THE

CANADIAN LAWYER

A HANDY BOOK OF THE LAWS AND OF LEGAL INFORMATION FOR THE USE OF

BUSINESS MEN, FARMERS, MECHANICS AND OTHERS IN CANADA

FIFTH EDITION—REVISED AND ENLARGED

BY BARRISTERS OF VARIOUS PROVINCES

TORONTO:
THE CARSWELL COMPANY, LIMITED
1917

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CONTAINING PLAIN AND SIMPLE INSTRUCTIONS TO ALL CLASSES FOR TRANSACTING BUSINESS ACCORDING TO LAW, WITH LEGAL FORMS FOR DRAWING NECESSARY PAPERS

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PREFACE TO FIFTH EDITION

THIS little manual was first of its kind to furnish to the public a compendium—simple and concise, as well as accurate, in its style and arrangement—of the most important provisions of the laws of all the Provinces of Canada in which the general principles of English law prevail. It is printed as a ready reference guide for commercial men, farmers, mechanics and others in the every day business transactions of life. It does not pretend to make its readers lawyers, or to enable them to dispense entirely with the advice of the legal profession when matters of real difficulty arise. But it does pretend to furnish, upon the subjects of which it treats, information which will enable an ordinary business man to solve for himself a large proportion of the legal questions which are met with in his business, without the necessity of his applying to a lawyer.

Many persons have neither the time nor the money to refer to a solicitor every day for advice. Cases frequently arise in which he must of necessity make up his mind and act, before he can possibly have an opportunity to consult a lawyer. A work like the present, ready at hand, easy of reference, may be found to save each year to its owner, ten times its cost.

The rapid development of the Western provinces and consequent growth of commercial law, has rendered necessary the appearance of a new edition. It has also of necessity added very considerably to the volume of material, making the present edition about 100 pages larger than any previous one.

Of the immense value of a well-prepared manual of this nature, there can be no question. Wrongs are suffered and

money lost every day because people generally are unacquainted with their legal rights, or means of redress. One half of the law suits which come before the Courts are brought about because some person was ignorant of a simple fact of law which he should have known; and it is undeniable that an acquaintance with the elementary principles of law would enable many a man to steer clear of litigation.

To preserve this work within the dimensions of a handbook, and yet comprise in it a reference to all subjects of a useful nature, has required no little labour.

Throughout the book technical terms and expressions have been, as far as possible, eschewed, and plain and simple language employed. A glossary of law terms is appended to explain words the use of which could not be avoided.

Competent editors from each Province of Canada have prepared and revised the laws, bringing them down to date of publication.

Toronto, July 1st, 1912.

THE CANADIAN LAWYER.

ADMINISTRATORS.

An administrator (or, if a female, administratrix,) is a person appointed by a Surrogate or Probate Court, or other proper authority, to take charge of the goods and estate of a person who has died without a will, and to distribute them according to law.

An administrator is sometimes appointed even where a will is left. If the will names no executor, an "administrator with the will annexed," must be appointed; if there is but one executor and he die before the estate is wound up, or refuse to act, an administrator of the goods not administered (sometimes called an *administrator de bonis non*) may be appointed. Also, if a single administrator die, an administrator of the goods not administered must act.

Where administration is sought by different persons, the laws of the various Provinces will be found to establish the order of preference between them. Administration will not be granted to those subsequent in priority until those prior have been cited before the Court and disclaimed, or waived their rights. Usually a husband has the first right to administer to the estate of his deceased wife, and a widow to that of her deceased husband; after these, the next of kin have the prior right to Letters of Administration; but a creditor of deceased may obtain them if they all disclaim, or any other proper person in the discretion of the Court. In Ontario Letters of Administration cannot be granted to a non-resident except in the case of resealing foreign letters.

Before Letters of Administration are granted, proof must be filed in the Court granting them, verifying the death, that search has been made for a will and none found, and that none is believed to exist; that the deceased has personal property within the jurisdiction of the Court; and that the applicant has a right to demand the administration. In most jurisdictions an inventory of the personal property must also be filed, with a computation of its sworn value. This is partly for the purpose of fixing the

amount of the bond which the administrator and his sureties (usually two) are required to execute and file in the Court, before the Letters issue. An affidavit (in duplicate) of value and relationship must also be filed under The Succession Duty Act.

After the Letters have issued, the first duty of the administrator is to take into his custody the personal property, books and papers of the deceased, and ascertain fully what are the assets of the deceased in the shape of goods, moneys and securities for money on hand, and book debts. A careful appraised inventory of these should be made, the debts realized upon, and other assets converted into cash if necessary to pay debts. An inventory of the liabilities of the estate should also be made out, and, if it be suspected that other liabilities which do not appear in the books, or of which the administrator is ignorant, exist, these should be advertised for by the administrator, to protect himself. For the first duty of an administrator is to pay the debts, and he has no right to distribute any property among the next of kin until the debts are paid. If sufficient assets exist, the debts are paid in full; if not, rateably, after payment in full of medical charges for the last illness of the deceased, funeral and testamentary expenses, one year's arrears of wages of clerks, domestic and farm servants, and one year's rent if in arrears. In Ontario and some other Provinces, an administrator who advertises for debts, may distribute, after a reasonable time, having reference only to claims of which he has notice. Should other claims be sent in after his distribution, he cannot be sued for them. In New Brunswick the administrator may distribute after the lapse of one year from administration, but cannot be compelled to do so until eighteen months have elapsed. If other claims come in after his distribution he may be sued for them, but may plead that he has fully administered the assets which came into his hands. The creditor in such case will get judgment against such assets as may be received in future.

The debts being paid, together with the funeral expenses and expenses of administration (which form a first charge upon the assets), the estate may then be divided among the widow and next of kin. The administrator may then pass his accounts before the Court which appointed him.

When a person dies without making a will, his property is then distributed according to the provisions of the Acts of the legislature passed to regulate such matters. In Nova Scotia the lands of a person dying intestate descend

first to all his children, sons and daughters, equally, and if any child should be dead leaving children, these grandchildren will stand in their parent's place and be entitled to the share which would have fallen to their parent, had such parent been alive. If the intestate leaves no children, one-half of his lands will go to his father, and the other half to his widow, instead of dower. Failing both children and widow, the lands will go to the intestate's father; and if the father be dead, and there be no children, then one-half of the lands go to the widow and one half to the mother, brothers, and sisters; failing widow, children, and father, all the real estate goes to the mother, brothers, and sisters of the intestate, and if the mother be dead, then to the brothers and sisters and collateral relatives.

With regard to personal property, under the Statutes of Distributions, if the intestate leave a widow and any child or children, the widow shall take a third part of the surplus of his effects. If he leave no child or descendant of a child, she takes one-half. If the intestate leave children, two-thirds of his effects, if he leave a widow, or the whole if he leave no widow, shall be equally divided among his children, or, if but one, to such child. If the intestate leave no children or representatives of them nor widow, his father, if living, takes the whole; if the intestate should have left a widow, then one-half. In Ontario, however, by amendment to the statute, the father, mother, brothers and sisters of the deceased take equally. If the father be dead, the mother, brothers and sisters of the intestate shall take in equal shares, subject, as before, to the widow's right to a moiety. If there be no brother or sister, the mother shall take the whole, or, if the widow be living, a moiety only, as before; but a step-mother can take nothing. The children of brothers or sisters who are dead stand in their parent's place.

If a married woman is possessed of property, real or personal, she may dispose of the same by her will to whom she pleases.

The separate personal property of a married woman dying intestate is to be distributed in the same proportions between her husband and children as the personal property of a husband dying intestate is to be distributed between his wife and children.

When a person dies intestate, any of the next of kin (and failing them, a creditor), may obtain letters of administration, from the Surrogate, Probate or other proper Provincial Court, which will clothe the party obtaining such letters with the same authority that

an executor has. An administrator's duties and liabilities are precisely the same as those of an executor, save that an administrator must give a bond for the due performance of his duties, which, as a rule, an executor need not do. Where a will appoints no executor, an administrator with the will annexed will be appointed.

The authority of the administrator does not extend beyond the jurisdiction of the Court which appoints him. If assets exist beyond such jurisdiction, he, or some other person, may apply for administration there, in order to reach them. The chief administration should be in the jurisdiction where the deceased had his domicile at the time of his death. The other administrations are called ancillary.

In Ontario, by "The Devolution of Estates Act," R. S. O. 1897, c. 127, now c. 56 of the statutes of 1910, the following statutory provisions apply to the estates of persons dying on or after the 1st July, 1886. Upon the death of such persons, their estates in fee simple, or chattels real, notwithstanding any disposition by will, devolve upon and become vested in their legal personal representative, subject to the payment of their debts; and, so far as not disposed of by deed, will, or contract, are to be distributed as personal property, subject to the provisions of the Act. Under this statute, where a general administration is applied for, the application, or petition, and the affidavit in support of it, must show the particulars of the real estate of the deceased, and its value, or probable value; and the amount of the security to be given must have reference to such value in addition to the value of the rest of the estate of the deceased. The administrator, or other legal personal representative, has power to dispose of, and otherwise deal with, all real property vested in him by the Act, as though the same were personal property.

As to the duties of administrators in regard to the payment of Succession Duty the chapter on that subject should be consulted.

In Ontario where there are no debts, and persons beneficially entitled do not concur in the sale, or are infants or lunatics, the consent of the Official Guardian is necessary to make the sale valid as against them.

In Ontario real estate not disposed of by the administrator within 3 years of the death of the testator, vests without any conveyance by the administrator in the persons beneficially entitled to it, unless the administrator registers a caution that it may be necessary for him to sell the lands in the Land Titles or Registry Office where the land is situ-

ate. A form of caution is given below. When such a caution is registered the land does not vest in the heir or devisee until 12 months from the time it is registered or from the time of the registration of the last of such cautions, if there are more than one registered. Where the administrator has omitted through oversight to register a caution within the 12 months, the Act provides a special method of doing so, either by consent of the adult heirs or devisees affected, or by an order signed by a High Court or County Court Judge, or a certificate of the Official Guardian.

Before the expiration of the 12 months the administrator may file a certificate withdrawing the caution or withdrawing it as to a specified parcel of land. A form of this certificate is given below with the necessary affidavit.

In Manitoba, lands are now to be treated, as regards descent, as chattels real; and they pass to the executor or administrator of the person dying seized, as personal estate.

In New Brunswick, where the personal estate is not sufficient to pay the debts of the deceased, the executor or administrator may within 10 years from his appointment petition the Judge for leave to sell or lease the real estate or a portion thereof. A creditor may at any time, after 18 months and before the expiration of 10 years from granting probate or administration, make an application to the Judge to call on the executors to shew cause why the land should not be sold or leased to satisfy his debt.

The forms appended are those in common use in Ontario. Usually, printed forms of all necessary administration papers may be obtained of the Court to which application for the Letters is made.

FORMS.

Petition for Letters of Administration (Ontario and Nova Scotia.)

Unto the Surrogate Court of the Count of

The petition of of the of in the Count of , humbly sheweth:

That (name of intestate) late of the of in the Count of , deceased, died on or about the day of in the year of our Lord one thousand nine hundred and at in the Count of , and that the said deceased at the time of his death had fixed place of abode at the in the said Count of

That the said deceased died without having left any Will, Codicil or Testamentary Paper whatever, and your Petitioner is , and next of kin of the said deceased.

That the value of the whole property of the said deceased which h in any way died possessed of, or entitled to, is under dollars. That the value of the Personal Estate and Effects is under dollars, and of the Real Estate is under dollars, and that full particulars and an appraisement of all said property are exhibited herewith and verified upon oath.

Wherefore your Petitioner pray that administration of the Property of the said deceased may be granted and committed to by this Honourable Court.

Dated the day of , A. D. 19

Administration Bond (Ontario.)

Know all men by these presents, that we (names and additions of administrator and his sureties) are jointly and severally bound unto (name of Surrogate Judge), the Judge of the Surrogate Court of the County of , in the sum of Dollars, to be paid to the said (name of Surrogate Judge) or the Judge of the said Court for the time being; for which payment well and truly to be made we bind ourselves and each of us for the whole, our heirs, executors and administrators, firmly by these presents. Sealed with our Seals, dated the day of in the year of our Lord one thousand nine hundred and

The condition of this obligation is such that if the above named (name of administrator) the administrator of all the personal estate and effects, rights and credits of (name of intestate) late of the of in the County of , deceased, (who died on the day of , in the year of our Lord one thousand nine hundred and) do, when lawfully called on in that behalf, make or cause to be made a true and perfect Inventory of all and singular the personal estate and effects, rights and credits of the said deceased which have or shall come into the hands, possession or knowledge of the said (administrator) or into the hands and possession of any other person or persons for him, and the same so made do exhibit or cause to be exhibited unto the Registrar of the Surrogate Court of the County of whenever required by law so to do; And the same personal estate and effects, rights and credits, and all other the personal estate and effects, rights and credits of the said deceased at the time of his death, which at any time after shall come into the hands or possession of the said (administrator) or into the hands or possession of any other person or persons for him, do well and truly administer according to law; and shall well and truly pay over and account for to the person or persons entitled to the same, all moneys and assets to be received by him for or in consequence of the exercise by him of any power over real estate created by the Will, etc. (if any), or by any statute, and which may be exercised by him; that is to say, do pay the debts which the said deceased did owe at his decease, and further, do make or cause to be made a true and just account of his said administration whenever required by law so to do, and all the rest and residue of the said estate and effects, rights and credits, do deliver and pay unto such person or persons, respectively, as shall be entitled thereto under the provisions of any Act of Parliament now in force, or that may hereafter be in force in Ontario.

And if it shall hereafter appear that any last Will or Testament was made by the deceased, and the executor or executors therein named do exhibit the same unto the said Court, making request to

have it allowed and approved accordingly, if the said (administrator) being thereunto required do render and deliver the said Letters of Administration (approbation of such Testament being first had and made) in the said Court, then this obligation to be void and of no effect, or else to remain in full force and virtue.

Signed, Sealed and Delivered, in the presence of

A.B. [L.S.]
C.D. [L.S.]
E.F. [L.S.]

Notice to Creditors (Ontario.)

All persons having claims against the estate of T. B., late of the City of , in the County of York, engineer, who died on or about the tenth day of May, 1907, intestate, are requested on or before the 10th day of July, 1907, to send in to the undersigned by letter, a statement of the nature and amount of their claims and the securities, if any, held by them; together with their full names and addresses.

After the said day the estate will be distributed, regard being had for such claims only as the undersigned may have then notice of.

Dated at Toronto this 10th day of June, 1907.

JOHN WATSON,
Administrator.

Form of Caution (Ontario.)

(R. S. O. 1897, c. 127, s. 13, s.-s. 2.)

We (A. B. and C. D.) executors of (or administrators, with the will annexed, of, or administrators of) , who died on or about the day of , do hereby certify that it may be necessary for us under our powers and in fulfilment of our duties as executors (or administrators), to sell the real estate of the said , or part thereof, (or the caution may specify any particular parts or parcels), and of this all persons concerned are hereby required to take notice.

Dated at the day of 19 .

[Signature of executors or administrators.]

[The execution of this caution is to be verified by an affidavit of execution as in the form below.]

Certificate of Withdrawal of Caution (Ontario.)

(R. S. O. 1897, c. 127, s. 13, s.-s. 4.)

We, A. B. and C. D., executors (or administrators) of do hereby withdraw the caution heretofore registered with respect to the real estate of the said , (or as the case may be).

Dated at the day of 19 .

[Signature of executors or administrators.]

Affidavit of Execution (Ontario.)

of certificate of withdrawal of caution.

(R. S. O. 1897, c. 127, s. 13, s.-s. 5.)

County of }
To wit: } I, G. H., etc., make oath and say:

1. That I am well acquainted with A. B. and C. D. named in the above certificate.

2. That I was present and did see the said certificate signed by the said A. B. and C. D.

3. That I am a subscribing witness to the said certificate and I believe the said A. B. and C. D. to be the persons who registered the caution referred to in the said certificate.

Sworn before me at the
of in the county of }
this } G. H.
day of A. D. 19 . }

A commissioner, &c.

AFFIDAVITS AND DECLARATIONS.

An affidavit is a sworn, written statement of facts made or taken in a judicial proceeding, or under some Provincial or Dominion Act. Statutes in Ontario and other Provinces permit Mennonites, Tunkers, Moravians, Quakers, and others entertaining religious scruples against taking an oath to make affirmation. The only difference between an affidavit and an affirmation is this that the one is sworn to be true, the other is affirmed. The penalties for making a false affidavit, or false affirmation or declaration, are identical.

In New Brunswick an affirmation may be taken in lieu of an oath where the witness is unwilling from alleged conscientious motives to be sworn.

FORMS.

General Form of Affidavit.

Province of
County of } I, John Simons, of the of in the County of and Province of , Yeoman, (or proper designation) make oath and say:
To Wit:

1. That (here state the facts to be sworn to plainly and accurately, in unambiguous language).
2. That, etc. (commencing each separate paragraph upon a new line.)

Sworn before me, at the of in the County of this day of A.D. 19 . } John Simons.

A Commissioner (or J. P., for the said County, etc.)

General Form of Affirmation.

Province of
County of } I, James Brown, of in the County of , Merchant (or other proper designation), do solemnly and sincerely affirm and declare as follows:
To Wit:

1. That, etc
2. That, etc.
3. That, etc.

Affirmed before me at in the County of this day of A.D. 19 . } James Brown.

J.P. (or a Commissioner, etc.)

Form of Statutory Declaration.

Dominion of Canada.
Province of Ontario.
Count of
To wit.

In the matter of

I, of in the Count of (Occupation), do solemnly declare that

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

Declared before me at the of in the County of thus day of A.D. 19

A Commissioner, etc.

Form of Certificate of J.P., or Commissioner, where Affidavit made by two or more.

The above-named James Brown and Isaac Thompson, were severally sworn before me, at the of in the county of this day of A.D. 19 .

James Brown.
Isaac Thompson.

A commissioner, &c.

Form of Certificate where Marksman Deponent.

Sworn before me, at the of in the County of this day of A.D. 19 , after being first read over and explained by me to the said Patrick Hanna, who appeared perfectly to understand the same and made his mark thereto in my presence.

His
Patrick x Hanna
mark.

A Commissioner, etc.

Form of Oath.

Is that your name and handwriting?

You swear that the contents of this affidavit by you subscribed are true. So help you God.

Affirmation.

Is that your name and handwriting?

I, A. B. of the town of do solemnly sincerely and truly declare and affirm that the contents of this my affirmation are true.

Declaration.

Is that your name and handwriting?

You do solemnly declare that the contents of this declaration, by you subscribed, are true.

The following form of jurat has been held sufficient in New Brunswick, and is the form in general use:—

Sworn to at the City of
in the County of
and Province of
this day of
A.D. 19
Before me,
(Signature).

A Notary Public of the Province of duly admitted and sworn, residing and practising at said town of

In testimony whereof I have hereunto affixed my Seal Notarial.

(Notarial Seal). (Signature).

To suppress what was considered an illegal practice which generally prevailed of administering oaths and affidavits voluntarily taken and made in matters not the subject of judicial enquiry, nor required or authorized by law, a statute of the Dominion of Canada was passed in the year 1874, whereby it was enacted that no Justice of the Peace, or other person, should administer or receive, or allow to be administered or received, any oath or solemn affirmation, with regard to any matter of which such Justice or person had not jurisdiction or cognizance by any law of the Dominion, or of the Province in which such oath or affirmation is administered, or of any foreign country wherein such instrument is designed to be used, save in the form given in the Act. This statute should be carefully observed by Justices and others called upon to administer oaths, as its infraction is made a misdemeanour, punishable by fine and imprisonment.

All affidavits, affirmations and declarations, should be written in words at length, and in narrative form, and expressed in the first person. Figures should not be employed in the body of the instrument, although they may be used in the jurat. If any interlineations or erasures are made, the initials of the person before whom the affidavit, etc., is

sworn, should be written in the margin opposite such interlineation or erasure. Where it may be necessary to erase any words in the body of the instrument, such should be erased by drawing the pen through them, and not by scraping with a knife.

The statements contained in these instruments should be written in paragraphs, each paragraph being numbered, and dealing, as far as possible, with a distinct portion of the subject. This is the practice in all the Courts, and is useful to follow in every case.

Where affidavits are for use in a suit or action in a Court of Law, they require, as a general rule, to be taken before a Commissioner of the Court in which they are intended to be used. Sometimes, however, they may be taken before a Justice of the Peace or Notary Public. The latter functionary is generally the proper officer where the instrument is sworn outside of the Province where it is to be used, and his seal should be affixed beside his signature.

Statutory declarations will be found useful where it is required, in matters of title to lands, to preserve evidence of certain facts, such as relate to questions of dower, possession, intestacy, etc.; and, in other transactions, allegations as to proof of accounts or other facts of which it is deemed advisable to preserve evidence.

It is a duty incumbent upon any officer administering an oath, affirmation or declaration, to satisfy himself that the party to be sworn, etc., is the person who actually signed the instrument, and that he or she has heard the same carefully read over, or has read it personally, so as to fully understand its entire contents. Where the circumstances appear to require it, the officer should not hesitate to explain the wording of the instrument carefully to the deponent and make certain that he properly understands the terms employed. An oath should not be lightly administered, but with a decorum befitting the solemnity of the act. The parties should stand, uncovered; but a Hebrew is sworn with his hat on. An oath is administered to a Christian by tendering him the volume of the New Testament to kiss, or in such form as he may declare to be binding. A Hebrew is similarly sworn upon the Old Testament. A party entitled to affirm may hold up his right hand and the person before whom the same is taken shall certify that the deponent is entitled to affirm. The signature of the deponent should be written by him at the

foot of the affidavit, etc., but if unable to write, he should make a mark beside his name, which is written for him, thus :—

The mark of
×
A. B.

or,

his
A. × B.
mark.

And the fact that the deponent is a marksman (or person unable to sign his name) should be noticed in the jurat.

AGREEMENTS OR CONTRACTS.

An agreement is a bargain entered into between two or more persons, upon sufficient consideration, to do, or not to do, a particular thing. If reduced to writing and signed under seal, it is called a *specialty*; if not under seal, whether verbal or written, it is called a *parol* agreement.

It is advisable, in contracts of importance, to add a seal. Care should be taken to express, in the writing, the full terms of the bargain in plain language.

A consideration is essential in every contract. By consideration is meant an equivalent given by the one party and accepted by the other. A simple or parol contract, unsupported by a consideration, cannot be enforced. Thus, if a man should promise to give me $1,000 without any consideration or equivalent on my part, he is not bound to perform his promise, and I am without remedy if he should break his word. In all contracts by specialty consideration is presumed.

Considerations are of two kinds, *good* and *valuable*. A *good* consideration is that of blood or the natural love which a person has to his wife or children, or any of his near relatives. A *valuable* consideration is such as money, marriage, or the like.

A *specialty* contract is of necessity a written one; but a *simple* contract may be either written or verbal. There are, however, some simple contracts which the law requires to be in writing in compliance with the provisions of several statutes which we will proceed briefly to notice.

The first of these is the Statute of Frauds, passed in 1676, in the reign of Charles II. (29 Car. II. Cap. 3) now R. S. O. 1897 cap. 338, which enacts (section 4), that in the five following cases no verbal promise shall be sufficient to ground an action upon, but that the agreement, or at least some note or memorandum thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized.

1. Where an executor or administrator promises to answer damages out of his own estate.

2. Where a man undertakes to answer for the debt, default or miscarriage of another person.

The phrase "to answer for the debt, default or miscarriage of another person," means to answer for a debt, default or miscarriage for which that other remains liable; if by the contract the liability of the other party ceases and some one else becomes primarily liable, the contract is not within the Act and need not be in writing.

3. Where an agreement is made upon consideration of marriage.

4. Where any contract is made of lands, tenements or hereditaments, or any interest therein.

5. And lastly, where there is any agreement that is not to be performed within a year from the making thereof.

The words, "any agreement that is not to be performed within the space of one year from the making thereof," refer to contracts, the complete performance of which is of necessity extended beyond the space of a year. In order to bring an agreement within this clause of the statute so as to render writing necessary, both parts of the agreement must be such as are not to be performed within a year. If one *may* be performed it is good without writing.

This statute does not give to writing any validity which it did not possess before. A written promise made since this statute, without any consideration, is quite as void as it would have been before. The statute merely adds a further requisite to the validity of certain contracts, namely, that they shall, besides being good in other respects, be put into writing, otherwise they cannot be enforced.

The clause requiring the "agreement or some memorandum or note thereof, to be signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized," has been liberally construed, and any insertion by the party of his name in any part of the agreement, either at the beginning or in the body of the document, for the purpose of authenticating it, will be equally valid with a signature at the foot; and it is not necessary that both parties should sign the agreement, for the statute only requires that it should be signed "by the party to be charged therewith."

The parties, terms, subject matter and consideration of the agreement must be contained in the writing, either expressly or by reference to some other document. And as a "memorandum or note" of the agreement is allowed, a writing sufficient to satisfy the statute may often be made out from letters written by the party, or from a written offer accepted without any variation before the party offering has exercised his right of retracting;

and when correspondence is carried on by means of the post, an offer is held to be accepted from the moment that a letter accepting the offer is put into the post, although it may never reach its destination, the post office being regarded as the agent of the party making the offer.

With reference to contracts for the sale of goods, it is to be observed that the necessary requisites depend partly upon the value of the goods. As to goods under the value of $40, there can be no sale without a tender or part payment of the money, or a tender or part delivery of the goods, unless the contract is to be completed at a future time. Thus, if A. should agree to pay so much for the goods, and B., the owner, should agree to take it, and the parties should then separate without anything further passing, this is no sale. But if A. should tender the money, or pay but a cent of it to B., or B. should tender the goods, or should deliver any, even the smallest portion of them to A., or if the payment or delivery, or both, should be postponed by agreement till a future day, the sale will be valid, and the property in the goods will pass from the seller to the purchaser. If, however, any act should remain to be done on the part of the seller previously to the delivery of the goods, the property will not pass to the purchaser until such act shall have been done. Thus, if goods, the weight of which is unknown, are sold by weight; or, if a given weight or measure is sold out of a larger quantity, the property will not pass to the purchaser until the price shall have been ascertained by weighing the goods in the one case, or the goods sold shall have been separated by weight or measure, in the other. So, if an article be ordered to be manufactured, the property in it will not vest in the person who gave the order until it shall, with his consent, have been set apart for his benefit.

With regard to goods of the value of $40 or upwards, additional requisites have been enacted by the seventeenth section of the Statute of Frauds, which provides "that no contract for the sale of any goods, wares and merchandise for the price of £10 sterling or upwards, shall be allowed to be good except the buyer shall accept part of the goods so sold, 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 said bargain be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorized."

And, in Ontario, by a more recent Act (R. S. O. 1897, cap. 146, sec. 9), and in Nova Scotia (by R. S. N. S. 1900, cap. 141, sec. 11 (2)), this enactment "shall extend to all

contracts for the sale of goods of the value of $40 and upwards, notwithstanding the goods may be intended to be delivered at some future time, or may not, at the time of the contract, be actually made, procured or provided, or fit or ready for delivery, or although some act may be requisite for the making or completing thereof, or rendering the same fit for delivery."

The same law is in force in New Brunswick, Manitoba, Saskatchewan and Alberta, but in the three provinces last named the amount is $50 instead of $40.

In Prince Edward Island, the Statute of Frauds is extended in the words of the last section to goods of the value of thirty dollars.

If an agreement for sale of goods is not to be performed within the space of one year from the making thereof, then, however small be the value of the goods, no action can be brought upon it, unless the agreement, or some memorandum or note thereof shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized.

It is convenient, though not necessary, that agreements should be signed by the parties thereto; and where something is to be done on both sides, it is very useful to have them written in duplicate so that each party may possess one copy. They do not require a seal in all cases. The forms given will in general indicate when a seal is necessary, and when not.

The writing may be in lead-pencil, or ink, and so may the signatures, though it is of course best to write in ink. If a party cannot sign his name in writing, he may make his mark, in place of the signature, in the presence of a witness who will attest it.

Fraud destroys all agreements. If one party is induced to enter into the contract by misrepresentations of important facts made to him by the other, the party so misled may, on discovery of the fraud, disaffirm the bargain, and cannot be held to it. After the writing is signed, it must not be altered by one party without the other's express consent.

Minors, or persons under twenty-one years, insane persons, idiots, and those grossly intoxicated cannot make a binding contract.

Agreements to do unlawful acts are void at law, and cannot be enforced.

FORMS.

Agreement for Sale of Land.

(SHORT FORM.)

Articles of agreement made the day of 19 , Between of the of , in the county of , hereinafter called the vendor of the one part, and of the of in the county of , hereinafter called the purchaser of the other part.

The vendor agrees to sell and the purchaser agrees to purchase all that certain parcel of land, situate, &c., for the sum of dollars, payable as follows: the sum of dollars upon the signing of this agreement, and dollars on the completion of the purchase (or as they may agree).

The vendor shall not be required to furnish any abstract of title, or procure or shew any deed or evidence of title not in his possession, or any copies of deeds or papers. The conveyance to be drawn at the expense of the , and to contain only the ordinary statutory covenants (or as may be agreed) and the land to be conveyed free from dower and other incumbrances.

The purchaser to be allowed days to investigate the title, which he shall do at his own expense, and if within that time he shall furnish the vendor in writing with any objection to the title which the vendor shall be unable or unwilling to remove, the vendor may cancel this agreement by a letter delivered to the purchaser, or mailed postage prepaid, and addressed to him at , and the vendor shall thereupon return the deposit money to the purchaser without interest, and shall not be liable for any expenses incurred by the purchaser. Provided that the purchaser may waive such objection by giving notice to the vendor within days of the receipt of the notice of cancellation, and upon the receipt thereof by the vendor this agreement shall be continued in full force and effect.

Time to be the essence of this agreement. The vendor to pay the proportion of insurance premiums and taxes to the date of giving possession (or as may be agreed) after which date the purchaser is to assume them.

This agreement to extend to and be binding on the respective heirs, executors, administrators and assigns of the parties hereto.

In witness whereof we have hereunto set our hands and seals.

Signed sealed and delivered in the presence of

In order to register above agreement there must be attached an affidavit of execution, for form see affidavit of execution of a deed, p. 139.

Agreement for Lease with a Right to Purchase at a definite sum.

Articles of Agreement made and entered into this day of , 19 . Between A. B. of, etc. (lessor), of the one part, and C. D., of, etc. (lessee), of the other part as follows, namely: The said A. B. hereby agrees to let, and the said C. D. hereby agrees to take, All, etc. (here describe the premises), for the term of years to be computed from the day of next, at the yearly

rent of $ payable quarterly, on the day of , the day of , the day of , and the day of , in every year, the first of such payments to be made on the day of next. The said A. B., his heirs or assigns will, at the request of the said C. D., his executors, administrators, or assigns, execute a lease of the said premises to the said C. D., his executors, administrators or assigns, for the term at the rent aforesaid, to be payable as aforesaid. In the said lease to be granted as aforesaid, shall be contained covenants on the part of the said C. D., his executors, administrators and assigns, to pay the said yearly rent as the same shall become due, and also all present and future taxes, rates, assessments, and other outgoings whatsoever in respect of the said premises. And also to repair and keep in repair at his and their own expense, during the whole of the said term, the said premises so agreed to be demised. And also at the like expense to insure the said premises against loss or damage by fire in the name or names of the said A. B., his heirs or assigns, in some public office to be approved of by the said A. B., in the sum of $ at least, and to keep the same so insured during the continuance of the said term, and at all times when required, to produce the policy or policies of insurance and the receipt for the premiums in respect of the same to the said A. B., his heirs or assigns. And also, not to assign, sub-let, or part with the possession of the said premises, or any of them, during the said term of years, without the consent of the said A. B. And in the said lease to be so granted as aforesaid, shall be contained a condition authorizing the re-entry of the said A. B., his heirs or assigns, into the said premises on non-payment of the said yearly rent, or any part thereof, for the space of twenty-one days, or in case the said C. D., his executors or administrators shall become bankrupt or insolvent, or shall permit the said lease to be taken in execution, or on breach of all or any of the covenants so to be contained on the part of the said C. D., his executors, administrators and assigns in the said lease agreed to be granted as aforesaid. And in the said lease shall also be contained a covenant on the part of the said A. B., that in case the said C. D., his executors or administrators shall, on or before the determination of the said term of years, be desirous of purchasing the interest of the said A. B., or his heirs in the said premises so agreed to be demised, then he, the said A. B., his heirs or assigns, shall and will take for the purchase thereof the sum of $, and shall and will, upon payment of the same sum, at the costs and charges of the person or persons requiring the same, convey and assure the freehold and inheritance in fee simple in possession or expectant on the determination of the said term of years (as the case may be), in the same premises unto the person or persons so paying the said sum of $ and his, her or their heirs and assigns, or as he, she or they shall direct. And it is moreover agreed that a counterpart of the said lease shall be executed by the said C. D., his executors or administrators, at his or their own expense, and delivered to the said A. B., his heirs or assigns; and that until such lease or counterpart shall be executed, the rents, covenants and conditions agreed to be thereby respectively reserved and contained, shall, as nearly as circumstances will permit, be paid, observed and performed as if the same had been actually executed.

In witness whereof, the parties hereto have hereunto set their hands.

Signed in the presence of A. B.
E. F. C. D

Agreement for Sale by way of Lease, reserving Purchase Money as Rent.

This agreement, made the day of , one thousand eight hundred and , Between A. B., of, etc,, of the first part, and C. D., of, etc., of the second part.

