmers, p. 239, illustrates the effect of this sub-sect. by the following cases:—

(1) A bill drawn and payable in France expresses no value received, and is therefore invalid according to French Law. If it is indorsed in England, the indorser could be sued there (*Cf. Wynne* v. *Jackson* (1826) 2 Russ. 351 and 634) though the drawer could not.

(2) By the law of Illinois a verbal acceptance is valid. A bill drawn in London on a town in Illinois is verbally accepted there. The acceptance is valid (*Cf. Scudder* v. *Union Bank* (1875), 1 Otto, Sup. Ct. U. S. 406). Maclaren, p. 367, is doubtful as to how far the principle of such a decision would be law under the Act, seeing that the rule of sub-sect. (*a*) is "subject to the provisions of this Act," and under sect. 17 a verbal acceptance is invalid.

Capacity.—Where there is a conflict of different laws on this question the general rule, as stated in the notes to sect. 22, is that it is governed by the law of the domicile. The Act has no provision on this question of conflict, unless such a wide meaning should be given to the word "interpretation" in clause (*b*) of this section (Maclaren, p. 375), and it would be straining the meaning of that word to make it include capacity (Lafleur, p. 184).

Completion of Contract.—The different contracts of the drawer, acceptor and indorser of a bill are only complete upon delivery, and the contract is made in each case where this is affected, not where the signature is attached, *Chapman* v. *Cottrell*, 34 L. J. Ex. 186 (1865); but the presumption is that a bill is issued, indorsed and delivered at the place where it bears date, and accepted at the place where the drawee is addressed unless there is something to show that the contract was, in fact, made at some other place (Maclaren, p. 366).

Contracts that will not be enforced.—Contracts immoral, or contrary to the law of nations, or injurious to British public interests, though valid where made will not be enforced on behalf of a guilty party in our courts: Byles, 14th ed., p. 385. The reason is that the laws of foreign countries are admitted in our Courts not *proprio vigore* but *ex comitate*.

The following are two exceptions to the general rule stated in sub-sec. (*a*).

Provided that—

(1.) Where a bill is issued out of Canada, it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue:

(2.) Where a bill, issued out of Canada, conforms, as regards requisites in form, to the law of Canada, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold or become parties to it in Canada:

"Country" is not defined in the Act. While, strictly speaking, Canada is one country for the purposes of bills and notes, those being assigned by sect. 91 of the B. N. A. Act exclusively to the Dominion Parliament, it is probable that the Courts will apply the principles of the present section, which are the recognized rules of private International Law, to cases where two or more provinces are concerned and there is a conflict between their laws (Maclaren, p. 365).

(*b*.) Subject to the provisions of this Act, the interpretation of the drawing, indorsement, acceptance or acceptance *supra* protest of a bill, is determined by the law of the place where such contract is made:

Provided, that where an inland bill is indorsed in a foreign country, the indorsement shall, as regards the payer, be interpreted according to the law of Canada;

The provisions of the Act to which this clause is subject are the succeeding clauses of this section, and sect. 53.

The word "interpretation" must not be taken in its narrowest sense, but includes the legal effect of the contract—the rights and obligations of the parties thereunder: Lafleur on Conflict of Laws, p. 183; Maclaren, p. 368; Chalmers, p. 241; Westlake, sec. 229. In the case of *Alcock* v. *Smith* (1892), 1 Ch. at p. 256, this comprehensive meaning was given to the word by Romer, J., and also by Andrews, J., in the Quebec case of *The London and Brazilian Bank* v. *Maguire*, R. J. Q., 8 S. C. 358 (1895).

As to the general effect of the sub-section, see Maclaren, p. 369 and 370; Chalmers, p. 241; Lafleur, p. 182; Westlake, p. 268; Dicey on Conflict of Laws, p. 606.

(*c*.) The duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonor, or otherwise, are determined by the law of the place where the act is done or the bill is dishonored;

The word "act" includes "omissions": Westlake, sec. 231.

(*d*) Where a bill is drawn out of but payable in Canada, and the sum payable is not expressed in the currency of Canada, the amount shall, in the absence of some express stipulations, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable:

(*e*.) Where a bill is drawn in one country and is payable in another, the due date thereof is determined according to the law of the place where it is payable.

(*f*.) If a bill or note, presented for acceptance, or payable out of Canada, is protested for non-acceptance or non-payment, a notarial copy of the protest and of the notice of dishonor, and a notarial certificate of the service of such notice, shall be received in all courts, as *prima facie* evidence of such protest, notice and service.

Lex Loci Solutionis.—The law of the place of payment has also been applied to determine interest on a bill dishonored by non-payment: *re* Commercial Bank of South Australia, 36 Ch. D. 522 (1887), sec. 57.

Discharge.—The present rule is that a defence or discharge, good by the law of the place where the contract is made or is to be performed, is to be held to be of equal validity in every place where the question may come to be litigated. In England and America the same rule has been adopted, and acted on with a most liberal justice. Story on Conflict of Laws, secs. 331 and 332, quoted by Maclaren, p. 375. A bill discharged in Quebec by either compensation or prescription would be held to be discharged in other countries where these would not operate as discharges as to bills made or payable there. See *Harris* v. *Quine*, L. R., 4 Q. B. 653 (1869); Story, sec. 582.

Lex Fori.—The law of the place where the action is brought or proceedings are taken governs as to all matters belonging to the remedy or mode of enforcement: *De la Vega* v. *Vianna*, 1 B. & Ad., 284 (1830). Under this head are comprised:—(1) The limitation of actions subject to the operation of the law in places like Quebec, when it operates as a discharge; (2) set-off, subject to the same limitations, and (3) the admission of evidence, See Maclaren, p. 378, and cases there cited.

Proof of Foreign Law.—When a question arises as to the law of a foreign country, it must be pleaded and proved as a fact in the case by competent witnesses: Westlake, p. 364; Lafleur, p. 23; *Concha* v. *Murietta* (1890), 40 Ch. D., 543 C. A. It is usual to state what the foreign law is, and then to allege the facts, bringing the case within that foreign law: Byles, 14th ed., p. 392. In the absence of allegation and proof of the foreign law, it is presumed to be similar to that of the *locus fori*.

PART III.

CHEQUES ON A BANK.

72. **A cheque is a bill of exchange drawn on a bank, payable on demand:**

See "Bill of Exchange" defined by section 3; "bank" by section 2 (*c*), and "bill payable on demand" by section 10.

The Act is declaratory in so far as it defines a cheque as a bill of exchange. *McLean* v. *Clydesdale Bank* (1883), p. App. Cas. 95. It is no part of the definition that a cheque should be an *Inland Bill*, or that it should be drawn by a *customer* upon his banker. (Chalmers, p. 245). All cheques are bills of exchange, but all bills of exchange are not cheques; therefore an authority to draw cheques does not necessarily include an authority to draw bills: *Forster* v. *Mackreth* (1867), L. R., 2 Ex. 163.

Like other bills of exchange a cheque need not be dated: section 3 (4). When undated it is payable on demand: section 10. It is not invalid for being ante-dated or post-dated, or dated on a Sunday: section 13 (2).

The mere circumstance of one man drawing a cheque in favor of another is no evidence of a debt due from the drawer: *Pearce* v. *Davis*, 1 M. & Rob. 365.

A cheque unless dishonored, is payment. But upon a question whether a debt has been paid, the mere production of a cheque drawn by the debtor in favor of the creditor and paid by the banker is no evidence of payment: *Egg* v. *Barnett*, 3 Esp. 196. It must be further shewn that the cheque passed through the creditors' hands.

If a person gets goods or money by means of a cheque when he has no account at the bank upon which it is drawn, he is guilty of obtaining the goods or money by false pretences, and is liable to three years' imprisonment: Criminal Code, 1892, section 359; *Reg.* v. *Hazelton*, L. R., 2 C. C. 134 (1874).

2. Except as otherwise provided in this part, the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque.

The exceptions are contained in sections 73 (2), and 74 to 81 inclusive.

73. Subject to the provisions of this Act—

(*a*.) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or the person on whose account it is drawn had the right at the time of such presentment, as between him and the bank, to have the cheque paid, and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such bank to a larger amount than he would have been had such cheque been paid;

(*b*.) In determining what is a resonable time, regard shall be had to the nature of the instrument, the usage of trade and of banks, and the facts of the particular case;

(*c*.) The holder of such cheque, as to which such drawer or person is discharged, shall be a creditor, in lieu of such drawer or person, of such bank to the extent of such discharge, and entitled to recover the amount from it.

The provisions of the Act to which this section is subject are those in section 46, relating to excuses for non-presentment and delay in presentment (Maclaren, p. 387).

The following English rules as to what is a reasonable time for presentment are substantially those which have been recognized in Canada (Maclaren, p. 388):—

(1.) If the person who receives a cheque and the bank on whom it is drawn are in the same place, the cheque must, in the absence of special circumstances, be presented for payment on the day after it is received: *Alexander* v. *Burchfield*, 7 M. & Gr. 1061 (1842).

(2.) If the person who receives a cheque and the banker on whom it is drawn are in different places, the cheque must, in the absence of special circumstances, be forwarded for presentment on the day after it is received, and the agent to whom it is forwarded must, in like manner, present it or forward it on the day after he receives it: *Hare* v. *Henty*, 10 C. B. N. S. 65 (1861).

(3.) In computing time, non-business days must be excluded, and when a cheque is crossed any delay caused by presenting the cheque pursuant to the crossing is excused: section 91.

See Canadian cases cited by Maclaren, p. 388.

74. The duty and authority of a bank to pay a cheque drawn on it by its customer are terminated by—

(*a.*) Countermand of payment;

(*b.*) Notice of the customer's death.

The relations of banker and customer in respect of cheques may be summarized as follows (Chalmers, p. 251):

(1.) In the absence of special contract, the relations between a banker and his customer are those of debtor and creditor; and in addition the customer is entitled to draw cheques, on the banker to the extent of the sum for which he is a creditor: *Re* Agra Bank (1866), 36 L. J., ch. 151.

(2.) Subject to the exceptions above noted, where a cheque is presented for payment and dishonored, and the banker has in his hands at the time funds to the credit of his customer sufficient to meet it, the banker is liable to his customer in damages, *Todd* v. *Union Bank*, 4 Man. R. 204 (1887), unless the requisite funds were paid in so short a time before the dishonor of the cheque that the banker could not with the exercise of reasonable diligence have ascertained the state of accounts between them: *Whitaker* v. *Bank of England* (1835), 1 C. M. & R. 749-750. The damages recoverable by a non-trader for the wrongful refusal of a bank to allow him to withdraw a special deposit are nominal or limited to interest on the money: *Henderson* v. *Bank of Hamilton*, 25 O. R. 641 (1894). (Maclaren, p. 389).

(3.) A bank may, without special instructions, pay any bills or notes of which the customer is acceptor or maker, and which are payable at the bank: *Jones* v. *Bank of Montreal*, 29 U. C. Q. B. 448 (1869); *Vagliano* v. *Bank of England* (1891), A. C. 107.

(4.) In the absence of special directions from the customer, it is the duty of the banker to pay the customers' cheques in the order in which they are presented, irrespective of their dates, provided the date is not subsequent to the presentment: *Kilsby* v. *Williams* (1822), 5 B. & Ald. 819.

(5.) Where a customer keeps his account at one branch of a bank, other branches are not bound to honor his cheques: *Woodland* v. *Fear* (1857), 7 E. & B. 519. But if he has accounts in two or more branches the bank may combine them against him, provided they are all in the same right. A personal and a trust account cannot be combined. See the whole status of branch banks in regard to bills discussed by the Privy Council in the case of *Prince* v. *Oriental Bank* (1878), 3 App. Cas. 325.

Breach of Trust.—Where a banker refused to cash a cheque on the ground that a breach of trust was contemplated by the drawer to his, the banker's, knowledge, he was held to be justified in so doing. *Gray* v. *Johnston*, L. R. 3 H. of L. 1.

Countermand.—A customer may stop payment of a cheque before it is accepted, but not after: *McLean* v. *Clydesdale Bank*, 9 A. C. 95 (1883). It has also been held that a bank is not bound to honor a customer's cheque after a garnishee order is served on it, even although the balance exceed the judgment: *Rogers* v. *Whiteley* (1892), A. C. 118. Authority to pay the customer's cheque would also be revoked by notice of his insolvency: *Rogers* v. *Whiteley*, *supra*.

Death of a Customer.—Payment after the death but before notice is valid. *Rogerson* v. *Ladbroke*, 1 Bing. 93 (1822). It has been held in England that, after the death of a partner, the surviving partner may draw cheques upon the partnership account. *Backhouse* v. *Charlton*, 8 Ch. D. 444 (1878). In Quebec the death of a partner terminates the partnership, and also the right of the survivors to act for the firm, in the absence of a special agreement to the contrary: C. C. 1892, 1897.

Overdraft.—In the absence of special agreement, express or implied, founded on consideration, a banker is, of course, under no obligation to let a customer overdraw. As to implied agreement, see *Armfield* v. *London & Westminster Bank* (1883), 1 C. & E. 170; as to presumption, see *Ritchie* v. *Clydesdale Bank* (1886), 13 Sess. Cas. 114 As to the general duty of a bank not to disclose the state of a customer's account without good reasons, see *Hardy* v. *Veasey* (1868), L. R., 3 Ex. 107.

A cheque on payment becomes the property of the drawer, *R.* v. *Watts* (1850), 2 Den. C. C. 15, but the banker who pays it is entitled to keep it as a voucher until his account with his customer is settled: Cf. *Charles* v. *Blackwell* (1877), 2 C. P. D. 162 C. A.

Entries made in customer's pass book are *prima facie* evidence against the bank: *Commercial Bank* v. *Rhind*, 3 Macq. H. L. 643 (1860).

Fraudulent Alteration.—If the sum for which a customer draws a cheque be fraudulently altered, and increased, and the bank pay the larger sum, it cannot charge its customer with the excess, but must bear the loss: *Hall* v. *Fuller*, 5 B. & C. 750. But should any act of the drawer have facilitated or given occasion to the forgery, the drawer must bear the loss: *Young* v. *Grote*, 4 Bing. 253.

Branch Banks.—A balance at one branch may be applied in reduction of an overdrawn account at another, even without notice to the customer: *Garnett* v. *McKewan*, L. R. 8 Ex. 10.

Crossed Cheques.

75. Where a cheque bears across its face an addition of—

(*a*) The word "bank" between two parallel transverse lines, either with or without the words "not negotiable;" or—

(*b*) Two parallel transverse lines simply, either with or without the words " not negotiable;"

That addition constitutes a crossing, and the cheque is crossed generally;

2. Where a cheque bears across its face an addition of the name of a bank, either with or without the words "not negotiable," that addition constitutes a crossing and the cheque is crossed specially and to that bank.

The mere crossing of a cheque does not affect its negotiability, unless it is also crossed "not negotiable." *National Bank* v. *Silke* (1890) Law Journal Notes 157 C. A., and even with such words it is still transferable, but within certain limits defined by section 80.

This part of the Act does not apply to cheques on private bankers, nor can a cheque on an incorporated bank be crossed in favor of a private banker, or if crossed generally be presented through him (Maclaren, p. 393).

76. A cheque may be crossed generally or specially by the drawer:

2. Where a cheque is uncrossed, the holder may cross it generally or specially:

3. Where a cheque is crossed generally, the holder may cross it specially:

4. Where a cheque is crossed generally or specially, the holder may add the words "not negotiable:"

The holder of a cheque is the payee or indorsee, if it is payable to order, provided he is in possession of it. If it is payable to bearer the holder is the person who is in possession of it (Maclaren, p. 394).

5. Where a cheque is crossed specally, the bank to which it is crossed may again cross it specially to another bank for collection:

6. Where an uncrossed cheque, or a cheque crossed generally, is sent to a bank for collection, it may cross it specially to itself:

7. A crossed cheque may be reopened or uncrossed by the drawer writing between the transverse lines, and initialing the same, the words "pay cash."

77. A crossing authorized by this Act, is a material part of the cheque: it shall not be lawful for any person to obliterate or, except as authorized by this Act, to add to or alter the crossing:

As to effect of material alterations generally, see section 63. If the obliteration, addition or alteration does not amount to forgery, it would come under section 136 of the Criminal Code, 1892, which makes any person who, without lawful excuse, disobeys an Act of Parliament, guilty of an offence, and liable to one year's imprisonment (Maclaren, p. 395).

78. Where a cheque is crossed specially to more than one bank, except when crossed to another bank as agent for collection, the bank on which it is drawn shall refuse payment thereof:

2. Where the bank on which a cheque so crossed is drawn nevertheless pays the same, or pays a cheque crossed generally otherwise than to a bank, or, if crossed specially, otherwise than to the bank to which it is crossed, or to the bank acting as its agent for collection, it is liable to the true owner of the cheque for any loss he sustains owing to the cheque having been so paid.

Provided, that where a cheque is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorized by this Act, the bank paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorized by this Act, and of payment having been made otherwise than to a bank or to the bank to which the cheque is or was crossed, or to the bank acting as its agent for collection, as the case may be.

79. Where the bank on which a crossed cheque is drawn in good faith and without negligence pays it, if crossed generally to a bank, or if crossed specially, to the bank to which it is crossed, or, to a bank acting as its agent for collection, the bank paying the cheque, and if the cheque has come into the

hands of the payee, the drawer shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner thereof.

If the cheque were payable to order, and the indorsement has been forged, the drawer, or, as the case may be, the payee, can recover the amount from the person who received payment of the cheque, if he can find him: *Ogden* v. *Benas* (1874), L. R. 9 C. P. 513.

80. Where a person takes a crossed cheque which bears on it the words "not negotiable," he shall not have and shall not be capable of giving a better title to the cheque than that which had the person from whom he took it.

Making a cheque "not negotiable" puts it on the same footing as an overdue bill, so that any holder takes it subject to the equities attaching to it, and no person can become a holder in due course. Chalmers, p. 259, gives the following illustrations: A cheque payable to bearer and crossed "not negotiable" is stolen. The thief gets a tradesman to cash it for him, and the tradesman gets the cheque paid on presentment through a banker. The banker who pays and the banker who receives the money for the tradesman are protected, but the tradesman would be liable to refund the money to the true owner, and, assuming payment of the cheque to have been stopped, he could not sue the drawer. So, too, where a cheque crossed "not negotiable" was drawn in favor of a firm, and one of the partners in fraud of his co-partner indorsed the cheque to the defendant, who cashed it, it was held that the other partner, who, under the terms of the partnership agreement, was entitled to the cheque, could recover the amount from the defendant: *Fisher* v. *Roberts* (1890), T. L. R. 354, C. A. See the section incidentally discussed in *National Bank* v. *Silke* (1891), 1 Q. B. 435, C. A.

81. Where a bank in good faith, and without negligence, receives for a customer payment of a cheque crossed generally or specially to itself, and the customer has no title, or a defective title thereto, the bank shall not incur any liability to the true owner of the cheque by reason only of having received such payment.

Whether a person is a "customer" of a bank is a question of fact.

Where a banker, in good faith, and without negligence, receives payment for a customer of a crossed cheque, and the customer has no title or a defective title, the banker incurs no liability to the true owner, by reason only of having received payment: *Great Western Railway Company* v. *London & County Banking Company* (1899), 2 Q. B. 172.

Where the only transaction between an individual and a bank is the collection of a crossed cheque, such individual is not a "customer" of the bank within this section: *Matthews* v. *Williams*, 10 R. 210 (1894).

Section 79 relieves the bank on which the crossed cheque is drawn; this section, the bank which collects it. If it be indorsed "per proc." and the banker makes no inquiry as to the authority so to indorse, this may be negligence: *Bissel* v. *Fox*, 53 L. T. N. S. 193.

PART IV.

PROMISSORY NOTES.

82. A promissory note is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person, or to bearer:

No form of words is essential to the validity of a note, provided the requirements of this section be fulfilled, *Hooper* v. *Williams* (1848), 2 Exch. 20; but, on the other hand, a document might conform to the terms of the section and yet not be a promissory note. It must be such as to shew the intention to make a note: *Sibree* v. *Tripp* (1846), 15 M. & W. 29. If there be no words amounting to a promise the instrument is merely evidence of a debt. For instance, a banker's deposit note running "Received of Mr. C. £150 to be accounted for on demand," and signed, will not be treated as a promissory note: *Hopkins* v. *Abbott* (1875), L. R. 19 Eq. 222.

An instrument promising to do anything in addition to the payment of money is not a note, sec. 3 (2), but it has been held in the U. S. that a promissory note may give the holder the option between the payment of the sum specified and the performance of some other act by the makers, though as to the latter it is not a note: *Cf. Dinsmore* v. *Duncan* (1874), 57 New York R. 573. As the holder can demand money, and no option is given to the maker, it is said there is no uncertainty in the instrument (Chalmers p. 263).

If the instrument is ambiguous, and it is uncertain whether it was meant to be a bill or note, the construction most favorable to the validity of the instrument will be adopted: *Mare* v. *Charles*, 5 E. & B. 981 (1856). A bill may also be treated as a note under the circumstances mentioned in sect. 5 (2).

An instrument invalid as a note may be valid as an agreement. *Kirkwood* v. *Smith*, W. N. 1896, 46 (16).

Bon or I. O. U. If the instrument is a simple I. O. U., and contains no promise to pay, it is a mere acknowledgment of the debt, and it is not negotiable, *Gould* v. *Coombs*, 1 C. B. 543 (1845). If there is a promise to pay it is a note, the following having been held sufficient: "11th Oct., 1831, I. O. U. £20, to be paid on the 22nd inst., W. B.": *Brooks* v. *Elkins*, 2 M. & W. 74 (1836).

An I. O. U. ought regularly to be addressed to the creditor by name, but though not addressed to anyone, it will be evidence for the plaintiff, if produced by him: Taylor on Evidence, s. 121.

2. An instrument in the form of a note payable to maker's order is not a note within the meaning of this section, unless and until it is indorsed by the maker.

3. A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof.

When a note on its face contains a statement that it is given as collateral security, it is not a promissory note: *Sutherland* v. *Patterson*, 4 O. R. 565 (1884).

Where collateral security is given *with* a note, the right to such collateral goes with the note: *Central Bank* v. *Garland*, 20 O. R. 142 (1890), and the creditor has a right to hold the securities even after the remedy on the note is barred by the statute of limitations: *Wiley* v. *Ledyard*, 10 Ont. P. R. 182 (1883).

4. A note which is, or on the face of it purports to be, both made and payable within Canada, is an inland note, any other note is a foreign note.

83. A promissory note is inchoate and incomplete until delivery thereof to the payee or bearer.

The nature of the delivery necessary to give effect to a note is set out in sect. 21.

84. A promissory note may be made by two or more makers, and they may be liable thereon jointly, or jointly and severally, according to its tenor:

2. Where a note runs "I promise to pay," and is signed by two or more persons, it is deemed to be their joint and several note.

The law respecting joint and joint and several liabilities differs in Quebec from that in force in other parts of Canada. Under the French law in force in Quebec where several persons are jointly liable for a debt, each of them is liable for an equal fractional part to the creditor, whatever may be their respective rights as against each other: Pothier on Obligations, No. 165, 17 Laurent, Nos. 274, 280. Under English law, on the other hand, each joint debtor is liable to the creditor for the whole. If one dies his representatives are not liable for any part to the creditor. If the creditor does not sue all who are alive and in the country, those who are sued might have proceedings stayed until the living joint debtors who are in the country are made parties. A judgment taken against some of the joint debtors frees the others from all liability. (See MacLaren, p. 408-409 and cases there cited. Also Leake on Contracts, p. 940.)

If a note is on its face "joint," and not joint and several, the law would differ as above, according as to whether it was a Quebec note or not, and the note would be interpreted according to the law of the place where it was made, sect. 71 (b); that is where it was delivered to the payee or bearer, sect. 83 (Maclaren, p. 409).

Where one of two joint makers of a note signs for the accommodation of the other, their relation is that of principal and surety, and the prescription of 5 years does not apply: *Cullen* v. *Bryson*, Q. R., 2 S. C. 36 (1892).

A "joint and several" liability is substantially the same in English and French law. Each of the debtors is liable for the full amount, and on his death his liability descends to his representatives. Payment by one discharges the liability of the others to the creditor. The debtor who has paid may have his right of contribution against his co-debtors. A judgment against one maker is no bar to proceedings against the others: *Re* Davidson, 13 Q. B. D. 53 (1884). If one or more are sued, but not all, those who are sued have no right to delay the plaintiff by having the others called in: *Durocher* v. *Lapalme*, M. L. R. 1 S. C. 494 (1885). (Maclaren, p. 409.)

85. Where a note payable on demand has been indorsed, it must be presented for payment within a reasonable time of the indorsement; if it is not so presented, the indorser is discharged; if, however, with the assent of the indorser it has been delivered as a collateral or continuing security, it need not be presented for payment so long as it is held as such security:

For notes payable on demand, read sect. 10 with sect. 88.

2. In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade, and the facts of the particular case:

Where a demand note is payable with interest, this has been considered as an indication that an early presentment was not contemplated: *Thorn* v. *Scovil*, 4 N. B. (2 Kerr) 557 (1844).

Reasonable time appears to be a mixed question of law and fact. Regard must be had to the nature of the instrument as a continuing security, *e. g.*, ten months may not be an unreasonable time: *Chartered Bank* v. *Dickson* (1871), L. R. 3 P. C. 579, but presentment of a demand note over three years after it was made is not within reasonable time: *Banque du Peuple* v. *Denincourt*, Q. R. 10 S. C. 428 (1897).

3. Where a note payable on demand is negotiated, it is not deemed to be overdue, for the purpose of affecting the holder with defects of title of which he had not notice, by reason that

it appears that a reasonable time for presenting it for payment has elapsed since its issue.

This subsection negatives the application of section 36 (3) to promissory notes payable on demand, which are in the nature of continuing securities.

86. Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place. But the maker is not discharged by the omission to present the note for payment on the day that it matures. But, if any suit or action is instituted thereon against him before presentation, the costs thereof shall be in the discretion of the court. If no place of payment is specified in the body of the note, presentment for payment is not necessary in order to render the maker liable:

2. Presentment for payment is necessary in order to render the indorser of a note liable:

3. Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an indorser liable; but when a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the indorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice.

For the rules as to presentment for payment, see sects. 45 and 52, which apply to promissory notes, with the modifications specified in section 88. The provisions of section 46, as to excuses for delay in making presentment, or presentment being dispensed with entirely, as well as those relating to notice of dishonor, also apply to notes with the necessary modifications.

A promissory note payable at a particular place need not be presented there at maturity in order to charge the maker, although there are funds to meet it, the duty of the maker of such a note being to keep the funds there until presentment: *The Merchants Bank of Canada* v. *Henderson*, 28 Ont. R. 360 (1897); but if the funds so left were finally lost through the neglect of the holder to present the note, as, for instance, by the failure of a bank, the maker would be discharged, at least to the extent of the loss.

87. The maker of a promissory note, by making it—

(*a*) Engages that he will pay it according to its tenor:

(*b*) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

The measure of damages against the maker of a note would in general be the same as against the acceptor of a bill, as to which, see section 57.

88. Subject to the provisions in this part, and except as by this section provided, the provisions of this Act relating to bills of exchange apply, with the necessary modifications, to promissory notes:

2. In applying those provisions the maker of a note shall be deemed to correspond with the accepter of a bill, and the first indorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order.

3. The following provisions as to bills do not apply to notes, namely, provisions relating to:—

(*a*) Presentment for acceptance;

(*b*) Acceptance:
(*c*) Acceptance *supra* protest;
(*d*) Bill in a set;

4. Where a foreign note is dishonored, protest thereof is unnecessary, except for the preservation of the liabilities of indorsers.

The following sections in Part II. of the Act do not apply to promissory notes, 3, 4, 5, 6, 15, 17, 18, 19, 36 (3), 39, 40, 41, 42, 43, 44, 53, 54 (1) (2), 64, 65, 66, 67 and 70 (Maclaren, p. 418).

The following are the chief points in which promissory notes differ from bills of exchange, causing the above mentioned sections of the Act to be inapplicable to notes:—

1. The contract of the maker of a note being similar to that of the acceptor of a bill, the rules regulating presentment for acceptance, acceptance and payment *supra* protest do not apply to notes;

2. Notes are not made in sets, nor is protest required in the case of a foreign note dishonored here, except to charge indorsers;

3. Notes may be joint or joint and several, and may, in addition, contain certain other matters, such as a pledge, with power to sell as a collateral security;

4. The strictness of the rule as to defects attaching to the title of the transferee of an overdue instrument is relaxed in the case of a promissory note payable on demand: Byles, p. 14 and 15.

PART V.

SUPPLEMENTARY.

89. A thing is deemed to be done in good faith, within the meaning of this Act, where it is in fact done honestly whether it is done negligently or not.

Negligence or carelessness on the part of the holder of a bill is not of itself sufficient to deprive him of his remedies for procuring its payment, *Jones* v. *Gordon* (1877), 2 App. Cas., H. L. 629; but negligence or carelessness when considered in connection with the surrounding circumstances may be evidence of bad faith: *Re* Gomersall (1875), 1 Ch. D. 146. Every case must be determined on its own merits.

90. Where, by this Act, any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority:

2. In the case of a corporation, where, by this Act, any instrument or writing is required to be signed, it is sufficient if the instrument or writing is duly sealed with the corporate seal; but nothing in this section shall be construed as requiring the bill or note of a corporation to be under seal.

91. Where, by this Act, the time limited for doing any act or thing is less than three days, in reckoning time, non-business days are excluded; "non-business days," for the purposes of this Act, mean the days mentioned in the fourteenth section of this Act; any other day is a business day.

Some of the short delays in the Act are:—The drawer has two days to decide whether he will accept a bill, section 42; notice of dishonor must be given the next following business day, section 49 (*k*) and s-s. 4, and presentment to the acceptor for honor should be on the day following maturity, section 66, s-s. 2.

92. For purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill or note has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting.

93. Where a dishonored bill is authorized or required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonored, any justice of the peace resident in the place may present and protest such bill and give all necessary notices, and shall have all the necessary powers of a notary in respect thereto:

2. The expense of noting and protesting any bill or note, and the postages thereby incurred, shall be allowed and paid to the holder in addition to any interest thereon:

3. Notaries may charge the fees in each Province heretofore allowed them:

4. The forms in the first schedule to this Act may be used in noting or protesting any bill or note and in giving notice thereof. A copy of the bill or note and indorsement may be included in the forms, or the original bill or note may be annexed and the necessary changes in that behalf made in the forms:

5. A protest of any bill or note, and any copy thereof as copied by the notary or justice of the peace, shall, in any action be *prima facie* evidence of presentation and dishonor, and also of service of notice of such presentation and dishonor as stated in such protest.

A notary who is one of the indorsers on a promissory note is not entitled to act as notary to make the protest, even where he substitutes the name of another person for his own and purports to make the process at the request of the person so substituted (Maclaren, p. 425).

94. The provisions of this Act as to crossed cheques shall apply to a warrant for payment of dividend.

95. The enactments mentioned in the second schedule to this Act are hereby repealed, as from the commencement of this Act, to the extent in that schedule mentioned:

Provided, that such repeal shall not affect anything done or suffered, or any right, title or interest acquired or accrued before the commencement of this act, or any legal proceeding or remedy in respect of any such thing, right, title or interest:

2. Nothing in this Act or in any repeal effected thereby shall affect the provisions of "*The Bank Act*:"

3. The Act of the Parliament of Great Britain passed in the fifteenth year of the reign of His late Majesty George III., intituled "An Act to restrain the negotiation of Promissory Notes and Inland Bills of Exchange under a limited sum within that part of Great Britain called England," and the Act of the said Parliament passed in the seventeenth year of His said Majesty's reign intituled "An Act for further restraining the negotiation of Promissory Notes and Inland Bills of Exchange under a limited sum within that part of Great Britain called

England," shall not extend to or be in force in any Province of Canada, nor shall the said Acts make void any bills, notes, drafts or orders which have been or may be made or uttered therein.

96. Where any Act or document refers to any enactment repealed by this Act, the Act or document shall be construed and shall operate as if it referred to the corresponding provisions of this Act.

97. This Act shall come into force on the first day of September next.

AMENDING ACT OF 1891, 54-55 VICT., CAP. 17.

The amendments made by sections 1 to 7 inclusive of this Act have been incorporated in the foregoing Act of 1890.

Section 8 of the amending Act reads as follows:—

8. Application of Common Law of England.—The rules of the common law of England, including the law merchant, save in so far as they are inconsistent with the express provisions of the said Act, as hereby amended, shall apply and shall be taken and held to have applied from the date on which the said Act came into force, to bills of exchange, promissory notes and cheques.

The expression *Common Law* is used in different senses. In this section it is probably used in the sense of that system which applies to new combinations of circumstances, those rules of law which are derived from legal principles and judicial precedents (Maclaren, p. 437).

The *Law Merchant* consists of those usages of merchants and traders in the different departments of trade which have been recognized and ratified by decisions of Courts of Law. Evidence of custom is inadmissible to contradict a general usage once incorporated into a judicial decision (Maclaren, p. 438).

Note.—For references to *Chalmers*, see 5th edition (1896); to *Maclaren*, see 2nd edition (1896).

FIRST SCHEDULE.

FORM A.

NOTING FOR NON-ACCEPTANCE.

(Copy of Bill and Indorsements.)

On the 18 , the above bill was, by me, at the request of , presented for acceptance to E. F., the drawee, personally (*or*, at his residence, office or usual place of business), in the city (town *or* village) of and I received for answer, " :"

The said bill is therefore noted for non-acceptance.

A. B.,
Notary Public.

(Date and Place.) 18 .

Due notice of the above was by me served upon { A.B., C. D., } the { drawer indorser } personally, on the day of (*or*, at his residence, office or usual place of business) in

, on the day of , or, by depositing such notice, directed to him, at , in Her Majesty's post office in the city [town *or* village], on the day of , and prepaying the postage thereon.,

A. B.,
Notary Public.

(*Date and Place.*) 18

FORM B.

PROTEST FOR NON-ACCEPTANCE OR FOR NON-PAYMENT OF A BILL PAYABLE GENERALLY.

(*Copy of Bill and Indorsements.*)

On this day of , in the year 18 , I, A. B., notary public for the Province of , dwelling at , in the Province of , at the request of , did exhibit the original bill of exchange, whereof a true copy is above written, unto E. F., the {drawee / acceptor} thereof personally, (*or*, at his residence, office *or* usual place of business) in , and speaking to himself (*or* his wife, his clerk, *or* his servant, &c.), did demand {acceptance / payment} thereof; unto which demand {he / she} answered: " ."

Wherefore, I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the acceptor, drawer, and indorsers (*or* drawer and indorsers) of the said bill, and other parties thereto or therein concerned for all exchange, re-exchange, and all costs, damages and interest, present and to come, for want of {acceptance / payment} of the said bill.

All of which I attest by my signature.

(Protested in duplicate.)

A. B.,
Notary Public.

FORM C.

PROTEST FOR NON-ACCEPTANCE AND NON-PAYMENT OF A BILL PAYABLE AT A STATED PLACE.

(*Copy of Bill and Indorsements.*)

On this day of , in the year 18 , I, A. B., notary public for the Province of , dwelling at , in the Province of , at the request of , did exhibit the original bill of exchange, whereof a true copy is above written, unto E. F., the {drawee / acceptor} thereof, at , being the stated place where the said bill is payable, and there, speaking to did demand {acceptance, / payment} of the said bill; unto which demand he answered: " ."

Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the acceptor, drawer, and indorsers (*or* drawer and indorsers) of the said bill, and all other parties thereto or therein concerned, for all exchange, re-exchange, costs, damages and interest, present and to come, for want of { acceptance / payment } of the said bill.

All of which I attest by my signature.

(Protested in duplicate.)

A. B.,

FORM D.

PROTEST FOR NON-PAYMENT OF A BILL NOTED, BUT NOT PROTESTED FOR NON-ACCEPTANCE.

If the protest is made by the same notary who noted the bill, it should immediately follow the act of noting and memorandum of service thereof, and begin with the words, "and afterwards on, &c.," *continuing as in the last preceding form, but introducing between the words* "did" *and* "exhibit," *the word* "again," *and, in a parenthesis, between the words* "written" *and* "unto," *the words:* "and which bill was by me duly noted for non-acceptance on the day of

But if the protest is not made by the same notary, then it should follow a copy of the original bill and indorsements and noting marked on the bill—and then in the protest introduce, in a parenthesis between the words "written" *and* "unto," *the words* "and which bill was on the day of , by notary public for the Provine of , noted for non-acceptance, as appears by his note thereof marked on the said bill."

FORM E.

PROTEST FOR NON-PAYMENT OF A NOTE PAYABLE GENERALLY.

(*Copy of Note and Indorsements.*)

On this day of , in the year 18 , I, A. B., notary public for the province of , dwelling at , in the Province of , at the request of , did exhibit the original promissory note, whereof a true copy is above written, unto , the promisor, personally (*or*, at his residence, office *or* usual place of business), in , and speaking to himself (*or* his wife, his clerk *or* his servant, &c.), did demand payment thereof; unto which demand { he / she } answered: " ."

Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the promisor and indorsers of the said note, and all other parties thereto or therein concerned, for all costs, damages and interest, present and to come, for want of payment of the said note.

All of which I attest by my signature.

(Protested in duplicate.)

A. B.,
Notary Public.

FORM F.

PROTEST FOR NON-PAYMENT OF A NOTE PAYABLE AT A STATED PLACE.

(Copy of Note and Indorsements.)

On this day of , in the year 18 , I, A. B., notary public for the Province of , dwelling at , in the Province of , at the request of , did exhibit the original promissory note, whereof a true copy is above written, unto the promisor, at , being the stated place where the said note is payable, and there, speaking to did demand payment of the said note, unto which demand he answered: " .".

Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the promisor and indorsers of the said note, and all other parties thereto or therein concerned, for all costs, damages and interest, present and to come, for want of payment of the said note.

All of which I attest by my signature.

(Protested in duplicate.)

A. B.,
Notary Public.

FORM G.

NOTARIAL NOTICE OF A NOTING, OR OF A PROTEST FOR NON-ACCEPTANCE, OR OF A PROTEST FOR NON-PAYMENT OF A BILL.

(Place and date of Noting or of Protest).

1st.

To P. Q. (*the drawer.*)
at

Sir,

Your bill of exchange for $, dated at the , upon E. P., in favor of C. D., payable days after { sight / date } was this day, at the request of duly { noted / protested } by me for { non-acceptance. / non-payment. }

A. B.,
Notary Public.

(Place and date of Noting or of Protest.)

2nd.

To C. D. (*indorser*),
(*or* F. G.)
at

Sir,

Mr. P. Q.'s bill of exchange for $, dated at
Notary Public.
the , upon E. F., in your favor (*or* in favor of C. D.,) payable days after { sight / date } and by you indorsed, was this day, at the request of , duly { noted / protested } by me for { non-acceptance. / non-payment. }

A. B.,
Notary Public.

FORM H.

NOTARIAL NOTICE OF PROTEST FOR NON-PAYMENT OF A NOTE.

(*Place and date of Protest.*)

To

at

Sir,

Mr. P. Q.'s promissory note for $, dated at , the payable {days / months / on—} after date to {you / E. F.,} or order, and indorsed by you, was this day, at the request of , duly protested by me for non-payment.

A. B.,
Notary Public.

FORM I.

NOTARIAL SERVICE OF NOTICE OF A PROTEST FOR NON-ACCEPTANCE OR NON-PAYMENT OF A BILL. OR OF NON-PAYMENT OF A NOTE (*to be subjoined to the Protest*).

And afterwards, I, the aforesaid protesting notary public, did serve due notice, in the form prescribed by law, of the {foregoing protested for} {non-acceptance / non-payment} {of the} {bill / note} thereby protested upon {P. Q., / C. D.,} the {drawer / indorsers} personally, on the day of (*or*, at his residence, office, *or* usual place of business) in , on the day of ; (*or*, by depositing such notice, directed to the said {P. Q., / C. D.} at , in Her Majesty's post office, in on the day of , and prepaying the postage thereon).

In testimony whereof, I have, on the last mentioned day and year, at aforesaid, signed these presents.

A. B.,
Notary Public.

FORM J.

PROTEST BY A JUSTICE OF THE PEACE (WHERE THERE IS NO NOTARY) FOR NON-ACCEPTANCE OF A BILL, OR NON-PAYMENT OF A BILL OR NOTE.

(*Copy of Bill or Note and Indorsements.*)

On this day of , in the year 18 , I, N. O., one of Her Majesty's justices of the peace for the district (*or* county &c.), of , in the Province of dwelling at (*or* near) the village of , in the said district, there being no practising notary public at or near the said

village (*or any other legal cause*), did, at the request of
and in the presence of
well known unto me, exhibit the
original { bill / note } whereof a true copy is above written
unto P. Q., the { drawer / acceptor / promisor } thereof, personally (*or* at his residence, office, *or* usual place of business) in
and speaking to himself (his wife, his clerk, *or* his servant, &c.), did demand { acceptance / payment } thereof, unto which
demand { he / she } answered: "   ."

Wherefore I, the said justice of the peace, at the request aforesaid, have protested, and by these presents do protest against the { drawer and indorsers / promisor and indorsers / acceptor, drawer and indorsers } of the said { bill / note } and all other parties thereto and therein concerned, for all exchange, re-exchange, and all costs, damages, and interest, present and to come, for want of { acceptance / payment } of the said { bill / note. }

All which is by these presents attested by the signature of the said (*the witness*) and by my hand and seal.

(Protested in duplicate.)

(*Signature of the witness.*)

(*Signature and seal of the J. P.*)

SECOND SCHEDULE.

ENACTMENTS REPEALED.

Province and Chapter.	Title of Act and extent of repeal.
Dominion of Canada: Chap. 123, Revised Statutes.	An Act respecting Bills of Exchange and Promissory Notes.—The whole Act.
Province of Quebec: Civil Code of Lower Canada	Articles 2279 to 2354, both inclusive [*].
Nova Scotia: Revised Statutes, third series, chap. 82........	"Of Bills of Exchange and Promissory Notes." Section 2. The other sections of this chapter have been heretofore repealed.
New Brunswick: Revised Statutes, chap. 116.	"Of Bills, Notes and Choses in Action." Section 2. The other sections of this chapter have been heretofore repealed.
30 Vic., 1867, chap. 34	An Act to amend chap. 116 of the Revised Statutes. "Of Bills, Notes and Choses in Action:" also Act 12th Victoria, chapter 39, relating thereto. Section 1.

[*Except in so far as such articles, or any of them, relate to evidence in regard to bills of exchange, cheques and promissory notes.]

The Bank Act.

53 Vict., *Cap.* 31, 1890 (Ca.)

ANNOTATED BY

A. W. PATRICK BUCHANAN, LL.B.,

Of the Montreal Bar.

NEW YORK LIFE BUILDING, MONTREAL.

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The Bank Act was assented to on the 16th May, 1890, and its provisions apply to the Banks named, whose Charters or Acts of incorporation are continued in force so far as regards incorporation and corporate name, the amount of capital stock, the amount of each share of such stock, and each place of business of such Bank, until 1st July, 1901.

The Act is composed of 104 Sections, of which Sections 3, 6, 7 and 8 have reference to the Application of the Act;

Sections 9 to 17 to the Incorporation and Organization of Banks;

Sections 26 to 28 and 35 to 44 to the Capital Stock;
Sections 29 to 34 to Shares and Calls;
Sections 45 and 46 to the Annual Statement and Inspection;
Sections 47 to 49 to Dividends;
Section 50 to Reserves;
Sections 51 to 63 to the Note Issue;
Sections 64 to 72, and 80 to 84 to the Business and Powers of the Bank;
Sections 73 to 79 to Warehouse Receipts, Bills of Lading and Security Receipts;
Sections 85 to 88 to Returns by the Bank;
Sections 89 to 96 to Insolvency;
Sections 97 to 101 to Offences and Penalties;
Sections 102 to Public Notices;
Section 103 to Dominion Government Cheques;
Section 104 to Commencement of Act and Repeal.

The provisions of the following Acts have also reference to Banks:—

53 Victoria, Chap. 32, the Savings' Bank Act, amended 60-61 Vict., Chap. 9.

55-56 Victoria, Chap. 29, Criminal Code, Sections 3 (c), 364, 365, 366, 376, 377, 378, 420, 423, 430, 441, 442 and 458.

53 Victoria, Chap. 33, the Bills of Exchange Act, Sections 72, 73, 74, 75, 76, 77, 78, 79, 80 and 81.

By the Bills of Exchange Act, 53 Vict., Chap. 33, and amendments, the following are legal holidays or non-juridical days, and consequently Bank holidays:—

(a) In all the Provinces of Canada, except the Province of Quebec:—

Sundays;
New Year's Day;
Good Friday;
Easter Monday;
Christmas Day;

The birthday (or the day fixed by proclamation for the celebration of the birthday) of the reigning Sovereign; and if such birthday is a Sunday, then the following day;

The first day of July (Dominion Day), and if that day is a Sunday, then the second day of July as the same holiday;

The first Monday in September, to be designated "Labour Day;"

Any day appointed by proclamation for a public holiday, or for a general fast, or a general thanksgiving throughout Canada; and the day next following New Year's Day and Christmas Day, when those days respectively fall on Sunday.

(b) And in the Province of Quebec, the said days, and also:—

The Epiphany (Jan. 6th.)
The Ascension (Moveable).
All Saints Day (Nov. 1st.)
Conception Day (Dec. 8th.)

(c) And also, in any one of the Provinces of Canada, any day appointed by proclamation of the lieutenant-Governor of such Province for a public holiday, or for a fast or thanksgiving within the same, or being a non-juridical day by virtue of a statute of such Province.

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

SHORT TITLE.

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

Cushing vs. *Dupuy*, L. R., 5 A. C. 409 (1880).

The British North America Act of 1867, s. 91, in assigning to the Dominion Parliament the subjects of bankruptcy and insolvency intended to confer and did confer on it legislative power to interfere with property, civil rights and procedure within the Provinces, so far as these latter might be affected by a general law relating to those subjects. Consequently the Dominion enactment, 40 Vict., ch. 41, s. 28, amending the Canadian Insolvent Act, and providing that the judgment of the Court of Appeal in matters of insolvency should be final, *i.e.*, not subject to the appeal as of right to Her Majesty in Council allowed by the Civil Procedure Code, Article 1178, is within the competence of the Canadian Parliament, and odes not infringe the exclusive powers given to the Provincial legislatures by sec. 92 of the Imperial Statute. Neither does it infringe the Queen's prerogative, for it only limits the right of appeal as given by the Code.

Merchants' Bank vs. *Smith*, 8 S. C. R. 512 (1883).

Sections 46, 47 and 48 of 34 Vic., ch. 5 (D), are *intra vires* of the Dominion Parliament.

Quirt vs. *The Queen*, 19 S. C. R. 510 (1891).

In 1866 the Bank of Upper Canada became insolvent, and assigned all its property and assets to trustees. By 31 V., c. 17, the Dominion Parliament incorporated the said trustees, giving them authority to carry on the business of the bank so far as was necessary for winding up the same. By 33 V., c. 40, all the property of the bank vested in the trustees was transferred to the Dominion Government, who became seized of all the powers of the trustees.

Held, that these acts were *intra vires* of the Dominion Parliament.

The authority to pass the said acts cannot be referred to the legislative jurisdiction of Parliament over "banking and the incorporation of banks," but to that over "bankruptcy and insolvency" only.

Tennant vs. *Union Bank of Canada*, P. C., 6 R. 382; [1894] **App. Cas. 31.**

The words "Banking, Incorporation of Banks and the Issue of Paper Money" in section 91 of the British North America Act, 1867, cover the case of warehouse receipts taken as security by a bank in the course of the business of banking. Notwithstanding section 92 of th same Act, the Dominion Parliament has power to legislate with respect to such securities, though with the effect of modifying the law of the Province in relation thereto.

INTERPRETATION.

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

(a.) THE BANK.—The expression "the bank" means any bank to which this Act applies;

Henry vs. *Simard*, 16 L. C. R. 273 (1866).
An incorporated bank is a public corporation.

(b.) TREASURY BOARD.—The expression "Treasury Board" means the board provided for by section nine of chapter twenty-eight of the Revised Statutes of Canada, or any Act in amendment thereof or substitution therefor;

The Treasury Board consists of the Minister of Finance and Receiver General and any five of the Ministers belonging to the Queen's Privy Council for Canada, to be nominated from time to time by the Governor in Council.
R. S. C., c. 28, s. 9, as amended by 50-51 V., c. 13.

(c.) GOODS, WARES AND MERCHANDISE.—The expression "goods, wares or merchandise" includes, in addition to the things usually understood thereby, timber, deals, boards, staves, saw-logs and other lumber, petroleum, crude oil, and all agricultural produce and other articles of commerce;

(d.) WAREHOUSE RECEIPT.—The expression "warehouse receipt" means any receipt given by any person for any goods, wares, or merchandise in his actual, visible and continued possession, as bailee thereof, in good faith, and not as of his own property, and includes receipts given by any person who is the owner or keeper of a harbor, cove, pond, wharf, yard, warehouse, shed, storehouse or other place for the storage of goods, wares or merchandise, for goods, wares and merchandise delivered to him as bailee and actually in the place, or in one or more of the places owned or kept by him, whether such person is engaged in other business or not;

(e.) BILL OF LADING.—The expression "bill of lading" includes all receipts for goods, wares or merchandise, accompanied by an undertaking to transport the same from the place where they were received to some other place, whether by land or water, or partly by land and partly by water, and by any mode of carriage whatever;

(f.) MANUFACTURER.—The word "manufacturer" includes maltsters, distillers, brewers, refiners and producers of petroleum, tanners, curers, packers, canners of meat, pork, fish, fruit or vegetables and any person who produces by hand, art, process or mechanical means any goods, wares or merchandise.

APPLICATION OF ACT.