Whereas, the said party of the second part hath contracted with the said party of the first part for the purchase, in fee simple, of all and singular the lands, tenements, hereditaments, and premises hereinafter mentioned to be hereby demised, for the sum of $ lawful money of Canada, to be paid on the days and times and in manner hereinafter mentioned. And whereas, the said parties are willing and desirous that the said party of the second part shall go into immediate possession and occupation of the said lands, tenements, hereditaments and premises, and receive a conveyance of the fee simple and inheritance thereof, so soon as the principal sum shall be fully and faithfully paid on the days and times and in manner after mentioned (all and singular other the covenants and agreements hereinafter contained, and which on the part and behalf of the said party of the second part, his executors, administrators, and assigns, are to be paid, fulfilled, performed and kept, according to the true intent and meaning of these presents), and that in the meantime the interest on the said principal sum should be reserved and paid as rent issuing out of the said lands, tenements, hereditaments, and premises hereby demised. Now, therefore, this agreement witnesseth, that in consideration of the premises and of the rents, covenants, and agreements hereinafter reserved and contained, and which on the part and behalf of the said party of the second part, his executors, administrators and assigns, are to be paid, done and performed, He, the said party of the first part, Hath demised, leased, set, and to farm let, and by these presents Doth demise, lease, set, and to farm let, unto the said party of the second part, his executors, administrators and assigns, All those lands, tenements, hereditaments, and premises, situate, lying and being in the in the County of in the Province aforesaid [here describe the premises], together with all outhouses, waters, and water-courses thereon erected, lying or being, and all and singular other the rights, members and appurtenances thereunto belonging, or in any wise appertaining. To have and to hold the said lands, tenements, hereditaments, and premises hereby demised, or intended so to be, with the appurtenances thereunto belonging, unto the said party of the second part, his executors, administrators and assigns, from the day of , one thousand nine hundred and , for and during, and unto the full end and term of years from thence next ensuing, and fully to be completed and ended. Subject nevertheless to the reservations, limitations, provisoes, and conditions expressed in the original grant thereof from the Crown. Yielding and paying therefor, yearly and every year during the said term hereby demised, unto the said party of the first part, his heirs, executors, administrators and assigns, the yearly rent or sum of $ of lawful money of Canada, in even and equal half yearly payments on the day of and day of in each and every year during the said term, without any deduction, defalcation, or abatement thereof, or out of any part thereof, for or in respect of any taxes, rates, levies, charges, rents, assessments, statute labour, or other imposition of what nature or kind soever, either already taxed, rated, levied, charged, assessed or imposed, or hereafter to be taxed, rated, levied, charged, assessed or imposed, whether the same be now due, or shall hereafter become

due, on the said demised premises or any part thereof, or on the said rent or any part thereof, or on either of the said parties to these presents, their or either of their heirs, executors, administrators, or assigns, or any of them in respect thereof, or any part thereof, by authority of Parliament or otherwise howsoever, the first payment of the said rent hereby reserved to be made on the day of . in the year of our Lord one thousand nine hundred and . Provided always, nevertheless, that on payment of any instalment or instalments of the principal sum hereinafter specified according to the covenant hereinafter contained, for payment thereof, and the true intent and meaning of these presents, the said rent hereby reserved shall from thenceforth be proportionably reduced, so as at no time to exceed the annual interest on such part of the said principal sum as shall from time to time remain due and owing after the payment of such instalment or instalments respectively; And provided, also, that if the said yearly rent or any part thereof, or the said principal sum or any part thereof, shall at any time or times hereafter be behind and unpaid for the space of thirty days next after any or either of the days on which the same or any part thereof ought to be paid, as herein or hereby provided, according to the true intent and meaning of these presents; Or, if the said party of the second part, his executors, administrators or assigns, or any of them, shall at any time assign, or set over, or demise, or underlease the said demised premises, or any part thereof, or in any other manner, part with the possession of the same, to any person or persons whomsoever, for all or any part of the said demised term, without the special license or consent of the said party of the first part, his heirs or assigns, first had in writing; Or if the party of the second part, or any one acting under or claiming from him, shall at any time during the continuance of these presents commit or suffer to be committed any waste or destruction to any of the timber upon the said land, for any other purpose whatsoever than bringing the land into cultivation; Then, and in any and every of the said cases, it shall and may be lawful for the said party of the first part, his heirs or assigns, into the said demised premises or any part thereof, in the name of the whole, to re-enter, and out of the same to eject, expel, remove and put the said party of the second part, his executors, administrators and assigns, and the same to have again, re-possess and enjoy, as in his and their first and former estate; and from the time of any such re-entry by the said party of the first part, his heirs or assigns, the said term hereby demised, or so much thereof as shall be then unexpired, and these presents, and every clause, matter and thing therein contained, shall cease and determine, and forever thereafter be null and void to all intents and purposes whatsoever, anything herein contained to the contrary thereof in any wise notwithstanding. And the said party of the second part doth hereby for himself, his heirs, executors, administrators and assigns, covenant, promise and agree, to and with the said party of the first part, his heirs and assigns, in manner following, that is to say: That he the said party of the second part, his heirs, executors, administrators, and assigns, or some of them, shall and will well and truly pay or cause to be paid unto the said party of the first part, his heirs, executors, administrators and assigns, the said yearly rent on the days and times and in manner hereinbefore mentioned, for payment thereof, according to the true intent and meaning of these presents. And also that he the said party of the second part, his heirs, executors, administrators or assigns, or some of them, shall and will, during the said term hereby

demised, pay, do, and perform all taxes, rates, levies, charges, rents, assessments, statute labour, or other imposition above mentioned, lawfully charged or to be charged, whether the same be now due, or shall hereafter become due, on the said demised premises, on the said rent, or on any part thereof, or on any person or persons in respect thereof, or any part thereof, as aforesaid: And also that he the said party of the second part, his executors, administrators or assigns, or any of them, shall not nor will at any time or times during the said term hereby demised, assign or set over, underlet or underlease, the said demised premises, or any part thereof, or in any other manner part with the possession of the same or any part thereof during any part of the said demised term, without such special license and consent as is hereinbefore specified, as aforesaid: And also that he the said party of the second part, or any one acting under or claiming from him, shall not at any time, during the continuance of these presents, commit, or suffer to be committed, any waste or destruction to any of the timber upon the same land, for any other purpose than bringing the land into cultivation; And also that he the said party of the second part, his heirs, executors, administrators or assigns, or some of them, shall and will well and truly pay or cause to be paid, unto the said party of the first part, his heirs, executors, administrators or assigns, the full and just sum of $ of lawful money of Canada, on the days and times and in manner following, that is to say [here set forth the terms and manner in which the purchase money is to be paid]. And the said party of the first part, doth hereby for himself, his heirs, executors, administrators and assigns, covenant, promise and agree, to and with the said party of the second part, his executors, administrators, and assigns, in manner following, that is to say, That upon the due and faithful payment, performance, and fulfilment by the said party of the second part, his executors, administrators or assigns, of all and singular the covenants and agreements herein contained, and which on the part and behalf of the said party of the second part, his executors, administrators and assigns, are to be paid, done, and performed, he the said party of the first part, his heirs or assigns, shall and will, at the expiration or other sooner determination of the said term hereby demised, upon the request of the said party of the second part, his executors, administrators or assigns, made to him the said party of the first part, his heirs, executors, administrators or assigns, or any of them, but at the proper costs and charges in the law of the said party of the second part, his executors, administrators or assigns, well and sufficiently convey and assure, or cause to be well and sufficiently conveyed and assured, unto the said party of the second part, and his heirs, in fee simple absolute, or to such person or persons and his, her, or their heirs, in fee simple absolute, as the said party of the second part, his executors, administrators or assigns, shall nominate and appoint, and to such uses as he or they shall direct, all and singular the said lands, tenements, hereditaments, and premises hereby demised by such conveyances and assurances in the law, as by the said party of the second part, his executors, administrators or assigns or his or their counsel learned in the law, shall or may be reasonably devised, advised, or required, freed and discharged of and from all incumbrances whatsoever: but subject nevertheless to the reservations, limitations, provisoes and conditions expressed in the original grant thereof from the Crown; with usual and proper covenants. And it is hereby further expressly agreed upon by and between the said parties, that in case at any time any of the rent or interest

aforesaid, or of the purchase money shall remain unpaid for the space of months after the same shall have fallen due, the party of the first part, his heirs or assigns, shall have full power to re-sell the said land at the best price which can be reasonably got for the same, and thereby utterly extinguish and bar all claim, interest, and title of the party of the second part, and all claiming under or by him in the same land—such re-sale to be either for cash or upon credit as the party of the first part, his heirs or assigns, may determine. And that the party of the first part, his heirs or assigns, may in the first place pay himself the expenses of such re-sale, and the whole of the claim due, or to become due, by the party of the second part, or any one claiming by or under him, out of the proceeds of such re-sale, and pay the balance (if any there be) when collected, over to the party of the second part, or the person entitled thereto; And that the party of the second part, or those claiming by or under him, shall be answerable to the party of the first part, his heirs or assigns, for any deficiency which may happen to be produced by the re-sale between the sum then due and to become due, under these presents, to the party of the first part, his heirs or assigns, and the proceeds of such re-sale.

In witness whereof, the parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed and delivered in the presence of E. F. A. B. [L.S.] C. D. [L.S.]

[NOTE.—The above instrument being a contract or agreement by specialty requires to be sealed as well as signed.]

Agreement to build a House, etc., the Materials to be provided by the Builder.

Articles of agreement made and entered into the day of , 19 , Between A. B. (builder), of, etc., of the one part, and C. D., (proprietor), of, etc, of the other part.

The said A. B. [builder], doth hereby for himself, his executors and administrators, covenant, promise and agree to and with the said C. D. [proprietor], his executors, administrators and assigns, that he the said A. B. [builder], his executors or administrators, shall and will for the consideration hereinafter mentioned, within the space or time of (six calendar months) from the date of these presents, erect, build and completely cover in and finish upon the premises, of the said C. D. [proprietor], at aforesaid, a dwelling house and buildings according to the plan and elevation set forth in the schedule hereunder written. And also do, perform, and execute, or cause and procure to be done, performed and executed, all and singular other the works mentioned in the schedule hereunder written, according to the plan and elevation therein mentioned or contained, the same to be done within the time aforesaid, and in a good workmanlike and substantial manner to the satisfaction of E. F. (surveyor or architect), of, etc., (insert name and residence of architect or surveyor), or any other surveyor or architect whom the said A. B. [builder], and C. D. [proprietor] shall for that purpose by some writing under their hands appoint; such satisfaction to be testified by a writing or certificate under the hand of the said E. F. [surveyor or architect], or such other surveyor or architect as aforesaid. And also shall and will find and provide such good,

proper and sufficient materials of all kinds whatsoever as, together with and in addition to the materials now lying on the said premises, shall be proper and sufficient for erecting the said dwelling house and buildings, and completely finishing the said works. And it is further agreed by and between the said parties that if the said A. B. [builder], his executors or administrators, shall in any manner neglect or be guilty of any delay whatsoever, in building and completely finishing the said dwelling house, buildings and works as aforesaid, and the said E. F. [surveyor or architect], or such other surveyor or architect as aforesaid, shall certify the same by writing under his hand, and the said C. D. [proprietor], shall give or leave notice in writing of such neglect or delay at the place of abode of him the said A. B. [builder], his executors or administrators, and the said A. B. [builder], his executors or administrators, shall not according to the direction of the said E. F. [surveyor or architect], or such other surveyor or architect as aforesaid, proceed to complete the said buildings and works within the space of (seven) days after such notice given or left as aforesaid; then and in any such case it shall be lawful for the said C. D. [proprietor], his executors or administrators to purchase proper and sufficient materials, and also to employ a sufficient number of workmen to finish and complete the said dwelling house, buildings and works, and also that the said C. D. [proprietor], his executors, administrators or assigns, shall and may deduct and retain to himself and themselves the costs of such materials, and all such sums of money as he or they shall pay to such workmen for the completion of such dwelling house, building and works out of the money which shall be due to the said A. B. [builder], his executors or administrators under this agreement; and also that the said A. B. [builder], his executors or administrators, shall not nor will in any manner do, or cause or procure to be done, any act, matter or thing whatsoever to prevent, hinder or molest the said C. D. [proprietor], his executors, administrators or assigns, or any person or persons employed by him or them, from completing and finishing the said dwelling house, buildings and works in manner aforesaid, or in using the materials which shall be on the said premises, and provided by either of the said parties for the doing thereof.

And the said C. D. [proprietor], doth hereby for himself, his heirs, executors and administrators, covenant promise and agree to and with the said A. B. [builder], his executors and administrators, that he the said C. D. [proprietor], his executors or administrators, shall and will well and truly pay or cause to be paid unto the said A. B. [builder], his executors, administrators or assigns, the sum of $ of lawful money of Canada, in manner following, that is to say, the sum of per cent. on the amount of the materials used in the said buildings and works as they shall proceed, to be ascertained by the surveyor (or architect) for the time being, and his certificate under his hand to be conclusive between the said parties; and also that the said C. D. [proprietor], his executors or administrators, shall and will every week during the progress of the said buildings and works, pay and supply the said A. B. [builder], his executors or administrators, with such sums of money as shall be sufficient for paying and discharging the wages and labour of the workmen and labourers who shall from time to time be employed in or about the said buildings and works, the amount whereof shall be ascertained by the surveyor (or architect) for the time being by a certificate under his hand; and the remainder of the said sum of $, within days (or months) next after the said dwelling

house, buildings and premises shall be completely built, done and finished to the satisfaction of the said E. F. [surveyor or architect], or such other surveyor or architect as aforesaid, the same to be testified in writing under his hand. And it is hereby declared and agreed by and between the said parties hereto, that in case the said C. D. [proprietor], his executors, administrators or assigns, shall direct any more work to be done in or about the said dwelling house, buildings and works than is contained in the schedule hereunder written, then, and in such case the said C. D. [proprietor], his executors or administrators, shall pay or cause to be paid unto the said A. B. [builder], his executors or administrators, so much money as such extra work and the materials used therein shall cost or amount unto, anything hereinbefore contained to the contrary notwithstanding; and that if it shall be thought proper by the said C. D. [proprietor], his executors, administrators or assigns, to diminish or omit any part of the work specified in the said schedule hereunder written, then and in such case the said A. B. [builder], his executors or administrators shall deduct and allow out of the said sum of $ so much money as the work so to be diminished or omitted shall amount unto, upon a reasonable valuation, anything hereinbefore contained to the contrary notwithstanding; and all allowances or deductions for such extra or omitted works respectively shall be ascertained and settled by the said E. F. [surveyor or architect], or such other surveyor or architect to be appointed as aforesaid. And it is hereby covenanted and agreed by and between the said parties hereto that if any dispute or difference shall happen or arise between them, their or either of their executors, administrators or assigns, or between either of them, and the said E. F. [surveyor or architect], or such other surveyor or architect to be appointed as aforesaid, touching or concerning the said dwelling house, buildings and works hereby contracted to be made and done as aforesaid, or touching or concerning any other matter or thing whatsoever relating thereto, or to the additional or extra work as aforesaid, then such dispute or difference shall be left to the determination and award of three indifferent persons, one to be named by the said A. B. [builder], his executors or administrators, and another by the said C. D. [proprietor], his executors, administrators or assigns, and the third by the said two persons so named by each of them the said parties or his executors, administrators or assigns. And each of them the said parties hereto doth hereby for himself, his heirs, executors and administrators, covenant and agree with the other of them, his executors and administrators that they the said parties respectively and their respective executors and administrators shall and will severally stand to, abide by, perform and keep the award and determination of the said three persons so to be chosen, or of any two of them, touching the said several matters of dispute or difference as aforesaid, so as the same award and determination be made in writing under the hands and seals of the said arbitrators or some of them, within two calendar months next after such dispute or difference shall arise. And it is further agreed by and between the said parties, that the submission hereby made, shall, at the option and expense of either of the said parties requiring the same, be made a rule of (name the Superior or Supreme Court of the Province); and that the costs and charges attending any reference or arbitration as aforesaid shall be in the discretion of the said arbitrators, or any two of them, and shall be paid and satisfied pursuant to their award.

In witness whereof, the said parties to these presents have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of Y. Z. } A. B. [L.S.] C. D. [L.S.]

Another Form.

An agreement made the day of , 19 , Between A. B., of, etc. (builder), of the first part C. D., of, etc. (surety), of the second part, and E. F. (proprietor), of, etc., of the third part.

Whereas, the said E. F., is possessed of a piece of ground situate at (describe the premises) upon which he is desirous of erecting a dwelling house and offices according to the elevation, plans and specifications prepared for that purpose by W. M., architect and surveyor, and under the direction and to the satisfaction of the said W. M., or other architect or surveyor for the time being of the said E. F., his executors, administrators or assigns; which said elevation, plans and specifications, are marked with the letters A, B, C, D, E, F, and G, and are signed by the said A. B., C. D. and E. F., and the said specification is contained in the schedule hereunder written, or hereunto annexed; and the said A. B. has proposed to erect and complete the said dwelling-house and offices, and to make and execute all other works mentioned and specified in the said elevation, plans and specifications, within the time hereinafter limited for that purpose, and according to the stipulations and agreements hereinafter contained, at or for the price or sum of $; which proposal the said E. F. hath agreed to accept on the said A. B., together with the said C. D., as his surety, entering into the agreements hereinafter contained

Now it is hereby witnessed, That the said A. B. and C. D. do, for themselves, their heirs, executors and administrators, and each and every one of them doth for himself, his heirs, executors and administrators, hereby agree with and to the said E. F., his executors, administrators and assigns, in manner following: that is to say, That he, the said A. B., shall, at his own cost and charges, forthwith, erect and complete, make and execute, with all proper and necessary materials, workmanship, and labour, of the best kind in every respect, and in the most substantial and workmanlike manner, upon the said piece of ground, a dwelling-house, and offices behind the same, with the appurtenances, and all other works, matters and things mentioned and specified in the said elevation, plans and specification, under the direction and to the satisfaction of the said W. M., or other the architect or surveyor for the time being of the said E. F., his executors, administrators or assigns; and for that purpose shall find and provide all proper and necessary materials, implements and machinery; and shall make good all damages which may be occasioned either to the said dwelling-house, offices and works, or any of them, or to adjoining buildings, by the execution of the same works or any of them; and shall cleanse all drains and cess-pools in or about the premises, and cart and clear away at such times and in such manner as shall or may be directed by the said W. M., or other architect or surveyor as aforesaid, all surplus earth and waste or useless materials, implements and machinery, which may from time to time remain during the execution of the same works, or at the completion thereof; And shall at his own costs and charges from time to time, until the said

dwelling-house, offices and works shall be erected, completed, made, and executed, insure or cause to be insured, in the joint names of the said E. F., his executors, administrators or assigns, and of the said A. B., his executors or administrators, and for the sum of $, all and singular the erections and buildings for the time being standing on the said piece of ground, to the full value thereof, in some public insurance office to be approved of by the said E. F., and shall deliver the policy of insurance to the said E. F., his executors, administrators or assigns, and shall produce and show to the said E. F., his executors, administrators or assigns, the receipts for the premium of insurance, when requested so to do; and that in case of fire, all the moneys to be recovered by virtue of such insurance shall forthwith be applied in re-instating the premises, under the direction and to the approbation of the said W. M., or other architect or surveyor as aforesaid; and that the said A. B., shall well and sufficiently cover in or cause to be covered in, the dwelling-house and offices so to be erected as aforesaid, before the day of , and shall complete, make and execute, or cause to be completed, made and executed, all and singular the said dwelling-house, offices and other works, in manner aforesaid, and according to the true intent and meaning of these presents, before the day of ; and that if the said A. B., his executors or administrators, shall not so well and sufficiently cover in the said dwelling-house and offices before the said day of , or shall not so complete, make and execute, the said dwelling-house, offices and works before the said day of , then, the said A. B., and C. D., their executors and administrators shall pay to the said E. F., his executors, administrators and assigns, the sum of $, for every week during which the said dwelling-house and offices shall remain uncovered in after the said day of and the like sum for every week the said dwelling-house, offices and works shall remain unfinished after the said day of ; which sums may be recovered as liquidated damages, or may be deducted from the sums payable to the said A. B., his executors and administrators, under this agreement, provided always that in case the said E. F., his executors, administrators or assigns, or his or their surveyor or architect, shall require any extra or additional works to be done, or shall cause the works to be delayed in their commencement or their progress, the said A. B., his executors or administrators, shall be allowed to have such additional time for covering in and finishing the said buildings and works, beyond the said day above fixed, as shall have been necessarily consumed in the performance of such extra or additional works, or as shall have been lost by the delay caused by the said E. F., his executors, administrators or assigns, or his or their surveyor or architect as aforesaid; and the said payments for delay shall not become payable until after the expiration of such additional time or times.

And the said A. B. and C. D., for themselves, their executors and administrators, do hereby further agree with the said E. F., his executors, administrators and assigns, that in case the said W. M or other architect or surveyor as aforesaid, shall be dissatisfied with the conduct of any workman employed by the said A. B., his executors or administrators, in the said works, or with any materials used or brought upon the said premises for the purpose of being used in the said works, and shall give notice thereof in writing under his hand to the said A. B., his executors or administrators, he, the said A. B., his executors or administrators, will forthwith

discharge such workman from the said works and remove the said materials; and that in case the said A. B., his executors or administrators, shall not, in the judgment of the said W. M., or other architect or surveyor, as aforesaid, employ a sufficient number of workmen in the execution of the said works, or have on the premises a sufficient quantity of materials or implements of proper quality for the said works, and the said W. M., or other architect or surveyor as aforesaid, shall, by writing under his hand, require the said A. B., his executors or administrators, to employ an additional number of workmen, or bring upon the premises an additional quantity of materials or implements of proper quality, and shall specify in such notice the number and description of additional workmen to be supplied, the said A. B., his executors or administrators, shall forthwith employ in the said works such additional number of workmen, and shall forthwith bring upon the premises such additional quantity of materials or implements for the said works; and that in case he shall refuse or neglect for the space of seven days to comply with any such notice or request, it shall be lawful for the said W. M., or other architect or surveyor as aforesaid, to dismiss and discharge the said A. B., his executors or administrators from the further execution of the said works, and for the said E. F., his executors, administrators or assigns, to employ some other person to complete the same; and that in such case the sum agreed to be paid to such other person to complete the said works (such sum being approved by the said W. M., or other architect or surveyor, as aforesaid), shall be deducted from the said sum of $, and the balance after making any other deductions which the said E. F., his executors, administrators or assigns, shall be entitled to make under this agreement, shall be paid by the said E. F., his executors, administrators or assigns, to the said A. B., his executors or administrators, in full for the work done by him or them, at the expiration of two months after he or they shall have been so discharged as aforesaid: And it is hereby further agreed by and between the parties hereto, that all the materials brought upon the said piece of ground for the purpose of being used in the said buildings, except such as shall be disapproved of by the said W. M., or other architect or surveyor as aforesaid, shall, immediately they shall be brought upon the said premises, become the property of the said E. F., his executors, administrators or assigns, and shall be used in the said works.

And the said E. F. doth hereby, in consideration of the works so agreed to by the said A. B., agree with the said A. B., his executors, administrators and assigns, that he, the said E. F., his executors, administrators or assigns, will pay to the said A. B., his executors, administrators or assigns, the said sum of $, in manner following, that is to say: the sum of $ within one week after the said W. M., or other architect or surveyor as aforesaid, shall have certified in writing to the said E. F., his executors, administrators or assigns, under his hand, that work to the value of $ has been done under this agreement, and the further sum of $ within one week after the said W. M., or other architect or surveyor shall have certified as aforesaid, that further work to the value of $ has been done under this agreement, and so on shall pay $ for every $ worth of work so certified as aforesaid, until the whole of the said works shall be finished, and shall pay the balance remaining unpaid within one month after the said works shall have been completed and finished to the satisfaction of the said W. M., or such other architect or

surveyor, and the said W. M., or such other architect or surveyor, shall have certified to the said E. F., his executors, administrators or assigns, that the said works have been completed and finished to his satisfaction. Provided always, and it is hereby further agreed by the parties hereto, and particularly by the said A. B., and C. D., that if the said E. F., his executors, administrators or assigns, shall at any time be desirous of making any alterations or additions in the erection or execution of the said dwelling-house, offices and other works, then and in such case, the said A. B., his executors or administrators, shall make and execute such alterations and additions to the satisfaction of the said W. M., or such other architect or surveyor; and the sum or sums of money to be paid or allowed between the said parties in respect of such alterations and additions shall be settled and ascertained by the said W. M., or such other architect or surveyor, whose determination shall be final. Provided always, and it is hereby further agreed, that in the settling and ascertaining the said sum or sums of money, the said W. M., or such other architect or surveyor, shall not include any charge for day work unless an account thereof shall have been delivered to the said E. F., his executors, administrators or assigns, or the said W. M., or such other architect or surveyor, at the end of the week in which the same shall have been performed. Provided also, and it is hereby further agreed, that no such alteration or addition shall release the said A. B. and C. D., their executors or administrators, or any or either of them, from the observance and performance of the agreements herein contained on the part of the said A. B., his executors or administrators, to be observed and performed, so far as relates to the other parts of the said dwelling-house, offices and works; but that the same agreements shall in all respects be observed and performed in like manner as if no such alteration or addition had been directed. Provided also, and it is hereby agreed, that if the said W. M. shall die, or cease to act as the surveyor and architect of the said E. F., his executors, administrators or assigns, and the said A. B., his executors or administrators shall be dissatisfied with the surveyor or architect for the time being, appointed by the said E. F., his executors, administrators or assigns, in the room of the said W. M., then it shall be lawful for the said A. B., his executors or administrators, at his own expense to employ a surveyor or architect on his behalf in the adjustment of the accounts to act with the surveyor or architect for the time being of the said E. F., his executors, administrators or assigns; and in case of disagreement between such two surveyors or architects, they shall be at liberty to nominate a third; and the said three surveyors or architects or any two of them, shall and may exercise all the powers and discretion which the said W. M. could or might have exercised under or by virtue of these presents if he had lived or continued to act as the surveyor or architect of the said E. F., his executors, administrators and assigns. And it is hereby further agreed that if the said A. B., his executors or administrators, shall so employ a surveyor or architect on his or their behalf, he shall be nominated within ten days after the said A. B. shall be informed of the appointment of the surveyor or architect so appointed by the said E. F., his executors, administrators or assigns, and notice in writing of such nomination by the said A. B., his executors or administrators, shall forthwith be given to the said E. F., his executors, administrators or assigns.

In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of Y. Z. — A. B. [L.S.] C. D. [L.S.] E. F. [L.S.]

THE SCHEDULE ABOVE REFERRED TO.

(Here copy the Specification).

Sub-Contract between a Builder and a Carpenter.

An agreement made the day of 19 , Between A. B., of, etc., (Builder) and G. H., of, etc., (Carpenter).

Whereas, the said A. B., hath entered into a contract with E. F., of, etc., to erect a dwelling-house and offices according to certain plans, elevations and specifications referred to in the said contract, under the superintendence of W. M., or other surveyor of the said E. F., which contract is dated the day of ; Now it is hereby agreed that in consideration of the sum of $ to be paid by the said A. B., his executors or administrators, to the said G. H., his executors or administrators, as hereinafter mentioned, the said G. H., his executors or administrators, will do all the carpenter's work necessary to be done for the completion of the said contract in the manner, within the time, and according to the plans and specifications mentioned and referred to in the said contract, and will provide all materials and implements necessary for the performance of such work, and will in all things abide by, perform, fulfil and keep the terms and stipulations of the said contract, so far as the same are applicable to such carpenter's work. And it is further agreed that in case the said A. B., his executors or administrators, shall become liable under the said contract to pay any damages or penalty by reason of the default or delay of the said G. H., his executors or administrators, in the performance of the work agreed to be performed by him, then that the said G. H., his executors or administrators shall pay to the said A. B., his executors or administrators, the amount of such damages or penalty, and that in case that the said W. M., or other surveyor appointed to superintend the works under the said contract shall disapprove of the work done by the said G. H., his executors or administrators, or the materials used by him or them, or the manner in which such work is done, or in case the said G. H., his executors or administrators, shall refuse or neglect forthwith on request by the said W. M., or other architect, as aforesaid, to re-execute such work with the materials and in the manner required by the said W. M., or other architect, as aforesaid, it shall be lawful for the said A. B., his executors or administrators, to dismiss and discharge the said G. H., his executors, or administrators from the further performance of such work, and employ some other person to complete the same, and to deduct the costs of such completion from the sum which would otherwise be payable to the said G. H., his executors and administrators, under this agreement. In consideration whereof the said A. B. agrees to pay to the said G. H., his executors or administrators, the sum of $ in manner following, that is to say: 75 per cent. of the contract price for the work done by the said G. H., his executors or

administrators, during any week, on the Saturday in every week during the continuance of the said works, and balance within one month after the completion of the said dwelling-house and offices.

In witness whereof, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed and delivered
in the presence of } A. B. [L.S.]
Y. Z. } G. H. [L.S.]

[NOTE.—This form of sub-contract may be adapted to any particular work on a building, as bricklayer's, painter's, etc.]

Contract to do Repairs, etc.

An agreement made the day of ,19 , Between A. B., of, etc., and C.D., of, etc.

The said A. B. agrees to do all the works hereunder specified in the best and most workmanlike manner, and to provide for such works all necessary materials and things of the best quality, and to complete and finish the said works on or before the day of next, and in case the said works shall not be finished on or before the said day of , to pay or allow to the said C. D., out of the monies payable under this agreement, the sum of $, for each day during which the said works shall remain unfinished after the said day of , and in case the said C. D. shall require any additions or alterations to be made to the works hereunder specified, to execute such additions and alterations in the best and most workmanlike manner, with material of the best quality. And it is hereby agreed that in case any additional works shall be required by the said C. D. or in case the said C. D. shall delay the execution of the said works, the said A. B. shall have such additional time for the performance of the said works after the said day of , as shall be equivalent to the time consumed in the execution of such additional works, or to the time during which the said C. D. shall have delayed the said works, and that the payments for non-completion as aforesaid, shall not be payable until after the expiration of such additional time. And it is hereby further agreed that materials brought upon the premises of the said C. D., for the purpose of being used in the said works, shall, if of proper description and quality, immediately become the property of the said C. D. And the said C. D. agrees to pay to the said A. B., for the said works, the sum of $ within one week after the same shall be finished.

Witness the hands of the said parties.

Signed in the presence of A. B.
Y. Z. C. D.

Agreement for Sale of Merchant's Stock.

This agreement made the day of 19 , Between A. B., of, etc., merchant, of the one part, and C. D., of, etc., merchant, of the other part.

The said A. B. agrees to sell, and the said C. D. agrees to buy, all the stock of goods, wares and merchandise, now being in and upon the store occupied by the said A. B. at aforesaid, at the invoice price thereof (or at the sum of $, or otherwise as agreed upon) an account of such goods, wares and merchandise being

taken by the parties hereto in the presence of each other. [And it is hereby agreed that any of the said goods, wares or merchandise, which may be damaged, shall be appraised and valued by three disinterested persons, each of the parties hereto selecting one of such persons and the two so selected appointing the third, and that the price set upon such damaged goods, wares and merchandise, by the said three persons, or any two of them, shall be substituted for the invoice price thereof, and that within ten days after the value of the said goods, wares and merchandise, shall have been ascertained as aforesaid, the said C. D. shall pay the amount thereof to the said A. B.] And the said A. B. agrees to make, execute and deliver unto the said C. D., a good and sufficient bill of sale of the said goods, wares and merchandise, and to give to the said C. D. quiet and peaceable possession thereof upon payment to him, the said A. B., by the said C. D., within the time before specified of the invoiced [or appraised] value as aforesaid.

Witness, etc. (complete as in last form).

If desired, the clause for appraising damaged goods can be made applicable to the entire stock. The clause between brackets will be left out if a fixed sum is agreed on.]

Agreement for Sale of Grain.

Memorandum of agreement made the day of 19 , Between A. B., of, etc., of the one part, and C. D., of, etc., of the other part. The said A. B. agrees to sell to the said C. D. five thousand bushels of wheat, of the grade known as , to be delivered to the said C. D., at [ ] on or before the first day of January next, free of all charges, at the price or sum of per bushel. And the said C. D. agrees to purchase the said wheat, and to pay therefor at the rate aforesaid, upon delivery as aforesaid. And the said A. B. hereby guarantees and warrants the said wheat to be good, clean and merchantable grain.

Witness the hands of the said parties.

Signed in the presence of A. B.
Y. Z. C. D.

APPRENTICES.

An apprentice is one bound in due form of law to a master, to be taught by him the handicraft, art, trade or business which the master professes or follows.

The law relating to this subject is a branch of the general law relating to Master and Servant, which will be found more fully treated of in a subsequent chapter. The distinctive feature of apprenticeship is that the master agrees to teach as well as employ.

The contract of apprenticeship is usually entered into by a deed containing the specific terms of the agreement, as well as covenants for due performance of its obligations on the part of both parties. This is called an Indenture of Apprenticeship, general forms of which are appended. As it is usually entered into during the minority of the apprentice, whose services may by law belong to his parent or guardian, and who, being under age cannot, save under statutory provisions, contract, the parent or guardian is, as a rule, necessarily a party to it. It continues no longer than the minority of the apprentice.

By virtue of the contract, it is the master's duty to fully instruct the apprentice in all details of the handicraft, trade or business in question. He is supposed to stand toward the apprentice in somewhat the relation of a parent, and is expected to watch over his morals and conduct, to correct him, when necessary, with kindness and moderation, and to afford him such friendly counsel and advice as the youth and inexperience of the apprentice may appear to require. He must not abuse his authority, either by harsh or cruel treatment, or by keeping the apprentice employed in menial occupations wholly distinct from the trade or business which he is indentured to learn. He cannot annul the contract by dismissing the apprentice, save for a sufficient cause, and then only by proper application to a Justice of the Peace, or such other authority as the statute law of the Province may provide.

The master usually covenants to take the apprentice into his service and teach him the art or trade he himself exercises or carries on; to find him in meat, drink and lodging and sometimes with wearing apparel, washing and all other necessaries, during the term. The sickness of the apprentice, or his incapacity to serve and to learn by reason of ill health, or

an accident, does not discharge the master from his covenant to provide for him and to maintain him, inasmuch as the latter takes him for better and for worse, and must minister to his necessities in sickness as well as in health.

The apprentice, on his part, is under obligation faithfully to serve his master, obey all his lawful orders and commands, keep his secrets, preserve and protect his property, and advance his interests so far as he can, and to apply himself diligently to learn the trade or business. He must also observe all the stipulations contained in the indenture to be performed by him. He must not absent himself, without leave, from his master's service, and should not, save in occupations as necessarily require it, such as seafaring, be taken out of the Province. Should he suffer injury to his health or morals by improper treatment of his master, he may be discharged upon application to the proper tribunal.

An indenture executed by a minor without the consent of his parent or guardian, and in the absence of any statute giving the minor alone power to enter into it, it is not binding upon him. When the minor is a male over fourteen, or a female over twelve, his or her consent to be bound is also generally requisite.

The death of the master terminates the contract, unless otherwise provided by the indenture or by statute . The contract may provide for the assignment of the apprentice to another master continuing in or carrying on the same trade or handicraft, but, if not, such cannot be made without the consent of the apprentice.

STATUTE LAW IN ONTARIO.

Voluntary contracts of service or indentures entered into by any parties within Ontario are not binding for a longer period than nine years from the day of the date of the contract.

The general provisions of the Act respecting apprentices and minors, R. S. O. 1897, cap. 161, now cap. 31 of statutes of 1911, may be abstracted as follow:

The Act respecting apprentices and minors provides that where a minor over the age of sixteen, who has no parent or legal guardian, or who does not reside with such parent or guardian, enters into an engagement, written or verbal, to perform any service or work, such minor shall be liable upon the same, and shall have the benefit thereof in the same manner as if of legal age.

A parent, guardian or other person having the care or charge of a minor, or any charitable society authorized by the Lieutenant-Governor to exercise the powers conferred by the Act, and having the care or charge of a minor, may with the minor's

consent, if the minor is a male not under the age of fourteen years, or is a female not under the age of twelve years, and without such consent if he or she is under such age, constitute, by indenture, to be the guardian of the child, any respectable trustworthy person who is willing to assume, and by indenture or other instrument in writing does assume, the duty of a parent towards the child; but the parent remains liable for the performance of any duty imposed by law in case the guardian fails to perform it. The guardian then possesses the same authority over the child as he would have if the ward were his own child, and is bound to perform the duties of a parent towards the ward.

Where the father of an infant child abandons and leaves the child with the mother, the mother, with the approbation of two Justices of the Peace, may bind the child as an apprentice until the child attains twenty-one if a male, or eighteen if a female. The mother and the Justices must sign the indenture. No child fourteen years old or upwards is to be so apprenticed without his or her consent.

The Mayor, Judge of the County Court, or Police Magistrate of any city or town, and in a county, the Judge of the County Court, may apprentice orphan children and children who have been deserted by their parents, or whose parents have been committed to gaol.

A Judge of the County Court, or Police Magistrate, may alter the mode of payment of wages, and may annul the indenture of apprenticeship.

If a master of an apprentice dies, the apprentice, if a male, by operation of law, and without any new writings, becomes transferred to the person (if any) who continues the master's business.

A master may transfer his apprentice, with the consent of the latter, to any person who is competent to receive or take an apprentice, and who carries on the same kind of business.

Every master must provide to his apprentice suitable board, lodging and clothing or such equivalent therefor as is mentioned in the indenture, and must also properly teach and instruct him, or cause him to be taught and instructed, in his trade or calling.

Every apprentice must faithfully serve his master, obey all his lawful commands, and not absent himself from his service, day or night, without consent.

A master convicted before any Justice, Mayor or Police Magistrate, on the complaint of the apprentice, of any ill usage, cruelty or refusal of necessary provisions, is liable to a fine not exceeding twenty dollars and costs, and to imprisonment in default for a term not exceeding one month.

An apprentice convicted of refusal to obey lawful commands, or of waste or damage to property, or of any other improper conduct, may be imprisoned for a term not exceeding three months.

An apprentice absenting himself before the time of service expires may be compelled to make good the loss by longer service or pecuniary satisfaction; and if he refuses or neglects to do so, may be committed to gaol for a term not exceeding three months; but the master must proceed to enforce such service or satisfaction within three years after the expiration of the term for which the apprentice contracted to serve.

Persons harbouring or employing an absconding apprentice, are liable to pay the full value of the apprentice's labour.

The apprenticeship indenture may be cancelled if the apprentice becomes insane, or is convicted of felony, or is sentenced to the Central Prison, Provincial Reformatory or Penitentiary, or absconds. The master must, within one month, give notice in writing to the

other parties to the indenture of his intention to cancel the indenture, which notice must be served on the parties, or published in "The Gazette," or in a local county or city paper.

Masters or apprentices may appeal to the General Sessions against any Magistrate's decision, and the General Sessions may make any order under the Act which the County Judge could make.

NOVA SCOTIA.

The same general principles obtain as in Ontario. By the Revised Statutes, 1900, cap. 117, all children under fourteen years may be bound as apprentices or servants until that age; above that age, male children may be indentured until twenty-one; and female until eighteen or marriage. Where a minor above fourteen years is bound apprentice by his or her parent or guardian, the consent of the minor must be obtained and signified in the written indenture, which is made out in duplicate and executed by the minor, as well as by the other parties. The minor is entitled to the full amount of money, or other return, given for his services. The statute imposes a duty on the parties binding minors as apprentices to see that they are properly treated. Complaints are heard before two Justices, subject to appeal to the County Court for the county in which the master resides. Apprentices guilty of misconduct may be punished by imprisonment, upon an order of a Justice of the Peace.

NEW BRUNSWICK.

The following is a summary of the statute law:

Children under fourteen years may be bound apprentice until that age by their father, or, in case of his death or incompetency, by their mother or other legal guardian; if they have no parent competent to act and no guardian, they may bind themselves, with the assent of two Justices.

Minors above fourteen not having parents or guardians competent to act may be bound in the same manner, with their consent, to be expressed in the indenture, and testified by their signing the same; females to the age of eighteen or marriage, and males to twenty-one.

The Indenture of Apprenticeship must be in two parts—one part to be kept by the parent or guardian (if any), or to be deposited with the Town Clerk for the use of the minor.

No indenture is binding on the minor after the death of his master; nor shall any indenture be assignable; nor shall any minor be taken out of the Province, unless with his consent to be declared in the presence of a Justice, and certified by him in writing.

Provision shall be made in every Indenture of Apprenticeship for teaching the indentured child or children to read and write, and to cypher as far as the rule of three, and for religious and other instruction; and such other benefit or allowance to the minor as may be agreed upon; and, in case of sickness, for medical attendance, board and care.

Before any indenture is executed, the parties shall go before a Justice of the Peace, who shall examine whether the apprentice has any just objection thereto, and shall certify thereon accordingly; and no indenture shall be deemed executed without such certificate.

All considerations of money, etc., shall be paid or secured to the sole use of the apprentice.

Complaints, etc., shall be heard before one Justice.

No person shall sell upon credit to any apprentice.

Harbouring an absconded apprentice is punishable by a fine of $20; and if by a master of a vessel, $40.

PRINCE EDWARD ISLAND.

The more specific provisions of the law of this Province upon this subject, enacted by the Statute, 8 Vict. cap. 14, may be summarized as follows:

Any parent, or parents, guardian or guardians, may bind out as an apprentice, any child of any age as an indented servant to any tradesman, artisan or farmer, for a period not exceeding the time when such child shall attain the age of twenty-one years.