3. To what Banks the Act applies.—The provisions of this Act apply to the several banks enumerated in Schedule A to this Act, and to every bank incorporated after the first day of January, in the year one thousand eight hundred and ninety, whether this Act is specially mentioned in its Act of incorporation or not, but not to any other bank, except as hereinafter specially provided.

SCHEDULE A.

BANKS WHOSE CHARTERS ARE CONTINUED BY THIS ACT.

1. The Bank of Montreal.
2. The Quebec Bank.
3. La Banque du Peuple.
4. The Molsons Bank.
5. The Bank of Toronto.
6. The Ontario Bank.
7. The Eastern Townships Bank.
8. La Banque Nationale.
9. La Banque Jacques Cartier.
10. The Merchants' Bank of Canada.
11. The Union Bank of Canada.
12. The Canadian Bank of Commerce.
13. The Dominion Bank.
14. The Merchants Bank of Halifax.
15. The Bank of Nova Scotia.
16. The Bank of Yarmouth.
17. La Banque Ville Marie.
18. The Standard Bank of Canada.
19. The Bank of Hamilton.
20. The Halifax Banking Company.
21. La Banque d'Hochelaga.
22. The Imperial Bank of Canada.
23. La Banque de St. Hyacinthe.
24. The Bank of Ottawa.
25. The Bank of New Brunswick.
26. The Exchange Bank of Yarmouth.
27. The Union Bank of Halifax.
28. The People's Bank of Halifax.
29. La Banque de St. Jean.
30. The Commercial Bank of Windsor.
31. The Western Bank of Canada.
32. The Commercial Bank of Manitoba.
33. The Traders' Bank of Canada.
34. The People's Bank of New Brunswick.
35. The Saint Stephen's Bank.
36. The Summerside Bank.

Of the above 36 banks, 4 have suspended payment, namely:—

(1) Commercial Bank of Manitoba, which suspended payment on the 3rd July, 1893, and went into liquidation.

(2) La Banque du Peuple, which suspended payment on the 16th July, 1895.

(3) La Banque Ville Marie, which suspended payment on the 25th July, 1899, and went into liquidation.

(4) La Banque Jacques Cartier, which suspended payment on the 31st July, 1899, and reopened on the 27th October, 1899.

4. Charters continued to 1st July, 1901.—As to other particulars.—Proviso: as to forfeiture.—The charters or Acts of incorporation, and any Acts in amendment thereof, of the several banks enumerated in Schedule A to this Act are continued in force, so far as regards the incorporation and corporate name, the amount of capital stock, the amount of each share of such stock and the chief place of business of each bank, until the first day of July, in the year one thousand nine hundred and one, subject to the right of each bank to increase or reduce its capital stock in the manner hereinafter provided; and as to all other particulars this Act shall form and be the charter of each of the said banks until the said first day of July, in the year one thousand nine hundred and one,—subject in the case of La Banque du Peuple to the provisions hereinafter made in respect to that bank: Provided always, that the said charters or Acts of incorporation are hereby continued in force only in so far as they, or any of them, are not forfeited or rendered void under the terms thereof, or of this Act, or of any other Act passed or to be passed, by reason of the non-performance of the conditions thereof, or by insolvency, or otherwise.

Sarrazin vs. *La Banque de St. Hyacinthe*, 28 L. C. J. 270 (1881).

This was an application to the Minister of Justice of the Dominion of Canada for a *fiat* for a writ of *scire facias* for certain breaches of the terms of the charter of the bank, in order to declare the charter of the bank to be forfeited, together with its rights, powers, privileges and franchises of corporation. The Attorney General found that the officers of the bank had not intentionally and materially violated the terms of their charter, and for immaterial or unintentional breach of the terms of the charter, the Crown would not, at the present day, seek to forfeit a charter, and declined to grant the prayer of the petition.

5. What Provisions shall apply to La Banque du Peuple.—Proviso: as to Directors.—Inconsistent Enactments Repealed.—All the provisions of this Act, except those contained in sections three, six to seventeen (both inclusive), nineteen to twenty-seven (both inclusive), thirty-three, forty-five, and eighty-nine to ninety-six (both inclusive), apply to La Banque du Peuple: Provided, that wherever the word "directors" is used in any of the sections which apply to the said bank, it shall be read and construed as meaning the principal partners or members of the corporation of the said bank; and so much of the Act incorporating the said bank, or of any Act amending or continuing it, as is inconsistent with any section of this Act applying to the said bank, or which makes any provision in any matter provided for by such sections other than such as is hereby made, is hereby repealed; otherwise the said Acts are continued in force, subject to the proviso contained in section four of this Act.

6. What Provisions shall apply to the Banks of British North America and of B. C.—The provisions contained in sections two, seven, thirty-seven, forty-seven to

eighty-eight (both inclusive), and ninety-seven to one hundred and four (both inclusive), apply to the Bank of British North America and the Bank of British Columbia respectively; and the provisions contained in the other sections of this Act do not apply to the said banks.

7. Chief Seat of Business of the said Banks.—For the purposes of the several sections of this Act made applicable to the Bank of British North America and the Bank of British Columbia, the chief office of the Bank of British North America shall be the office of the bank at Montreal, in the Province of Quebec, and the chief office of the Bank of British Columbia shall be the office of the bank at Victoria, in the Province of British Columbia.

8. How Merchants' Bank of P. E. I. may come under this Act.—The provisions of this Act may be extended to the Merchants' Bank of Prince Edward Island by the Treasury Board, upon the application of the directors of the said bank, before the expiration of the present charter of the said bank; and upon publication in the *Canada Gazette* of the resolution of the directors applying hereunder, and of the minute of the Treasury Board thereon allowing such application, the provisions of this Act shall, from the time named in such minute, or if there is no time named therein, from the date of the publication thereof in the *Canada Gazette*, apply to the said bank; and its charter and Act of incorporation, and any Acts in amendment thereof, shall thereupon be extended for the same time and to the extent as if the name of the said bank had been included in Schedule A to this Act.

INCORPORATION AND ORGANIZATION OF BANKS.

9. Matters to be provided for in special Act.—The capital stock of every bank hereafter incorporated, the name of the bank, the place where its chief office is to be situate, and the name of the provisional directors shall be declared in the Act of incorporation of every such bank:

2. Form of Act of Incorporation.—An Act of incorporation of a bank in the form set forth in Schedule B to this Act shall be construed to confer upon the bank thereby incorporated all the powers, privileges and immunities, and to subject it to all the liabilities and provisions set forth in this Act.

SCHEDULE B.

FORM OF ACT OF INCORPORATION OF NEW BANKS.

An Act to incorporate the Bank.

Whereas the persons hereinafter named have, by their petition, prayed that an Act be passed for the purpose of establishing a bank in , and it is expedient to grant the prayer of the said petition:

Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. The persons hereinafter named, together with such others as become shareholders in the corporation by this Act created, are hereby constituted a corporation by the name of hereinafter called "the Bank."

2. The capital stock of the bank shall be dollars.

3. The chief office of the bank shall be at

4. shall be the provisional directors of the Bank.

5. This Act shall, subject to the provisions of section sixteen of "The Bank Act," remain in force until the first day of July, in the year one thousand nine hundred and one.

10. Capital Stock and Shares.—The capital stock of any bank hereafter incorporated shall be not less than five hundred thousand dollars, and shall be divided into shares of one hundred dollars each.

11. Provisional Directors.—The number of provisional directors shall be not less than five nor more than ten, and they shall hold office until directors are elected by the subscribers to the stock, as hereinafter provided.

12. Opening of Stock Books.—For the purpose of organizing the bank, the provisional directors may cause stock books to be opened, after giving public notice thereof,—upon which stock books shall be recorded the subscriptions of such persons as desire to become shareholders in the bank; and such books shall be opened at the place where the chief office of the bank is to be situate, and elsewhere, in the discretion of the provisional directors, and may be kept open for such time as they deem necessary.

13. First Meeting of Subscribers.—Notice.—Election of Directors.—So soon as a sum of not less than five hundred thousand dollars of the capital stock of the bank has been *bona fide* subscribed, and a sum not less than two hundred and fifty thousand dollars thereof has been paid to the Minister of Finance and Receiver General, the provisional directors may, by public notice, published, for at least four weeks, call a meeting of the subscribers to the said stock, to be held in the place named in the Act of incoporation as the chief place of business of the bank, at such time and at such place therein as set forth in the said notice; at which meeting the subscribers shall determine the day upon which the annual general meeting of the bank is to be held, and shall elect such number of directors, duly qualified under this Act, not less than five nor more than ten, as they think necessary, who shall hold office until the annual general meeting in the year next succeeding their election; and upon the election of directors as aforesaid the functions of the provisional directors shall cease.

14. Conditions previous to commencing business by new Banks.—The bank shall not issue notes nor commence the business of banking until it has obtained from the Treasury Board a certificate permitting it to do so, and no application

for such certificate shall be made until directors have been elected by the subscribers to the stock in the manner hereinbefore provided; and every director, provisional director, or other person, issuing or authorizing the issue of the notes of such bank or transacting or authorizing the transaction of any business in connection with such bank, except such as is hereinbefore provided, before the obtaining of the certificate from the Treasury Board, shall be guilty of an offence against this Act.

15. When Certificate may be granted.—No certificate shall be given by the Treasury Board until it has been shown to the satisfaction of the Board, by affidavit or otherwise, that all the requirements of this Act and of the special Act of incorporation of the bank, as to the payment required to be made to the Minister of Finance and Receiver General, the election of directors, deposit for security for note issue, or otherwise, have been complied with, and that the sum so paid was then held by the Minister of Finance and Receiver General; and no certificate as aforesaid shall be given except within one year from the passing of the Act of incorporation of the bank applying for the said certificate.

16. If Certificate is not granted.—In the event of the bank not obtaining a certificate from the Treasury Board within one year from the time of the passing of its Act of incorporation, all the rights, powers and privileges conferred on such bank by its Act of incorporation shall thereupon cease and determine and be of no force and effect whatever.

17. Disposal of amount deposited with Minister of Finance.—Upon the issue of the certificate in manner hereinbefore provided, the Minister of Finance and Receiver General shall forthwith pay to the bank the amount of money so deposited with him as aforesaid, without interest, after deducting therefrom the amount required to be deposited under section fifty-four of this Act; and in case no certificate is issued by the Treasury Board within the time limited for the issue thereof, the amount so deposited shall be returned to the person depositing the same; but in no case shall the Minister of Finance and Receiver General be under any obligation to see to the proper application of the same in any way.

INTERNAL REGULATIONS.

18. By-laws may be made.—The shareholders of the bank (or, in the case of La Banque du Peuple, the principal partners or members of the corporation thereof,) may regulate, by by-law, the following matters incident to the management and administration of the affairs of the bank, that is to say: The day upon which the annual general meeting of the shareholders for the election of directors shall be held; the record to be kept of proxies, and the time, not exceeding thirty days, within which proxies must be produced and recorded prior to a meeting in order to entitle the holder to vote thereon; the number of the directors, which shall not be less than five and

not more than ten, and the quorum thereof, which shall not be less than three; their qualification, subject to the provisions hereinafter made; the method of filling vacancies in the board of directors whenever the same occur during each year, and the time and proceedings for the election of directors, in case of a failure of any election on the day appointed for it; the remuneration of the president, vice-president and other directors; and the amount of discounts or loans which may be made to directors, either jointly or severally, or to any one firm or person, or to any shareholder, or to corporations:

2. GUARANTEE AND PENSION FUNDS.—The shareholders may authorize the directors to establish guarantee and pension funds for the officers and employees of the bank and their families, and to contribute thereto out of the funds of the bank:

3. CERTAIN BY-LAWS CONTINUED.—Until it is otherwise prescribed by by-law under this section, the by-laws of the bank on any matter which may be regulated by by-law under this section shall remain in force, except as to any provision fixing the qualification of directors at an amount less than that prescribed by this Act; and no person shall be elected or continue to be a director unless he holds stock paid up to the amount required by this Act, or such greater amount as is required by any by-law in that behalf:

4. BANQUE DU PEUPLE EXCEPTED.—The foregoing provisions of this section, touching directors, shall not apply to La Banque du Peuple, which shall in these matters be governed by the provisions of its charter.

19. Board of Directors.—The stock, property, affairs and concerns of the bank shall be managed by a board of directors, who shall be elected annually in manner hereinafter provided, and shall be eligible for re-election:

2. QUALIFICATION.—Each director shall hold capital stock of the bank as follows:—When the paid-up capital stock is one million dollars or less, each director shall hold stock on which not less than three thousand dollars has been paid up; when the paid-up capital stock is over one million dollars and does not exceed three million dollars, each director shall hold stock on which not less than four thousand dollars has been paid up; and when the paid-up capital stock exceeds three million dollars, each director shall hold stock on which not less than five thousand dollars has been paid up:

3. MAJORITY TO BE BRITISH SUBJECTS.—A majority of the directors shall be natural-born or naturalized subjects of Her Majesty:

4. ELECTION.—NOTICE.—The directors shall be elected by the shareholders on such day in each year as is appointed by the charter or by any by-law of the bank, and such election shall take place at the head office of the bank at such time of the day as the directors appoint; and public notice thereof shall be given by the directors, by publishing the same for at least four weeks previous to the time of holding such election, in a newspaper published at the place where the said head office is situate:

5. WHO SHALL BE DIRECTORS.—The persons, to the number authorized to be elected, who have the greatest number of votes at any election, shall be directors:

Gibb vs. *Poston*, 16 L. C. R. 257 (1866).
The polling of illegal votes in favor of the election of a director of a bank does not *per se* annul his election, unless it is alleged and proved that another candidate had polled a larger number of legal votes.

6. PROVISION IN CASE OF EQUALITY OF VOTES.—ELECTION OF PRESIDENT, ETC.—If it happens at any election that two or more persons have an equal number of votes and the election or non-election of one or more of such persons as a director or directors depends on such equality, then the directors who have a greater number, or the majority of them, shall determine which of the said persons so having an equal number of votes shall be the director or directors, so as to complete the full number. And the said directors, as soon as may be, after the said election, shall proceed to elect, by ballot, two of their number to be president and vice-president respectively:

Bank of Montreal vs. *Rankin*, 4 L. N. 302 (1881).
The personal knowledge of the president of a bank of the circumstances of an alleged compromise cannot be opposed to the bank, as the latter was not bound by the acts of the president in his individual capacity and had no cognizance of the pretended compromise

7. VACANCIES, HOW FILLED.—If a vacancy occurs in the board of directors, such vacancy shall be filled in the manner provided by the by-laws; but the non-filling of the vacancy shall not vitiate the acts of a quorum of the remaining directors; and if the vacancy so created is in the office of the president or vice-president, the directors shall, from among themselves, elect a president or vice-president, who shall continue in office for the remainder of the year.

Bank of Liverpool vs. *Bigelow*, 3 R. & C. 236, Nova Scotia (1878).
By the Act of 1871, c. 5, s. 32, not less than three directors were constituted a quorum for the transaction of business. By s. 30, it was provided that directors should be elected by the shareholders at the annual meeting, and that vacancies should be filled in the manner provided by by-laws, which, by another section, a majority of directors for the time being were empowered to make, but which had never in fact been made. In March, 1874, three of the directors appointed one Innes a director to fill a vacancy, and in September, 1874, a call was made by four directors, one of whom was Innes, who seconded the resolution.

Held, that although Innes was not legally a director, the call was valid, three of the directors who made it being legally qualified.

20. Provision in case of Failure of Election.—If an election of directors is not made on the day appointed for that purpose, such election of directors may take place on any other day according to the by-laws made by the shareholders in that behalf; and the directors then in office shall remain in office until a new election is made.

21. Meetings of Directors: Casting Vote of Presiding Director.—At all meetings of the directors, the president, or, in his absence, the vice-president or, in the absence of both of them, one of the directors present, chosen to act *pro tempore*, shall preside; and the president, vice-president or

president *pro tempore* so presiding shall vote as a director, and if there is an equal division on any question shall also have a casting vote.

22. General Powers of Directors.—Proviso: as to By-Laws in force.—The directors may make by-laws and regulations (not repugnant to the provisions of this Act or the laws of Canada) touching the management and disposition of the stock, property, affairs and concerns of the bank, and touching the duties and conduct of the officers, clerks and servants employed therein, and all such other matters as appertain to the business of a bank; Provided, always, that all by-laws of the bank heretofore lawfully made and now in force, in regard to any matter respecting which the directors may make by-laws under this section (including any by-laws for establishing guarantee and pension funds for the employees of the bank), shall remain in force until they are repealed or altered by others made under this Act.

Busby vs. *Bank of Montreal*, N.B. Equity cases, 62 (1880).

Held, that no power was vested in the directors of a bank to pass a by-law fixing the date of the annual meeting of the shareholders for the election of directors, and that it was therefore *ultra vires*.

2. That one shareholder could not maintain a bill in his own name alone respecting an injury common to all the shareholders.

23. Appointment of Officers, etc.—The directors may appoint as many officers, clerks and servants for carrying on the business of the bank, and with such salaries and allowances as they consider necessary, and they may also appoint a director or directors for any branch of the bank:

Banque Nationale vs. *City Bank*, 17 L. C. J. 197 (1873).

Cheques fraudulently initialled as accepted by the manager of a bank, and for which the drawer has given in exchange to the manager certain securities which the bank retains, cannot be repudiated by the bank, when the cheques are held by a *bona fide* holder for value.

Grieve vs. *Molsons Bank*, 8 O. R. 162 (1885).

A bank manager is not acting without the scope of his authority in accepting the cheque of a customer to deliver to another customer on a particular day, or on the happening of a special event.

Exchange Bank vs. *La Banque du Peuple*, M. L. R., 3 Q. B. 232 (1886).

A bank is liable for the acceptance by its president and cashier of cheques marked good on future dates specified, which were afterwards discounted by the plaintiff in good faith and in the ordinary course of business. (Affirmed by Supreme Court 10 L. N. 362.)

Exchange Bank vs. *La Banque du Peuple*, 10 L. N. 362 (1887).

In 1881, G., having business transactions with the Exchange Bank, agreed with C., president and manager of the bank, that in lieu of further advances the bank would accept his cheque, but made payable at a future date. On the 19th October, 1881, G. drew a cheque on the Exchange Bank, and after having it accepted as follows: "Good on February 19th, 1882, T. Craig, President," got the cheque discounted by the People's Bank and deposited the proceeds to his credit in the Exchange Bank. This cheque was renewed on the 23rd of May, and it was presented at the Exchange Bank and paid. Thereupon another cheque for the same amount was accepted in the same way and discounted by the People's Bank on the 7th September, 1883. At the time of the suspension of payment by the Exchange Bank, the People's Bank had in its possession four cheques

signed by G., and accepted by T. Craig, president of the Exchange Bank, which were subsequently presented for payment on the dates when they were payable, and duly protested, and also after the three days of grace.

The total amount of these cheques was $66,020.64, and one of them, viz., the one dated 7th September, 1883, for $31,000, was a renewal of the cheque, the proceeds of which had been paid to the credit of G. in the Exchange Bank.

On an action by the People's Bank against the Exchange Bank, for the recovery of the sum of $66,020.74, based on the four cheques in question, the Exchange Bank pleaded *inter alia* that C. had not acted within the scope of his duties and within the limits of his powers, and that the bank had never authorized or ratified his acceptance of G.'s cheques.

Held, affirming the judgment of the Court of Queen's Bench, that under the circumstances the Exchange Bank was liable for the acceptance by their president and manager of G.'s cheques discounted by the People's Bank in good faith and in due course of business.

La Banque Jacques Cartier vs. *Montreal City and District Savings Bank*, 13 App. Cas. 111 (1887).

Where the accounts of a bank in liquidation had been changed so as to represent the bank as a debtor in respect of a sum which had been borrowed by its manager for his own purposes:—

Held, that the doctrine of acquiescence and ratification by the liquidating authorities would not avail to render the bank liable to pay a debt which it never owed.

Bank of Commerce vs. *Jenkins*, 16 O. R. 215 (1888).

A deed executed by the manager of a bank, not being under the corporation seal, nor under a signature or sign manual, where it executed documents, was not binding on the bank.

Merchants Bank vs. *Whidden*, 19 S. C. R. 53 (1891).

K., agent of a bank and also a member of a business firm, procured accommodation drafts from a customer of the bank, which he discounted as such agent, and, without endorsing the drafts, used the proceeds, in violation of his instructions from the head office, in the business of his firm. The firm, having became insolvent, executed an assignment in trust of all their property by which the trustee was to pay "all debts by the assignors or either of them due and owing or accruing or becoming due and owing" to the said bank as first preferred creditor, and to the makers of the accommodation paper, among others, as second preferred creditors. The estate not proving sufficient to pay the bank in full, a dispute arose as to the accommodation drafts, the bank claiming the right to disavow the action of the agent in discounting them and appropriating the proceeds in breach of his duty as creating a debt due to it from his firm, the makers claiming that they were really debts due to the bank from the insolvents. In a suit to enforce the carrying out of the trusts created by the assignment—

Held, That the drafts were "debts due and owing" from the insolvents to the bank and within the first preference created by the deed.

K. procured the accommodation paper for the sole purpose of borrowing the money of the bank for his firm, and when the firm received that money they became debtors to the bank for the amount.

That the agent being bound to account to the bank for the funds placed at his disposal, he became a debtor to the bank, on his authority being revoked, for the amount of these drafts as money for which he had failed to account. Whether or not the bank had a right to elect to treat the act of the agent as a tort was not important, as in any case there was a debt due.

Exchange Bank vs. *Fletcher*, 19 S. C. R. 278 (1891).

The Exchange Bank, in advancing money to F. on the security of Merchants' Bank shares, caused the shares to be assigned to their managing director, and an entry to be made in their books that the managing director held the shares in question on behalf of the bank as security for the loan. The bank subsequently credited F. with the dividends accruing thereon. Later on, the managing director pledged these shares to another bank for his own personal debt, and absconded.

Held, that upon re-payment by F. of the loan made to him, the Exchange Bank was bound to return the shares or pay their value. The prohibition to advance upon security of shares of another bank contained in the amendment to the general banking act applies to the bank and not to the borrower.

Assuming that the subsequent amendment of the general banking act forbade the taking of such security by any bank, the amendment did not alter the charter of the Exchange Bank, 35 Vic., ch. 51 (D), under which the Exchange Bank had power to take the shares in question in its corporate name as collateral security. To take such security may have become an offence against the banking law, punishable from the beginning as a misdemeanor and subject to a pecuniary penalty, but it was not *ultra vires*. Art. 14 C. C., which declares that prohibitive laws import nullity, has no application to such a case.

Thompson vs. *Bank of Nova Scotia*, 13 C. L. Times 311 (1893).

It is no part of the business of a bank agent to institute criminal proceedings against a debtor of the bank, and his doing so is in excess of authority.

Richards vs. *Bank of Nova Scotia*, 26 S. C. R. 381 (1896).

Where an agent does an act outside of the apparent scope of his authority, and makes a representation to the person with whom he acts to advance the private ends of himself or someone else other than his principal, such representation cannot be called that of the principal. In such a case it is immaterial whether or not the person to whom the representation was made believed the agent had authority to make it.

The local manager of a bank having received a draft to be accepted induced the drawer to accept by representing that certain goods of his own were held by the bank as security for the drafts. In an action on the draft against the acceptor—

Held, that the bank was not bound by such representation; that by taking the benefit of the acceptance it could not be said to adopt what the manager said in procuring it, which would burden it with responsibility instead of conferring a benefit; and that the knowledge of the manager with which the bank would be affected should be confined to knowledge of what was material to the transaction and the duty of the manager to make known to the bank.

2. SECURITY TO BE GIVEN.—Before permitting any cashier, officer, clerk or servant of the bank to enter upon the duties of his office, the directors shall require him to give bond, guarantee, or other security to the satisfaction of the directors, for the due and faithful performance of his duties.

City Bank vs. *Brown*, 2 L. C. R. 246 (1852).

A bond conditional upon the due fulfilment of the duties of an officer in a bank is made void by the reduction of the salary stipulated, in favor of such officer, in and by the deed containing such bond, and that such reduction, without the consent of the sureties, has the effect of a novation.

Bank of Upper Canada vs. *Bradshaw*, L. R., 1 P. C. 479 (1867).

In an action brought by a banking company against their late manager and cashier, to recover moneys belonging to the bank alleged to have been improperly applied in discounting bills, etc., for his own advantage, for the benefit of parties and companies with whom he was connected, and in which he was interested, it appeared that such transactions were all in the ordinary course of the business of the bank; that he had not exceeded the power and authority with which he was entrusted; and that no case of bad faith could be proved against him. Under such circumstances, the action of the bank was dismissed.

Bank of Toronto vs. *European Assurance Society*, 14 L. C. J. 186 (1870).

Held, that the allowing, by a bank manager, of overdrafts, without security, is an irregularity within the meaning of a policy guaranteeing the bank against such loss as might be occasioned to the bank by the want of integrity, honesty and fidelity, or by the negligence, defaults or irregularities of the manager, where, in the opinion of the court, the evidence established that the manager concealed the fact of the overdrafts

from the head office by fictitious returns, and acted in improper concert with the parties whom he allowed to overdraw.

Banque Nationale vs. *Lesperance*, 4 L. N. 147 (1881).

The teller of a bank endorsed on a parcel of bank notes the amount which it was supposed to contain. It was subsequently discovered that the parcel was $6,300 short, and it was ascertained that a deficiency of the same amount existed in the teller's accounts, and had been during several years skilfully covered up and concealed from the knowledge of the authorities of the bank, who had made the usual inspections.

Held, that a guarantee insurance company which had guaranteed the fidelity of the teller was liable for the deficiency, but only to the extent which occurred after the contract was made.

***Exchange Bank* vs. *Gault*, 30 L. C. J. 259 (1886).**

A gave a bond that C., who was cashier of a bank, would faithfully perform his duties. C. was afterwards made president of the bank, and when in such a position committed a defalcation.

Held, that the bond was void.

Springer vs. *Exchange Bank; Barnes* vs. *Exchange Bank*, 14 S. C. R. 716 (1887).

The sureties of an absconding bank cashier are not relieved from liability by showing that the bank employed their principal in transacting what was not properly banking business, in the course of which he appropriated the bank funds to his own use, the claim against sureties being for the moneys so appropriated by the principal and not for losses occasioned by such illegal transactions.

London Guarantee and Accident Co. vs. *Hochelaga Bank*, R. J. Q. R., 3 Q. B. 25 (1893).

The cashier of a bank removed bundles of notes from the bank premises to his residence, for the purpose of signing them, but it appeared that he brought them all back, and subsequently, in his office in the bank, he put a number of $5.00 notes in the bundles, instead of $10.00 notes, and thus defrauded the bank of $8,140.

Held, 1. In intrusting the notes to the cashier to be signed, there was no negligence on the part of the bank involving a violation of the terms of the contract, and the loss was one caused by "fraud and dishonesty amounting to embezzlement" on the part of the employee, and came under the guarantee given by the policy.

The same employee, shortly before his flight from the country, caused his own cheques to the amount of $15,574 to be certified by the ledger-keeper of the bank, although he, the cashier, had no funds there.

Held, 2. This act, although, technically speaking, not constituting the crime of embezzlement, was "fraud and dishonesty amounting to embezzlement" on the part of the cashier, and came under the guarantee of the policy. These words in the policy have to be taken in their ordinary or vulgar sense, as otherwise the words "fraud or dishonesty" would be without effect.

3. The fact that the bank recovered a large part of the money taken did not affect its right to claim under the policy, there being a balance of total loss remaining which exceeded the amount of the policy.

4. The claim of the bank was not affected by its communications with the employee after his flight, such communications not having had any injurious effect as regards the guarantee company.

On the 30th May the cashier did not appear at his office, and a number of the cheques certified by the ledger-keeper, as above mentioned, were presented and paid, although he had no amount to his credit to check against. On the following day the bank gave notice of the defalcation to the local agent of the guarantee company—

Held, 5. The notice was given *en temps utile*, and the bank was not guilty of negligence.

24. Special General Meetings.—The directors of the bank, or any four of them,—or any number not less than

twenty-five of the shareholders of the bank, who are together proprietors of at least one-tenth of the paid-up capital stock of the bank, by themselves or by their proxies,—may, at any time, call a special general meeting of the shareholders, to be held at their usual place of meeting, upon giving six weeks' previous public notice, specifying in such notice the object of such meeting:

2. REMOVAL OF PRESIDENT, DIRECTOR, ETC.—New Election.—If the object of any such special general meeting is to consider the proposed removal of the president or vice-president, or of a director of the bank, for maladministration or other specified and apparently just cause, and if a majority of the votes of the shareholders at such meeting is given for such removal, a director to replace him shall be elected or appointed in the manner provided by the by-laws of the bank, or if there are no by-laws providing therefor, then by the shareholders at such meeting; and if it is the president or vice-president who is removed, his office shall be filled by the directors in the manner provided in case of a vacancy occurring in the office of president or vice-president.

25. Votes on Shares.—Ballot.—Every shareholder shall, on all occasions on which the votes of the shareholders are taken, have one vote for each share held by him for at least thirty days before the time of meeting; and in all cases when the votes of the shareholders are taken, the voting shall be by ballot:

2. MAJORITY TO DETERMINE.—CASTING VOTE.—All questions proposed for the consideration of the shareholders shall be determined by the majority of the votes of the shareholders present in person or represented by proxy; and the chairman elected to preside at any such meeting of the shareholders shall vote as a shareholder only, unless there is a tie,—in which case, except as to the election of a director, he shall have a casting vote:

3. AS TO JOINT HOLDERS OF SHARES.—If two or more persons are joint holders of shares, any one of such joint holders may be empowered, by letter of attorney from the other joint holder or holders, or a majority of them, to represent the said shares, and vote accordingly:

4. PROXIES.—Shareholders may vote by proxy, but no person other than a shareholder eligible to vote shall be permitted to vote or act as such proxy, and no manager, cashier, clerk or other subordinate officer of the bank shall vote either in person or by proxy, or hold a proxy for that purpose:

5. RENEWAL OF PROXIES.—No appointment of a proxy to vote at any meeting of the shareholders of the bank shall be valid for that purpose unless it has been made or renewed in writing within the two years next preceding the time of such meeting:

6. IN CERTAIN CASES CALLS MUST BE PAID BEFORE VOTING.—No shareholder shall vote, either in person or by proxy, on any question proposed for the consideration of the shareholders of the bank at any meeting of such shareholders, or in any case in which the votes of the shareholders of the bank are taken, unless he has paid all calls made by the directors which are then due and payable

CAPITAL STOCK.

26. Increase of Capital.—Approval of Treasury Board.—The capital stock of the bank may be increased from time to time, by such percentage or by such amount as is determined upon by by-law passed by the shareholders, at the annual general meeting, or at any special general meeting called for the purpose: Provided always, that no such by-law shall come into operation, or be of any force or effect, unless and until a certificate approving thereof has been issued by the Treasury Board:

2. CONDITIONS OF APPLICATION FOR APPROVAL.—No such certificate shall be issued by the Treasury Board unless application therefor is made within three months from the time of the passing of such by-law, nor unless it appears to the satisfaction of the Treasury Board that a copy of such by-law together with notice of intention to apply for such certificate, has been published for at least four weeks in the *Canada Gazette*, and in one or more newspapers published in the place where the chief office or place of business of the bank is situate; nothing herein contained, however, shall be construed to prevent the Treasury Board from refusing to issue such certificate if it thinks best so to do.

27. How Stock shall be allotted.—Any of the original unsubscribed capital stock, or of the increased stock of the bank, shall, when the directors so determine, be allotted to the then shareholders of the bank *pro rata*, and at such rate as is fixed by the directors, but no fraction of a share shall be so allotted; provided that in no case shall a rate be fixed by the directors, which will make the premium (if any) paid or payable on such stock so allotted exceed the percentage which the reserve fund of the bank then bears to the paid-up capital stock thereof; and any of such allotted stock which is not taken up by the shareholder to whom such allotment has been made, within six months from the time when notice of the allotment was mailed to his address, or which he declines to accept, may be offered for subscription to the public, in such manner and on such terms as the directors prescribe.

28. Capital Stock may be Reduced.—The capital stock of the bank may be reduced by by-law passed by the shareholders at the annual general meeting, or at a special general meeting called for the purpose; but no such by-law shall come into operation or be of force or effect until a certificate approving thereof has been issued by the Treasury Board:

2. CERTIFICATE OF TREASURY BOARD.—No such certificate shall be issued by the Treasury Board unless application therefor is made within three months from the time of the passing of the by-law, nor unless it appears to the satisfaction of the Board that the shareholders voting for such by-law represent a majority in value of all the shares then issued by the bank, and that a copy of the by-law, together with notice of intention to apply to the Treasury Board for the issue of a certificate approving thereof, has been published for at least four

weeks in the *Canada Gazette*, and in one or more newspapers published in the place where the chief office or place of business of the bank is situate; nothing herein contained however shall be construed to prevent the Treasury Board from refusing to issue such certificate if it thinks best so to do:

3. STATEMENTS TO BE SUBMITTED.—In addition to evidence of the passing of the by-law and the publication thereof in the manner above provided, statements showing the amount of stock issued and the number of shareholders, with the amount of stock held by each, represented at such meeting, and the number of shareholders, with the amount of stock held by each, who voted for such by-law, and also full statements of the assets and liabilities of the bank, together with a statement of the reasons and causes why such reduction is sought, shall be laid before the Treasury Board at the time of the application for the issue of a certificate approving such by-law:

4. REDUCTION NOT TO AFFECT LIABILITY OF SHAREHOLDERS.—The passing of such by-law, and any reduction of the capital stock of the bank thereunder, shall not, in any way, diminish or interfere with the liability of the shareholders of the bank to the creditors thereof at the time of the issue of the certificate approving such by-law:

5. IF LEGISLATION IS ASKED TO SANCTION REDUCTION.—If, in any case, legislation is sought to sanction any reduction of the capital stock of any bank, a copy of the by-law or resolution passed by the shareholders in regard thereto, together with statements similar to those above provided to be laid before the Treasury Board, shall be filed with the Minister of Finance and Receiver-General, at least one month prior to the introduction into Parliament of the Bill relating to such reduction:

6. LIMIT TO REDUCTION.—The capital shall not be reduced below the amount of two hundred and fifty thousand dollars of paid-up stock.

SHARES AND CALLS.

29. Shares and Transfer thereof.—Books of Subscription.—The shares of the capital stock of the bank shall be personal estate, and shall be assignable and transferable at the chief place of business of the bank, or at such of its branches, or at such place or places in the United Kingdom, or in any of the British colonies or possessions, and according to such form, and subject to such rules and regulations, as the directors prescribe; and books of subscription may be opened, and the dividends accruing on any shares of such stock may be made payable at any of the places aforesaid; and the directors may appoint such agents in the United Kingdom, or in any of the British colonies or possessions, for the purposes of this section, as they deem necessary.

In re Bank of Ontario, 44 U. C. Q. B. 247 (1879).

Upon an application by a bank whose head office was in Ontario, under s. 25 of the Banking Act of 1871, 34 Vict., ch. 5, for an order adjudicating and awarding shares—

Held, that an execution from the Superior Court of Montreal might be validly executed by a sworn bailiff of that Court,

instead of by the sheriff, and the bailiff might fulfil the duty imposed on the sheriff under s. 19 of the Banking Act.

Held, also, that a sale under execution in Montreal might be made of shares of a bank whose head office was in Toronto.

30. Payment of Shares.—Proviso: ten per cent. payable on Subscription.—The shares of the capital stock shall be paid in by such instalments and at such times and places as the directors appoint: Provided always, that the directors may cancel any subscription for any share unless a sum equal to ten per cent. at least on the amount subscribed for is actually paid at the time of, or within thirty days after, the time of subscribing; but such cancellation shall not relieve the subscriber from his liability to creditors in the event of insolvency as hereinafter provided.

In re Central Bank, Nasmith's Case, 16 O. R. 293 (1883).

Where 10 per cent. was not paid at the time of the original subscription of bank shares, nor within thirty days thereafter, as required by the Banking Act, R. S. C., ch. 120, sec. 26, but was paid before the first transfer took place, and was accepted by the bank—

Held, that subsequent transferees of the shares were properly placed upon the list of contributories in winding-up proceedings.

The provision as to payment is for the protection of the public, and till payment is made the person subscribing may not be able to deal with the stock, but he is at least equitable owner, and may become legally entitled on making the prescribed payment.

Where the evidence showed that the bank had adopted the practice of dealing with their shares by way of marginal transfer, the first transfer being in blank, subject, as by marginal note, to the order of a broker, and the ultimate purchaser signing an aceptance in the book immediately under the transfer so signed in blank by the seller, the intermediate dealing of the broker being omitted from extended record in the bank books, and the transferees were duly entered as shareholders in the stock ledger of the bank—

Held, that this amounted substantially to an acceptance of shares transferred in blank, which was lawful where transfer by deed was not prescribed, and the entry in the stock ledger amounted to registration within the meaning of the Act.

Where it appeared that in one such case the transferee did not sign the acceptance, but that he subsequently dealt with the shares by selling and transferring them—

Held, that the transferees from him were properly placed upon the list of contributories, notwithstanding anything in the Banking Act, R. S. C., ch. 120, sec. 29.

Where one of those placed upon the list of contributories acquired his shares within one month from the suspension of the bank—

Held, that he was liable as a contributory. R. S. C., ch. 120, sec. 77, is cumulative so as to make also liable those who have been holders during the month preceding the suspension, leaving them to discuss among themselves their respective liabilities.

Where the shares which had been transferred to one placed on the list of contributories had been previously held by the cashier of the bank in trust, as alleged, for the bank, which it was objected was thus trafficking in its own shares—

Held, that, even if the cashier did hold the shares in trust for the directors of the bank, this would not be necessarily illegal, as he might have such shares, under s. 45 of the Banking Act, as security for overdue debts; and, besides, this was a matter which, though it might give the appellant a right to rescind during the currency of the banking institution, became of no moment after the rights of creditors represented by the liquidators arose. The matter was not an absolute nullity, but, at most, one which the shareholders could waive as voidable, and it became, by the suspension, of unimpeachable validity as between the appellant and the liquidators.

On an appeal the judgment was confirmed. *Vide* 18 O. A. R. 209 (1891).

Hughes vs. *Cie. des Villas*, M. L. R., 5 S. C. 129 (1889).

That the Statute governing building societies does not authorize interest on calls not paid.

In re Central Bank, Baine's Case, 16 O. A. R. 237 (1889).

One B. subscribed for certain shares of capital stock of the Central Bank of Canada, but did not at the time of subscription, nor within thirty days thereafter, make any payment thereon. About eight months later, however, payment was made by B. to the bank, and the bank accepted payment from him of 20 p.c. of the amount subscribed, and subsequently dividend cheques were issued by the bank in favor of B., and endorsed by him, and were paid.

Held, where there is an actually signed subscription contract, an actual receipt by the bank from the subscriber of a payment on account of a number of shares equal to those mentioned therein, and a subsequent receipt by that person of dividends on that number, an acknowledgment of the subscription contract at a time within which a payment could be effectually made thereon is to be presumed, and, under the curcumstances, B. and the bank were respectively estopped as against each other from denying that his subscription was re-acknowledged, and that he had been a stock holder.

31. Calls on Shares.—The directors may make such calls of money from the several shareholders for the time being, upon the shares subscribed for by them respectively, as they find necessary.

2. Time of calls and notice.—Limitation.—Such calls shall be made at intervals of not less than thirty days, and upon notice to be given at least thirty days prior to the day on which such call shall be payable; and no such call shall exceed ten per cent. of each share subscribed.

McCracken vs. *McIntyre*, 1 S. C. R. 479 (1877).

A person purchasing shares in good faith, without notice, as shares fully paid up, is not liable to an execution creditor of the company, whose execution has been returned *nulla bona* for the amount unpaid on the shares.

See under section 19, sub-section 7. *Bank of Liverpool* vs. *Bigelow*, 3 R. & C. 236, N. Sc. (1878).

Geddes vs. *Banque Jacques Cartier*, 24 L. C. J. 135 (1878).

Held, that, under the Banking Act (34 V., c. 5), a bank may lawfully make advances on the security of shares in an incorporated trading company and sell such shares (in default of repayment of the advances) on giving 30 days' notice to that effect.

***Bank of Liverpool* vs *Bigelow*, 3 R. & C. 236, N. Sc. (1878).**

Action was brought against defendant as transferee of shares in plaintiff bank for calls. There was no valid transfer of the shares under the Act, but defendant had paid calls, given a receipt for a dividend, combined with others in appointing a proxy.

Held, that he must be treated as a shareholder.

Gilman vs. *Court*, 13 R. L. 619 (1882).

Several calls on the double liability of the shareholders can only be made by a single resolution, and the calls must be made at intervals of not less than thirty days.

When the calls have been regularly made, at sufficient intervals, but the notice of not less than thirty days has not been given before the day on which the calls are payable, the amount cannot be recovered.

Bank of Nova Scotia vs. *Forbes*, 4 R. & G. 295, N. Sc. (1883).

Calls could not be legally made at one time, and none could legally be made but within ten days after the expiration of six months from the suspension of payment by the bank. And, further, that, in computing the statutory intervals between calls, the time must be reckoned exclusively of the day on which the previous call was payable.

32. Recovery of Calls.—The directors may, in case of the non-payment of any call, in the corporate name of the bank, sue for, recover, collect and get in all such calls, or may cause and declare such shares to be forfeited to the bank.

Robertson vs. *La Banque d'Hochelaga*, 4 L. N. 314 (1881).
Shares of bank stock cannot be declared forfeited for non-payment of calls, without first notifying the owner of the shares.

33. Forfeiture of Shares for non-payment of Calls.—Sale in such Cases.—And Transfer.—Proviso.—If any shareholder refuses or neglects to pay any instalment upon his shares of the capital stock at the time appointed therefor, such shareholder shall incur a penalty to the use of the bank of a sum of money equal to ten per cent. on the amount of such shares; and if the directors declare any shares to be forfeited to the bank they shall, within six months thereafter, without any previous formality other than thirty days' public notice of their intention so to do, sell at public auction the said shares, or so many of the said shares as shall, after deducting the reasonable expenses of the sale, yield a sum of money sufficient to pay the unpaid instalments due on the remainder of the said shares and the amount of penalties incurred upon the whole; and the president or vice-president, manager or cashier of the bank shall execute the transfer to the purchaser of the shares so sold; and such transfer shall be as valid and effectual in law as if it had been executed by the original holder of the shares thereby transferred; but the directors, or the shareholders at a general meeting, may, notwithstanding anything in this section contained, remit, either in whole or in part, and conditionally or unconditionally, any forfeiture or penalty incurred by the non-payment of instalments as aforesaid, or the bank may enforce the payment of any call or calls by suit, instead of declaring the shares forfeited.

34. Recovery by Suit.—What only need be proved.—In any action brought to recover any money due on any such call it shall not be necessary to set forth the special matter in the declaration or statement of claim, but it shall be sufficient to allege that the defendant is holder of one share or more, as the case may be, in the capital stock of the bank, and is indebted to the bank for a call or calls upon such share or shares, in the sum to which the call or calls amount, as the case may be, stating the amount and number of such calls, whereby an action has accrued to the bank to recover the same from such defendant by virtue of this Act; and it shall not be necessary to prove the appointment of the directors.

TRANSFER AND TRANSMISSION OF SHARES.

35. Conditions of Transfer of Shares.—Fraction of Share not Transferable.—No assignment or transfer of the shares of the capital stock of the bank shall be valid unless it is made and registered and accepted by the person to whom

the transfer is made, in a book or books kept for that purpose, nor unless the person making the same has, if required by the bank, previously discharged all his debts or liabilities to the bank which exceed in amount the remaining stock, if any, belonging to such person, valued at the then current rate; and no fractional part of a share, or less than a whole share, shall be assignable or transferable.

Walsh vs. *Union Bank*, 5 Q. L. R. 289 (1879).
A transfer by a father to his minor son of shares of stock in a bank, and accepted by the father in trust for his minor son, is null and void for want of legal acceptance.

Smith vs. *The Bank of Nova Scotia*, 8 S. C. R. 558 (1883).
Held, that a resolution passed at a special general meeting of shareholders, authorizing a loan of such sum as might be necessary to enable the bank to resume specie payments, the shareholders agreeing to hold their shares without assigning them until the loan should be fully paid, could not bind shareholders not present at that meeting, even if it had been acted upon; and under the facts disclosed in evidence the defendant could not be deprived of his legal right under the Banking Act to transfer his shares and to have the transfer recorded in the books of the bank.

Barss vs. *Bank of Nova Scotia*, 6 R. & G. (Nova Scotia) 254 (1885).
The plaintiff being the holder of a number of shares in the Bank of Liverpool sold the same to S. and forwarded to him power of attorney, authorizing the registry of the transfer. At the same time he forwarded to the manager of the bank his stock certificates to be cancelled on the transfer being registered, and notified the bank of the transfer. S. paid the consideration for the shares and received the transfer, which he forwarded to the manager, whom he requested and authorized to register his acceptance. The bank declined to register the transfer until after payment of a certain loan obtained by the Bank of Liverpool from the Bank of Nova Scotia, which had been procured in pursuance of a resolution passed at a meeting of shareholders at which plaintiff was present, and which purported to bind the shareholders to hold their shares without assigning them until the principal and interest due on such loan had been fully paid. In the meanwhile the bank retained the papers, promising that when the loan was repaid the transfer would be duly entered. Subsequently, the Bank of Liverpool became insolvent and assigned to the Bank of Nova Scotia.
Held (on the authority of *Smith* vs. *Bank of Nova Scotia*, 8 S. C. R. 558, there being evidence that the loan was effected on other security than the resolution, and that the resolution was never acted upon), that plaintiff was not deprived by the passage of the resolution of his legal right to transfer his shares and to have the transfer registered in the books of the bank.

36. List of Transfers to be kept.—A list of all transfers of shares registered each day in the books of the bank, showing the parties to such transfers and the number of shares transferred in each case, shall be made up at the end of each day and kept at the chief place of business of the bank, for the inspection of its shareholders.

37. Transferrer of Shares must be registered owner.—All sales or transfers of shares, and all contracts and agreements in respect thereof, hereafter made or purporting to be made, shall be null and void (saving however, as to a purchaser not having knowledge of the defect, his rights and remedies under the contract of sale), unless the person making such sale or transfer, or in whose name or on whose behalf the same is made, is at the time thereof the registered

owner in the books of the bank of the share or shares so sold or transferred, or intended or purported so to be, or has the registered owner's assent to the sale, and the distinguishing number or numbers of such share or shares, if any, shall be designated in the contract or agreement of sale or transfer; and any person, whether principal, broker or agent, who violates the provisions of this section by wilfully selling or transferring, or attempting to sell or transfer, any share or shares by a false number, or of which the principal is not, at the time of such sale or attempted sale, the registered owner, or acting with the registered owner's assent to the sale, shall be guilty of an offence against this Act.

38. Sale of Shares under execution.—When any share of the capital stock has been sold under a writ of execution, the officer by whom the writ was executed shall, within thirty days after the sale, leave with the bank an attested copy of the writ, with the certificate of such officer indorsed thereon, certifying to whom the sale has been made; and thereupon (but not until after all debts and liabilities of the holder of the share to the bank, and all liens existing in favor of the bank thereon, have been discharged, as herein provided), the president, vice-president, manager or cashier of the bank shall execute the transfer of the share so sold to the purchaser; and such transfer shall be, to all intents and purposes, as valid and effectual in law as if it had been executed by the holder of the said share.

39. Transmission of shares otherwise than by transfer, how authenticated.—Proviso: as to declaration made out of Canada, etc.—**Proviso: further evidence may be required.**—If the interest in any share in the capital stock becomes transmitted in consequence of the death, bankruptcy, or insolvency of any shareholder, or in consequence of the marriage of a female shareholder, or by any other lawful means than by a transfer according to the provisions of this Act, such transmission shall be authenticated by a declaration in writing, as hereinafter mentioned, or in such other manner as the directors of the bank require; and every such declaration shall distinctly state the manner in which and the person to whom such shares have been transmitted, and shall be made and signed by such person; and the person making and signing such declaration shall acknowledge the same before a judge of a court of record, or before the mayor, provost or chief magistrate of a city, town, borough or other place, or before a notary public, where the same is made and signed; and every declaration so signed and acknowledged shall be left with the cashier, manager or other officer or agent of the bank, who shall thereupon enter the name of the person entitled under such transmission in the register of shareholders; and until such transmission has been so authenticated, no person claiming by virtue of any such transmission shall be entitled to participate in the profits of the bank, or to vote in respect of any such share of the capital stock: Provided always, that every such declaration and instrument as, by this and the next following section of this Act, are required to

perfect the transmission of a share in the bank which is made in any country other than Canada, or any other British colony, or the United Kingdom, shall be further authenticated by the clerk of a court of record and under the seal of such court, or by the British consul or vice-consul, or other accredited representative of the British Government in the country where the declaration is made, or shall be made directly before such British consul or vice-consul or other accredited representative; and provided also, that the directors, cashier or other officer or agent of the bank may require corroborative evidence of any fact alleged in any such declaration.

40. Transmission by marriage of female Shareholder.—If the transmission of any share of the capital stock has taken place by virtue of the marriage of a female shareholder, the declaration shall be accompanied by a copy of the register of such marriage, or other particulars of the celebration thereof, and shall declare the identity of the wife with the holder of such share, and shall be made and signed by such female shareholder and her husband; and they may include therein a declaration to the effect that the share transmitted is the separate property and under the sole control of the wife, and that she may receive and grant receipts for the dividends and profits accruing in respect thereof, and dispose of and transfer the share itself, without requiring the consent or authority of her husband; and such declaration shall be binding upon the bank and persons making the same, until the s[illegible] persons see fit to revoke it by a written notice to that e[illegible] to the bank; but the omission of a statement in any suc[illegible] claration that the wife making the same is duly authorize[illegible] her husband to make the same shall not invalidate the declaration.

41. Transmission by Decease.—If the transmission has taken place by virtue of any testamentary instrument, or by intestacy, the probate of the will, or the letters of administration, or act of curatorship or tutorship, or an official extract therefrom, shall, together with such declaration, be produced and left with the cashier or other officer or agent of the bank, name of the person entitled under such transmission.