Any infant of twelve years of age may be lawfully indented to any tradesman, farmer, or other, by his or her own consent, if such infant have no parent or guardian within the Island, until such infant attain twenty-one years, or for a shorter period, as may be agreed. Such indenture must be entered into in the presence and with the consent of two Justices of the Peace, each of whom shall sign such indenture.

All infants of sixteen years and upwards, having no parents or guardians in the Island, may indent themselves to service to any tradesman, farmer, or other, until twenty-one years, by indenture under seal.

Every Indenture of Apprenticeship must contain a stipulation to cause the indented child to be taught reading, writing, and the common rules of arithmetic.

Any two Justices of the Peace may bind mendicant children, abandoned by their parents. If an apprentice desert his employment, one Justice may issue a warrant to arrest him, and may commit him to gaol. The harbouring of deserting apprentices is punishable. Complaints in such matters, and as to ill-treatment, wages, etc., are disposed of before three Justices of the Peace.

MANITOBA.

The law in Manitoba may be said to be nearly identical with that in Ontario, the statute, cap. 79, R. S. M., 1902, being in large part a copy of the Ontario Statute.

FORMS.

Apprenticeship Indenture.

This Indenture, made the fourth day of June, 19 , Between William Jones, of Chatham, in the County of Kent, Jeweller, of the first part, Henry Jones, his son, now of the age of seventeen years, of the second part, and Thomas Mason, of the same place, printer,

of the third part, Witnesseth, That the said William Jones, with the consent of his said son, Henry Jones, testified by his being a party to and executing these presents, doth hereby put, place, bind and indent him, the said Henry Jones, to the said Thomas Mason to learn the art and trade of a printer, and with him, the said Thomas Mason, his executors, administrators and assigns, after the manner of an apprentice to dwell and serve from the date hereof until the fourth day of June, 1889, being a period of four years, when the said minor will arrive at the age of twenty-one years.

And the said William Jones doth hereby, for himself, his heirs, executors and administrators, covenant, promise and agree to and with the said Thomas Mason, his executors, administrators and assigns, that during the said term of four years, the said Henry Jones shall well and faithfully serve the said Thomas Mason, his secrets keep, and lawful commands at all times obey, and shall give and devote to him his whole time and labour; that he shall not marry during the said term, nor use ardent spirits, nor practice gaming or any other unlawful sports, nor waste, injure or destroy the property of his master, but conduct himself in a sober, temperate, honest manner, and as a good and faithful apprentice ought to do, during all the time aforesaid.

And the said Thomas Mason, for himself, his heirs, executors and administrators, doth hereby covenant, promise and agree to and with the said William Jones, his executors and administrators, that he, the said Thomas Mason, his executors and administrators, shall and will teach and instruct, or cause to be taught and instructed, the said Henry Jones, in the art, trade and mystery of a Printer, and shall and will find and provide for the said apprentice sufficient meat, drink, apparel, washing and lodging during the said term; and at the expiration thereof shall and will give his said apprentice two suits of apparel (any other special terms may be here inserted); and the said Thomas Mason further agrees to pay to the said William Jones, father of the said Henry Jones, the following sums of money, to wit: for the first year's service, twenty-five dollars; for the second year's service, seventy-five dollars; and for each and every subsequent year, until the completion of his term, one hundred dollars; which said payments are to be made on the first day of June in each year.

And for the true performance of all and singular the covenants and agreements hereinbefore contained, the said parties bind themselves each unto the other, jointly by these presents.

In witness whereof, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed and delivered
in the presence of
R. JOHNSON.

WILLIAM JONES. [L.S.]
HENRY JONES. [L.S.]
THOMAS MASON. [L.S.]

Indenture of Appenticeship for a Girl to learn Housework, etc.

This Indenture, made the tenth day of May, 19 , Between Mary Franks, of Niagara, in the County of Lincoln, Widow, of the first part, Sarah Franks, her daughter, now of the age of fifteen years, of the second part, and Robert Holden, of the same place, Farmer, of the third part, Witnesseth that the said Sarah Franks, by and with the consent of the said Mary Franks, her mother, testified by her

execution of these presents, hath bound and put herself, and by these presents doth bind and put herself apprentice to the said Robert Holden, with him to dwell and serve from the day of the date hereof until the full end of the term of two years next ensuing, fully to be completed and ended; during which term the said Sarah Franks her said master faithfully shall and will serve in all lawful business, according to her power and ability, and honestly and obediently in all things demean and behave herself toward her said master during the term aforesaid.

And the said Robert Holden shall and will teach and instruct, or cause to be taught and instructed, the said apprentice in sewing, knitting and housewifery, the management of the dairy, and all matters connected with the calling of a farmer proper to be taught to her the said apprentice, together with reading, writing and the other usual branches of a common school education; and shall and will during the said term find, provide and allow her sufficient meat, drink, clothing, lodging, washing, and all other necessaries; and at the expiration of the term aforesaid shall and will give unto the said apprentice two suits of apparel.

In Witness, etc. (Conclude as in last form).

Signed, etc.	MARY FRANKS.	[L.S.]
JOHN SERVOS.	SARAH FRANKS.	[L.S.]
	ROBERT HOLDEN.	[L.S.]

Assignment of an Indenture of Apprenticeship.

(To be indorsed upon it).

Know all men by these presents, that I, the within named Samuel Moore, by and with the consent of James Jackson, my within named apprentice, and Henry Jackson, his father (or as the case may be), parties to the within Indenture, testified by their signing and sealing these presents, for divers good causes and considerations, have assigned and set over the within Indenture, and the said James Jackson, the apprentice within named, unto John Travers, of Milton, of the County of Halton, Printer, his executors, administrators or assigns, for the residue of the within mentioned term, he and they performing all and singular the covenants therein contained on my part to be kept and performed.

And I, the said James Jackson, do hereby covenant on my part, with the consent of my father, the said Henry Jackson, faithfully to serve the said John Travers, as an apprentice for the residue of the term within mentioned, and to perform toward him all and singular the covenants within mentioned on my part to be kept and performed.

And I, the said John Travers, do for myself, my executors and administrators, covenant to perform all and singular the covenants within mentioned on the part of the said Samuel Moore to be kept and performed.

Signed, sealed and delivered, etc.

ARBITRATIONS AND AWARDS.

An arbitration is the reference and submission of a matter in dispute to the decision of one or more persons called arbitrators. The findings or decisions of arbitrators in such matters are called awards.

Instead of having a dispute settled by an action in a law Court, people sometimes prefer to leave the matter to fair-minded persons mutually agreed upon, not judges of the Courts, nor, necessarily, lawyers, but men of business ability and possessed of special knowledge of the trade, or other matters which may be involved. Business men, as a rule, prefer arbitration to lawsuits in trade, or business disputes, as involving more certainty of justice, with less delay and expense. Boards of Trade usually provide that their members shall, in the first instance, submit their differences to this mode of settlement; and in articles of co-partnership between traders, it is usual to stipulate that if any dispute shall arise between the partners it shall be referred to the determination of two indifferent persons as arbitrators, or of their umpire, who is commonly required to be chosen by the arbitrators.

It is also a common practice of all Courts where the English law is administered, to order the submission of intricate matters of account to arbitrators appointed by such Courts. So, also, many statutes require particular matters in dispute between parties to be settled in this manner.

Arbitrations are thus either voluntary or compulsory; the former being made by mutual agreement, the latter where either party, under the statute law of a particular Province, has a right to compel a reference of matters in controversy, without the consent of the other.

In trifling matters of dispute the agreement to refer the dispute (called a submission) is verbal; but it is preferable in all cases to have a writing signed by both parties.

By the Arbitration Act, 1909, Ontario Statutes, cap. 35, a "submission" is defined to be "a written agreement to submit present or future differences to arbitration whether an arbitrator is named therein or not."

Such submission, unless a contrary intention is expressed in it, is irrevocable, except by order of the Court or of a Judge, and has the same effect in all respects as if it had been made an order of Court..

A submission, unless a contrary intention is expressed, is deemed to include the following provisions so far as they are applicable to the reference under the submission, viz.:

(a) If no other mode of reference is provided, the reference shall be to a single arbitrator.

(b) If the reference is to two arbitrators, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award.

(c) The arbitrators shall make their award in writing within three months after entering on the reference, or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the arbitrators, by any writing signed by them, may from time to time enlarge the time for making the award.

(d) If the arbitrators have allowed their time or extended time to expire without making an award, or have delivered to any party to the submission, or to the umpire, a notice in writing, stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.

(e) The umpire shall make his award within one month after the original or extended time appointed for making the award of the arbitrators has expired, or on or before any later date to which the umpire by any writing signed by him may from time to time enlarge the time for making his award.

(f) The parties to the reference, and all persons claiming through them respectively, shall subject to any legal objection, submit to be examined by the arbitrators or umpire, on oath or affirmation, in relation to the matters in dispute, and shall subject as aforesaid, produce before the arbitrators or umpire all books, deeds, papers, accounts, writings and documents within their possession or power respectively which may be required or called for, and do all other things which during the proceedings on the reference the arbitrators or umpire may require.

(g) The witnesses on the reference shall, if the arbitrators or umpire think fit, be examined on oath or affirmation.

(h) The award to be made by the arbitrators or umpire shall be final and binding on all the parties and the persons claiming under them respectively.

(i) The costs of the reference and award shall be in the discretion of the arbitrators or umpire, who may direct to and by whom and in what manner such costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof, and may award costs to be paid as between solicitor and client.

If any party to a submission commences legal proceedings against any other party to the submission in respect of any matter agreed to be referred, a stay of proceedings will be granted on application to the Court after entry of

appearance and before delivery of any pleadings if there is no sufficient reason why the matter should not be referred and the applicant was and remains willing to do everything necessary to the proper conduct of the arbitration.

The arbitrators, unless a contrary intention is expressed in the submission, have power to administer oaths or to take affirmations of the parties and witnesses appearing, to state an award in the form of a special case for the opinion of the Court and to correct in an award any clerical mistake or error arising from any accidental slip or omission.

New Brunswick enacted an Arbitration Act in 1909. This is similar in its terms to the Ontario Act. It defines "Arbitration" as including valuation and appraisal. This makes the Act applicable to valuations under renewable leases which are common in New Brunswick.

Manitoba passed a similar Act in 1911 to come into force 1st Nov., 1912. Under it the fees of arbitrators are determined by the Court or Judge.

In arbitration proceedings the arbitrators are bound to require the attendance of the parties, for which purpose notice of the meetings of the arbitrators should be given. If either party neglect to attend either in person or by attorney after due notice, the arbitrators may proceed without him. In taking evidence arbitrators are at liberty to proceed in any way they please, if the parties have due notice of their proceedings and do not object before the award is made; but in order to obviate any objection, they ought to proceed in the admission of evidence according to the regular rules of law. The award should be signed by the arbitrators in each other's presence, and when made it must be both certain and final. Thus, if the award be that one party enter into a bond with the other for his quiet enjoyment of certain lands, this award is void for uncertainty; for it does not appear in what sum the bond should be. If the arbitrators be empowered to decide all matters in difference between the parties, the award will not necessarily be wanting in finality for not deciding on all such matters, unless it appear to have been required that all such matters should be determined by the award, and all such were submitted. An award, to be binding, must embrace every matter submitted. If the award reserve to the arbitrators, or give to any other person, or to one of the parties, any further authority or discretion in the matter, it will be bad for want of finality. And if the award be that any person, not a party to the reference, should do an act, or that money should be paid to, or any other act done in fa-

vour of, such a person, unless for the benefit of the parties, such award will be void. An award, however, may be partly good and partly bad, provided the bad part is independent of and can be separated from that which is good. But if by reason of the invalidity of part of the award, one of the parties cannot have the advantage intended for him as a recompense for that which he is to do, according to that part of the award which would otherwise be valid, the whole will be void. If it should appear on the face of the award that the arbitrators, intending to decide a point of law, have fallen into an obvious mistake of the law, the award will be invalid. But where subjects involving questions both of law and fact are referred to arbitration, the arbitrators may make an award according to what they believe to be the justice of the case, irrespective of the law on any particular point.

The Courts have power to set aside the award for corruption or other misconduct on the part of the arbitrators, or if they should be mistaken in a plain point of law or fact. The application to set aside the award must, however, be made within six weeks after the publication of the award, but the Court or Judge may, under special circumstances, allow the application to be made after this time. If the submission to arbitration be made by rule or order of the Court in any cause, the Court still retains its ancient jurisdiction of setting aside the award on account of either misconduct of the arbitrators, or of their mistake in point of law. Sometimes the Court will refer the matter back to the arbitrators for further examination, in the event of any application being made to the Court on the subject of the award.

If an umpire be appointed, his authority to make an award commences from the time of the disagreement of the arbitrators, unless some other period be expressly fixed; and if, after the disagreement of the arbitrators, he makes an award before the expiration of the time given to the arbitrators to make their award, such award will be valid. The umpire must be chosen by the arbitrators in the exercise of their judgment, and must not be determined by lot, unless all the parties to the reference consent to his appointment by such means. In order to enable him to form a proper decision, he ought to hear the whole evidence over again, unless the parties should be satisfied with his deciding on the statement of the arbitrators. And the whole matter in difference must be submitted to his decision, and not some particular points only on which the arbitrators may disagree.

An award for the payment of money creates a debt from one party to the other, for which an action may be brought

in any Court of law. But when the award is made a rule of Court, its performance may be enforced by execution.

It often happens that the matters to be referred are of too complicated a nature to admit of successful carriage without the intervention of a professional man. The foregoing observations are not intended to apply to such matters: they are meant for plain and simple cases only.

In Ontario, the fees payable to witnesses are fixed by statute at the same amount as would be paid such witnesses in any ordinary suit in the Court having jurisdiction over the matter of the reference. Parties are required to pay the costs of all adjournments of the proceedings made at their request or by reason of their absence. Beyond a reasonable fee to the arbitrators for drawing up their award, their fees are as follows:

Where arbitrators are not either barristers, solicitors, engineers, architects, or Ontario land surveyors:—

For every meeting where the cause is not proceeded with, but an enlargement or postponement is made at the request of any party, not less than	$ 2 00
Nor more than	4 00
For every day's sitting, to consist of not less than six hours, not less than	5 00
Nor more than	10 00
For every sitting not extended to six hours (fractional parts of hours being excluded) where the arbitration is actually proceeded with, for each hour occupied in such proceedings, at the rate of not less than	1 00
Nor more than	1 50

Where the arbitrator is such professional person—

For every meeting where the cause is not proceeded with, but an enlargement or postponement is made at the request of any party, not less than	4 00
Nor more than	8 00
For every day's sitting, to consist of not less than six hours, not less than	10 00
Nor more than	20 00
For every sitting not extending to six hours (fractional parts of hours being excluded) where the arbitration is actually proceeded with, for each hour occupied in such proceedings at the rate of not less than	2 00
Nor more than	3 00

In Nova Scotia the same general law prevails regarding arbitrations and awards as set forth above. Statutory provisions similar to the Arbitration Act of Ontario will be found in R. S. N. S. 1900, cap. 176. Fees for witnesses are as prescribed for travel and attendance of witnesses when summoned in the Supreme Court, and witnesses are liable to the same penalties for disobedience.

For remedies by arbitration in the adjustment of disputes between masters and workmen in Ontario, reference should be had to "The Trade Disputes Act," R. S. O. 1897, c. 158, as amended by 1902 statutes, cap. 22, and in Nova Scotia to R. S. N. S. 1900, c. 21 (the Mines Arbitration Act.)

FORMS.

General Form of Submission to Arbitration.

This Indenture, made the day of 19 , Between A. B., of, etc., of the one part, and C. D., of, etc., of the other part, Whereas, certain differences have arisen between the said A. B. and the said C. D., respecting, etc., [here state concisely the subject-matter in dispute, or, if all matters in difference are referred, you had better not state such subject-matter at all]: and it is agreed by and between the said A. B. and C. D. to refer the said differences [or all matters in difference between them] to the award, order, final end and determination of U. V., of, etc., and X. Z., of, etc., arbitrators nominated by the said A. B. and C. D., respectively; and in case they disagree about making an award, or fail to make an award before the day of next, then to the award, umpirage, final end and determination of such umpire as the said arbitrators shall by writing under their hands, endorsed on these presents, before they enter upon the consideration of the matters referred, nominate and appoint.

Now this indenture witnesseth that they the said A. B. and C. D., do, and each of them for himself, severally and respectively, and for his several and respective heirs, executors and administrators, doth covenant, promise and agree with and to each other, his executors and administrators respectively, that the said differences [or all matters in difference] between the said A. B. and C. D., be forthwith referred to the award, order, arbitrament, final end and determination of the said U. V. and X. Z.; and in case they disagree about making an award, or fail to make an award before the day of next, then to the award, umpirage, final end and determination of such umpire as the said arbitrators shall, by writing under their hands, endorsed on these presents, before they enter upon the consideration of the matters referred, nominate and appoint: so as the said arbitrators or umpire do make and publish his or their award or umpirage in writing under his or their hands of and concerning the premises, ready to be delivered to the parties or to either of them, or, if they or either of them shall be dead before the making of the award or umpirage, to their respective personal representatives who shall require the same, on or before the day of next, or on or before any other day to which the said arbitrators or umpire shall, by writing signed by him or them, endorsed on these presents, from time to time enlarge the time for making such award or umpirage; and that the said A. B. and C. D. respectively, and their respective executors and administrators shall and will perform, fulfil and keep the said award or umpirage so to be made as aforesaid, and that the death of either of the said parties shall not operate as a revocation of the power and authority of the said arbitrators or umpire to make said award or umpirage; and that all costs and charges of this reference and of the said award shall be in the discretion of the said arbitrators or umpire, who shall direct and award by whom and to

whom and in what manner the same shall be paid; And, further, that the said A. B. and C. D., and each of them, shall and will produce unto and deposit with the said arbitrators or umpire, all deeds, books, papers, evidences and writings, touching or relating to the matters in difference in their respective possessions or power as the said arbitrators or umpire shall think fit: And that each of them shall and will submit to be examined upon oath, if thought necessary, by the said arbitrators or umpire, and will, as far as in them lies respectively, do all such other acts and things as the said arbitrators or umpire shall require for the better enabling him or them to make the said award: And, further, that if either of the said parties shall obstruct or prevent the said arbitrators or umpire from making an award by affected or wilful delay, or by not attending after reasonable notice, and without such excuse as the said arbitrators or umpire shall be satisfied with and adjudge to be reasonable, it shall be lawful for the said arbitrators or umpire to proceed ex parte: And, further, that neither of them, the said A. B. and C. D., shall and will prosecute any action or suit in any Court of Law or Equity against the other of them, of and concerning the premises, until the said award be made and published: And, further, that this submission may be made a rule of His Majesty's Court of [ ] if that Court shall so please: And, further, that the said arbitrators or umpire shall take the said arbitration at [ ] aforesaid, and shall have power to call for and examine all witnesses upon oath, and have the assistance of accountants in adjusting and ascertaining the state of the accounts of the said parties in difference.

In witness whereof, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed and delivered in
the presence of A. B. [L.S.]
E. F. C. D. [L.S.]

Another Form.

This Indenture, made the day of 19 , Between A. B., of, etc., of the first part, and C. D., of, etc., of the second part.

Whereas disputes and differences have arisen and are now depending, between the said parties of the first and second parts in reference to [state matters in dispute], and in order to put an end thereto, and to obtain an amicable adjustment thereof the said parties of the first and second parts have respectively agreed to refer the same to the award, order, arbitrament, final end and determination of U. V., of, etc., and X. Z., of, etc. arbitrators indifferently chosen, by and on behalf of the said parties respectively: And in the event of the said arbitrators hereby appointed not being able to agree within one month from the date of these presents upon their said award, then it shall and may be lawful for them to appoint some fit person as third arbitrator, by a memorandum, in writing, under their hands, to be endorsed on these presents; and the award of any two of them shall be final and conclusive, both at law and in equity, upon both of the said parties hereto; such award to be made in writing on or before the day of next.

Now this Indenture witnesseth, that the said parties hereto do, and each of them doth, each for himself severally and respectively, and for his and their respective heirs, executors and administrators, covenant and agree, well and truly to stand to, obey, abide by, observe, perform, fulfil, and keep the award, order, arbitrament and final determination of the said arbitrators hereby appointed; or, in

the event of it having been necessary to appoint such third arbitrator as aforesaid, to stand to, obey, abide by, observe, perform, fulfil and keep the award, order, arbitrament, and final determination of any two of them of and concerning the premises aforesaid or any thing in any manner relating thereto, so as such award be made in writing, under their hands, or under the hands of any two of them (in the event of any such appointment as aforesaid), on or before the day of next.

And it is hereby agreed, that the said arbitrators shall be at liberty, by writing under their hands, or the hands of any two of them, respectively endorsed on these presents, to enlarge the time for making the said award when and as often and to such times as they shall think fit. And also, that all the costs and charges attending the said arbitration shall be in the discretion of the said arbitrators hereby appointed, or in the event of such appointment of a third arbitrator as aforesaid, or any of them so making their award as aforesaid, and shall be paid and satisfied pursuant to their award. And also, that these presents may be made a rule of His Majesty's Court of , at [ ]

And for the full performance of the said award so to be made as aforesaid, the said parties hereto bind themselves, severally and respectively, their several and respective heirs, executors and administrators, each to the other of them respectively, in the penal sum of [ ] lawful money of Canada, firmly by these presents.

In witness whereof the said parties to these presents have hereunto set their hands and affixed their seals, the day and year first above written.

Signed, sealed and delivered in
the presence of A. B. [L.S.]
E. F. C. D. [L.S.]

Submission by Bond.

Know all men by these presents, That I, A. B., of, &c., am held and firmly bound to C. D., of, &c., in the penal sum of [ ] of lawful money of Canada, to be paid to the said C. D., or to his certain attorney, executors, administrators, or assigns, for which payment to be well and truly made I bind myself, my heirs, executors, and administrators firmly by these presents.

Sealed with my seal. Dated this day of , 19 .

Whereas, disputes and differences have arisen, and are now pending, between the above-bounden A. B. and the said C. D., touching and concerning [state subject-matter in dispute as in submission.]

And whereas the above bounden A. B., and the said C. D., have agreed to refer such disputes and differences, as well as all actions, suits, controversies, accounts, reckonings, matters, and things in any wise relating thereto, to the award, arbitrament and determination of U. V. and X. Z., arbitrators nominated, appointed and chosen as well by and on the part and behalf of the above-bounden A. B. as of the said C. D., and who have consented and agreed to accept the burthen of the said arbitration.

Now, the condition of the above-written bond or obligation is such, that if the above-bounden A. B. do and shall well and truly submit to, abide by, and perform, the award, arbitrament and determination of the said arbitrators so nominated, appointed and chosen as aforesaid, touching and concerning the matters in dispute between the above-bounden A. B. and the said C. D., and so referred to them the said arbitrators as aforesaid (provided such award be made in

writing under the hands and seals of the said arbitrators, ready to be delivered to the said parties, or such of them as shall apply for the same, on or before the day of , one thousand nine hundred and): Then this obligation shall be void, otherwise to be and remain in full force and virtue.

And it is hereby agreed between the said parties in difference, that these presents and the submission hereby made of the said matters in controversy, may be made a rule of the High Court of Justice, pursuant to the statute in that behalf, and that all books papers, vouchers, entries or memoranda in the power, custody or possession of the said parties shall be produced to the said arbitrators or umpire; and that all witnesses produced to the said arbitrators or umpire shall be sworn by them; and that all costs and charges attending on the drawing of these presents and of the said arbitration and award shall be in the discretion of the said arbitrators or umpire.

Signed, sealed and delivered
in the presence of A. B. [L.S.].
E. F.

[NOTE.—A similar bond must be executed by C. D., substituting C. D. for A. B. whenever the name occurs.]

Appointment of an Umpire.

We, the within-named U. V. and X. Z., in pursuance of the powers given us by the within written agreement do hereby nominate and appoint U. U., of , to be umpire between us in and concerning the matters in difference within referred [on condition that he do, within days from the date hereof, by some writing under his hand, accept the umpirage.]

Witness our hands this day of , 19 .

U. V.
Witness, W. W. X. Z.

[NOTE.—The foregoing appointment should be endorsed on the arbitration deed or bond.]

Enlargement of time for making Award.

We, the undersigned arbitrators, by virtue of the power to us given for this purpose, do hereby appoint, extend, and (if a second enlargement, "further") enlarge the time for making our award until the day of next, on or before which said day our award in writing of and concerning the matters in difference within mentioned and referred to us shall be made and published.

In witness whereof, we have set our hands the day of , 19 .

Witness, A. B.
W. W. C. D.

[NOTE.—The observations appended to the last form apply to this and the two next forms.]

Enlargement of Time by the Parties.

We, the within-named A. B. and C. D., for ourselves severally and respectively, and for our several and respective heirs, executors and administrators, do hereby give, grant and allow unto the within-named arbitrators further time for making their award of and con-

cerning the several matters within referred to them, until the day of next.

In witness whereof, we have hereunto set our hands [or, if the submission was by bond or deed, say, "our hands and seals"], the day of 19 .

Signed, (or Signed, Sealed and Delivered)
in the presence of
W. W.

A. B. [L.S.]
C. D. [L.S.]

Appointment of Third Person as Additional Arbitrator.

We, the within-named U. V. and X. Z., do by this memorandum under our hands (made before we enter or proceed on the arbitration within mentioned) nominate and appoint Mr. X. Y., of , the third person or arbitrator, to whom, together with ourselves all matters in difference between the said parties within mentioned shall be referred, according to the tenor and effect of the within submission.

Witness our hands this day of , 19 .

Signed in the presence of
Y. Z.

U. V.
X. Z.

Oath to be Administered by Arbitrator to a Witness.

You shall true answer make to all such questions as shall be asked of you by or before me touching or relating to the matters in difference between A. B. and C. D. referred to my award (or "to the award of myself and G. H."), without favor or affection to either party; and therein you shall speak the truth, the whole truth, and nothing but the truth. So help you God.

Appointment by Arbitrator for Attendance before him.

In the matter of an arbitration between A. B. and C. D.

I appoint , the day of next, at o'clock in the noon, at , for proceeding in this reference. Dated the day of 19 .

A. A.

To Messrs. A. B. and C. D., and their respective attorneys or agents, and all other whom it may concern.

(The arbitrator's signature, or the signature of one or more of them, if more than one.)

Peremptory Appointment for the same purpose.

In the matter of an arbitration between A. B. and C. D.

I appoint the day of instant (or "next") at o'clock in the noon precisely, at peremptorily to proceed upon and conclude the reference now pending before me between A. B. and C. D.: And I hereby give notice, that in case of non-attendance of either party, I shall nevertheless proceed, and immediately make my award. Dated the day of 19 .

E. F., Arbitrator.

To Messrs. A. B. and C. D., and their respective attorneys or agents, and all others whom it may concern.

General Form of Award.

To all to whom these presents shall come, I, A. A., of, etc., send greeting; (etc., proceed to recite the instrument by which the parties referred to arbitration, and so much of its terms as may be essential to show the authority of the arbitrator or umpire with respect to the subject-matter of reference, and the time, power of enlargement, and manner of making the award. Thus, if it be by indenture, the recital may be as follows: Whereas by an Indenture bearing date, etc., and made between, etc., reciting that various differences had arisen, etc., so stating all that may be material to warrant the following award, and then proceed thus); Now know ye that I, the said A. A., having taken upon myself the burthen of the said arbitration, and having heard and duly considered all the allegations and evidence of the said respective parties of and concerning the said matters in difference so referred as aforesaid, do make this my award in writing of and concerning the said matters in difference so referred, and do hereby award, order, determine and direct that (etc., conclude with a distinct statement of the arbitrator's decision on all the points referred to him).

In witness whereof, I have hereunto set my hand this day of 19 .

Signed in the presence of A. A.
W. W.

Award where the Submission was by Mutual Bonds.

To all to whom these presents shall come, I, A. A., of, etc., send greeting; Whereas on , by a bond made and sealed with the seal of C. D., of, etc., he became held and firmly bound unto A. B., of, etc., in the penal sum of $: And whereas on the day and year aforesaid the said A. B., by another bond sealed with his seal, became held and firmly bound unto the said C. D., in the like penal sum, with conditions written under the said several bonds that the said A. B., his heirs, executors and administrators, should well and truly stand to, abide by, perform, fulfil, and keep the award, order, and final end and determination of me, A. A., an arbitrator indifferently named and elected as well on the part and behalf of the above bounden A. B., as the above bounden C. D., to arbitrate, award, order, judge and determine of and concerning (etc., here set out such parts of the bond as bear upon the award, and state the enlargement, if any). Now, I, the said A. A., having taken upon myself the burthen of the said arbitration, and having heard and duly and maturely weighed and considered the several allegations, vouchers and proofs made and produced on both sides, do in pursuance of the said submission make and publish this my award of and concerning the said premises in manner following, that is to say: I do award, etc.

In witness, etc. (as in last form.)

Signed in presence of A. A.
W. W.

Award where the Submission was by agreement, and stating an assent to an enlargement.

To all to whom these presents shall come, we A. A., of, etc., and T. A., of, etc., send greeting: Whereas, by a certain agreement in writing under the hands of A. B., of, etc., and C. D., of, etc., bearing date on or about the day of last reciting that (etc., here set out such parts of the agreement as bear upon the award): And whereas by an endorsement on the said agreement, bearing date on or about the day of last under the hands of all the said parties to the said agreement they the said parties mutually and reciprocally consented and agreed that the time for the said arbitrators making the said award should be enlarged to the day of then next, and that they would in all other respects abide by the terms of the said agreement. Now know ye that we, the said arbitrators, having taken upon us the burthen of the said reference, and having examined all such witnesses as were produced before us by the said parties respectively, and having fully weighed and considered all the allegations, proofs and vouchers made and produced before us, do award [etc.]

In witness, etc., [as in preceding forms.]

Signed in the presence of
W. W.

A. A.
T. A.

Clauses which may be inserted in an Award where they suit the circumstances.

1. I award that C. D. do pay to A. B. the sum of $ within days after demand.

2. I award that A. B. do pay to C. D. the sum of $ within days after demand.

3. I award and direct that C. D. do, within one month after demand, pay to the said A. B. the sum of $, and that the said A. B. do, upon such payment, deliver to the said C. D. a good and sufficient conveyance in fee simple, free from incumbrances, of all and singular, etc., (describe lands).

4. I award and direct that the said A. B. do pay to the said C. D. the sum of $, and that thereupon the said A. B. and C. D. do execute and deliver the one to the other good and sufficient releases of all claims and demands which they may have one against the other.

5. I award that the costs of the reference and award be paid by C. D. to A. B.

6. I award that each party bear his own costs of the reference, and that the costs of the award be paid by the said A. B. (or C. D., or in equal portions by the said A. B. and C. D.)

7. I award and direct that the said C. D. do pay to the said A. B. the costs incurred by the said A. B. of and incidental to the reference and award (when the arbitrator is to ascertain the amount, add the following words), and I assess the amount of the said costs of the said A. B. at $, and the costs of my award at $.

8. And I further award and direct that the said A. B. and C. D. do each bear his own costs of the reference, and pay one-half the costs of the award; and if either party shall, in the first instance,

pay the whole or more than half of the costs of the award, the other party shall repay him so much of the amount as shall exceed the half of the said costs.

9. I award and direct that one moiety of the costs of the reference and award be borne and paid by A. B., and the other moiety by C. D.

Affidavit of execution of Arbitration Bond.

County of ,
to wit: I, Y. Z., of, etc., make oath and say,

1. That I was present and did see the annexed Arbitration Bond duly signed, sealed and delivered by the therein named A. B., and that I am the subscribing witness to the execution of the said bond.

Y. Z.

ASSIGNMENTS.

An assignment, in its usual acceptation, is the written transfer of any kind of property, whether real or personal. The person making the assignment is called the assignor, and the person to whom it is made, the assignee.

Generally speaking, any interest in either lands or goods may be assigned; as, for instance, a lease, mortgage, or contract to purchase; or a draft or promissory note, bond, or policy of insurance.

An assignment of land, or of any interest in land, should be registered in the proper Registry Office. An assignment of goods and chattels, whether absolute, as a bill of sale, or conditional, as a chattel mortgage, not accompanied by immediate delivery and followed by an actual and continued change of possession, requires in most Provinces to be filed in the office of the County Clerk of the county or union of counties, wherein the goods are. This branch of the subject will be found more fully treated of subsequently under the heading Chattel Mortgages and Bills of Sale. In New Brunswick these must be filed in the office of the Registrar of Deeds of the county wherein the goods are.

An assignment of an interest in lands requires to be executed with the same formalities as other deeds. For a more extended notice of these formalities, the reader may refer to the chapter on Deeds.

An assignment of the entire stock in trade, book debts, credits and effects of a trader is sometimes made to another person as trustee for creditors, for the purpose of liquidating rateably the debts of the person making the assignment. Before the abolition of the Dominion Insolvent Act, it could also be, in certain cases, compelled. Upon this subject it may be only necessary to remark that where such assignment is made the utmost fairness and honesty should characterize the acts of the trader making the assignment, who should not conceal or retain any portion of his estate. Such an assignment will be valid if without preference to any creditor, but if otherwise, or if any fraud appear on the part of the assignor, it will be set aside.

The proper words to effect an assignment in conveyancing are, "assign, transfer and set over."

The following forms will be found to meet cases of common occurrence. In matters of difficulty, the services of a professional man should be procured.

Assignment of Agreement to Purchase.

(To be endorsed upon or annexed to the Original.)

Whereas, the within named C. D. hath duly paid to the within named A. B. the sum of $, being the amount of the first two instalments of the purchase money within mentioned, together with all interest upon such purchase money up to the day of last, according to the terms and provisions of the within-written articles, and there now remains to be paid the sum of $ only, by equal annual instalments of $ each, with interest from the day of last. And whereas, the said C. D. hath contracted and agreed with E. F., of, etc., for the sale to him of the within-mentioned premises (and the improvements thereon) and all his right and title thereto and estate and interest therein under or by virtue of the within-written agreement, at the price or sum of $, but subject nevertheless to the payment by him, the said E. F., his heirs, executors or administrators unto the said A. B., his executors or administrators, of the said sum of $ residue of the original purchase money aforesaid, and interest thereon from the period aforesaid, at the times and in manner within mentioned.

Now these presents witness, that in pursuance of such agreement and in consideration of the sum of $, of good and lawful money aforesaid, to him, the said C. D., in hand paid by the said E. F. at or before the execution hereof, the receipt whereof he, the said C. D., doth hereby acknowledge, he, the said C. D., hath sold, assigned, transferred and set over, and by these presents doth sell, assign, transfer and set over to the said E. F., his heirs and assigns, All and singular the within mentioned and described parcel or tract of land and premises, and therein described as being lot No. , in the concession of , together with all the right, title and interest of him, the said C. D., of, in, and to the within-written articles of agreement and covenants, and the lands and premises therein referred to (and all improvements thereon), and all benefit and advantage to arise therefrom, to have and to hold to the said E. F., his heirs, executors, administrators and assigns, for his and their own use and benefit forever.

And the said C. D. doth hereby make, ordain, authorize, constitute, and appoint the said E. F., his heirs, executors, administrators, and assigns, his true and lawful attorney and attorneys irrevocable for him, the said C. D., and in his name, but for the sole use and benefit of the said E. F., his heirs, executors and administrators, to demand, sue for, recover and receive of and from the within-named A. B., his heirs, executors or administrators, all such sum or sums of money and damages as shall or may at any time or times hereafter accrue or grow due to him, the said C. D., his heirs, executors, administrators or assigns, under or by virtue of the said recited articles of agreement and covenants, or any matter, clause, or thing therein contained, by reason or on account of the breach or default of him, the said A. B., his heirs, executors or administrators, in relation thereto; the said C. D. hereby also covenanting with the said E. F., his heirs, executors and administrators, that he hath not done or suffered, nor will he do or suffer any act, matter or thing whereby the said E. F., his heirs, executors or administrators, shall or may be hindered or prevented from commencing and prosecuting any action or actions, suit or suits, at law or in equity, for the recovery of any principal money or damages under or by virtue of

the said articles of agreement and covenants referred to, or enforcing the performance of the said articles of agreement, or obtaining such other satisfaction as can or may be had or obtained for the same by virtue thereof; And the said E. F. doth hereby, for himself, his heirs, executors and administrators, covenant with the said C. D., his heirs, executors and administrators, that he, the said E. F., his heirs, executors or administrators, shall and will well and truly pay to the said A. B., his executors or administrators, the aforesaid sum of $, residue of the purchase money aforesaid, and all the interest thereon now or hereafter to become due, by the instalments and at the times mentioned and provided therefor in and by the said recited articles of agreement, and therefrom shall and will indemnify and forever save harmless the said C. D., his heirs, executors and administrators, and his and their goods and chattels, lands and tenements, by these presents.

In witness whereof the said parties to these presents have hereunto set their hands and seals.

Signed, sealed and delivered
in the presence of C. D. [L.S.]
W. W. E. F. [L.S.]

Assignment of a Bond by Endorsement.

Know all men by these presents, that for and in consideration of the sum of $ lawful money of Canada, by E. F., of, etc., to the within-mentioned obligee, C. D., in hand well and truly paid at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, he, the said C. D., hath bargained, sold, assigned, transferred and set over, and by these presents doth bargain, sell, assign, transfer and set over, unto the said E. F., his executors, administrators and assigns, the within-written bond or obligation, and all principal and interest money thereby secured and now due or hereafter to become due thereon, and all benefit and advantage whatever to be had, made or obtained by virtue thereof, and all the right, title, interest, property, claim and demand whatsoever, both at law and in equity, of him, the said C. D., of, in, to or out of the said bond and moneys, together with the said bond. To have, hold, receive and enjoy the said bond and moneys unto the said E. F., his executors, administrators and assigns, from henceforth, for his and their own use and benefit forever; And the said C. D. doth hereby make, constitute and appoint, and in his place and stead put and place the said E. F., his executors, administrators and assigns, the true and lawful attorney and attorneys irrevocable of him, the said C. D., in his name, but to and for the sole use and benefit of the said E. F., his executors, administrators and assigns, to ask, demand and receive of and from the within-named A. B., the obligor in the within-written bond or obligation named, his heirs, executors, administrators or assigns, all such principal and interest moneys as now are or shall from time to time or at any time hereafter be due upon the said bond, and to sue and prosecute any action, suit, judgment, or execution thereupon, and to acknowledge, make and give full satisfaction, receipts, releases and discharges for all moneys secured by the said bond and now due or at any time hereafter growing due thereon, and generally to do all and every such further and other lawful acts and things, as

well for the recovering and receiving as also for the releasing and discharging of all and singular the said hereby assigned bond, moneys and premises, as fully and effectually to all intents and purposes as he, the said C. D., his executors, administrators or assigns, could or might do if personally present and doing the same. And the said C. D. doth hereby, for himself, his executors and administrators, covenant and agree with the said E. F., his executors, administrators and assigns, to ratify, allow and confirm all and whatsoever the said E. F., his executors, administrators or assigns, shall lawfully do or cause to be done in or about the premises by virtue of these presents. And the said C. D., for himself, his executors and administrators, doth further covenant, promise and agree to and with the said E. F., his executors, administrators and assigns, by these presents, in manner following, that is to say: that the within mentioned sum of $ remains justly due and owing upon the said bond, and that he, the said C. D., hath not received or discharged all or any of the said moneys due or to grow due on the said bond, nor shall or will release, non-suit vacate or disavow any suit or other legal proceedings to be had, made or prosecuted by virtue of these presents, for the suing for, recovering, releasing or discharging of the said moneys or any of them, without the license of the said E. F., his executors, administrators or assigns, first had and obtained in writing, nor shall or will revoke, invalidate, hinder, or make void these presents, or any authority or power hereby given, without such license as aforesaid.

In witness whereof the said C. D. hath hereunto set his hand and seal the day of , 19 .

Signed, etc., C. D. [L.S.]
W. W.

Assignment of Bond by Endorsement.

(Concise Form.)

Know all men by these presents, that I, A. B., of the of in the County of and Province of Ontario, in consideration of the sum of of lawful money of Canada to me in hand paid by C. D., of, etc., at or before the sealing of these presents (the receipt whereof is hereby acknowledged), have sold, assigned, transferred and set over, and by these presents doth sell, assign, transfer and set over unto the said C. D., his executors and assigns, the within bond or obligation, and all principal and interest thereby secured, and now due, or hereafter to become due thereon, and all benefit and advantage whatever to be had, made or obtained by virtue thereof, and all the right, title, interest, claim, property, and demand whatsoever of me the said A. B., of, into or out of the said bond and moneys, together with the said bond. To have, hold, receive and enjoy the said bond and moneys unto the said C. D., his executors, administrators and assigns, from henceforth for his and their own use and benefit for ever.

In witness whereof, I have hereunto set my hand and seal, this day of , 19 .

Signed, sealed and delivered A. B.
in the presence of
Y. Z.

Assignment (Ontario Crown Lands.)

Know all men by these presents, that I, A. B., of the of , in the County of and Province of Ontario. for and in consideration of the sum of $, of lawful money of the said Province, to me in hand paid by C. D., of the of , in the County of and Province aforesaid, at or before the date hereof, (the receipt whereof I do hereby acknowledge), have bargained, sold, assigned, transferred and set over, and by these presents do bargain, sell, assign, transfer and set over to the said C. D., his heirs and assigns, all my estate, title, interest, claim and demand whatsoever, both at law and in equity, of, in and to that certain parcel or tract of land and premises situate, lying and being in the Township of , in the County of and Province aforesaid, containing by admeasurement acres, be the same more or less, being composed of Lot number in the Concession of the Township of aforesaid [insert if necessary, "subject to the conditions, as to settlement and otherwise, of the Crown Lands Department, which are to be performed."]

To have and to hold the same with all and every the benefit that may or can be derived from the said acres of land, unto the said C. D., his heirs and assigns forever.

In witness whereof, I have hereunto set my hand and seal, this day of , 19 .

Signed, sealed and delivered
in the presence of A. B. [L.S.]
Y. Z.

Affidavit of Execution.

County of , to wit: I, Y. Z., of the Township of in the County of , make oath and say: That I was personally present and did see the within named A. B. duly sign and seal, and as his act and deed deliver, the within Assignment on the day of the date thereof, and that I, this deponent, am a subscribing witness thereto.

Sworn before me at ,
this day of 19 Y. Z.
A. B.
A Commissioner for taking affidavits
in and for said County.

Assignment of Lease.

This Indenture made the day of , one thousand nine hundred and , Between A. B., of, etc., of the first part, and C. D., of, etc., of the second part. Whereas, by an Indenture of Lease, bearing date on or about the day of , and made between J. K., of, etc., of the one part, and the said A. B., of the other part, the said J. K. did demise and lease unto the said A. B. the lessee therein named, his executors, administrators and assigns, all and singular that certain parcel or tract of land and premises situate, lying and being, in the, etc. To hold the same,

with the appurtenances, unto the said lessee, his executors, administrators and assigns, from the day of , one thousand nine hundred and , for and during the term of years from thence next ensuing and fully to be complete and ended, at the yearly rent of $, and under and subject to the lessee's covenants and agreements in the said Indenture of Lease reserved and contained.

Now this Indenture Witnesseth, that in consideration of the sum of $, of lawful money of Canada, now paid by the said party of the second part to the said party of the first part (the receipt whereof is hereby acknowledged), he the said party of the first part doth hereby grant, bargain, sell, assign, transfer and set over unto the said party of the second part, his executors, administrators and assigns, All and singular the said parcel or tract of land, and all other the premises comprised in, and demised by, the said hereinbefore in part recited Indenture of Lease, Together with the said Indenture of Lease, and all benefit and advantage to be had or derived therefrom: To have and to hold the same, together with all houses and other buildings, easements, privileges and appurtenances thereunto belonging or in any wise appertaining, unto the said party of the second part, his executors, administrators and assigns, from henceforth for and during all the residue of the said term granted by the said Indenture of Lease, and for all other the estate, term, right of renewal (if any), and other the interest of the said party of the first part therein; Subject to the payment of the rent, and the observance and performance of the lessee's covenants and agreements in the said Indenture of Lease reserved and contained.

And the said party of the first part doth hereby, for himself, his heirs, executors and administrators, covenant, promise and agree, to and with the said party of the second part, his executors, administrators and assigns, in manner following, that is to say:

That notwithstanding any act of the said party of the first part, the said hereinbefore in part recited Indenture of Lease is, at the time of the sealing and delivering of these presents, a good, valid and subsisting lease in the law, and not surrendered, forfeited or become void or voidable; and that the rent and covenants therein reserved and contained have been duly paid and performed by the said party of the first part up to the day of the date hereof.

And that, notwithstanding as aforesaid, the said party of the first part now has in himself good right, full power, and lawful and absolute authority to assign the said lands and premises, in manner aforesaid, and according to the true intent and meaning of these presents.

And that, subject to the said rent, and the lessee's covenants and agreements in the said lease contained, it shall be lawful for the said party of the second part, his executors, administrators and assigns, to enter into and upon and hold and enjoy the said premises for the residue of the term granted by the said Indenture of Lease, and any renewal thereof (if any), for their own use and benefit, without the let, suit, hindrance, interruption or denial of the said party of the first part, his executors, administrators or assigns, or any other persons claiming under him or them, and that free and clear, and freely and clearly acquitted, exonerated, and discharged or otherwise, by and at the expense of the said party of the first part, his heirs, executors and administrators, well and effectually saved, defended and kept harmless, of, from and against all former and other gifts, grants, bargains, sales, leases and other incumbrances

whatsoever, of the said party of the first part, or any person claiming under him, them or any of them.

And that the said party of the first part, his heirs, executors, administrators and assigns and all other persons claiming any interest in the said premises, under him or them, shall and will, from time to time, and at all times hereafter, at the request and cost of the party of the second part, his executors, administrators or assigns, make, do, and execute, or cause and procure to be made, done and executed, all such further assignments and assurances in the law of the said premises for more effectually assigning and assuring the said premises for the residue of the said term, and any renewal thereof (if any), as by the said party of the second part, his executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably advised or required.

And the said party of the second part doth hereby, for himself, his heirs, executors, administrators and assigns, covenant, promise and agree, to and with the said party of the first part, his executors and administrators, that he or they, the said party of the second part, his executors, administrators or assigns, shall and will, from time to time, during all the residue of the said term granted by the said Indenture of Lease, pay the rent, and perform the lessee's covenants and agreements therein respectively reserved and contained, and indemnify and save harmless the said party of the first part, his heirs, executors and administrators therefrom, and from all actions, suits, costs, losses, charges, damages, and expenses, in respect thereof.

In witness whereof, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed and delivered
in the presence of A. B. [L.S.]
Y. Z. C. D. [L.S.]

Received, on the date hereof, the sum of $ being the full consideration above mentioned.

Witness, A. B.
Y. Z.

Assignment of Lease.

(Shorter Form.)

This Indenture, made the day of , one thousand nine hundred and , Between A. B., of, etc., of the first part, and C. D., of, etc., of the second part, Witnesseth, that in consideration of the sum of $ now paid to the said party of the first part, the receipt whereof is hereby acknowledged, he the said party of the first part, doth hereby assign unto the said party of the second part, his executors, administrators and assigns, All and singular the premises comprised in and demised by a certain Indenture of Lease bearing date the day of , one thousand nine hundred and , and made between, etc., which said premises are more particularly known and described as follows, that is to say: All and singular that certain parcel or tract of land and premises situate, lying, and being, etc., together with the appurtenances, To hold the same unto the said party of the second part, his executors, administrators and assigns, henceforth for and during the residue of the term of years from the day of 19 , thereby

granted, and for all other the estate, term, and interest (if any) of the said party of the first part therein. Subject to the payment of the rent and the performance of the lessee's covenants and agreements in the said Indenture of Lease reserved and contained.

And the said party of the first part, for himself, his heirs, executors, and administrators, doth hereby covenant with the said party of the second part, his executors, administrators and assigns, that notwithstanding any act of the said party of the first part, he hath now power to assign the said premises in manner aforesaid. And that subject to the payment of the said rent, and the performance of the said lessee's covenants, it shall be lawful for the said party of the second part, his executors, administrators and assigns, peaceably and quietly to hold and enjoy, the said premises hereby assigned during the residue of the term granted by the said Indenture of Lease, without any interruption by the said party of the first part, or any other persons claiming under him, free from all charges and incumbrances whatsoever of him the said party of the first part. And that he, the said party of the first part, and all persons lawfully claiming under him will, at all times hereafter, at the request and costs of the said party of the second part, his executors, administrators and assigns, assign and confirm to him and them the said premises for the residue of the said term as the said party of the second part, his executors, administrators or assigns, shall direct.

And the said party of the second part, for himself, his heirs, executors and administrators, doth hereby covenant with the said party of the first part, his executors and administrators, that he, the said party of the second part, his executors, administrators or assigns, will, from time to time, pay the rent and perform the lessee's covenants in the said Indenture of Lease contained, and indemnify and save harmless the said party of the first part, his heirs, executors and administrators, from all losses and expenses in respect thereof.

In witness whereof, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed and delivered
in the presence of A. B. [L.S.]
Y. Z. C. D. [L.S.]

Assignment of Lease by Administrator.

Know all men by these presents, that I, A. B., of, etc., administrator of all and singular the goods and chattels, rights and credits, of the within-named C. D. deceased, for and in consideration of the sum of $, lawful money of Canada, to me in hand well and truly paid by E. F., of, etc., at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained, sold, assigned, transferred and set over, and by these presents do bargain, sell, assign, transfer, and set over, unto the said E. F., his executors, administrators and assigns, all and singular the parcel or tract of land and premises comprised in the within-written Indenture of Lease, and all the estate, right, title and interest, which I, the said A. B., as administrator of the said C. D. as aforesaid, or otherwise, now have, or at any time hereafter shall or may have, claim, challenge or demand, of, in, or to, all or any of the said premises, by virtue of the said Indenture of Lease or otherwise, as administrator of the said C. D. To have and to hold the said parcel or tract of land, and all and singular other the premises, with

their and every of their appurtenances, unto the said E. F., his executors, administrators and assigns, for and during all the rest, residue, and remainder yet to come and unexpired, of the within-mentioned term of years, subject, nevertheless, to the yearly rent of $ in and by the said Indenture of Lease reserved and contained, and to become due and payable, and to all and every the covenants, clauses, provisoes and agreements therein contained. And I, the said A. B., for myself, my heirs, executors and administrators, do hereby covenant and declare to and with the said E. F., his executors, administrators and assigns, that I, the said A. B., have not at any time heretofore made, done, committed, or executed, or wittingly or willingly permitted or suffered, any act, deed, matter, or thing whatsoever, whereby or wherewith, or by means whereof, the said parcel or tract of land and premises hereby assigned, are, is, can, shall, or may be any ways impeached, charged, affected, or incumbered in title, estate or otherwise, howsoever.

In witness whereof, I, the said A. B., have hereunto set my hand and seal the day of , 19 .

Signed, etc., A. B. [L.S.

Assignment from Trader to secure Debt.

This Indenture, made the day of , one thousand nine hundred and , Between A. B., of, etc., of the first part, C. D., wife of the said A. B., of the second part, and E. F., of, etc., of the third part.

Whereas, the said party of the first part is justly and truly indebted unto the said party of the thirdl part in the sum of or thereabouts, and hath agreed to execute unto the said party of the third part an assignment of all his estate and interest in the real and personal estate and effects hereinafter mentioned, for the purpose of paying thereout or securing the payment of such indebtedness.

Now this Indenture witnesseth, that in pursuance of the said agreement, and in consideration of the sum of one dollar of lawful money of Canada, to the said party of the first part paid by the said party of the third part, at or before the execution of these presents (the receipt whereof is hereby acknowledged), he, the said party of the first part, hath granted, bargained, sold, released, conveyed, assigned, transferred, and assured, and by these presents, Doth grant, bargain, sell, release, convey, assign, transfer and assure unto the said party of the third part, his heirs, executors, administrators and assigns, All and singular the real estate specified in the Schedule to these presents marked A, and all the household goods, books, credits, furniture, stock in trade, bonds, bills, notes, books of account and securities for money, and all other the personal estate and effects, now belonging, due, or owing to him the said party of the first part, specified in the Schedule to these presents, marked B; the greater part of which are now in and upon the premises upon which the said party of the first part now carries on his said business, and which said goods are forthwith, upon the execution of these presents, to be delivered into the possession of the said party of the third part, or his agent or agents in that behalf; and all reversions, remainders, rents, issues and profits, and all the right, title, interest, trust, possession, property, claim and demand whatsoever, at law or in equity, of him the said party of the first part, of, in, to, out of, or upon the same

real and personal estate, goods, chattels, effects and property, respectively. Together with the appurtenances, and together with all books, writings, deeds, bills, notes and receipts, papers and vouchers, touching or concerning the said premises hereby assigned, or any part thereof.

To have and to hold, receive, take, and enjoy, the said real and personal estate, goods, chattels, stocks, moneys, credits, bonds, bills, notes, securities for money, and all and singular other the premises hereby conveyed and assigned, or intended so to be, unto the said party of the third part, his heirs, executors, administrators and assigns, henceforth forever, to and for his and their sole and only use, and as and for his and their own proper goods, chattels, moneys and effects absolutely.

Subject nevertheless, and to and for the intents and purposes following, that is to say:

That the said party of the third part, or his agent or agents in that behalf, do and shall with all convenient speed sell and dispose of the said real and personal estate, stock, chattels and effects, either together or in parcels, and either by public auction or private contract, for the best price or prices that can be reasonably obtained for the same, and either for ready money or for credit or otherwise, as shall be deemed most beneficial, the receipts of the said party of the third part being sufficient discharges for the same; and do and shall receive, collect and get in all and singular the credits and sums of money hereby assigned or intended so to be, and apply the said moneys to arise by such sale or sales, and to be received or collected as aforesaid, after payment of all costs, charges and expenses of these presents, and incidental thereto, and in carrying out the purposes thereof, or otherwise in relation thereto, in and towards the payment and liquidation in full of the said indebtedness of the said party of the first part to the said party of the third part, and after such payment do and shall pay the residue and surplus, if any, to the said party of the first part, his executors, administrators or assigns, or as he or they shall direct.

And for the better carrying out of these presents, the said party of the first part, doth hereby nominate and appoint the said party of the third part, his executors, administrators and assigns, the true and lawful attorney and attorneys of him the said party of the first part, for him and in his name to do, perform, and execute all such acts, deeds, matters, and things whatsoever in relation to all and singular the real and personal estate and effects and premises hereby assigned as aforesaid, as the said party of the third part may deem necessary for more effectually carrying into effect the true intent and meaning hereof; and that for the purposes aforesaid it shall be lawful for the said party of the third part, his servants and agents, to continue in and to occupy the said premises now in the occupation of the said party of the first part, until the trusts of this assignment are fully executed.

Provided also, that any collateral or other securities, by way of judgments or otherwise, which the said party of the third part now holds against the said party of the first part in respect of his said indebtedness or any part thereof, shall not be prejudiced or affected by this assignment, or otherwise than by payment of such indebtedness out of the proceeds to arise hereunder.

And provided, further, that the said party of the third part shall not be answerable or chargeable as implied trustee hereunder, except for wilful neglect or default.

And the said party of the second part, wife of the said party of the first part, in consideration of one dollar to her paid by the said party of the third part, hereby releases unto the said party of the third part all dower, and right or title to dower, in the said lands hereby conveyed and every part thereof.

In witness whereof, the said parties to these presents have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered
in the presence of
Y. Z.

A. B. [L.S.]
C. D. [L.S.]
E. F. [L.S.]

Assignment of Judgment.

This Indenture, made the day of 19 , Between A. B., of, etc., of the first part, and C. D., of, etc., of the second part.

Whereas, the said party of the first part, on or about the day of , one thousand nine hundred and , recovered a judgment in the Court of , for Ontario, at Toronto, for the sum of $ against .

And whereas, the said party of the first part hath agreed to assign the said judgment, and all benefit to arise therefrom, either at law or in equity, unto the said party of the second part, in manner hereinafter expressed.

Now this Indenture witnesseth, that in pursuance of the said agreement, and in consideration of the sum of $, of lawful money of Canada, to the said party of the first part in hand paid by the said party of the second part, at or before the execution hereof, the receipt whereof is hereby acknowledged, he the said party of the first part, Hath bargained, sold and assigned, and by these presents Doth bargain, sell and assign, unto the said party of the second part, his executors, administrators and assigns, All that the said hereinbefore mentioned judgment, and all benefit to be derived therefrom, either at law or in equity, or otherwise howsoever.

To hold, receive and take the same, and all benefit and advantage thereof, to and for his and their own proper use, and as and for his and their own proper moneys and effects, absolutely.

And the said party of the first part hereby constitutes and appoints the said party of the second part, his executors and administrators, to be his true and lawful attorney and attorneys, at the proper costs and charges of the said party of the second part, his executors and administrators, to take and prosecute all and every remedy or proceeding at law or in equity, which the said party of the second part, his executors or administrators, shall hereafter consider advisable in reference to the said judgment, the said party of the second part, for himself, his heirs, executors and administrators, hereby agreeing to indemnify and save harmless the said party of the first part, his heirs, executors and administrators, of and from all damages, costs, charges and expenses in respect thereof.

In witness whereof, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed and delivered
in the presence of
Y. Z.

A. B. [L.S.]
C. D. [L.S.]

Assignment of Mortgage.

This Indenture, made the day of , one thousand nine hundred and . Between A. B., of the , in the County of and Province of Ontario, of the first part, and C. D., of the , in the County of and Province aforesaid, of the second part.

Whereas, by an Indenture of Mortgage bearing date the day of , one thousand nine hundred and , and made between E. F., of, etc., of the first part, and the said A. B. of the second part, it is witnessed, that in consideration of the sum of $, of lawful money of Canada, to him the said E. F., paid by the said A. B., He, the said E. F., did grant, bargain, sell, alien, release, enfeoff, convey and confirm unto the said A. B., his heirs and assigns, all and singular that certain parcel or tract of land and premises situate, lying and being in the, etc.; To have and to hold the same unto the said A. B., his heirs and assigns, forever, Subject, nevertheless, to a proviso therein contained for redemption upon payment by the said E. F. to the said A. B. of the sum of $ of lawful money aforesaid and interest, on the day and time and in manner therein mentioned.

And whereas, the sum of $ is now owing to the said A. B. on the said in part recited security, and the said A. B. hath agreed to sell and assign the said lands and premises, and all the moneys thereby secured, as well as the said Indenture of Mortgage, and all his interest therein, unto the said C. D. for the consideration hereinafter mentioned.

Now this Indenture witnesseth, that the said party of the first part to this Indenture, in consideration of the sum of $, of lawful money of Canada aforesaid to him by the said party of the second part to this Indenture in hand paid, the receipt whereof he, the said party of the first part, doth hereby acknowledge, and of and from the same, and every part thereof, acquit, release and discharge the said party of the second part, his heirs, executors, administrators and assigns, forever; He, the said party of the first part, hath bargained, sold, assigned, transferred, and set over to the said party of the second part, his heirs, executors, administrators and assigns, the said principal sum of $, so due and owing to him as aforesaid, and secured by the hereinbefore in part recited Indenture of Mortgage, and also all future and other sums of money which from henceforth shall or may grow due by way of interest for or on account of the said principal sum of $. And also the said messuages and tenements, lands and premises, comprised in the said in part recited Indenture of Mortgage, and all the estate, right, title, interest, claim, and demand whatsoever of him, the said party of the first part, of, in, to, or out of the said premises or any part thereof, or the said principal and interest monies.

To have and to hold, receive and take, the said principal sum of $ and interest, and all and singular other the premises hereby assigned, and every part thereof, unto the said party of the second part, his heirs, executors, administrators or assigns, to and for his and their own proper moneys, securities, and effects absolutely; And, for the more effectually enabling the said party of the second part, his executors, administrators and assigns, to recover and receive and said principal sum of $ and interest, and to have and take the benefit of the security for the same, he, the said party of the first part, hath made, ordained, constituted, and appointed the said party of the second part, his executors, administrators and

assigns, his true and lawful attorneys, to ask, demand, sue for, recover and receive from the said E. F., his executors, administrators or assigns, or any other person or persons liable to pay the same, the said sum of $ and interest, and to commence and prosecute any action, suit or other proceeding, either at law or in equity, for the recovery of the same, and on receipt of the said principal moneys and interest, or any part thereof, to give sufficient receipts and discharges; And to make, do and execute all or any other act, matter or thing, for recovering and receiving the said principal sum and interest; And the said party hereto of the first part, for himself, his heirs, executors, administrators and assigns, covenants with the party hereto of the second part, his executors, administrators and assigns, that the said principal sum of $ is now owing to him, the said party hereto of the first part, under the said security, and that he has done no act or thing whereby the said principal sum of $ is or has been received, released, discharged, or incumbered.

In witness whereof, the parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed and delivered
in the presence of
Y. Z.

A. B. [L.S.]
C. D. [L.S.]

Assignment of Mortgage.

(By Indorsement.)

This Indenture, made the day of , one thousand nine hundred and , Between C. D. within named, of the first part, and E. F., of, etc., of the second part, Witnesseth, that the party of the first part, in consideration of the sum of $, to him paid by the party of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained, sold and assigned, and by these presents doth grant, bargain, sell and assign, to the party of the second part, his heirs, executors, administrators and assigns, all the right title, interest, claim and demand whatsoever of him, the party of the first part, of, in and to the lands and tenements mentioned and described in the within mortgage, And also to all sum and sums of money secured and payable thereby and now remaining unpaid, To have and to hold the same, and to ask, demand, sue for, and recover the same, as fully to all intents and purposes as he, the party of the first part, now holds and is entitled to the same.

In Witness whereof, the parties to these presents have hereto set their hands and seals, the day and year first above written.

Signed, sealed and delivered
in the presence of
Y. Z.

C. D. [L.S.]

Assignment of Debts.

This Indenture, made the day of , 19 , Between A. B., of, etc., of the one part, and C. D., of, etc., of the other part:

Whereas, the said A. B. hath, for some time past, carried on the business of a Tailor, at , aforesaid, and in the course of such business the several persons whose names are mentioned in the schedule hereunder written, have become indebted to him in the several sums of money set opposite to their respective names in such schedule, and he hath contracted with the said C. D. for the absolute sale of the same debts for the sum of $.

Now this Indenture witnesseth that in consideration of $ to the said A. B., paid by the said C. D., on the execution hereof, (the receipt whereof is hereby acknowledged), He, the said A. B. doth hereby assign and transfer unto the said C. D., his executors, administrators and assigns, All and singular the several debts and sums of money mentioned in the schedule hereunder written, which are now due and owing to the said A. B. from the several persons whose names are mentioned in the same schedule. And all the right and interest, claim and demand whatsoever of the said A. B., to and in the same debts and premises. To have, receive and take the said debts, sums of money and premises hereby assigned unto and to the said C. D., his executors, administrators and assigns, for his and their own absolute use and benefit. And the said A. B. doth hereby absolutely and irrevocably constitute and appoint the said C. D., his executors, administrators and assigns, the true and lawful attorney and attorneys, of him the said A. B., his executors or administrators in his or their name or names, or otherwise to receive; and if the said C. D., his executors, administrators or assigns, shall deem it expedient so to do, to sue for and recover the said debts, sums of money and premises hereby assigned, or any of them; and when the same respectively, or any part thereof, shall be received, to give discharges for the same. And generally to perform all acts whatsoever which shall be requisite in order to give complete effect to the assignment hereby made, and to appoint a substitute or substitutes for all, or any of the purposes aforesaid, and such substitution at pleasure to revoke; the said A. B. hereby ratifying and confirming and agreeing to ratify and confirm whatsoever his said attorney or attorneys, or his or their substitute or substitutes, shall lawfully do in the premises. And the said A. B. doth hereby for himself, his heirs, executors and administrators, covenant with the said C. D., his executors, administrators and assigns, that the said several debts hereby assigned, or intended so to be, are now due and owing to him, and that he, his executors or administrators will not at any time hereafter revoke the power or authority hereinbefore contained, or receive, compound for or discharge the said several debts, or any, or either of them, or any part thereof respectively, or release or interfere in any action or suit which shall or may be commenced in his, their, or either of their names, in pursuance of these presents, for the recovery of the same, without the consent in writing of the said C. D., his executors, administrators or assigns, but will at all times avow, justify and confirm all such matters and things, process and proceedings, as the said C. D., his executors, administrators or assigns, or any other person or persons, by or through his or their direction or procurement, shall in pursuance of the power hereinbefore contained, do, commence, bring or prosecute upon, or by reason or means of the said debts and premises; and further that he, the said A. B., his executors and administrators, will at all times hereafter on the request, and at the costs of the said C. D., his executors, administrators or assigns, make, do and execute all such further assignments, letters of attorney, acts, deeds, matters and things for the more effectually assigning and assuring unto the said C. D., his executors, administrators and assigns, the said several debts and premises, and enabling him or them to recover and receive the same respectively, for his and their own absolute use and benefit in manner aforesaid, according to the true intent and meaning of these presents, as by the said C. D., his executors, administrators or assigns, shall be reasonably required. And the said C. D. doth hereby for himself, his heirs, executors, administrators and assigns, covenant with the said

A. B., his executors and administrators, that he, the said C. D., his executors, administrators or assigns, will at all times hereafter save harmless, and keep indemnified the said A. B., his executors or administrators, from and against all losses, costs, charges, damages and expenses, by reason of his or their name or names being used in any action, suit or other proceeding, which shall or may be brought or instituted by the said C. D., his executors, administrators or assigns, or his or their substitute or substitutes under or by virtue of the power or authority in that behalf hereinbefore contained, or otherwise by reason or in consequence of the same power or authority, or in relation thereunto.

In witness, etc.,

Signed, etc., A. B. [L.S.]

Y. Z. C. D. [L.S.]

The Schedule to which the above-written Indenture refers.

Name of Debtor.	Amount of Debt.	Name of Debtor.	Amount of debt.
John Smith	$100 00	Henry Bastion	$118 25
William Jones	$150 00	&c.	
John Jacobs	$200 00	&c.	

Received on the day of the date of the above-written Indenture of the above named C. D., the sum of $, being the consideration money above mentioned to be paid by him to me.

Witness, A. B.

Y. Z.

NOTE.—In all cases, where the consideration for a deed is money paid by the one party to the other, a receipt, in the above form, should be written upon the instrument, and signed and witnessed.

Another Form.

Know all men by these presents, that I, A. B., of, etc., in consideration of the sum of $ paid to me by C. D., of etc., (the receipt of which is hereby acknowledged) do hereby sell, assign and transfer, unto the said C. D., his executors, administrators and assigns, all my claims and demands against E. F., of, etc., for debt, due to me and all actions against the said E. F., now pending in my favour and all causes of action whatsoever against him.

And I do hereby nominate and appoint the said C. D., his executors, administrators and assigns, my attorney or attorneys irrevocable, and do give him and them full power and authority to institute any suit or suits against the said E. F., and to prosecute the same, and any suit or suits which are now pending, for any cause or causes of action in favour of me, against the said E. F., to final judgment and execution; and such execution to cause to be satisfied by levying the same on any real or personal estate of the said E. F. in due course of law, and the proceeds thereof to take and apply to his or their own use; but it is hereby expressly stipulated that all such acts and proceedings are to be at the proper costs and charges of the said C. D., his executors, administrators or assigns, without expense to me.

And I do further empower the said C. D., his executors, administrators and assigns, to appoint such substitute or substitutes as he or they shall see fit, to carry into effect the objects and purposes of this authority, or any of them, and the same to revoke from time to time, at his or their pleasure, I, the said A. B., hereby ratifying and confirming all the lawful acts of the said C. D., his executors, administrators and assigns, in pursuance of the foregoing authority.

Witness my hand and seal this day of , 19 .

Signed, sealed and delivered
in the presence of A. B. [L.S.]
Y. Z.

Assignment of a Policy of Fire Insurance by Indorsement.

Know all men by these presents, that I, the within named A. B., in consideration of the sum of $ to me paid by C. D., of, etc., (the receipt whereof is hereby acknowledged) have assigned and transferred, and by these presents do absolutely assign and transfer unto the said C. D., his executors, administrators and assigns, All my right, title and interest to and in the within policy of insurance, with full power to use my name so far as may be necessary to enable him fully to avail himself of the interest herein assigned, or hereby intended to be assigned, but at his own costs and charges.

As witness my hand and seal, this day of 19 .

in the presence of A. B. [L.S.]
Y. Z.

Assignment by Bill of Sale of Goods.

This Indenture made the day of 19 . Between A. B., of, etc., (vendor), of the one part, and C. D., of, etc., (purchaser), of the other part.

Whereas, the said A. B. hath contracted with the said C. D. for the absolute sale to him of the goods, chattels, furniture and effects comprised in the schedule hereunder written or hereto annexed, and now on the premises situate at, etc., (describe the place), at or for the price or sum of $. Now this Indenture witnesseth, that in pursuance of the aforesaid agreement, and in consideration of the sum of $, now paid to the said A. B. by the said C. D., the receipt whereof is hereby acknowledged, He, the said A. B., by these presents doth assign and set over unto the said C. D., his executors, administrators and assigns, All and singular the household furniture, goods, chattels and effects comprised and set forth in the schedule hereunder written or hereunto annexed, and all the advantages thereof, and all the right, title, interest, possibility, property, claim and demand of him, the said A. B., into, out of or upon the said furniture, goods, chattels, and effects, and every part thereof. To have, hold, receive and take the said furniture, goods, chattels and effects hereby assigned or expressed, or intended so to be, unto the said C. D., his executors, administrators and assigns absolutely. And the said A. B. doth hereby for himself, his heirs, executors and administrators covenant with the said C. D., his executors, administrators and assigns, that he, the said A. B., now hath in himself absolute authority to assign the several premises hereby assigned or expressed and intended so to be, unto the said C. D., his executors, administrators and assigns, in manner aforesaid: And that the said A. B., his executors and administrators, and

all persons claiming under him and them, shall at any time or times hereafter, on the request, and at the costs and charges of the said C. D., his executors, administrators and assigns, do and execute all such acts and assurances for more effectually assuring the said premises hereby assigned or expressed, and intended so to be, unto the said C. D., his executors, administrators and assigns, and placing him and them in possession of the same in manner aforesaid and according to the true intent and meaning of these presents, as by him or them, or his or their counsel in the law shall be devised, advised and required.

In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered
in the presence of A. B. [L.S.].
Y. Z.

The Schedule referred to in the above written Indenture.

(Here set out a full and particular description of the goods—they must be described with such detail as to render them easy of identification.)

Another Form.

This Indenture, made day of 19 , Between A. B., of, etc., of the first part, and C. D., of, etc., of the second part.

Whereas, the said party of the first part is possessed of the chattels hereinafter set forth and enumerated and hath contracted with the said party of the second part, for the sale to him of the same, at the sum of $

Now this Indenture witnesseth, that in pursuance of the said agreement, and in consideration of the sum of $ of lawful money of Canada, now paid by the said party of the second part to the said party of the first part, (the receipt whereof is hereby acknowledged), He, the said party of the first part, hath bargained, sold, assigned, transferred and set over, and by these presents doth bargain, sell, assign, transfer, and set over unto the said party of the second part, his executors, administrators and assigns, all those the said chattels and effects following, that is to say, (here enumerate the several articles intended to be assigned with such certainty as that they may be easily identified). And all the right, title, interest, property, claim and demand whatsoever, both at law and in equity or otherwise howsoever, of him the said party of the first part, of, in, to and out of the same, and every part thereof.

To have and to hold the said hereinbefore assigned premises and every part thereof, with the appurtenances, and all the right, title and interest of the said party of the first part therein as aforesaid, unto and to the use of the said party of the second part, his executors, administrators and assigns to and for his and their sole and only use forever.

And the said party of the first part doth hereby, for himself, his heirs, executors and administrators, covenant, promise and agree with the said party of the second part, his executors and administrators, in manner following, that is to say:

That he, the said party of the first part, is now rightfully and absolutely possessed of and entitled to the said hereby assigned premises and every part thereof, and that the said party of the first part now has in himself good right to assign the same unto the said party of the second part, his executors, administrators and assigns,

in manner aforesaid and according to the true intent and meaning of these presents; And that the said party hereto of the second part, his executors, administrators and assigns, shall and may from time to time and at all times hereafter peaceably and quietly have, hold, possess and enjoy the said hereby assigned premises and every part thereof to and for his and their own use and benefit, without any manner of hindrance, interruption, molestation, claim or demand whatsoever, of, from or by him, the said party of the first part, or any person or persons whomsoever; And that free and clear and freely and absolutely released and discharged or otherwise at the costs of the said party of the first part, effectually indemnified from and against all former and other bargains, sales, gifts, grants, titles, charges and incumbrances whatsoever; And, moreover, that he, the said party of the first part, and all persons rightfully claiming or to claim any estate, right, title or interest of, in or to the said hereby assigned premises or any part thereof, shall and will from time to time and at all times hereafter, upon every reasonable request of the said party of the second part, his executors, administrators or assigns, but at the costs and charges of the said party of the second part, make, do and execute or cause to be made, done and executed all such further acts, deeds, and assurances for the more effectually assigning and assuring the said hereby assigned premises unto the said party of the second part, his executors, administrators and assigns, in manner aforesaid and according to the true intent and meaning of these presents, as by the said party of the second part, his executors, administrators or assigns, or his or their counsel, shall be reasonably advised and required.

In witness, etc. A. B. [L.S.]

AUCTIONS AND AUCTIONEERS.

An auctioneer is a person who is authorized to sell goods or merchandise or lands at public auction or sale for a recompense, or (as it is commonly called) a commission. He cannot buy: he can only sell. Primarily, he is deemed in law the agent of the seller of the goods only; but for certain purposes he is also deemed to be the agent of both buyer and seller. Thus, by knocking down the goods sold to the person who is the highest bidder, and inserting his name in his book or memorandum, he is considered as the agent of both parties; and the memorandum so made by him will bind both parties, as being a memorandum sufficiently signed by an agent of both parties within the Statute of Frauds before referred to in the chapter on Agreements. Before the knocking down of the goods, he is, indeed, exclusively the agent of the seller; but after the knocking down, he becomes also the agent of the purchaser, and the latter is presumed in law to give him authority to write down his name as purchaser. An auctioneer has also a special property in the goods sold by him, and a lien on the same and on the proceeds thereof, for his commission; and he may sue the purchaser at the sale in his own name, as well as in the name of his principal. An auctioneer can sell only for ready money, unless there be some usage of trade to sell on credit, or unless the terms of sale are on credit.