Boyd vs. *The Bank of New Brunswick*, New Brunswick Equity Cases, 546 (1891).

Under the "Bank Act," ch. 120, R. S. Can., a bank cannot refuse to register a transfer to a purchaser by an executor of shares in the bank standing in the name of the testator, though by the testator's will the shares are specifically bequeathed.

Hencker vs. *Bank of Montreal*, R. J. Q., 7 S. C. 257 (1895).

Section 1 of 55-56 V., Quebec, c. 17, enacting R. S. Q. 1191 *d*, sub-section 5, provides, that "No transfer of the properties of any estate or succession shall be valid, nor shall any title vest in any person, if the taxes payable under this section have not been paid; and no executor, trustee, administrator, curator, heir or legatee shall consent to any transfers or payments of legacies unless the said duties have been paid."

Held, the above provision is *intra vires* of the Provincial Legislature, and a bank is therefore justified in refusing to register a transfer of shares by executors under a will, until proof is offered that the duties payable under the act above cited have been paid.

Donohue vs. *La Banque Jacques Cartier*, R. J. Q., 11 S. C. 90 (1896).

Notwithstanding the fact that the sale of shares of bank stock belonging to an absent minor was made while the minor was not properly represented, such sale, when subsequently ratified by a person legally entitled to represent the minor, will not be set aside at the suit of the minor after becoming of age,—more especially where it is proved that the proceeds of the sale of shares were applied for the benefit of the minor's' estate, and were entered in the' account rendered by the testamentary executors and duly accepted by the tutor.

42. Further provision in such case.—If the transmission of any share of the capital stock has taken place by virtue of the decease of any shareholder, the production to the directors and the deposit with them of an authentic notarial copy of the will of the deceased shareholder, if such will is in notarial form according to the law of the Province of Quebec, or of any authenticated copy of the probate of the will of the deceased shareholder, or of letters of administration of his estate, or of letters of verification of heirship, or of the act of curatorship or tutorship, granted by any court in Canada having power to grant the same, or by any court or authority in England, Wales, Ireland, or any British colony, or of any testament testamentary or testament dative expede in Scotland, or if the deceased shareholder died out of Her Majesty's dominions, the production to and deposit with the directors of any authenticated copy of the probate of his will or letters of administration of his property, or other document of like import, granted by any court or authority having the requisite power in such matters, shall be sufficient justification and authority to the directors for paying any dividend, or for transferring or authorizing the transfer of any share, in pursuance of and in conformity to such probate, letters of administration, or other such document as aforesaid.

43. Bank not bound to see to Trusts.—The bank shall not be bound to see to the execution of any trust, whether express, implied or constructive, to which any share of its stock is subject; and the receipt of the person in whose name any such share stands in the books of the bank, or, if it stands in the name of more persons than one, the receipt of one of such persons shall be a sufficient discharge to the bank for any dividend or any other sum of money payable in respect of such share, unless express notice to the contrary has been given to the bank; and the bank shall not be bound to see to the application of the money paid upon such receipt, whether given by one of such persons or all of them.

Muir vs. *Carter*, 16 S. C. R. 473 (1889).

The fact of bank shares being purchased in trust at a time when the trustee was solvent imports an interest in somebody else, and the onus is upon a party who has seized such shares to prove that they are in fact the property of the trustee, and as such available to satisfy the demand of his creditors. (*Sweeney* vs. *Bank of Montreal*, 12 Appeal Cases, 617 followed.)

Simpson vs. *Molsons Bank*, P. C., 11 R. 427, (1895); [1895] App. Cas. 270.

Where a statute incorporating a bank provides that "the bank shall not be bound to see to the execution of any trust, whether express, implied or constructive, to which any of the shares of the bank may be subject," such provision must relate to, and free the bank from, liability for trusts of which the bank had knowledge or notice, as the bank could not, apart from the statute, incur liability by not seeing to the execution of a trust of which they had no knowledge,

But assuming that the bank would be liable if it were shown that they were possessed of actual notice of the trust, the facts (1) that a copy of the testator's' will was in the possession of the bank; (2) that in the case of three of the testator's children, **notice of the substitution of grandchildren was contained in** the transfer registered by the executors in the bank's books on a previous occasion; (3) that one of the executors was president of the bank, and that the law agent of the executors was also law agent of the bank, and not sufficient to prove that the bank have received notice of the trust.

44. Executors and Trustees not personally liable.—Exception.—No person holding stock in the bank as executor, administrator, guardian or trustee, of or for any person named in the books of the bank as being so represented by him, shall be personally subject to any liability as a shareholder, but the estate and funds in his hands shall be liable in like manner and to the same extent as the testator, intestate, ward or person interested in such trust fund would be, if living and competent to hold the stock in his own name; and if the trust is for a living person, such person shall also himself be liable as a shareholder; but if such testator, intestate, ward or person so represented is not so named in the books of the bank, the executor, administrator guardian or trustee shall be personally liable in respect of such stock as if he held it in his own name as owner thereof.

ANNUAL STATEMENT AND INSPECTION.

45. Statement to be laid before Annual Meeting.—At every annual meeting of the shareholders for the election of directors, the out-going directors shall submit a clear and full statement of the affairs of the bank, containing on the one part,—

LIABILITIES.—The amount of the capital stock paid in, the amount of notes of the bank in circulation, the net profits made, the balances due to other banks, and the cash deposited in the bank, distinguishing deposits bearing interest from those not bearing interest; and on the other part,—

ASSETS.—The amount of the current coin, the gold and silver bullion, and the Dominion notes held by the bank, the balances due to the bank from other banks, the value of the real and other property of the bank, and the amount of debts owing to the bank, including and particularizing the amounts so owing upon bills of exchange, discounted notes, mortgages and other securities,—

WHAT STATEMENT SHALL SHOW.—Exhibiting, on the one hand, the liabilities of, or the debts due by the bank, and on the other hand the assets and resources thereof; and the said statement shall also exhibit the rate and amount of the last dividend declared by the directors, the amount of reserved profits at the date of such statement, and the amount of debts due to the bank, over-due and not paid, with an estimate of the loss which will probably accrue thereon.

46. Inspection of Books, etc.—The books, correspondence and funds of the bank shall, at all times, be subject to the inspection of the directors; but no person, who is not a director, shall be allowed to inspect the account of any person dealing with the bank.

DIVIDENDS.

47. Dividends.—The directors of the bank shall, subject to the provisions of this Act, declare quarterly or half-yearly dividends of so much of the profits of the bank as to the majority of them seems advisable; and they shall give at least thirty days' public notice of the payment of such dividends previously to the date fixed for such payment; and they may close the transfer books during a certain time, not exceeding fifteen days, before the payment of each dividend.

48. Dividend not to impair Capital.—Capital lost to be made up.—Proviso.—No dividend or bonus shall ever be declared so as to impair the paid-up capital; and if any dividend or bonus is so declared or made payable, the directors who knowingly and wilfully concur therein shall be jointly and severally liable for the amount thereof as a debt due by them to the bank; and if any part of the paid-up capital is lost, the directors shall, if all the subscribed stock is not paid up, forthwith make calls upon the shareholders to an amount equivalent to such loss; and such loss and the calls, if any, shall be mentioned in the next return made by the bank to the Minister of Finance and Receiver General: Provided that, in any case in which the capital has been impaired as aforesaid, all net profits shall be applied to make good such loss.

49. Dividend limited unless there is a certain reserve.—No division of profits, either by way of dividends or bonus, or both combined, or in any other way, exceeding the rate of eight per cent. per annum, shall be made by the bank, unless, after making the same, it has a rest or reserve fund equal to at least thirty per cent. of its paid-up capital; and all bad and doubtful debts shall be deducted before the amount of such rest is calculated.

RESERVES.

50. Part of Reserve to be in Dominion notes.—Penalty for non-compliance.—The bank shall hold not less than forty per cent. of its cash reserves in Dominion notes; and every bank holding at any time a less amount of its cash reserves in Dominion notes than is prescribed by this section shall incur a penalty of five hundred dollars for each and every violation of the provisions of this section:

2. Supply of Dominion notes.—The Minister of Finance and Receiver General shall make such arrangements as are necessary for insuring the delivery of Dominion notes to any bank, in exchange for an equivalent amount of specie, at the several offices at which Dominion notes are redeemable, in the cities of Toronto, Montreal, Halifax, St. John, N.B., Winnipeg, Charlottetown and Victoria, respectively; and such notes shall be redeemable at the office for redemption of Dominion notes in the place where such specie is given in exchange.

NOTE ISSUE.

51. Amount and denomination of Bank Notes.—The bank may issue and re-issue notes payable to bearer on de-

mand and intended for circulation; but no such note shall be for a sum less than five dollars, or for any sum which is not a multiple of five dollars, and the total amount of such notes, in circulation at any time, shall not exceed the amount of the unimpaired paid-up capital of the bank:

2. NOTE ISSUE OF BANQUE DU PEUPLE AND BANK OF BRITISH NORTH AMERICA.—Notwithstanding anything contained in the next preceding sub-section, the total amount of such notes in circulation at any time of La Banque du Peuple and the Bank of British North America respectively shall not exceed seventy-five per cent. of the unimpaired paid-up capital of such banks respectively, but each of such banks may issue such notes in excess of the said seventy-five per cent. upon depositing, with respect to such excess, with the Minister of Finance and Receiver General, in cash or bonds of the Dominion of Canada, an amount equal to the excess; provided always that in no case shall the total amount of the notes of either of the said banks in circulation at any time exceed the unimpaired paid-up capital of such bank; and the cash or bonds so deposited shall be available by the Minister of Finance and Receiver General for the redemption of notes issued in excess as aforesaid, in the event of the suspension of the said banks respectively:

3. PENALTIES FOR EXCESS OF CIRCULATION.—If the total amount of the notes of the bank in circulation at any time exceeds the amount authorized by this section, the bank shall incur penalties as follows: If the amount of such excess is not over one thousand dollars, a penalty equal to the amount of such excess; if the amount of such excess is over one thousand dollars and is not over twenty thousand dollars, a penalty of one thousand dollars; if the amount of such excess is over twenty thousand dollars, and is not over one hundred thousand dollars, a penalty of ten thousand dollars; if the amount of such excess is over one hundred thousand dollars and is not over two hundred thousand dollars, a penalty of fifty thousand dollars; and if the amount of such excess is over two hundred thousand dollars, a penalty of one hundred thousand dollars:

4. NOTES UNDER $5 TO BE CALLED IN.—All notes heretofore issued or re-issued by the bank, and now in circulation, which are for a sum less than five dollars, or for a sum which is not a multiple of five dollars, shall be called in and cancelled as soon as practicable.

52. Pledging of Notes prohibited.—The bank shall not pledge, assign, or hypothecate its notes; and no advance or loan made on the security of the notes of a bank shall be recoverable from the bank or its assets:

2. PENALTY FOR PLEDGING.—Every person who, being the president, vice-president, director, principal partner *en commandite*, general manager, manager, cashier, or other officer of the bank, pledges, assign, or hypothecates, or authorizes, or is concerned in the pledge, assignment or hypothecation of the notes of the bank, and every person who accepts, receives or takes, or authorizes or is concerned in the acceptance or receipt or taking of such notes as a pledge, assignment or hypo-

thecation, shall be liable to a fine of not less than four hundred dollars and not more than two thousand dollars, or to imprisonment for not more than two years, or to both:

3. PENALTY FOR IMPROPER ISSUE OR TAKING OF NOTES.—Every person who, being the president, vice-president, director, principal partner *en commandite*, general manager, manager, cashier, or other officer of a bank, with intent to defraud, issues or delivers, or authorizes or is concerned in the issue or delivery of notes of the bank intended for circulation and not then in circulation,—and every person who, with knowledge of such intent, accepts, receives or takes, or authorizes or is concerned in the acceptance, receipt or taking of such notes,—shall be guilty of a misdemeanor, and liable to imprisonment for a term not exceeding seven years, or to a fine not exceeding two thousand dollars, or to both.

53. Notes to be first charge of Assets.—The payment of the notes issued or re-issued by the bank and intended for circulation, and then in circulation, together with any interest paid or payable thereon as hereinafter provided, shall be the first charge upon the assets of the bank in case of its insolvency; and the payment of any amount due to the Government of Canada, in trust or otherwise, shall be the second charge upon such assets; and the payment of any amount due to the government of any of the Provinces, in trust or otherwise, shall be the third charge upon such assets:

The Queen vs. *The Bank of Nova Scotia*, 11 S. C. R. 1 (1885).

Held, that the Crown claiming as a simple contract creditor of an insolvent bank has a right to priority over other creditors of equal degree. This prerogative privilege belongs to the Crown as representing the Dominion of Canada, when claiming as a creditor of a Provincial corporation in a Provincial Court, and is not taken away in proceedings in insolvency by 45 Vict., ch. 23.

Exchange Bank vs. *Queen*, 11 A. C. 157 (1886).

The Crown is bound by the two Codes of Lower Canada, and can claim no priority except what is allowed by them. Being an ordinary creditor of a bank in liquidation, it is not entitled to priority of payment over its other ordinary creditors.

Maritime Bank vs. *The Queen*, 17 S. C. R. 657 (1889).

An insurance company, in order to deposit $50,000 with the Minister of Finance and receive a license to do business in Canada according to the provisions of the Insurance Act (R. S. C., c. 124), deposited the money in a bank and forwarded the deposit receipt to the Minister. The money in the bank drew interest which, by arrangement, was received by the company. The bank having failed, the government claimed payment in full of this money as money deposited by the Crown.

Held, that it was not the money of the Crown, but was held by the Finance Minister in trust for the company; it was not, therefore, subject to the prerogative of payment in full in priority to other creditors.

The Liquidators of the Maritime Bank vs. *The Receiver-General of New Brunswick*, [1892] App. Cas. 437.

The British North America Act, 1867, has not severed the connection between the Crown and the Provinces; the relation between them is the same as that which subsists between the Crown and the Dominion in respect of the powers, executive and legislative, public property and revenues, as are vested in them respectively. In particular, all property and revenues reserved to the Provinces by sections 109 and 126 are vested in Her Majesty as sovereign head of each Province.

Held, affirming a judgment of the Supreme Court of Canada, that the provincial government of New Brunswick, being a

simple contract creditor of the Maritime Bank of the Dominion of Canada in respect of public moneys of the province deposited in the name of the Receiver-General of the province, is entitled to payment in full over the other depositors and simple contract creditors of the bank, its claim being for a Crown debt to which the prerogative attaches.

2. LIABILITY FOR PENALTIES IN CASE OF INSOLVENCY.—The amount of any penalties for which the bank is liable shall not form a charge upon the assets of such bank, in case of its insolvency, until all other liabilities are paid.

54. Existing Banks to make deposit with Minister of Finance equal to five per cent. of note circulation.—Every bank to which this Act applies, and which is carrying on its business at the time when this Act comes into force, shall, within fifteen days thereafter, pay to the Minister of Finance and Receiver General, a sum of money equal to two and one-half per cent. of the average amount of its notes in circulation during the twelve months next preceding the date of the coming into force of this Act, or if such bank has not been in operation for twelve months, a sum of money equal to two and one-half per cent. of the average amount of its notes in circulation during the time it has been in operation; and each bank shall, within fifteen days from and after the first day of July, in the year one thousand eight hundred and ninety-two, pay to the Minister of Finance and Receiver General such further sum of money as is necessary to make the total amount so paid by each bank to be a sum equal to five per cent. of the average amount of its notes in circulation during the twelve months next preceding the date last mentioned,—which sum shall be adjusted annually as hereinafter provided:

2. AS TO MERCHANTS' BANK OF P.E.I.—The Merchants' Bank of Prince Edward Island shall, on or before the day upon which it becomes subject to the provisions of this Act, pay to the Minister of Finance and Receiver General such sum as appears to the satisfaction of the Treasury Board to be equal to two and one-half per cent. of the average amount of its notes in circulation during the then preceding twelve months; and shall further pay to the Minister of Finance and Receiver General, within fifteen days from and after the first day of July in the year then next following, such further sum as is necessary to make the total sum paid by the said bank to be a sum equal to five per cent. of the average amount of its notes in circulation from the time the said bank became subject to the provisions of this Act to the said first day of July,—which sum shall be adjusted annually as hereinafter provided:

3. AS TO NEW BANKS.—The Minister of Finance and Receiver General shall, upon the issue of a certificate under this Act authorizing a bank to issue notes and commence the business of banking, retain out of any moneys of such bank then in his possession the sum of five thousand dollars,—which sum shall be held for the purposes of this section, until the annual adjustment hereunder takes place in the year then next following, at which time the amount at the credit of the bank shall be adjusted by payment to or by the bank of such sum

as is necessary to make the amount at the credit of the bank to be a sum of money equal to five per cent. of the average amount of its notes in circulation from the time it commenced business to the time of such adjustment,—which sum shall be adjusted annually as hereinafter provided:

4. FORMATION OF CIRCULATION REDEMPTION FUND.—The amounts so paid, retained, and kept on deposit as aforesaid shall form a fund to be known as "The Bank Circulation Redemption Fund,"—which fund shall be held for the following purpose, and for no other, namely: In the event of the suspension by the bank of payment in specie or Dominion notes of any of its liabilities as they accrue, for the payment of the notes then issued or re-issued by such bank, and intended for circulation, and then in circulation, and interest thereon; and the Minister of Finance and Receiver General shall, with respect to all notes paid out of the said fund, have the same rights as any other holder of the notes of the bank:

5. FUND TO BEAR INTEREST.—The fund shall bear interest at the rate of three per cent. per annum, and it shall be adjusted, as soon as possible after the thirtieth day of June in each year, in such a way as to make the amount at the credit of each bank contributing thereto, unless herein otherwise specially provided, equal to five per cent. of the average note circulation of such bank during the then next preceding twelve months:

6. NOTE CIRCULATION, HOW DETERMINED.—The average note circulation of a bank during any period shall be determined from the average of the amount of its notes in circulation, as shown by the monthly returns for such period made by the bank to the Minister of Finance and Receiver General; and where, in any return, the greatest amount of notes in circulation at any time during the month is given, such amount shall, for the purposes of this section, be taken to be the amount of the notes of the bank in circulation during the month to which such return relates:

7. NOTES OF BANK SUSPENDING PAYMENT TO BEAR INTEREST UNTIL REDEEMED.—IF NOT REDEEMED TO BE PAID OUT OF FUND.—PROVISO.—In the event of the suspension by the bank of payment in specie or Dominion notes of any of its liabilities as they accrue, the notes of such bank, issued or re-issued and intended for circulation, and then in circulation, shall bear interest at the rate of six per cent. per annum, from the day of such suspension to such day as is named by the directors, or by the liquidator, receiver, assignee or other proper official, for the payment thereof,—of which day notice shall be given by advertisement for at least three days in a newspaper published in the place in which the head office of the bank is situate; but in case any notes presented for payment on or after any day named for payment thereof are not paid, all notes then unpaid and in circulation shall continue to bear interest to such further day as is named for payment thereof,—of which day notice shall be given in manner above provided: Provided always, that in case of failure on the part of the directors of the bank, or of the liquidator, receiver, assignee or other proper official, to make arrangements within two months from

the day of suspension of payment by the bank as aforesaid for the payment of all of its notes and interest thereon, the Minister of Finance and Receiver General may thereupon make arrangements for the payment of the notes remaining unpaid, and all interest thereon, out of the said fund, and shall give such notice of such payment as he thinks expedient, and on the day named by him for such payment all interest on such notes shall cease, anything herein contained to the contrary notwithstanding; but nothing herein contained shall be construed to impose any liability on the Government of Canada or on the Minister of Finance and Receiver General beyond the amount available from time to time out of the said fund:

8. PAYMENTS FROM FUND TO BE WITHOUT REGARD TO AMOUNT CONTRIBUTED.—PROVISO.—All payments made from the said fund shall be without regard to the amount contributed thereto by the bank in respect of whose notes the payments are made; and in case the payments from the fund exceed the amount contributed by such bank to the fund, and all interest due or accruing due to such bank thereon, the other banks shall, on demand, make good to the fund the amount of such excess, *pro rata* to the amount which each bank has at that time contributed to the fund; and all amounts recovered and received by the Minister of Finance and Receiver General from the bank on whose account such payments were made shall, after the amount of such excess has been made good as aforesaid, be distributed among the banks contributing to make good such excess *pro rata* to the amount contributed by each; Provided always, that each of such other banks shall only be called upon to make good to the said fund its share of such excess, in payments not exceeding in any one year one per cent. of the average amount of its notes in circulation,—such circulation to be ascertained in such manner as the Minister of Finance and Receiver General decides; and his decision shall be final:

9. REPAYMENT OF AMOUNT IF BANK IS WOUND UP.—In the event of the winding up of the business of a bank by reason of insolvency or otherwise, the Treasury Board may, on the application of the directors, or of the liquidator, receiver, assignee or other proper official, and on being satisfied that proper arrangements have been made for the payment of the notes of the bank and any interest thereon, pay over to such directors, liquidator, receiver, assignee or other proper official, the amount at the credit of the bank, or such portion thereof as it thinks expedient:

10. TREASURY BOARD MAY REGULATE MANAGEMENT OF FUND.—The Treasury Board may make all such rules and regulations as it thinks expedient with reference to the payment of any moneys out of the said fund, and the manner, place and time of such payments, the collection of all amounts due to the said fund, all accounts to be kept in connection therewith, and generally the management of the said fund and all matters relating thereto:

11. ENFORCEMENT OF PAYMENT.—The Minister of Finance and Receiver General may, in his official name, by action in the Exchequer Court of Canada enforce payment (with costs of

action) of any sum due and payable by any bank under the provisions of this section.

55. Notes of Banks to be payable at par throughout Canada.—The bank shall make such arrangements as are necessary to ensure the circulation at par in any and every part of Canada of all notes issued or re-issued by it and intended for circulation; and towards this purpose the bank shall establish agencies for the redemption and payment of its notes at the cities of Halifax, St. John, Charlottetown, Montreal, Toronto, Winnipeg and Victoria, and at such other places as are, from time to time, designated by the Treasury Board.

56. Redemption of Notes.—The bank shall always receive in payment its own notes at par at any of its offices, and whether they are made payable there or not:

2. PAYABLE AT CHIEF PLACE OF BUSINESS.—The chief place of business of the bank shall always be one of the places at which its notes are made payable.

57. Payments in Dominion notes.—Torn or defaced notes.—The bank, when making any payment, shall, on the request of the person to whom the payment is to be made, pay the same, or such part thereof, not exceeding one hundred dollars, as such person requests, in Dominion notes for one, two, or four dollars each, at the option of such person: Provided always, that no payment, whether in Dominion notes or bank notes, shall be made in bills that are torn or partially defaced by excessive handling.

58. Bonds, notes, etc., how and by whom to be signed.—Proviso: power may be deputed to officer.—The bonds, obligations and bills, obligatory or of credit, of the bank under its corporate seal, and signed by the president or vice-president and countersigned by a cashier or assistant cashier, which are made payable to any person, shall be assignable by indorsement thereon; and bills or notes of the bank signed by the president, vice-president, cashier or other officer appointed by the directors of the bank to sign the same, promising the payment of money to any person or to his order, or to the bearer, though not under the corporate seal of the bank, shall be binding and obligatory on it in like manner and with the like force and effect as they would be upon any private person, if issued by him in his private or natural capacity, and shall be assignable in like manner as if they were so issued by a private person in his natural capacity: Provided always, that the directors of the bank may, from time to time, authorize, or depute any cashier, assistant cashier or officer of the bank, or any director other than the president or vice-president, or any cashier, manager or local director of any branch or office of discount and deposit of the bank, to sign the notes of the bank intended for circulation.

59. Notes may be signed by machinery.—One signature must be written.—All bank notes and bills of the bank whereon the name of any person intrusted or authorized

to sign such notes or bills on behalf of the bank is impressed by machinery provided for that purpose, by or with the authority of the bank, shall be good and valid to all intents and purposes as if such notes and bills had been subscribed in the proper handwriting of the person intrusted or authorized by the bank to sign the same respectively, and shall be bank notes and bills within the meaning of all laws and statutes whatever, and may be described as bank notes or bills in all indictments and civil or criminal proceedings whatsoever: Provided always, that at least one signature to each note or bill must be in the actual handwriting of a person authorized to sign such note or bill.

60. Penalty for unauthorized issue of notes for circulation.—Every person, except a bank to which this Act applies, who issues or re-issues, makes, draws, or indorses any bill, bond, note, cheque or other instrument, intended to circulate as money, or to be used as a substitute for money, for any amount whatsoever, shall incur a penalty of four hundred dollars, which shall be recoverable with costs, in any court of competent jurisdiction, by any person who sues for the same; and a moiety of such penalty shall belong to the person suing for the same, and the other moiety to Her Majesty for the public uses of Canada:

2. What shall be deemed such notes.—The intention to pass any such instrument as money shall be presumed, if it is made for the payment of a less sum than twenty dollars, and is payable either in form or in fact to the bearer thereof, or at sight, or on demand, or at less than thirty days thereafter, or is overdue, or is in any way calculated or designed for circulation, or as a substitute for money; unless such instrument is a cheque on some chartered bank paid by the maker directly to his immediate creditor, or a promissory note, bill of exchange, bond or other undertaking for the payment of money, paid or delivered by the maker thereof to his immediate creditor, and is not designed to circulate as money or as a substitute for money.

61. Defacement of Notes—Penalty.—Every person who in any way defaces any Dominion or Provincial note, or bank note, whether by writing, printing, drawing or stamping thereon, or by attaching or affixing thereto, anything in the nature or form of an advertisement, shall be liable to a penalty not exceeding twenty dollars.

62. Counterfeit and fraudulent notes to be stamped as such.—Every officer charged with the receipt or disbursement of public moneys, and every officer of any bank, and every person acting as or employed by any banker, shall stamp or write in plain letters the word "counterfeit," "altered" or "worthless," upon every counterfeit or fraudulent note issued in the form of a Dominion or bank note, and intended to circulate as money, which is presented to him at his place of business; and if such officer or person wrongfully stamps any genuine note he shall, upon presentation, redeem it at the face value thereof.

63. No advertisement, etc., to be issued in the form of a note.—Every person who designs, engraves, prints or in any manner makes, executes, utters, issues, distributes, circulates or uses any business or professional card, notice, placard, circular, hand-bill or advertisement in the likeness or similitude of any Dominion or bank note, or any obligation or security of any Government, or of any bank, is liable to a penalty of one hundred dollars or to three months' imprisonment, or to both.

BUSINESS AND POWERS OF THE BANK.

64. Branches and agencies.—General powers of the Bank.—Certain business may not be transacted by the Bank.—The bank may open branches, agencies and offices, and may engage in and carry on business as a dealer in gold and silver coin and bullion, and it may deal in, discount, and lend money and make advances upon the security of, and may take as collateral security for any loan made by it, bills of exchange, promissory notes and other negotiable securities, or the stock, bonds, debentures and obligations of municipal and other corporations, whether secured by mortgage or otherwise, or Dominion, Provincial, British, foreign and other public securities, and it may engage in and carry on such business generally as appertains to the business of banking; but, except as authorized by this Act, it shall not, either directly or indirectly, deal in the buying, or selling, or bartering of goods, wares and merchandise, or engage or be engaged in any trade or business whatsoever; and it shall not, either directly or indirectly, purchase, or deal in, or lend money, or make advances upon the security or pledge of any share of its own capital stock, or of the capital stock of any bank; and it shall not, either directly or indirectly, lend money or make advances upon the security, mortgage, or hypothecation of any land, tenements, or immovable property, or of any ships or other vessels, or upon the security of any goods, wares and merchandise.

Browne vs. *Commercial Bank*, 10 U. C. Q. B. 129 (1852).

The plaintiffs indorsed a promissory note to the defendants for collection. The note was made by one C. C., living in Cobourg, payable to the order of one G. S. B. generally, not at any bank or other place; and from G. S. B. it had passed by several indorsements to the plaintiffs. After it had been received by the defendants, it was indorsed by their teller at Toronto in favor of J. T., their agent at Cobourg.

The different endorsers were notified by the bank that the note had been presented to the maker, and payment refused, and that the bank looked to them for payment; and the note was returned to the plaintiffs as having been duly presented.

The plaintiffs then sued the indorsers, but were defeated in their actions, in consequence of a want of proper presentment for payment.

Held, that, under the circumstances of this case, the bank were liable to the plaintiffs for such want of presentment, notwithstanding a notice issued by them, and which the plaintiffs had received, that all notes delivered to them, and that they (the defendants) would be responsible only for moneys actually received in payment of such notes, but not for any omissions, informalities, or mistakes, in respect of such notes.

Richer vs. *Voyer*, L. R., 5 P. C. 461 (1874).

A bank certificate was given in the following form:—

MONTREAL, 7 septembre, 1863.

"A. B. a depose dans cette banque a interet a quatre pour cent. par an, la somme de deux mille dollars, payable a l'ordre C. D., lors de la remise du present certificat. Cette somme pour porter interet devra rester au moins trois mois dans cette banque, et le porteur de ce certificat ne pourra la retirer qu'apres quinze jours d'avis, l'interet cessant du jour de cette avis."

Quaere, whether this was a negotiable instrument under Art. 2349 of the Civil Code of Lower Canada.

Under the 776th Article of the Civil Code of Lower Canada, which provides that gifts of moveable property accompanied by delivery may be made and accepted by private writings or verbal agreements, the anterior possession of property which can be the subject of *don manuel* is equivalent to delivery at the time of the gift, although the former possession was for another purpose.

The maxim of the French law—*possession vaut titre*—held not to apply where an agent held possession of a bank deposit certificate standing in the name of his principal, and bearing the principal's endorsement, the production of which certificate was required by the bank whenever interest was paid.

Lewis vs. *Jeffery*, M. L. R., 7 Q. B. 141 (1875).

Where a note of a third party is transferred for valuable security, being given in payment of goods purchased, and the note is not endorsed by the transferor, a warranty is implied that the maker is not insolvent to the knowledge of the transferor.

If it be proved that the maker of the note was insolvent to the knowledge of the transferor, the party who received it is entitled to offer it back and claim the amount from the transferer, without asking for the rescission of the contract *in toto*.

Dunspaugh vs. *Molsons Bank*, 22 L. C. J. 57 (1878).

Where a bank is induced to advance a sum of money to B. on the undertaking implied in a telegram from A. to B. and exhibited to the bank, that A. will repay the advance by accepting a draft for the amount thereof, and the advance is used to retire another draft for which A. is liable, that A. is liable to the bank for the advance, though he subsequently refuses to accept the draft.

Molsons Bank vs. *Kennedy*, 10 R. L. 110 (1879).

A bank is not prohibited by the Banking Act from guaranteeing the payment of certain merchandises purchased by their customer.

The Railway & Newspaper Advertising Co. vs. *Molsons Bank*, 2 L. N. 207 (1879).

A bank is not liable for calls on stock of an incorporated company held as collateral security.

Union Bank vs. *Ontario Bank*, 24 L. C. J. 309 (1880).

Where a bank draws a draft for $25 on one of its branches, and fails to advise said branch of the fact, and the draft is afterwards raised to one of $5,000, and so skilfully as to deceive the branch office, which pays the amount of the draft as raised to another bank, holding the draft in good faith, and, in consequence of such payment, this latter bank pays $3,500 on account thereof to the person from whom the bank received it, the former bank cannot recover from the latter bank the amount so paid to it.

Bank of Montreal vs. *Geddes*, 3 L. N. 146 (1880).

Under the Banking Act of 1871, 34 Vict., ch. 5, a bank could not legally make loans upon the security of the stock of any joint stock company, except the stock of other banks, and therefore an action by the bank against the directors of a street railway company for loss sustained by making a loan on its stock (which was alleged to have been unduly inflated by false statements on the part of said directors) cannot be maintained.

Consolidated Bank vs. *Merchants Bank*, 27 L. C. J. 370 (1882).

A letter of guarantee given to a bank, securing the payment of notes discounted by said bank, for certain firms mentioned,

does not bind the guarantors to a bank constituted by the amalgamation of the said bank with another bank.

Bain vs. *Torrance*, 1 Man. 32 (1884).

Plaintiff applied for payment over, by the bank, of money deposited at their branch office at Winnipeg.

Previous to the garnishee order being made, the money had been paid over by the head office at Toronto, under sequestration issued against the defendant in Ontario.

***Held*, following *Irwin* vs. *The Bank of Montreal*, 38 U. C. Q. B.** 375, that a bank and its branches are but one concern, and that the application must therefore be discharged with costs.

***Sweeney* vs. *Bank of Montreal*, 12 S. C. R. 661 (1885).**

S. brought an action against the Bank of Montreal to recover the value of certain shares of stock transferred to the bank under the following circumstances:—S.'s money was originally sent out from England, to J. R. at Montreal, to be invested in Canada for her. J. R. subscribed for a certain amount of stock in a certain incorporated company as follows: "J. R. in trust," without naming for whom, and paid for it with S.'s money. He subsequently sent over the certificates of stock to S., and paid her the dividends he received on the stock. Becoming indebted to the Bank of Montreal, R. transferred to the manager of the bank as security for his indebtedness a certain number of S.'s shares, and the transfer showed in its face that he held these shares "in trust." The Bank of Montreal then received the dividends on these shares, credited them to J. R., who paid them to S. J. R. subsequently became insolvent, and S., not receiving her dividends as usual, sued the Bank for an account.

Held, that there was sufficient to show that J. R. was acting as the mandatary or agent of S., and the Bank of Montreal, not having shown that J. R. had authority to sell or pledge the said stock, S. was entitled to get an account from the bank.

Exchange Bank vs. *Canadian Bank of Commerce*, M. L. R., 2 Q. B. 476 (1886).

Where drafts and notes are placed with a bank by a debtor of the bank, not as collateral security, but for collection, compensation does not take place until the bank has received the amounts collected by them on such notes; and in the present case, the debtor having become insolvent before any amounts were received on such notes, the compensation did not take place between the amount collected by the bank and the debt due to it. (Reversing M. L. R. 1 S. C. 225.)

MacFarlane & Corporation of the Parish of St. Cesaire, M. L. R., 2 Q. B. 160 (1886).

A debenture is a negotiable instrument, and cannot bear a condition on the face of it, making its validity dependent upon obligations to be performed in future. And so where a municipal corporation voted a bonus to a railway company payable in debentures, and the by-law imposed certain future obligations **upon the company as to the mode of operating the road, it was** *held* that debentures in which these obligations were set forth as conditions were not a valid tender.

N.B.—This judgment was confirmed in the Supreme Court of Canada, 14 S. C. R. 738.

Exchange Bank & Montreal City and District Savings Bank, M. L. R., 6 Q. B. 196 (1887).

A savings bank, holding bank shares as pledgee, and appearing as owner on the books of the bank, is not the owner of such shares within the meaning of section 58 of the Banking Act, 34 Vict., ch. 5, and therefore is not subject to the double liability.

A bank, shares of which are transferred to a savings bank, is presumed to know that the shares are held by the latter as collateral security, inasmuch as under section 18 of 34 Vict., ch. 7, a savings bank cannot acquire bank shares or hold them **except as pledgee. (Affirming M. L. R. 2 S. C. 129 (1881).**

Exchange Bank vs. *Nowell*, M. L. R., 3 S. C. 129 (1887).

Where a bank took a note endorsed by a customer as security for past advances, amounting to about $10,000, and after the maturity of this note, deposits amounting to more than $100,000, were passed to his credit in the books of the bank—

Held, that in the absence of any special imputation of payments or reserve as to the application of the subsequent deposits, these deposits were to be imputed in payment of the oldest debt, and the customer's liability at the maturity of the collateral security being more than paid by the subsequent deposits, the collateral was discharged, and the bank's action against the maker and first endorser of said note would be dismissed.

Goodall vs. *Exchange Bank*. M. L. R., 3 Q. B. 430 (1887).

T., a customer of the bank, discounted with that bank appellant's acceptance. When it fell due appellant failed to pay it, and the bank charged to T's account, who at the time owed the bank a small balance, which balance was augmented by subsequent transactions, wherein nevertheless, if the credits were imputed to the earliest indebtedness, the balance due when the acceptance matured would be more than covered. The bank retained possession of the acceptance, and brought this suit against appellant, the acceptor, to recover its amount. Appellant pleaded payment and compensation. *Held*, That the bank was entitled to recover from appellant the amount of his acceptance, and that appellant was not discharged by the credits in the bank's account with T.

Cleveland vs. *Exchange Bank*, M. L. R., 3 Q. B. 30 (1887).

Where the amount of a note discounted by a bank for the endorser was charged on maturity to the endorser's account, and the deposits subsequently made by the endorser, as shown by the books of the bank, were more than sufficient to cover his indebtedness to the bank at the time the note matured, such note must be held to have been paid, and the bank has no action thereon against the maker who has paid the endorser (but without obtaining possession of the note); and the fact that the endorser's aggregate indebtedness to the bank continued to increase does not affect the question of payment of the note referred to in the absence of a reserve of recourse by the bank thereon.

Bank of Montreal vs. *Sweeny*, 12 A. C. 617 (1887).—*Held*, by the Privy Council, affirming the judgment of the Superior Court of Canada.

A holder of shares "in trust" is not a *manditaire*, *prete-nom*, and holds subject to a prior title on the part of some person undisclosed. Such holding not being forbidden by the law of the colony, a transferee from such holder is bound to enquire whether the transfer is authorized by the nature of the trust.

Maritime Bank vs. *Union Bank*, M. L. R., 4 S. C. 244 (1888).

A bank acting as agent for another bank is not authorized in the absence of express agreement, to cash a cheque drawn upon the principal bank but unaccepted by it.

A telegram from the president of the principal bank to a depositor therein, stating that certain funds are at his credit, is not an acceptance of a cheque drawn by the depositor upon the receipt of such telegram for the amount of the funds, such telegram adding nothing to the legal obligation of the principal bank towards the depositor to pay the cheque when duly presented for payment, if there were then funds at his credit to meet it and no legal hindrance to its payment existed.

No compensation arises between the principal bank and its agent, entitling the latter to set off moneys paid under an unaccepted cheque upon the principal bank against moneys held by the agent and due to the principal bank.

A custom of bankers cannot be put in evidence unless it has been specially pleaded.

Merchants' Bank & McKay, 15 S. C. R. 672 (1888).

McKay gave a mortgage to the Merchants Bank as security for the present indebtedness of, and future advances to, a customer of the bank. By the terms of the mortgage McKay was to be liable, amongst other things for the promissory notes, etc. of the customer outstanding at the date of the mortgage, and all renewals, alterations and substitutions thereof.

Held, That the bank having given up the said promissory notes, etc., and accepted as renewals thereof, forged and worthless paper, McKay was, to the extent of such worthless paper, relieved from liability as such surety;

Held, That the bank having accepted the renewals in the ordinary course of banking business, and it not being shown that they were guilty of negligence, the surety was not relieved.

Bank of Montreal vs. *Thomas,* 16 O. R. 503 (1888).

On the maturity of a bill of exchange, the drawers thereof, thinking the acceptor would be unable to meet it, telegraphed him, that if unable to pay it to draw on them for the amount. The acceptor took the telegram to the manager of the bank, who, on the faith of it, discounted a sight draft by the acceptor on the drawers, with the proceeds of which he retired his acceptance, which was held by another bank. The drawers refused to accept the bill so drawn.

Held, that the telegram having been sent for the purpose of inducing persons to advance money on it, and to take the bill so drawn in pursuance of it, a privity was created between the bank which discounted it and the senders of the telegram, entitling the former to maintain an action against the latter for the money so advanced.

Black vs. *The Bank of Nova Scotia,* 21 N. Sc. 448 (1889).

The Bank of Liverpool being indebted to defendant bank in the sum of $80 000, agreed to pay the amount in instalments, plaintiffs, among others, being sureties for three instalments, amounting to $60,000. Acceptances held by the Liverpool Bank were placed with the defendant bank as collateral security for the last of the instalments on which plaintiffs were liable, and were collected by defendant bank, but were afterwards appriated by defendant bank to a different indebtedness. Plaintiffs, in ignorance of the appropriation first mentioned, paid in 1879 a balance of $9,772.30 demanded from them, and on afterwards discovering the facts as to the appropriation and payment, brought the present action to recover it back as paid under mistake of fact.

Held, that the amount having been appropriated in the first instance to the debt on which plaintiffs were sureties, no other appropriation could be made without plaintiffs' consent; that plaintiffs were not estopped on account of their not having demanded an investigation of the state of the accounts before paying, nor by the fact that when called on to pay they requested further time and made use of it to obtain securities from the Liverpool Bank; that defendants could not set up that they had been prejudiced by plaintiffs'' payment, in their dealings with the insolvent bank, as the facts of the matter were within their knowledge and not in the knowledge of the plaintiffs; that plaintiffs were not bound to tender to defendants before action the bond of the Liverpool Bank which had been assigned to plaintiffs for the reason, among others, that it had been paid off by the money so appropriated, and was valueless.

Johansen vs. *Chaplin,* M. L. R., 6 Q. B. 111 (1889).

A bank is not authorized to enter into a contract of suretyship guaranteeing the payment by a customer of the hire of a steamship under a charter party. (And see *Watts* vs. *Wells,* M. L. R., 7 Q. B. 387.)

Landry vs. *The Bank of Nova Scotia,* 29 N. B. 564 (1889).

The plaintiffs drew and endorsed a bill of exchange and delivered it to the defendants to discount, which they agreed to do if the bill was accepted. After acceptance the defendants refused to give the plaintiff either the proceeds of the bill, claiming the right to apply it to the payment of a debt which the plaintiffs owed them.

Held, that the defendants were liable in trover for a conversion of the bill.

A discount means an advance of money, upon the transfer of a negotiable instrument to the bank, payable at a future day, as security.

Thompson vs. *Molsons Bank,* 16 S. C. R. 664 (1889).

The Molsons Bank took from H. & Co. several warehouse receipts as collateral security for commercial paper discounted in the ordinary course of business, and having a surplus from the sale of the goods represented by the receipts, after paying the debts for which they were immediately pledged, claimed under a parole agreement to hold that surplus in payment of

other debts due by H. & Co. H. & Co., having become insolvent, Thompson, as one of the creditors, brought an action against the bank claiming that the surplus must be distributed rateably among the general body of creditors.

Held, that the parol agreement was not contrary to the provisions of the Banking Act, R. S. C., ch. 120, and that after the goods were lawfully sold the money that remained, after applying the proceeds of each sale to its proper note, could properly be applied by the bank under the terms of the parol agreement.

(See under section 23, *Exchange Bank* vs. *Fletcher*,)

Re Central Bank, Morton and Black's Claims, 17 O. R. 574 (1889).

An incorporated bank, by its cashier, issued deposit receipts in the following form: "Received from the sum of $, which this bank will repay to the said or order, with interest at 4 per cent. per annum, on receiving 15 days' notice. No interest will be allowed unless the money remains with the bank six months. This receipt to be given up to the bank when payment of either principal or interest is required."

Held, that it was competent under the Banking Act, R. S. C., ch. 120, to issue such deposit receipts, and that even if they did not possess all the incidents of promissory notes, yet being meant to be transferred by indorsement, they were so far negotiable as to pass a good title to a *bona fide* purchaser for value, taking without notice of any infirmity of title.

But, *semble*, that these deposit receipts were negotiable instruments under which the holders were entitled to recover as upon a promissory note made by the bank.

McDonald vs. *Rankin*, M. L. R., 7 S. C. 44 (1890).

The action of a shareholder of a bank against the directors, to recover loss occasioned by their gross negligence and mismanagement, being an action of mandate, is prescribed only by thirty years.

The action against the directors for maladministration appertains to the corporation, but in default of suit by the corporation it is competent to the shareholder to institute it.

Directors of a corporation are bound to exercise the care of a prudent administrator in the management of its business. Such acts as allowing overdrafts by insolvent persons without proper security, the impairment of the capital of the bank by the payment of unearned dividends, the furnishing of false and deceptive statements to the Government, the expenditure of the funds of the bank in the legal purchase of its own shares, are acts of gross mismanagement amounting to dol, and render the directors personally liable, jointly and severally, for losses sustained by the shareholders by reason thereof.

Directors cannot divest themselves of their personal responsibility. While they are at liberty to employ such assistants as may be required to carry on the business of the corporation, they are, nevertheless, responsible for the fault and misconduct of the employees appointed by them, unless the injurious acts complained of be such as could not have been prevented by the exercise of reasonable diligence on their part.

Montreal City & District Savings Bank vs. *Geddes*, M. L. R., 6 S. C. 243 (1890).

A creditor is not obliged to sell his pledge before bringing an action of damages against the directors of a corporation indebted to him for making false statements.

Watts vs. *Wells*, M. L. R., 7 Q. B. 387 (1890).

A bank cannot validly enter into a contract of suretyship, guaranteeing the payment by a customer of the hire of a steamship under a charter party; and where the bank has derived no benefit from such contract, a claim made thereon against the bank in liquidation will be dismissed.

La Banque Nationale vs. *Merchants' Bank*, M. L. R., 7 S. C. 336 (1891).

A custom of trade or banking in derogation of the common law must be strictly proved. And where a bank sought to excuse itself from taking back an unaccepted cheque on another bank, which had been sent into the clearing house in the morning, on the ground that by a rule of the association a cheque

for which there were no funds should be returned to the presenting bank before noon of the day of presentation, whereas the cheque in question was not offered back until 3.30 p.m., and it appeared that the rule in question was of a temporary character only, and was not usually followed by the banks which belonged to the Clearing House Association, it was held that such rule could not derogate from the ordinary rule of law as to the return of cheques for which there are no funds.

Petry vs. *La Caisse d'Economie de Quebec*, 19 S. C. R. 713 (1891).

The curator to the substitution of W. Petry paid to the respondents the sum of $8,632 to redeem 34 shares of the capital stock of the Bank of Montreal, entered in the books of the bank in the name of W. G. P. in trust, and which the said W. G. P., one of the *grèves* and managers of the estate, had pledged to respondents for advances made to him personally. J. H. P. *et al*, appellants, representing the substitution, by their action demanded to be refunded the money which they alleged H. J. P., one of them, had paid by error as curator to redeem shares belonging to the substitution. The shares in question were not mentioned in the will of William Petry, and there was no inventory to show they formed part of the estate, and no *acte d'emploi* or *remploi* to show that they were acquired with the assets of the estate.

Held, that the debt of W. G. P. having been paid by the curator with full knowledge of the facts, the appellants could not recover. Arts. 1047, 1048 C. C.

Bank stock cannot be held as regards third parties in good faith to form part of substituted property on the ground that they have been purchased with the moneys belonging to the substitution without an act of investment in the name of the substitution and a due registration thereof. Arts. 931, 938, 939 C. C.

Central Bank vs. *Garland*, 20 O. R. 142 (1891).

A tradesman sold goods to customers, taking promissory notes for the price, and also hire receipts by which the property retained in him till the full payment was made. The notes were discounted through the medium of a third person by the plaintiffs, who were made aware when the line of discount was opened of the course of dealing and of the securities held. They were not, however, put in actual possession of the securities, and there was no express contract in regard to them. In an action to recover the securities or their proceeds from the assignee for creditors of the tradesman, *held*, that the securities were accessory to the debt, that in equity the transfer of the notes was the transfer of the securities, that the defendant was in no higher position than his assignor, and could not resist the claim to have the receipts accompany the notes, and that it was not material that the relation of assignor and assignee did not immediately exist between the tradesman and the plaintiffs.

Molsons Bank vs. *Carscaden*, 8 Man. 451 (1892).

A firm of contractors agreed with S. that, if he would endorse their notes to the Molsons Bank to the amount of $10,000, they would give an assignment to the bank of all moneys to be payable to them from a railway company on contracts made and to be made by them with the railway company to secure the notes. They also agreed with the bank that in consideration of an advance to them of the money upon their notes endorsed by S., they would assign to the bank the said moneys, and gave to N., the bank manager, a power of attorney authorizing him to collect from the railway company the said moneys. S. endorsed the notes and the moneys were advanced.

Held, that this transaction amounted to an equitable assignment to the bank for the moneys in question.

Held also, that moneys arising out of future contracts can be assigned.

Held also, that it is within the powers of incorporated banks to make advances upon the security of any *choses in action*, except in so far as the Banking Acts expressly exclude such transactions.

Re the Essex Land & Timber Co. Trout's Case, 21 O. R. 367 (1892).

On a petition by a mortgagee in the winding-up proceedings

of a company, under R. S. C., ch. 129, asking for the conveyance to him by the liquidator of the company's equity of redemption, the court has jurisdiction to make the usual order for foreclosure or sale.

It is a matter of discretion with the court whether an action will be directed or summary proceedings sanctioned.

A mortgage upon land given to secure endorsations upon negotiable paper to be made by the mortgagee for the benefit of the mortgagor becomes operative only upon the endorsements being made; and an assignment of such mortgage to a bank before the making of the endorsements is not a violation of section 45 of the Banking Act, R. S. C., ch. 120.

Re Central Bank, Canada Shipping Co.'s Case, 21 O. R. 515 (1892).

A bank in this Province, under an agreement with a customer, domiciled here, advanced money to him to enable him to buy cattle in this Province, which, under the agreement, when purchased, were to be forwarded by rail to him at Montreal, and to be shipped by steamship to Liverpool, the bank having no control over the cattle until they reached the vessel, when they were to be received by the steamship for the bank, and the customer's possession and control over them was to end; bills of lading therefor in favor of the bank being then signed. The cattle were purchased and sent to Montreal as agreed on. On arriving at the steamship, and before the bills of lading were made out, a creditor of the customer attached the cattle under a writ of *saisie-arret*, but the steamship owners, disregarding the writ, signed the bills of lading and conveyed the cattle to their destination. The creditor subsequently recovered a judgment for the value of the cattle in the Province of Quebec, against the steamship owners, which the latter having paid, sought to prove on the estate of the bank in winding up proceedings, but the claim was disallowed by the master.