Auction sales should be conducted with the strictest fairness, and due notice of the sale ought to be given. Every bona fide bid should be taken down. Before proceeding to sell, the conditions of sale ought to be read or announced. Usually these conditions are written or printed; but the verbal declarations of the auctioneer at the sale, where they do not contradict the written conditions, are binding.

Although the entry by the auctioneer in his book is a sufficient memorandum to bind both seller and buyer, yet in every sale of land it is usual to have agreements of sale and purchase signed by auctioneer and purchaser.

Forms of such agreements, and ordinary conditions of sale, are subjoined. It is proper to have the written and signed agreement endorsed on, or attached to, the particulars and conditions of sale.

In Ontario, under The Consolidated Municipal Act, 3 Ed. VII., c. 19, s. 583, by-laws may be passed by the councils of counties and towns separated from the county for municipal purposes, and of cities having less than 100,000 inhabitants, and by the Boards of Commissioners of Police in cities having 100,000 inhabitants or more, for licensing, regulating and governing auctioneers and other persons selling or putting up for sale goods, wares, merchandise or effects by public auction, and for prohibiting the granting of such license to any applicant who is not of good character, or whose premises are not suitable for the business, or upon residential or other streets in which in the opinion of the council it is not desirable that the business of auctioneers should be carried on, such qualifications to be determined by such means as the by-law provides; and for determining the time such license shall be in force.

Sales of land in Ontario must be without reserve, unless the contrary is stated in the particulars or conditions of sale. If the vendor, or seller, reserves the right to bid, this fact must be similarly disclosed; otherwise the auctioneer is not at liberty to receive any bid from the vendor, or any agent of his.

In Manitoba, Saskatchewan and Alberta there are similar statutory provisions as to auction sales of goods, but not of land.

In Nova Scotia, under the Municipal Act (R. S. N. S. cap. 70), municipals councils have the power to make by-laws in respect to licensing auctioneers, pedlars, hawkers and traders of goods, with power to discriminate between those who are ratepayers and those who are not, as to the amount of the license fee to be charged, provided such by-law shall not affect the products of the farm, the forest or the sea. The town council of an incorporated town has similar powers under the Towns' Incorporation Act (R. S. N. S. cap. 71), and the city charters of Halifax (1907, s. 487) and Sydney (Acts 1903, s. 368, s-s. 92), make similar provision.

FORMS.

Memorandum to be signed by an Auctioneer, after a Sale of Land.

I hereby acknowledge that A. B. has been this day declared by me the highest bidder, and purchaser of [describe the land] at the sum of $, [or at the sum of $ per acre or foot], and that he has paid into my hands the sum of $ as a deposit, and in part payment of the purchase money, and I hereby agree that the vendor, C. D., shall in all respects fulfil the conditions of sale hereto annexed.

Witness my hand, the day of , 19 .

T. B., Auctioneer.

Memorandum to be signed by Purchaser.

I hereby acknowledge that I have this day purchased at public auction all that [describe the land] for the sum of $, [or for the price of $ per acre or per foot], and have paid into the hands of T. B., the auctioneer, the sum of $ as a deposit, and in part payment of the said purchase money; and I hereby agree to pay the remaining sum of $, unto C. D., the vendor, at , on or before the day of , and in all other respects on my part to fulfil the annexed conditions of sale

Witness my hand, this day of 19 .

A. B.

Conditions of Sale of Goods.

1. The highest bidder to be the purchaser; and if any dispute shall arise as to the last or highest bidder, the property shall be immediately put up again at the former bidding.

2. No person to advance less than $ at a bidding.

3. The purchasers to give in their names, and places of residence (if required), and pay down a deposit of per cent., in part payment of purchase money; in default of which, the lot or lots so purchased will be immediately put up again and re-sold.

4. The lots to be taken away at the buyer's expense, within three days after, and the remainder of the purchase money to be paid on or before delivery.

5. Upon failure of complying with these conditions, the deposit money shall be forfeited: and all lots uncleared within the time aforesaid shall be resold by public auction or private sale, and the deficiency, if any, on such re-sale shall be made good by the defaulter.

Conditions of Sale of Land.

1. The highest bidder shall be declared the purchaser; and if any dispute shall arise as to the last or highest bidder, the property shall be immediately put up again at the former bidding.

2. No person shall advance at any one bidding less than $, or retract his or her bidding; and the vendors, by themselves or their agent, shall be at liberty to bid once for the property.

3. The purchaser shall pay, immediately after the sale, to the vendors' solicitor, a deposit of per cent. in part payment of the purchase money, and sign an agreement for the payment of the remainder on or before the day of , 19 . The premises will be sold subject to all defects or imperfections of title, if any, subsisting before the commencement of the title of the present vendors, and not occasioned by any act done by them or any person claiming under or in trust for them; [and subject also to the several mortgages outstanding appearing on the certificate of the registrar of the county of , which will be produced at the time of sale.]

4. The purchaser shall accept a conveyance from the vendors, to be prepared at his own expense, on payment of the remainder of the purchase money; and possession will be given on completion of

the purchase: from which time the purchaser shall be entitled to the rents and profits. But if, from any cause, the remainder of the purchase money shall not be paid on the day of , 19 , the purchaser shall pay interest for the same at the rate of per cent., from that day to the day of payment; but, nevertheless, this stipulation is without prejudice to the vendors' right of re-sale under the last of these conditions.

5. If any mistake be made in the description of the property, or there be any other error in the particulars of sale, the same shall not annul the sale, but a compensation or equivalent shall be given, or taken, as the case may require, according to the average of the whole purchase money (on such error or mis-statement being proved): such compensation or equivalent to be settled by two referees or their umpire—one referee to be chosen by each party, within ten days after notice given of the error, and the umpire to be chosen by the referees immediately after their appointment.

6. The purchaser shall not be entitled to the production of any title deed other than such as are in the vendors' hands, [or in the hands of the several mortgagees.]

7. Upon failure of complying with the above conditions, the deposit shall be forfeited, and the vendors shall be at full liberty (with or without notice) to re-sell the property by public auction or private sale; and if, on such re-sale, there should be any deficiency, the purchaser shall make good such deficiency to the vendors, together with all expenses attending such re-sale; the same to be recoverable as liquidated damages.

NOTE—Special conditions may be necessary to meet particular cases, but the above conditions will meet ordinary cases. Except in very plain and simple cases, the services of a professional man should be procured.

The Standing Conditions of the High Court of Justice in Ontario, for Sales of Lands.

1. No person shall advance less than $10 at any bidding under $500, nor less than $20 at any bidding over $500; and no person shall retract his bidding.

2. The highest bidder shall be the purchaser, and if any dispute arise as to the last or highest bidder, the property shall be put up at a former bidding.

3. The parties to the suit with the exception of the vendor, and (naming any parties, trustees, agents, or others in a fiduciary situation), shall be at liberty to bid.

4. The purchaser shall, at any time of sale, pay down a deposit in proportion of $10 for every $100 of the purchase money to the vendor, or his solicitor; and shall pay the remainder of the purchase money on the day of next; and upon such payment the purchaser shall be entitled to the conveyance, and to be let into possession; the purchaser at the time of such sale to sign an agreement for the completion of the purchase.

5. The purchaser shall have the conveyance prepared at his own expense, and tender the same for execution.

6. If the purchaser fail to comply with the conditions aforesaid, or any of them, the deposit and all other payments thereon shall be forfeited, and the premises may be re-sold, and the deficiency, if any, by such re-sale, together with all charges attending the same, or occasioned by the defaulter, are to be made good by the defaulter.

BILLS OF EXCHANGE, PROMISSORY NOTES AND CHEQUES.

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. The person who makes the note is called the drawer, or maker; the person to whom it is payable, the payee; the person endorsing it, the endorser, and he to whom the endorser transfers his interest therein by such endorsement, the endorsee. The person in whose possession it is, is called the holder. Minors cannot be parties to a note or bill of exchange.

To constitute a valid promissory note, the following facts are requisite: It must be in writing; the promise to pay must be an absolute, and not a conditional promise; it must promise to pay money; and the amount must be fixed and certain, and payable at a fixed period of time or upon some event which must certainly occur. If no time is fixed in the note for its payment, it is payable on demand; if payable to a fictitious person, it is payable to the bearer. If it bears no date, the time will run from the first day it can be proved by evidence the note was in existence.

No precise form of words is indispensable. Equivalent expressions may be used for both the words "promise" and "pay," if the meaning is preserved; but, to run no risks, it is well to use the common forms and words, which are given hereinafter.

A note signed by more than one person is either joint, or joint and several. If two or more persons desire to become responsible so that one cannot be sued upon it without the other or others, the note should read, "We jointly, but not severally, promise." If each intends to become responsible for the whole debt without regard to any defence the others might have or subsequently acquire to resist payments, it should run thus, "We jointly and severally promise;" the holder may then sue all jointly or each separately, at his election. If the note reads simply, "I promise," etc., and is signed by several makers, it is several as well as joint.

Stamps are no longer necessary to be affixed to a bill or note.

An accommodation note is one upon which the maker receives no consideration, but which he makes for the purpose of lending the payee, or other party, his credit to enable the payee to raise money thereupon. Upon such a note the party for whose accommodation it was made cannot recover from the person thus lending him the use of his name; but if it is endorsed for value by the former to a third person, that third person may recover from the original maker or party lending his name and credit, the amount he has advanced upon it, even though such third person is aware that the transaction was an accommodation. If a person, at the time of taking any note (except an accommodation note), has notice that it is void in the hands of the payee upon any legal grounds, he places himself, by such taking, in precisely the same position as the payee, unless some intermediate endorser or transferor between him and the maker had not such notice or knowledge. If the holder took the note innocently, and for value, and without knowledge of transactions affecting its validity, he may recover upon it, unless, indeed, the note be a forgery, when it is altogether void as to all parties. Various circumstances will render a note void; thus, if obtained by fraud, or founded upon a fraudulent consideration, it is void. So if an unfair advantage is taken of the maker, or the note procured from him when intoxicated. Also, if the consideration is an illegal one, as contrary to general public policy, or statute, as for future illicit intercourse, to bribe a public officer, or for a wager, or gaming debt, or the suppression of criminal proceedings. But a note given for past seduction is good. A material alteration in any part of the note, as in the date, amount, or time of payment discharges all parties not aware of and consenting to such alteration.

By R. S. C. 1906, c. 119, ss. 14, 15, 16, it is provided that "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." An indorsee takes such a note subject to any defence or set-off which would have existed between the original parties. The penalty for knowingly issuing or indorsing an instrument of this kind without these words upon it, is imprisonment

for any term not exceeding a year or a fine not exceeding $200.

Where a note is transferred after it is dishonoured or is overdue, it is taken (even though value be given for it) subject to all equities, or rights of set-off which would attach to it as against the original payee, and the holder can recover no more than the original payee could have recovered, save in the case of accommodation endorsements.

Notes bear interest from date only where it is so expressed on the face of them. Otherwise they bear interest, in most Provinces, from the time action may be brought on them, that is, when they become payable. If payable on demand, or at sight, presentment must be made before interest will run. If interest at a greater rate than the legal rate is agreed to be paid, the rate should be specially mentioned upon their face.

A general endorsement is effected by the endorser's writing his name on the back of the note; this evidences an agreement to pay the note in the event of a refusal by the maker to pay, and of prompt notification thereof to the endorser. A special endorsement is effected by a written direction, upon the face of the note, that payment is to be made to a particular person; as, "Pay to George Brown or order." If the endorser wishes to be free from all liability, he should add to his endorsement the words, "without recourse." A note payable to A. B. without adding the words "or order," or "or bearer," is negotiable and payable to the order of the payee.

The endorsement of a note passes no property, unless the endorser had, at the time, a legal property in it. When payable to a firm or partnership, any member of the firm may endorse it if the firm is continuing, but if the firm has been dissolved each member or his representatives must endorse; if payable to several persons, not partners, the endorsement must be by all of them; upon insolvency of the payee, his assignee is the proper person to endorse, and after his death, his executors or administrators.

By endorsement of a note, the endorser becomes merely security that the maker will pay it when due. If the holder neglects to demand payment, or receives part of the money from the maker, giving further time for the balance, the endorser, unless he has expressly consented, is discharged from all liability. Whatever discharges prior endorsers will also discharge all subsequent endorsers. To hold the endorser, payment of the note must be promptly demanded of the maker when the note is due, if such demand can be

made. Neglect to make any demand will not be excused by the insolvency or death of the maker; if dead, the demand should be made on the executor or administrator, or at the residence of the deceased. If the maker has left the country, demand should be made at his dwelling-house or last place of business.

On all notes save those payable on demand three days (called days of grace) beyond the time appearing on the face of the note are allowed within which payment may be made. These days of grace are reckoned exclusive of the day when the note would otherwise fall due, and without deduction of Sundays or holidays. If the last day falls on a Sunday or other non-juridical day (commonly called a Bank holiday) the note will become due upon the next juridical day. Thus a note due (or of which the last day of grace falls upon the twenty-fifth day of December, is payable, in Canada, on the twenty-sixth, unless the latter day chances to be a Sunday, or other holiday, when it is due upon the twenty-seventh or next juridical day. In computing days of grace, the day of the date of the note is not reckoned. The word "month" in a note or draft means calendar, and not lunar, month; thus, a note at one month, dated the thirty-first day of January, falls due three days after the twenty-eighth day of February, or, in Leap-year, the twenty-ninth.

In Canada, non-juridical days or Bank holidays, are as follows:—Sundays, New Year's Day, Good Friday, Easter Monday, Victoria Day, Labour Day, Christmas Day, the day appointed to celebrate the Birthday of the reigning Sovereign, and any day appointed by proclamation for a public holiday, or for a general fast or thanksgiving throughout the Dominion; and the days next following New Year's Day, Christmas Day, Victoria Day, Dominion Day, and the Birthday of the reigning sovereign when such days respectively fall on Sunday.

In Quebec, in addition to above days, The Epiphany, The Ascension, All Saints Day, and Conception Day. Also in the various Provinces, any day appointed by the Lieutenant-Governor of the Province for a public holiday, or for a public fast or thanksgiving to be observed in the particular Province.

The presentment necessary to charge an endorser must be carefully attended to, both as to place and time, and as to the person to whom presentment must be made. The note must be presented on the very day it falls due. If payable at a bank, and the holder is there on that day until the hour for closing, demanding payment, that will be sufficient to

charge the endorser. If expressed on its face to be payable at a particular bank, or other place, and "not otherwise or elsewhere," presentment must be made there, but if these words be not inserted, presentment to the maker in person at any place will be sufficient to charge him; if no place of payment be named in the note, it must be presented either to the maker personally, or, during business hours, at his usual place of business, or, within reasonable hours, at his dwelling house. If payable by a firm, a presentment to any one partner, or at the firm's usual place of business, is good; but payment of a joint note, not made by partners, must be demanded of all the makers severally. Even though the note has been lost, or mislaid, or accidentally destroyed, the holder must still make a regular and formal demand, tendering a sufficient indemnity if required by the party paying, to protect that party in making the payment. A lost note or draft, not yet due, should be advertised in the public press, to prevent its being transferred to an innocent holder.

The demand must be made upon the last of the days of grace; an earlier demand is of no validity. Notes payable at sight, or on demand, must be presented within a reasonable time, to charge the endorser. The question of what is a reasonable time will be determined by the circumstances of each case.

Where payment is, upon proper presentment, refused, the holder must promptly notify the endorsers, and inform them that he will hold them liable for the payment of the note. Should this be neglected, the endorsers will be no longer liable. In the case of an inland note, a notice, either verbal or written, by the holder personally or by his agent, is sufficient; but in the case of a foreign note, it is necessary (and in both cases it is advisable) to place it in the hands of a Notary Public, inasmuch as the law provides that the protest and certificate of such public officer shall be prima facie evidence of the facts therein contained. He is also responsible to the holder for any neglect in giving the proper notices.

By the Bills of Exchange Act, R. S. C. 1906, c. 119, s. 103, it is provided as follows:—"Notice of the protest or dishonour of any bill payable in Canada, shall notwithstanding anything in this Act 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, in which case such notice shall be sufficiently given if addressed

to him, in due time, at such other place, s.-s. 2. Such notice, so addressed, shall be sufficient, although the place of residence of such party is other than either of the places aforesaid, and 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; s.-s. 3. Such notice shall not be invalid by reason of the fact that the party to whom it is addressed is dead." Should any party, since the date of his signature, and to the knowledge of the holder, have died or become insolvent, the notice should be addressed to his proper representatives, or assignee, if any.

As regards the time within which such notice of dishonour is to be given, the law is as follows:—The notice must be given as soon as the bill is dishonoured, and must be given not later than the next following juridical or business day. If there are several endorsers, each is allowed a day after himself receiving notice, to notify the endorser prior to himself. The notice should in its terms be full and exact, informing the party to whom it is given of the non-payment, and that the party giving it looks to him for payment.

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. R. S. C. 1906, c. 119, s. 17.

The person signing the bill is called the drawer; the person on whom the order is made, the drawee; if the latter, or another person, accepts the bill, he is called the acceptor; the party in whose favour the bill is made, is called the payee; any person who writes his name on the back of it, an endorser; he to whom it is transferred by such writing, the endorsee; and any party in possession of the bill and entitled to receive the money upon it, the holder.

An inland bill is a bill which is, or on the face of it purports to be both drawn and payable within Canada, or drawn within Canada upon some person resident therein; any other bill is a foreign bill. The same principles of law may be said generally to govern foreign and inland bills alike, but one difference is that foreign bills must be protested for non-acceptance, or non-payment, while inland bills need not, except in the Province of Quebec. It should also be observed that the laws and business customs of the foreign

country in which a foreign bill is drawn or payable, or in which the party to be charged resides, may, even in Canadian Courts, regulate certain particulars of the contract, as the time of payment, formalities of protest and of notices, etc.

Foreign bills of exchange sometimes consist of several parts, usually three, supposed to be mailed at different dates, called a set, each part containing a condition that it shall be paid only if the others remain unpaid; the whole set, however, making but one bill. Each part ought to be delivered to the payee. The principles of law already enunciated as applying to promissory notes apply also, in large part, to bills of exchange.

As with regard to promissory notes, no precise form of words is required to constitute a bill of exchange, though generally adopted and recognized forms should be followed. To make a bill negotiable, the words "or order," "or bearer" or other similar words, should appear on its face.

It is safer to present all bills for acceptance, although, unless payable at sight, or at so many days after sight, or after demand, presentment for payment is all that is absolutely necessary, except where a bill expressly stipulates that it shall be presented for acceptance or where it is drawn, payable elsewhere than at the residence or place of business of the drawee, when it must be presented for acceptance before it can be presented for payment. An acceptance of an inland bill must be in writing upon the bill, and should be signed by the acceptor. The mere signature of the acceptor without additional words is sufficient. It may vary the terms of the bill as to place of payment, or even time or amount; but if the acceptance vary from the express terms of the bill, the holder has a right to treat the bill as dishonoured. If he choose to take a qualified or partial acceptance, he should at once notify the other parties. A bill cannot be drawn payable upon a contingency, or condition, but may be so accepted, if the holder is willing.

Should acceptance be refused, the bill should be protested at once for non-acceptance, and the drawer and endorsers notified.

After a bill has been protested for non-acceptance, any person not already a party to the bill may accept it, as it is called, "for honour" or "supra protest," for the honour of the bill generally, or of some particular party to it. This evidences a conditional undertaking to pay the bill if the drawer should not, and may be given where, after the ordin-

ary acceptance, the acceptor becomes insolvent or absconds. Such acceptance enures to the benefit of all parties subsequent to him for whose honour it is given. The acceptor for honour is entitled to notice of non-payment.

Endorsements may be written either upon the face or on the back of a bill. They may be written in pencil. If the endorsement is a mere signature of the party transferring, without any other words, it is called an endorsement in blank. Where the words "Pay A. B." or "Pay A. B., or order," are written, this is termed a special endorsement. Bills and notes may be endorsed before they are complete. If a bill not due be paid, but left in the holder's hands, a person taking it before it is due, in good faith and without notice of the payment, may sue upon it.

An endorsement may be restrictive, and stop the negotiability of a bill, as, "Pay C. D., or order, for my use; or it may be qualified, as "without recourse," so as to exempt the endorser from personal liability in case of dishonour.

An agent or partner should endorse in the same form as that in which he draws a bill. The place where a bill is drawn need not be stated or written on the bill. If a place be stated, it will be presumed that the drawer resides there, and if only a general description be given, as "Toronto" or "Halifax," it is sufficient in law, in the absence of information as to the particular street, etc., in which the drawer resides, to give him notice of dishonour by letter addressed to him merely "Toronto," or "Halifax."

A date is not an absolute essential to a valid bill, although the bill be payable after date. If the date be omitted, or an impossible date given, the date is fixed by the actual time of drawing or issuing the instrument.

The amount of the bill is usually superscribed in figures. This is, of course, unnecessary, but it is usual. If contradictory to the written words of the bill, the latter would govern; but it might be found useful, where not contradictory, in supplying the word "dollars," if the latter should, by oversight, be omitted from the body of the bill.

If no time is stated on the bill for payment of the amount, the bill is payable at once, or on demand. If the time for payment be fixed, it is not material that the day is ever so distant.

But it is a rule that a bill or note is void, even between the original parties thereto, if the payment of the money is made, by the terms of the instrument on the face of it, or by a written contemporaneous endorsement on the instrument, dependent upon a condition, or upon the con-

tingency of the happening of an event which may never occur; and the defect is not cured by the fulfilment of the condition or the occurrence of the event.

Thus, if an instrument be drawn or made for the payment of a sum of money (being the price of certain goods), "upon condition that if any dispute should arise between, etc., respecting the goods, the note should be void"; or "provided the terms mentioned in certain letters shall be complied with"; or "provided T. S. shall not pay"; or "provided D. M. shall not return to Canada, or his death be duly certified, before the appointed time for payment"; or "when I am able"; or "when J. S. shall marry; or "when an estate, etc., shall be sold"; it is not valid as a bill or note.

An instrument is not valid as a bill or note if the sum specified is not payable at all events, but is expressed to be security merely as a set-off against, or deduction from, another demand.

And the instrument is considered uncertain, contingent, and void as a bill or note, if the money is to be paid out of a specified fund, which may never be realized or be adequate to the purpose; as, "out of rents"; or "out of money when received"; or "out of my growing subsistence"; or "out of the produce of goods when sold" or "out of drafts on a banker"; or "when they shall be paid."

But, however uncertain it may be when the event on which the time for payment is made dependent will occur, if it be certain that it must transpire at some period, the bill or note will be good; as, if the payment is to be made within one month "after the death" of a party; or "when J. S. shall come of age" (naming the day); so that his death would not discharge the liability.

The bill may be made payable to the drawer, or to a third person. It is not essential that either should be named, provided the bill be made payable to the order of the drawer (when in effect it is payable to him), or to bearer.

But alternative words on the face of the instrument, as to the party to whom payment is to be made, will invalidate the bill; as, if it be payable to A. or B.

If, on framing a bill, a blank or space be left for the name of the payee, the acceptor and drawer tacitly authorize a bona fide holder, afterwards taking the bill from the drawer or his transferee, to supply his own name, so as to give effect to the instrument as a bill payable to himself; and the objection of uncertainty, which would otherwise prevail, is thus obviated.

If the name of a fictitious person be introduced as payee the bill is inoperative in the hands of a party who takes it

with knowledge of that fact; but the parties to the bill who were aware of the circumstance shall not be permitted to avail themselves of the irregularity; and against them the bill, in the hands of an innocent holder for value, may be treated as a bill payable to bearer.

If the bill be drawn in the name of a fictitious person, payable to the order of the drawer, with the acceptor's knowledge, the latter may be charged by a bona fide holder as undertaking to pay to the order of the person who signed as the drawer.

Although the bill be accepted payable at a particular place in pursuance of the drawer's request, yet if the acceptor do not use the restrictive words "and not otherwise or elsewhere," the acceptance is, as to him, deemed to be general; and the acceptor is responsible, although no presentment be made at the specified place.

The words "value received" (though usual) are not necessary to give validity or force to the instrument as a bill of exchange.

The formal signature of the drawer at the foot of the bill is not essential. If the drawer himself write the bill in this shape, "I, A. B., request you to pay," etc., the instrument will be good, although not undersigned.

The signature may be in pencil; or by a mark or cross by way of signature.

When an agent draws a bill for his principal, the signature should be in the name of the latter; or in the name of the agent, thus: "A. B." (the agent) "for C. D." (the principal); or thus: "C. D." (the principal), "per procuration, A. B." (the agent). If an agent merely sign his own name only, as drawer, he will become personally liable on the bill, and the principal will not incur any responsibility thereon.

If there be several drawers, and they be partners either the name of the firm may be subscribed by one of the members or an agent of the firm, or the signature may be by the partner or agent "for" the firm by its usual title.

If the drawers be not partners, each should separately sign by himself or by an agent appointed by him for the purpose. In this case one drawer has no implied authority to sign for the others.

The acceptance may be upon any part of the bill, and it may be effected by the drawer merely writing his name with the word "accepted"; or, it seems, by his merely writing thereon "presented," or the day of the month, or a direction to a third person to pay the amount.

An acceptance may be in pencil, or by making a mark in lieu of a signature with intent to accept.

A cheque is a written order, addressed to a bank, or private bankers, made upon them by a person having money in their hands, directing them to pay upon presentment to the person named therein, or to his order, or to bearer, a specified sum of money. It is transferable, like a bill or note, by endorsement or delivery.

A cheque is not entitled to days of grace; it may be taken any time after its date, and the holder still not be subject to equities, as set off and the like, existing between the drawer and the party from whom the holder receives it; and no delay on the part of the holder in demanding payment of the bank excuses the drawer from such payment, unless he has suffered some loss or injury by reason of unusual or protracted delay, and then only to the extent of such loss.

Where a bank refuses to pay a customer's cheque when drawn to an amount not exceeding the amount of the customer's deposit with the bank, it is liable to the customer in damages. But it is not bound to pay at all unless it has funds to the full amount of the cheque. The death of the drawer revokes the bank's authority to pay an outstanding cheque, but a payment in ignorance of the death would be valid. If the sum for which the cheque is drawn be fraudulently altered and increased, the cheque is void, and should the bank pay such increased sum, it must itself bear the loss, unless the drawer's careless method of writing the cheque itself invited the forgery. The bank also loses should it pay a cheque of which the maker's or endorser's signature is forged.

A cheque should be presented for payment within a reasonable time. Such reasonable time is generally considered the first, or, at furthest, second day after receipt. Should such presentment be neglected, and the bank in the meantime fail, the holder would bear the loss, provided that funds of the drawer sufficient to meet the cheque were in the hands of the bank at and shortly after its issue.

An "I. O. U." is a simple acknowledgment of a debt, in writing. It is not assignable by mere endorsement.

A bill, note or cheque is not invalid by reason only that it bears date on a Sunday.

FORMS.

Negotiable note.

$100. OTTAWA, 1st May, 1907.

Three months after date, I promise to pay John Scarlett, or order, at the Bank of Montreal, Toronto, the sum of one hundred dollars, value received. THOMAS ATKINS.

Note not negotiable.

$2,000. CHATHAM, N.B., 15th March, 1907.

Sixty days after date I promise to pay Samuel Harrison two thousand dollars, value received. HENRY TURNER.

Joint note.

$350. ANNAPOLIS, N.S., 10th Jan., 1907.

Six months after date we jointly, but not severally, promise to pay Samuel Richards, or order, three hundred and fifty dollars.

H. THORNE.
THOMAS BARFOOT.

Joint and several note.

$580. LONDON, Ont., 4th July, 1907.

Thirty days after date we jointly and severally promise to pay to the order of Nathan Quigley five hundred and eighty dollars.

CHARLES WOOD.
IRWIN SECORD.

Note on demand.

$150. WINNIPEG, Man. 17th Oct., 1907.

On demand I promise to pay Edward Chase, or order, one hundred and fifty dollars, value received. T. SILVESTER.

Bill of exchange.

$1,700. VICTORIA, B. C., 12th December, 1907.

Three days after sight, pay to the order of Henry Silverthorne seventeen hundred dollars, value received, and charge to the account of CABLE, CONGREVE & CO.

To Messrs. Johnson & Smart, Toronto.

Cheque.

To the TORONTO, 27th May, 1907.

Imperial Bank of Canada: pay to Smith & Sellry, or order, [$78.40] seventy-eight dollars forty cents.

JOHN EASTON & CO.

Protest of promissory note for non-payment.

(The protested note is attached.)

On this tenth day of July, in the year of our Lord one thousand nine hundred and seven at the request of the Manufacturers'

Bank, the holders of the promissory note hereunto annexed, I, Campbell Stuart, a Notary Public for Ontario, by Royal authority duly appointed, did exhibit the said promissory note unto James Barr, at the city of Kingston, Ont., at the office of the said James Barr, being the place where the same is payable, and speaking to him did demand payment of the said promissory note, to which demand he answered "No funds."

Wherefore, I, the said Notary, at the request aforesaid, have protested, and do hereby solemnly protest, as well against all the parties to the said Promissory note as against all other persons whom it may concern, for all interest, damages, costs, charges, expenses and other losses suffered or to be suffered for want of payment of the said promissory note.

And afterwards on the day and year mentioned in the margin, I, the said Notary Public, did serve due notice according to law of the said presentment, non-payment and protest of the said promissory note upon the several parties thereto by depositing in Her Majesty's post office at Kingston, Ont., being the nearest post office to the place of the said presentment, letters containing such notices, one of which letters was addressed to each of the said parties severally, the superscription and address of which letters are respectively copied below, as follows, that is to say.

JAMES BARR, Kingston, Ont.
MARTIN GRAHAM, Kingston, Ont.

In testimony whereof I have hereunto set my hand and affixed my seal of office the day and year first above written.

C. STUART, Notary Public.

Notice to endorsee of above.

10th day of July, 1907.

To Martin Graham, Kingston, Ont.:

Take notice that a promissory note dated on the 7th day of April, 1886, for the sum of $7,000, made by James Barr, payable three months after date thereof at the office of James Barr, and endorsed by yourself, was this day presented by me for payment at the said office, and that payment thereof was refused, and that the Manufacturers' Bank, the holders of the said note, look to you for payment thereof. And also take notice, that the same was this day protested by me for non-payment.

Your obedient servant.
C. STUART, Notary Public.

Bond of indemnity upon paying a lost note.

Know all men by these presents, that I, James Edwards, of Windsor, in the County of Essex, and Province of Ontario, farmer, am held and firmly bound unto Simpson Talbot, of the same place, Insurance Agent, in the penal sum of one thousand dollars, lawful money of Canada, to be paid to the said Simpson Talbot, or his certain attorney, executors, administrators or assigns; for which payment, well and truly to be made, I bind myself, my heirs, executors and administrators, and each and every of them, firmly by these presents. Sealed with my seal and dated this fourth day of August, in the year of our Lord one thousand nine hundred and seven.

Whereas the above named Simpson Talbot, by his promissory note signed by him, and dated the first day of May, in the year one thousand eight hundred and eighty-four, did promise to pay unto one John Mann, or order, five hundred dollars, three months after the date thereof, and such note was afterward endorsed by the said John Mann, and transferred to and became the property of the said James Edwards, as the said Edwards alleges; and whereas the said Edwards further alleges that he held the said note in his possession for the space of some weeks, but afterwards mislaid or lost the same, and the same is now lost; and whereas the said Simpson Talbot has, on the day of the date hereof, at the request of the said James Edwards, and upon his, the said Edwards promising to indemnify the said Talbot, and deliver up the said note to be cancelled when found, paid the said Edwards the said sum of five hundred dollars, in full satisfaction and discharge of the said note, the receipt whereof the said Edwards doth hereby acknowledge; now the condition of the above written bond or obligation is such, that if the said Edwards, his heirs, executors or administrators, or any of them, do and shall, from time to time, and at all times hereafter save, defend, keep harmless, and indemnify the said Simpson Talbot, his executors and administrators, and his and their goods, chattels, lands and tenements of, from and against the said note of five hundred dollars, and of and from all costs, charges, loss, damages and expenses, that shall or may happen or arise therefrom, and also deliver or cause to be delivered up the said note, when and so soon as the same shall be found, to be cancelled, then this obligation to be void; otherwise to remain in full force and virtue.

JAMES EDWARDS. [L.S.]

Signed, sealed and delivered in presence of
Simcoe Robinson.

BONDS.

A bond is a deed (invariably under seal) whereby the maker, or obligor, as he is called, obliges himself, his heirs, executors, and administrators, to pay, as a penalty a specified sum of money to another person called the obligee. Some bonds contain no more than the obligation, and, where so drawn, they are known as single bonds. As a rule, however, a condition is added to the effect that if the obligor performs some particular act or duty, therein specified, the obligation shall be void; otherwise that it shall remain in full force and virtue.

The penalty in a bond is usually made double the amount of the true debt, if a liability in money is to be secured; where the bond is given to secure the performance of some agreement or duty, a sum reasonable under the circumstances is fixed as the penalty. The amount is immaterial so long as it is sufficient, for in an action on the bond, only the actual indebtedness (with interest and costs) secured, if for money or money's worth, or reasonable damages, if to secure the performance of an act, can be recovered.

The parties to a bond may agree beforehand that the act covenanted to be performed or abstained from, will result to the obligee in damages to a certain stipulated or liquidated amount, and fix the amount of the bond at the sum agreed upon and so specifically mentioned; and if this sum appears reasonable, it will determine the amount of the liability. But the inclination of Courts of law is to permit only the true and actual amount of the damage or loss to be recovered, and the fact of the clear agreement of the parties that the amount mentioned is stipulated damages, and not in the way of a penalty, must be proved in case the bond is disputed at law.

Where the obligation of a bond is possible at the time of making it, but afterwards becomes impossible of performance by the act of God, the penalty is saved.

FORMS.

Single Bond without condition.

Know all men by these presents, that I, A. B., of, etc., am held and firmly bound unto C. D., of, etc., in the penal sum of $1,000 of

lawful money of Canada, to be paid to the said C. D. or to his certain attorney, executors, administrators or assigns; for which payment to be well and faithfully made, I bind myself, my heirs, executors and administrators, and every of them firmly by these presents.

Sealed with my seal, dated the 6th day of July, 1907.

Signed, sealed and delivered
in the presence of A. B. [L.S.]
Y. Z.

Money Bond.

Know all men by these presents, that I, A. B., of, etc., am held and firmly bound unto C. D., of, etc., in the penal sum of $1,000 of lawful money of Canada, to be paid to the said C. D. or to his certain attorney, executors, administrators or assigns: for which payment well and truly to be made, I bind myself, my heirs, executors and administrators firmly by these presents.

Sealed with my seal, dated this 6th day of July, 1907.

The condition of the above written bond or obligation is such that if the above bounden A. B., his heirs, executors or administrators, do and shall well and truly pay or cause to be paid unto the said C. D., his executors, administrators or assigns, the just and full sum of $500 of lawful money of Canada, with interest thereon at the rate of ten per cent. per annum, on the days and times, and in the manner following, that is to say: The said principal sum of $500 on the 6th day of January, 1907, and the said interest half yearly, on the 6th days of January and July in each year (the first of such payments of interest on the 6th day of January next) without any deduction, defalcation or abatement whatsoever: Then the above written bond or obligation shall be void and of no effect; otherwise shall be and remain in full force and virtue.

Signed, sealed and delivered
in the presence of A. B. [L.S.]
Y. Z.

Bond to convey Land.

Know all men by these presents, that I, A. B., of, etc., am held and firmly bound unto C. D., of, etc., in the penal sum of $1,000 of lawful money of Canada, to be paid to the said C. D., or to his certain attorney, executors, administrators or assigns; for which payment well and truly to be made, I bind myself, my heirs, executors and administrators, and every of them forever, firmly by these presents.

Sealed with my seal, dated this 1st day of May, 1907.

Whereas, the said C. D. hath contracted with the above bounden A. B., for the absolute purchase in fee simple, free from incumbrances, of the following lands and premises, that is to say: (here describe the lands to be conveyed). And whereas, the said C. D. hath agreed to pay therefor, the sum of $500 of lawful money of Canada, at the times, and in manner following, that is to say: (here state the mode of payment).

Now the condition of the above obligation is such that if the said C. D., his heirs, executors, administrators or assigns, shall well and truly pay, or cause to be paid, to the above bounden A. B., his executors, administrators or assigns, the sum of $500 at the time and in manner aforesaid; and if the above bounden A. B., his heirs or assigns, shall then by good and sufficient deed or deeds of conveyance in fee simple, convey and assure, or cause to be conveyed and assured, unto the said C. D., his heirs and assigns forever, the said premises hereinbefore described, free from all incumbrances; then the above obligation shall be void: otherwise shall be and remain in full force and virtue.

Signed, sealed and delivered
in the presence of A. B. [L.S.]
Y. Z.

Bond for payment of Purchase Money.

Know all men by these presents, that I, C. D., of, etc., am held and firmly bound unto A. B., of, etc., in the penal sum of $1,000 of lawful money of Canada, to be paid to the said A. B., or to his certain attorney, executors, administrators or assigns; for which payment well and truly to be made, I bind myself, my heirs, executors and administrators, and every of them firmly by these presents.

Sealed with my seal, dated this day of 19 .

Whereas, the above bounden C. D., hath contracted with the said A. B., for the absolute purchase in fee simple, free from all incumbrances, of the following lands and premises; that is to say: (here describe the lands).

And whereas, the above bounden C. D. hath agreed to pay therefor the sum of $500 of lawful money of Canada, at the time and in manner following; that is to say: (here state the mode of payment.)