On appeal:—

Held, that, apart from the Banking Act, R. S. C., ch. 120, by virtue of the agreement between the bank and its customer, the possession and a special property in the goods passed to the bank, of which the steamship owners were aware, and having assented thereto upon receipt of the cattle, before any process was sevred, must be taken to have held the cattle for the bank.

Held, also, that the rights of the parties were entirely governed by the provisions of the Banking Act and following, though not altogether approving, *Merchants' Bank* vs. *Suter*, 24 Gr. 356, that under sec. 53, sub-sec. 4 of the Act, the bank had, under the agreement and the facts proved, an equitable lien upon the cattle from the time of the making of the agreement, which prevailed over the attachment.

Held, lastly, that the bank "acquired" the bills of lading within the meaning of the Banking Act as soon as the cattle were received by the steamship, although it did not at that time actually "hold" the bills.

Pacaud vs. *La Banque du Peuple*, R. J. Q., 3 S. C. 8 (1893).

The pledgee who applies to his own uses a sum of money pledged as security for the payment of a note, is guilty of an abuse of the pledge, within the meaning of Article 1975 of the Civil Code, sufficient to justify the pledgor in demanding repayment of such money with interest.

Where the return of money pledged as security for the payment of a note is conditioned upon the collection by the pledgee of the amount of such note, the fact that he has been himself the means of preventing the collection of the note (as by releasing one of the parties thereto, the others being solvent) will make the conditional obligation (to return the money) absolute.

A bank is bound by the entries in its books, and especially in its customers pass-books, at least in the absence of other proof of error.

La Banque du Peuple & Pacaud, R. J. Q., 2 Q.B. 424 (1893).

A bank which, in discounting a note, receives from a third party its value in pledge as collateral security for its payment, on the condition that it will use diligence to recover the amount of the note from the maker and the endorser before realizing the value, vi 'ates this condition in accepting a renewal of the note and in treating with one of the endorsers for his discharge

for a partial payment, giving him thus a means of contestation of the action which it has against him. **The owner of the value** put in pledge is from that time entitled to recover from the bank, followed in *Friedman* vs. *Caldwell*, R. J. Q., 3 Q. B. 200 (1894).

Brush vs. *Molsons Bank*, R. J. Q., 3 Q. B. 12 (1893).

Appellant on the 22nd March, 1886, addressed the following letter to the bank respondent:—

"In consideration of your making advances to W. C. Hibbard upon his drafts upon W. R. Hibbard, and accepted by the latter to the extent of $6,000, I hereby guarantee you, the said bank, the due payment of all sums at any time due and owing to you, the said bank, from the said W. C. Hibbard, under said drafts, not exceeding the sum of $6,000, and any interest and costs which may accrue thereon, and that no payment received by you from said W. C. Hibbard, or otherwise, shall be taken in reduction of my liability upon this guarantee, and that you may give any time to, or take any security from, or accept any composition from said W. C. Hibbard, or any of the parties to any bills, drafts, notes or cheques discounted or held by you as aforesaid, without prejudice to your claim upon me under this guarantee. And I further agree that all dividends, compositions and payments received from him, them or any of them, or his or their representatives, shall be taken and applied as payment in gross, and that this guarantee shall apply to and secure any ultimate balance that shall remain due to you, the said bank, under said drafts. And I further agree that this guarantee shall be a continuing guarantee for an amount not exceeding the said sum of $6,000 due to you from the said W. C. Hibbard for any or all of the causes aforesaid, and shall remain in force until revoked by written notice to the said Molsons Bank, and that the same shall not be revoked by my death."

Upon receipt of this letter, respondent advanced to W. C. Hibbard $6,000 in three sums, upon his drafts upon W. R. Hibbard and accepted by the latter. These drafts were renewed from time to time as they became due, by similar drafts, which were similarly renewed when they became due until 1889. In 1888 Hibbard closed his account with the bank, drew out his balance, $88, and went out of business. In an action by the bank against the appellant, for the amount of the draft as representing the balance due upon advances made under the letter of guarantee—

Held. 1. The guarantee, being a continuing guarantee for the amount, was not restricted to the original drafts, but extends to those by which they were renewed, until revoked by written notice.

2. The fact that Hibbard closed his account and drew out his balance did not affect the case, as it did not appear that any draft was then due, to which the balance could be applied.

Banque Jacques Cartier vs. *The Queen*, R. J. Q., 8 S. C. 346 (1893).

Petition of right claiming the amount due on a letter, usually styled a letter of credit, given by the Provincial Secretary to one D., to enable him to execute a printing contract with the government, and transferred to petitioners.

Held, that it was not competent to the Provincial Secretary, by this letter of credit, to bind the province to the payment of any advances to the said D., and that though the subsequent voting by the legislature of an item in the Estimates and Supply Act may have empowered the Executive to pay the amount for which the letter had been signed, it did not impose on it any obligation so to do, nor confer on petitioners any right to enforce payment.

Ward vs. *Quebec Bank*, R. J. Q., 3 Q. B. 122 (1894).

Where a note is received as collateral security from a holder in due course, before maturity, and without notice of any defect in the title of the person who negotiated it, the creditor has all the rights of such holder as regards all parties prior to him, and he can recover the amount of the note from such prior parties. Where the sum secured is less than the amount of the note, the pledgee, as regards the surplus, sues as trustee for the pledgor and can recover if the latter could do so.

Macnider vs. *Young*, R. J. Q., 3 Q. B. 539 (1894).

The sale and transfer of instruments of no intrinsic value,

but evidences of value, as notes, bills of exchange, bank bills, bills of lading, warehouse receipts, bonds and debentures, is not subject to Arts. 1487, 1488 and 1490 C. C. Such instruments, when payable to bearer, require no other evidence of proprietorship than simple possession, against which the only practically effective plea is bad faith in the holder, and the burden of proof is on the party who sets it up. In the absence of such allegation and proof, the owners of debentures pledged, without authority, by their agent, as security for a loan to himself by a broker, cannot revendicate them in the hands of the latter.

The fact that when they were pledged, the debentures had matured and were past due is immaterial, and does not affect the right of ownership of those who, as the parties in this case are not liable, either as makers or endorsers, for the payment thereof.

Henderson vs. *Bank of Hamilton*, 25 O. R. 641 (1894).

The damages recoverable by a non-trading depositor in a savings bank who has made his deposit subject to special terms, on a wrongful refusal of the bank to pay it to him personally, are limited to the interest on the money.

On an appeal this judgment was confirmed, 220 A. R. 414.

Rolland et al. vs. *La Caisse d'Economie Notre Dame de Quebec*, 24 S. C. R. 405 (1895).

L. borrowed a sum of money from a savings bank, which he agreed to repay with interest, transferring in pledge as collateral security letters of credit on the Government of Quebec. L. having become insolvent, the bank filed its claim for the amount of the loan, with interest, with the curator of the estate, and on appeal, the appellants, as creditors of L., contested on the ground that the said securities were not of the class mentioned in the Act relating to saving banks (R. S. C., c. 122, s. 20), and the bank's act in making the said loan was *ultra vires* and illegal.

Held, that assuming that the act of the bank in lending the money on the pledge of such securities was *ultra vires*, although this might affect the pledge as regards third parties interested in the securities, it was not, of itself, and *ipso facto*, a radical nullity of public order of such a character as to disentitle the bank under Arts. 989 and 990 C. C. from claiming back the money with interest. *Bank of Toronto* vs. *Perkins* (8 Can. S. C. R. 903), distinguished.

Jacques Cartier Bank vs. *The Queen*, 25 S. C. R. 84 (1895).

The Provincial Secretary of Quebec wrote the following letter to D. with the assent of his colleagues, but not being authorized by order in council:

"J'ai l'honneur de vous informer que le gouvernement fera voter, dans le budget supplementaire de 1891-92, un item de six mille piastres qui vous seront payees immediatement apres la session, et cela a titre d'acompte sur l'impression de la 'Liste des Terres de la Couronne, concedees depuis 1763, jusqu'au 31 decembre, 1890,' dont je vous ai confie l'impression dans une lettre en date du 14 janvier, 1891.

"Cette somme de six mille piastres sera payee au porteur de la presente lettre, revetue de votre endossement."

D. indoresed the letter to a bank as security for advance to enable him to do the work.

Held, that a bank cannot deal in such securities as the said letter of credit which is dependent on the vote of the legislature, and therefore not a negotiable instrument within the Bills of Exchange Act of 1890 or The Bank Act, R. S. C., ch. 120, secs. 45 and 60.

Danogh vs. *Gillespie*, 21 O. A. R. 292 (1895).

Bankers are subject to the principles of law governing ordinary agents, and, therefore, bankers to whom as agents a bill of exchange is forwarded for collection, can receive payment in money only and cannot bind the principals by setting off the amount of the bill of exchange against a balance due by them to the acceptor.

La Banque Ville Marie vs. *Mayrand*, R. J. Q., 10 S. C. 460 (1896).

A bank having discounted a note signed by M. and endorsed by the defendant, a public trader, acting by her hus-

band who was her attorney for the purposes of her business; the proceeds of the discount were entered in the books of the bank to the credit of M., and it was proved that the female defendant had received no consideration.

Held, that the endorsement of the note exceeded the power of the defendant's husband, and that the bank having paid the proceeds of the discount to the maker of the note who was clearly not doing the same business as the defendant, on a note signed, not by the latter, but by her attorney, had no action against the defendant, it being understood that she had received no consideration for the note.

Cooper vs. *Molsons Bank*, 26 S. C. R. 611 (1896).

If a merchant obtains from a bank a line of credit on terms of depositing his customers' notes as collateral security, the bank is not obliged, so long as the paper so deposited remains uncollected, to give any credit in respect of it, but when any portion of the collaterals is paid, it operates at once as payment of the merchant's debt, and must be credited to him.

Insky vs. *Hochelaga Bank*, R. J. Q., 10 S. C. 510 (1896).

The agreement between a merchant and a bank that the deposits made by the merchant would be kept by the bank to guarantee the payment of promissory notes bearing the former's signature, and discounted by the bank, is a commercial transaction which can be proved by witnesses.

Bank of Toronto vs. *Hamilton*, 28 O. R. 51 (1896).

The plaintiffs, under telegraphic instructions from one of their branches, telephoned from the head office to one of their sub-agencies to credit the defendant with $2,000. The sub-agency, however, by some misunderstanding, credited him with $3,000, which he drew out. The $2,000 had been paid into the branch bank in the first instance by way of an advance on the shipping bills of certain cattle bought from the defendant for about $2,800, but of this the plaintiffs had no notice. The defendant, however, refused to pay the difference between the $2,000 and the price of the cattle, on the ground that in faith of the payment to him he had allowed them to be shipped abroad, which by his agreement for sale was not to be done till payment of the price in full.

Held, that the defendant was bound to repay the excess over the $2,000.

Lilman vs. *Montreal City and District Savings Bank*, R. J. Q., 13 S. C. 262 (1897).

Where a bank receives a note for collection, and in the regular course of business places the same in the hands of a responsible and perfectly solvent agent, it is not liable for the loss of the note in the mails. In any case the defendant's offer to give security to the makers and endorser that they would never be troubled if they paid the note, was sufficient.

Merchants Bank of Canada vs. *Darveau es qualite*, R. J. Q., 15 S. C. 326 (1898).)

The Adams Shoe Company shipped goods to a Toronto house. Drafts were drawn for the price of such goods and discounted by the Merchants' Bank. As security for these advances, not only the title to the drafts was transferred to the bank, but also the claim against the Toronto house for the price of the goods shipped and whose value the drafts represented.

Held:—There is no prohibition in the Banking Act against taking as security, for advances made by a bank, the transfer of a certain debt, and the same is permitted. Consequently, the transactions above mentioned were valid and within the legal powers of the bank.

65. Bank to have lien on debtor's shares—Sale of such shares—Notice—Transfer in case of sale.—The bank shall have a privileged lien, for any debt or liability for any debt to the bank, on the shares of its own capital stock and on any unpaid dividends of the debtor or person liable, and may decline to allow any transfer of the shares of such debtor or person until such debt is paid; and the bank

shall, within twelve months after such debt has accrued and become payable, sell such shares, and notice shall be given to the holder thereof of the intention of the bank to sell the same, by mailing such notice in the post office to the last known address of such holder, at least thirty days prior to such sale; and upon such sale being made the president, vice-president, manager or cashier shall execute a transfer of such shares to the purchaser thereof in the usual transfer book of the bank, which transfer shall vest in such purchaser all the rights in or to such shares which were possessed by the holder thereof, with the same obligation of warranty on his part as if he were the vendor thereof, but without any warranty from the bank or by the officer of the bank executing such transfer.

In re Chinic & Union Bank vs. *Rattray*, 14 Q. L. R. 289 (1888).

Under R. S. C., ch. 120, sec. 89. a bank has a lien on the stock held in it by a member of a firm for a debt due to it by such firm.

When a debt is due a bank, and the debtor acquires stock in the same, such stock is at once affected by the lien of the bank, and moneys realized by the bank out of such stock may be applied by it to the payment of said debt, in preference to another debt contracted subsequently by the same debtor.

Under the common law of the Province of Quebec, a creditor claiming against the estate of a joint debtor is bound to give credit for whatever he may have received for his other joint debtors.

66. Collateral securities may be similarly dealt with.—The stock, bonds, debentures or securities, acquired and held by the bank as collateral security, may, in case of default to pay the debt, for securing which they were so acquired and held, be dealt with, sold and conveyed either in like manner and subject to the same restrictions as are herein provided in respect of stock of the bank on which it has acquired a lien under this Act, or in like manner as and subject to the restrictions under which a private individual might in like circumstances deal with, sell and convey the same, but without obligation to sell the same within twelve months:

2. Right to do so may be waived.—The right so to deal with and dispose of such stock, bonds, debentures or securities in manner aforesaid may be waived or varied by any agreement between the bank and the owner of such stock, bonds, debentures or securities, made at the time at which such debt was incurred, or if the time of payment of such debt has been extended, then by an agreement made at the time of such extension.

67. Real Estate for occupation.—The bank may acquire and hold real and immovable property for its actual use and occupation and the management of its business, and may sell or dispose of the same, and acquire other property in its stead for the same purpose.

68. Mortgages as additional security.—The bank may take, hold and dispose of mortgages and *hypotheques* upon real or personal, immovable or movable property, by way of additional security for debts contracted to the bank in the course

of its business; and the rights, powers and privileges which the bank is by this Act declared to have or to have had in respect of real or immovable property mortgaged to it, shall be held and possessed by it in respect of any personal or movable property which is mortgaged or hypothecated to it.

Bank of Upper Canada vs. *Killaly*, 21 U. C. Q. B. 9 (1861).

One P., in January, 1860, agreed to build for the Grand Trunk Railway Co. 100 cars of a specified pattern to be delivered in four months and a half from that time on their track at Toronto free of charge; the company to pay $825 for each car, payments to be made monthly on the estimate made by a person appointed by the company on materials furnished and work done; "payments to be made to the satisfaction of the Bank of Upper Canada, who are to act as receivers." All but 16 cars were delivered, and these 16, the inspector of the company had approved of, and they were sent to the Suspension Bridge to wait for the springs, which the company were to furnish.

On the 24th of September, 1860, the bank and the Grand Trunk Railway Co. entered into an agreement, reciting the contract, and that the bank had made large advances on account of it, and had agreed to advance the necessary sum to complete it and to acquire the title to the cars. The company then assigned all their interest in the agreement and cars to the bank, and the bank leased them back to the company for three years at a rate named, with a proviso that on payment of their debt to the bank the cars should revert to the company. After this, P. received monies from the bank on account of the contract.

Held, that by the agreement the cars vested in the company before delivery; that the bank were not precluded by their charter from taking security upon them, and that they were entitled therefore as against an executive creditor of P.

Bank of Toronto vs. *Perkins*, 8 S. C. R. 603 (1883)).

B., on the 19th January, 1876, transferred to the Bank of T. (appellants), by notarial deed, an hypothec on certain real estate in Montreal, made by one C., to him, as collateral security for a note which was discounted by the appellants and the proceeds placed at B.'s credit on the same day on which the transfer was made. The action was brought by the appellants against the insolvent estate of C. to set aside a prior hypothec given by C., and to establish their priority.

Held, (affirming the judgment of the Court of Queen's' Bench), that the transfer by B. to the Bank of T. was not given to secure a past debt, but to cover a contemporaneous loan, and was therefore null and void, as being in contravention of the Banking Act, 34 Vic., ch. 5, sec. 40.

Grant vs. *La Banque Nationale*, 9 O. R. 411 (1885).

Advances made on a pledge of certain timber limits to the Province of Quebec, which pledge purported on its face to be "for advances made and to be made," was valid as to advances made before the pledge, but that as to the future advances the pledge of the timber limits was invalid as being in contravention of 34 Vic., chap. 5, sec. 40.

Bathgate vs. *Merchants Bank*, 5 Man. L. R. 210 (1888).

The full and true consideration for which a bill of sale is given must be set out in it with substantial accuracy, otherwise the bill is void. G., being indebted to B., gave his note for the amount, which B. discounted at a chartered bank. As security for the discount, G. executed a chattel mortgage to the bank. At maturity B. took up the note. Afterwards he procured from G. a bill of sale of the goods. The bill recited the mortgage, and an agreement to sell the goods for $100 over the mortgage. The expressed consideration was the premises and $100. The $100 was not paid or intended to be paid.

Held, that the mortgage was void under the Banking Act. (Sec. 45.)

In re McCaffrey & La Banque du Peuple, R. J. Q., 5 S. C. 135 (1894).

An alleged infringement of The Banking Act (*e. g.*, taking

security for future advances), though a matter affecting public policy, will not support a contestation of the bank's claim unless pleaded and legally proved.

Gillies vs. *Commercial Bank*, 10 Man. L. R. 460 (1895).

The plaintiff, a married woman, carried on business separately from her husband, and, being largely indebted to numerous creditors and to the defendant bank, applied to the bank for an advance. This was agreed to, on the plaintiff giving the bank a mortgage on her real estate and stock and all future stock to be acquired during the currency of the mortgage. She also assigned to the bank all her book debts as further security.

Held, (1) that the securities taken were valid under s. 48 of the Banking Act then in force, R. S. C., c. 120.

(2) That the plaintiff had no equity under the circumstances to compel the bank to perform its covenant to pay her creditors without offering to perform the agreement on her part, and to pay her debt to the bank.

(3) That under the circumstances no trust was created by the said covenant of the bank in favor of the creditors referred to therein, such covenant having been intended to refer only to the proceeds of the plaintiff's sales and to deposits and collections of book-debts while the business was being carried on, and having been given only with a view to enable the plaintiff to keep the business going.

69. Purchase of land under execution, etc.—The bank may purchase any lands or real and immovable property offered for sale under execution, or in insolvency, or under the order or decree of a court, as belonging to any debtor to the bank, or offered for sale by a mortgagee or other encumbrancer having priority over a mortgage or other incumbrance held by the bank or offered for sale by the bank under a power of sale given to it for that purpose, in cases in which, under similar circumstances, an individual could so purchase, without any restriction as to the value of the property which it may so purchase, and may acquire a title thereto as any individual purchasing at sheriff's sale, or under a power of sale, in like circumstances, could do, and may take, have, hold and dispose of the same at pleasure.

70. Absolute title may be acquired.—Proviso: Sale of property so acquired.—The bank may acquire and hold an absolute title in or to a real or immovable property mortgaged to it as security for a debt due or owing to it, either by obtaining a release of the equity of redemption in the mortgaged property, or by procuring a foreclosure, or by other means whereby, as between individuals, an equity of redemption can, by law, be barred, and may purchase and acquire any prior mortgage or charge on such property: Provided always, that no bank shall hold any real or immovable property, howsoever acquired, except such as is required for its own use, for any period exceeding seven years from the date of the acquisition thereof.

71. Title to lands so acquired: power of sale, etc.—Nothing in any charter, Act or law shall be construed as ever having prevented or as preventing the bank from acquiring and holding an absolute title to and in any such mortgaged real or immovable property, whatever the value thereof is, or from exercising or acting upon any power of sale contained in any mortgage given to it or held by it, authorizing or enabling it to sell or convey away any property so mortgaged.

72. As to advances for building ships.—Every bank advancing money in aid of the building of any ship or vessel shall have the same right of acquiring and holding security upon such ship or vessel, while building and when completed, either by way of mortgage, *hypotheque*, hypothecation, privilege, or lien thereon, or purchase or transfer thereof, as individuals have in the Province wherein such ship or vessel is being built, and for that purpose may avail itself of all such rights and means of obtaining and enforcing such security, and shall be subject to all such obligations, limitations and conditions as are, by the law of such Province, conferred or imposed upon individuals making such advances.

73. Warehouse receipts may be taken as collateral security.—The bank may acquire and hold any warehouse receipt or bill of lading as collateral security for the payment of any debt incurred in its favor in the course of its banking business; and the warehouse receipt or bill of lading so acquired shall vest in the bank, from the date of the acquisition thereof, all the right and title of the previous holder or owner thereof, or of the person from whom such goods, wares and merchandise were received or acquired by the bank, if the warehouse receipt or bill of lading is made directly in favor of the bank, instead of to the previous holder or owner of such goods, wares and merchandise:

Bank of British North America vs. *Clarkson*, 19 U. C. C. P. 182 (1869).

M. & Co. being indebted to the plaintiffs on certain overdue notes, it was agreed that plaintiffs should discount a further note for them, with the proceeds of which, it was understood, the overdue paper should be retired; that M. & Co. should hand over to plaintiffs certain warehouse receipts for wool, stored in their warehouse, as collateral security. This note was accordingly, on 23rd January, 1868, discounted by plaintiffs, and the old notes duly retired, an agreement being signed by M. & Co. at the time of the discount, reciting that they had endorsed over the receipts as collateral security for the note, etc., etc. The receipts, nearly all in the same form, were as follows;

"Warehouse Receipt.

'Received in store in our warehouse, at . . . from sundry parties, 17,900 pounds batting, to be delivered pursuant to the order of the Bank of British North America, to be endorsed hereon. The said batting is separate from, etc., etc." Neither M. & Co., nor the bank, endorsed the receipts.

Held, that they were not warehouse receipts under the statutes referred to, and that the bank could not, therefore, claim the property covered by them.

Per Hagerty, C. J., that the transaction of the 23rd January was not in substance, though in form, a present advance to M. & Co., but merely a mode adopted of paying off an already existing debt.

Williamson vs. *Rhind*, 22 L. C. J. 166 (1877)

A warehouse receipt given by a warehouseman when the goods in question are not in his possession is null and void.

Milloy vs. *Kerr*, 8 S. C. R. 474 (1880).

A warehouse receipt given by a warehouseman for goods which were not in his actual possession was not a valid warehouse receipt.

Held, that M. never had any actual possession, control over, or property in the goods in question, so as to make the receipt given by M., under the circumstances in this case, a valid warehouse receipt within the meaning of the clauses in that behalf in the Banking Act.

Merchants Bank vs. *Smith,* 8 S. C. R. 512 (1884).

Held, that it is not necessary to the validity of the claim of a bank under a warehouse receipt given by an owner who is a warehouseman and wharfinger, and has the goods in his possession, that the receipt should reach the hands of the bank by indorsement.

Bank of Hamilton vs. *Noye,* 9 O. R. 631 (1885).

In this case the question of the validity of warehouse receipts was decided. It was held that a party having undertaken to keep certain "grain separate and distinguishable from other grain," and having failed to do so, it became his duty to enable the plaintiff to recover what the receipts called for or its equivalent.

Stevenson vs. *Bank of Commerce,* 23 S. C. R. 531 (1892).

On an appeal to the Supreme Court, it was held that the finding of the courts below [see R. J. Q., 1 Q. B. 171 (1892)] of the fact of the bank's knowledge of their debtor's insolvency was sustained by the evidence in the case, and there had therefore been a fraudulent preference made to the bank by the insolvent in transferring over to it all his customers' paper not yet due.

Fatt vs. *Shortley,* R. J. Q., 1 S. C. 389 (1892).

The transfer of a warehouse receipt to secure a past due indebtedness is not in itself an unlawful act, but such transfer gives the transferee none of the exceptional rights which would result from a transfer under C. S. C., ch. 54, s. 9.

It gives him no right upon the goods represented by the receipt, such goods, notwithstanding the transfer, remaining the property of the transferror free of any lien whatever in favor of the transferee.

Tennant vs. *Union Bank,* 19 O. A. R. 1 (1893).

The plaintiff was the assignee for the benefit of the creditors of a firm of saw millers who had obtained large advances from the defendants on the security of a third person's promissory note endorsed by the firm. To this third person, in pursuance of a previous written agreement to that effect, whereby the firm pledged to him a quantity of logs on timber limits and the lumber to be manufactured therefrom, the firm gave warehouse receipts on logs described as being in certain lakes in transit to the mills, and also subsequently in conformity with an agreement with the bank when the advances were made, on lumber in the mill yards manufactured from the logs pledged, and the warehouse receipts were by him endorsed over to the bank.

Held, that the warehouse receipts were bad as to the logs, the lakes not being "places kept by the signers of the receipts."

Held, further, Burton, J. A., dissenting, that the warehouse receipts were good as to the lumber, and had been validly acquired by the bank by endorsement from the holder under sub-section 2 of section 53 and section 54 of R. S. C., chap. 120.

Young vs. *Demers,* R. J. Q., 4 Q. B. 364 (1895).

A wood, salt or coal merchant, who occupies a wharf for the purposes of his trade, where he receives and gives delivery of his merchandise, has not the quality to give a receipt of this merchandise which gives to the prejudice of third parties special rights which warehouse keepers can create through their quality of warehouse keepers for the merchandise of others.

2. WHEN PREVIOUS HOLDER IS AN AGENT.—If the previous holder of such warehouse receipt or bill of lading is the agent of the owner of the goods, wares and merchandise mentioned therein the bank shall be vested with all the right and title of the owner thereof, subject to his right to have the same re-transferred to him, if the debt, as security for which they are held by the bank, is paid:

3. INTERPRETATION OF "AGENT."—In this section the expression "agent" means any person intrusted with the possession of

goods, wares or merchandise, or to whom the same are consigned, or who is possessed of any bill of lading, receipt, order, or other document used in the course of business as proof of the possession or control of goods, wares and merchandise, or authorizing or purporting to authorize, either by indorsement or by delivery, the possessor of such document to transfer or receive the goods, wares and merchandise thereby represented; and such person shall be deemed the possessor of such goods, wares and merchandise, bill of lading, receipt, order, or other document as aforesaid, as well if the same are held by any person for him or subject to his control as if he is in actual possession thereof.

74. Loans to wholesale manufacturers.—The bank may lend money to any person engaged in business as a wholesale manufacturer of any goods, wares and merchandise, upon the security of the goods, wares and merchandise manufactured by him or procured for such manufacture:

Hirschfeldt vs. The Union Bank, R. J. Q., 7 S. C. 300 (1895).

Held, the pledgee of grain pledged as collateral security for advances, is not responsible for commissions on sales made by an agent employed by the pledger and acting solely under his instructions as owner although such sales were made only on such terms as were satisfactory to the pledgee.

La Banque d'Hochelaga vs. Merchants Bank, 10 Man. L. R. 361 (1895).

One A., a wholesale purchaser and shipper of dead stock and the products thereof, obtained several advances of money from the defendants on the security of assignments of certain hog products in the form in Schedule C, to the Bank Act; and agreed with the manager of the Bank to ticket the goods so as to identify them, and not to sell the goods. He then set apart certain of the goods as belonging to the defendants, and placed tickets over them to indicate this, but afterwards he sold all these goods in the ordinary course of business and substituted other goods of a like character in their place, placing the same tickets upon them. Subsequently, the plaintiffs, as security for a then pre-existing debt due them from A., obtained an assignment of the same kind as the defendants had taken, covering *inter alia* 10,000 lbs. of bacon, but no appropriation of any particular bacon as hypothecated to the plaintiffs was made until about seven weeks later, when, at the instance of an officer of the plaintiffs, A. set apart 10,000 lbs. of bacon out of the pile which had been appropriated to the defendants in the manner above described, and this quantity was ticketed with the name of the plaintiff bank, the defendants' tickets being removed. Shortly afterwards A. absconded, and the defendants took possession of this 10,000 lbs. of bacon under their securities.

Held, that they were entitled to hold it against the plaintiffs.

Held, also, that, notwithstanding the language of s. 75 of the Bank Act, a bank may take securities of the kind provided for by s. 74, even for pre-existing debts, as the general provisions of s. 68 should not be held to be restricted by the language of s. 75 so as to prevent it.

2. Loans to certain wholesale purchasers or shippers.—The bank may also lend money to any wholesale purchaser or shipper of products of agriculture, the forest and mine, or the sea, lakes and rivers, or to any wholesale purchaser or shipper of live stock or dead stock, and the products thereof, upon the security of such products, or of such live stock or dead stock, and the products thereof:

3. FORM OF SECURITY.—Such security may be given by the owner and may be taken in the form set forth in Schedule C to this Act, or to the like effect; and by virtue of such security, the bank shall acquire the same rights and powers in respect to the goods, wares and merchandise, stock or products covered thereby, as if it had acquired the same by virtue of a warehouse receipt.

SCHEDULE C.

FORM OF SECURITY UNDER SECTION SEVENTY-FOUR.

In consideration of an advance of dollars, made by the (*name of bank*) to A. B., for which the said bank holds the following bills or notes (*describe fully the bills or notes held, if any*), the goods, wares and merchandise mentioned below are hereby assigned to the said bank as security for the payment, on or before the day of of the said advance, together with interest thereon at the rate of per cent. per annum from the day of (*or*, of the said bills and notes, or renewals thereof, or substitutes therefor, and interest thereon, *or as the case may be*.

This security is given under the provisions of section seventy-four of "The Bank Act," and is subject to all the provisions of the said Act.

The said goods, wares and merchandise are now owned by and are now in possession, and are free from any mortgage, lien or charge thereon (*or as the case may be*), and are in (*place or places where goods are*), and are the following: (*particular description of goods assigned*).

Dated at 18 .

75. When such security may be acquired.—The bank shall not acquire or hold any warehouse receipt or bill of lading or security under the next preceding section to secure the payment of any bill, note or debt, unless such bill, note or debt is negotiated or contracted at the time of the acquisition thereof by the bank, or upon the written promise or agreement that such warehouse receipt or bill of lading or security would be given to the bank: but such bill, note or debt may be renewed, or the time for the payment thereof extended, without affecting any such security:

Suter vs. *Merchants Bank*, 24 Grant's Ch. R. 365 (1876).
The judgment in this case turned upon advances made to a manufacturer in goods manufactured remaining unsold without specifying any quantity.

Robertson vs. *Lajoie*. 22 L. C. J. 169 (1878).
A document in the form following was a warehouse receipt, and not a mere delivery order: "Received from . . . . on storage, in . . . the following merchandise, viz.: (300) three hundred tons No. 1 Clyde pig iron, storage free till opening of navigation."

Such warehouse receipt is transferable by indorsement as collateral security for a debt contracted at the time, in good

faith, the pledgee having no notice that the pledgor is not authorized to pledge, the proof of such knowledge being on the party signing the receipt.

An obligation contracted at the time may be made to cover future advances, but not past indebtedness.

See *Watson* vs. *Jamieson*, 33 L. C. J. 71 (1889).

Perkins vs. *Ross*, 6 Q. L. R. 65 (1880).

A quantity of timber was pledged for the payment of a draft, and if the draft was not paid, the holder was to sell the wood and place the proceeds to the owner's credit. The draft was not paid, the owner of the wood became insolvent, and the pledgee sold the wood, of which he never had had actual delivery. *Held*, that the pledgee could not place the balance of the price of sale after paying the draft to the credit of a former indebtedness of the owner.

Ross vs. *Molsons Bank*, 2 Dorion's Q. B. R. 82 (1881).

Banks cannot acquire a lien on logs under the Banking Act, 34 Vict., chap. 5, if the pledge of these logs was made for a previous indebtedness, or if they were not held by virtue of a transfer of a receipt by a cove-keeper or by the keeper of any wharf or harbour, or other place, or of a specification of timber deposited in a cove, wharf or harbour, warehouse, mill or other place in Canada within the meaning of the said Act.

To acquire a lien under Articles 1745, 1966 and 1967 of the Civil Code of Lower Canada, there must be an actual delivery or possession of the property pledged or of some document in use in the ordinary course of business entitling the bearer thereof to claim possession of such property.

Bank of Hamilton vs. *Shepherd et al., and Bailey et al.* vs. *Bank of Hamilton*, 21 O. A. R. 156 (1894).

The renewal of a note is not a negotiation of it within the meaning of section 75 of the Bank Act, 53 Victoria, chap. 31 (D.), so as to support a security taken at the time of the renewal in substitution for a previously existing security.

Bank of Hamilton vs. *Halsted*, 28 S. C. R. 235 (1897).

A bill or note taken by a bank on acquiring a security in form C. to the "Bank Act," 52 Vict., ch. 31, sections 74 and 75, is not "negotiated" at the time of the acquisition thereof within the meaning of the latter section, when the person giving the security, and to whose account the proceeds of the bill or note are credited, is not at liberty to draw against them except on fulfilling certain other conditions.

Held by the Supreme Court of Canada, an assignment made in the form "C," to the "Bank Act," as security for a bill or note given in renewal of a past due bill or note, is not valid as a security under the seventy-fourth section of the "Bank Act."

The judgment of the Court of Appeals for Ontario, which affirmed the judgment of Meredith, C. J., 27 O. R. 435 (1896), affirmed.

Conn vs. *Smith et al.*, 28 O. R. 629 (1898).

The insolvent had been in the habit of buying hops from time to time, and giving the bank his own warehouse receipts or direct pledges for the purpose of raising money to pay for them. Then, at the request of the bank, he constituted his bookkeeper his warehouseman, and the latter issued warehouse receipts to the bank in substitution for the securities or receipts theretofore held, there being no further advance made when the new securities were given:

Held, that this exchange of securities should be treated as authorized under sub-section 2 of section 75 of the Banking Act.

The plaintiff asked for a declaration that advances made by the bank upon a mortgage by the insolvent to a third person, and by him assigned to the bank, were contrary to the Banking Act, and that the property was free from the mortgage:

Held, that no such declaration could be made in the absence of the mortgagee, who was liable to the bank as endorser of a promissory note of the insolvent, collateral to the mortgage.

2. EXCHANGE OF WAREHOUSE RECEIPT FOR BILL OF LADING AND *vice versa.*—The bank may, on shipment of any goods, wares and merchandise for which it holds a warehouse receipt, or security as aforesaid, surrender such receipt or security and receive a bill of lading in exchange therefor, or, on the receipt of any goods, wares and merchandise for which it holds a bill of lading or security, as aforesaid, it may surrender such bill of lading or security, store such goods, wares and merchandise, and take a warehouse receipt therefor, or may ship them, or part of them, and take another bill of lading therefor:

3. PENALTY FOR MAKING FALSE STATEMENT.—Every one is guilty of a misdemeanor and liable to imprisonment for a term not exceeding two years who wilfully makes any false statement in any warehouse receipt, bill of lading or security, as aforesaid:

4. PENALTY FOR ALIENATING GOODS SO SECURED.—Every one is guilty of a misdemeanor and liable to imprisonment for a term not exceeding two years, who, having possession or control of any goods, wares and merchandise covered by any warehouse receipt, bill of lading or security as aforesaid, and having knowledge of such receipt, bill of lading or security, and without consent of the bank, in writing and before the advance, bill, note or debt thereby secured has been fully paid, wilfully alienates or parts with any such goods, wares, or merchandise, or wilfully withholds from the bank possession thereof upon demand after default in payment of such advance, bill, note or debt.

76. As to goods manufactured from articles pledged.—If goods, wares and merchandise are manufactured or produced from the goods, wares and merchandise, or any of them, included in or covered by any warehouse receipt, or security given under section seventy-four of this Act, while so covered, the bank holding such warehouse receipt or security shall hold or continue to hold such goods, wares and merchandise, during the process and after the completion of such manufacture or production, with the same right and title and for the same purposes and upon the same conditions as it held or could have held the original goods, wares and merchandise.

Re Goodfallow, Traders Bank vs. *Goodfallow*, 19 O. R. 299 (1890).

A miller gave a warehouse receipt to a bank on some wheat "and its product" stored in his mill for advances made to him, and died insolvent about two months after. During this period wheat was constantly going out of and fresh wheat coming into the mill. Just before his death the bank took possession, and found a large shortage in the wheat which had commenced shortly after the receipt had been given, and had continued to a greater or less degree all the time.

In the administration of his estate it appeared that, during the period of shortage, some of the wheat had been converted into flour, which had been sold, and the proceeds, which were less than the value of the shortage, paid to the administrator:

Held, that the bank was entitled to the purchase money of the flour.

All the wheat made into flour after the shortage began and sold to customers was wheat belonging to the bank. As long as the "product" of this wheat can be traced, whether it be in flour or in money, it is recoverable by the bank as against the deceased and his administrators.

77. Prior claim of the bank over unpaid vendor.—All advances made on the security of any bill of lading or warehouse receipt, or security given under section seventy-four of this Act, shall give to the bank making such advances a claim for the repayment of such advances on the goods, wares and merchandise therein mentioned, or into which they have been converted, prior to and by preference over the claim of any unpaid vendor; but such preference shall not be given over the claim of any unpaid vendor who had a lien upon such goods, wares and merchandise at the time of the acquisition by the bank of such warehouse receipt, bill of lading, or security, unless the same was acquired without knowledge on the part of the bank of such lien.

78. Sale of goods on non-payment of debt.—In the event of the non-payment at maturity of any debt secured by a warehouse receipt or bill of lading, or security given under section seventy-four of this Act, the bank may sell the goods, wares and merchandise mentioned therein, or so much thereof as will suffice to pay such debt with interest and expenses, returning the overplus, if any, to the person from whom such warehouse receipt, or bill of lading, or security, or the goods, wares and merchandise mentioned therein, as the case may be, were acquired; but such power of sale shall be subject to the following provisions, namely:

2. NOTICE TO BE GIVEN BEFORE SALE OF GOODS PLEDGED.—No sale without the consent in writing of the owner of any timber, boards, deals, staves, saw logs or other lumber, shall be made under this Act until notice of the time and place of such sale has been given by a registered letter, mailed in the post office to the last known address of the pledger thereof, at least thirty days prior to the sale thereof; and no goods, wares and merchandise, other than timber, boards, deals, staves, saw-logs or other lumber, shall be sold by the bank under this Act without the consent of the owner, until notice of the time and place of sale has been given by a registered letter, mailed in the post office to the last known address of the pledger thereof, at least ten days prior to the sale thereof:

3. SALE BY AUCTION AFTER NOTICE.—Every such sale of any article mentioned in this section, without the consent of the owner, shall be made by public auction, after a notice thereof by advertisement, stating the time and place thereof, in at least two newspapers published in or nearest to the place where the sale is to be made; and if such sale is in the Province of Quebec, then at least one of such newspapers shall be a newspaper published in the English language, and one other such newspaper shall be a newspaper published in the French language.

79. Penalty for contravention.—Every bank which violates any provision contained in any of the sections numbered sixty-four to seventy-eight (both inclusive) shall incur for each violation thereof a penalty not exceeding five hundred dollars.

80. No penalty for usury.—What interest may be allowed.—The bank shall not be liable to incur any penalty or forfeiture for usury, and may stipulate for, take, reserve or exact any rate of interest or discount not exceeding seven per cent. per annum, and may receive and take in advance any such rate, but no higher rate of interest shall be recoverable by the bank; and the bank may allow any rate of interest whatever upon money deposited with it.

La Banque de St. Hyacinthe vs. *Sarrasin*, R. J. Q., 2 S. C. 96 (1892).

Banks can charge, on notes which are presented to them for discount, only interest of seven per cent. per annum.

The prohibition in this matter, being one affecting public order, the person who has paid to a bank interest exceeding the rate fixed by law is entitled to receive from the bank the amount of the excess.

81. No instrument to be void on account of usury.—As to innocent holders.—No promissory note, bill of exchange or other negotiable security, discounted by or indorsed or otherwise assigned to the bank, shall be held to be void, usurious or tainted by usury, as regards such bank, or any maker, drawer, acceptor, indorser, or indorsee thereof, or other party thereto, or *bona fide* holder thereof, nor shall any party thereto be subject to any penalty or forfeiture by reason of any rate of interest taken, stipulated or received by such bank, on or with respect to such promissory note, bill of exchange, or other negotiable security, or paid or allowed by any party thereto to another in compensation for, or in consideration of the rate of interest taken or to be taken thereon by such bank; but no party thereto, other than the bank, shall be entitled to recover or liable to pay more than the lawful rate of interest in the Province where the suit is brought, nor shall the bank be entitled to recover a higher rate than seven per cent. per annum, and no innocent holder of or party to any promissory note, bill of exchange or other negotiable security, shall, in any case be deprived of any remedy against any party thereto, or liable to any penalty or forfeiture, by reason of any usury or offence against the laws of any such Province, respecting interest, committed in respect of such note, bill or negotiable security, without the complicity or consent of such innocent holder or party.

82. Collection fees.—The bank may, in discounting at any of its places of business, branches, agencies or offices of discount and deposit, any note, bill or other negotiable security or paper payable at any other of its own places or seats of business, branches, agencies or offices of discount and deposit in Canada, receive or retain, in addition to the discount, any amount not exceeding the following rates per cent., according to the time it has to run, on the amount of such note, bill or other negotiable security or paper, to defray the expenses attending the collection thereof, that is to say: under thirty days, one-eighth of one per cent.; thirty days or over, but under sixty days, one-fourth of one per cent.; sixty days and over, but under ninety days, three-eighths of one per cent.; ninety days and over, one-half of one per cent.

83. Agency fees.—The bank may, in discounting any note, bill or other negotiable security or paper, *bona fide* payable at any place in Canada different from that at which it is discounted, and other than one of its own places or seats of business, branches, agencies or offices of discount and deposit in Canada, receive and retain, in addition to the discount thereon, a sum not exceeding one-half of one per cent. on the amount thereof, to defray the expenses of agency and charges in collecting the same.

84. Deposits may be received from persons unable to contract.—Proviso: amount limited.—The bank may receive deposits from any person whomsoever, whatever his age, status or condition in life, and whether such person is qualified by law to enter into ordinary contracts or not; and, from time to time, may repay any or all of the principal thereof, and may pay the whole or any part of the interest thereon to such person, without the authority, aid, assistance or intervention of any person or official being required, unless before such repayment the money so deposited in and repaid by the bank is lawfully claimed as the property of some other person, in which case it may be paid to the depositor with the consent of the claimant, or to the claimant with the consent of the depositor: Provided always, that if the person making any such deposit could not, under the law of the Province where the deposit is made, deposit and withdraw money in and from a bank without this section, the total amount to be received from such person on deposit shall not, at any time, exceed the sum of five hundred dollars:

Brown v. *Quebec Bank*, 2 L. C. L. J. 253 (1866).

Banking institutions are not liable for any deficit in packages of silver paid out by them, unless the silver be counted and the deficit made known before the packages are taken from the bank.

Saderquist vs. *Ontario Bank*, 15 O. A. R. 609 (1889).

The plaintiff, a Norwegian by birth, and almost totally ignorant of the English language, in September, 1884, deposited with the defendants at one of their branch offices a sum of money, and received from the bank the usual deposit receipt, at the time signing his name on the stub or counterfoil of the receipt for the purpose of enabling the bank to identify him at any time the money might be demanded. For the purpose of safekeeping, plaintiff, being about to proceed to work elsewhere, left the receipt with one S. S. About seven months afterwards plaintiff returned, when he was informed by S. S. that he had withdrawn the money from the bank, but promised to return it. The plaintiff being ignorant of the manner in which the money had been paid out and of his rights as against the defendants, took no steps whatever against them, and S.S. absconded from the country in August, 1885, heavily indebted. In the month of December following, the plaintiff having been informed as to his rights against the bank, consulted a solicitor, who undertook to attend to the matter, but omitted to take any steps, and in the month of April following (1886), the plaintiff through another solicitor made a demand on the bank for payment which was refused. The demand so made was the first notice the bank had of the fraud which had been practiced on them.

Held, affirming the judgment of the Chancery Division (14 O. R. 586), (1) that the plaintiff in entrusting the receipt to S. S. was not guilty of any act of negligence; (2) that his delay in notifying the defendants of the fraud perpetrated on them was not a breach of any legal duty on his part so as to stop him from recovering the amount of his deposit.

Scott vs. *The Bank of New Brunswick*, 31 N. B. 21 (1891).

S., a ship-master, deposited $1,000 with a bank in 1883, and received a deposit receipt therefor. He left the receipt with R., the managing owner of his vessel. Soon afterwards he went to sea and remained away till July, 1887. In December, 1884, R. took the receipt to the bank, with the name of S. endorsed on it, and gave the receipt to the bank, receiving a deposit receipt for the same amount payable to himself. This R. gave the bank as collateral security for the payment of his note for $1,000 discounted by them, and they afterwards applied it in payment of the note. On the return of S., R. admitted that he had drawn the money and used it, and upon S. threatening him with criminal proceedings, he begged S. not to expose him, and said that if he would wait he would pay him. At this time, R. owed S. $2,650 besides the amount of the deposit receipt, and he gave S. a bill of exchange for £250 and a mortgage for $2,500 on some property in which he said he had an interest, payable in one year. S. said nothing to the bank about the matter, but went away again, and did not return for two years. R. left the country in November, 1888. On the return of S., in July, 1889, finding that the bill was dishonored, and that nothing was realized on the mortgage, he demanded the money from the bank, and on their refusal to pay, brought this action for the amount. The jury found that S. had not indorsed the receipt, and that the $1,000 was not included in the mortgage; and gave a verdict for S.

Held, that S. was estopped by his conduct from recovering against the bank.

Note—14 Occ. N. 388). The action was twice tried. On the first trial a verdict was given in favor of S., the jury having found that when R. took the deposit receipt to the bank, with the name of S. endorsed on it, such endorsement had not been written by S., and the trial judge held that the finding was, in effect, that of forgery by R., which could not be ratified. The jury also found that the security taken by S. did not include the $1,000. The full court ordered [illegible]w trial on the ground that the last finding was against evidence (31 N. B., Reps. 21), and an appeal from that decision to the Supreme Court was not entertained (21 S. C. R. 30). On the second trial the bank obtained a verdict which was affirmed by the full court. On appeal from the latter decision the Supreme Court of Canada on the 21st May, 1894,

Held, affirming the judgment of the court below (13 Occ. N. 248), that the doctrine of estoppel was not involved in the case; that R. obtained the money from the bank by falsely representing that he had authority from S.; that S. by ratifying and confirming the payment, adopted the agency, and his act made the payment equivalent to one to a person having authority to receive it; and it made no difference, that, by his false representations R. may have committed an indictable offence. See 23 S. C. R. 277 (1894).

2. BANK NOT BOUND TO SEE TO TRUSTS IN RELATION TO SUCH DEPOSITS.—The bank shall not be bound to see to the execution of any trust, whether expressed, implied or constructive, to which any deposit made under the authority of this section is subject; and except only in the case of a lawful claim by some other person before repayment, the receipt of the person in whose name any such deposit stands, or if it stands in the name of two persons the receipt of one, or if in the names of more than two persons the receipt of a majority of such persons, shall be a sufficient discharge to all concerned for the payment of any money payable in respect of such deposit, notwithstanding any trust to which such deposit is then subject, and whether or not the bank sought to be charged with such trust (and with whom the deposit has been made) had notice thereof; and the bank shall not be bound to see to the application of the money paid upon such receipt.

Kerry vs. *Merchants Bank*, 32 L. C. J. 121 (1888).

A bank authorized to receive deposits is not bound to see to the execution of any trust, whether express, implied or constructive, to which these deposits are subject; that the receipt furnished by the person in whose name these deposits are entered is a valid discharge.

RETURNS BY THE BANK.

85. Monthly returns to Government.—Monthly returns shall be made by the bank to the Minister of Finance and Receiver General in the form set forth in Schedule D to this Act, and shall be made up and sent in within the first fifteen days of each month, and shall exhibit the condition of the bank on the last juridical day of the month next preceding; and such monthly returns shall be signed by the chief accountant and by the president, or vice-president, or the director or principal partner then acting as president, and by the manager, cashier or other principal officer of the bank at its chief place of business:

SCHEDULE D.

Return of the liabilities and assets of the bank on the day of , A.D.

Capital authorized.. .. ..$
Capital subscribed.. .. ..$
Capital paid up .. ..$
Amount of rest or reserve fund.. .. ..$
Rate per cent. of last dividend declared. per cent.

LIABILITIES.

1. Notes in circulation.. .. ..$
2. Balance due to Dominion Government, after deducting advances for credits, pay-lists, etc.
3. Balance due to Provincial Governments.. ..
4. Deposits by the public, payable on demand..
5. Deposits by the public, payable after notice or on a fixed day.. .. ..
6. Loans from other banks in Canada, secured
7. Deposits, payable on demand or after notice or on a fixed day, made by other banks in Canada.. .. ..
8. Balances due to other banks in Canada in daily exchanges.. .. ..
9. Balances due to agencies of the bank, or to other banks or agencies in foreign countries
10. Balances due to agencies of the bank, or to other banks or agencies in the United Kingdom .. ..
11. Liabilities not included under foregoing heads

$

ASSETS.

1. Specie.. .. ..$
2. Dominion notes.. .. ..

3. Deposits with Dominion Government for security of note circulation.. .. ..
4. Notes of and cheques on other banks.. .. ..
5. Loans to other banks in Canada, secured.. ..
6. Deposits, payable on demand or after notice or on a fixed day, made with other banks in Canada.. .. ..
7. Balances due from other banks in Canada in daily exchanges.. .. ..
8. Balances due from agencies of the bank, or from other banks or agencies in foreign countries.. .. ..
9. Balances due from agencies of the bank, or from other banks or agencies in the United Kingdom.. .. ..
10. Dominion Government debentures or stocks
11. Canadian municipal securities, and British, Provincial, or foreign, or colonial public securities (other than Dominion).. .. .. ..
12. Canadian, British and other railway securities
13. Call loans on bonds and stocks.. .. ..
14. Current loans.. .. ..
15. Loans to the Government of Canada.. .. .. ..
16. Loans to Provincial Governments.. .. .. ..
17. Overdue debts.. .. ..
18. Real estate, the property of the bank (other than the bank premises).. .. ..
19. Mortgages on real estate sold by the bank ..
20. Bank premises.. .. ..
21. Other assets not included under the foregoing heads.. .. ..

$

Aggregate amount of loans to directors, and firms of which they are partners, $

Average amount of specie held during the month, $

Average amount of Dominion Notes held during the month, $

Greatest amount of notes in circulation at any time during the month, $

I declare that the above return has been prepared under my directions and is correct according to the books of the bank.

E. F.,

Chief Accountant.

We declare that the foregoing return is made up from the books of the bank, and that to the best of our knowledge and belief it is correct, and shows truly and clearly the financial position of the bank; and we further declare that the bank has never, at any time during the period to which the said return relates, held less than forty per cent. of its cash reserves in Dominion notes.

(Place) this day of

A. B., President

C. D., General Manager.

2. Penalty for not making up monthly return in due time.—Every bank which neglects to make up and send in, as aforesaid, any monthly return required by this section within the time hereby limited, shall incur a penalty of fifty dollars for each and every day after the expiration of such time during which the bank neglects so to make up and send in such return; and the date upon which it appears by the post office stamp or mark upon the envelope or wrapper enclosing such return for transmission to the Minister of Finance and Receiver General, that the same was deposited in the post office, shall be taken *prima facie*, for the purposes of this section, to be the date upon which such return was made up and sent in.

86. Special returns may be called for.—The Minister of Finance and Receiver General may also call for special returns from any bank, whenever, in his judgment, they are necessary to afford a full and complete knowledge of its condition:

2. PENALTY FOR NOT MAKING SUCH RETURN IN DUE TIME.—Such special returns shall be made and signed in the manner and by the persons specified in the next preceding section, and every bank which neglects to make and send in any such special return within thirty days from the date of the demand therefor by the Minister of Finance and Receiver General shall incur a penalty of five hundred dollars for each and every day such neglect continues; and the provisions contained in the last preceding section as to the *prima facie* evidence of the date upon which returns are made up and sent in thereunder, shall apply to returns made under this section: Provided always, that the Minister of Finance and Receiver General may extend the time for sending in such special returns for such further period, not exceeding thirty days, as he thinks expedient.

87. Transmission of certified lists of shareholders to Minister of Finance.—The bank shall, within twenty days after the close of each calendar year, transmit or deliver to the Minister of Finance and Receiver General, to be by him laid before Parliament, a certified list showing the names of the shareholders of the bank on the last day of such calendar year, with their additions and residences, the number of shares then held by them respectively, and the value at par of such shares:

2. MODE OF TRANSMISSION.—Such list shall be delivered at the Department of Finance, or shall be sent by registered letter posted at such time that, in the ordinary course of post, it may be delivered at the said Department within the time above limited:

3. PENALTY FOR NEGLECT TO TRANSMIT SUCH LISTS.—Every bank which neglects to transmit such list in manner aforesaid within the time aforesaid shall incur a penalty of fifty dollars for each and every day during which such neglect continues.

88. Annual Statement of dividends remaining unpaid, etc.—Proviso.—The bank shall, within twenty days

after the close of each calendar year, transmit or deliver to the Minister of Finance and Receiver General, to be by him laid before Parliament, a return of all dividends which have remained unpaid for more than five years, and also of all amounts or balances in respect to which no transactions have taken place or upon which no interest has been paid during the five years prior to the date of such return: Provided always, that in case of moneys deposited for a fixed period, the period of five years above referred to shall be reckoned from the date of the termination of such fixed period:

2. DETAILS OF RETURN.—FURTHER DETAILS.—Such return shall be signed in the manner required for the monthly returns under section eighty-five of this Act, and shall set forth the name of each shareholder or creditor, his last known address, the amount due, the agency of the bank at which the last transaction took place, and the date thereof; and if such shareholder or creditor is known to the bank to be dead, such return shall show the names and addresses of his legal representatives so far as known to the bank:

3. PENALTY FOR NOT MAKING ANNUAL RETURN.—Every bank which neglects to transmit or deliver to the Minister of Finance and Receiver General the return above referred to, within the time hereinbefore limited, shall incur a penalty of fifty dollars for each and every day during which such neglect continues:

4. DISPOSAL OF UNCLAIMED MONEYS.—PROVISO.—PROVISO.—If, in the event of the winding up of the business of the bank in insolvency, or under any general winding-up Act, or otherwise, any moneys payable by the liquidator, either to shareholders or depositors, remain unclaimed for the period of three years from the date of suspension of payment by the bank, or from the commencement of the winding up of such business, or until the final winding up of such business, if such takes place before the expiration of the said three years, such moneys and all interest thereon shall, notwithstanding any statute of limitations or other Act relating to prescription, be paid to the Minister of Finance and Receiver General, to be held by him subject to all rightful claims on behalf of any person other than the bank; and in case a claim to any moneys so paid as aforesaid is thereafter established to the satisfaction of the Treasury Board, the Governor in Council shall, on the report of the Treasury Board, direct payment thereof to be made to the person entitled thereto, together with interest on the principal sum thereof at the rate of three per cent. per annum for a period not exceeding six years from the date of payment thereof to the said Minister of Finance and Receiver General as aforesaid; Provided, however, that no such interest shall be paid or payable on such principal sum, unless interest thereon was payable by the bank paying the same to the said Minister of Finance and Receiver General: Provided also, that on payment to the Minister of Finance and Receiver General as herein provided, the bank and its assets shall be held to be discharged from further liability for the amounts so paid.

5. Requirements as to outstanding notes in case of insolvency.—Upon the winding-up of a bank in insolvency or under any general winding-up Act, or otherwise, the assignees, liquidators, directors or other officials in charge of such winding-up, shall, before the final distribution of the assets, or within three years from the commencement of the suspension of payment by the bank, whichever shall first happen, pay over to the Minister of Finance and Receiver General a sum out of the assets of the bank equal to the amount then outstanding of the notes intended for circulation issued by the bank; and, upon such payment being made the bank and its assets shall be relieved from all further liability in respect of such outstanding notes. The sum so paid shall be held by the Minister of Finance and Receiver General and applied for the purpose of redeeming, whenever presented, such outstanding notes, without interest.

INSOLVENCY.

89. Liability of shareholders in case of insufficiency of assets.—In the event of the property and assets of the bank being insufficient to pay its debts and liabilities, each shareholder of the bank shall be liable for the deficiency to an amount equal to the par value of the shares held by him, in addition to any amount not paid up on such shares.

Court vs. Waddell, 4 L. N. 78 (1881).

A director of a bank who has drawn dividends on his stock cannot escape double liability on account of the absence of a by-law authorizing the issue of the preferential stock.

Hilman vs. Court, 13 R. L. 619 (1882).

Where a shareholder of a bank acquires debts of the bank after the suspension of the bank, he cannot offer these debts in compensation of calls on his double liability made by the liquidator under 31 V., c. 5.

Exchange Bank vs. Montreal City and District Savings Bank, M. L. R. 2 S. C. 1 ([illegible]).

A bank whose shares are transferred to a savings bank, is presumed to know that they are held by the latter as collateral security, inasmuch as under section 18 of 34 Vict., chap. 7, a savings bank cannot acquire bank shares or hold them except as pledgee.

Liquidators of the Maritime Bank vs. Troop, 16 S. C. R. 456 (1888).

A contributory of an insolvent company, who is also a creditor, cannot set off the debt due to him by the company against calls made in the course of winding-up proceedings in respect of the double liability imposed by the Banking Act.

See Re Central Bank vs. Home Savings and Loan Co.'s Case, 18 O. A. R. 489 (1891).

See under Section 35.

90. Provision as to prescription and statute of limitations.—As a condition of the rights and privileges conferred by this Act or by any Act in amendment thereof, the following provision shall have effect. The liability of the bank under any law, custom, or agreement to repay moneys deposited with it and interest (if any) and to pay dividends declared and payable on its capital stock shall continue notwithstanding any statute of limitations or any enactment or law relating to prescription:

2. RETROACTION.—This section applies to moneys heretofore or hereafter deposited, and to dividends heretofore or hereafter declared.

91. Suspension for ninety days to constitute insolvency.—Any suspension by the bank of payment of any of its liabilities as they accrue, in specie or Dominion notes, shall, if it continues for ninety days, consecutively, or at intervals within twelve consecutive months, constitute the bank insolvent and operate a forfeiture of its charter or Act of incorporation, so far as regards all further banking operations; and the charter or Act of incorporation shall remain in force only for the purpose of enabling the directors or other lawful authority to make and enforce the calls mentioned in the next following sections of this Act and to wind up its business.

Senecal vs. *Exchange Bank*, M. L. R., 2 S. C. 107 (1884).
The creditor of an incorporated bank which has suspended its payments can, even before the expiration of 90 days from the date of said suspension, sue the bank and obtain judgment for the amount of his claim.

Exchange Bank vs. *Hall*, M. L. R., 2 Q. B. 409 (1886).
The respondent having funds to his credit in a bank which had suspended payment, drew cheques on the bank for various sums. These cheques were accepted by the bank on the same day, and the respondent then, for valuable consideration, disposed of them to various parties, who were paid the respective amounts by the bank by credits or otherwise.

Held, that the bank had no action against respondent to recover the amount of the cheques so paid, their recourse, if any, being against the parties to whom they had paid the money.

Exchange Bank vs. *Montreal Coffee House Association*, M. L. R., 2 S. C. 141 (1886).
The provisions of 45 Vict., chap. 23, override any rule as to insolvency contained in the Civil Code; therefore only payments made by an insolvent corporation within thirty days before the commencement of the winding-up order, *i.e.*, the date of the order made by the court for the winding-up, can be recovered by the liquidators.

In any case, a deposit of money made with a bank on the day and at the very hour when it suspended payments may lawfully be returned to the depositor.

Ontario Bank vs. *Chaplin*, 20 S. C. R. 152 (1891).
A person who makes a deposit with a bank after its suspension, the deposit consisting of cheques of third parties drawn on and accepted by the bank in question, is not entitled to be paid by privilege the amount of such deposit.

92. Calls in such cases.—If any suspension of payment in full in specie or Dominion notes of all or any of the notes or other liabilities of the bank continues for three months after the expiration of the time which, under the preceding section, would constitute the bank insolvent, and if no proceedings are taken under any general or special Act for the winding up of the bank, the directors shall make calls on the shareholders thereof, to the amount they deem necessary to pay all the debts and liabilities of the bank, without waiting for the collection of any debts due to it or the sale of any of its assets or property:

2. HOW SUCH CALLS SHALL BE MADE AND ENFORCED.—Such calls shall be made at intervals of thirty days, and upon

notice to be given thirty days at least prior to the day on which such call shall be payable, and any number of such calls may be made by one resolution; any such call shall not exceed twenty per cent. on each share; and payment of such calls may be enforced in like manner as payment of calls on unpaid stock may be enforced; and the first of such calls may be made within ten days after the expiration of the said three months:

3. REFUSAL TO MAKE CALLS UNDER THIS SECTION A MISDEMEANOR.—Every director who refuses to make or enforce, or to concur in making or enforcing any call under this section, is guilty of a misdemeanor, and liable to imprisonment for any term not exceeding two years, and shall further be personally responsible for any damages suffered by such default.

93. Calls under winding-up Act.—In the event of proceedings being taken under any general or special winding-up Act, in consequence of the insolvency of the bank, the said calls shall be made in the manner prescribed for the making of such calls in such general or special winding-up Act.

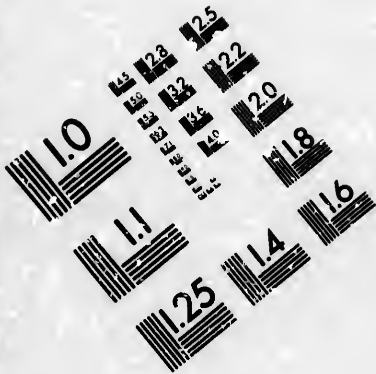
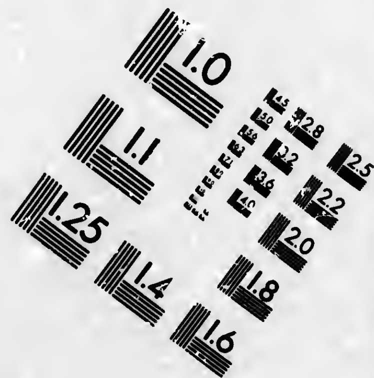
94. Forfeiture for non-payment.—Any failure on the part of any shareholder liable to any such call to pay the same when due, shall operate a forfeiture by such shareholder of all claim in or to any part of the assets of the bank,—such call and any further call thereafter being nevertheless recoverable from him as if no such forfeiture had been incurred.

95. Liability of directors not diminished.—Nothing in the six sections next preceding contained shall be construed to alter or diminish the additional liabilities of the directors as hereinbefore mentioned and declared.

96. Liability of shareholders who have transferred their stock.—Persons who, having been shareholders of the bank, have only transferred their shares, or any of them, to others, or registered the transfer thereof within sixty days before the commencement of the suspension of payment by the bank, and persons whose subscriptions to the stock of the bank have been cancelled in manner hereinbefore provided within the said period of sixty days before the commencement of the suspension of payment by the bank, shall be liable to all calls on the shares held or subscribed for by them, as if they held such shares at the time of such suspension of payment, saving their recourse against those by whom such shares were then actually held.

In re Central Bank, Baine's Case, 16 O. A. R. 237 (1889).

No special directions as to the transfer of shares had been formally adopted by the directors of the bank, but the transfer book had been prepared for and adapted to a system of marginal transfer. One C. transferred certain shares in blank, subject by a marginal note initialed by C., to the order of a broker, and subject by subsequent marginal note, initialed by the broker, to the order of B. B. signed an acceptance of the shares immediately under the transfer in blank signed by C., and was entered in the books of the bank as the holder of the shares, the intermediate transfers to and from the broker being omitted. The transfer to B. and acceptance by him took place within a month of the time of the suspension.

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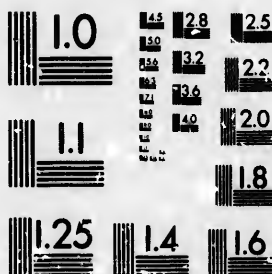
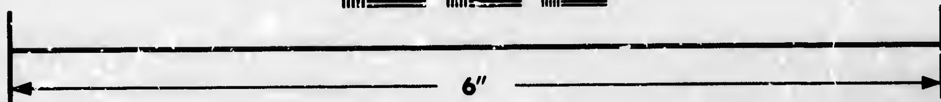

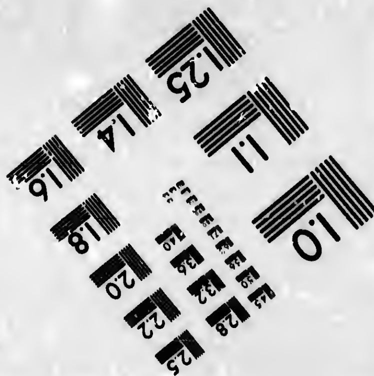

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Held, that this transfer and acceptance were a sufficient compliance with, or at least not in any way a violation of the statutory provisions, and that B, became the legal holder of the shares, and was liable as a contributory.

Sections 70 and 77 of R. S. C., ch. 20, must be read together, and make liable as contributories all those who hold shares at the time of the suspension of the bank, or who have held shares at any time within one month before the suspension.

Re Central Bank, Henderson's Case, 17 O. R. 110 (1889).

Held, that H., who had acquired certain shares in a bank within one month before the suspension of the bank, was rightly on the list of contributories as to these shares, but that his transferrors should also be placed upon it.

Re Central Bank vs. *Home Savings and Loan Co.'s Case*, 18 O. A. R. 489 (1891).

After a winding-up order has been made it is too late for holders of shares, entered as such in the books of the bank, to escape liability by showing irregularities in transfers to more or less remote predecessors in title.

A loan company which advances money on the security of shares, which are transferred to it, and accepted by it, in the ordinary absolute form, cannot escape liability on the ground that it is merely a trustee for the borrower.

Re Central Bank vs. *Hogg*, 19 O. R. 7 (1892).

A minor's father signed her name to a stock subscription book of a bank, paid the calls and received the dividend cheques which were endorsed by her at her father's request, the moneys being received by him. The bank was put into liquidation by winding-up proceedings, and the order for call against contributories was made three months before she came of age. A year after the liquidation commenced, she took proceedings to have her name removed from the list of contributories:—

Held, that she was not liable as a contributory, and that her name must be removed from the list.

OFFENCES AND PENALTIES.

97. President etc., giving undue preference to any creditor guilty of a misdemeanor.—Every one is guilty of a misdemeanor and liable to imprisonment for a term not exceeding two years who, being the president, vice-president, director, principal partner *en commandite*, manager, cashier or other officer of the bank, wilfully gives or concurs in giving any creditor of the bank any fraudulent, undue or unfair preference over other creditors, by giving security to such creditor or by changing the nature of his claim or otherwise howsoever, and shall further be responsible for all damages sustained by any person in consequence of such preference.

In the case of *The Queen* vs. *Buntin*, 7 L. N. 395 (1884), the accused, a director of the Exchange Bank, which had suspended payment on the 17th September, 1893, was indicted in the November Term, 1884, of the Court of Queen's Bench, at Montreal, with having, in concurrence with one Craig, the president of the Bank, secured and received an undue preference over other creditors, and was found guilty.

98. Recovery and disposal of penalties.—The amount of all penalties imposed upon a bank for any violation of this Act shall be recoverable and enforceable with costs, at the suit of Her Majesty, instituted by the Attorney General of Canada, or the Minister of Finance and Receiver General, and such penalties shall belong to the Crown for the public uses of Canada; but the Governor in Council, on the report of the Treasury Board, may direct that any portion of any pen-

alty be remitted or paid to any person, or applied in any manner deemed best adapted to attain the objects of this Act and to secure the due administration thereof.

99. Making false statement in returns, etc., a misdemeanor, etc.—The making of any wilfully false or deceptive statement in any account, statement, return, report or other document respecting the affairs of the bank is, unless it amounts to a higher offence, a misdemeanor punishable by imprisonment for a term not exceeding five years; and every president, vice-president, director, principal partner *en commandite*, auditor, manager, cashier or other officer of the bank, who prepares, signs, approves or concurs in such statement, return, report or document, or uses the same with intent to deceive or mislead any person, shall be held to have wilfully made such false statement, and shall further be responsible for all damages sustained by any person in consequence thereof.

Drake vs. *Bank of Toronto*, 9 Grant's Ch. R. 116 (1862).

Semble: The directors and managers of incorporated banks are *quasi* trustees for the general body of shareholders, and, if any loss should accrue to the bank by their infringing the statute against usury, they would be liable individually to make good the loss to the bank.

In the case of *The Queen* vs. *Cotte*, 22 L. C. J. 141 (1877), the cashier of La Banque Jacques Cartier was indicted for having unlawfully and wilfully made a wilful, false and deceptive statement in a return respecting the affairs of the bank, and was found guilty. On an appeal to the Court of Queen's Bench for the Province of Quebec, that Court, on the 19th March, 1877, maintained the verdict and held that it is not necessary to allege that the return referred to was one required by law to be made by the accused, or that any use was made by him of such return, or to specify in what particulars the return was false. Nor is it necessary to allege in the indictment that the false statement was made with intent to deceive or mislead.

Rhodes vs. *Starnes*, 22 L. C. J. 113 (1878).

Reports made and accounts rendered by the directors in the course of their duty, though made and issued to the shareholders only, as to the state of affairs of the company, are considered the representations of the company not only to the shareholders, but to the public, if they are published and circulated by the authority of the directors or a general meeting.

Directors of a company are personally liable for injury caused to third parties by false representations contained in a report of the directors to the shareholders, but the injury must be immediate and not the remote consequence of the representation, and it must appear that the false representation was made with the intent that it should be acted upon by such third persons.

A shareholder cannot claim damages against directors for having been induced to purchase shares by misrepresentation, if he has continued to hold them without objection long after he had knowledge, or full means of knowledge, of the untruth of the representations on which he bought them.

In the case of *Regina* vs. *Sir Francis Hincks*, 24 L. C. J. 116 (1879), the defendant, the president of the Consolidated Bank of Canada, was indicted for making a wilfully false and deceptive return under 34 Vict., chap. 5, section 62, relating to banks and banking, the falsity of the return consisting in the improper classification of the assets and liabilities, and was tried and convicted on the 20th October, 1879. On an appeal to the Court of Queen's Bench for the Province of Quebec, the verdict was quashed and set aside, the court holding that the question as to whether the items: 1st, Sums borrowed by the defendant's bank from other banks, for which deposit receipts were given, classed as "other deposits payable after notice or at a fixed day;" 2nd, Demand notes classed as "bills and notes discounted

and current," had been improperly classified was a question of fact for the jury, and not one of law for the court.

In the case of *Molleur* vs. *Louprct*, 8 L. N. 305 (1885), it was held in the Superior Court for the District of Iberville, Quebec, that the information in the case of making a false return under the Banking Act, 34 Vict., chap. 5, section 62, may be sworn to by a non-shareholder, and even by a citizen who is a debtor of the bank.

Macdonald vs. *Bulmer, et al.*, R. J. Q., 12 S. C. 424 (1897).

The recourse of a drawer and depositor of the bank against the directors of the bank for damages caused by their bad administration being based on the responsibility which the directors have assumed as mandataries, and not on a *delit*, is prescribed by thirty years.

In the case of *Queen* vs. *William Weir*, the ex-president of the Banque Ville Marie was indicted in the Court of Queen's Bench, at Montreal, for wilfully making a false return to the Dominion Government, and on the 28th November, 1899, was found guilty. Ferdinand Lemieux, the ex-cashier of the bank was indicted for signing the false return, and on the 21st December, 1899, was found guilty.

100. Unauthorized use of title "Bank," etc.—Every person assuming or using the title of "bank," "banking company," "banking house," "banking association" or "banking institution," without being authorized so to do by this Act, or by some other Act in force in that behalf, is guilty of an offence against this Act.

101. Penalty for offence against this Act.—Every person, committing an offence declared to be an offence against this Act, shall be liable to a fine not exceeding one thousand dollars, or to imprisonment for a term not exceeding five years, or to both, in the discretion of the court before which the conviction is had.

PUBLIC NOTICES.

102. How notices shall be given.—The several public notices by this Act required to be given shall, unless otherwise specified, be given by advertisement in one or more newspapers published at the place where the head office of the bank is situate, and in the *Canada Gazette*.

DOMINION GOVERNMENT CHEQUES.

103. Government cheques to be paid at par.—The bank shall not charge any discount or commission for cashing any official cheque of the Government of Canada, or of any department thereof, whether drawn on itself or on another bank.

COMMENCEMENT OF ACT AND REPEAL.

104. Commencement of this Act.—Repeal of R.S.C., c. 120 and of 51 V., c. 27 and 50-51V., c. 47.—Saving clause.—This Act shall come into force on the first day of July,

in the year one thousand eight hundred and ninety-one; and from that day chapter one hundred and twenty of the Revised Statutes of Canada, intituled "*An Act respecting Banks and Banking*," the Act passed in the fifty-first year of Her Majesty's reign, chapter twenty-seven, in amendment thereof, the Act passed in the session held in the thirty-third year of Her Majesty's reign, chapter twelve, intituled "*An Act to remove certain restrictions with respect to the issue of bank notes in Nova Scotia*," the Act passed in the session held in the fiftieth and fifty-first years of Her Majesty's reign, chapter forty-seven, intituled "*An Act respecting the defacing of counterfeit notes, and the use of imitations of notes*," and chapter one hundred and twenty of the Revised Statutes of New Brunswick, "*Of Banking*," and the Act passed by the Legislature of the Province of New Brunswick in the nineteenth year of Her Majesty's reign, chapter forty-seven, intituled "*An Act to explain chapter 120, Title XXXI, of the Revised Statutes, 'Of Banking,'*" shall be repealed, except as to rights theretofore acquired or liabilities incurred in regard to any matter or thing done or contract or agreement made or entered into or offences committed under the said chapters or Acts, and nothing in this Act shall affect any action or proceedings then pending under the said chapter or Acts then repealed, but the same shall be decided as if such chapters and Acts had not been repealed.

AN ACT TO AMEND THE BANK ACT.

62-63 Vict., chap. 14.

(Assented to 10th July, 1899.)

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. Note issue at agency in British possession other than Canada.—Notwithstanding the provisions of section 51 of The Bank Act, any bank to which that Act applies may issue and re-issue, at any office or agency of the bank in any British colony or possession other than Canada, notes of the bank payable to bearer on demand and intended for circulation in such colony or possession, for the sum of one pound sterling each, or for any multiple of such sum, provided the issue or re-issue of such notes is not forbidden by the laws of such colony or possession.

2. Redemption.—The notes so issued shall be redeemable at par at any office or agency of the bank in the colony or possession in which they are issued for circulation, and not elsewhere, except as hereinafter specially provided; and the place of redemption of such notes shall be legibly printed or stamped across the face of each note so issued.

3. Redemption if agency is abolished. Proviso: as to issue in Canada.—In the event of the bank ceasing to have an office or agency in any such British colony or pos-

session, all notes issued in such colony or possession under the provisions of this Act shall become payable and redeemable at the par value thereof (that is to say, at four dollars and eighty-six and two-thirds cents per pound sterling) in the same manner as notes of the bank issued in Canada are payable and redeemable; provided always that no notes issued for circulation in a British colony or possession other than Canada shall be re-issued in Canada, and that nothing herein shall be construed as authorizing the issue or re-issue by the bank in Canada of notes payable to bearer on demand and intended for circulation for a sum less than five dollars or for a sum which is not a multiple of five dollars.

4. Total amount of circulation.—The amount of the notes at any time in circulation in any colony or possession, issued under the provisions of this Act, shall, at the rate of four dollars and eighty-six and two-thirds cents per pound sterling, form part of the total amount of the notes in circulation within the meaning of section 51 of The Bank Act, and, except as herein otherwise specially provided, shall be subject to all the provisions of The Bank Act; but nothing herein contained shall enable the bank to increase the total amount of its notes in circulation in Canada and elsewhere beyond the limit fixed by the said section 51 of The Bank Act.

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Louis H. Collard.

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L. W. Sicotte.

UNDER THE NATURALIZATION ACT.

L. W. Sicotte.

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W. C. McCarthy.. .. .. "
D. B. McTavish .. ..Ottawa.
John J. McGee.. .. .. "
Philip S. Ross, 182 St. James Street.. .. ..Montreal.
John Popham.. .. .. "
Frederick Styles Lyman.. .. .. "
Arch. Wm. Stevenson.. .. .. "
Avila Bourbonniere, 83 Rue St. Jacques.. .. .. "
James Nasmith Greenshields.. .. .. "
J. Aylwin Creighton.. .. .. "
George R. Locker.. .. .. "
Samuel C. Fatt.. .. .. "
O'Hara Baynes.. .. .. "
John C. Griffin.. .. .. "
Edward Graves.. .. .. "
Charles Cushing.. .. .. "
Alex. Fowler Riddell.. .. .. "
Edmund Guerin.. .. .. "
Duncan McCormick.. .. .. "
James J. Ross.. .. .. "
Henry Kavanagh.. .. .. "
Frederic Hague.. .. .. "
W. H. Olive.. .. .. "
Peers Davidson.. .. .. "
W. J. White.. .. .. "
John Hyde.. .. .. "
S. W. Jacobs.. .. .. "
P. C. Beauchesne.. .. ..Carleton, P.Q.
Henry James Morgan.. .. ..Ottawa.
R. J. Meakstead.. .. .. "
Theophilus H. Oliver.. .. ..Quebec.
Michael Esdras Bernier.. .. .. "
F. X. Gosselin.. .. .. "
Hon. F. C. Marchand.. .. ..St. Johns, P.Q.

New Brunswick.

Alfred H. Demille.. .. ..St. John, N.B.
X. Herbert Vail.. .. .. "
John Kerr.. .. .. "
Stephen Rand.. .. .. "
Warren C. Winslow.. .. .. "
Charles A. Stockton .. .. "
Edmund G. Kaye.. .. .. "
George C. Coster.. .. .. "
J. Roy Campbell... .. .. "
Augustus Harvey Hannington.. .. .. "
James Jack.. .. .. "
H. H. Picket.. .. .. "

Samuel Gay Morse.. .. ..Hopewell, Albert Co.
Frank McCully.. .. ..Moncton

PRINCE EDWARD ISLAND.

Thomas Kelly.. .. ..Summerside

MANITOBA.

Wm. E. McLellan.. .. ..Winnipeg
James W. E. Darby.. .. ..
William Johnston Tupper.. .. ..Winnipeg.

BRITISH COLUMBIA.

Albert Alex. Boak.. .. ..Vancouver
Albert J. Hill.. .. ..New Westminster

NEW SOUTH WALES.

Frank Osborne.. .. ..Sydney

NEWFOUNDLAND.

George H. Emerson.. .. ..St. John

INDIA.

Lieut-Genl. Donald M. Stewart.. .. ..Bengal
Major Genl. Michael A. S. Biddulph.. .. .. "

UNITED STATES OF AMERICA.

Arthur J. McLeod, 50 School Street.. .. ..Boston
Edward J. Jones.. .. .. "
Samuel Jennison.. .. .. "
Charles A. Shaw .. .. "
Charles Hall Adams.. .. .. "
Winslow Warren.. .. .. "
Benjamin A. Lockhart.. .. .. "
Elmer E. Young.. .. .. "
Samuel K. Hamilton.. .. .. "
Daniel B. Whittier.. .. .. "
E. A. Greeley.. .. .. "
R. A. Torrey.. .. .. "
P. W. Carver.. .. .. "
Hector Baxter, 420 Guaranty Loan Building.. .. .. ..Minneapolis
Fred. P. Fairbanks.. .. ..New York.
W. E. Scovill, 120 Broadway.. .. .. "
Joseph B. Braman.. .. .. "
John J. Ward.. .. .. "
Charles H. Hyde.. .. .. "
William T. Hardenbrook, 38 Park Row.. .. .. "
George W. Schurman.. .. .. "
Thomas J. Hunt.. .. ..Philadelphia.
Graeme M. Wilson.. .. ..Bay City, Michigan.
Philip A. Hoyne.. .. ..Chicago.
Charles Taylor.. .. .. New York.
Warren H. Meade.. .. ..St. Paul, Minnesota.
Roble S. Reid.. .. ..Port Townsend, Washington Ty.
Livingston W. Cleaveland.. .. ..New Haven.

COMMISSIONERS RESIDING IN THE PROVINCE OF NOVA SCOTIA TO DO ACTS WITHIN THE PROVINCE.

FOR THE PROVINCE OF QUEBEC.

Thomas Ritchie.. .. ..Halifax.
A. J. G. MacEchen.. .. ..Sydney, C.B.

FOR THE PROVINCE OF ONTARIO.

Thomas Ritchie.. .. ..Halifax.
H. T. Jones.. .. .. "
Edgar N. Clements.. .. ..Yarmouth.
A. J. G. MacEchen.. .. ..Sydney, C.B.

FOR THE PROVINCE OF NEW BRUNSWICK.

J. M. Chisholm.. .. ..Halifax.
Charles R. Smith.. .. ..Amherst.
Henry B. Stairs.. .. ..Halifax.
Edgar N. Clements.. .. ..Yarmouth.
H. E. Gillis.. .. ..Annapolis Royal.
A. J. G. MacEchen.. .. ..Sydney, C.B.
W. Inglis Moffat.. .. ..Amherst.
Arthur Davison.. .. .. "

FOR THE STATE OF MASSACHUSETTS.

Byron A. Weston.. .. ..Halifax.
George Bingay.. .. ..Yarmouth.
Edgar N. Clements.. .. .. "
H. E. Gillis.. .. ..Annapolis Royal.

FOR NEWFOUNDLAND.

Jonathan Parsons.. .. ..Halifax.
John M. Chisholm.. .. .. "
A. J. G. MacEchen.. .. ..Sydney, C.B.

COMMISSIONERS FOR GIVING RELIEF TO INSOLVENT DEBTORS AND FOR TAKING AFFIDAVITS TO HOLD BAIL.

CO. OF ANNAPOLIS.—Wm. Y. Foster, Robert Mills, T. W. Chesley, Albert Beals, L. S. Morse, Wm. Reardon, A. W. Corbett, Richard J. Uniacke, J. G. H. Parker, Wm. Chipman, Albert Morse, Edwin Ruggles, John B. Mills, Timothy G. Bohaker, Chas. Jacques, Henry Phinney, O. M. Taylor, Jas. H. Whitman, O. T. Daniels, W. W. Clark, James Horsfall, A. W. Harris, J. M. Owen, Fred Leavitt, John Ervin, O. S. Miller, Edgar H. Porter, M. C. Roop, Elzear Gidney, Wm. H. Miller, Benj. B. Hardwick, Henry Parks, J. Inglis Nixon, F. R. Fay, John L. Cox, Samuel Legg, F. L. Milner, Bridgetown; W. G. Parsons, Middleton; Jas. E. Oakes, Nictaux Falls; H. D. Ruggles, Annapolis.

CO. OF ANTIGONISH.—W. E. McPhie, C. P. Chisholm, Edward Corbett, Alexander McInnis, John C. McKinnon, M.D.; Donald

McDonald, Wm. Gerrier, C. N. Harrington, Joseph A. Wall, Daniel C. Chisholm, Wm. Chisholm, D. F. McGarry, E. L. Gerrier, Antigonish.

Co. of Cape Breton.—John McLean, Jos. McVarish, Blowers Archibald, Colin Chisholm, Fred. Mosley, Martin J. Phoran, Murray Dodd, John Gillis, Walter Crowe, Geo. B. Ingraham, Chas. W. Hill, A. J. G. MacEchen, John C. McNeil, W. E. Peters, Sydney; Otto B. Lewis, N. Sydney; Daniel M. Curry, Sydney; David A. Hearn, Arichat; Daniel D. McKenzie, N. Sydney; Joseph McDonald, L. X. McDonald, Wm. Hackett, jr., Angus G. McLean, Don. A. Cameron, John C. Townsend, Sydney; W. A. G. Hill, Sydney; Joseph McDonald, Daniel McPhee, North Sydney; Alex. McGillivray, L. Glace Bay; John J. Forbes, North Sydney; Allan J. McDonald, Sydney; Hugh Ross, Sydney.

Co. of Colchester.—James K. Blair, John T. B. Henderson, Wm. A. Fulmore, Alexander C. Patterson, Norman J. Layton, George Gunn, Firman McLure, A. N. Tupper, T. N. Dunphy, S. D. McLellan, E. W. Hamilton, Samuel F. Morrison, L. G. Crowe, S. W. Cummings, Wm. McDonald, T. M. King, J. E. Corbett, F. J. Logan, Lr. Stewiacke; H. V. Bigelow, R. B. Graham, H. A. Lovett, R. D. Fraser, F. W. B. Loughead, Hon. F. A. Laurence, Hugh McKenzie, Fred Calder, Chas. A. McLennan, Truro; Fredk. Tupper, Geo. Fulton, Upper Stewiacke.

Co. of Cumberland.—Wm. Oxley, Amos Purdy, W. Y. King, Thompson J. Copp, Angus McGillivray, John M. Townsend, Chas. R. Smith, Alexander M. Wills, J. William Cove, M.D., Arthur R. Dickey, William Moffatt, John Hewson, Wm. Greenfield, Edward B. Blenkhorn, Alexander S. Townsend, C. E. Ratchford, Richard L. Black, John W. Hickman, W. Fred. Donkin, Ernest Black, Amherst; Edgar E. Hewson, Amherst; Lemuel Bigney, John W. Morris, B. W. Ralston, Donald J. McLeod, Wm. E. Blenkhorn, Wm. Slade, Ephraim Howard, J. Alder Davis, Rufus S. Purdy, Frank L. Peers, Spring Hill; Fredk. R. Eaton, Chas. McCabe, Parrsboro; Michael Dowlin, Amherst; W. B. Huestis, Amherst; Chas. S. Chapman, Amherst; Hance J. Logan, Amherst; C. E. Casey, Amherst; Joshua H. Livingston, Wentworth; Jas. W. Brownell, Linden; Archd. W. Foster, Spring Hill; Richard Lowerson, Amherst; Job H. Seaman, River Hebert; Duncan McKim, Ira Drysdale, Wallace; David S. Taylor, Stuart Jenks, H. W. Mackenna, Parrsboro; Josiah Black, Amherst; T. M. Johnson, Oxford.

Co. of Digby.—W. W. Clarke, William B. Stewart, B. H. Ruggles, Edward Hogan, Charles H. Denton, John Holdsworth, John A. Russell, Jeremiah McLaughlin, Weymouth Bridge; Watson Saunders, Sandy Cove; A. J. S. Copp, Digby; Solomon M. Dakin, Centreville; John R. Hunt, Smith's Cove; John Kinney, Weymouth; R. L. Black, Charles Burrell, Samuel McCormack, Frank Jones, Digby; Bernard Havey, Freeport; J. A. Grierson, Weymouth; George M. White, Thos. W. Longstaff, Digby; W. W. Wade, Bear River; Henry L. Dennison. Clare.—A. M. Comeau, Gabriel Saulnier, Jacob S. Allen.

Co. of Guysboro'.—William G. Scott, P. C. Cullen, John McMillen, Wm. Hartshorne, Alex. Tory, W. D. R. Cameron,

Allan McQuarrie, C. M. Frencheville, Jas. McLellan, Danl. McKinnon, A. W. Hart, A. G. Winterbotham, Samuel H. Peeples, James H. Buckley, Edw. C. Peart, A. H. Macdonald, Port Melgrave.

Co. of Halifax.—H. A. Macdonald, R. H. Murray, Joseph Kaye, Wm. Twining, Wm. F. McCoy, Robt. McIlreith, John H. Anderson, Alexander Stephen, Wm. R. Foster, J. Wilberforce Longley, Lewis W. DesBarres, Wm. Munro, Bryon A. Weston, Thos. Ritchie, John M. Chisholm, H. S. Blackader, Chas. Sydney Harrington, John T. Bulmer, George H. Fielding, Fredk. P. Outram, Jonathan Parsons, Wm. Condon, Edwin D. King, John Menger, Geo. Ritchie, W. W. McLellan, F. J. Tremaine, Howard Clarke, Wm. C. Henley, Chas. H. Smith, Alf. Whitman, J. L. Griffin, J. T. Ross, J. L. Barnhill, John McDougall, Wm. B. Ross, Wm. B. Wallace, Wallace McDonald, W. A. Mills, M. U. Lenoir, W. R. M. Hartlen, A. G. Troop, Jas. A. McDonald, Wm. W. Walsh, Alfred E. Silver, Adams A. McKay, W. H. Covert, H. T. Jones, Andrew Cluney, Jos. F. Frame, Wm. H. Higgins, W. A. Henry, W. B. MacCoy, T. F. Tobin, Jas. M. Davison, T. J. Cahalane, E. C. Swanson, Thos. Notting, Alex. McNeil, M. K. Doyle, F. F. Mathers, H. B. Stairs, C. B. Burns, R. W. Crowe, J. Frank Outhit, D. K. Grant, C. D. McDonald, Arthur S. Barnstead, John E. Wood, B. H. Armstrong, Frank B. Scott, Frank W. Russell, Chas. F. Tremaine, Charles P. Fullerton, Halifax; J. H. Taylor, Taylor's Settlement.

Co. of Hants.—M. H. Goudge, Geo. H. King, J. W. Ousley, H. Percy Scott, Stephen Putnam, John Lynch, G. W. Smith, W. M. Christie, Robert Faulkner, Wm. O'Brien, Thomas Aylward, Herbert W. Sangster, James W. Curry, Wm. H. Mosher, Robert B. Eaton, Jas. Farquhar, Newport; Alba Redden, Windsor; Wm. Sangster, Falmouth; John A. Taylor, Hantsport; F. A. G. Ousley, Fredk. Curry, Windsor.

Co. of Inverness.—Angus McDonald, Wm. McPherson, Donald McDonald, A. A. Taylor, Jas. T. Lawrence, John McKay, D. F. McLean, Wm. Clough, John A. McDonnell, Donald Gillis, Daniel McLean, Alex. Bain, H. A. Forbes, Duncan WcLean, James McDonald, Peter Smith, Allan McMillan, John G. McKay, Neil McAulay, Moses J. Doucet, John R. McDonald, Daniel McLennan, Alex. McNeill, Port Hood; R. G. McLellan, Port Hood; Dun. McDonell, Long Point; Alexander T. McDonald, Robt. Frizzle, Brook Village; Kenneth McLennan, Bedford.

Co. of Kings.—Wm. Crane, Daniel B. Parker, Arthur W. Smith, Lambert O. Nelly, Aylesford; John H. Dennison, Edward A. Pyke, John Hamilton, E. Sydney Crawley, John P. Chipman, Wentworth E. Roscoe, Jno. W. Wallace, Barclay Webster, E. M. Beckwith, E. J. Cogswell, Chas. F. Rockwell, W. P. Shaffner, A. C. VanBuskirk, H. E. Jefferson, J. A. Northup, Canning; B. H. Armstrong, Jas. W. Caldwell, Frank A. Dixon, Wolfville.

Co. of Lunenburg.—A. K. McLean, Jas. Dowling, Jas. D. Selig, Wm. J. Dauphinee, Wm. H. Owen, Daniel M. Owen, Jas. A. Curll, Edward B. Hysen, Thos. Curll, Patrick McGuire,

Henry T. Ross, Richard H. Griffiths, J. A. Whitford, Wm. E. Marshall, V. J. Paton, Ralph T. Keefler, Bridgewater; Chas. W. Lane.

Co. of Pictou.—Hry. R. Narroway, Donald Robertson, A. M. Fraser. Richard Tanner, Robert Willis, Jas. Roy, Chas. E. Tanner, John McGillivray, Fred. W. Fraser, Donald Grey, John Ross, Wm. McLaren, W. F. McKenzie, John U. Ross, James Kitchen, Don. McDougall, Hugh Cameron, Edwd. McLellan, D. W. Crockett, H. V. Jennison, Hugh S. Fraser, Rodk. McDougall, Wm. A. Dickson, Edw. Doherty, George Patterson, James F. McLean, Angus McDonald, Bailey's Brook; John H. Sinclair, D. C. Fraser, New Glasgow; John J. Power, David McKay, Pictou; H. K. Fitzpatrick, New Glasgow; David Logan, Pictou; R. M. Langille, Westville; Henry S. McKay, Westville.

Co. of Queens.—James Collie, Matthew Drew, Thomas Farrell, Francis L. Seldon, Nelson F. McLeod, Charles Harlow, I. S. Cushing, David H. McPherson, J. N. S. Marshall, J. G. Pyke, Jas. McLeod, Colin Campbell, Jas. Clements, I. V. Dexter, John Allen.

Co. of Richmond.—John R. Smith, Daniel O'C. Madden, John Freehill, E. P. Flynn, John H. Rhindress, David Grouchy, Angus McNeil, George H. Bissett, John Morrison, Peter Grouchy, Wm. R. Cutler, Wm. Brymer, W. E. Morrison, George W. Kyte, St. Peters; D. R. Boyle, West Arichat; Duncan Finlayson, Arichat.

Co. of Shelburne.—R. G. Irwin, George A. Cox, Frank C. Blanchard, J. J. E. DeMolitor, John B. Lawrence, Edward A. Capstick, John Bower, Edmund Snow, Thomas W. Watson, Andrew C. Robertson, Edward Greenwood, Abram C. McLean, Joseph E. Lloyd and James Ruggles, Lockeport; Arthur Hood, Shelburne; Elijah Nickerson, Wood's Harbor; E. M. Bill, Shelburne; John Hood, Shelburne; A. C. Newell, J. A. Kenny, Cape Sable Island; Wm. H. Matheson, Wood's Harbor.

Co. of Victoria.—Alex. Taylor, John L. Bethune, M.D., Alex. McDonald, David McDonald, John A. McDonald, Murdoch G. McLeod, Daniel Livingstone, John J. McCabe, Alex. Anderson, D. F. McRae, M. E. McKay, Edward W. McCurdy, Baddeck; H. P. Blanchard, Baddeck; A. J. McDonald, Baddeck; James McKinnon, McKinnon's Harbor.

Co. of Yarmouth.—Rowley, Thomas B. Flint, George Judson Burrill, Thos. B. Crosby, George Bingay, Bernard E. Rogers, Jos. A. Smith, Stephen B. Murray, Benj. Annis, Jas. Huntington, Geo. R. Smith, David C. Crosby, Port Maitland. *Argyle*—Enos Gardner, Smith Harding, O. W. Slocumb, David L. Porter.

NEW BRUNSWICK.

COMMISSIONERS FOR TAKING AFFIDAVITS.

In general all Attorneys of the Supreme Court are Commissioners for taking affidavits to be read in that Court. In addition to Attorneys and others who are specially appointed commissioners, the following persons may take oaths and affidavits in the Province.

1. Any Justice of any Court in which or before any judge of which the same is to be used.

2. Justices of the Peace may administer an oath or take an affirmation or declaration in any matter over which he has jurisdiction; may swear appraisers, petitioners on petitions to any public individual or body, or inventories or accounts rendered to the executor of an estate, insurance proofs, or the like.

3. Any person holding an enquiry by authority of an Act of Assembly, or of the Government may administer an oath, declaration or affirmation, if directed.

4. Judges of the Supreme and County Courts, and Commissioners for taking affidavits to be read in the Supreme Court, may administer any oath, declaration or affirmation, or take an affidavit to be used in any cause, matter or proceeding in any Court in this Province, or authorized to be administered or taken by any law in force in this Province.

PERSONS AUTHORIZED TO TAKE AFFIDAVITS OUT OF THE PROVINCE.

1. The Lieutenant-Governor in Council may by commission appoint so many persons as he may think fit to take affidavits, in the United Kingdom of Great Britain and Ireland or any colony thereof, or in any foreign country, or in any Province of Canada.

2. Any Commissioner authorized by the Lord Chancellor to administer oaths in Chancery in England.

3. Any Notary Public certified under his hand and official seal.

4. The Mayor of any City, Borough, Municipality or Town Corporate and certified under the common or corporate seal of such City, Borough or Municipality, or the seal of such Mayor.

5. Any Judge of the Court of Queen's Bench in Great Britain, or Ireland, or Master in Chancery in England or Ireland, or any Judge or Lord of Session in Scotland, the handwriting of any such person being authenticated by a Notary Public.

6. Any Judge of any Court of Supreme Jurisdiction in any Colony belonging to the Crown of Great Britain and Ireland.

7. Any British Minister, ambassador, consul or vice-consul, acting consul, pro-consul or consular agent of Her Majesty exercising his functions in any foreign place, certified under the hand and seal of such persons.

8. Any Governor of a State, certified under his hand and seal.

PRINCE EDWARD ISLAND.

COMMISSIONERS FOR TAKING AFFIDAVITS IN THE SUPREME COURT.

CHARLOTTETOWN—John Brecken, Mal. McLeod, F. D. St. C. Brecken, Louis H. Davies, Edward Bayfield, H. J. Palmer, A. A. McLean, W. A. O. Morson, George A. Harvie, F. L. Haszard, A. B. Warburton, Rich. Reddin, Arthur Peters, John S. McDonald, Stanislas Blanchard, Hedley V. Palmer, George Tweedie, Wm. S. Stewart, Charles R. Smallwood, John A. Longworth, Wm. Arthur Weeks, Hector C. MacDonald, James H. Reddin, E. H. Haviland, J. T. Mellish, Aeneas A. Macdonald, John F. Whear, J. J. Johnston, A. Ernest Ings, John A. McDonald, Geo. S. Inman, W. E. Bentley, W. H. F. Carvell.

QUEEN'S COUNTY—Bradalbane, John McLeod; Cavendish, A. M. McNeil, John C. Clark; Covehead, Cornelius Higgins; Crapaud, Donald W. Palmer; DeSable, William Enman; Eldon, Donald R. McDonald, James St. C. Moore, Alexander McMillan; Emerald, Albert Craig; Hope River, Peter McGuigan; Lot 57, Donald McLeod; Lot 67, Mal. Matheson; Mount Stewart, Jas. Ross; Stanley Bridge, Roderick McNeill, M.D.; Strathalbyn, Donald Cameron, Donald Nicholson; Tracadie Cross, Anthony J. Dougan; Vernon River, Lemuel C. Hayden.

PRINCE COUNTY—Alberton, Richard B. Reid, Charles A. Woodman, John P. Brennan, Thos. B. Woodman; Bedeque, Augustus E. C. Holland; Bideford, Albert Williams; Cape Traverse, Alex. Strang, Arthur Irving; Centreville, Major Wright; Coleman, Strang Hart; Hamilton, Wm. McN. Simpson; Kensington, D. Darrach, M.D., Reuben Tuplin, G. W. W. Bentley; Kinkora, Owen Hughes; Lot 7, Peter Doyle; Lot 8, Donald C. Ramsay; Lot 14, Donald J. McDougall; Lot 25, William Taylor; Malpeque, Peter McNutt; Miminegash, Lawrence Doyle; Northam, Thomas Campbell, M.D.; O'Leary, James Barclay, Peter N. Pate; Port Hill, John Yeo, Hugh A. Ramsay; Princetown, Benj. Beairsto; Richmond, Stephen E. Gallant; Searletown, Dougald S. Wright; St. Eleanors, Alex. E. Holland; Summerside, Wm. T. Hunt, Henry E. Wright, Hugh J. Massey, Henry Scales, Neil McQuarrie, James E. Wyatt, John H. Bell, Kenneth J. Martin, Geo. Godkin, Horace H. Beer; Tignish, Joseph E. Richard, Alex. J. McFadyen, Richard Dawson; Tryon, Saml. E. Reid; Tyne Valley, John Forbes; Wright's Mills, David Rogers; Lot 7, Alfred McWilliams; Carleton, Lot 28, Donald Morrison; Cape Traverse, Ephraim A. Bell.