And whereas, upon the treaty for the said purchase, it was agreed that the above bounden C. D. should enter into the above bond or obligation for payment of the said purchase money, or the unpaid part thereof, and interest in manner aforesaid; and be let into possession of the said lands and premises and receipt of the rents and profits hereof, from the day of the date hereof.

Now the condition of the above written obligation is such that if the above bounden C. D., his heirs, executors, administrators or assigns, shall well and truly pay or cause to be paid to the said A. B., his executors, administrators or assigns, the whole of the said purchase money and interest thereon as aforesaid at the times and in manner aforesaid, without making any deduction, defalcation or abatement thereout on any account whatsoever; Then the above obligation shall be void: otherwise shall be and reamin in full force and virtue.

Signed, sealed and delivered
in the presence of C. D. [L.S.]
Y. Z.

Bond of Indemnity

Know all men by these presents, That I, E. F., of, etc., am held and firmly bound unto G. H., of, etc., in the penal sum of $5,000 of

lawful money of Canada, to be paid to the said G. H., or to his certain attorney, executors, administrators or assigns: For which payment well and truly to be made, I bind myself, my heirs, executors and administrators, and every of them, firmly by these presents.

Sealed with my seal, dated this day of 19 .

The condition of the above written bond or obligation is such that if the above bounden obligor, his heirs, executors and administrators, do and shall from time to time, and at all times hereafter, hold and keep harmless and fully indemnified the said obligee, his heirs, executors and administrators, and his and their lands and tenements, goods, chattels and effects, of, from and against all loss, costs, charges, damages and expenses which the said obligee, his heirs, executors or administrators, may at any time hereafter bear, sustain, be at, or be put to, for, or by reason, or on account of (here state the particular matters to which the indemnity is to apply) or anything in any manner relating thereto; Then the above written bond or obligation shall be void: otherwise shall be and remain in full force and virtue.

Signed, sealed and delivered
in the presence of E. F. [L.S.]
Y. Z.

Bond from a Lessee and his Surety to pay rent according to Lease.

Know all men by these presents, That we, C. D., of, etc., and E. F., of, etc., are held and firmly bound unto A. B., of, etc., in the penal sum of $1,000 of lawful money of Canada, to be paid to the said A. B., or to his certain attorney, executors, administrators or assigns: for which payment well and truly to be made we bind ourselves and each of us by himself, our and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals. Dated this day of 19 .

Whereas, the above named A. B. by Indenture of Lease bearing even date with, but executed before, the above written obligation, for the consideration in the said lease mentioned, hath demised to the above bounden C. D., a certain saw mill situate at etc., (here describe the premises) To hold unto the said C. D., his executors, administrators and assigns, for the term of years from thence next ensuing (determinable nevertheless at the end of the first years of the said term, if the said C. D., his executors, administrators or assigns, shall give months notice thereof, in manner therein mentioned) at and under the yearly rent of $500 payable quarterly in manner as therein expressed: as by the said lease will more fully appear.

Now the condition of the above written obligation is such, that if the above bounden C. D. and E. F., or either of them, their, or either of their heirs ,executors or administrators, shall and do during the continuance of the said recited lease, well and truly pay or cause to be paid, the said yearly rent or sum of $500, unto him the said A. B., his heirs or assigns, by four equal quarterly payments of $125 each, on the several days following, that is to say, the day of , the day of , the day of , and the day of in each and every year during the said demise, or within fourteen days next after any of the said days or times of payment, according to the true intent and meaning of the said recited lease, (the first quarterly payment to be made on

the day of next); Then the above written obligation shall be void and of no effect: otherwise shall remain in full force and virtue.

Signed, sealed and delivered
in the presence of C. D. [L.S.]
Y. Z. E. F. [L.S.]

Bond from a Builder and two Sureties for the due Performance of a Contract.

Know all men by these presents, That I, A. B., (builder), of, etc., am held and firmly bound unto E. F., of, etc., in the penal sum of $1,000, lawful money of Canada, and that we, G. H., (surety), of etc., and J. K. (other surety), of, etc., as the sureties for the said A. B., his executors and administrators, are severally and respectively held and firmly bound to the said E. F., in the penal sum of $1,000 each, lawful money aforesaid, all the said several sums to be paid to the said E. F., or his certain attorney, executors, administrators or assigns, for which payment to be well and truly made by me the said A. B. I, the said A. B., bind myself, my heirs, executors and administrators, and every of them, firmly by these presents, and for which several payments to be well and truly made by us, we the said G. H. and J. K., respectively, bind ourselves respectively, and our respective heirs, executors and administrators, and every of them firmly by these presents. Sealed with our seals. Dated this day of 19 .

Whereas, the above bounden A. B., (builder), has entered into a contract and agreement in writing with the said E. F., dated the day of , 19 , whereby he, the said A. B., has contracted and agreed with the said E. F., to do the whole of the works in erecting and completely finishing a certain dwelling-house and premises, with the outbuildings belonging thereto, in every respect agreeably to the drawings, agreements, conditions, clauses and particulars, mentioned, specified and contained in a certain paper writing or specification annexed to the said contract;

And whereas, at the time of entering into such agreement as aforesaid, the said A. B., and his said sureties, the said G. H. and J. K., agreed to execute the above written bond or obligation for the due performance of the several works so contracted to be done as aforesaid, according to the specification aforesaid.

Now, therefore, the condition of the above written bond or obligation is such that if the above bounden A. B., his executors or administrators do and shall, within calendar months from the date of the above written bond or obligation, do, perform, execute and completely finish, or cause to be done, performed, executed and completely finished, all and singular the several buildings and works mentioned and specified in the hereinbefore mentioned specifications, conformably to the said specification in all respects whatsoever, and in a good and workmanlike manner: Then the above written bond of obligation shall be void, but otherwise the same shall remain in full force and virtue.

Signed, sealed and delivered
in the presence of A. B. [L.S.]
Y. Z. G. H. [L.S.]
J. K. [L.S.]

CHATTEL MORTGAGES AND BILLS OF SALE.

Chattel Mortgages are conveyances, by way of security, of personal property of a moveable kind, such as household furniture, farming implements, cattle, stock in trade, etc. They are special written contracts, entered into between two or more parties, for the conditional sale or transfer of the chattels therein mentioned, to ensure the repayment of money loaned, or any debt, or to secure the mortgagee against a liability, such as the endorsement of a promissory note. The mortgagor's property and title to the chattels is sold, assigned and transferred to the mortgagee, subject to transfer or reconveyance upon repayment of the money loaned, etc., at the time, and in the manner specifically set forth. If the mortgagor so repays, or otherwise performs his contract, the mortgage becomes void, and may be discharged by a proper written discharge, and the title to the goods revests in him. While his contract remains unbroken, it is usually stipulated that the goods, etc., are to remain in his possession, and he is to have the use of them.

The object of the statutory enactments hereinafter mentioned with reference to the registration of chattel mortgages, is to enable creditors of the mortgagor and others about to become creditors, to obtain prompt notice of the transfer of his title in effects of which he remains apparently owner. In the absence of such enactments it might lie in the power of a debtor, if fraudulently disposed, to deprive confiding creditors of the fruits of an execution against him. Purchasers in good faith might also be defrauded.

So strongly is the law opposed to such fraudulent practices that it may be generally stated that any chattel mortgage not given and taken in perfect good faith, and for good and equitable consideration, will be null and void, and may be set aside in a Court of Justice by the creditors or purchasers whose rights are infringed. Even if valuable consideration be given, yet if there exist collusion between the parties, or other fraud, the mortgage cannot be upheld in law as against creditors of the mortgagor or subsequent purchasers in good faith, of the chattels. But a mortgage void as against such is sometimes good between the parties.

In preparing a chattel mortgage great care and considerable skill are requisite, as well as close attention to the requirements of the local statutes governing the transaction.

Should these requirements not be fulfilled, even although the defects appear at first sight trivial, the instrument may be found worthless for the purpose for which it was intended. This extends to matters subsequent to the first preparation and registry of the instrument, such as its renewal within the periods prescribed by the statute, and other duties imposed upon the parties by law. The express provisions of the instrument itself must also be carefully conformed to, as they embrace the specific terms of the contract. These usually give the mortgagee the right, among others, to enter upon the premises of the mortgagor and take possession of the chattels, so soon as any default is made in payment, and to sell them. Such possession is usually taken by the mortgagee's bailiff acting under written warrant signed by the mortgagee, though there is nothing to prevent the mortgagee from taking personal possession himself.

If a sale takes place, the strict terms of the contract as to the mode of sale, and the disposal of the amount realized must be observed. A mortgagee improperly seizing or selling may render himself liable to the mortgagor in damages for trespass.

Upon seizure, the mortgagee becomes absolute owner of the chattels, though a Court of Equity will, in some instances, allow the mortgagor to redeem, upon just terms.

It is hardly necessary to state that no bar of dower is required in a chattel mortgage. In practice it will be found well to recite, or state shortly in the body of the mortgage, the object for which the instrument is given, and the true and actual nature of the consideration. This is in some cases absolutely necessary, and is in all useful. It is too often overlooked by conveyancers. The chattels conveyed should also be fully and accurately described, so that no mistake is possible. After payment of the mortgage it should be promptly discharged.

The forms which follow have been carefully prepared, and from them and the statutes appended may be learned the principal requirements of the law in this particular in the various Provinces.

BILLS OF SALE.

A Bill of Sale is a conveyance in writing, generally under seal, whereby one person conveys the right, title or interest he has in goods or chattels, to another.

Where chattels are of small value or are of such a nature as to be easily transferred from hand to hand, or to admit of an actual, immediate and evident change of ownership, a bill

of sale is generally unnecessary. But where the chattels remain situate as before, and the change of ownership or possession is not readily apparent, a bill of sale should be demanded, to remove all doubts and protect them against seizure by the creditors of the seller. A bill of sale executed in fraud of creditors is always void. Further requisites of bill of sale will be learned upon perusal of the following statutes and forms.

ONTARIO MORTGAGES AND SALES OF PERSONAL PROPERTY.

10 Edw. VII., cap. 65.

1. This Act may be cited as "*The Bills of Sale and Chattel Mortgage Act.*" R. S. O. 1897, c. 148, s. 1.

2. In this Act,

(*a*) "Actual and continued change of possession" shall mean such change of possession as is open, and reasonably sufficient to afford public notice thereof. R. S. O. 1897, c. 148, s. 39.

(*b*) "Creditors" shall include creditors of the mortgagor or bargainor suing on behalf of themselves and other creditors, an assignee in insolvency of a mortgagor or bargainor and an assignee for the general benefit of creditors, as well as creditors having executions against the goods and chattels of the mortgagor or bargainor in the hands of a Sheriff or other officer. R. S. O. 1897, c. 148, s. 38.

(*c*) "Mortgage" shall include a conveyance intended to operate as a mortgage. *New.*

(*d*) "Rolling stock" shall mean and include any locomotive, engine, motor car, tender, snow plough, flanger, and every description of car or of railway equipment designed for movement on its wheels, over or upon the rails or tracks of a railway. *New.*

3. This Act, except section 32, shall not apply to an assignment for the general benefit of creditors to which *The Assignments and Preferences Act* applies. *New.*

4. This Act shall not apply to mortgages of vessels registered under the provisions of any Act in that behalf. R. S. O. 1897, c. 148, s. 34.

EFFECT OF REGISTERING OR OMITTING TO REGISTER.

5. Every mortgage of goods and chattels in Ontario, which is not accompanied by an immediate delivery and an actual and continued change of possession of the things mortgaged, or a true copy thereof, shall be registered as hereinafter provided, together with

(*a*) The affidavit of an attesting witness thereto of the due execution of such mortgage, or of the due execution of the mortgage of which the copy filed purports to be a copy, which affidavit shall also state the date of the execution of the mortgage, and

(*b*) The affidavit of the mortgagee that the mortgagor therein named is justly and truly indebted to the mortgagee in the sum mentioned in the mortgage, that the mortgage 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 mentioned therein against the creditors of the mortgagor, or of preventing the creditors of such mortgagor from obtaining payment of any claim against him. R. S. O. 1897, c. 148, ss. 2, 3.

6.—(1) A mortgage of goods and chattels made

(*a*) To secure the mortgagee for advances made in pursuance of an agreement in writing to make future advances for the purpose of enabling the borrower to enter into or to carry on business with such advances, the time of repayment thereof not being longer than one year from the making of the agreement; or

(*b*) To secure the mortgagee against the endorsement of any bill of exchange or promissory note or other liability by him incurred for the mortgagor, such liability not extending for a longer time than one year from the date of the mortgage;

may be registered in the manner prescribed by this Act if accompanied by

(*c*) The affidavit of an attesting witness to the execution thereof, and,

(*d*) The affidavit of the mortgagee stating that the mortgage truly sets forth the agreement and truly states the extent and amount of the advances intended to be made or liability intended to be created by the agreement and covered by the mortgage, and that the mortgage is entered into in good faith and for the express purpose of securing the mortgageee repayment of his advances or against the liability intended to be created, as the case may be, and not for the purpose of securing the goods and chattels mentioned therein against the creditors of the mortgagor nor to prevent such creditors from recovering any claims which they may have against the mortgagor. R. S. O. 1897, c. 148, ss. 7 and 8.

7. If the mortgage and affidavits are not registered as by this Act provided, the mortgage shall be absolutely null and void as against creditors of the mortgagor, and as against subsequent purchasers or mortgagees in good faith for valuable consideration. R. S. O. 1897, c. 148, s. 5.

8. Every sale of goods and chattels, not accompanied by an immediate delivery and followed by an actual and continued change of possession of the goods and chattels sold, shall be in writing, and such writing shall be a conveyance under the provisions of this Act, and such conveyance or a true copy thereof, accompanied by an affidavit of an attesting witness thereto of the due execution of the conveyance, and an affidavit of the bargainee that the sale is *bona fide* and for good consideration, as set forth in the conveyance, and not for the purpose of holding or enabling the bargainee to hold the goods mentioned therein against the creditors of the bargainor, shall be registered, as hereinafter provided, otherwise the sale shall be

absolutely null and void as against the creditors of the bargainor and as against subsequent purchasers or mortgagees in good faith. R. S. O. 1897, c. 148, s. 6.

9. Every such mortgage or conveyance shall operate and take effect upon, from and after the day and time of the execution thereof. R. S. O. 1897, c. 148, s. 4.

10. Every mortgage and every conveyance or agreement required to be registered under this Act shall contain such sufficient and full description of the goods and chattels that the same may be thereby readily and easily known and distinguished. R. S. O. 1897, c. 148, s. 32.

11. This Act shall extend to a mortgage or sale of goods and chattels, which may not be the property of, or in the possession, custody or control of the mortgagor or bargainor or any person on his behalf at the time of the making of the mortgage or sale, and notwithstanding that such goods or chattels may be intended to be delivered at some future time, or that the same may not at the time of the making of the mortgage or sale be actually procured or provided, or fit or ready for delivery, or that some act may be required for the making or completing of such goods and chattels, or rendering the same fit for delivery. R. S. O. 1897, c. 148, s. 37.

12.—(1) Every affidavit of *bona fides* required by this Act and every affidavit required upon renewal of a chattel mortgage may be made by one of two or more bargainees or mortgagees, or by his or their agent, if aware of all the circumstances and properly authorized in writing to take the conveyance or to take or renew the mortgage, or, in the case provided for by section 6, to make the agreement and to take the mortgage.

(2) If the mortgage or conveyance is made to a corporation the affidavit may be made by the president, vice-president, manager, assistant manager, secretary, or treasurer, or by any other officer or agent thereof authorized to do so by resolution of the directors.

(3) Where the affidavit is made by the agent of the mortgagee or bargainee or by an officer or agent of a corporation, it shall state that the deponent is aware of all the circumstances connected with the mortgage or conveyance, and has personal knowledge of the facts deposed to. 3 Edw. VII. c. 7, s. 30. R. S. O. 1897, c. 148, ss. 2, 3, 7 and 8.

13. The authority in writing referred to in the next preceeding section, or a copy of such authority, shall be attached to and filed with the mortgage or conveyance. R. S. O. 1897, c. 148, s. 9.

14. Any affidavit by this Act required to be made by the mortgagee or by the bargainee may in the case of his death be made by any of his next of kin or by his executor or administrator, or, if the mortgage has been assigned, by his assignee. *New.*

15. An authority to take a conveyance or to take or renew a mortgage may be a general one to take all or any conveyances to the bargainee, or to take and renew all or any mortgages to the mortgagee. R. S. OO. 1897, c. 148, s. 31.

CONTRACTS TO GIVE MORTGAGES, ETC.

16. Every covenant, promise or agreement to make, execute or give a mortgage of goods and chattels shall be in writing, and shall be deemed to be a mortgage within the meaning of this Act. R. S. O. 1897, c. 148, s. 11.

17. Every covenant, promise or agreement to make a sale of goods and chattels shall be in writing and shall be deemed to be a sale of goods and chattels within the meaning of this Act. R. S. O. 1897, c. 148, s. 12.

REGISTRATION.

18.—(1) Except in the case of the Provisional County of Haliburton, the instruments mentioned in the preceding sections shall be registered in the office of the clerk of the County or District Court of the county or district in which the property mortgaged or sold is at the time of the execution thereof.

(2) Where the property is situate in the Provisional County of Haliburton, the instrument shall be registered in the office of the clerk of the first division court of the provisional county.

(3) In the case of a county the instrument shall be registered within five days from the execution thereof.

(4) In the case of the Provisional County of Haliburton and of a district, the instrument shall be registered within ten days from the execution thereof.

(5) The clerk shall file the instrument and endorse thereon the time of receiving it. R. S. O. 1897, c. 148, s. 15; 62 V. 2, c. 14, s. 13.

19. In the event of the permanent removal of the goods and chattels from the county, provisional county or district in which the goods and chattels were at the time of the execution of the mortgage, to another county, provisional county or district, before the payment and discharge of the mortgage, a copy of the mortgage, and of the affidavits, documents, instruments and statements relating thereto, certified under the hand of the Clerk in whose office it was registered, and under the seal of the Court, shall be filed with the proper officer as mentioned in section 18, of the county, provisional county or district to which the goods and chattels are removed within two months from such removal, otherwise the mortgage shall be null and void as against creditors of the mortgagor and as against subsequent purchasers and mortgagees in good faith for valuable consideration. R. S. O. 1897, c. 148, s. 17.

20. The Clerk shall number every instrument or copy filed in his office, and shall enter in alphabetical order in a book to be provided by him the names of all the parties thereto, with the number indorsed thereon opposite to each name, and such entry shall be repeated alphabetically under the name of every party thereto. R. S. O. 1897, c. 148, s. 16.

RENEWAL OF MORTGAGES.

21.—(1) Except as provided in subsection 2 and subject to the provisions of section 24, every mortgage registered in pursuance of this

Act shall cease to be valid, as against the creditors of the person making the same and as against subsequent purchasers and mortgagees in good faith for valuable consideration, after the expiration of one year from the day of the registration thereof, unless, within thirty days next preceding the expiration of the said term of one year, a statement, Form 1, exhibiting the interest of the mortgagee, his executors, administrators or assigns in the mortgaged property, and showing the amount still due for principal and interest thereon, and all payments made on account thereof, is registered in the proper office, as mentioned in section 18, of the county, provisional county or district in which the mortgage was registered, with an affidavit of the mortgagee, that the statement is true, and that the mortgage has not been kept on foot for any fraudulent purpose. R. S. O. 1897, c. 148, s. 18.

(2) Where there has been a permanent removal of the goods and chattels as mentioned in section 19, and a certified copy of the mortgage has been registered as required by that section, the statement and affidavit shall be registered in the office in which such certified copy is registered, and the period of one year shall be reckoned from the date of the registration of such certified copy.

(3) Where the two months mentioned in section 19 have not expired when the period of one year mentioned in subsection 1 expires and a certified copy of the mortgage has not been registered as provided by section 19, the statement and affidavit may be registered in the office in which the mortgage was registered.

(4) If any *bona fide* error or mistake is made in the statement, either by the omission to give any credit or by any miscalculation in the computation of interest or otherwise, the statement and the mortgage therein referred to shall not be invalidated if the mortgagee, his executors, administrators or assigns, within two weeks after the discovery of the error or mistake registers an amended statement and affidavit referring to the former statement and clearly pointing out the error or mistake therein and correcting the same.

(5) If before the registration of such amended statement and affidavit any creditor or purchaser or mortgagee in good faith for valuable consideration has made any *bona fide* advance of money or given any valuable consideration to the mortgagor, or has incurred any costs in proceedings taken on the faith of the amount due on the mortgage being as stated in the renewal statement and affidavit as first registered, the mortgage as to the amount so advanced or the valuable consideration given or costs incurred by such creditor, purchaser or mortgagee, shall, as against such creditor, purchaser or mortgagee, stand good only for the amount mentioned in the renewal statement and affidavit first registered. R. S. O. 1897, c. 148, s. 19.

(6) The statement and affidavit shall be deemed one instrument, and shall be registered and entered as provided by section 20. R. S. O. 1897, c. 148, s. 20.

(7) Another statement in accordance with the provisions of subsection 1, verified as required by that subsection, shall be registered in the proper office, according to section 18 or subsection 2 of this section, as the case may be, within thirty days next preceding the expiration of one year from the day of the registration of the statement required by subsection 1, otherwise such mortgage shall cease to be valid as against the creditors of the mortgagor, and as against subsequent purchasers and mortgagees in good faith for valuable

consideration, and so on from year to year, that is to say, another verified statement shall be registered within thirty days next preceding the expiration of one year from the day of the registration of the former statement, otherwise such mortgage shall cease to be valid as aforesaid. R. S. O. 1897, c. 148, s. 21.

(8) If the affidavit is made by an assignee, or by any of his next of kin, or by his executor or administrator, the assignment or the several assignments through which he claims shall be registered with the statement and affidavit unless the same have been already registered.

(9) Subsection 8 shall not apply to an assignment for the benefit of creditors under *The Assignments and Preferences Act*, or any other Act of Ontario or of Canada relating to assignments for the benefit of creditors, if such assignment be referred to in the statement, and notice thereof has been given in manner required by law. R. S. O. 1897, c 148, s. 22.

22. Where a new county or district is formed, or territory is added to a county or district, every mortgage which under the provisions of this Act would otherwise require to be renewed in the county or district of which the territory forming or added to the new county or district was part, shall be renewed in the office of the proper officer of the county or district so formed or to which such territory is added, and upon such renewal a copy of the mortgage, certified under the hand of the officer in whose office it was registered and the seal of the court, shall be registered with the renewal statement and affidavit. R. S. O. 1897, c. 148, s. 35.

SUBSEQUENT TAKING POSSESSION.

23. A mortgage or sale declared by this Act to be void or which under the provisions of section 21 has ceased to be valid as against creditors and subsequent purchasers or mortgagees, shall not by the subsequent taking of possession of the goods and chattels mortgaged or sold by the mortgagee or bargainee be thereby made valid as against persons who became creditors, purchasers, or mortgagees before such taking of possession. R. S. O. 1897, c. 148, s. 40.

MORTGAGES TO SECURE BONDS, ETC., OF CORPORATIONS.

24.—(1) In the case of a mortgage of goods and chattels made by any incorporated company to a bondholder, or to a trustee, for the purpose of securing the bonds or debentures of such company, it shall be sufficient if the affidavit of *bona fides* is to the effect that the mortgage was executed in good faith and for the express purpose of securing the payment of the bonds or debentures referred to therein, and not for the purpose of protecting the goods and chattels mentioned therein against the creditors of the mortgagors, or of preventing the creditors of such mortgagors from obtaining payment of any claim against them. R. S. O. 1897, c. 148, s. 23 (1); 4 Edw. VII. c. 10, s. 36.

(2) Where the head office of the company is not within Ontario, the mortgage may be registered within thirty days instead of five days, as provided by section 18.

(3) Any such mortgage may be renewed in the manner and with the effect provided by section 21 by the filing of a statement by the mortgagee or one of the mortgagees exhibiting the interest of the mortgagee or mortgagees in the property claimed by virtue of the mortgage, and showing the amount of the bond or debenture debt which the same was made to secure, and showing all payments on account thereof which to the best of the information and belief of the person making such statement, have been made, or of which he is aware or has been informed, together with an affidavit of the person making such statement, that the statement is true to the best of his knowledge, information and belief, and that the mortgage has not been kept on foot for any fraudulent purpose, and such statement shall be filed instead of the statement required by section 21.

(4) Where the mortgage is made as a security for debentures and the by-law authorizing the issue of the debentures, as a security for which the mortgage was made, or a copy thereof, certified under the hand of the president or vice-president and secretary of the company and verified by an affidavit thereto attached or endorsed thereon, and having the corporate seal attached thereto, is registered with the mortgage, it shall not be necessary to renew the mortgage, but the same shall in such case continue to be as valid as if it had been duly renewed as in this Act provided.

(5) The next preceding subsection shall apply to every such mortgage made and registered after the 5th day of May, 1894, but nothing herein shall affect any accrued rights or any litigation pending on the 13th day of April, 1897. R. S. O. 1897, c. 148, s. 23 (2-6).

25.—(1) In the case of a mortgage securing bonds made by an incorporated company on rolling stock owned by it, it shall be sufficient for the purposes of this Act if the mortgage or a copy thereof and the affidavit in subsection 1 of the next preceding section referred to be filed in the office of the Provincial Secretary within the time limited by this Act for registering a mortgage to secure bonds or debentures of an incorporated company.

(2) The office of the Provincial Secretary shall be the place for filing the renewal statements of any such mortgage of rolling stock where renewal thereof is necessary under this Act.

(3) Subsections 1 and 2 shall apply to any such mortgage on rolling stock heretofore made, if the same has been filed as therein provided. 3 Edw. VII. c. 7, s. 60.

26.—(1) In the case of a mortgage, hypothec or other instrument made by an incorporated company securing bonds, debentures, notes or other securities on any rolling stock which is subject to any lease, conditional sale or bailment to a railway company, the same or a copy thereof may be filed in the office of the Provincial Secretary within 21 days from the execution thereof, and if so filed shall be as valid as against creditors of such company and subsequent purchasers as if the same had been registered pursuant to the provisions of this Act.

(2) Notice of the filing shall forthwith thereafter be given in the *Ontario Gazette*. (*See* 6 Edw. VII., c. 38, s. 7, (Dom.); 8 Edw. VII. c. 33, ss. 41 and 42.

(3) In case any such mortgage, hypothec or other instrument made before the 14th day of April, 1908, or a copy thereof, had been

filed in the office of the Provincial Secretary within ninety days from that date, the same shall be as valid as against creditors of such company and purchasers or mortgagees, becoming such creditors, purchasers or mortgagees subsequent to that date, as if it had been registered pursuant to the provisions of this Act.

PROOF OF REGISTRATION.

27. A copy of any instrument or document registered under this Act and of any endorsement thereon certified under the hand of the officer with whom the same is registered and under the seal of the court or where the same is filed in the office of the Provincial Secretary under the hand of the Provincial Secretary or Assistant Provincial Secretary, shall be received as evidence by all courts that the instrument or document was received and registered or filed according to the endorsement thereon. R. S. O. 1897, c. 148, s. 24.

DISCHARGE OF MORTGAGES.

28. A mortgage registered under this Act may be discharged by registering in the office in which the mortgage is registered a certificate, Form 2, signed by the mortgagee, his executors, administrators or assigns. R. S. O. 1897, c. 148, s. 25.

29.—(1) The officer with whom the mortgage is registered upon receiving such certificate, proved by the affidavit of a subscribing witness, shall, at each place where the number of the mortgage has been entered, with the name of any of the parties thereto, in the book kept by him under section 20, or wherever otherwise in such book the mortgage has been entered, write the words "Discharged by Certificate Number (*stating the number of the certificate*)," and to such entry the officer shall subscribe his name, and he shall also endorse the fact of the discharge upon the instrument discharged, and shall subscribe his name to the endorsement. R. S. O. 1897, c. 148, s. 26.

(2) Where a mortgage has been renewed under section 21, the endorsement or entries required by the next preceding subsection need only be made upon the statement and affidavit filed on the last renewal, and at the entries of the statement and affidavit in such book. R. S. O. 1897, c. 148, s. 27.

(3) A certificate of discharge by an assignee shall not be registered unless and until the assignment is registered.

(4) The assignment shall, upon proof by the affidavit of a subscribing witness, be registered, numbered and entered in such book, in the same manner as a mortgage. R. S. O. 1897, c. 148, s. 28.

FEES.

30. For services under this Act the officers shall be entitled to the following fees:

(*a*) For registering each instrument or copy or renewal statement, fifty cents:

(*b*) for registering an assignment, twenty-five cents;

(*c*) For registering a certificate of discharge, twenty-five cents;

(*d*) For a general search, twenty-five cents;

(*e*) For production and inspection of any instrument or document, ten cents;

(*f*) For copies of any instrument or document and certifying the same, ten cents for every hundred words;

(*g*) For extracts, whether made by the person making the search or by the officer, ten cents for every hundred words. R. S. O. 1897, c. 148, s. 29.

INSPECTION OF BOOKS AND INSTRUMENTS.

31—(1) Every person shall on payment of the proper fees have access to and be entitled to inspect the books containing records or entries of mortgages, conveyances or assignments registered.

(2) A person desiring such access or inspection shall not be required, as a condition to his right thereto, to furnish the names of the persons in respect of whom such access or inspection is sought.

(3) The Clerk shall upon demand produce for inspection any such mortgage, conveyance, assignment or copy thereof registered in his office. R. S. O. 1897, c. 148, s. 36.

STATISTICAL RETURNS.

32.—(1) Every officer with whom instruments are required to be registered under the provisions of this Act shall, on or before the 15th day of January in each year, transmit to the Minister of Agriculture a return which shall set out:

(*a*) The number of undischarged mortgages on record in his officer on the 1st day of January in the year next preceding that in which the return is made;

(*b*) The number of mortgages and renewals, the number of discharges, and the number of assignments for the benefit of creditors registered during the year following the said 1st day of January; and

(*c*) The number of undischarged mortgages on record in his office on the 31st day of December in said year.

(2) The return shall not include instruments which have lapsed by reason of non-renewal.

(3) The occupations or callings of the mortgagors or assignors as stated in the instruments shall be classified and the return shall show the aggregate sums purporting to be secured by the mortgages in each class.

(4) The return shall, where practicable, distinguish mortgages to secure endorsations or future advances from mortgages to secure existing debts or present advances. R. S. O. 1897, c. 148, s. 42.

33. Chapter 148 of The Revised Statutes, 1897, except section 41, and all amendments thereto, are repealed.

34. This Act shall come into force and take effect on, from and after the 1st day of September, 1910.

FORM 1.

RENEWAL STATEMENT.

Statement exhibiting the interest of in the property mentioned in the mortgage dated the day of 19 , made between of of the one part, and , of , of the other part, and registered in the office of the Clerk of the Court of the of , on the day of 19 , and of the amount due for principal and interest thereon, and of all payments made on account thereof.

The said , is still the mortgagee of the said property, and has not assigned the said mortgage (*or* the said is the assignee of the said mortgage by virtue of an assignment thereof from the said to him, dated the day of 19), (*or as the case may be*).

No payments have been made on account of the said mortgage (*or* the following payments, and no other, have been made on account of the said mortgage:

19 , January 1, Cash received.....$100.00)

The amount still due for principal and interest on the said mortgage is the sum of $ made up as follows: (*here give the items*).

A. B.,
(*Signature of Mortgagee or Assignee.*)

County (*or District*) of
To wit,

I, of the of in the of the mortgagee named in the mortgage mentioned in the foregoing (*or* annexed) statement (*or* assignee of the mortgagee named in the mortgage mentioned in the foregoing [*or* annexed] statement) (*as the case may be*), make oath and say:

1. That the foregoing (*or* annexed) statement is true.

2 That the mortgage mentioned in the said statement has not been kept on foot for any fraudulent purpose.

A. B.

Sworn before me at the of in the of , this day of 19 .
A Commissioner, etc.

R. S. O. 197, c. 148, Sched. B.

FORM 2.

DISCHARGE OF MORTGAGE.

To the Clerk of the Court of the of

I, of do certify that has satisfied all money due, or to grow due on a certain mortgage made by to , which mortgage bears date the day of 19 , and was registered (*or in case the mortgage*

has been renewed was last renewed), in the office of the Clerk of the Court of the of ,on the day of 19 , as No. (*here mention the date of registration of each assignment thereof, and the names of the parties, or mention that such mortgage has not been assigned, as the fact may be*) ; and that I am the person entitled by law to receive the money, and that such mortgage is therefore discharged.

Witness my hand, this day of 19 .
Witness,
C. D. A. B.,
(*signature of Mortgagee or Assignee.*)

R. S. O. 1897, c. 148, Sched. A.

NOVA SCOTIA.

Chapter 142 of the R. S. N. S. 1900. "The Bills of Sale Act" contains the statute law relating to both bills of sale, chattel mortgages, and all assignments, transfers, declarations of trust without transfer, and other assurances without transfer of personal chattels, and also powers of attorney, authorities or licenses to take possession of personal chattels as security for any debt. Assignments for general benefit of creditors, deeds of trust to secure bonds or debentures of incorporated companies, marriage settlements, transfers or assignments of ships or interests therein, transfers of goods in the ordinary course of trade, mercantile documents, such as warehouse receipts or bills of lading, etc., are not within the Act.

Every bill of absolute or conditional sale of chattels or a true copy thereof must be filed in the proper registry office in which the grantor resides at the time of the execution of same. As against purchasers and creditors, the bill of sale takes priority from the time of filing same. An affidavit of bona fides must accompany the bill of sale, and must comply with the various sections of the Act in this regard. Bills of sale must be renewed by filing a statement of the account properly attested by affidavit every three years during the life of the bill of sale, within the last thirty days of the term. Unless such renewal statement is filed in accordance with the Act, it is invalid as against creditors and subsequent purchasers. The forms given in the Act should be closely followed.

Hiring and purchase agreements are governed by the provisions of cap. 42, Nova Scotia Statutes, 1907, as amended by cap. 24, Acts, 1908, reading as follows:—

1. Section 8, of cap 142, Revised Statutes, 1900, is repealed, and the following substituted therefor:—

8. (1) Every hiring, lease, bailment, or bargain for the sale of personal chattels, accompanied by an immediate delivery, and followed by an actual and continued change of possession, whereby it is agreed:—

(a) That the property in the personal chattels, or,

(b) In case of a bargain for sale, that a lien thereon for the price thereof, or any portion thereof, shall remain in the person letting to hire, the lessor, the bailor, or the bargainor, until payment in full of the hire, rental or price agreed upon by future payments or otherwise, and whether the personal chattels so delivered be the identical subject matter of the hiring, lease, bailment or bargain for sale or otherwise

shall be evidenced by instrument or instruments in writing, shewing the terms of such agreement, and be signed by the person to whom such personal chattels are hired, the lessee, bailee, bargainee, or his agent thereunto duly authorized, in writing, and shall have written or printed therein, the post office address of the person letting to hire, lessor, bailor or bargainor.

(2) Within ten days after the delivery of such chattel or chattels, a true copy of such instrument or instruments shall be filed in the registry of deeds for the registration district in which the person to whom such personal chattels are hired, the lessee, bailee, or bargainee resides at the time of the execution thereof, and the same shall be accompanied by an affidavit of either of the parties thereto, or if such hiring, lease, bailment or bargain for sale was made by, with or to an agent thereunto, duly authorized in writing, the affidavit of such agent stating:—

(a) That the said copy or copies of such instrument or instruments truly sets forth the terms, nature and effect of the agreement between the parties thereto with respect to the personal chattels therein mentioned; and,

(b) That said instrument or instruments was, or were executed in good faith, and for the purpose of securing to the person letting to hire, the lessor, the bailor, or the bargainor, the payment in full of the amount therein mentioned as to be paid, and not for the mere purpose of protecting the personal chattels therein mentioned against the creditors of the person to whom such personal chattels are hired, the lessee, bailee, or bargainee, or of preventing such creditors from recovering any claim which they may have against him.

(3) Such affidavit shall be as nearly as may be in the form "D." in the schedule.

(4) The Registrar on receipt of such copy or copies and affidavit shall duly file the same, and cause them to be properly entered in the index book kept for that purpose.

(5) The person letting to hire, lessor, bailor or bargainor, shall leave a copy or copies of such instrument or instruments, in writing, with the person to whom such personal chattels are hired, the lessee, bailee, or bargainee, at the time of the execution of such writing or within twenty days thereafter.

(6) If a copy or copies of such instrument or instruments, in writing, and affidavit, be not filed as required by sub-sec. (2) of this section, the agreement between the parties that such property or such lien shall remain in such person letting to hire, lessor, bailor or bargainor, as aforesaid, shall, as against the creditors, purchasers and mortgagees of the person to whom such personal chattels are hired, of the lessee, of the bailee, or of the bargainee, be null and void.

(7) Every person letting to hire, lessor, bailor or bargainor, shall, on demand by any creditor or interested person, file with said Registrar, within twenty days from the making of said demand, a sworn statement of the amount due on such agreement, and on failure to file said statement, shall forfeit all rights accruing under the same as against such creditor or interested person, and as to such creditor or interested person, the agreement between the parties that such property or such lien shall remain in such person letting to hire, such lessor, bailor or bargainor as aforesaid, shall thenceforth be null and void. It shall be sufficient to make such demand, by mailing the same, postage prepaid and registered, to the post office address of the person letting to hire, lessor, bailor or bargainor, as stated in the instrument or instruments, filed in the Registry of Deeds, under the provisions of this Act.