KING'S COUNTY—Annandale, John Nicholas; Brudenell, George Wightman; Cardigan, Robert Mooney, William P. Lewis, George F. Owen; Dundas, Saml. McDonald, John R. Campbell; Fox River, Lot 42; Anthony McCormack; Georgetown, J. A. Mathieson, George A. Aitken; Little Sands, Duncan Munn; Montague Bridge, Samuel Mutch, G. S. Inman, W. Leith Poole; Montague (Lower), Dun. Fraser; Morell, Robert N. Cox; Murray Harbor, Samuel Prowse, John Kielly; Murray River, Robert Whiteway, sen.; North Lake (East Point), Dougald

Campbell; Peake's Station, Hugh Currie; Souris, Ronald McDonald, John McLean, John G. Sterns, James A. McInnis, Arthur J. B. Mellish; St. Peter's Bay, Patrick McInnis, John A. McLean.

COMMISSIONERS RESIDING OUTSIDE THE PROVINCE FOR TAKING AFFIDAVITS IN THE SUPREME COURT FOR USE WITHIN THE PROVINCE.

LONDON, ENGLAND—Alfred W. Heales, Solicitor, Doctor's Commons; James Hume Dodgson, Solicitor; Philip Henry Cox, Solicitor; Edward Nunn, Henry Archd. Saunders, 3 and 4 Great Winchester Street.

LIVERPOOL, ENGLAND—Thos. R. Pennington, Crosshill Street.

PLYMOUTH, ENGLAND—Conyndon Matthews, Frankfort Street.

GLASGOW, SCOTLAND—Wm. B. Patterson, 101 St. Vincent Street.

MONTREAL, P.Q.—John Popham, John S. Hall, jr., J. D. Davidson, Philip S. Ross, George R. Locker, 64 Victoria St.; James G. Ross, 18 St. Alexis St.; Albert E. de Lorimier, William Alex. Caldwell, 114 St. James St.; Charles C. de Lorimier, 114 St. James St.

QUEBEC, P.Q.—Edouard J. Angers, Francis Xavier Gosselin, 61 St. Peter Street.

NEW YORK, N.Y.—Joseph B. Bradman, 115 Broadway; James Colin McEachen, 333 Broadway; Walter L. S. Langerman, 21 Park Row.

CHICAGO, ILL.—Wm. S. Pettegrew, 91 Dearborn St.; Philip A. Hoyne, 52 Custom House Building; Wm. H. F. Holmes.

BOSTON, MASS.—Joseph A. Harris, Charles A. Shaw, 11 Court Street; Chas. H. Adams, 5 Court Street.

PHILADELPHIA, PA.—Thomas J. Hunt, 623 Walnut Street.

ST. JOHN, N.B.—James Jack.

COMMISSIONERS FOR TAKING AFFIDAVITS IN THE COUNTY COURTS.

QUEEN'S COUNTY.

Charlottetown—Frederick W. Hughes, G. A. Harvie, Angus A. McLean, Donald McNeil, Henry Smith; Cavendish, John H. Robertson; Clifton, New London, William McKay, Hugh B. McKay; Dunstaffnage, Henry M. McLeod; Eldon, James St. C. Moore; Hampton, Lot 29, Robert Ince; Hope River, Michael McGuigan; Monaghan, James Wisner; Mount Stewart, James Ross; New Glasgow, John Binns; Rustico (South), Robert A. Crasswell; Valleyfield, Alex. Martin; Victoria, Solomon J. B. Leard; Wood Islands, Duncan Taylor.

PRINCE COUNTY.

Summerside—Wm. T. Hunt, H. J. Massey; Centreville, Alfred Schurman; Egmont Bay, Sylvanus E. Gallant; Alberton, Charles A. Woodman; Lot 26, Peter Duffy; Port Hill, Wm. Hopgood, D. C. Ramsay; Tignish, Joseph E. Richard, John McLellan.

KING'S COUNTY.

Georgetown—G. A. Aitken; Montague Bridge, Geo. Wightman, Geo. S. Inman; Murray River, Robert Whiteway; Cardigan, George F. Owen; Little River, Lot 56, John C. Underhay; Springfield, Clement McDonald; Inlet, Lot 46, Stephen Campbell; East Point, Alexander R. Beaton; Souris, James Moynagh, jr.; Souris West, James A. McInnis.

MANITOBA.

LIST OF COMMISSIONERS RESIDING OUTSIDE OF PROVINCE FOR TAKING AFFIDAVITS FOR USE IN MANITOBA.

NOTE.—It should be mentioned that there is no way of ascertaining which of the persons named in the following list have died or removed elsewhere since the dates of their respective appointments.

ENGLAND.

London.—Eustace Anderson, Percival Birkett, Thos. W. Bischoff, H. Pearson Brocklesby, J. Brend Batten, Geo. Birchall, Samuel Verschoyle Blake, Phillip Henry Coxe, Joseph Grose Colmar, Raymond Crane, Leonard W. Crouch, James H. Dodgson, Albert Fagge, A. M. M. Forbes, John P. Godfrey, John Greenfield, Alfred Heales, William K. Henderson, George March Hill, Henry S. Holts, Geo. Anthony King, No. 66 Cannon st., John Locke Jeans, Charles A. Kingston, Geo. Kirk, Dudley W. B. Leathley, G. F. Legg, K. N. MacFee. St. George's Club; Edward Westley Nunn, Frederick Parlein, A. Polland, Sydney H. Peddar, E. T. Ratcliff, 6 Gray's Inn; Seaton F. Taylor, Edward Webb, John Woodlands Watkin, Geo. E. Solomon, 28 Holford square; John Proffitt, 32 St. George st.

Bradford.—John Thomas Last.

Halifax.—Christopher T. Rhodes.

Liverpool.—J. H. S. Dyke, George T. Haigh, Frank John Leslie, T. R. Pennington.

Penge, Surrey Co.—Edward H. Alcock.

Plymouth.—C. Mathews.

SCOTLAND.

Dundee.—T. Littlejohn.

Glasgow.—Archibald Cunningham, James Muirhead, Wm. B. Patterson.

Edinburgh.—Horatius Bonar, Duncan F. Dallas, Arthur Leahy, Hamilton Maxwell, William McLaren, Thomas McLaren, Andrew Newland, James McCaul.

Inverness.—Hector Rose Mackenzie.

Kilsyth.—William H. Whyte.

Ireland.

Dublin.—Alexander Bell, Leinster Chambers, 43 Dame st.; J. M. Cathrew.

British Columbia.

Vancouver.—Edgar H. Goulding, H. A. Mellon, Charles A. Worsnop.
Victoria.—H. D. Helmcken, Johnson M. Leet.

North West Territories.

Art'abasca.—James McDougall.
Calgary.—Edward A. Baynes.
Edmonton.—Daniel Maloney, Stewart D. Mulkins.
Fleming.—Benjamin B. Gilbart.
Fort Cumberland.—Pierre Deschambault.
Moose Jaw.—William Grayson, James P. Mitchell.
McLeod.—Charles C. McCaul.
Mackenzie River.—Bishop Girouard.
Prince Albert.—William R. Gunn, Alexander Sproat, Fitzgerald Cochran, George A. Watson.
Qu'Appelle.—Leslie Gordon, Dixie Watson.
Riding Mountain.—Raymond E. Vidal.
St. Albert.—Hayter Reed.
St. Louis de Langevin.—Arthur O. Garnot.
Wood Mountain.—Edward W. Jarvis.

Ontario.

Alexandria.—Edward H. Tiffany.
Brantford.—Alfred J. Wilkes.
Brockville.—W. H. Jones.
Clinton.—Alonzo H. Manning.
Elora.—John Jacob.
Galt.—G. W. H. Ball.
Goderich.—Isaac Thomas.
Hamilton.—Aemilius Irving, Q.C., W. Churchill Livingston, Stuart Livingston.
Ingersoll.—Peter J. Brown, Thomas Wells.
London.—W. H. Bartram.
Ottawa.—John Joseph McGee, Henry James Morgan, Frank M. Macdougall, Nicholas S. Garland, L. O. Armstrong.
Peterboro.—R. W. Errett.
Seaforth.—James H. Benson, John Beattie.
St. Catharines.—Henry Yale.
Stratford.—G. W. Lawrence.
Toronto.—Walter Barwick, Wm. H. Best, Henry Barber, E. R. C. Clarkson, James Gover, James Henry Morris, H. B. Murphy, Alex. W. Murdock, Wm. James Mitchell, B. McMurrich, Rufus S. Neville, Joseph Powell, John G. Robinson, James C. Semple, James W. Severs.
Walkerton.—Thomas Dickson.
Wingham.—H. W. C. Meyer.

Keewatin.

Lac Seul.—James Mackenzie.

Quebec.

Montreal.—A. Brogan, Avila Bourbonniere, Thos. P. Butler, O'Hara Baynes, Charles Baynes, Edwin H. Bissett, Charles Robson Black, William Herbert Burroughs, Edward Carter, Q.C., Alfred Charlebois, Christopher B. Carter, Charles Cushing, C. Duncan Davidson, Peers Davidson, John M. M. Duff, Theodore Doucet, Edward L. deBellefeuille, Chas. E. deLorimier, Mathew H. Escott, John Fair, Jean H. J. Frigon, Samuel C. Fatt, John Carr Griffin, James M. Glass, Joseph Gershom, Edmund Guerin, James Stewart Hunter, Albert S. Hunter, Charles A. Hanson, R. T. Heneker, Edwin Hanson, Frederic Hague, John Hyde, John Irvine, J. H. Isaacson, A. D. Jobin, G. W. R. Kittson, Joseph C. LaRiviere, Frederick S. Lyman, Geo. R. Locker, Seth Pen Leet, P. S. Murphy, Frederick D. Monk, John Lang Morris, Joseph Melancon, David R. McCord, R. D. McGibbon, John McIntosh, Duncan McDougall, Duncan McCormick, P. E. Normandeau, John Popham, Joseph Palliser, Alexander F. Riddell, Phillip S. Ross, W. B. S. Reddy, W. Lord Ross, James Geo. Ross, Francis Wm. Radford, W. B. Stephens, Archibald W. Stevenson, Frederick W. Terrill, Melbourne M. Tait, DeBlois Thibaudeau, W. S. Walker, Frederick James White, Wm. John White.

Quebec.—Albert Malouin, Thomas J. Maloney, J. E. Prince.

St. Benoit.—Joseph Girouard.

Sorel.—John G. Crebassa.

New Brunswick.

Fredericton.—Wesley Van Wart.

St. John.—Arthur F. Freeman.

Nova Scotia.

Halifax.—Hon. William Miller, Q.C., John Y. Payzant.

United States.

Boston.—Charles Hall Adams, Joseph B. Braman, Alfred D. Foster, Charles A. Shaw.

Minneapolis.—H. Baxter.

New York.—Joseph B. Braman, William T. Hardenbrook, Joseph B. Noues, John J. Ward.

Chicago.—Philip A. Hoyne, Simeon W. King.

Philadelphia.—Thomas J. Hunt.

St. Paul.—E. H. Murphy.

Australia.

Victoria.—Joseph Woolf.

BRITISH COLUMBIA.

COMMISSIONERS.

Nearly all barristers and solicitors and many other persons in British Columbia have commissions for making affidavits for use within the Province.

In Ontario such affidavits may be made before James Chisholm, Hamilton, and in Quebec before F. S. Lyman, Q.C., Montreal.

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Edinburgh, Scotland.—J. S. Mack, A. Newlands.

Glasgow, Scotland.—T. C. Young.

Hamilton, Ontario.—F. E. Kilvert.

Liverpool, England.—Thos. R. Pennington.

London, England.—E. W. Nunn, 27 Gracechurch Street, E.C.; F. J. White; J. Greenfield, 27 Queen Victoria Street; D. H. Russell, Hudson's Bay Co.; J. H. Dodgson, 4 Great Winchester Street; T. W. Bischoff, 4 Great Winchester Street; P. H. Coxe, 4 Great Winchester Street; G. C. Bompas, 4 Great Winchester Street; J. G. Colmer, Victoria Street, Westminster, S. W.; H. P. Barraud, 7 St. Mildred's Court; R. W. Regge, 7 St. Mildred's Court; A. J. Murray, 1 Clement's Inn, E.C.; J. Profitt, 32 Great George Street; A. Heales, Doctor's Commons; J. W. Watkin, 11 St. Thomas' Street, S.E.; R. Crane, Queen Street, Cheapside; E. Cane; S. V. Blake, 17 Victoria Street; E. F. Day, 37 Norfolk Street; C. Russell, 37 Norfolk Street; Geo. Birchall, 85 Gracechurch Street; Geo. Eugene Solomon; Percival Birkett, 4 Lincoln's Inn Fields; Charles Granville Kekewick.

London, Ontario.—E. J. Parke.

Montreal, Quebec.— R. T. Heneker, W. P. Sharp, J. G. Ross, F. Hague, W. S. Walker.

New York, U.S.A.—J. B. Braman.

Ottawa, Ontario.—H. J. Morgan, R. J. Wicksteed, J. J. McGee, A. F. McIntyre.

Philadelphia, U.S.A.—Thos. J. Hunt.

St. Benoit, Quebec.—Jos. Girouard.

St. Boniface, Manitoba.—E. Trudel, W. M. Ronald.

St. John, New Brunswick.—W. Pugsley, Jr.

Toronto, Ontario.—A. Burrows, J. J. Kingsmill, A. Downey.

Windsor, Ontario.—J. F. C. Haldane.

Winnipeg, Manitoba.—L. W. Coutlee, E. D. Carey, F. W. Heubach, W. A. Collins, J. Burridge, W. Moffatt, J. E. Forsland.

Chartered Accountants.

Johnson J. W ....Belleville, O
McKeand T. E ....Chatham, O
Findlay W. F ....Hamilton, O
Hills R .... "
Kittson H. N .... "
Mason John J .... "
Young Ralph E .... "
Blanchard A ....Kingston, O
Clark Thos. S .... "
Eagleson D ....Lindsay, O
JEWELL GEO. F ....London, O
Pentelow Wm. M .... "
Cinq Mars A ....Montreal
Creak Geo .... "
Duff J. M. M .... "
Durnford Geo .... "
Hains John McD .... "
Hyde John .... "
Macintosh & Hyde .... "
McDonald John .... "
Plimsoll A. H .... "
Riddle & Common .... "
Ross P. S., & Sons .... "
Savage Geo. A .... "
Stevenson Arch. W .... "
BLATCH GEO. L ....Ottawa, O
Armstrong J. F ....Owen Sound, O
Fleming C. A .... "
Sharpe F. S ....St John, N.B
Rapelje H ....St Thomas, O
Anderson Wm ....Toronto, O
Barber Henry .... "
Clarkson E. R. C .... "
Coady R. T .... "
Cross W. H .... "
Dawson P. H. B .... "
EDWARDS & HART-SMITH. Geo. Edwards, Alex. Hart-Smith .... "
EDDIS WILTON C .... "
Goldman Leopold .... "
Gordon H. D. Lockhart .... "
Gunn Edmund .... "
Hardy James .... "
Hoskins David .... "
Hudson O M .... "
Jenkins Robert .... "
Jephcott Alfred .... "
Johnson Geo. W .... "
Kernahan W. T .... "
Martin John M .... "
Moore John T .... "
MORTIMER H .... "
Neff Arthur C .... "
Postlethwaith Colin R. W .... "
Powls William .... "
Smeaton A .... "
Tindall W. B ....Toronto, Q
Vigeon Harry .... "
Walsh Joseph E .... "
Watson James .... "
West W. H .... "
Wilson P. T .... "
Young John H .... "
Lye Henry ....Walkerville
Scully J. M ....Waterloo
MACPHERSON F. H ....Windsor

ACCOUNTANTS.

(Subscribers.)

POLLACK HENRY N ....Fort William, O
BARTON E. A ....Montreal
BARLETT & SMITH .... "
FRASER D. TORRANCE .... "
GAGNON & CARON .... "
REID WM., & CO .... "
UPTON HENRY .... "
LARMONT P ....Ottawa, O
PARADIS & JOBIN ....Quebec
CLARIS G T ....St. Thomas
ATKINSON JAMES L ....Toronto, O
MACKAY JOHN .... "

Banks and their Agencies.

Standard Bank of Canada.........Ailsa Craig, O
Merchants Bank of Prince Edward Island ....Alberton, P.E.I
Bank of Ottawa ....Alexandria, O
Union Bank of Canada .... "
ONTARIO BANK........................Alliston, O
Bank of Montreal .... Almonte, O
Bank of Nova Scotia .... "
Merchants Bank of Canada ....Alvinston, O
Molsons Bank.. .... "
BANK OF MONTREAL ....Amherst, N. S
BANK OF NOVA SCOTIA ..... "
Halifax Banking Co .... "
BANK OF NOVA SCOTIA.......Annapolis, N. S
UNION BANK OF HALIFAX.. "
HALIFAX BANKING CO......Antigonish, N. S
MERCHANTS BANK OF HALIFAX "
Bank of Ottawa ....Arnprior, O
Bank of Nova Scotia........ .... "
Bank of British North America ...Aschroft, B. C
Canadian Bank of Commerce ....Atlin, B.C
Merchants Bank of Halifax............ "
Merchants Bank of Canada. .... Athens, O
Ontario Bank ....Aurora, O
Bank of Ottawa ....Avonmore, O
Traders Bank of Canada.... ... . Aylmer, O
Molsons Bank. ... ... "
Canadian Bank of Commerce.... ....Ayr, O
Bank of Toronto .... Barrie, O
Canadian Bank of Commerce.... .... "
Halifax Banking Co.............Barrington, N. S

Union Bank of Halifax.Barrington Passage, N. S
Merchants Bank of Halifax. .... Bathurst, N. B
Commercial Bank of Windsor ..Bear River, N. S
MERCHANTS BANK OF CANADA Beauharnois, Q
EASTERN TOWNSHIPS BANK....Bedford, Q
BANK OF MONTREAL...........Belleville, O
Canadian Bank of Commerce .... "
DOMINION BANK .... "
MERCHANTS BANK OF CANADA. "
Bank of British North America ...Bennett, B.C
MERCHANTS BANK OF HALIFAX "
Bank of Hamilton .. ..Berlin, O
Canadian Bank of Commerce .... "
Merchants Bank of Canada .... "
COMMERCIAL BANK OF WINDSOR Berwick, N. S
CANADIAN BANK OF COMMERCE Blenheim, O
BANK OF HAMILTON...............Blyth, O
Union Bank of Canada.. ....Boissevain, Man
Ontario Bank ....Bowmanville, O
Standard Bank of Canada........ "
Bank of Ottawa ....Bracebridge, O
Standard Bank of Canada.... ....Bradford, O
DOMINION BANK ....Brampton, O
Merchants Bank of Canada...... "
BANK OF BRITISH NORTH AMERICA Brandon, Man

Bank of Hamilton..... ....Brandon, Man.
IMPERIAL BANK OF CANADA "
Merchants Bank of Canada......... "
Bank of British North America....Brantford, O
Bank of Montreal .... "
Canadian Bank of Commerce....... "
STANDARD BANK OF CANADA "
BANK OF NOVA SCOTIA.....Bridgetown, N. S
UNION BANK OF HALIFAX "
Halifax Banking Co.. ... .Bridgewater, N. S
Merchants Bank of Halifax.... "
Standard Bank of Canada. ....Brighton, O
BANK OF MONTREAL..........Brockville, O
Bank of Toronto.... .... "
Molsons Bank .... "
Standard Bank of Canada...........Brussels, O
Ontario Bank .. ..Buckingham, Q
Bank of Montreal ....Calgary, N. W. T
Imperial Bank of Canada........ "
Molsons Bank .... "
Union Bank of Canada .... "
Standard Bank of Canada ......Campbellford, O
BANK OF NOVA SCOTIA....Campbellton, N. B
Halifax Banking Co................Canning, N. S
Standard Bank of Canada... .... Cannington, O
PEOPLES BANK OF HALIFAX....Canso, N. S.
Union Bank of Canada............Carberry, Man
Bank of Ottawa .. ..Carleton Place, O
Union Bank of Canada....... .. "
BANK OF HAMILTON............Carman, Man

Union Bank of Canada ....Carman, Man
Canadian Bank of Commerce..........Cayuga, O
Bank of Nova Scotia. .....Charlottetown, P. E. I
Merchants Bank of Halifax, "
MERCHANTS BANK OF PRINCE ED
WARD ISLAND, Head Office,
Charlottetown, P. E. I
Bank of Monrreal ....Chatham, O
Canadian Bank of Commerce.......... "
Merchants Bank of Canada............ "
Standard Bank of Canada .... "
Bank of Montreal..................Chatham, N.B
Bank of Nova Scotia.............. "
Bank of Hamilton.....................Chesley, O
Merchants Bank of Canada.......... "
Molsons Bonk...................Chesterville, O
LA BANQUE NATIONALE .....Chicoutimi, Q
Union Bank of Halifax......Clarke's Harbor, N.S
Molsons Bank.......... ....Clinton, O
EASTERN TOWNSHIPS BANK...Coaticook, Q
Bank of Toronto.......................Cobourg, O
DOMINION BANK.................. "
Standard Bank of Canada.......... Colborne, O
Bank of Toronto................ Collingwood, O
CANADIAN BANK OF COMMERCE "
PEOPLE'S BANK OF HALIFAX,
Cookshire, Q
BANK OF MONTREAL............Cornwall, O
Ontario Bank........................ "
EASTERN TOWNSHIPS BANK. Cowansville, Q
Canadian Bank of Commerce.....Cranbrook, B. C
Union Bank of Canada.........Crystal City, Man.
PEOPLE'S BANK OF HALIFAX....Danville, Q
Union Bank of Halifax..........Dartmouth, N. S

BANK OF OTTAWA.... ....Dauphin, Man.
Bank of British North America....
Dawson City, Alaska
Canadian Bank of Commerce.. "
Bank of Hamilton....... . ...Delhi, O
Union Bank of Canada ....Deloraine, Man
Bank of Montreal................. Deseronto, O
Bank of Nova Scotia ....Digby, N.S
Merchants Bank of Halifax .... Dorchester, N.B
Traders Bank of Canada ... .Drayton, O
Canadian Bank of Commerce..........Dresden, O
Canadian Bank of Commerce..........Dundas, O
Canadian Bank of Commerce..........Dunnville, O
Standard Bank of Canada............Durham, O
Traders Bank of Canada .... .Dutton, O
Imperial Bank of Canada .....Edmonton, N.W.T
Merchants Bank of Canada.... .... "
MERCHANTS BANK OF CANADA, Eganville, O
Peoples' Bank of Halifax ....Edmunston, N.B
Traders Bank of Canada............ Elmira, O
Merchants Bank of Canada.... ....Elora, O
Imperial Bank of Canada. ....Essex, O
MOLSONS BANK............ ......Exeter, O
LA BANQUE DE ST HYACINTHE, Farnham Q
Imperial Bank of Canada ....Fergus, O
Canadian Bank of Commerce...........Fernie, B.C
Standard Bank of Canada............Forest, O
CANADIAN BANK OF COMMERCE,
Fort Francis, O
Canadian Bank of Commerce....Fort Steele, B.C
BANK OF MONTREAL.. ......Fort William, O
ONTARIO BANK....... .... "
La Banque Nationale ....Fraserville, Q
Molsons Bank........ .... "
People's Bank of Halifax .... "

Bank of British North America,
Fredericton, N.B
BANK OF MONTREAL .... "
BANK OF NOVA SCOTIA.... ..... "
MERCHANTS BANK OF HALI-
FAX................................ "
PEOPLE'S BANK OF NEW BRUNS-
WICK.............................. "
CANADIAN BANK OF COMMERCE..Galt, O
Imperial Bank of Canada .... "
Merchants Bank of Canada............ "
BANK OF TORONTO.............Gananoque, O
MERCHANTS BANK OF CANADA "
Bank of Hamilton................Georgetown, O
Merchants of Canada...... .....Gladstone, Man.
UNION BANK OF CANADA.....Glenboro, Man
Traders Bank of Canada..............Glencoe, O
BANK OF MONTREAL............Goderich, O
Canadian Bank of Commerce........ "
Imperial Bank of Canada ....Golden, B.C
People's Bank of Halifax. ......Grand Falls, N.B
Eastern Townships Bank......Grand Forks, B.C
Merchants Bank of Halifax.... "
Eastern Townships Bank...... ....Granby, Q
UNION BANK OF CANADA.......Gretna, Man
Bank of British North America..Greenwood, B.C
Bank of Montreal........ .... "
CANADIAN BANK OF COMMERCE,
Greenwood, B.C
Bank of Hamilton ....Grimsby, O
BANK OF MONTREAL..............Guelph, O
CANADIAN BANK OF COMMERCE "

Dominion Bank.... ....Guelph, O
TRADERS BANK OF CANADA..... "
MERCHANTS BANK OF HALIFAX, Guysboro, N.S
Bank of British North America ....Halifax
BANK OF MONTREAL .... "
Bank of Nova Scotia, Head Office..... "
HALIFAX BANKING CO., Head Office .... "
MERCHANTS BANK OF HALIFAX, Head Office .... "
People's Bank of Halifax, Head Office. "
People's Bank of Halifax, North End Branch .... "
UNION BANK OF HALIFAX, Head Office .... "
Western Bank of Canada .... Hamburg, O
Bank of British North America.... ....Hamilton
BANK OF HAMILTON, Head Office.. "
BANK OF HAMILTON, East End Branch.... "
Bank of Hamilton, Barton St. Branch "
BANK OF MONTREAL........ ..... "
CANADIAN BANK OF COMMERCE "
IMPERIAL BANK OF CANADA.... "
Merchants Bank of Canada .... "
Molsons Bank .... "
Traders Bank of Canada. .... "
Merchants Bank of Canada.........Hanover, O
Bank of Hamilton ....Hamiota, Man
Union Bank of Canada .... "
Bank of Nova Scotia. ....Harbo Grace, Nfld
STANDARD BANK OF CANADA. Harriston, O
People's Bank of Halifax ....Hartland, N.B

Union Bank of Canada ....Hartney, Man
Union Bank of Canada.........Hastings, O
Bank of Ottawa... ....Hawkesbury, O
Molson's Bank ....Hensall, O
Merchants Bank of Canada. ....Hespeler, O
LA BANQUE D'HOCHELAGA...Hochelaga, Q
Union Bank of Canada ....Holland, Man
Bank of Ottawa ....Hull, Q
Merchants Bank of Canada .... "
Dominion Bank .... Huntsville, O
EASTERN TOWNSHIPS BANK. Huntingdon, Q
La Banque de St. Hyacinthe ...... Iberville, Q
Union Bank of Canada.......Indian Head, N.W.T
Imperial Bank of Canada ....Ingersoll, O
Merchants Bank of Canada.... "
TRADERS BANK OF CANADA.... "
Bank of Hamilton.... ....Jarvis, O
Banque d'Hochelaga.... ...Joliette, Q
La Banque Nationale .... "
Bank of British Columbia......Kamloops, B.C
Bank of British North America .....Kaslo, B. C
Bank of Ottawa ....Keewatin, O
Bank of Ottawa .... Kemptville, O
Bank of Nova Scotia ....Kentville, N.S
Union Bank of Halifax.... "
Union Bank of Canada .....Killarney, Man
Merchants Bank of Canada.. ....Kincardine, O
BANK OF BRITISH NORTH AMERICA ....Kingston, O
BANK OF MONTREAL.... "
Merchants Bank of Canada .... "
ONTARIO BANK.... "
Standard Bank of Canada.... "
MERCHANTS BANK OF HALIFAX, Kingston, N.B

Molsons Bank....Kingsville, O
Molsons Bank....Knowlton, Q
Merchants Bank of Canada..........Lachine, Q
Bank of Ottawa.... ....Lachute, Q
PEOPLE'S BANK OF HALIFAX... Lake Megantic, Q
Bank of Hamilton ....Lanark, O
Merchants Bank of Canada.......Lansdowne, O
La Banque de St. Hyacinthe.. .L'Assomption, Q
Union Bank of Halifax. .....Lawrencetown, N.S
Merchants Bank of Canada .....Leamington, O
Traders Bank of Canada.... "
Bank of Montreal ... .Lethbridge, N.W.T
Union Bank of Canada.... "
PEOPLE'S BANK OF HALIFAX......Levis, Q
Bank of Montreal ....Lindsay, O
Dominion Bank .... "
Ontario Bank .... "
Bank of Hamilton ....Listowell, O
Imperial Bank of Canada .... "
Union Bank of Halifax.... Little Glace Bay, N.S
Bank of Nova Scotia ....Liverpool, N.S
Union Bank of Halifax.... "
Halifax Banking Co ....Lockeport, N.S
Bank of British North America..........London
Bank of Montreal.... "
Bank of Toronto.... "
CANADIAN BANK OF COMMERCE... "
MERCHANTS BANK OF CANADA.... "
Molsons Bank.... "
MERCHANTS BANK OF HALIFAX. Londonderry, N.S
Banque d'Hochelaga....Louiseville, Q
Merchants Bank of Canada....Lucan, O
Bank of Hamilton ....Lucknow, O
Halifax Banking Co .... , Lunenburg, N.S
Merchants Bank of Halifax .... "

PEOPLE'S BANK OF HALIFAX. Lunenburg, N.S
Union Bank of Canada..........Macleod, N.W.T
EASTERN TOWSHIPS BANK ......Magog, Q
Merchants Bank of Halifax.......Maitland, N.S
LA BANQUE NATIONALE.........Malbaie, Q
Bank of Hamilton... .... Manitou, Man
UNION BANK OF CANADA.... "
Merchants Bank of Canada........ Markdale, O
Standard Bank of Canada.... ....Markham, O
BANK OF OTTAWA.............. Mattawa, O
Molsons Bank..........................Meaford, O
Merchants Bank of Canada...Medicine Hat, Assa
Union Bank of Canada............ Melita, Man
Union Bank of Canada...........Merrickville, O
Commercial Bank of Windsor. Middleton, N.S
Halifax Banking Co............... "
BANK OF BRITISH NORTH AMERICA, Midland, O
Western Bank of Canada .... "
Merchants Bank of Canada.......... Mildmay, O
Bank of Hamilton.......................Milton, O
Union Bank of Canada.........Minnedosa, Man
Merchants Bank of Canada..........Mitchell, O
BANK OF MONTREAL..........Moncton, N.B
Bank of Nova Scotia .... "
MERCHANTS BANK OF HALIFAX "
LA BANQUE NATIONALE....Montmagny, Q
BANK OF BRITISH NORTH AMERICA, Head Office .... Montreal
BANK OF MONTREAL, Head Office... "
Bank of Montreal, West End Branch... "
BANK OF MONTREAL, Seigneurs St. Branch.................................. "

BANK OF MONTREAL, Point St. Charles Branch.......................Montreal
Bank of Nova Scotia.................... "
BANK OF OTTAWA................... "
Bank of Toronto, 262 St. James.... .... "
Bank of Toronto, St. Etienne St .... "
Banque d'Hochelaga, Head Office...... "
BANQUE D'HOCHELAGA, Notre Dame St. East .... "
BANQUE D'HOCHELAGA, St Catherine Centre Branch...... .... "
BANQUE D'HOCHELAGA, St Catherine East Branch...................... "
BANQUE D'HOCHELAGA, Notre Dame West Branch.................... "
CANADIAN BANK OF COMMERCE. "
CITY AND DISTRICT SAVINGS BANK, Head Office.................... "
Dominion Bank..... .... "
IMPERIAL BANK OF CANADA...... "
LA BANQUE JACQUES CARTIER, Head Office.............................. "
LA BANQUE NATIONALE........... "
MERCHANTS' BANK OF CANADA, Head Office............................. "
MERCHANTS' BANK OF CANADA, St Catherine St Branch............... "
MERCHANTS BANK OF CANADA. St. Lawrence St. Branch............. "
Merchants Bank of Canada. Mile End Branch.......... .... "
MERCHANTS BANK OF HALIFAX, 1760 Notre Dame .... "
Merchants Bank of Halifax, Westmount "

MERCHANTS BANK OF HALIFAX, Notre Dame St West.................Montreal
MOLSONS BANK, Head Office......... "
Molsons Bank, St Catherine St. Branch "
ONTARIO BANK .... "
QUEBEC BANK, Place d'Armes....... "
QUEBEC BANK, St Catherine St. ..... "
Union Bank of Canada .... "
Merchants Bank of P. E. I ......Montague, P.E.I
UNION BANK OF CANADA.Moose Jaw, N.W.T
UNION BANK OF CANADA..Moosomin, N.W.T
BANK OF HAMILTON...........Morden, Man
Union Bank of Canada .... "
Molsons Bank.............. .... Morrisburg, O
Ontario Bank....................Mount Forest, O
Bank of British Columbia..........Nanaimo, B.C
Merchants Bank of Halifax........ "
Dominion Bank .. ..Napanee, O
Merchants Bank of Canada .... "
Merchants Bank of Canada ....Neepawa, Man
UNION BANK OF CANADA.... "
Bank of British Columbia.............Nelson, B C
Bank of Montreal ... . "
Imperial Bank of Canada........ .... "
Merchants Bank of Halifax.... ...... "
Bank of Nova Scotia .. .. Newcastle, N.B
Merchants Bank of Halifax........ "
Traders Bank of Canada.............Newcastle, O
Bank of Montreal .... New Denver B.C
Bank of Nova Scotia..... .....New Glasgow, N.S
Halifax Banking Co .... "
Union Bank of Halifax........ "
Ontario Bank. ....Newmarket, O
Bank of British Columbia, New Westminster, B.C
Bank of Montreal.......... "
Bank of Hamilton .... .Niagara Falls, O

Imperial Bank of Canada........Niagara Falls, O
TRADERS BANK OF CANADA. .North Bay, O
Bank of Nova Scotia. ....North Sydney, C.B
Union Bank of Halifax .... "
Molsons Bank ....Norwich, O
Union Bank of Canada..................Norwood, O
MERCHANTS BANK OF CANADA
Oakville, O
Bank of Hamilton ....Orangeville, O
Canadian Bank of Commerce .... "
Dominion Bank. .... Orillia, O
Traders Bank of Canada .... "
Eastern Townships Bank ....Ormstown, Q
Dominion Bank. ....Oshawa, O
Western Bank of Canada, Head office "
BANK OF BRITISH NORTH AMERICA, Ottawa
Bank of Montreal.... .... "
BANK OF OTTAWA, Head Office .... "
Bank of Ottawa, Bank St Branch .... "
Bank of Ottawa, Rideau St Branch .... "
CANADIAN BANK OF COMMERCE..... "
LA BANQUE NATIONALE .... "
Merchants Bank of Canada............... "
Merchants Bank of Halifax............... "
Molsons Bank...... .... "
Ontario Bank .... "
QUEBEC BANK .... "
BANK OF HAMILTON..........Owen Sound, O
Merchants Bank of Canada........ "
Molsons Bank .... "
Bank of Nova Scotia ....Oxford, N.S
WESTERN BANK OF CANADA .....Paisley O
Bank of Hamilton..................Palmerston, O
CANADIAN BANK OF COMMERCE...Paris, O

Merchants Bank of Canada.... ....Parkdale, O
Standard Bank of Canada. .... "
Canadian Bank of Commerce........Park Hill, O
Commercial Bank of Windsor.....Parrsboro, N.S
Halifax Banking Co .... "
Bank of Ottawa .... Parry Sound, O
BANK OF NOVA SCOTIA..........Paspebiac, Q
BANK OF OTTAWA.............. Pembroke, O
QUEBEC BANK...................... "
WESTERN BANK OF CANADA
Penetanguishene, O
BANK OF MONTREAL ....Perth, O
Merchants Bank of Canada .... "
Bank of Montreal................Peterborough, O
Bank of Toronto...... .... "
Canadian Bank of Commerce ... "
ONTARIO BANK................ "
Bank of Toronto................... ...Petrolea, O
Western Bank of Canada ....Pickering, O
BANK OF MONTREAL ....Picton, O
Standard Bank of Canada .... "
Bank of Nova Scotia... ....Picton, N.S
MERCHANTS BANK OF HALIFAX "
Union Bank of Canada ...Pincher Creek, N.W.T
Bank of Hamilton ....Plum Coulee, Man
Molsons Bank.....................Port Arthur, O
Ontario Bank .... "
Imperial Bank of Canada.......Port Colborne, O
Bank of Hamilton..... ....Port Elgin, O
MERCHANTS BANK OF HALIFAX,
Port Hawkesbury, C.B
People's Bank of Halifax. ....Port Hood, C.B
Bank of Toronto....................Port Hope, O
Traders' Bank of Canada............ "
Canadian Bank of Commerce.......Port Perry, O
WESTERN BANK OF CANADA "

BANK OF OTTAWA....Portage la Prairie, Man
IMPERIAL BANK OF CANADA "
Merchants Bank of Canada "
Merchants Bank of Canada ....Prescott, O
Merchants Bank of Canada .. . . Preston, O
Imperial Bank of Canada..Prince Albert, N.W.T
Bank of British North America........ .Quebec
BANK OF MONTREAL........... .... "
BANQUE D'HOCHELAGA...... .... "
LA BANQUE NATIONALE, Head Office. "
LA BANQUE NATIONALE, St. John st. Branch .... "
LA BANQUE NATIONALE, St Rochs branch......................... ..... "
MERCHANTS BANK OF CANADA... "
Merchants Bank of Canada, St Sauveur.. "
Molsons Bank .... "
Peoples Bank of Halifax..... .... "
Quebec Bank, Head office........... .... "
Quebec Bank, Upper Town Branch ..... "
QUEBEC BANK, St. Rochs Branch .... "
Union Bank of Canada, Head Office.... "
Union Bank of Canada, St. Louis st Branch .... "
Bank of Ottawa ....Rat Portage, O
Imperial Bank of Canada .... "
Bank of Montreal ....Regina, N. W. T
Union Bank of Canada .... "
Bank of Ottawa ....Renfrew, O
Merchants Bank of Canada.......... "
Imperial Bank of Canada........Revelstoke, B.C
Molsons Bank.... .... "
Eastern Townships Bank..... .....Richmond, Q
Molsons Bank.... ... .Ridgetown,
Traders Bank of Canada.......... "
LA BANQUE NATIONALE......Rimouski, Q

La Banque Nationale..........Roberval, Q
Bank of British North America. .Rossland, B. C
Bank of British Columbia .... "
Bank of Montreal.... .... "
Bank of Toronto.................. "
Merchants Bank of Halifax.......
Halifax Banking Co..............Sackville, N. B
Merchants Bank of Halifax.......... "
Bank of British Columbia.......... Sandon, B.C
BANK OF MONTREAL..............Sarnia, O
Canadian Bank of Commerce .... "
TRADERS BANK OF CANADA ..... "
Canadian Bank of Commerce.Sault Ste Marie, O
Imperial Bank of Canada..... " "
Canadian Bank of Commerce.. .... Seaforth, O
Dominion Bank...................... "
MERCHANTS BANK OF CANADA, Shawville,Q
Peoples Bank of Halifax..........Shediac, N. B.
Halifax Badking Co......... ....Shelburne, N. S
Union Bank of Canada ....Shelburne, O
BANQUE D'HOCHELAGA .....Sherbrooke, Q
EASTERN TOWNSHIPS BANK, Head Office
Sherbrooke, Q
LA BANQUE NATIONALE.... "
MERCHANTS BANK OF CANADA "
Union Bank of Halifax.........Sherbrooke, N. S
MERCHANTS BANK OF HALIFAX
Shubenacadie, N. S
Bank of Hamilton .... Simcce, O
CANADIAN BANK OF COMMERCE "
MOLSONS BANK... .... "
Canadian Bank of Commerce.... ...Skaguay, Ala
Molsons Bank... ....Smith's Falls, O
Union Bank of Canada....... "

Banque d'Hochelaga..................Sorel, Q
Molsons Bank.... .... "
Merchants Bank of Canada..........Souris, Man
Union Bank of Canada ... . "
Merchants Bank of P. E. I..........Souris, P.E.I
Bank of Hamilton ....Sonthampton, O
Hal fax Banking Co..............Springhill, N.S
Bank of Nova Scotia.. ... .St Andrews, N. B
BANK OF TORONTO...... .. St Catharines, O
CANADIAN BANK OF COMMERCE "
Imperial Bank of Canada .... "
LA BANQUE DE ST HYACINTHE.St Cesaire, Q
Merchants Bank of Canada....St. Cunegonde, Q
La Banque Nationale.St Francois de la Beauce, Q
QUEBEC BANK ....St. George de la Beance, Q
LA BANQUE D'HOCHELAGA.....St Henri, Q
QUEBEC BANK.......... .... "
EASTERN TOWNSHIPS BANK "
St Hyacinthe, Q
LA BANQUE DE ST. HYACINTHE "
La Banqne Nationale .... "
Merchants Bank of Canada. ......St Jerome, Q
Bank of British North America...St John N. B
Bank of Montreal.... .... "
Bank of New Brunswick .... "
Bank of Nova Scotia .... "
Halifax Banking Co .... "
BANK OF MONTREAL.... ......St John's, Nfld
Bank of Nova Scotia......... ...... "
Merchants Bank of Hatifax .... "
Banqne de St. Jean, Head Office.. ...St Johns, Q
La Banque Nationale . ... "
MERCHANTS BANK OF CANADA. "
La Banque Nationale.Ste Marie de la Beauce, Q

Bank of Montreal................ St Mary's, O
Traders Bank of Canada........... "
UNION BANK OF HALIFAX... St. Peters, C.B.
Banque de St Jean...................St Remi, Q
BANK OF NOVA SCOTIA.....St. Stephen, N.B
ST STEPHEN'S BANK .... "
Imperial Bank of Canada ....St Thomas, O
Merchants Bank of Canada....... "
Molsons Bank...................... "
Eastern Towuships Bank..... .... Stanstead, Q
Bank of Toronto ....Stayner, O
Bank of Nova Scotia ....Stellarton, N.S
Standard Bank of Canada...........Stouffville, O
BANK OF MONTREAL...........Stratford, O
Canadian Bank of Commerce .... "
Merchants Bank of Canada.......... "
Imperial Bank of Canada.....Strathcona, N.W.T
Canadian Bank of Commerce ....Strathroy, O
Traders Bank of Canada. .... "
Traders Bank of Canada ......Sturgeon Falls, O
Ontario Bank ....Sudbury, O
Traders Bank of Canada....... ..... "
Bank of Nova Scotia ....Summerside, P.E.I
Merchants Bank of Halifax.... . "
Summerside Bank.............. "
Bank of Nova Scotia ....Sussex, N.B
Bank of British North America .... Sydney, C.B
BANK OF MONTREAL........... "
Commercial Bank of Windsor........ "
MERCHANTS BANK OF HALIFAX "
Union Bank of Halifax............... "
Western Bank of Canada ....Tavistock, O
QUEBEC BANK.............Thetford Mines, Q
QUEBEC BANK ....Thorold, O
BANQUE D'HOCHELAGA ...Three Rivers, Q

QUEBEC BANK..................Three Rivers, Q
Merchants Bank of Canada...... ....Tilbury, O
Traders Bank of Canada.............Tilsonburg, O
Western Bank of Canada........... "
Bank of British North America..........Toronto
Bank of Hamilton .... "
Bank of Montreal, Yonge st .... "
BANK OF MONTREAL, cor Front and Yonge .... "
Bank of Nova Scotia........................ "
Bank of Ottawa.......................... "
Bank of Toronto, Head Office.............. "
Bank of Toronto, King st. W. Branch.... "
Canadian Bank of Commerce, Head Office "
Canadian Bank of Commerce, College st.. Branch .... "
Canadian Bank of Commerce, King st E Branch.............................. "
Canadian Bank of Commerce, Parliament st Branch.............................. "
Canadian Bank of Commerce, Queen st E Branch.............................. "
Canadian Bank of Commerce, Queen st W Branch.............................. "
CANADIAN BANK OF COMMERCE, Yonge and College sts Branch .... "
CANADIAN BANK OF COMMERCE, Yonge st Branch...... .... "
DOMINION BANK, Head Office............ "
DOMINION BANK, Dundas st Branch.. "
DOMINION BANK, Market st Branch... "
DOMINION BANK, Queen and Esther sts Branch.............................. "
DOMINION BANK, Sherbourne st..... "
DOMINION BANK, Spadina av Branch. "
Imperial Bank of Canada, Head Office... "
Imperial Bank of Canada, Yonge and Queen sts Branch........................ Toronto
IMPERIAL BANK OF CANADA, Yonge and Bloor sts Branch.................. "
Merchants Bank of Canada................. "
Molsons Bank........................ .. . "
ONTARIO BANK, Head Office.......... "
ONTARIO BANK, Queen st Branch ..... "
Ontario Bank Young & Richmond sts Branch................................... "
QUEBEC BANK................................ "
Standard Bank of Canada, Head Office.... "
Traders Bank of Canada, Head Office .... "
Union Bank of Canada .... "
Canadian Bank of Commerce.Toronto Junction, O
Molsons Bank .... "
Bank of British North America . ... Trail, B.C.
Molsons Bank........................Trenton, O
Commercial Bank of Windsor...... .Truro, N.S
HALIFAX BANKING CO...... ..... "
MERCHANTS BANK OF HALIFAX "
ONTARIO BANK.........................Tweed, O
Dominion Bank.........................Uxbridge, O
BANQUE D'HOCHELAGA..... ..Valleyfield, Q
Molsons Bank........................ "
Bank of British Columbia..... . Vancouver, B.C
Bank of British North America . "
BANK OF HAMILTON..... ..... "
Bank of Montreal............. .... "
Canadian Bank of Commerce . . "
Imperial Bank of Canada.... ..... "
MERCHANTS BANK OF HALIFAX........................... "
MERCHANTS BANK OF HALIFAX, East End ....Vancouver, B.C
MOLSONS BANK .... "
Banque d'Hochelaga... ....Vankleek Hill, O
Bank of Ottawa .... "
Bank of Montreal...... ....Vernon, B.C
BANK OF BRITISH COLUMBIA.Victoria, B.C
BANK OF BRITISH NORTH AMERICA .... "
Bank of Montreal....... .... "
MERCHANTS BANK OF HALIFAX.... .... "
Molsons Bank .... "
Molsons Bank................ ......Victoriaville, Q
Quebec Bank........................ "
Union Bank of Canada ....Virden, Man
CANADIAN BANK OF COMMERCE. Walkerton, O
Merchants Bank of Canada .... "
Canadian Bank of Commerce......Walkerville, O
BANK OF MONTREAL.... ......Wallaceburg, O
Canadian Bank of Commerce.. .....Waterloo, O
MOLSONS BANK .... "
Eastern Townships Bank ....Waterloo, Q
Merchants Bank of Canada .... .Watford, O
Union Bank of Canada .... .Wawanesa, Man
Imperial Bank of Canada ....Welland, O
Merchants Bank of Halifax. .... Westmount, Q
Merchants Bank of Canada..........Westport, O
Bank of Nova Scotia ....Westville, N.S
Merchants Bank of Halifax......Weymouth, N.S
Dominion Bank ....Whitby, O
WESTERN BANK OF CANADA...... "
Union Bank of Canada................Wiarton, O
Union Bank of Canada ....Winchester, O

Canadian Bank of Commerce........Windsor, O
Merchants Bank of Canada........ "
Traders' Bank of Canada........ "
COMMERCIAL BANK OF WINDSOR ......Windsor, N.S
Halfiax Banking Co........ "
Bank of Hamilton........Wingham, O
BANK OF HAMILTON ....Winkler, Man
Bank of British North America...Winnipeg, Man
BANK OF HAMILTON .... "
BANK OF MONTREAL........ "
BANK OF NOVA SCOTIA......Winnipeg, Man
BANK OF OTTAWA........ "
BANQUE D'HOCHELAGA........ "
CANADIAN BANK OF COMMERCE "
Dominion Bank........ "
Dominion Bank (North End Branch) "
IMPERIAL BANK OF CANADA.. "
Merchants Bank of Canada........ "
Molsons Bank........ "
UNION BANK OF CANADA..... "
PEOPLES BANK OF HALIFAX .Wolfville, N.S
Union Bank of Halifax........Wolfville, N.S
Bank of Nova Scotia ....Woodstock, N.B
Merchants Bank of Halifax. ..... "
Peoples Bank of Halifax .... "
Canadian Bank of Commerce......Woodstock, O
Imperial Bank of Canada........ "
MOLSONS BANK........ "
Bank of Nova Scotia ....Yarmouth, N.S
Bank of Yarmouth .... "
Exchange Bank of Yarmouth...... "
Merchants Bank of Halifax........Ymir, B.C
Union Bank of Canada. ....Yorkton, N.W.T

Private Bankers.

Subscribers.

RAY STREET & CO........Fort William
MILLS & CUNNINGHAM ....Kingston
ADAMS G. J........Montreal
GARAND, TERROUX & CO........ "
PICKEN J. B., & CO........ "
ROBERT ANTOINE........Montreal
ST. MARS & CHERRIER........ "
WALTERS C. H., & CO. .... "
THOMPSON FRANK & CO......Sherbrooke, Q
CLINCH D. C........St. John, N.B
ROBINSON J. MORRIS........ "
YABKER GEO. W........Toronto
ALLOWAY & CHAMPION........Winnipeg

CANADIAN TARIFF OF CUSTOMS.

(For amendment to Customs Tariff of 11th August, 1899, see page 635.)

(*An Act to amend the Customs Tariff*, 1897. *Passed 13th June*, 1898.)

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. Section 6 of *The Customs Tariff*, 1897, is hereby repealed, and the following is substituted therefor:—

"6. The importation into Canada of any goods enumerated, described or referred to in Schedule C to this Act is prohibited; and any such goods imported shall thereby become forfeited to the Crown and shall be destroyed or otherwise dealt with as the Minister of Customs directs; and any person importing any such prohibited goods, or causing or permitting them to be imported, shall for each offence incur a penalty not exceeding two hundred dollars."