(8) In case any person letting to hire, lessor, bailor or bargainor of any personal chattels as aforesaid, or his successors in interest, takes or take possession thereof for breach of any condition, he or they shall retain the same for three months, and the person to whom such personal chattels are hired, the lessee, bailee or bargainee or his successor in interest may redeem the same within such period on payment of the full amount then in arrears, together with interest.

(9) When personal chattels have been let to hire, leased, bailed, or bargained, originally as aforesaid, and a copy of the agreement between the parties filed according to the provisions of this Act, and the same have been taken possession of as in the next preceding sub-section mentioned, such chattels shall not be sold without twenty days notice of the intended sale being first given to the person to whom such personal chattels are hired, the lessee, bailee, or bargainee, or his successor in interest. The notice may be personally served, or may, in the absence of such person to whom such personal chattels are hired, the lessee, bailee, or bargainee, or his successor in interest, be left at his residence, or last known place of abode in Nova Scotia, or be sent by registered letter deposited in the post office at least twenty-two days before the time when the said twenty days will elapse, addressed to the person to whom such personal chattels are hired, the lessee, bailee, or bargainee, or his successor in interest, at his last known post office address in Canada.

2. The provisions of this Act shall extend to contracts made outside the Province of Nova Scotia.

3. Section 12, of said cap. 142, Revised Statutes, 1900, is amended by inserting the words, "A Barrister of Supreme Court," between the last word of the second line and the first word of the third line of such section.

NEW BRUNSWICK.

In this Province the law relating to chattel mortgages and bills of sale is now contained in the Bills of Sale Act, Consolidated Statutes, 1903, cap. 142, the provisions of which are similar to the law in Ontario with the following exceptions. Instruments are to be filed with the Registrar of Deeds and Wills of the county where the maker resides; if he is not so resident, then with the Registrar or Registrars of the county or counties where the goods are situate, instead of with the clerk of the County Court as in Ontario. Thirty days are allowed within which to file the instruments instead of five as in Ontario. In Ontario unless a renewal is filed within thirty days next preceding the expiration of one year from the filing of the mortgage it ceases to be valid as against creditors, but in New Brunswick a creditor, if the renewal is not so filed, must serve the mortgagee with a written notice requiring him to do so, and the mortgage then ceases to be valid if the renewal is not

filed within thirty days as against an execution issued at the suit of such creditor. In the case of mortgages to secure repayment of future advances, or against the endorsement of bills or promissory notes in Ontario, the time of repayment or liability must not extend beyond a year from the making of the agreement, while in New Brunswick the limit is three years.

It has been held in New Brunswick that an agreement in writing that goods supplied under it should remain the property of the person supplying them and that should such person, at any time, consider that the business of the firm, to which the goods were supplied, was not being conducted in a proper way or to the satisfaction of the person supplying the goods, the latter should be at liberty to take possession of the stock, book debts and other assets and dispose of the same, constitutes only a license to take possession and not a mortgage under the Bills of Sale Act. In such case the Act did not apply, and while the book debts were not assigned by such license, yet the persons supplying the goods were entitled to the book debts as against the assignees of the firm receiving the goods. The effect of this decision is that a wholesale house may supply goods to a retail house and so long as the goods are not sold, but simply delivered under an agreement by which the supplying party has the right to resume possession of the goods, it need not be evidenced by a bill of sale.

THE FORMS OF DISCHARGE AND RENEWAL OF CHATTEL MORTGAGE IN USE IN NEW BRUNSWICK ARE GIVEN BELOW.

DISCHARGE OF MORTGAGE.

To the Registrar of Deeds of the County of

I, A. B., of do certify that has satisfied all money due on, or to grow due on a certain chattel mortgage made by to which mortgage bears date the day of , A.D. , and was registered (or in case the mortgage has been renewed, was renewed) in the office of the Registrar of Deeds of the County of ,on the ,A.D. , as No. (here mention the day and date of registration of each assignment thereof, and the names of the parties, or mention that such mortgage has not been assigned, as the fact may be); and that I am the person entitled by law to receive the money; and that such mortgage is therefore discharged.

Witness my hand, this day of , A.D., 19 .

One Witness, stating residence and occupation. } A. B.

RENEWAL OF MORTGAGE.

Statement exhibiting the interest of C. D. or E. F. in the property mentioned in a chattel mortgage dated the day of 19 , made between A. B., of of the one part, and C. D., of of the other part and filed in the office of the Registrar of Deeds of the County of on the day of 19 , and of the amount due for principal and interest thereon, and on all payments made on account thereof, or the amount of advances made as well as the amount remaining to be made; likewise the amount still due for principal and interest on such advances, and showing all payments made on account thereof, or showing the amount of liability incurred, and the amount due in respect thereof, and also all payments made on account thereof.

The said C. D. is still the mortgagee of the said property, (or the said E. F. is the assignee of the said mortgage by virtue of an assignment thereof from the said C. D. to him dated the day of 19), (or as the case may be).

No payments have been made on account of the said mortgage (or the following payments, and no other, have been made on account of the said mortgage:

1907, January 1, Cash received - - $100.00)

or, the amount of advances made under the said mortgage is as follows:

1907.

January 1, Cash $500 00
February 1, Cash 300 00
Amount of advances remaining to be paid $1,000 00

or, the amount of liability incurred, for which said mortgage was given as security, is as follows:

Payments have been made on account thereof as follows:

(Here set out the payments.)

And the amount due in respect thereof is $

(Here set out amount.)

The amount still due for principal and interest on the said Mortgage is the sum of dollars, computed as follows: [here give the computation.]

C. D.

County of } I, of the
To wit: } of in the County of
the mortgagee named in the chattel mortgage mentioned in the foregoing (or annexed) statement (or assignee of the mortgagee named in the chattel mortgage mentioned in the foregoing [or annexed] statement), (as the case may be), make oath and say:

1. That the foregoing (or annexed) statement is true.

2. That the chattel mortgage mentioned in the said statement has not been kept on foot for any fraudulent purpose.

Sworn before me at the }
of in the County }
of this day of A.D. 19 .
X. Y., a Commissioner, etc.

PRINCE EDWARD ISLAND.

By the Statute 23 Vict. cap. 9, every bill of sale and chattel mortgage, and every schedule and inventory therein, may be filed with the Prothonotary of the Supreme Court at

Charlottetown, or the deputy prothonotary of the county in which the grantor resides; if the grantor be non-resident, the instrument is to be filed at Charlottetown. Before such filing the execution of the instrument must be proved on oath before the prothonotary or deputy prothonotary with whom the same is filed, either by one or more of the subscribing witnesses, or by the acknowledgment of the grantor; and such proof must be indorsed on the instrument. The oath may be taken before the prothonotary, or deputy prothonotary, or before a commissioner of the Supreme Court, and they must certify the same in the forms given in the Act. Registered instruments take priority from the date of filing; but, as between the immediate parties to them and as against the grantor, they are good without filing.

An important change in the law was effected by the statute 41 Vict. cap. 7, whereby it is enacted that all absolute bills of sale shall be fraudulent and void, except as between grantor and grantee, unless the grantee shall, forthwith upon the execution thereof, take actual possession of the goods and chattels comprised therein, and the grantor shall cease to have the possession thereof.

A chattel mortgage shall be presumed to be valid, although such possession is not taken, if registered according to 23 Vict. cap. 9; and if the grantee, or his agent, or one of several grantees, or the agent of all or any of them make the affidavit in Schedule A (hereunder given); which affidavit shall be endorsed upon, or annexed to, such chattel mortgage.

The affidavit called for by this Act may be made before any Commissioner of the Supreme Court, or County Court, or before the Prothonotary of the Supreme Court, or the Deputy Prothonotary of the county in which such mortgage was required to be filed, or before any clerk or assistant clerk of the County Court.

Sheriffs, Sheriffs' Bailiffs, Constables, and all persons authorized to levy under any execution from any Court, may levy upon and sell any chattels mentioned in a chattel mortgage, provided that the amounts secured by all registered chattel mortgages thereon, and interest as expressed therein, up to the day of payment, be duly paid.

SCHEDULE—FORM A.

Dominion of Canada; } I, of in
Province of Prince Edward Island. } County, (farmer,
County. as the case may be), the
grantee [or one of the grantees] mentioned in the within chattel
Mortgage, (or I, of in County, agent for the grantee or

one of the said grantees), make oath and say; that the grantor named in said chattel mortgage is really and truly indebted to me (or to the grantee or grantees therein named), in the sum of $ for (here state consideration), and I further say that the said chattel mortgage was really and truly given and accepted for the consideration therein expressed, and that to the best of my knowledge and belief the said mortgage was not executed for the purpose or with the intent of protecting the property therein described from the creditors of the said grantor, or of defrauding the creditors of the said grantor or any of them.

Sworn at
in County
this day of 19
before me

A. B.

MANITOBA.

Under statutory provisions similar to those in the Ontario Statute, viz.: "The Bills of Sale and Chattel Mortgage Act," R. S. M. 1902, cap. 11, as amended, chattel mortgages and bills of sale should be filed in the office of the Clerk of the County Court of the judicial division in which the goods are situate at the time of the execution of the instrument in order to protect the mortgagee or grantee from the claims of creditors and subsequent purchasers or mortgagees. They must be so filed within twenty days from the date thereof and take effect, except as between the parties thereto, only from the time of the filing.

Mortgages cease to be valid as against subsequent purchasers or mortgagees in good faith, or creditors, unless renewed within two years from their filing.

The following sections of the Act should be especially noted:—

39. Every mortgage, bill of sale, lien, charge, incumbrance, conveyance, transfer or assignment, executed or created and which is intended to operate and have effect as security, shall, in so far as the same assumes to bind, comprise, apply to or affect any growing crop, or crop to be grown in the future, in whole or in part, be absolutely void, except the same be made, executed or created as a security for the purchase price, and interest thereon, of seed grain.

40. Every mortgage or incumbrance upon growing crops, or crops to be grown, made, executed or created to secure the purchase price of seed grain, with or without interest, shall not be affected by, or be subject to, any chattel mortgage or bill of sale previously given by the mortgagor, any landlord's claim for rent, in respect of the land upon which

such seed grain has been used for sowing the crop during the year in which it is supplied, or any claim of a mortgagee of the said lands arising under any term or covenant or condition contained in any such mortgage upon said lands, or by any writ of execution against the mortgagor, in the hands of a sheriff or County Court bailiff at the time of the registration of such seed grain mortgage; but such seed grain mortgage shall be a first and preferential security for the sum therein mentioned upon the crop covered by such seed grain mortgage against any and every other claim, security or process to which it might otherwise be liable.

41. Every mortgage or incumbrance upon growing crops or crops to be grown, made or created to secure the purchase price of seed grain, shall be held to be within the provisions of this Act; and the affidavit of bona fides of the mortgagee or his agent shall contain an additional or further statement that the same is taken to secure the purchase price of seed grain.

The costs of seizure under a chattel mortgage are fixed by statute, and are given hereafter.

As to receipt notes, hire receipts, etc., see LIEN NOTES, page ——

SASKATCHEWAN AND ALBERTA.

The corresponding statute in these Provinces is "The Bills of Sale Ordinance," C. O. N. W. T., cap. 43. Under this Act chattel mortgages and bills of sale should be filed in the office of the registration clerk for that one of the registration districts into which the Province is divided for the purposes of the Act as set forth in the Act, in which the goods are at the time of the execution of the instrument. They should be so filed within thirty days from the execution thereof. Chattel mortgages take effect only from the time of the filing. The statute is silent as to the time when bills of sale take effect, but it is probable that the law is the same on that point.

As to conveyance of growing or future crops, the following section should be noted:—

15. No mortgage, bill of sale, lien, charge, incumbrance, conveyance, transfer or assignment hereafter made, executed or created and which is intended to operate and have effect as a security shall in so far as the same assumes to bind, comprise, apply to or affect any growing crop or crop to be grown in future in whole or in part, be valid ex-

cept the same be made, executed or created as a security for the purchase price and interest theron of seed grain.

(2) Every mortgage or incumbrance upon growing crops or crops to be grown, made or created to secure the purchase price of seed grain shall be held to be within the provisions of this Ordinance, and the affidavit of bona fides among the other necessary allegations shall contain a statement that the same is taken to secure the purchase price of seed grain.

(3) No mortgage or incumbrance to secure the price of seed grain shall be given upon any crop which is not sown within one year of the date of the execution of the said mortgage or incumbrance.

(4) Every registration clerk shall keep a separate register of such seed grain mortgages and shall be entitled to receive the same fees for his services as provided for under sec. 33 of this Ordinance.

(5) Every such seed grain mortgage so taken and filed shall not be affected by or subject to any chattel mortgage or bill of sale previously given by the mortgagor or by any writ of execution against the mortgagor in the hands of the sheriff at the time of the registration of such grain mortgage, but seed grain mortgage shall be a first and preferential security for the sum therein mentioned; the date of the purchase of seed grain, the number of bushels and price per bushel must be stated in the mortgage as well as in the affidavit of bona fides.

As to receipt notes, hire receipts, and orders for chattels commonly called lien notes, see the article on that subject, under the title "LIEN NOTES," page .

BRITISH COLUMBIA.

By the Revised Statutes of British Columbia, 1897, c. 32, bills of sale and all schedules and inventories must be registered in the District Registry for the city, county or place where the chattels dealt with are situate within twenty-one days from the time of making. Where the chattels are not within a Land Registry District the statute provides a special method of filing.

The affidavit of an attesting witness in the form given must accompany the bill (unless made by a company having a registered head office in the Province, for which a special form is prescribed by the Act). Any defeasance or condition of a bill must be written on the same paper and filed

with it or it is null and void as against creditors. Within five years from the date of registration a renewal in the form given must be filed, or the registration ceases to be effective. The result of non-registration is to render the bill void as against subsequent purchasers or mortgagees for valuable consideration. Registration has the effect of a bona fide delivery of the goods. A registered bill takes priority over an unregistered one. When two or more are registered they have priority as between themselves according to date.

Affidavit of Execution.

"Bills of Sale Act."

I, , of , make oath and say as follows:—

1. That the paper writing hereunto annexed, and marked "A," is a true copy of a bill of sale, and of every (or, where the original is filed, "is the bill of sale and every") schedule or inventory thereto annexed, or therein referred to, and of every attestation of the execution thereof, as made and given and executed by

2. That the bill of sale was made and given by the said on the day of , in the year of our Lord one thousand nine hundred and

3. That I was present and did see the said in the said bill of sale mentioned, and whose name is signed thereto, sign and execute the same on the said day of in the year aforesaid.

4. That the said at the time of making and giving the said bill of sale resided, and still resides (if such be the fact), at and then was and still is (if such is the fact),

[If there has been a change of residence or occupation since execution of bill of sale give particulars, or, if place of business is given alter accordingly.]

5. That the name set and subscribed as the witness attesting the due execution thereof, is of the proper handwriting of me, this deponent, and that I reside at [give number of house, street and town], and am

Subscribed to and sworn before me this day of A.D. 19 .

Renewal of Bill of Sale.

"Bills of Sale Act."

I, A. B., of, do swear that a bill of sale, bearing date the day of , 19 , and made between and which said bill of sale, (or, and a copy of which said bill of sale, as the case may be), was filed in the office of the Registrar-General of Titles (or, in the office of , or,), on the day of , 19 , and is still a subsisting security.

Subscribed and sworn before me, this day of , 19 .

A. B.

FORMS.

Chattel Mortgage.

This Indenture, made the day of , 19 , Between A. B., of, etc., of the one part, and C. D., of, etc., of the other part. Witnesseth that the said party of the first part, for and in consideration of the sum of $100 of lawful money of Canada, to him in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, doth bargain, sell and assign unto the said party of the second part, his executors, administrators and assigns, all and every the goods, chattels, furniture and effects in and about the dwelling house (or store) of the said A. B., situate at, etc., and hereinafter particularly mentioned, that is to say (Here specify the chattels: or you may refer to a schedule, saying after the word, etc., "which are particularly specified in the schedule hereunder written.")

To have, receive and take the said goods and chattels hereby assigned or intended so to be, unto the said party of the second part, his executors, administrators and assigns, as his and their own proper goods and effects.

Provided always that if the said party of the first part, his executors or administrators, shall pay unto the said party of the second part, his executors, administrators or assigns, the full sum of $100 with interest thereon, at the rate of 10 per cent. on the day of next, then these presents shall be void.

And the said party of the first part doth hereby, for himself, his executors and administrators, covenant, promise, and agree to and with the said party of the second part, his executors, administrators, and assigns, that he, the said party of the first part, his executors or administrators, or some or one of them, shall and will well and truly pay, or cause to be paid, unto the said party of the second part, his executors, administrators and assigns, the said sum of money in the above proviso mentioned, with interest for the same as aforesaid, on the days and times and in the manner above limited for the payment thereof.

And also, that in case default shall be made in the payment of the said sum of money in the said proviso mentioned, or the interest thereon, or any part thereof, or in case the said party of the first part shall attempt to sell or dispose of, or in any way part with the possession of, the said goods and chattels, or any of them, or to remove the same or any part thereof out of the County of without the consent of the said party of the second part, his executors, administrators or assigns, to such sale, removal or disposal thereof, first had and obtained in writing; then and in such case it shall and may be lawful for the said party of the second part, his executors, administrators and assigns, peaceably and quietly to receive and take unto his or their absolute possession, and thenceforth to hold and enjoy all and every or any of the goods, chattels and premises hereby assigned or intended so to be, and with his or their servant or servants, and with such other assistant or assistants upon any lands, tenements, houses and premises belonging to and as he may require, at any time during the day to enter into and in the occupation of the party of the first part, where the said goods and chattels or any part thereof may be, and to break and

force open any door, lock, bolt, fastening, hinge, gate, fence, house, building, enclosure and place, for the purpose of taking possession of and removing the said goods and chattels: and to sell the said goods and chattels, or any of them, or any part thereof at public auction or private sale, as to them or any of them may seem meet; and from and out of the proceeds of such sale in the first place to pay and reimburse himself or themselves all such sums of money as may then be due, by virtue of these presents, and all such expenses as may have been incurred by the said party of the second part, his executors, administrators or assigns, in consequence of the default, neglect or failure of the said party of the first part, his executors, administrators or assigns, in payment of the said sum of money with interest thereon as above mentioned, or in consequence of such sale or removal as above mentioned; and in the next place to pay unto the said party of the first part, his executors, administrators and assigns, all such surplus as may remain after such sale, and after payment of all such sum and sums of money and interest thereon as may be due by virtue of these presents at the time of such seizure, and after payment of the costs, charges and expenses incurred by such seizure and sale as aforesaid.

And the said party of the first part doth hereby further covenant, promise and agree to and with the said party of the second part, his executors, administrators and assigns, that in case the sum of money realized under such sale as above mentioned shall not be sufficient to pay the whole amount due at the time of such sale, then he, the said party of the first part, his executors or administrators, will forthwith pay any deficiency to the said party of the second part, his executors, administrators and assigns.

In witness whereof, the parties to these presents have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of Y. Z. — A. B. [L.S.]

Affidavit of Mortgagee.

Ontario, County of To wit: I, C. D., of the of , in the County of the mortgagee in the within bill of sale by way of mortgage named make oath and say, that A. B., the mortgagor in the within bill of sale by way of mortgage named, is justly and truly indebted to me, this deponent, C. D., the mortgagee therein named, in the sum of $100, mentioned therein. That the said bill of sale by way of mortgage was executed in good faith, and for the express purpose of securing the payment of the money so justly due as aforesaid, and not for the purpose of protecting the goods and chattels mentioned in the said bill of sale by way of mortgage against the creditors of the said A. B., the mortgagor therein named, or preventing the creditors of such mortgagor from obtaining payment of any claim against him.

Sworn before me, at the of , in the County of , this day of . 19 . E. F. — C. D

J. P., or a Commissioner for taking Affidavits for the County of

Affidavit of Witness.

Ontario, County of } I, Y. Z., of the of , in the County
To wit: } of make oath and say, that I was personally present, and did see the annexed bill of sale, by way of mortgage, duly signed, sealed and delivered by A. B., party thereto, and that the name Y. Z., set and subscribed as a witness to the execution thereof, is of the proper handwriting of me, this deponent, and that the same was executed at , in the said County of on the day of A.D. 19 .

Sworn before me, at the of , in the County of , this day of , 19 .
E. F.

Y. Z.

J. P., or a Commissioner for taking Affidavits in and for the County of

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Chattel Mortgage.

(By way of securing against Indorsement.)

This Indenture, made the day of 19 , Between A. B., of, etc., of the first part, and C. D., of, etc., of the second part: Whereas the said party of the second part has indorsed the Promissory Note of the said party of the first part for the sum of $500, of lawful money of Canada, for the accommodation of the said party of the first part, which Promissory Note is in the words and figures following, that is to say: (here copy the note). And whereas the said party of the first part has agreed to enter into these presents for the purpose of indemnifying and saving harmless the said party of the second part of and from the payment of the said promissory note, or any part thereof, or any note or notes hereafter to be indorsed by the said party of the second part, for the accomodation of the said party of the first part, by way of renewal of the said recited note, or otherwise howsoever, within the period of one year from the date hereof.

Now this Indenture witnesseth, that the said party of the first part, in consideration of the premises, hath bargained, sold and assigned, and by these presents doth bargain, sell and assign, unto the said party of the second part, his executors, administrators and assigns, All and singular the goods, chattels furniture and household stuff hereinafter particularly mentioned and expressed, that is to say: (describe as in preceding form).

To have, hold, receive and take the said goods, chattels, furniture and household stuff hereby assigned or mentioned, or intended so to be, unto the said party of the second part, his executors, administrators and assigns, forever: Provided always, and these presents are upon this condition, that if the said party of the first part, his executors or administrators, do and shall well and truly pay, or cause to be paid, the said promissory note so as aforesaid indorsed by the said party of the second part, and all and every other note or notes, which may hereafter be indorsed by the said party of the second part for the accommodation of the said party of the first part, by way of renewal of the said note and indemnify and save harmless the said party of the second part, his heirs, executors and administrators, from all loss, costs, charges, damages or expenses in

respect of the said note or any renewals thereof, then these presents, and every matter and thing herein contained, shall cease, determine and be utterly void to all intents and purposes, anything herein contained to the contrary thereof in anywise notwithstanding. And the said party of the first part doth hereby, for himself, his heirs, executors and administrators, covenant, promise and agree to and with the said party of the second part, his executors and administrators, that he, the said party of the first part, his executors or administrators, or some or one of them, shall and will well and truly pay, or cause to be paid, the said promissory note in the above recital and proviso mentioned, and all future or other promissory notes which the said party of the second part shall hereafter indorse for the accomodation of the said party of the first part by way of renewal as aforesaid, and indemnify and save harmless the said party of the second part from all loss, costs, charges, damages or expenses in respect thereof.

And also, that in case default shall be made in the payment of the said promissory note or any renewal note or notes as in the said proviso mentioned, or in case the said party of the first part shall attempt to sell or dispose of, or in any way part with the possession of the said goods and chattels, or any of them, or remove the same or any part thereof out of the county of , without the consent of the said party of the second part, his executors or administrators, to such sale, removal or disposal thereof, first had and obtained in writing then and in such case it shall and may be lawful for the said party of the second part, his executors or administrators, with his or their servant or servants, and with such other assistant or assistants as he or they may require, at any time during the day to enter into and upon any lands, tenements, houses and premises, wheresoever and whatsoever belonging to, and in the occupation of the said party of the first part, his executors or administrators, where the said goods and chattels, or any part thereof, may be, and for such persons to break and force open any doors, locks, bolts, fastenings, hinges, gates, fences, houses, buildings, enclosures and places, for the purpose of taking possession of and removing the said goods and chattels, and upon and from, and after the taking possession of such goods and chattels as aforesaid, it shall and may be lawful, and the said party of the second part, his executors or administrators, and each or any of them, is and are hereby authorized and empowered to sell the said goods and chattels or any of them, or any part thereof, at public auction or private sale, as to him or them, or any of them, may seem meet, and from and out of the proceeds of such sale in the first place to pay and reimburse himself or themselves all such sums and sum of money as may then be due by virtue of these presents on the said promissory note, or any renewal note or notes, as aforesaid, and all such expenses as may have been incurred by the said party of the second part, his executors or administrators, in consequence of the default, neglect or failure of the said party of the first part, his executors or administrators, in payment of the said note or notes as above mentioned, or in consequence of such sale or removal as above mentioned; and in the next place to pay unto the said party of the first part, his executors, administrators or assigns, all of such surplus as may remain after such sale, and after payment of all such sum and sums of money, and interest thereon, as he, the said party of the second part shall be called upon to pay by reason of indorsing the said promissory note in the said recital and proviso mentioned, or any renewal note or notes to be indorsed by the said party of the

second part for the said party of the first part, as aforesaid, at the time of such seizure, and after payment of such costs, charges and expenses incurred by such seizure and sale, as aforesaid.

Provided always, nevertheless, that it shall not be incumbent on the said party of the second part, his executors or administrators, to sell and dispose of the said goods and chattels, but that in case of default in payment of the said note or notes as aforesaid, it shall and may be lawful for the said party of the second part, his executors, administrators and assigns, peaceably and quietly to have, hold, use, occupy, possess and enjoy the said goods and chattels, without the let, molestation, eviction, hindrance or interruption of him, the said party of the first part, his executors, administrators or assigns, or any of them, or any other persons or person whomsoever. And the said party of the first part doth hereby further covenant, promise and agree, to and with the said party of the second part, his executors and administrators, that in case the sum of money realized under any such sale as above mentioned shall not be sufficient to pay the whole amount due on the said note or notes at the time of such sale, that he, the said party of the first part, his executors or administrators, shall and will forthwith pay or cause to be paid, unto the said party of the second part, his executors or administrators, all such sum or sums of money, with interest thereon, as may then be remaining due upon the said note or notes.

In witness whereof, the parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed and delivered in the presence of Y. Z. — C. D. [L.S.] A. B. [L.S.]

Affidavit of Mortgagee.

Ontario, County of To wit: I, C. D., of, etc., the mortgagee in the within mortgage named, make oath and say, that such mortgage truly sets forth the agreement entered into between the mortgagor therein named and myself, being the parties thereto, and truly states the extent of the liability intended to be created by such agreement and covered by such mortgage, and that the said mortgage was executed in good faith and for the express purpose of securing me, the said mortgagee therein named, against the payment of the amount of my liability for the said mortgagor by reason of the promissory note therein recited, or any note or notes which I may endorse for the accommodation of the said party of the first part, as renewals of the said note; And not for the purpose of securing the goods and chattels mentioned therein against the creditors of the mortgagor, nor to prevent such creditors from recovering any claims which they may have against such mortgagor.

Sworn before me, at the of , in the County of , this day of , A.D. 19 . — C. D.

E. F.

J. P., or a Commissioner for taking affidavits in and for the County of

Affidavit of Witness.

Ontario, County of , to wit: I, Y. Z., of, etc., make oath and say, that I was personally present and did see the annexed bill of sale, by way of mortgage, duly signed sealed and delivered by A. B. and C. D., the parties thereto, and that I, this deponent, am a subscribing witness to the same; that the name Y. Z., set and subscribed as a witness to the execution thereof, is of the proper handwriting of me, this deponent, and that the same was executed at , in the said County of on the day of , 19.

Sworn before me, at the of , in the County of , this day of , A.D. 19 . Y. Z. E. F.

J. P., or a Commissioner for taking affidavits in and for the County of

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Chattel Mortgage.

(To secure future advances.)

This Indenture made the day of 19 , Between A. B., of, etc., of the first part, and C. D., of, etc., of the second part. Whereas, [here set forth fully by way of recital, the terms, nature and effect of the agreement for the future advances, and the amount of liability to be created, as for instance; "Whereas the said A. B. is desirous of entering into and carrying on the business of a dry goods merchant at the City of Toronto, and hath applied to the said C. D., to make him future advances not exceeding in the whole the sum of $5,000, at such times and in such sums as he, the said A. B., may require the same. And whereas, by an agreement in writing, dated on the day of 19 , and made between the said A. B. and C. D., the said C. D. hath agreed to make such future advances to the extent of $5,000 to the said A. B. for the purpose aforesaid at such times, and in such sums as the said A. B. may require it: the whole to be repaid within one year from the date of the said agreement."] Now this Indenture witnesseth that the said party of the first part, in consideration of the premises, and in pursuance of the said agreement hath bargained, sold and assigned, and by these presents doth bargain, sell and assign unto the said party of the second part, his executors, administrators and assigns, All and singular the goods, chattels, furniture and household effects hereinafter particularly mentioned and described in the schedule hereunto annexed, marked A. To have, hold, receive and take, all and singular the said goods, chattels, furniture and effects hereinbefore bargained, sold and assigned, or mentioned, or intended so to be, unto the said party of the second part, his executors, administrators and assigns forever. Provided always, and these presents are upon this condition, that if the said party of the first part, his executors or administrators do and shall well and truly pay or cause to be paid unto the said party of the second part, his executors, administrators or assigns, the sum of $5,000 or so much thereof as the said party of the second part shall advance to the said party of the first part, according to the terms of the said agreement, together with interest thereon at the rate of per cent. per annum, within one year from the date of the said agreement, then these

presents and every matter and thing herein contained, shall cease, determine and be utterly void to all intents and purposes, any thing herein contained to the contrary thereof in any wise notwithstanding. Provided always that in case default shall be made in payment of the said sum of $5,000, or so much thereof as may be advanced as aforesaid, and interest, contrary to the last mentioned proviso; or in case the said party of the first part shall attempt to sell or dispose of, or in any way part with the possession of, the said goods and chattels or any of them, or to remove the same or any part thereof out of the City of Toronto, without the consent of the said party of the second part, his executors, administrators or assigns, to such sale, removal or disposal thereof, first had and obtained in writing; then and in such case it shall and may be lawful for the said party of the second part, his executors, administrators or assigns with his or their servant or servants, and with such other assistant or assistants as he or they may require, peaceably and quietly to receive and take into his or their absolute possession, and thenceforth to hold and enjoy all and every, or any of the said goods and chattels: and upon and from and after taking possession of such goods and chattels as aforesaid, it shall and may be lawful and the said party of the second part, his executors, administrators and assigns, and each or any of them is and are hereby authorized and empowered, to sell the said goods and chattels, or any of them, or any part thereof at public auction or private sale, as to him or any of them may seem meet, and from and out of the proceeds of such sale in the first place to pay and reimburse him and them all such sums and sum of money as may then be due by virtue of these presents, and all such expenses as may have been incurred by the said party of the second part, his executors, administrators, or assigns, in consequence of the default, neglect or failure of said party of the first part, his executors, administrators or assigns, in payment of the said sum of money, with interest thereon, as above mentioned, and in the next place to pay unto the said party of the first part, his executors or administrators, all such surplus as may remain after payment of such sum or sums of money as aforesaid. And the said party of the first part, for himself, his heirs, executors and administrators, doth hereby covenant, promise and agree to and with the said party of the second part, his executors, administrators and assigns, that in case the sum of money realized under any such sale as above mentioned, shall not be sufficient to pay the whole amount due at the time of such sale, he the said party of the first part, his executors or administrators, shall and will forthwith pay or cause to be paid unto the said party of the second part, his executors, administrators or assigns, all such sum or sums of money, with interest thereon, as may then be remaining due.

And it is hereby also declared and agreed, that until default shall be made in payment of the said principal sum of $5,000 and interest contrary to the aforesaid proviso, it shall be lawful for the said A. B., his executors or administrators, to make use of (but not to remove from the premises) the said goods, chattels and things hereby assigned or intended so to be without any hindrance or disturbance by the said C. D., his executors, administrators or assigns. And the said A. B. doth hereby for himself, his heirs, executors and administrators, covenant with the said C. D., his executors and administrators, that he, the said A. B., hath not heretofore made, done, permitted or suffered, nor will at any time hereafter make, do, permit or suffer any act, deed, matter or thing whereby, or by means whereof, the said goods, chattels and premises hereby

assigned are, is, can or may be in any wise impeached, charged, affected, incumbered or prejudicially affected in any manner howsoever; and also that he the said A. B., his executors or administrators will, so long as any money shall remain due on this security, insure and keep insured the said goods, chattels and premises from damage by fire, in some respectable insurance office, in the names of the said C. D., his executors, administrators or assigns, in the sum of $, and hand the policy for such insurance, and the receipt for the current year's premium, to the said C. D., his executors, administrators or assigns, on demand; and that in default of the said policy being so effected or kept on foot as aforesaid, it shall be lawful for the said C. D., his executors, administrators and assigns, to effect or keep on foot the same, and all the premiums and other expenses incurred by him or them in so doing shall be repaid on demand by the said A. B., his executors or administrators, and until re-payment, the same shall be a charge on the said goods, chattels and premises hereby assigned, and shall bear interest after the rate aforesaid. And also that the said A. B., his executors and administrators, will, during the continuance of this security, keep the chattels, effects and premises hereby assigned, in good order, repair and condition in all respects, as they are in at the time of the execution hereof.

In witness whereof, the parties to these presents have hereupon set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of Y. Z. — A. B. [L.S.] C. D. [L.S.]

The Schedule above referred to marked A.

(Here set out a full and particular description of the goods, as required in the preceding forms.)

Mortgagee's Affidavit

Ontario, County of , to wit: I, C. D., of, etc., the mortgagee in the within mortgage named, make oath and say, that the within mortgage truly sets forth the agreement entered into between myself and A. B., therein named, and truly states the extent of the liability intended to be created by such agreement, and covered by the within mortgage. That the within mortgage is executed in good faith, and for the express purpose of securing to me the re-payment of the advances agreed to be made as within mentioned, and not for the purpose of securing the goods and chattels mentioned therein, and set forth in the schedule attached thereto, marked A, against the creditors of the said A. B., nor to prevent such creditors from recovering any claims which they may have against the said A. B.

Sworn before me, at the day of , 19 . — C. D.

F. W.,
A Commissioner, etc.

Affidavit of Witness, same as in preceding Forms.

Bill of Sale.

This Indenture made the day of one thousand nine hundred and , Between A. B., of, etc., of the first part, and C. D., of, etc., of the second part.

Whereas, the said party of the first part is possessed of the goods, chattels and effects hereinafter set forth, described and enumerated, and hath contracted and agreed with the said party of the second part for the absolute sale to him of the same for the sum of dollars.

Now this Indenture Witnesseth that in pursuance of the said agreement and in consideration of the sum of dollars of lawful money of Canada paid by the said party of the second part to the said party of the first part, at or before the sealing and delivery of these presents (the receipt whereof is hereby by him acknowledged) he, the said party of the first part, hath bargained, sold, assigned, transferred and set over, and by these presents, doth bargain, sell, assign, transfer, and set over unto the said party of the second part, his executors, administrators and assigns, all those the said goods, chattels and effects which may be more particularly described as follows (describe accurately) all which said goods, chattels and effects are contained in a dwelling house, situate and being at, etc.

And all the right, title, interest, property, possession, claim and demand whatsoever, both at law and in equity or otherwise howsoever, of him the said party of the first part, of, in, to or out of the same, and every part thereof.

To have and to hold the said hereinbefore assigned goods, chattels and effects, and every of them and every part thereof, with the appurtenances, and all the right, title and interest of the said party of the first part therein and thereto as aforesaid, unto and to the use of the said party of the second part, his executors, administrators and assigns to and for his and their sole and only use for ever; and the said party of the first part doth hereby for himself, his heirs, executors and administrators, covenant, promise and agree with the said party of the second part, his executors and administrators in manner following, that is to say, that he the said party of the first part, is now rightfully and absolutely possessed of and entitled to the said hereby assigned goods, chattels and effects, and every of them and every part thereof.

And that the said party of the first part now hath in himself good right to assign the same unto the said party of the second part, his executors, administrators and assigns in manner aforesaid, and according to the true intent and meaning of these presents; and that the said party hereto of the second part, his executors, administrators and assigns, shall and may from time to time, and at all times hereafter peaceably and quietly have, hold, possess and enjoy the said hereby assigned goods, chattels and effects and every of them and every part thereof, to and for his own use and benefit without any manner of hindrance, interruption, molestation, claim or demand whatsoever of, from or by him, the said party of the first part, or any person or persons whomsoever, and that free and clear and freely and absolutely released and discharged or otherwise at the costs of the said party of the first part, effectually indemnified from and against all former and other bargains, sales, gifts, titles, charges and incumbrances whatsoever.

And moreover that he the said party of the first part, and all persons rightfully claiming or to claim any estate, right, title, interest of, in or to the said hereby assigned goods, chattels and effects, and every of them and every part thereof, shall and will from time to time and at all times hereafter, upon every reasonable request of the said party of the second part, his executors, administrators or assigns, but at the costs and charges of the said party of the second part, make, do and execute, or cause or procure to be made, done and executed, all such future acts, deeds and assurances of the same for the more effectually assigning and assuring the hereby assigned goods, chattels and effects unto the said party of the second part, his executors, administrators, or assigns in manner aforesaid, and according to the true intent and meaning of these presents, as by the said party of the second part, his executors, administrators and assigns, or his or their counsel in the law shall be reasonably advised or required.

In witness whereof, the said parties to these presents have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered,
in the presence of A. B. [L.S.]

Affidavit of Bargainee.

County of } I, of in the foregoing
To wit: } bill of sale named, make oath and say:—
That the sale therein made is bona fide, and for good consideration namely: the actual present payment in hand to the bargainor by the bargainee, of the sum of dollars in cash, and not for the purpose of holding or enabling me this deponent to hold the goods mentioned therein against the creditors of the said bargainor or any of them.