2. On and after the first day of August, one thousand eight hundred and ninety-eight, section 17 of the said Act shall be repealed and the following shall be substituted therefor:—

"17. Articles which are the growth, produce or manufacture of any of the following countries may, when imported direct into Canada from any of such countries, be entered for duty or taken out of warehouse for consumption in Canada at the reduced rate of duty provided in the British preferential tariff set forth in Schedule D to this Act:—

(*a*) The United Kingdom;

(*b*) The British colony of Bermuda;

(*c*) The British colonies commonly called the British West Indies, including the following:—

The Bahamas;
Jamaica;
Turks and Caicos Islands;
The Leeward Islands (Antigua, St. Christopher-Nevis, Dominica, Montserrat, and the Virgin Islands);
The Windward Islands (Grenada, St. Vincent and St. Lucia);
Barbados;
Trinidad and Tobago;

(*d*) British Guiana;

(*e*) Any other British colony or possession the Customs Tariff of which is, on the whole, as favourable to Canada as the British preferential tariff herein referred to is to such colony or possession.

Provided, however, that manufactured articles to be admitted under such preferential tariff shall be *bona fide* the manufactures of a country or countries entitled to the benefits of such tariff, and that such benefits shall not extend to the importation of articles into the production of which there has not entered a substantial portion of the labour of such countries. Any question arising as to any article being entitled to such benefits shall be decided by the Minister of Customs, whose decision shall be final.

"2. Raw sugar, including all sugar described in item 436 of Schedule A, may, when imported direct from any British colony or possession, be entered for duty or taken out of warehouse for consumption in Canada at the reduced rate of duty provided in the British preferential tariff.

"3. The Minister of Customs, with the approval of the Governor in Council, shall determine what British colonies or possession or possessions shall be entitled to the benefits of the preferential tariff under paragraph (*e*) of sub-section 1 of this section.

"The Minister of Customs may, with the approval of the Governor in Council, make such regulations as are deemed necessary for carrying out the intention of this section."

3. Item 221 in Schedule A to the said Act is hereby repealed, and the following substituted therefor:—

"221. India rubber boots and shoes; rubber belting, rubber cement and all manufactures of India rubber and gutta percha, N.O.P., twenty-five per cent. *ad valorem*......25 p.c."

4. Items 435 and 436 in Schedule A to the said Act are hereby repealed and the following are substituted therefor:—

"435. All sugar above number sixteen Dutch standard in colour, and all refined sugars of whatever kinds, grades or standards, testing not more than eighty-eight degrees by the polariscope, one dollar and eight cents per one hundred pounds, and for each additional degree one and one-half cent per one hundred pounds. Fractions of five-tenths of a degree or less not to be subject to duty, and fractions of more than five-tenths to be dutiable as a degree.

"Sugar N E S, not above number sixteen Dutch standard in colour, sugar drainings or pumpings drained in transit, melado or concentrated melado, tank bottoms or sugar concrete, testing not more than seventy-five degrees by the polariscope, forty cents per one hundred pounds, and for each additional degree one and one-half cent per one hundred pounds. Fractions of five-tenths of a degree or less not to be subject to duty, and fractions of more than five-tenths to be dutiable as a degree. The usual packages in which imported to be free."

5. On and after the first day of July, one thousand eight hundred and ninety-eight, items 445 and 446 in Schedule A to the said Act shall be repealed.

6. On and after the said first day of July, the following item shall be inserted in Schedule B to the said Act instead of item 616:—

"616. Tobacco, unmanufactured, for excise purposes under conditions of the Inland Revenue Act."

7. On and after the first day of August, one thousand eight hundred and ninety-eight, Sche-

dule D to the said Act shall be repealed and the following substituted therefor:

"SCHEDULE D

"BRITISH PREFERENTIAL TARIFF.

"On articles entitled to the benefits of this preferential tariff under section seventeen, the duties mentioned in Schedule A shall be reduced as follows: The reduction shall be one-fourth of the duty mentioned in Schedule A, and the duty to be levied, collected and paid shall be three-fourths of the duty mentioned in Schedule A.

Provided, however, that this reduction shall not apply to any of the following articles and that such articles shall in all cases be subject to the duties mentioned in Schedule A, viz: wines, malt liquors, spirits, spirituous liquors, liquid medicines and articles containing alcohol; tobacco, cigars and cigarettes.

Provided further, that the reduction shall only apply to refined sugar, when evidence satisfactory to the Minister of Customs is furnished that such refined sugar has been manufactured wholly from raw sugar produced in the British colonies or possessions."

8. Except as herein otherwise provided, this Act shall be held to have come into force on the sixth day of April, in the present year, one thousand eight hundred and ninety-eight.

(An Act to consolidate and amend the Acts respecting the Duties of Customs.)

Assented to 29th June, 1897.

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. This Act may be cited as *The Customs Tariff*, 1897.

2. In this Act, and in any other Act relating to customs, unless the context otherwise requires,—

(*a*) The initials "N. E. S." represent and have the meaning of the words "not elsewhere specified";

(*b*) The initials "N. O. P." represent and have the meaning of the words "not otherwise provided for";

(*c*) The expression "gallon" means an imperial gallon;

(*d*) The expression "ton" means two thousand pounds avoirdupois;

(*e*) The expression "proof" or "proof spirits," when applied to wines or spirits of any kind, means spirits of a strength equal to that of pure ethyl alcohol compounded with distilled water in such proportions that the resultant mixture shall at a temperature of sixty degrees Fahrenheit have a specific gravity of 0.9198 as compared with that of distilled water at the same temperature;

(*f*) The expression "gauge," when applied to metal sheets or plates or to wire, means the thickness as determined by Stubb's standard guage;

(*g*.) The expression "in diameter," when applied to tubing, means the actual inside diameter;

(*h*) The expression "sheet," when applied to metals, means a sheet or plate not exceeding three-sixteenths of an inch in thickness.

(*i*) The expression "plate," when applied to metals, means a plate or sheet more than three-sixteenths of an inch in thickness.

3. The expressions mentioned in section two of *The Customs Act*, as amended by section two of *The Customs Amendment Act*, 1888, whenever they occur herein or in any Act relating to the customs, unless the context otherwise requires, have the meaning assigned to them respectively by the said sections two; and any power conferred upon the Governor in Council by *The Customs Act* to transfer dutiable goods to the list of goods which may be imported free of duty is not hereby abrogated or impaired.

4. Subject to the provisions of this Act and to the requirements of *The Customs Act*, chapter 32 of the Revised Statutes, as amended, there shall be levied, collected and paid upon all goods enumerated, referred to as not enumerated, in Schedule A to this Act, the several rates of duties of customs set forth and described in the said Schedule and set opposite to each item respectively or charged thereon as not enumerated, when such goods are imported into Canada or taken out of warehouse for consumption therein.

5. Subject to the same provisions and to the further conditions contained in Schedule B to this Act, all goods enumerated in the said Schedule B may be imported into Canada or may be taken out of warehouse for consumption in Canada without the payment of any duties of customs thereon.

6. The importation into Canada of any goods enumerated, described or referred to in Schedule C to this Act, is prohibited; and any such goods imported shall thereby become forfeited to the Crown and shall be destroyed, and any person importing any such prohibited goods, or causing or permitting them to be imported, shall for each offence incur a penalty of two hundred dollars.

7. The whole or part of the duties hereby imposed upon fish and other products of the fisheries may be remitted as respects either the United States or Newfoundland, or both, upon proclamation of the Governor in Council, which may be issued whenever it appears to his satisfaction that the Governments of the United States and Newfoundland, or either of them, have made changes in their tariffs of duties imposed upon articles imported from Canada, in reduction or repeal of the duties in force in the said countries respectively.

8. The export of deer, wild turkeys, quail, partridge, prairie fowl and woodcock, in the carcase or parts thereof, is hereby declared unlawful and prohibited; and any person exporting or attempting to export any such article shall for each such offence incur a penalty of one hundred dollars, and the article so attempted to be exported shall be forfeited, and may, on reasonable cause of suspicion of intention to export, be seized by any officer of the customs, and, if such intention is proved, shall be dealt with as for breach of the

Customs Laws; Provided, that this section sha not apply to the export, under such regulations as are made by the Governor in Council, of any carcase or part thereof of any deer raised or bred by any person, company or association of persons upon his or their own lands.

9. Regulations respecting the manner in which molasses and syrups shall be sampled and tested for the purpose of determining the classes to which they belong with reference to the duty chargeable thereon shall be made by the Controller of Customs, and the instruments and appliances necessary for such determination shall be designated by him and supplied to such officers as are by him charged with the duty of sampling and testing such molasses and syrups; and the decision of any officer (to whom is so assigned the testing of such articles) as to the duties to which they are subject under the tariff shall be final and conclusive, unless, upon appeal to the Commissioner of Customs within thirty days from the rendering of such decision, such decision is, with the approval of the Controller, changed; and the decision of the Commissioner with such approval shall be final.

10. In the case of all wines, spirits, or alcoholic liquors subject to duty according to their relative strength of proof, such strength shall be ascertained either by means of Sykes's hydrometer or of the specific gravity bottle, as the Controller of Customs directs; and in case such relative strength cannot be correctly ascertained by the direct use of the hydrometer or gravity bottle, it shall be ascertained by the distillation of a sample and the subsequent test in like manner of the distillate.

11. All medicinal or toilet preparations imported for completing the manufacture thereof, or for the manufacture of any other article by the addition of any ingredient or ingredients, or by mixing such preparations, or by putting up or labelling the same, alone or with other articles or compounds, under any proprietary or special name or trade mark, shall be valued for duty under the provision of subsection two of section sixty-five of *The Customs Act*, as amended by section fifteen of chapter fourteen of the statutes of 1888.

12. All medicinal preparations, whether chemical or other, usually imported with the name of the manufacturer, shall have the true name of such manufacturer and the place where they are prepared, and the word "alcoholic" or "non-alcoholic," permanently and legibly affixed to each parcel by stamp, label or otherwise; and all medicinal preparations imported without such names and word so affixed may be forfeited.

13. Packages shall be subject to the following provisions:—

(*a*) All bottles, flasks, jars, demijohns, carboys, casks, hogsheads, pipes, barrels, and all other vessels or packages, manufactured of tin, iron, lead, zinc, glass or any other material capable of holding liquids, and all packages in which goods are commonly placed for home consumption, including cases, not otherwise provided for, in which bottled spirits, wines or malt liquors or other liquids are contained, and every package being the first receptacle or covering inclosing goods for the purpose of sale, shall in all cases not otherwise provided for, in which they contain goods subject to an *ad valorem* duty, or a specific and *ad valorem* duty, be charged with the same rate of *ad valorem* duty as is to be levied and collected on the goods they contain, and the value of the packages may be included in the value of such goods;

(*b*) All such packages as aforesaid containing goods subject to a specific duty only, and not otherwise provided for, shall be charged with a duty of twenty per cent *ad valorem*

(*c*) Packages not hereinbefore specified, and not herein specially charged with or declared liable to duty, and being the usual and ordinary packages in which goods are packed for exportation, according to the general usage and custom of trade, shall be free of duty;

(*d*) All such special packages or coverings as are of any use, or apparently designed for use other than in the importation of the goods they contain, shall be subject to the same rate of duty as would thereon be levied if imported empty or separate from their contents;

(*e*) Packages (inside or outside) containing free goods shall be exempt from duty when the packages are of such a nature that their destruction is necessary in order to release the goods.

14. Any person who, without lawful excuse, the proof of which shall be on the person accused, sends or brings into Canada, or who, being in Canada, has in his possession, any bill-heading or other paper appearing to be a heading or blank capable of being filled up and used as an invoice, and bearing any certificate purporting to show, or which may be used to show, that the invoice which may be made from such billheading or blank is correct or authentic, is guilty of an indictable offence and liable to a penalty of five hundred dollars, and to imprisonment for a term not exceeding twelve months, in the discretion of the court, and the goods entered under any invoice made from any such bill-heading or blank shall be forfeited.

15. With respect to goods imported for manufacturing purposes that are admissible under this Act for any specific purposes at a lower rate of duty than would otherwise be chargeable, or exempt from duty, the importer claiming such exemption from duty, or proportionate exemption from duty, shall make and subscribe to the following affidavit or affirmation before the collector of customs at the port of entry, or before a notary public or a commissioner for taking affidavits:—

I (*name of importer*), the undersigned, importer of the (*names of the goods or articles*) mentioned in this entry, do solemnly (*swear or affirm*) that such (*names of the goods or articles*) are imported by me for the manufacture of (*names of the goods to be manufactured*) in my own factory, situated at (*name of the place, county and province*), and that no portion of the same will be used for any other purpose or disposed of until so manufactured.

16. Nothing contained in the foregoing provisions shall affect the *French Treaty Act*, 1894, or chapter three of the statutes of 1895, intituled *An Act respecting Commercial Treaties affecting Canada.*

17. When the customs tariff of any country admits the products of Canada on terms

which, on the whole, are as favourable to Canada as the terms of the reciprocal tariff herein referred to are to the countries to which it may apply, articles which are the growth, produce, or manufacture of such country, when imported direct therefrom, may then be entered for duty, or taken out of warehouse for consumption in Canada, at the reduced rates of duty provided in the reciprocal tariff set forth in Schedule D to this Act.

2. Any question arising as to the countries entitled to the benefits of the reciprocal tariff shall be decided by the Controller of Customs, subject to the authority of the Governor in Council.

3. The Governor in Council may extend the benefits of the reciprocal tariff to any country entitled thereto by virtue of a treaty with Her Majesty.

4. The Controller of Customs may make such regulations as are necessary for carrying out the intention of this section.

18. Whenever the Governor in Council has reason to believe that with regard to any article of commerce there exists any trust, combination, association or agreement of any kind among manufacturers of such article or dealers therein, to unduly enhance the price of such article or in any other way to unduly promote the advantage of the manufacturers or dealers at the expense of the consumers, the Governor in Council may commission or empower any judge of the Supreme Court or Exchequer Court of Canada, or of any superior court in any province of Canada, to inquire in a summary way into and report to the Governor in Council whether such trust, combination, association or agreement exists.

2. The judge may compel the attendance of witnesses and examine them under oath and require the production of books and papers, and shall have such other necessary powers as are conferred upon him by the Governor in Council for the purposes of such inquiry.

3. If the judge reports that such trust, combination, association or agreement exists, and if it appears to the Governor in Council that such disadvantage to the consumers is facilitated by the duties of customs imposed on a like article, when imported, then the Governor in Council shall place such article on the free list, or so reduce the duty on it as to give to the public the benefit of easonable competition in such article.

19. The following Acts are hereby repealed:—*The Customs Tariff*, 1894, being chapter thirty-three of the statutes of 1894; chapter twenty-three of the statutes of 1895, intituled *An Act to amend the Customs Tariff*, 1894; and chapter eight of the statutes of 1896, intituled *An Act further to amend the Customs Tariff*, 1894.

20. All Orders in Council and all departmental regulations inconsistent with any of the provisions of this Act are hereby repealed.

21. The foregoing provisions of this Act shall be held to have come into force on the twenty-third day of April, in the present year, one thousand eight hundred and ninety-seven, and to apply and to have applied to all goods imported or taken out of warehouse for consumption on or after the said day: Provided, that in the case of goods which were imported or taken out of warehouse for consumption, and on which duty was paid, on or after the twenty-third day of April, one thousand eight hundred and ninety-seven, in accordance with the rate of duty set forth as payable on such goods in the resolutions respecting the duties of customs introduced in the House of Commons on the twenty-second day of the said month, or in any such resolution subsequently introduced in the said House, the duty so paid shall not be affected, nor shall the person paying it be entitled to any refund or be liable to any further payment of duty, by reason of such rate of duty being altered by any resolution introduced subsequently to that in accordance with which such duty was paid and before the passing of this Act.

SCHEDULE A.

GOODS SUBJECT TO DUTIES.

Ales, Beers, Wines and Liquors.

p. c.

Ale, beer and porter, when imported in casks or otherwise than in bottle.........16c p gall

Ale, beer and porter, when imported in bottles (six quart or twelve pint bottles to be held to contain one gallon) .....24c p gall.

Cider not clarified or refined.........5c p gall.

Cider, clarified or refined..... ......10c p gall.

Lime juice and fruit juices, fortified with or containing not more than twenty-five per cent. of proof spirits ....60c p gall

And when containing more than twenty-five per cent of proof spirits......$2 p gall.

Lime juice and other fruit syrups and fruit juices N. O. P. 20

Spirituous or alcoholic liquors, distilled from any material, or containing or compounded from or with distilled spirits of any kind, and any mixture thereof with water, for every gallon thereof of the strength of proof, and when of a greater strength than that of proof, at the same rate on the increased quantity that there would be if the liquors were reduced to the strength of proof. When the liquors are of a less strength than that of proof, the duty shall be at a rate herein provided, but computed on a reduced quantity of the liquors in proportion to the lesser degree of strength; provided, however, that no reduction in quantity shall be computed or made on any liquors below the strength of fifteen per cent. under proof, but all such liquors shall be computed as of the strength of fifteen per cent under proof, as follows:—

(*a*.) Ethyl alcohol, or the substance commonly known as alcohol, hydrated oxide of ethyl or spirits of wine; gin of all kinds, N. E. S.; rum, whiskey, and all spirituous or alcoholic liquors, N. O. P.; amyl alcohol or fusel oil, or any substance known as potato spirit or potato oil; methyl alcohol, wood alcohol, wood naphtha, pyroxylic spirit or any substance known as wood spirit or methylated spirits, absinthe, arrack or palm spirit, brandy, including artificial brandy and imitations of brandy; cordials and liqueurs of all kinds, N. E. S.; mescal, pulque, rum shrub, schiedam and other

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schnapps; tafia, angostura and similar alcoholic bitters or beverages .... $2.40 p gall.

(*b*) Spirits and strong waters of any kind, mixed with any ingredient or ingredients, as being or known or designated as anodynes, elixirs, essences, extracts, lotions, tinctures or medicines, or medicinal wines (so called), or ethereal and spirituous fruit essences, N. E. S.............. ..... $2.40 p gall. and 30

(*c*) Alcoholic perfumes and perfumed spirits, bay rum, cologne and lavender waters, hair, tooth and skin washes, and other toilet preparations containing spirits of any kind, when in bottles or flasks containing not more than four ounces each, fifty per cent. *ad valorem*; when in bottles, flasks or other packages, containing more than four ounces each,... $2.40 p gall. and 40

(*d*) Nitrous ether, sweet spirits of nitre and aromatic spirits of ammonia,......... $2.40 per gall and 30

(*e*) Vermouth containing not more than thirty-six per cent., and ginger wine containing not more than twenty-six per cent. of proof spirits, 90 cents per gallon; if containing more than these percentages respectively of proof spirits...$2.40 p gall

(*f*) Medicinal or medicated wines containing not more than forty per cent. of proof spirits. ....$1.50 p gall

Wines of all kinds, except sparkling wines, including orange, lemon, strawberry, raspberry. elder and currant wines, containing twenty-six per cent. or less of spirits of the strength of proof, whether imported in wood or in bottles (six quart or twelve pint bottles to be held to contain a gallon)..... ....25c p gall

And for each degree or fraction of a degree of strength in excess of the twenty-six per cent. of spirits as aforesaid, an additional duty of three cents until the strength reaches forty per cent. of proof spirits; and in addition thereto 30

Champagne and all other sparkling wines in bottles containing each not more than a quart but more than a pint.......$3.30 p doz.

Containing not more than a pint each, but more than one-half pint.........$1.65 p doz.

Containing one-half pint each or less 82c p doz

Bottles containing more than one quart each shall pay in addition to $3.30 per dozen bottles, at the rate of $1.65 p gall on the quantity in excess of one quart per bottle, the quarts and pints in each case being old wine measure: in addition to the above specific duty there shall be an *ad valorem* duty of 30

But any liquors imported under the name of wine, and containing more than forty per cent. of spirits of the strength of proof shall be rated for duty as unenumerated spirits.

Animals and Agricultural, Animal and Dairy Products.

Animals, living, N E S.......................... 20

Live hogs... ....1½c p lb

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Meats, N E S, (when in barrel, the barrel to be free) ....2c p lb

Meats, fresh, N E S..................... ..3c p lb

Canned meats, and canned poultry and game, extracts of meats and fluid beef not medicated, and soups 25

Mutton and lamb, fresh....... 35

Poultry and game, N O P 20

Lard, lard compound and similar substances, cottolene and animal stearine of all kinds, N E S ....2c p lb

Tallow and stearic acid......................... 20

Beeswax 10

Candles, N E S................. 25

Paraffine wax candles.......... 30

Soap, common or laundry................1c p lb

Castile soap, mottled or white..........2c p lb

Soap, N E S 35

Pearline, and other soap powders................ 30

Glue, liquid, powdered or sheet, and mucilage, gelatine, and isinglass 25

Feathers, undressed.................................. 20

Feathers, N E S 30

Eggs ....3c p doz

Butter ....4c p lb

Cheese ....3c p lb

Condensed milk (weight of the package to be included in the weight for duty).3½c p lb

Condensed coffee with milk, milk foods and all similar preparations............................ 30

Apples, including the duty on the barrel ....40c p brl

Beans ....15c p bush

Buckwheat.......................................10c p bush

Pease, N E S ....10c p bush

Potatoes, N E S...................................15c p bush

Rye............................... ....10c p bush

Rye flour, including the duty on the barrel ....50c p brl

Hay..... ....$2 p ton

Vegetables, N O P...... 25

Barley 30

Dutiable breadstuffs, grain and flour and meal of all kinds, when damaged by water in transit, twenty per cent. *ad valorem* on the appraised value, such appraised value to be ascertained as provided by sections 58, 70, 71, 72, 73, 74, 75 and 76 of the Customs Act 20

Buckwheat, meal or flour...... ....½c p lb

Cornmeal, including the duty on the barrel ....25c p brl

Indian corn for purpose of distillation, subject to regulations to be approved by the Governor in Council ....7½c p bush

Oats..10c p bush

Oatmeal... 20

Rice, uncleaned, unhulled or paddy...½c p lb

Rice, cleaned ....1¼c p lb

Rice and sago flour and sago and tapioca... 25

Rice, when imported by makers of rice starch for use in their factories in making starch ....¾c p lb

Wheat.. ....12c p bush

Wheat flour, including the duty on the barrel............. ....60c p brl

Biscuits, not sweetened..... 25

Biscuits, sweetened....... .... 27½

Macaroni and vermicelli..................... 25

Starch, including farina, corn starch or flour

p. c.

and all preparations having the qualities of starch, the weight of the package to be in all cases included in the weight for duty...... ...... 1½c p lb

Seeds, viz :—garden, field and other seeds for agricultural or other purposes, N O P, sunflower, canary, hemp and millet seed, when in bulk or in large parcels...... 10

When put up in small papers or parcels...... 25

Mustard, ground...... 25

Mustard cake...... 15

Sweet potatoes and yams............10c p bush

Tomatoes, fresh............20c p bush and 10

Tomatoes and other vegetables, including corn and baked beans, in cans or other packages, N E S, the weight of the cans or other packages to be included in the weight for duty...... 1½c p lb

Pickles, sauces and catsups, including soy... 35

Malt, upon entry for warehouse subject to excise regulations...... 15c p bush

Extract of malt (non-alcoholic), for medicinal and baking purposes...... 25

Hops...... 6c p lb

Compressed yeast, in bulk or mass of not less than fifty pounds...... 3c p lb

In packages weighing less than fifty pounds, the weight of the package in the latter case to be included in the weight for duty...... 6c p lb

Yeast cakes and baking powder, the weight of the packages to be included in the weight for duty...... 6c p lb

Trees, viz :—apple, cherry, peach, pear, plum and quince, of all kinds, and small peach trees known as June buds............3c each

Grape vines, gooseberry, raspberry, currant and rose bushes; fruit plants, N E S, and shade, lawn and ornamental trees, shrubs and plants, N E S...... 20

Blackberries, gooseberries, raspberries, strawberries, cherries and currants, N E S, the weight of the package to be included in the weight for duty...... 2c p lb

Cranberries, plums and quinces...... 25

Prunes, including raisins, dried currants and California or silver prunes......1c p lb

Apples, dried, desiccated or evaporated; dates, figs, and other dried, desiccated or evaporated fruits, N E S...... 25

Grapes...... 2c p lb

Oranges, lemons and limes, in boxes of capacity not exceeding two and one-half cubic feet...... 25c p box

In one-half boxes, capacity not exceeding one and one-fourth cubic foot ...... 13c p ½ box

In cases and all other packages, per cubic foot holding capacity.10c p cub ft

In bulk, per one thousand oranges, lemons or limes...... $1.50 p M

In barrels, not exceeding in capacity that of the one hundred and ninety-six pounds flour barrel...... 5c p brl

Peaches, N O P, the weight of the package to be included in the weight for duty...... 1c p lb

Fruits in air-tight cans or other packages, the weight of the cans or other packages to be included in the weight for duty...... 2½c p lb

Fruits preserved in brandy, or preserved in other spirits...... $2 p gall

Preserved ginger...... 30

Jellies, jams and preserves, N E S...3½c p lb

Honey, in the comb or otherwise, and imitations thereof...... 3c p lb

Tea and green coffee, N E S...... 10

Coffee, roasted or ground, when not imported direct from the country of growth and production...... 2c p lb and

Coffee, roasted or ground, and all imitations thereof and substitutes therefor, including acorn nuts, N O P...... 2c p lb

Extract of coffee, N E S, or substitutes therefor of all kinds...... 3c p lb

Chicory, raw or green...... 3c p lb

Chicory, kiln-dried, roasted or ground.4c p lb

Cocoa shells and nibs, chocolate, and other preparations of cocoa, N E S...... 20

Cocoa paste, chocolate paste, cocoas and cocoa butter, N O P...... 4c p lb

Nuts, shelled, N E S...... 5c p lb

Almonds, walnuts, Brazil nuts, pecans and shelled peanuts, N E S...... 3c p lb

And nuts of all kinds, N O P......2c p lb

Cocoanuts, N E S...... $1 p 100

Cocoanuts, when imported from the place of growth, direct to a Canadian port.50c p 100

Cocoanut, desiccated, sweetened or not.5c p lb

Nutmegs and mace...... 25

Spices, viz :—ginger and spices of all kinds, unground, N E S...... 12½

Ground...... 25

Fine salt in bulk, and coarse salt, N E S...... 5c p 100 lbs

Salt, N E S, in bags, barrels and other packages,—the bags, barrels or other packages being the first coverings or inside packages, to bear the same duty as if such packages or first coverings were imported empty...... 7½c p 100 lbs

Fish and Products of the Fisheries.

Mackerel...... 1c p lb

Herrings, pickled or salted...... ½c p lb

Salmon, fresh...... ½c p lb

Salmon, pickled or salted...... 1c p lb

All other fish, pickled or salted, in barrels 1c p lb

Foreign-caught fish, imported otherwise than in barrels or half-barrels, whether fresh, dried, salted or pickled, not specially enumerated or provided for by this Act...... 50c p 100 lbs

Fish, smoked and boneless...... 1c p lb

Anchovies and sardines, packed in oil or otherwise, in tin boxes measuring not more than five inches long, four inches wide and three and a half inches deep, per whole box...... 5c p box

(*b.*) In half boxes measuring not more than five inches long, four inches wide, and one and five-eighths deep per half box...... 2½c p ½ box

(*c*) In quarter boxes, measuring not more than four inches and three-quarters

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long, three and a half inches wide and one and a quarter deep.............. ....2c p ½ box

Anchovies and sardines, when imported in any other form 30

Fish preserved in oil, except anchovies and sardines 30

Fresh or dried fish, N E S, imported in barrels, or half-barrels ....1c p lb

Salmon and all other fish prepared or preserved, including oysters, not specially enumerated or provided for in this Act...... 25

Oysters, shelled, in bulk..............10c p gall.

Oysters, shelled in cans not over one pint, including the cans.......................3c p can

Oysters, shelled, in cans over one pint and not over one quart, including the cans ....5c p can.

Oysters, shelled, in cans exceeding one quart in capacity, an additional duty of five cents for each quart or a fraction of a quart of capacity over a quart, including the cans ....5c p quart

Oysters, in the shell 25

Packages containing oysters or other fish, N O P...... 25

Oils, spermaceti, whale and other fish oils, and all other articles the produce of the fisheries not specially provided for...... 20

Books and Paper.

Albumenized and other papers and films chemically prepared for photographers' use...... 30

Books, viz:—Novels or works of fiction, or literature of a similar character, unbound or paper-bound or in sheets, including freight rates for railways and telegraph rates, bound in book or pamphlet form, but not to include Christmas annuals or publications commonly known as juvenile and toy books 20

Books, printed, periodicals and pamphlets, or parts thereof, N E S,—not to include blank account books, copy books, or books to be written or drawn upon.................. 10

Advertising and printed matter, viz. :—Advertising pamphlets, advertising pictorial show cards, illustrated advertising periodicals; illustrated price books, catalogues and price lists, advertising almanacs and calendars; patent medicine or other advertising circulars, fly sheets or pamphlets; advertising chromos, chromotypes, oleographs or like work produced by any process other than hand painting or drawing, and having any advertisement or advertising matter printed, lithographed or stamped thereon, or attached thereto, including advertising bills, folders and posters, or other similar artistic work, lithographed, printed or stamped on paper or cardboard for business or advertisement purposes, N O P, ...15c p lb.

Labels for cigar boxes, fruits, vegetables, meats, fish, confectionery or other goods or wares; shipping, price or other tags, tickets or labels, and railroad or other tickets, whether lithographed or printed, partly printed, N E S 35

Bank notes, bonds, bills of exchange, cheques, promissory notes, drafts and all similar work, unsigned, and cards or other commercial blank forms printed or lithographed, or printed from steel or copper or other plates, and other printed matter, N E S 35

Printed music, bound or in sheets.................. 10

Photographs, chromos, chromotypes, artotypes, oleographs, paintings, drawings, pictures, engravings or prints, or proofs therefrom, and similar works of art, N O P; blue prints, building plans, maps and charts, N E S................ 20

Newspapers or supplemental editions or parts thereof, partly printed and intended to be completed and published in Canada.. 25

Union collar cloth paper in rolls or sheets, not glossed or finished................................ 15

Union collar cloth paper in rolls or sheets, glossed or finished 20

Mill-board, not straw board.......... 10

Straw board, in sheets or rolls: tarred paper, felt or straw board; sandpaper, glass or flint paper, and emery paper or emery cloth 25

Paper sacks or bags of all kinds, printed or not 25

Playing cards............................ .....6c p pack.

Paper hangings or wall papers, borders or bordering, and window blinds of paper of all kinds... 35

Printing paper and paper of all kinds, N E S. 25

Ruled and border and coated papers, papeteries, boxed papers, pads not printed, papier-maché ware, N O P; envelopes, and all manufactures of paper, N E S.... 35

Chemicals and Drugs.

Acids, acetic acid and pyroligneous, N E S, and vinegar, a specific duty of fifteen cents for each gallon of any strength not exceeding the strength of proof, and for each degree of strength in excess of the strength of proof an additional duty of two cents ....2c p deg.

The strength of proof shall be held to be equal to six per cent. of absolute acid, and in all cases the strength shall be determined in such manner as is established by the Governor in Council.

Acid, acetic acid crude, and pyroligneous crude, of any strength not exceeding thirty per cent.. 25

Acid, muriatic and nitric, and all mixed or other acids, N E S.................................. 20

Acid, sulphuric.............................. 25

Acid, phosphate, N O P.................................. 25

Sulphuric ether, chloroform, and solutions of peroxides of hydrogen 25

All medicinal, chemical and pharmaceutical preparations, when compounded of more than one substance, including patent and proprietary preparations, tinctures, pills, powders, troches, lozenges, syrups, cordials, bitters, anodynes, tonics, plasters, liniments, salves, ointments, pastes, drops, waters, essences and oils, N O P; provided that drugs, pill-mass and preparations, not including pills or medicinal plasters, recognized by the British or the United

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States pharmacopœia or the French Codex as officinal, shall not be held to be covered by this item; all liquids containing alcohol. 50

And all others, liquid or not.................. 25

Pomades, French or flower odours preserved in fat or oil for the purpose of conserving the odours of flowers which do not bear the heat of distillation, when imported in tins of not less than ten pounds each...... 15

Perfumery, including toilet preparations (non-alcoholic), viz :—Hair oils, tooth and other powders and washes, pomatums, pastes and all other perfumed preparations, N O P, used for the hair, mouth or skin............ 30

Liquorice paste and liquorice in rolls and sticks.. 20

Paraffine wax... 30

Antiseptic surgical dressing, such as absorbent cotton, cotton wool, lint, lamb's wool, tow, jute, gauzes and oakum, prepared for use as surgical dressings, plain or medicated; surgical belts and trusses, electric belts, pessaries and suspensory bandages of all kinds 20

Surgical and dental instruments (not being furniture) and surgical needles ....Free

Cod liver oil... 20

Opium.

Opium, crude, the outward ball or covering to be free of duty........................$1 p lb

Opium, powdered ....$1.35 p lb.

Opium, prepared for smoking...........$5 p lb.

Colours, Paints, Oils, Varnishes, etc.

Dry white and red lead, orange mineral and zinc white.. 5

Ochres, ochrey earths, raw siennas, and colors, dry, N E S.. 20

Oxides, umbers, burnt siennas, and fire proofs, N E S; laundry blueing of all kinds, rough stuff and dry and liquid fillers, anti-corrosive and anti-fouling paints commonly used for ships' hulls, and ground and liquid paints, N E S.. 25

Paints and colours, ground in spirits, and all spirit varnishes and lacquers..$1.12½ p gall

Paris green, dry.. 10

Ink for writing 20

Blacking, shoe, and shoemakers' ink; shoe, harness and leather dressing, harness soap, and knife or other polish or composition, N O P.. 25

Putty, of all kinds..................................... 20

Turpentine, spirits of................................. 5

British gum, dextrine, sizing cream and enamel sizing... 10

Varnishes, lacquers, japans, japan driers, liquid driers, and oil finish, N E S....20c p gall and 20

Linseed or flaxseed oil, raw or boiled, lard oil, neat's-foot oil, and sesame seed oil 25

Illuminating oils composed wholly or in part of the products of petroleum, coal, shale or lignite, costing more than thirty cents per gallon.................................... 25

Lubricating oils, composed wholly or in part of petroleum, costing less than twenty-five cents per gallon........................5c p gall

Crude petroleum, fuel and gas oils (other than naphtha, benzine or gasoline) when imported by manufacturers (other than oil refiners) for use in their own factories for fuel purposes or for the manufacture of gas. ....2½c p gall

Oils, coal and kerosene distilled, purified or refined, naphtha and petroleum, and products of petroleum, N E S., ... 5c p gall

Barrels, containing petroleum or its products, or any mixture of which petroleum forms a part, when such contents are chargeable with a specific duty ....20c each

Lubricating oils, N E S, and axle grease...... 25

Olive oil, N E S... 20

Essential oils.. 10

Vaseline, and all similar preparations of petroleum for toilet, medicinal or other purposes. 35

Coal.

Coal, bituminous, per ton of 2,000 lbs.......... ....53c p ton

Coal dust, N E S...................................... 20

Earthenware, Cements, Slate and Stoneware.

Building brick, paving brick, stove linings, and fire brick, N E S, and manufactures of clay or cement, N O P............................. 20

Earthenware and stoneware, viz.: demijohns, churns or crocks.................................. 30

Drain tiles, not glazed.............................. 20

Drain pipes, sewer pipes, chimney linings or vents, chimney tops and inver[illegible] blocks, glazed or unglazed, and earthe[illegible] tiles. 35

China and porcelain ware, also [illegible] ware and stoneware, brown or coloured and Rockingham ware, white granite or iron stoneware, "c. c." or cream coloured ware, decorated, printed or sponged, and all earthenware, N E S.................................. 30

Baths, tubs and wash-stands of earthenware, stone, cement or clay, or of other material, N O P.. 30

Cement, Portland and hydraulic or water lime, in bags, barrels or casks, the weight of the package to be included in the weight for duty ....12½c per one hundred pounds

Plaster of Paris, or gypsum, ground, not calcined 15

Plaster of Paris, or gypsum, calcined or manufactured, the weight of the package to be included in the weight for duty. ....12½c. per one hundred pounds

Lithographic stones, not engraved............. 20

Grindstones, not mounted, and not less than thirty-six inches in diameter...................... 15

Grindstones, N E S 25

Flagstone, sandstone and all building stone, not hammered or chiselled; and marble and granite rough, not hammered or chiselled. 15

Marble and granite, sawn only; flagstone and all other building stone, dressed; and paving blocks of stone.............................. 20

Marble and granite, N E S, and all manufactures of marble or granite, N O P............ 35

Manufactures of stone, N O P..................... 30

Roofing slate, provided that the duty shall not exceed seventy-five cents per square..... 25

Slate mantels and other manufactures of slate, N E S.. 30

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Slate pencils and school writing slates........	25
Mosaic flooring of any material..................	30

Glass and Glassware.

Common and colourless window glass, and plain coloured, opaque, stained or tinted, or muffled glass, in sheets......................	20
Ornamental, figured, and enamelled coloured glass, vitrified or painted, chipped, figured, enamelled and obscured white glass; stained glass windows, and memorial or ornamental window glass, N O P, and rough rolled plate glass	30
Plate glass, not bevelled, in sheets or panes, not exceeding twenty-five square feet each, N O P..	25
Plate glass, not bevelled, in sheets or panes N E S..	35
Plate glass, bevelled, in sheets or panes, N O P..	35
Silvered glass, bevelled or not and framed or not...	35
German looking glass plate (thin plate), unsilvered or for silvering...................	20
Glass demijohns or carboys, empty or filled, bottles, decanters, flasks, phials, glass jars and glass balls, lamp chimneys, glass shades or globes, cut, pressed or moulded crystal or glass tableware, decorated or not, and blown glass tableware	30
Bent plate or other sheet glass, and all other glass, and manufactures of glass, N O P.....	20
Spectacles and eyeglasses.........................	30
Spectacles and eyeglass frames, and metal parts thereof..	20

Leather, Rubber and Manufactures of.

Dongola, cordovan, calf, sheep, lamb, kid or goat, kangaroo, alligator, or other upper leather, and all leather dressed, waxed, glazed or further finished than tanned, N E S, harness leather, and chamois skin..	17½
Skins for morocco leather, tanned but not further manufactured; sole leather, and belting leather, of all kinds; tanners' scrap leather; and leather and skins, N O P......	15
Glove leathers, tanned or dressed, coloured or uncoloured, when imported by glove manufacturers for use in their own factories in the manufacture of gloves....................	10
Japanned, patent or enamelled leather, and morocco leather....................................	25
Leather-board, leatheroid, and manufactures thereof, N O P................................	25
Whips of all kinds, including thongs and lashes	35
Belting, of leather or other material, N E S..	20
Boots and shoes, and slippers, of any material, N E S..	25
Manufactures of raw hide, and all manufactures of leather, N O P.........................	25
India-rubber boots and shoes; and all manufactures of india-rubber and gutta percha, N O P..	25
India-rubber clothing and clothing made waterproof with india-rubber or gutta percha hose, and cotton or linen hose lined with rubber, rubber mats or matting, and rubber packing..	35

Metals and Manufactures of.

Iron or steel scrap, wrought, being waste or refuse, including punchings, cuttings or clippings of iron or steel plates or sheets having been in actual use; crop ends of tin plate bars, or of blooms, or of rails, the same not having been in actual use ....$1 p ton	
Nothing shall be deemed scrap iron or scrap steel except waste or refuse iron or steel fit only to be re-manufactured in rolling mills.	
Iron in pigs, iron kentledge, and cast scrap iron ....$2.50 p ton	
Ferro-silicon, ferro-manganese, and spiegeleisen..	5
Iron or steel ingots, cogged ingots, blooms, slabs, billets, puddled bars and loops or other forms, N O P, less finished than iron or steel bars but more advanced than pig iron, except castings .... $2 p ton	
Rolled iron or steel angles, tees, beams, channels, girders and other rolled shapes or sections, weighing less than thirty-five pounds per lineal yard, not punched, drilled or further manufactured than rolled, N O P..$7 p ton	
Rolled iron or steel angles, tees, beams, channels, joists, girders, zees, stars or other rolled shapes, or trough, bridge, building or structural rolled sections or shapes, not punched, drilled or further manufactured than rolled, N E S, and flat eye-bar blanks not punched or drilled..............................	10
Bar iron or steel, rolled, whether in coils, rods, bars or bundles, comprising rounds, ovals and squares, and flats; and rolled shapes, N O P; and rolled iron or steel hoop, band, scroll or strip, eight inches or less in width, number eighteen gauge and thicker, N E S ....$7 p ton	
Universal mill or rolled edge bridge plates of steel when imported by manufacturers of bridges	10
Rolled iron or steel plates not less than thirty inches in width, and not less than one quarter of an inch in thickness, N O P.....	10
Rolled iron or steel sheets or plates, sheared or unsheared, and skelp iron or steel, sheared or rolled in grooves, N E S......$7 p ton	
Skelp iron or steel, sheared or rolled in grooves, when imported by manufacturers of wrought iron or steel pipe for use only in the manufacture of wrought iron or steel pipe in their own factories.........................	5
Rolled iron or steel sheets number seventeen gauge, and thinner, N O P; Canada plates; Russia iron; flat galvanized iron or steel sheets, terne plate, and rolled sheets of iron or steel coated with zinc, spelter or other metal, of all widths or thickness, N O P, and rolled iron or steel hoop, band, scroll or strip, thinner than number eighteen gauge, N E S	5
Chrome steel,..	15
Steel, in bars, bands, hoops, scroll or strips, sheets or plates, of any size, thickness or width, when of greater value than two and one-half cents per pound, N O P...............	5

Item	p. c.
Swedish rolled iron and Swedish rolled steel nail rods under half an inch in diameter for the manufacture of horse-shoe nails..	15
Iron and steel railway bars or nails of any form, punched or not, N E S, for railways, which term for the purposes of this item shall include all kinds of railways, street railways and tramways, even although they are used for private purposes only, and even although they are not used or intended to be used in connection with the business of common carrying of goods or passengers........	30
Railway fish plates and tie plates.....$8 p ton	
Switches, frogs, crossings and intersections for railways	30
Locomotives for railways, N E S........	35
Iron or steel bridges, or parts thereof; iron or steel structural work, columns, shapes or sections, drilled, punched or in any further stage of manufacture that as rolled or cast, N E S........	35
Forgings of iron or steel of whatever shape or size or in whatever stage of manufacture, N E S; and steel shafting, turned, compressed, or polished; and hammered iron or steel bars or shapes, N O P	30
Iron or steel castings, in the rough, N E S.....	25
Stove plates, stoves of all kinds, for oil, gas, coal or wood, or parts thereof, and sad or smoothing, hatters' and tailors' irons, plated wholly or in part, or not........	25
Springs, axles, axle bars, N E S, and axle blanks, and parts thereof, of iron or steel, for railway, or tramway or other vehicles..	35
Cart or wagon skeins or boxes........	30
Cast iron pipe of every description...$8 p ton	
Wrought iron or steel boiler tubes, N E S, including flues and corrugated tubes for marine boilers........	5
Tubes of rolled steel, seamless, not joined or welded, not more than one and one-half inch in diameter; and seamless steel tubes for bicycles........	10
Wrought iron or steel tubing, plain or galvanized, threaded and coupled or not, over two inches in diameter, N E S........	15
Wrought iron or steel tubing, plain or galvanized, threaded and coupled or not, two inches or less in diameter, N E S	35
Other iron or steel pipe or tubing, plain or galvanized, riveted, corrugated or otherwise specially manufactured, N O P	30
Iron or steel fittings for iron or steel pipe, of every description, and chilled iron or steel rolls........	30
Iron or steel cut nails and spikes (ordinary builders'); and railroad spikes..... ½ c p lb	
Wrought and pressed nails and spikes, trunk, clout, coopers', cigar box, Hungarian, horse-shoe, and other nails, N E S, horse, mule and ox shoes........	30
Wire nails of all kinds, N O P........3-5 c p lb	
Composition nails and spikes and sheathing nails........	15
Iron or steel shoe tacks, and ordinary cut tacks, leathered or not, brads, sprigs and shoe nails, double pointed tacks, and other tacks of iron and steel, N O P........	35
Screws, commonly called " wood screws," of iron or steel, brass or other metal, including lag or coach screws, plated or not, and machine or other screws, N O P........	35
Coil chain, coil chain links, and chain shackles, of iron or steel, five-sixteenths of an inch in diameter and over........	5
Barbed wire; and galvanized wire for fencing, numbers nine, twelve and thirteen gauge	Free
Buckthorn strip fencing, woven wire fencing, and wire fencing of iron or steel, N E S...	15
Wire, single or several, covered with cotton, linen, silk, rubber or other material, including cable so covered, N E S........	30
Brass wire, plain........	10
Copper wire, plain, tinned or plated........	15
Wire cloth, or woven wire of brass or copper........	25
Wire of all metals and kinds, N O P........	20
Wire rope, stranded or twisted wire, clothes' line, picture or other twisted wire and wire cable, N E S........	25
Wire cloth or wove wire, and wire netting, of iron or steel........	30
Needles, of any material or kind, and pins manufactured from wire of any metal, N O P........	30
Lead, old, scrap, pig and block	15
Lead, in bars, and in sheets........	25
Lead pipe, lead shot and lead bullets........	35
Lead, maufactures of, N O P........	30
Brass and copper nails, tacks, rivets and burrs or washers; bells and gongs, N E S, and all manufactures of brass or copper, N O P........	30
Zinc, manufactures of, N O P........	25
Nickel anodes........	10
Iron or steel nuts, washers, rivets, and bolts, with or without threads, and nut, bolt, and hinge blanks, and T and strap hinges of all kinds, N E S......¾ c p lb and	25
Builders', cabinet-makers', upholsterers', harness-makers', saddlers', and carriage hardware, including butt-hinges, locks, curry combs or curry cards, horse-boots, harness and saddlery, N E S........	30
Skates of all kinds, roller or other, and parts thereof........	35
Gas meters	35
Safes, doors for safes and vaults; scales, balances, weighing beams, and strength testing machines of all kinds........	30
Carvers, knives and forks of steel, butcher and table steels, oyster, bread, kitchen, cooks', butcher, shoe, farrier, putty, hacking and glaziers' knives; cigar knives, spatulas or palette knives, razors, erasers or office knives, pen, pocket, pruning, sportsmen's or hunters' knives, manicure files, scissors, trimmers; barbers', tailors', and lamp shears, horse and toilet clippers, and all like cutlery, plated or not, N O P,—when any of the above articles are imported in cases or cabinets, the cases or cabinets shall be dutiable at the same rate as their contents........	30
Knife blades or blanks, and table forks of iron or steel in the rough, not handled, filed, ground or otherwise manufactured..	10
Celluloid, moulded into sizes for handles of knives and forks, not bored nor otherwise	

	p. c.
manufactured; also, moulded celluloid balls and cylinders, coated with tin-foil or not, but not finished or further manufactured, and celluloid lamp shade blanks	10
Bird, parrot, squirrel and rat cages, of wire, and metal parts thereof	35
Files and rasps, N E S	30
Adzes, cleavers, hatchets, saws, wedges, sledges, hammers, crow-bars, cant-dogs and track tools; picks, mattocks, and eyes or poles for the same; anvils, vices; and tools, of all kinds, for hand or for machine use, including shoemakers' and tinsmiths' tools or bench machines, N O P	30
Axes, scythes, sickles or reaping hooks, hay or straw knives, edging knives, hoes, rakes, pronged forks, snaths, farm, road or field rollers, post hole diggers, and other agricultural implements, N E S	25
Shovels and spades, iron or steel, N E S; shovel and spade blanks, and iron or steel cut to shape for the same; and lawn mowers	35
Britannia metal, nickel silver, Nevada and German silver, manufactures of, not plated, and manufactures of aluminum, N O P	25
Sterling or other silverware, nickel-plated ware, gilt or electro-plated ware, wholly or in part, of all kinds, N E S	30
Telephone and telegraph instruments, electric and galvanic batteries, electric motors, dynamos, generators, sockets, insulators of all kinds: and electric apparatus, N E S	25
Electric light carbons and carbon points, of all kinds, N E S	35
Carbons over six inches in circumference	15
Lamps, side-lights and head-lights, lanterns, chandeliers, gas, coal or other oil fixtures and electric light fixtures, or metal parts thereof, including lava or other tips, burners, collars, galleries, shades and shade holders	30
Lamp springs, and glass bulbs for electric lights	10
Babbit metal, type metal, phosphor tin and phosphor bronze in blocks, bars, plates, sheets and wire	10
Type for printing, including chases, quoins and slugs, of all kinds	20
Plates engraved on wood, steel, or other metal, and transfers taken from the same, including engravers' plates of steel, polished, engraved or for engraving thereupon	20
Stereotypes, electrotypes, and celluloids for almanacs, calendars, illustrated pamphlets, newspapers advertisements or engravings, and all other like work for commercial, trade or other purposes, N E S, and matrices or copper shells for the same	1½c p sq in
Stereotypes, electrotypes and celluloids of newspaper columns, and bases for the same, composed wholly or partially of metal or celluloid	¼c p sq in
And matrices or copper shells for the same	1½c p sq in
Clothes wringers for domestic use, and parts thereof	35
Buckles of iron, steel, brass or copper, of all kinds, N O P (not being jewellery)	30

	p. c.
Guns, rifles, including air guns and air rifles not being toys, muskets, cannons, pistols, revolvers, or other firearms; cartridge cases, cartridges, primers, percussion caps, wads, or other ammunition, N O P; bayonets, swords, fencing foils and masks; gun or pistol covers or cases, game bags, loading tools and cartridge belts of any material	30
Agate, granite or enamelled iron or steel hollow-ware	35
Enamelled iron or steel ware, N E S; iron or steel hollow-ware, plain black, tinned or coated; and nickel and aluminum kitchen or household hollow-ware, N E S	30
Tinware, plain, japanned or lithographed, and all manufactures of tin, N E S, and manufactures of galvanized sheet iron or of galvanized sheet steel, N O P	25
Signs, of any material, framed or not; and letters of any material for signs or similar use	30
Fire engines and fire extinguishing machines, including sprinklers for fire protection	35
Brass pumps of all kinds, and garden or lawn sprinklers	30
Printing presses, printing machines, lithographic presses and type-making accessories therefor; folding machines, book-binders' book-binding, ruling, embossing and paper cutting machines, and parts thereof	10
Sewing machines, and parts thereof	30
Steam engines, boilers, ore crushers and rock crushers, stamp mills, Cornish and belted rolls, rock drills, air compressors, cranes, derricks, percussion coal cutters, pumps, N E S, windmills, horse-powers, portable engines, threshers, separators, fodder or feed cutters, potato diggers, grain crushers, fanning mills, hay tedders, farm wagons, slot machines and type-writers, and all machinery composed wholly or in part of iron or steel, N O P	25
Machine card clothing	25
Mould boards or shares, or plough plates, land sides, and other plates for agricultural implements, when cut to shape from rolled plates of steel but not moulded, punched, polished or otherwise manufactured	5
Mowing machines, harvesters self-binding or without binders, binding attachments, reapers, cultivators, ploughs, harrows, horse-rakes, seed drills, manure spreaders, weeders, and malleable sprocket or link belting chain for binders	20
Trawls, trawling spoons, fly hooks, sinkers, swivels, and sportsmen's fishing bait, and fish hooks, N E S	30
Patterns of brass iron, steel or other metal (not being models)	30
Manufactures, articles or wares not specially enumerated or provided for, composed wholly or in part of iron or steel, and whether wholly or partly manufactured	30

Vehicles.

	p. c.
Freight wagons, drays, sleighs and similar vehicles	25
Buggies, carriages, pleasure carts and similar	

	p. c
vehicles, N E S, including cutters, children's carriages and sleds, and finished parts thereof, N O P	35
Railway cars (or other cars), wheelbarrows, trucks, road or railway scrapers and hand carts	30
Bicycles and tricycles	30

Manufactures of Wood, Cane, Cork.

Cane, reed or rattan, split or otherwise manufactured, N O P	15
Corks, and other manufactures of cork wood or cork bark, N O P	20
Sawed boards, planks and deals planed or dressed on one or both sides, when the edges thereof are jointed or tongued and grooved	25
Lumber and timber, manufactured, N E S	20
Pails and tubs of wood; churns, brooms and whisks, wash-boards, pounders and rolling pins	20
Veneers of wood, not over three thirty seconds of an inch in thickness	7½
Mouldings of wood, plain, gilded or otherwise further manufactured	25
Wood pulp	25
Manufactures of wood, N O P	25
Fishing rods, walking sticks and walking canes, of all kinds, N E S	30
Picture frames and photograph frames, of any material	30
Umbrella, parasol and sunshade sticks or handles, N E S	20
Coffins and caskets, and metal parts thereof.	25
Show-cases, of all kinds, and metal parts thereof	35
Billiard tables, with or without pockets, and bagatelle tables or boards, cues, balls, cue racks, and cue-tips	35
Vulcanized fibre, kartavert, indurated fibre, and like material, and manufactures of, N E S	25
Blinds of wood, metal or other material, not textile or paper	30
House, office, cabinet or store furniture of wood, iron, or other material, in parts or finished; wire screens, wire doors and wire windows; cash registers; window cornices and cornice poles of all kinds; hair, spring and other mattresses, bolsters and pillows, including furniture springs and carpet sweepers	30
Window shade or blind rollers	35

Jewellery and Material therefor, etc.

Watch cases	30
Clocks, watches, watch glasses, clock and watch keys, and clock movements	25
Watch actions and movements	10
Precious stones, N E S, polished, but not set, pierced or otherwise manufactured, and imitations thereof	10
Composition metal for the manufacture of jewellery and filled gold watch cases	10
Jewellery, for the adornment of the person, including hat pins, hair pins, belt or other buckles, and similar personal ornamental articles commercially known as jewellery, N O P, and all manufactures of gold and silver, N E S	30
Fancy writing desks, fancy cases for jewellery, watches, silverware, plated ware and cutlery; glove, handkerchief and collar boxes or cases, brush or toilet cases, and all fancy cases for similar fancy articles, of any material; fans, dolls and toys of all kinds; ornaments of alabaster, spar, amber, terra cotta or composition; statuettes and bead ornaments, N E S	35
Gold, silver and aluminum leaf, Dutch or schlag metal leaf; brocade and bronze powders, and gold liquid paint	25

Minerals.

Asbestos in any form other than crude, and all manufactures thereof	25
Plumbago, not ground or otherwise manufactured	10
Plumbago, ground, and manufactures of, N E S, and foundry facings of all kinds	25

Musical Instruments.

Pianofortes, organs and musical instruments of all kinds	30
Brass band instruments, parts of pianofortes and parts of organs	25
Provided that musical instrument cases shall be dutiable at the same rate as their contents when imported containing the instruments.	

Textiles, Hats, Furs, etc.

Cotton batts, batting and sheet wadding, cotton warps and cotton yarns, dyed or not, N E S	25
Cotton fabrics, white or gray, bleached or unbleached, N O P	25
Cotton fabrics, printed, dyed or coloured, N O P	35
Damask of linen, stair linen, diaper, napkins, doylies, table and tray cloths, sheets, quilts, towels, and like articles of linen or cotton, or of linen and cotton combined, made up or not, N O P	30
Embroideries, N E S, laces, braids, fringes, cords, elastic, round or flat, garter elastic, tassels and bracelets, N O P, braids, chains, cords, or other manufactures of hair, N E S; handkerchiefs of all kinds; lace collars and all similar lace goods; lace nets and nettings of cotton, linen, silk or other material; shams, curtains, when made up, trimmed or untrimmed; regalia, badges and belts of all kinds, N O P; linen, silk and cotton clothing, and all other articles made up by the seamstress from linen or cotton fabrics, N O P; corsets of all kinds, corset clasps, busks, blanks and steels, and covered corset wires, cut to lengths, tipped or untipped	35
White cotton embroideries	25
Jeans, sateens and coutils, when imported by corset and dress stay makers for use in the manufacture of such articles in their own factories	20
Collars and cuffs, of cotton, linen, xylonite, xyolite or celluloid	35

Item	p. c.
Shirts of any material, and ladies' or misses' blouses and shirt waists	35
Crapes, black	20
Velvets, velveteens, silk velvets, plush and silk fabrics	30
Ribbons of all kinds and materials, and manufactures of silk or of which silk is the component part of chief value, N E S	35
Cotton sewing thread in hanks, three and six cord	15
Cotton sewing thread and crochet cotton, on spools or tubes or in balls, and all other cotton thread, N E S	25
Silk in the gum, or spun, not more advanced than singles, tram and thrown organzine, not coloured	15
Sewing and embroidery silk, and silk twist	25
Jute cloth, uncoloured, not otherwise finished than bleached or calendered	10
Horse clothing of jute, shaped or otherwise manufactured	30
All manufactures of hemp, flax or jute, N E S, or of flax, hemp and jute combined	25
Bags or sacks of hemp, linen or jute, and cotton seamless bags	20
Felt, pressed, of all kinds, not filled or covered by or with any woven fabric	20
Hair-cloth of all kinds	30
Sails for boats and ships	25
Cloths, not rubbered or made water-proof, whether of wool, cotton, unions, silk or ramie, sixty inches or over in width and weighing not more than seven ounces to the square yard, when imported exclusively for the manufacture of mackintosh clothing, under regulations to be adopted by the Governor in Council	15
Featherbone, plain or covered, in coils	20
Stockinettes for the manufacture of rubber boots and shoes, when imported by manufacturers of rubber boots and shoes, for use exclusively in the manufacture thereof in their own factories	15
Cotton duck, gray or white, N E S	22½
Oiled silk and oiled cloth, and tape or other textile india rubbered, flocked or coated, N O P	30
Women's and children's dress goods, coat linings, Italian cloths, alpacas, orleans, cashmeres, henriettas, serges, buntings, nun' cloth, bengalines, whip cords, twills, plains or jacquards of similar fabrics, composed wholly or in part of wool, worsted, the hair of the camel, alpaca, goat, or like animal, not exceeding in weight six ounces to the square yard, when imported in the gray or unfinished state for the purpose of being dyed or finished in Canada, under such regulations as are established by the Governor in Council	25
Sock and stockings of all kinds.	35
Knitted goods, N E S, undershirts and drawers, and hosiery of all kinds, N E S	35
Shawls of all kinds; railway or travelling rugs and lap dusters of all kinds	30
Wool, viz.: Leicester, Cotswold, Lincolnshire, Southdown combing wools, or wools known as lustre wools and other like combing wools, such as are grown in Canada	3c per lb.
Worsted tops made from such wools as are mentioned in the next preceding item	15
Yarns, woollen and worsted, N E S.	30
Yarns, composed wholly or in part of wool, worsted, the hair of the alpaca, goat or like animal, costing thirty cents per pound and over, when imported on the cop or tube or in the hank by manufacturers of woollen goods for use in their products	20
Fabrics, manufactures, wearing apparel and ready-made clothing, composed wholly or in part of wool, worsted, the hair of the alpaca, goat or other like animal, N E S blankets, bed-comforters, or counterpanes: flannels, cloths, doe-skins, cassimeres, tweeds, coatings, overcoatings and felt, cloth, N E S	35
Mats, door or carriage, N E S	35
Carpeting, rugs, mats and matting of cocoa, straw, hemp or jute; carpet linings and stair pads	25
Turkish or imitation Turkish or other rugs or carpets; and carpets, N E S.	35
Enamelled carriage, floor, shelf, and table oilcloth, linoleum, and cork matting or carpets	30
Window shades in the piece or cut and hemmed or mounted on rollers, N E S	35
Webbing, elastic and non-elastic	20
Umbrellas, parasols and sunshades of all kinds and materials	35
Gloves and mitts, of all kinds	35
Hats, caps and bonnets, N E S, and hat, cap and bonnet shapes	30
Braces or suspenders, and metal parts thereof.	35
Boot, shoe and stay laces of any material	30
Fur skins, wholly or partially dressed	15
Caps, hats, muffs, tippets, capes, coats, cloaks and other manufactures of fur, N O P.	30
Church vestments of any material	20

Sundries.

Item	p. c.
Ships and other vessels, built in any foreign country, whether steam or sailing vessels, on application for Canadian register, on the fair market value of the hull, rigging, machinery and all appurtenances; on the hull, rigging and all appurtenances, except machinery	10
On the boilers, steam engines and other machinery	25
Canoes, skiffs, or open pleasure sail-boats, of any material	25
Canvas, and sail twine of hemp and flax, when to be used for boats' and ships' sails.	5
Blasting and mining powder	2c per lb.
Cannon, musket, rifle, gun and sporting powder and canister powder	3c p. lb.
Nitro-glycerine, giant powder, nitro and other explosives	3c p. lb.
Glycerine, when imported by manufacturers of explosives, for use in the manufacture thereof in their own factories	10
Torpedoes, firecrackers, and fireworks of all kinds	25
Fertilizers, compounded or manufactured	10
Lamp wicks	25
Photographic dry plates.	30
Emery wheels, and manufactures of emery.	25

p. c.

Lead-pencils, pens, penholders and rulers of all kinds 25

Magic lanterns and slides therefor, philosophical, photographic, mathematical and optical instruments, N E S, cyclometers and pedometers, and tape lines of any material 25

Tobacco pipes of all kinds, pipe mounts, cigar and cigarette cases, cigar and cigarette holders, and cases for the same, smokers' sets and cases therefor, and tobacco pouches 35

Trunks, valises, hat boxes, carpet bags, tool bags or baskets, satchels, reticules, musical instrument cases, purses, portmanteaux, pocket-books, fly-books, and parts thereof, N O P, and baskets of all kinds..... 30

Frames, clasps and fasteners for purses and chatelaine bags or reticules not more than seven inches in width, when imported by manufacturers of purses and chatelaine bags or reticules, for use in the manufacture thereof in their own factories..... 20

Buttons, viz.:—Pantaloon buttons wholly of metal, and shoe buttons, N E S..... 25

Buttons of all kinds covered or not, N O P, including recognition buttons, and cuff or collar buttons (not being jewellery)..... 25

Combs for dress and toilet, including mane combs, of all kinds..... 35

Brushes, of all kinds..... 25

Hair, curled or dyed 20

Artificial flowers 25

Twine and cordage of all kinds, N E S..... 25

Rove, when imported for the manufacture of twine for harvest binders..... 5

Binders' twine or twine for harvest binders of hemp, jute, manilla or sisal, and of manilla and sisal mixed..... free

Hammocks, lawn tennis nets, sportsmen's fish nets, and other articles manufactured of twine, N O P..... 30

Sugar, Syrups and Molasses.

All sugar above number sixteen Dutch standard in colour, and all refined sugars of whatever kinds, grades or standards.1c p lb

Sugar, N E S, not above number sixteen Dutch standard in colour, sugar drainings, or pumpings drained in transit, melado or concentrated melado, tank bottoms and sugar concrete; the usual packages in which imported to be free..... ½c p lb

Glucose or grape sugar, glucose syrup and corn syrup, or any syrups containing any admixture thereof..... ¾c p lb

Sugar candy, brown or white, and confectionery, including sweetened gums, candied peel and pop-corn ..... ½c p lb and 35

Maple sugar, and maple syrup..... 20

Syrups and molasses of all kinds, N O P, the product of the sugar cane or beet, N E S, and all imitations thereof or substitutes therefor..... ¾c p lb

Molasses produced in the process of the manufacture of cane sugar from the juice of the cane without any admixture with any other ingredient, when imported in the original package in which it was placed at the point of production and not afterwards subjected to any process of treating or mixing, the package in which imported, when of wood, to be free,—

(*a*.) Testing by polariscope forty degrees or over..... 1½c p gall

(*b*.) When testing by polariscope less than forty degrees and not less than thirty-five degrees, 1½c p gall, and in addition thereto for each degree or fraction of a degree less than forty degrees..... .1c additional p degree

Tobacco, and Manufacturers of

Cigars and cigarettes, the weight of the cigarettes to include the weight of the paper covering..... $3 p lb and 25

Cut tobacco 55c

Manufactured tobacco, N E S, and snuff ..... 50c p lb

Foreign leaf raw tobacco, unstemmed, unmanufactured for excise purposes, under conditions of the Inland Revenue Act, after 30th June, 1897, to be computed on the weight when ex-warehoused..... 10c p lb

Foreign raw leaf tobacco, stemmed, unmanufactured, for excise purposes, under conditions of the Inland Revenue Act, after 30th June, 1897, to be computed on the weight when ex-warehoused..... 14c p lb

Unenumerated Goods.

All goods not enumerated in this Act as subject to any other rate of duty, nor declared free of duty by this Act, and not being goods the importation whereof is by this Act or any other Act prohibited, shall be subject to a duty of..... 20

SCHEDULE B.

FREE GOODS.

Articles for the use of the Governor-General.

Articles when imported by and for the use of the Army and Navy, viz.: Arms, military or naval clothing, musical instruments for bands, military stores and munitions of war; also articles consigned direct to officers and men on board vessels of Her Majesty's navy, for their own personal use or consumption.

Articles imported by or for the use of the Dominion Government, or of any of the Departments thereof, or by and for the Senate or House of Commons, including the following articles when imported by the said Government or through any of the Departments thereof for the use of the Canadian militia: Military clothing, musical instruments for military bands, military stores and munitions of war.

Articles for the personal or official use of Consuls General who are natives or citizens of the country they represent and who are not engaged in any other business or profession.

Travellers' baggage, under regulations prescribed by the Controller of Customs.

Carriages for travellers and carriages laden with merchandise, and not to include circus troupe

or hawkers, under regulations prescribed by the Controller of Customs.

Apparel, wearing and other personal and household effects, nor merchandise, of British subjects dying abroad, but domiciled in Canada; books, pictures, family plate or furniture, personal effects and heirlooms left by bequest.

Settlers' effects, viz: Wearing apparel, household furniture, books, implements and tools of trade, occupation or employment, guns, musical instruments, domestic sewing machines, typewriters, live stock, bicycles, carts and other vehicles and agricultural implements in use by the settler for at least six months before his removal to Canada, not to include machinery, or articles imported for use in any manufacturing establishment, or for sale; provided that any dutiable article entered as settlers' effects may not be so entered unless brought with the settler on his first arrival, and shall not be sold or otherwise disposed of without payment of duty, until after twelve months' actual use in Canada; provided also, that under regulations made by the Controller of Customs, live stock, when imported into Manitoba or the North-west Territories by intending settlers, shall be free until otherwise ordered by the Governor in Council.

Animals and articles brought into Canada temporarily and for a period not exceeding three months for the purpose of exhibition or of competition for prizes offered by any agricultural or other association; (but a bond shall be first given in accordance with regulations prescribed by the Controller of Customs, with the condition that the full duty to which such animals or articles would otherwise be liable shall be paid in case of their sale in Canada, or if not re-exported within the time specified in such bond.)

Horses, cattle, sheep, swine and dogs, for the improvement of stock, under regulations made by the Treasury Board and approved by the Governor in Council.

Menageries, horses, cattle, carriages and harness of, under regulations prescribed by the Controller of Customs.

Admiralty charts.

Typewriters, tablets with moveable fixtures, and musical instruments, when imported by and for the use of schools for the blind, and being and remaining the sole property of the governing bodies of the said schools and not of private individuals, the above particulars to be verified by special affidavit on each entry when presented.

Globes, geographical, topographical and astronomical; maps and charts for the use of schools for the blind; pictorial illustrations of insects or similar studies, when imported for the use of colleges, schools and scientific and literary societies; manuscripts and insurance maps, and album insides of paper.

Philosophical instruments and apparatus—that is to say such as are not manufactured in Canada, when imported for use in universities, colleges, schools, scientific societies and public hospitals.

Botanical and entomological specimens; mineralogical specimens; skins of birds, and skins of animals not natives of Canada, for taxidermic purposes, not further manufactured than prepared for preservation; fish skins and anatomical preparations and skeletons or parts thereof; and specimens, models and wall diagrams for illustration of natural history for universities and public museums.

Books, viz.: Books on the application of science to industries of all kinds, including books on agriculture, horticulture, forestry, fish and fishing, mining, metallurgy, architecture, electric and other engineering, carpentry, shipbuilding, mechanism, dyeing, bleaching, tanning, weaving and other mechanic arts, and similar industrial books; also books printed in any language other than the English and French languages, or in any two languages not being English and French, or in any three or more languages; and bibles, prayer-books, psalm and hymn-books, religious tracts, and Sunday school lesson pictures.

Books, embossed, for the blind, and books for the instruction of the deaf and dumb and blind.

Books printed by any government or by any association for the promotion of science or letters, and official annual reports of religious or benevolent associations, and issued in the course of the proceedings of the said associations, to their members, and not for the purpose of sale or trade.

Books, not printed or reprinted in Canada, which are included and used as text books in the curriculum of any university, incorporated college or normal school in Canada; books specially imported for the *bona fide* use of incorporated mechanics' institutes, public libraries, libraries of universities, colleges and schools, or for the library of any incorporated medical, law, literary, scientific or art association or society, and being the property of the organized authorities of such library, and not in any case the property of individuals,—the whole under regulations to be made by the Controller of Customs,—provided that importers of books who have sold the same for the purpose mentioned in this item shall, upon proof of sale and delivery for such purpose, be entitled to a refund of any duty paid thereon.

Books, bound or unbound, which have been printed and manufactured more than twelve years.

Newspapers, and quarterly, monthly and semi-monthly magazines, and weekly literary papers, unbound; and tailors', milliners' and mantle-makers' fashion plates.

Paintings in oil or water colors, by artists of well-known merit or copies of the old masters by such artists; and paintings, in oil or water colors, the production of Canadian artists under regulations to be made by the Controller of Customs.

Clothing and books, donations of, for charitable purposes, and photographs, not exceeding three, sent by friends and not for the purpose of sale.

Life-boats and life-saving apparatus specially imported by societies established to encourage the saving of human life.

Coins, cabinets of, collections of medals and of other antiquities including collections of postage stamps; gold and silver coins, except

United States silver coin; medals of gold, silver or copper, and other metallic articles actually bestowed as trophies or prizes and received and accepted as honorary distinctions, and cups or other prizes won in *bona fide* competitions; and medals commemorating the Diamond Jubilee of Her Majesty Queen Victoria, until the thirty-first of December, 1897, and dies for manufacturing such medals.

Locomotive and railway passenger, baggage and freight cars, being the property of railway companies in the United States, running upon any line of road crossing the frontier, so long as Canadian locomotives and cars are admitted free under similar circumstances into the United States, under regulations prescribed by the Controller of Customs.

Models of inventions and of other improvements in the arts—but no article shall be deemed a model which can be fitted for use.

Aluminum in ingots, blocks or bars, strips, sheets or plates; alumina and chloride of aluminum, or chloralum, sulphate of alumina and alum cake; and alum in bulk only, ground or unground.

Ambergris; ammonia, sulphate of, sal-ammoniac, and nitrate of ammonia; arsenic; bromine, Burgundy pitch; cinnabar, cochineal, cyanide of potassium, and cyanogen or compound of bromine and potassium for reducing metals in mining operations; iodine, crude; kryolite or cryolite, mineral; oxalic acid; quinine, salts of; saltpetre; calcareous tufa; alizarine and artificial alizarine; aniline oil, crude; aniline salts and arseniate of aniline annatto, liquid or solid; aniline dyes and coal tar dyes in bulk or packages of not less than one pound weight.

Antimony salts; antimony, or regulus of, not ground, pulverized or otherwise manufactured.

Artificial limbs.

Asphalt or asphaltum; bone pitch, crude only; and resin or rosin in packages of not less than one hundred pounds; and resin oil.

Anchors for vessels.

Bees.

Bells, when imported for the use of churches only.

Bismuth, metallic, in its natural state; blood albumen and tannic acid.

Blast furnace slag.

Blanketing and lapping, and discs or mills for engraving copper rollers, when imported by cotton manufacturers, calico printers, and wall paper manufacturers, for use in their own factories only.

Bolting cloth not made up.

Bones, crude, not manufactured, burned, calcined, ground or steamed.

Book-binders' cloth.

Boracic acid, and borax, ground or unground, in bulk of not less than twenty-five pounds.

Bristles, broom corn and hair brush pads.

Brass and copper, old and scrap, or in blocks; and brass or copper in bolts, bars and rods in coil or otherwise, not less than six feet in length, unmanufactured, and brass or copper in strips, sheets or plates, not polished, planished or coated, and brass or copper tubing, in lengths of not less than six feet, and not polished, bent or otherwise manufactured, and copper in ingots or pigs.

Britannia metal in pigs, blocks or bars.

Buckram, when imported for the manufacture of hat and bonnet shapes.

Bullion, gold and silver, in ingots, blocks, bars drops, sheets or plates, unmanufactured; gold and silver sweepings, and bullion or gold fringe.

Burr-stones, in blocks, rough or unmanufactured, not bound up or prepared for binding into mill-stones.

Caplins, unfinished Leghorn hats and Manilla hoods.

Casts, as models for the use of schools of design.

Cane and rattans, not manufactured; osiers or willows, and bamboos, unmanufactured, and bamboo reeds, not further manufactured than cut into suitable lengths for walking sticks or canes, or for sticks for umbrellas, parasols or sunshades.

Cat-gut or gut cord, for musical instruments; and cat-gut or worm gut, unmanufactured, for whip and other cord.

Celluloid, xylonite or xyolite in sheets, and in lumps, blocks or balls in the rough.

Chloride of lime, in packages of not less than twenty-five pounds weight; cobalt, ore of; oxide of cobalt, oxide of tin and oxide of copper; copper, precipitate of, crude; dragon's blood; gypsum, crude (sulphate of lime); lava, unmanufactured; manganese, oxide of; phosphorus; litharge; saffron, saffron cake, safflower, and extract of; sulphate of iron (copperas); sulphate of copper (blue vitriol); sulphur and brimstone, crude, or in roll or flour; tartar emetic and gray tartar; cream of tartar in crystals and argal or argols; verdigris, or sub-acetate of copper, dry; zinc, salts of, and tartaric acid crystals.

Chronometers and compasses for ships.

Citron, lemon and orange rinds in brine.

Clays, including China clay, fire clay and pipe clay; gannister and sand.

Coal, anthracite and anthracite coal dust; coke.

Coal and pine pitch, and coal and pine tar in packages of not less than 15 gallons.

Coir and coir yarn; raw cotton or cotton wool; and cotton waste, not dyed, cleaned, bleached or otherwise manufactured; cotton yarns, number forty and finer; and mohair yarns.

Communion plate, when imported for the use of churches.

Crucibles, clay or plumbago.

Curling stones.

Cups, brass, being rough blanks, for the manufacture of paper shells or cartridges, when imported by manufacturers of brass and paper shells and cartridges, for use in the manufacture of such articles in their own factories.

Diamonds, unset, diamond dust or bort and black, for borers; and diamond drills for prospecting for minerals, not to include motive power.

Domestic fowls, pure-bred, for the improvement of stock, homing or messenger pigeons and pheasants and quails.

Drugs, crude, such as barks, flowers, roots, beans, berries, balsams, bulbs, fruits, insects, grains, gums and gum resins, herbs, leaves, nuts, fruit and stem seeds—which are not edible and which are in a crude state and not advanced in value by refining or grinding or any other process of manufacture and not otherwise pro-

vided for; egg yolk; fuller's earth, in bulk only, not prepared for toilet or other purposes; lead, nitrate and acetate of, not ground; litmus and all lichens, prepared or not prepared; musk, in pods or in grain; roots, medicinal, viz.:—alkanet, crude, crushed or ground, aconite, calumba, folia digitalis, gentian, ginseng, jalap, ipecacuanha, iris, orris root, liquorice, sarsaparilla, squills, taraxacum, rhubarb and valerian, unground; vaccine and ivory vaccine points; gum chicle or sappato gum, crude; platinum and black oxide of copper, for use in the manufacture of chlorate; potash, chlorate of, not further prepared than ground, and free from admixture with any other substance; and bacteriological products or serum for subcutaneous injection.

Duck for belting and hose, when imported by manufacturers of such articles for use in the manufacture thereof in their own factories; and canvas or fabric, not frictionized, for the manufacture of bicycle tires when imported by the manufacturers of bicycle tires for use exclusively in the manufacture of bicycle tires in their own factories.

Dyeing or tanning articles, in a crude state, used in dyeing or tanning, N.E.S.; berries for dyeing or used for composing dyes; turmeric, nut galls and extracts thereof; lac, crude, seed, button, stick and shell; indigo, indigo paste and extract of, and indigo auxiliary or zinc dust; persis, or extract of archill and cudbear; terra japonica, gambier or cutch, extract of logwood, fustic, oak and oak bark and quebracho; camwood and sumac and extract thereof, tanner's bark, hemlock bark and oak bark; ground logwood, ground fustic, patent prepared dyes, and ground oak bark; iron liquor, solutions of acetate or nitrate of iron for dyeing and calico printing; madder and munjeet, or Indian madder, ground or prepared, and all extracts of; red liquor, a crude acetate of aluminum prepared from pyroligneous acid, for dyeing and calico printing.

Emery in bulk, crushed or ground.

Felt, adhesive for sheathing vessels.

Fertilizers, uncompounded or unmanufactured, including phosphate rock kainite or German potash salts, German mineral potash, bone-dust, bone black or charred bone and bone ash, fish offal or refuse, guano and other animal or vegetable manures.

Fibre, Mexican, natural, and tampico or istle and vegetable fibres; fibrilla, flax fibre and flax tow; grass, Manilla, Esparto or Spanish, and other grasses, and pulp of, including fancy grasses, dried but not colored or otherwise manufactured; moss, Iceland, and other mosses, seagrass and seaweed, crude or in their natural state, or cleaned only; and kelp.

Fire bricks, for use in processes of manufacture, or for manufacturing purposes.

Fillets of cotton and rubber not exceeding seven inches wide, when imported by and for the use of manufacturers of card clothing in their own factories.

Fish hooks, for deep sea or lake fishing, not smaller in size than number 2·0; bank, cod, pollack and mackerel fish lines; and mackerel, herring, salmon, seal, seine, mullet, net and trawl twine in hanks or coil, barked or not,—in variety of sizes and threads,—including gilling thread in balls, and head ropes, barked marline, and net morsels of cotton, hemp or flax, and deep sea fishing nets or seines, when used exclusively for the fisheries, and not to include hooks, lines or nets commonly used for sportsmen's purposes

Flint, flints and ground flint stones; felspar, cliff, chalk, China or Cornwall stone, ground or unground; gravels; precious stones in the rough.

Florist stock, viz:—Palms, bulbs, corns, tubers, rhizomes, araucaria, spiræa and lilies of the valley; seedling stock for grafting, viz:—plum, pear, peach and other fruit trees; seeds, viz.: annatto, beet, carrot, flax, turnip, mangold, mustard, sowing rapeseed and mushroom spawn; aromatic seeds which are not edible and are in a crude state, and not advanced in value or condition by grinding or refining or by any other process of manufacture, viz.: anise, anise star, caraway, cardamom, coriander, cumin, fennel and fenugreek; seed pease and seed beans from Britain; beans, viz.: tonquin, vanilla and nux vomica, crude only, locust beans and locust bean meal, and cocoa beans, not roasted, crushed or ground; fruits, viz.: bananas, plantains, pineapples, pomegranates, guavas, mangoes and shaddocks; wild blueberries, wild strawberries and wild raspberries; and trees, N E S.

Fossils, shells, tortoise and mother-of-pearl, and other shells unmanufactured.

Foot-grease, being the refuse of cotton seed after the oil has been pressed out, but not when treated with alkalies; and grease, rough, the refuse of animal fat for the manufacture of soap and oils only.

Fur skins of all kinds not dressed in any manner.

Goldbeaters' moulds and goldbeaters' skins.

Gums, viz.:—Amber, Arabic, Australian, copal-dammar, clemy, kaurie, mastic, sandarac, Senegal, shellac; and white shellac in gum or flake for manufacturing purposes; and gum tragacanth, gum gedda and gum barbery.

Hair, cleaned and uncleaned, but not curled, dyed or otherwise manufactured; and horse-hair not further manufactured than simply cleaned and dipped or dyed, imported by manufacturers of hair cloth for use in the manufacture of such article in their own factories.

Hatters' furs, not on the skin, and hatters' plush of silk or cotton; and hatters' bands (not cords), bindings, tips and sides, hat sweats and linings both tips and sides, when imported by hat and cap manufacturers for use in the manufacture of these articles only in their own factories.

Hemp, undressed.

Hemp paper, made on four cylinder machines and calendered to between .006 and .008 inch thickness for the manufacture of shot shells; primers for shot shells and cartridges, and felt board sized and hydraulic pressed, and covered with paper or uncovered, for the manufacture of gun wads, when such articles are imported by manufacturers of shot shells, cartridges and gun wads, to be used for these purposes only in their own factories, until such time as the said articles are manufactured in Canada; provi-

ded always that the said articles, when imported, shall be entered only at such port or ports as are named by the Controller of Customs, and at no other place; samples of such articles to be furnished to the collector of the the said port or ports by the Customs Department for the guidance of the officers when accepting free entries of such materials.

Hides and skins, raw, whether dry, salted or pickled, and raw pelts.

Hoofs, horn strips, horn and horn tips, in the rough, not polished or otherwise manufactured than cleaned.

Hoop iron not exceeding ⅝ inch in width and being 25 gauge and thinner, used for the manufacture of tubular rivets.

Ice.

Indian corn, not for purposes of distillation and under Customs regulations.

Ingot moulds; iron sand or globules or iron shot and dry putty for polishing glass or granite.

Iron or steel masts, or parts thereof, and iron or steel beams, angles, sheets, plates, knees and cable chain for wooden, iron, steel or composite ships and vessels; and iron, steel or brass manufactures which at the time of their importation are of a class or kind not manufactured in Canada, when imported for use in the construction or equipment of ships or vessels.

Ivory and ivory nuts, piano key ivories and veneers of ivory unmanufactured.

Junk, old.

Jute and jute butts; and jute cloth, as taken from the loom, not coloured, cropped, mangled, pressed, calendered nor finished in any way.

Jute, flax or hemp yarn, plain, dyed or coloured, jute canvas, not pressed or calendered, when imported by the manufacturers of carpets, rugs and mats, jute webbing or jute cloth, hammocks, twines and floor oil cloth, for use in the manufacture of any of these articles only, in their own factories.

Lamp black and ivory black.

Lastings, mohair cloth, or other manufactures of cloth, when imported by manufacturers of buttons for use in their own factories, and woven or made in patterns of such size, shape or form, or cut in such manner as to be fit for covering buttons, exclusively. These conditions to be ascertained by special examination by the proper officer of customs, and so certified on the face of each entry.

Leeches.

Lime juice, crude only.

Locomotive and car wheel tires of steel in the rough.

Meerschaum, crude or raw.

Metal glove fasteners; papier-maché shoe buttons, shoe eyelets, shoe eyelet hooks, shoe lace wire fasteners, and sewing machine attachments.

Mineral waters, natural, not in bottle, under regulations prescribed by the Controller of Customs.

Machinery imported exclusively for mining, smelting and reducing, viz:—Coal cutting machines except percussion coal cutters, coal heading machines, coal augers and rotary coal drills, core drills, miners' safety lamps, coal washing machinery, coke-making machinery, ore drying machinery, ore roasting machinery, electric or magnetic machines for separating or concentrating iron ores blast furnace water jackets, converters for metallurgical processes in iron or copper, briquette making machines, ball and rock emery grinding machines, copper plates, plated or not, machinery for extraction of precious metals by the chlorination or cyanide processes, monitors, giants and elevators for hydraulic mining, amalgam safes, automatic ore samplers, automatic feeders, jigs, classifiers, separators, retorts, buddles, vanners, mercury pumps, pyrometers, bullion furnaces, amalgam cleaners, gold mining slime tables, blast furnace blowing engines, wrought iron tubing, butt or lap welded, threaded or coupled or not, not less than 2½ inches diameter, when imported for use exclusively in mining, smelting, reducing or refining.

Nickel; and ores of metal of all kinds; and silex or crystallized quartz.

Oakum.

Oils, viz.:—Cocoanut and palm, in their natural state; and carbolic or heavy oil; oil of roses and ottar or attar of roses, and olive oil for manufacturing soap or tobacco, or for canning fish.

Oil cake and oil cake meal, cotton seed cake and cotton seed meal, and palm nut cake and meal.

Oysters, seed and breeding, imported for the purpose of being planted in Canadian waters.

Oleo-stearine and degras.

Palm leaf, unmanufactured.

Plaits, plain, not to include braid or fancy trimmings, composed of chip, manilla, cotton, mohair, straw, Tuscan and grass.

Platinum wire and platinum in bars, strips, sheets or plates; platinum retorts, pans, condensers, tubing and pipe, when imported by manufacturers of sulphuric acid for use in their works in the manufacture or concentration of sulphuric acid.

Potash, muriate and bichromate of, crude, caustic potash, and red and yellow prussiate of potash; also pot and pearl ash, in packages of not less than twenty-five pounds weight.

Prunella.

Pumice and pumice stone, ground or unground.

Quicksilver.

Quills in their natural state or unplumed.

Rags of cotton, linen, jute, hemp and woollen, paper waste clippings, and waste of any kind except mineral.

Rennet, raw and prepared.

Ribs of brass, iron or steel, runners, rings, caps, notches, ferrules, mounts and sticks or canes in the rough, or not further manufactured than cut into lengths suitable for umbrella, parasol or sunshade or walking sticks, when imported by manufacturers of umbrellas, parasols and sunshades for use in their factories in the manufacture of umbrellas, parasols, sunshades or walking sticks.

Rubber and gutta percha, crude caoutchouc or India-rubber, unmanufactured; powdered rubber and rubber waste; hard rubber in sheets, but not further manufactured, and recovered rubber and rubber substitute.

Rolled round wire rods in the coil, of iron or steel, not over three-eighths of an inch in

diameter, when imported by wire manufacturers for use in making wire in the coil, in their own factories.

Rubber thread, elastic.

Reeds, square or round, and raw hide centres, textile leather or rubber heads, thumbs and tips, and steel, iron or nickel caps for whip ends, when imported by whip manufacturers, for use in the manufacture of whips in their own factories.

Rollers, copper, for use in calico printing, when imported by calico printers for use in their factories in the printing of calicos and for no other purpose (such rollers not being manufactured in Canada).

Astrakan or Russian hare skins and China goat plates or rugs, wholly or partially dressed, but not dyed.

Salt, imported from the United Kingdom or any British possession, or imported for the use of the sea or gulf fisheries.

Sausage skins or casings, not cleaned.

Scrap iron and scrap steel, old and fit only to be remanufactured, being part of or recovered from any vessel wrecked in waters subject to the jurisdiction of Canada.

Silk, raw, or as reeled from the cocoon, not being doubled, twisted or advanced in manufacture in any way : silk cocoons and silk waste.

Silk in the gum or spun, when imported by manufacturers of silk underwear to be used for such manufacture in their own factories.

Silver, nickel and German, in ingots, blocks, bars, strips, sheets or plates unmanufactured.

Steel rails weighing not less than 45 pounds per lineal yard for use only in the tracks of a railway which is employed in the common carrying of goods and passengers and is operated by steam motive power only ; provided that this item shall not extend to rails for tracks of a railway which is used for private purposes only, nor shall this item extend to rails for use in the tracks of any electric railway, street railway, or tramway.

Soda, sulphate of, crude, known as salt cake, barilla or soda ash, caustic soda; silicate of soda in crystals or in solution ; bichromate of soda, nitrate of soda or cubic nitre, sal soda, sulphide of sodium, nitrate of soda, arseniate, binarseniate, chloride, chlorate, bisulphite and stannate of soda.

Spurs and stilts, used in the manufacture of earthenware.

Steel bowls for cream separators, and cream separators.

Steel saws and straw cutters cut to shape, but not further manufactured.

Crucible sheet steel, eleven to sixteen guage, two and one-half to eighteen inches wide for the manufacture of mower and reaper knives, when imported by the manufacturers thereof for use for such purpose in their own factories

Steel of number twenty gauge and thinner, but not thinner than number thirty gauge, for the manufacture of corset steel, clock springs and shoe shanks, when imported by the manufacturers of such articles for exclusive use in the manufacture thereof in their own factories.

Flat steel wire, of number sixteen guage or thinner, when imported by the manufacturers of crinoline or corset wire and dress stays, for use in the manufacture of such articles in their own factories.

Steel valued at two and one-half cents per pound and upwards, when imported by the manufacturers of skates, for use exclusively in the manufacture thereof in their own factories.

Steel under one-half inch in diameter, or under one-half inch square, when imported by the manufacturers of cutlery, or of knobs, or of locks, for use exclusively in the manufacture of such articles in their own factories.

Steel of number twelve guage and thinner, but not thinner than number thirty gauge, for the manufacture of buckle clasps, bed fasts, furniture casters and ice creepers, when imported by the manufacturers of such articles, for use exclusively in the manufacture thereof in their own factories.

Steel of number twenty-four and seventeen gauge, in sheets sixty-three inches long, and from eighteen inches to thirty-two inches wide, when imported by the manufacturers of tubular bow sockets for use in the manufacture of such articles in their own factories.

Steel for the manufacture of bicycle chain, when imported by the manufacturers of bicycle chain for use in the manufacture thereof in their own factories.

Steel for the manufacture of files, augers, auger bits, hammers, axes, hatchets, scythes, reaping hooks, hoes, hand-rakes, hay or straw knives, wind mills and agricultural or harvesting forks when imported by the manufacturers of such or any of such articles for use exclusively in the manufacture thereof in their own factories

Steel springs for the manufacture of surgical trusses, when imported by the manufacturers for use exclusively in the manufacture thereof in their own factories.

Flat spring steel, steel billets and steel axle bars, when imported by manufacturers of carriage springs and carriage axles for use exclusively in the manufacture of springs and axles for carriages or vehicles other than railway or tramway, in their own factories.

Spiral spring steel for spiral springs for railways, when imported by the manufacturers of railway springs for use exclusively in the manufacture of railway spiral springs in their own factories.

Steel strip and flat steel wire when imported into Canada by manufacturers of buckthorn and plain strip fencing, for use in the manufacture of such articles in their own factories; and barbed fencing wire of iron or steel after January 1st, 1898.

Galvanized iron or steel wire number nine, twelve and thirteen gauge, after January 1st, 1898.

Stereotypes, electrotypes and celluloids of newspaper columns in any language other than French and English, and of books, and bases and matrices and copper shells for the same, whether composed wholly or in part of metal or celluloid.

Surgical and dental instruments (not being furniture) and surgical needles, after January 1st, 1898.

Tagging metal, plain, japanned or coated, in coils not over one and a half inch in width,

when imported by manufacturers of shoe and corset laces for use in their factories.

Tails, undressed.

Tea and green coffee imported direct from the country of growth and production, and tea and green coffee purchased in bond in the United Kingdom, provided there is satisfactory proof that the tea or coffee so purchased in bond is such as might be entered for home consumption in the United Kingdom.

Teasels.

Tin, in blocks, pigs, bars and sheets, tin plates, tin crystals, tin strip waste, and tin foil, tea lead.

Timber or lumber or wood, viz.: lumber and timber planks and boards of amaranth, cocoboral, boxwood, cherry, chestnut, walnut, gumwood, mahogany, pitch pine, rosewood, sandal-wood, sycamore, Spanish cedar, oak, hickory, whitewood, African teak, black-heart ebony, lignum vitæ, red cedar, redwood, satinwood and white ash, when not otherwise manufactured than rough-sawn or split or creosoted, vulcanized or treated by any other preserving process; sawed or split boards, planks, deals and other lumber when not further manufactured than dressed on one side only or creosoted, vulcanized or treated by any preserving process; pine and spruce clapboards; timber or lumber hewn or sawed, squared or sided or creosoted; laths, pickets and palings; staves not listed or jointed of wood of all kinds; firewood, handle, heading, stave, and shingle bolts, hop poles, fence posts, railroad ties; hubs for wheels, posts, last blocks, wagon, oar, gun, heading and all like blocks or sticks rough hewn, or sawed only; felloes of hickory wood, rough sawn to shape only, or rough sawn and bent to shape, not planed, smoothed or otherwise manufactured; hickory billets and hickory lumber, sawn to shape for spokes of wheels, but not further manufactured; hickory spokes, rough turned, not tenoned, mitred, throated, faced, sized, cut to length, round tenoned or polished; shingles of wood; the wood of the persimmon and dogwood trees; and logs and round unmanufactured timber, ship timber or ship planking, not specially enumerated or provided for in this Act.

D shovel handles, wholly of wood, and Mexican saddle trees and stirrups of wood.

Corkwood, or cork bark, unmanufactured.

Saw-dust of the following woods: Amaranth, cocoboral, boxwood, cherry, chestnut, walnut, gumwood, mahogany, pitch pine, rosewood, sandal-wood, sycamore, Spanish cedar, oak, hickory, whitewood, African teak, black-heart ebony, lignum vitæ, red cedar, redwood, satinwood, white ash, persimmon and dogwood.

Treenails.

Tobacco, unmanufactured, for excise purposes, under conditions of the Inland Revenue Act, until July 1st, 1897.

Tubes, rolled iron not welded or joined, under one and one-half inch in diameter, angle iron, nine and ten gauge, not over one and one-half inch wide, iron tubing lacquered or brass covered, not over one and one-half inch in diameter, all of which are to be cut to lengths for the manufacture of bedsteads, and to be used for no other purpose, and brass trimmings for bedsteads, when imported by or for manufacturers of iron or brass bedsteads to be used for such purposes only in their own factories, until such time as any of the said articles are manufactured in Canada.

Turpentine, raw or crude.

Turtles.

After 1st January, 1898, binders' twine, or twine for harvest binders, of hemp, jute, manilla or sisal, and of manilla and sisal mixed, and all articles upon which duties are levied which enter into the cost of the manufacture of such twine, under regulations to be made by the Controller of Customs.

Ultramarine blue, dry or in pulp.

Varnish, black and bright, for ships' purposes.

Whalebone, unmanufactured.

Whiting or whitening, Paris white and gilders' whiting, *blanc fixe* and satin white.

Wire, crucible cast steel.

Wire rigging for ships and vessels.

Wire, of brass, zinc, iron or steel, screwed or twisted, or flattened or corrugated, for use in connection with nailing machines for the manufacture of boots and shoes, when imported by manufacturers of boots and shoes, to be used for such purposes only in their own factories.

Steel wire, Bessemer soft drawn spring, of numbers ten, twelve and thirteen gauge, respectively, and homo steel spring wire of numbers eleven and twelve gauge, respectively, when imported by manufacturers of wire mattresses, to be used in their own factories in the manufacture of such articles.

Wool and the hair of the camel, alpaca, goat, and other like animals, not further prepared than washed, N E S; noils, being the short wool which falls from the combs in worsted factories; and worsted tops, N E S.

Wool or worsted yarns, when genapped, dyed or finished and imported by manufacturers of braids, cords, tassels and fringes to be used in the manufacture of such articles only in their own factories.

Yarn spun from the hair of the alpaca or of the angora goat, when imported by manufacturers of braids for use exclusively in their factories in the manufacture of such braids only, under such regulations as are adopted by the Controller of Customs.

Yellow metal, in bolts, bars and for sheathing.

Zinc spelter and zinc in blocks, pigs, sheets and plates; and seamless drawn tubing.

Molasses, second process, or molasses derived from the manufacture of "molasses sugar," testing by polariscope less than 35 degrees, when imported by manufacturers of blacking, for use in their own factories, in the manufacture of blacking,—conditional that the importers shall, in addition to making oath at the time of entry that such molasses is imported for such use and will not be used for any other purpose, cause such molasses to be at once mixed in a proper tank made for the purpose with at least one-fifth of the quantity thereof of cod or other oil, whereby such molasses may be rendered unfit for any other use, such mixing to

be done in the presence of a Customs officer at the expense of the importer, and under such further regulations as are from time to time considered necessary in the interest and for the protection of the revenue, and that until such mixing is done and duly certified on the face of the entry thereof by such Customs officer the entry shall be held to be incomplete and the molasses subject to the usual rate of duty as when imported for any other purpose.

Bags, barrels, boxes, casks and other vessels exported filled with Canadian products, or exported empty and returned filled with foreign products; and articles the growth, produce and manufacture of Canada, when returned after having been exported; provided that proof of the identity of such articles and goods shall be made under regulations to be prescribed by the Controller of Customs, and that such articles and goods returned within three years from time of exportation, without having been advanced in value or improved in condition by any process of manufacture or other means: provided further that this item shall not apply to any article or goods upon which an allowance of drawback has been made, the re-importation of which is hereby prohibited except upon payment of duties equal to the drawback allowed; nor shall this item apply to any article or goods manufactured in customs or excise bonded warehouse and exported under any provision of law.

SCHEDULE C.

PROHIBITED GOODS.

Books, printed paper, drawings, paintings, prints, photographs or representations of any kind of a treasonable or seditious, or of an immoral or indecent character.

Reprints of Canadian copyright works, and reprints of British copyright works which have been copyrighted in Canada also.

Coin, base or counterfeit.

Oleomargarine, butterine or other similar substitute for butter.

Tea adulterated with spurious leaf or with exhausted leaves, or containing so great an admixture of chemical or other deleterious substances as to make it unfit for use.

Goods manufactured or produced wholly or in part by prison labour, or which have been made within or in connection with any prison, jail or penitentiary; also goods similar in character to those produced in such institutions, when sold or offered for sale by any person, firm or corporation having a contract for the manufacture of such articles in such institutions or by any agent of such person, firm or corporation, or when such goods were originally purchased from or transferred by any such contractor.

SCHEDULE D.

RECIPROCAL TARIFF.

On all the products of countries entitled to the benefits of this Reciprocal Tariff, under the provisions of section sixteen, the duties mentioned in schedule A shall be reduced as follows:—

On and after the twenty-third of April, 1897, until the thirtieth day of June, 1898, inclusive, the reduction shall in every case be one-eighth of the duty mentioned in schedule A, and the duty to be levied, collected and paid shall be seven-eighths of the duty mentioned in schedule A.

On and after the first day of July, 1898, the reduction shall in every case be one-fourth of the duty mentioned in schedule A, and the duty to be levied, collected and paid shall be three-fourths of the duty mentioned in schedule A.

Provided, however, that these reductions shall not apply to any of the following articles, and that such articles shall in all cases be subject to the duties mentioned in schedule A, viz.:—wines, malt liquors, spirits, spirituous liquors, liquid medicines and articles containing alcohol; sugar, molasses and syrups of all kinds, the product of the sugar cane or beet root; tobacco, cigars and cigarettes.

An Act further to amend the Customs Act. Assented to 11th August, 1899.

Her Majesty by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. Section 62 of *The Customs Act*, Chapter 32 of the Revised Statutes, is hereby amended by inserting the words "or landing" after the word "entry" in the ninth line.

2. Section 245 of the said Act, as amended by section 2 of chapter 36 of the Statutes of 1898, is hereby amended by adding the following paragraph thereto:—

"(s.) for regulating the number of deer and parts thereof which may be exported in any year, when shot, under Provincial or Territorial authority in Canada, by any person not domiciled in Canada for sport, and for limiting the ports at which such deer may be exported, and for prescribing the conditions under which such exportation may be permitted: Provided, that deer in the carcass or parts thereof may be exported as prescribed by such regulations notwithstanding anything to the contrary in any Act of the Parliament of Canada."

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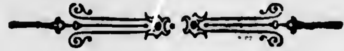

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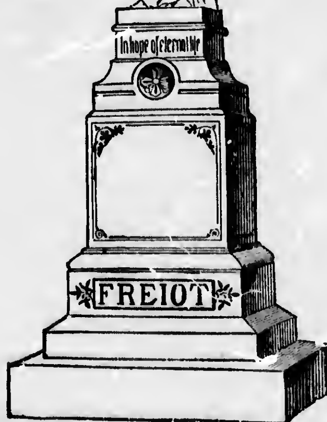

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