Sworn before me at the
of in the
County of this
day of 19 .
A Commissioner.

COMPANIES.

A company is a distinct entity apart from the members or shareholders composing it; who are themselves not liable personally for its obligations unless expressly made so, and they are affected only to the extent of their interest in the company, that is, to the amount of their investment. In this respect it differs from a partnership for, as a rule, partners are always liable for all the debts and engagements of the firm.

The creation of a company or corporation or the conversion of an individual's or firm's business into a limited liability company is a proceeding that needs the employment of a lawyer; this is particularly so where contracts are to be made with promoters or financiers. It is, of course, possible for a man unfamiliar with the law to form a company by complying with the statutory formalities, but the want of skilled advice may be disastrous. Companies like infants, should have professional assistance at their birth.

Companies are statutory creations established by special Act of the Dominion or of a Provincial Parliament or under the provisions of some general Act, such as the Companies Act of Canada, or a Provincial Act. Their creation is evidenced by an Act, letters patent, or a certificate granted by the Crown, which is sometimes called its charter.

When a company is incorporated by special Act of the Dominion or Provincial Parliament, its powers, privileges, liabilities, etc., are set forth in the Act itself, and the new company is governed by these and by certain general provisions, applicable to all such companies. Where there is a conflict or inconsistency between the special and general Acts, the provisions of the former apply.

Under the Dominion Companies Act and those of the various provinces of Canada, incorporation may be obtained by filing certain documents, such as a petition or memorandum of association, a stock subscription book, and proposed by-laws or articles of association, according to the requirements of the Act under which application is made. The petition memorandum of association or application sets out the name of the new company, its proposed objects and special provisions, the amount of authorized capital, the par value of each share, the location of the head office, the names of the provisional directors or incorporators, the amount of stock taken by each, etc., all being in strict com-

pliance with the statutory enactments and rules laid down by the Government. Along with the documents filed, which generally have to be in duplicate, there must be paid a fee depending on the amount of capital authorized. Each Province has its own scale of fees, which will be found in the Companies Act.

If everything is in order, a certificate of incorporation or letters patent will be issued by the Secretary of State or Provincial Secretary, and the company is then ready to begin business.

All companies incorporated under the Dominion or Provincial Companies Acts must use the word "limited" after their name on all signs, notices, advertisements, cheques, receipts, letterheads, and other company publications, and in some Provinces must also keep the company's name with the word "limited" after it on the outside of every office or place of business of the company. There is a penalty for omitting to comply with these provisions of the Act.

The persons named in the original petition for letters patent or charter are called provisional directors, and their business is to call a general meeting of all the shareholders for the election of directors and the proper organization of the company. The first meeting of the provisional directors generally does nothing more than decide that a shareholders' meeting be summoned. This meeting must be called in strict accordance with existing by-laws or general company law. The business done at this meeting generally consists of the selection of a temporary chairman and secretary for the meeting; the approval and adoption of the letters patent incorporating the company as the charter of the company, the adoption of by-laws (respecting the number of directors to be elected, their powers and duties, term of office, qualifications and disqualifications, the officers of the company, transfer of shares, form of stock certificates and proxies, the time, place and method of calling general meetings of the company, remuneration of directors and officers, accounting and auditing and all other important matters of internal regulation); the adoption of a seal for the company (which must have the company's name on it followed by the word "limited"), the passing of resolutions relating to the acquisition of property; and the election of directors.

The directors elected, then convene in accordance with the by-laws, and after the selection of a temporary chairman and secretary, a president, secretary ond other officers of the company are appointed, resolutions are passed re-

specting the amount of stock to be issued, the percentage or calls to be paid up by subscribers, the issue and signature of stock certificates, the selection of a bank, the signature of cheques and drafts, and the carrying out of any resolutions passed by the shareholders for the purchase of property by the company.

The holding of these organization meetings is best left in the hands of the legal adviser employed to obtain the company's charter. It is in these early proceedings that mistakes are most easily made; later when shareholders are probably more numerous and other interests arise, correction of these mistakes is difficult or impracticable.

The same advice is necessary in the preparation of a prospectus, as the statutory requirements not only are numerous and important, but exceedingly rigorous. All circular advertisement or other invitation offering to the public for subscription or purchase, any shares, stock, bonds, etc., come within the same provisions of the statute. Promoters and directors are subject to heavy penalties and liabilities for misstatements, for omission to state certain information, and, for omitting to file a prospectus with the proper official of the Government.

A person under 21 years of age cannot validly subscribe for shares, and directors cannot consent to a transfer of stock to an infant, if shares are subject to unpaid calls. A married woman, in most of the Provinces, may become a shareholder without her husband's consent. A corporation cannot become a shareholder unless its charter or the general legislation applicable to it gives it power to hold such shares.

An application for shares does not bind the applicant until the application is accepted by the company and the acceptance communicated to the applicant. An application may be withdrawn before acceptance; when an acceptance has been posted, it is too late to withdraw an application. No particular form of application is necessary, even a verbal one being sufficient if the company chooses to accept it. A conditional application cannot be accepted minus the condition, and acceptance with the condition binds the company to the terms of the agreement. Acceptance is generally in the hands of the board of directors, who should pass resolutions accepting the applications and alloting the shares. All written applications, resolutions, a copy of the notice of allotment, and the correspondence respecting same should be carefully preserved.

Certificates should be issued to shareholders who have paid the amount of all calls on their subscriptions, receipts being issued pending paying of the calls. Certificates are generally signed by two directors or two officers of the company, the company's seal being affixed.

The general powers of management of a company are vested in the board of directors elected by the shareholders, and to whom they are accountable. A small board, of say, five directors is generally sufficient. Directors are generally elected by ballot for one year. They must all be duly qualified shareholders of the company, and must accept office as a director either by actual or virtual acceptance of the duties. Irregularities and defects in the appointment or election of a director do not invalidate his acts, provided he is not actually aware of such defects. A director who ceases to own the requisite number of shares is generally disqualified from continuing as director. Bankruptcy does not necessarily disqualify a director, unless the by-laws declare it to be a disqualification. Generally speaking a director cannot be compelled to attend to his duties; but one who does not devote some time to its affairs or is disqualified should resign at once. Where a director is personally interested in a transaction between the company and himself or another firm (of which he is a member), he is generally prohibited by the by-laws from voting, although the prohibition does not prevent him voting as a shareholder in respect of the same transaction. A director cannot retire from office except with the consent of his co-directors. Vacancies occurring on the board of directors may, unless the by-laws otherwise direct, be filled by the board for the remainder of the term from among qualified shareholders. The board of directors represents and is the agent of the company (the shareholders). The powers of the board are the powers of the company, except where they are restricted or qualified by the by-laws or charter.

Shareholders have generally no right to control or interfere with the discretionary powers vested in the board of directors for the management of the business of the company. The Courts will not grant redress to a shareholder for some act performed by the board in good faith and within its powers. The board of directors has no power by resolution to exclude any director from access to the company's accounts. A director with a claim against the company cannot purchase property of the company for his own benefit; if he does so, he holds the property as trustee for the company and is accountable for any profit received on a resale.

The president is the chief executive officer, and may perform such acts as by usage . . . the nature of the business or under specially delegated authority, or under the by-laws may devolve upon him. He has no more control over the company's property or funds than any other director. He acts as chairman of meetings of the shareholders and directors. When paid a salary he is bound to render an adequate return for the confidence reposed in him, by exercising reasonable business diligence in the general care, oversight and management of the company's affairs.

Where the president is unable to give all of his time to the supervision of affairs, a managing director is usually appointed. He represents the board and is by them delegated to take active charge of the business of the company.

The obligations of officers and agents employed by a company are the same as those employed by a private individual in respect of term of employment, removal, dismissal, notice, etc. A company is liable for the acts of its officers and agents within the scope of their duties. False representations as to facts made by directors or officers of a company, are themselves liable for damage sustained by any one relying on such statements.

Meetings of shareholders are called by notice given in strict accordance with the by-laws or statute. Each shareholder is entitled to express notice, though the right may be waived. A notice should specify the date, the exact hour, place and business of the meeting. Unless authorized by special Act, or charter or general company legislation to hold meetings outside the province where the head office is situated, they should be held at the head office. Shareholders define their own quorum, method of voting in person and by proxy, the majority required for a decision, and procedure generally. If a by-law exists respecting procedure at a meeting and it is desired to adopt other procedure, the by-law must first be changed in accordance with the provisions of any by-law directing how such change may be made.

A meeting of the shareholders is required to be held annually, at which reports of the year's business and financial position are presented for consideration and approval, and the election of directors for the ensuing year. A meeting may be adjourned and the business transacted at the adjourned meeting is then a continuation of the original meeting, and any business that might properly have been con-

sidered at the first meeting may be further considered and determined. Notice of the adjourned meeting, although not generally required by the by-laws, is advisable.

Directors meetings should be convened by regular notices sent to all the members of the board. They cannot act and vote by proxy; they are bound to meet and confer; a draft resolution passed around for the separate assent of each director is of no validity until confirmed and passed by a duly convened meeting of the board. Unless determined by the by-laws, the majority of the directors constitute a quorum. A resolution carried by the majority of the quorum is binding, although the majority is a minority of the whole board. By-laws made by the directors are in general binding until the next meeting of the shareholders, when in default of ratification they cease to have any validity. Shareholders are presumed to know all the by-laws of the company.

Calls, that is, instalments payable on stock not fully paid up, cannot be made until company has been chartered. Calls may be made by resolution of the directors fixing the day and place of payment. A notice informing shareholders of the call made must be sent to each shareholder. A variation in the notice from the resolution such as the date of payment invalidates the call. Time is computed from the date of mailing the notice. A call made so as to require only certain shareholders to pay calls, which others are not required to pay is void. A hundred per cent. call may be made unless contrary to charter or by-laws. Shareholders are always liable, for instance, in a winding-up, to pay any amount unpaid on their shares, whether a formal call has been made or not. Procedure laid down by the by-laws for the forfeiture of shares for unpaid calls should be strictly followed. Notice of forfeiture must state the correct amount due, the time within which payment must be made, and the place of payment.

Company law in recent years has become one of the most bewildering mazes that a layman may travel. The pitfalls are numerous, particularly in the promotion of companies, the issue of prospectuses, the merger of one company with another, the registration of a company outside the Province, the issue of bonds and debentures, and voluntary liquidation, so much so that the services of a solicitor are frequently required. In fact, there are very few matters apart from the general business dealings of the company in which legal oversight is not advisable.

CONSTABLES.

The following sections are, with permission, selected from an excellent little work entitled The County Constables' Manual, by J. Jones, High Constable of the County of York, Ontario, and published in Toronto. The subject is fully and ably treated in this little work, which should be in the possession of every constable, as it contains a full and accurate exposition of the law, portions of which only can be given in a work like the present.

Appointment of Constables in Ontario.

The Justices may, from time to time, at any sitting or adjourned sitting of the Court of General Sessions of the Peace, appoint a County High Constable and a sufficient number of fit and proper persons to act as constables in each township, incorporated village, police village, and place within the county, and may in like manner, from time to time, in their discretion, dismiss any constable so appointed.

To prevent injurious delays arising from the long intervals between the sittings of the General Sessions, the County Judge may at any time appoint constables for the County of which he is Judge.

Persons appointed shall, before entering on the duties of their office, take and subscribe the following oath, which any Justice of the Peace may administer.

In Manitoba, constables are either Provincial constables appointed for the whole Province by the Lieutenant-Governor-in-Council, or Municipal constables appointed by the council of any municipality, with authority only therein, though a Justice of the Peace may at any time appoint a special constable to attend to any particular matter.

In Saskatchewan and Alberta, in addition to the Royal North-West Mounted Police, constables may be appointed by the Lieutenant-Governor-in-Council for the whole of the Province, and a Justice of the Peace may at any time appoint a special constable to act in an emergency in any part of the Province.

Oath of Office.

I, A. B. , having been appointed constable for the County of , do solemnly swear that I will truly, faithfully and impartially perform the duties appertaining to the said office, according to the best of my skill and ability.

So help me God.

Sworn before me, etc.,

J. P.

"If a constable, duly appointed and notified, refuse to take the necessary oath, or refuse to execute the office, he is guilty of a serious offence, and may be punished by fine or imprisonment. It

is not necessary there should be an actual refusal, for if the party do not attend to be sworn in before the Justice, or afterwards do not execute his office, it is evidence of his refusal to do so, and for this he may be indicted either at the Assizes of Oyer and Terminer or General Sessions. (Archbold, C. P., 932; Burns, J. P., 1085).

"If a constable refuses to be sworn, a Justice of the Peace may at once bind him over to the Oyer and Terminer or General Sessions to answer for contempt, but there is no power vested in Magistrates to punish by summary conviction." (Dalton, cap. 28).

Arrest.

An arrest is the apprehending or detaining of the person in order to be forthcoming to answer an alleged or suspected crime. The constable should not merely content himself with securing the offender, but should actually arrest him, so that if he escape or is rescued by others, he or they may be subject to the penalties of escape or arrest. To constitute an arrest the party should, if possible, be touched by the constable, who should say, I arrest you, or You are my prisoner. Bare words will not make an arrest without laying hold of the person or otherwise confining him. But if an officer come into a room and tell the party he arrests him, and locks the door, this is an arrest, for he is in custody of that officer; or if in any other way the person submit himself by word and action to be in custody, it is an arrest. (Patton).

Every officer, upon demand made upon him must shew the warrant under which he arrests or distrains. (Wilson, P. 51-52).

If the party snatch or take the warrant, the constable has a right to force it from him, using no unnecessary violence in doing so.

Where a constable has made an arrest with or without warrant, he should as soon as possible bring the party before the Justice according to the terms of the warrant; and if guilty of any unnecessary delay he will be liable to punishment; but if the arrest be made in or near the night, or at a time when the prisoner cannot well be brought before the Justice, or if there be danger of rescue, or the party be ill and unable then to be brought up, the constable may secure him in the county gaol, in a lock-up house, or other safe place, till the next day, or until it may be reasonable to bring him up before the Justice; but a warning is again given against any unreasonable detention. (Patton). In case a lock-up be found most convenient, it will be necessary to employ a constable to watch the prisoner at night, unless the municipality in which the lock-up is situate keep a watchman for this purpose.

R. S. C. 1906, c. 146, s. 711 (Summary Convictions). It is laid down that where a warrant is issued in the first instance, the Justice issuing it shall furnish a copy or copies thereof, and cause a copy to be served on each party arrested at the time of such arrest.

Breaking Open Doors.

Breaking open an outer door or window to enter a man's house, is an objectionable and dangerous proceeding, and should only be resorted to in extreme cases. The peace and security of private dwellings is a matter of great importance. It is only in matters of high concern to the public, and to prevent the ends of justice being frustrated, that the law permits its officer to have recourse to this obnoxious proceeding.

The officer is therefore in no case justified in breaking open outer doors, or the windows or other parts of a house, until—

1. He has declared his business; 2, demanded admission; and, 3, allowed a reasonable time for opening them to elapse, and they have not been opened in that time.

Under warrant.—Upon a warrant for felony or suspicion of felony, or to compel sureties of the peace, or for a breach of the peace, the constable to whom a warrant is directed may break open outer doors to effect an arrest, if the party is in his own house, or has taken refuge in the house of another, after notification, demand and refusal, as has been already stated. (Patton). A constable may break in to apprehend on a capias founded on indictment for any crime, or in the daytime on a warrant to search for stolen goods, if accompanied with a direction to bring the party before a Justice, or to enforce the law where a forcible entry or detainer is found by Justices, either on an inquest or their own view, or on a warrant of Justices for levying a fine or execution of a judgment on conviction grounded on a statute that gives all or any part of the penalty to the King. (Wilson).

Without warrant.—The constable's authority to break open doors by virtue of his office, as conservator of the peace acting without a warrant, is strictly confined to cases where an actual breach of the peace is committed in his view, or where he sees a felony committed, or has grounds to apprehend that a felony is likely to be committed, or if an affrayer run into a house to escape arrest, the constable in hot pursuit would be justified in effecting an entrance by force to take him. (Nevertheless, in mere breaches of the peace, if he know the parties, he had better obtain a warrant instead of taking this course). Also where a violent affray is going on in a house in the view or hearing of a constable, which is likely to result in bloodshed or loss of life (as where there is a violent cry of murder in the house), the necessity of the case will authorize the constable to get into the house in the readiest manner he can, to stop the affray and prevent further violence or bloodshed.

Where one is known to have committed a felony or given a dangerous wound, and is pursued by a constable who is denied admittance into a house wherein the offender is sheltered, the door may be broken in order to take him. It would, however, be otherwise, if there was only a mere suspicion of guilt; a warrant should be obtained.

If the house in which an offending party is supposed to have taken refuge is not his own house, the constable should be sure that the felon is there; for, if not there, the constable would in most cases be considered in law a trespasser. (Patton).

So, if there be noise or disorderly conduct or drinking in a house at an unreasonable time of the night, and particularly in a tavern, he may break open the house to put a stop to it.

If an officer have entered the house in a legal manner, and the outer door is fastened upon him, he and others in his aid may break open the door to set him at liberty.

The maxim that "Every man's house is his castle," only applies to the dwelling house. (Wilson).

Constables.

A constable must readily and strictly obey all lawful orders of Justices of the Peace, Coroners, and the officers placed over him by the General Sessions of the Peace.

He must be very civil and respectful in his demeanor and conduct to the public, giving the best answers he can to the numerous questions which will be put to him, and showing at all times a

readiness to do all in his power to oblige consistently with his duty.

He is to speak the truth at all times and under all circumstances, and when called upon to give evidence, to state all he knows respecting the case without fear or reservation, and without any desire to influence the result, either for or against the prisoner.

To enable him to speak quite confidently and to prevent the possibility of his evidence being shaken, he is to jot down at the time in his memorandum book dates and other particulars respecting arrests or occurrences, to which he can always refer.

When called upon by a person to take another into custody, he must be guided in a great measure by the circumstances of the case and the nature of the charge or offence; but if he have any doubt as to how he ought to act, the safest course is to ask all the persons concerned to go with him to the nearest Justice, who will direct the constable.

If a constable is called upon to act he must do so with energy, promptness and determination, for, if he wavers or doubts, the criminal may escape, or the opportunity to render assistance may be lost. (T. P. F. Reg).

(Authority)—The authority of constables is general and special, the office partaking of the nature of both. The general authority accrues by virtue of their own right as officers; the special authority accrues by the right of some one else. All constables are conservators of the peace by right of their office, and are also the immediate and proper officers of Justices of the Peace.

Constables, by virtue of their inherent powers, may act without warrant in the prevention of crime, and for the arrest of offenders. (See Warrant, arrest without).

As the immediate and proper officers of Justices of the Peace, constables act under, and are bound to obey, the lawful mandates of the magistrates of their county.

The office of constable in Canada is coincident with the introduction into the Province of the commercial law of England. It is of great antiquity; but whether constables came in with Justices of the Peace, or existed at common law in England, is of little moment to us; but the law-writers who have examined the question say that constables existed as subordinate conservators of the peace long before Justices of the Peace were made by the 1st Edward III., A.D., 1327.

Coroners' Constables.

It will be the duty of a constable, should a death occur from violence or unfair means, or through culpable or negligent conduct (of any other person than deceased), to notify the nearest coroner while the body is fresh, and, if possible, while it remains in the same situation as when the party died. He should attend the coroner when he arrives, and if the coroner considers an inquest necessary, the constable, on receiving the warrant to summon the jury, should immediately summon and make his return thereon. The constable officiating at an inquest opens the proceedings by proclamation, assists the coroner, preserves order, and is to obey all lawful orders of the coroner. The coroner has by law the right to do all acts which are necessary to enable him to hold his inquest on the view of the body; and as incidental to this right, he could break open doors to get at the body; and those who obstruct him in so doing are guilty of a misdemeanor, and a constable who is present is bound to protect him.

(Proclamation before calling jury). Oyez, Oyez, Oyez. You good men of this county summoned to appear here this day, to inquire, for

our Sovereign Lord the King, when, how, and by what means R——— F——— came to his death, answer to your names as you shall be called, every man at the first call, upon the pain and peril that shall fall thereon. God save the King.

Proclamation for default of jurors). Oyez, Oyez, Oyez. You good men who have been already severally called, and have made default, answer to your names and save your peril. God save the King.

(Proclamation for witnesses). Oyez, Oyez, Oyez. If any one can give evidence on behalf of our Sovereign Lord the King, when how, and by what means R——— F——— came to his death, let him come forth, and he shall be heard. God save the King.

(Proclamation of adjournment). Oyez, Oyez, Oyez. All manner of persons who have anything more to do at this Court before the King's coroner for this county, may depart home at this time, and give their attendance here again (or at the adjourned place) on next, being the day of instant, at of the clock, in the precisely. God save the King.

(Proclamation at adjourned meeting). Oyez, Oyez, Oyez. All manner of persons who have anything more to do at this Court before the King's coroner for this county on this inquest now to be taken and adjourned over to this time and place, draw near and give your attendance; and you, gentlemen of the jury, who have been impanelled and sworn upon this inquest touching the death of R——— F———, severally answer to your names and save your recognizances.

(Proclamation at the close of inquest). Oyez, Oyez, Oyez. You good men of this county who have been impanelled and sworn of the jury to inquire, for our Sovereign Lord the King touching the death of R——— F———, and who have returned your verdict, may now depart hence and take your ease. God save the King.

Refusing to Assist a Constable.

To suppress an affray or accomplish an arrest, a constable may call to his assistance any private person present, who will be bound to render aid under the penalty of severe punishment for refusal or neglect; but the constable must carry this in mind, that to warrant his interference there must be evident appearance that a felony or other crime against the King's peace is on the point of being committed; and this caution also may be given as to threats, that mere rash words or abusive or violent language used to the constable or to any other person, unless calculated to deter the officer from doing his duty, or directly tending to a breach of the peace, would not of themselves form a sufficient ground for the arrest of the wrong doer. (Patton, 16).

And on page 26, the same writer says: "I would reiterate, that whenever necessary, a constable may call upon any by-stander in the King's name to assist him in making an arrest, or securing an offender; and that private persons acting in aid of the officer are entitled to the same indemnity as the officer, for their acts in his aid."

Search Warrant.—R. S. C. 1906, c. 146, ss. 629-643.

In executing a search warrant, the constable must be careful strictly to pursue its directions. The warrant (R. S. C. 1906, c. 146, Form 2), commonly specifies the place to be searched, the goods to be seized and the person to be taken. It the outer door of the house to be searched be shut, and upon demand not opened, the constable may break it open, and so may inner doors, boxes, etc., after the keys have been demanded and refused.

The constable should not take away any goods but those specified in the warrant, unless they are indispensable in substantiating the charge of stealing the goods specified. The constable should take with him materials for striking a light, if necessary, and he should take sufficient time to make a thorough search. The owner of the goods should, in all cases, accompany the constable to point out the goods, in order to prevent mistakes.

The constable, in accordance with the warrant, should have necessary and proper assistance to watch outside, to prevent the goods being taken away or the accused person escaping.

When the goods, or any portion of them, are found, the constable is to bring them and the person before the Justice, according to the directions of the warrant subject to his order. If the accused be committed for trial, the constable should make an inventory of the goods in his memorandum book, and mark the exhibits so as to be identified by him. If a horse is the subject of the larceny, the best plan would be to hand him over for safe keeping to the owner, on his entering into a recognizance to prosecute, and giving a guarantee that the horse shall be forthcoming.

Warrants, Arresting on.

When a warrant is placed in a constable's hands for execution, he should satisfy himself that it is under the hand and seal of the Justices issuing same, that it is properly directed, viz.: "To all or any of the constables or other peace officers in the county of, etc., etc." (R. S. C. 1906, c. 146, Form 6). It shall state shortly the matter of the information or complaint on which it is founded.

It shall name or otherwise describe the person against whom it has been issued.

It shall order the constable to apprehend the defendant, and to bring him before the Justice issuing the warrant, or some other Justice, to answer the said charge.

It need not be made returnable at any particular time, but may remain in force until it is executed.

If the warrant is found deficient in any particular it should be taken to the Justice who issued it to have its defects rectified. The constable should make an entry in his memorandum book of the time of its receipt, and the necessary particulars.

The warrant should be executed with secrecy and despatch, and after the execution the constable should endorse it with the date of its execution.

The constable should also ascertain from the warrant the nature of the offence, and whether he knows the party named in the warrant; if not he should find out from the complainant the description, personal appearance, manner, dress, or any peculiarity by which he may be recognized, and it would be advisable for the constable, if possible, to take the complainant or some person who could point out the accused.

An arrest may be made in the night as well as the day, but not on Sunday, unless the offence charged includes a breach of the peace or felony.

The accused should be brought without delay before the proper Magistrate, and it is the duty of the Magistrate to make such arrangements with the officer who is entrusted with the execution of the warrant, that the case be brought on to a hearing as speedily as possible after the arrest. To detain an accused person for an unreasonable time would be very improper, illegal and unjust.

If the accused person escape, go into or reside in another county, it will be necessary for the constable to have the warrant endorsed by a Justice having jurisdiction where the accused is. The constable therefore, will wait upon a Justice having such jurisdiction, who will endorse the warrant on the constable making oath as to the signature of the Justice who issued the warrant (R. S. C. 1906, c. 146), or, in case of fresh pursuit, at any place in the next adjoining territorial division, and within seven miles of the border of the first division, without having the warrant backed. Under R. S. C. 1906, c. 146, any Justice may grant and issue a warrant to apprehend any one charged for an indictable offence, or a search warrant on a Sunday as well as on any other day. It is also provided that no warrant or other process shall be served on the Lord's Day, except in cases of treason, felony or breach of the peace.

Without Warrant—R. S. C. 1906, c. 146.

Any person found committing an offence punishable either upon indictment or upon summary conviction, may be immediately apprehended by any constable or peace officer without a warrant, or by the owner of the property on or with respect to which the offence is being committed, or by his servant, or any other person authorized by such owner, and shall be forthwith taken before some neighbouring Justice of the Peace to be dealt with according to law.

A constable may arrest for any felony committed in his presence, and he is bound at all risks to use his best endeavours to do so. Nothing short of imminent danger to his life will excuse him for allowing the offender to escape.

He may also arrest on his own suspicion that a felony has been committed, and that the party he arrests is or was concerned in it.

When he arrests upon his own suspicion, it must not be upon any loose, vague suspicion, either of an offence having been committed, or of its having been committed by the person arrested, but he must, in the language of the law, have reasonable and probable cause for believing both of these facts. If he arrest without having reasonable and probable cause for so doing, he will be liable to answer in damages to the aggrieved party for making the arrest, but if he arrest under justifiable circumstances, he will not be liable for the felony, nor will he be liable even although there was no felony at all committed. So, also, if a constable arrest one for a felony upon information derived from another, he will be fully authorized in doing so, if he had reasonable and probable cause for believing the information he had to be correct, and he will not be liable, although, as before stated, no felony had, in fact, been committed (Wilson, 35).

The constable, however, must be careful that he has such reasonable and probable cause to justify his proceedings, for, if he have not, he will be liable, in like manner as any one else would be, for his malicious conduct. The constable then should consider—

(1) Who it is that gives him information.

(2) Who the person is who is alleged to have committed the offence.

(3) The general probability of the facts narrated. For instance, a constable is not justified in apprehending a person, as receiver of stolen goods, on the mere assertion of the principal felon.

So it also follows, if he arrest on his own suspicion of the party being a felon, or upon information communicated to him by another, he should not detain the party arrested after his suspicions are, or ought to be, entirely removed, or if he discover the information which was given him to be false or untrustworthy. (Wilson, 36).

Thus, if a constable arrest on a suspicion of theft, and after searching the party discover nothing, and the suspicion appears to be groundless, he may discharge the party out of his custody without taking him before a Magistrate.

A constable may arrest on information of others that a party has committed a felony. Thus, if a reasonable charge of felony is made against a person who is given in charge to a constable, the constable is bound to take him, and he will be justified in so doing, though the charge may turn out to be unfounded.

A constable may justify an arrest on a reasonable charge of felony without warrant, although it should afterwards appear that no felony had been committed, but a private individual cannot.

A constable is justified in apprehending a person on suspicion of felony, if he have reasonable or probable cause to believe that the party charged is the felon.

Also, any person whom he finds loitering on any highway, yard, or other place, during the night, and whom he has good cause to suspect of having committed, or being about to commit, a felony, and detain such person, and bring him before a Justice, before noon the following day, to be dealt with according to law. R. S. C. 1906, c. 146, s. 652.

A constable is bound to take up any one committing a breach of the peace in his view. He may also, when there has been a breach of the peace, though not in his presence, and in order to prevent a renewal of it, arrest one whom he has good reason to believe is about to break it.

But, when no breach of the peace has taken place in his view, and there is no likelihood of its being broken, he cannot, either at his own instance or a complaint of any one, without a warrant, unless specially authorized by statute. Neither can a constable receive any person from another, who has been arrested by that other, for an alleged breach of the peace, unless at his own risk; that is, if the party taken have broken the peace, the constable will be right in receiving him into his custody, but if he have not, the constable will be liable in taking him, in like manner as the other will who delivered him to the constable.

The general rule, therefore, for a constable is never to arrest or receive any one into his custody for any offence less than a felony, unless—

(1) The constable has either seen the offence committed, or

(2) Fears a breach of the peace, or

(3) Unless a warrant authorizing the arrest is delivered to him. (Wilson, 25).

NOVA SCOTIA.

The Constables Act (R. S. N. S. cap. 41), provides that in case of riot, tumult or disturbance, or of just apprehension thereof, outside of Halifax or any incorporated town, three justices of the peace may by writing appoint any number of special constables, their appointment to continue in force for fourteen days. In case of disturbance at any public meeting, any justice, at the request of the chairman of the

meeting, or of three freeholders, may verbally appoint special constables to preserve the peace. Neglect or refusal to act incurs a penalty of eight dollars. Ordinary constables are appointed by the Municipal Council, under the provisions of the same Act.

NEW BRUNSWICK.

In New Brunswick, constables are appointed by the Municipal Councils, or in some cases by City or Town Councils. By statute, anyone resisting a constable in the discharge of his duty or not rendering assistance, when called upon by a constable, is liable to fine and imprisonment.

DEEDS.

The legal and technical definition of a deed is a writing sealed and delivered. Bonds, therefore, and assignments and chattel mortgages, of which we have treated in a previous chapter, are all deeds: that is to say, they are writings sealed and delivered. The popular idea of a deed, however, is commonly associated with the transfer of land, and it is in this sense in which we shall speak of a deed in this chapter.

A deed of land, then, is a writing sealed and delivered by the parties, by which lands, tenements or hereditaments are conveyed by one person to another. It may be either written or printed, or partly written and partly printed, and on paper or parchment. Figures, as a general rule, should be avoided, and all words written in full without abbreviation or contraction. The name, residence and occupation or addition of every party to the deed should be carefully inserted, and also some date: properly the date of the day of execution, but not necessarily; for a deed may legally be dated on one day, and not executed until some other and subsequent day. Care should be used in describing the lands conveyed; an error here may entail considerable expense before it can be rectified. If a whole township lot be conveyed, it will be sufficient to describe it as lot number so and so, in such a concession, township and county, comprising so many acres. If a portion only be conveyed, describe accurately the part intended; as the north or south half, or north-east or south-west quarter, as the case may be. Where the boundaries are well known, and especially where only a portion of a lot is conveyed, it will be desirable to describe the premises by metes and bounds; giving the course or magnetic bearings, and the length of each side. A well prepared deed should contain no alterations or interlineations of any kind; they will not, however, invalidate the instrument; but if necessary to be made, the fact that they were so made before signature of the deed should be stated in the attestation clause at the foot, and the witness should put his initials in the margin, opposite all such alterations or interlineations, so that he may be the better able, if ever called on, to prove that they were so made before execution. When once signed and executed, a deed must not be altered, as any such alteration might wholly vitiate the deed.

The person conveying the land is called the grantor; the person to whom it is to be conveyed is called the grantee. If the grantor is a married man, his wife should in all Pro-

vinces where she is by law entitled to dower, join in the deed and bar her dower; otherwise, when her husband dies she will be entitled to one-third of the land conveyed for her lifetime. Land may be conveyed in such a manner as to preclude the wife of the party to whom it is conveyed from any right to dower on her husband's death; but the species of deed by which this may be done is very special, and can only safely be prepared by a professional man.

In preparing deeds, care should be taken that all persons whose interests in the property are intended to be conveyed should be made parties to and should duly execute the instrument. Minors, or persons under twenty-one years of age, are incapable of making a binding disposition of their lands, unless under the sanction of an order of a Court of competent jurisdiction. The same may be said of lunatics and idiots, whose interests may be transferred only by order of a Court or by trustees or committees appointed or sanctioned by it. The power of corporations to convey depends upon the extent of the rights and privileges conferred upon them by law, and the method in which they execute conveyances is usually determined by statute. With regard to married women, the form in which a conveyance of their lands must be drawn and attested differs in the various Provinces, and an explanation of the formalities required in each is deemed unnecessary in this connection.

Every deed should be signed by the grantor. It is not necessary that the grantee should sign unless the deed contains some covenant on his part. The ordinary way of executing a deed is for the party conveying to sign his name in his usual manner, opposite the seal at the foot, and placing his finger on the seal to say, "I deliver this as my act and deed." If the person should be unable to write, he may execute by mark. In this case some person should write opposite the seal the words "A. B. his mark," leaving space in the middle for the mark to be made—usually a cross: thus: A. $\overset{\text{His}}{\underset{\text{Mark.}}{\times}}$ B. The mark must, of course, be made by the party himself, though his hand may be guided, or he may do it by simply touching the pen while the mark is being made by some other person for him. Before a deed is executed by an illiterate person, or, indeed, by any person, if he so requests, it ought to be read over and explained, so that he may fully understand what he is doing.

A corporation usually executes a deed by affixing to it its common seal, and signing by its chief officer, as Mayor, President, etc. In most of the Provinces no affidavit is neces-

sary to prove the execution of a deed by a corporation; the seal alone is sufficient evidence. Where land is conveyed to a corporation, the word "successors" should be used in place of the word "heirs" in referring to it.

In Ontario, short forms of deeds of grant are established by statute, the abbreviated covenants in which are given an amplified meaning therein fully set forth. The object of enactments of this nature is to save unnecessary expense or registration.

Where one person has, by power of attorney under seal, authority to execute a deed of lands for another, the power should be registered or attached to the deed and duly verified or authenticated.

The only forms of deeds given here are the common forms of bargain and sale used in the ordinary conveyance of real property. The forms given are with absolute covenants and with qualified or limited covenants. The former are very extensive, and ought not to be given without some sufficient reason, as they bind the grantor with reference to the acts of all parties through whom the property may have passed. Limited covenants, on the contrary, are confined to the acts of the grantor himself and those claiming under him.

A quit claim deed, if made to a party already possessing some interest in the land, releases all the interest which the grantor has in the land, whatever it may be.

A deed poll is made by one party only, as in the case of a sheriff's deed.

A trust deed is made to a person called a trustee, who is to hold the land for the use or benefit of some other person. The wife of the trustee is not entitled to dower in the land.

Where deeds are made without any consideration, they may be set aside in favour of the creditors of the grantor, and of purchasers from him in good faith and for valuable consideration.

Before purchasing property it is essential that the title to it should be properly investigated. Registry offices are established in every county and district, where all deeds and other instruments affecting land ought to be registered.

Every unregistered deed or instrument affecting the title to land is ineffective as against any person claiming for valuable consideration, and without notice under a subsequent deed or instrument affecting the title to the same land.

ONTARIO.

In Ontario, a deed of land should be executed in duplicate —one copy whereof will be left in the registry office, and the

other retained by the party. Upon the deed intended to be left in the registry there must be an affidavit of execution made by the attesting witness. It is sufficient if this affidavit be only placed on such one; but it is usual and convenient to have an affidavit on both.

In Ontario, to secure registration, an affidavit of a subscribing witness to the deed must be made (upon the instrument, or securely attached to it), which, after setting forth the name, place of residence and addition or occupation of the witness, in full, must show the following facts:—(i) The execution of the original deed and duplicate, if any there be; (ii) the place of execution; (iii) that the witness knew the parties to the instrument, if such be the fact; or that he knew such one or more of them, according to the fact; (iv) that he is a subscribing witness thereto. The affidavit is, under provisions of the Ontario statute, to be made before some one of the following persons:

1. If made in Ontario, it shall be made before—
   The Registrar or Deputy Registrar of the County in which the lands lie,
   Or, before a Judge of the Supreme Court of Judicature,
   Or, before a Judge of a County Court within his County,
   Or, before a Commissioner authorized by the High Court to take affidavits.
   Or, before any Justice of the Peace for the County in which the affidavit is sworn.
2. If made in Quebec, it shall be made before—
   A Judge or Prothonotary of the Superior Court, or Clerk of the Circuit Court,
   Or, before a Commissioner authorized under the laws of Ontario to take, in Quebec, affidavits in and for any of the Courts of Record in the Province of Ontario,
   Or, before any Notary Public in Quebec, certified under his official seal.
3. If made in Great Britain or Ireland, it shall be made before—
   A Judge of the Supreme Court of Judicature in England, or of the Court of Session or the Justiciary Court in Scotland,
   Or, before a Judge of any of the County Courts within his County,
   Or, before the Mayor or Chief Magistrate of any City, Borough, or Town corporate therein, and certified under the common seal of such City, Borough or Town corporate.
   Or, before a Commissioner authorized to administer oaths in the Supreme Court of Judicature in England, or in the Supreme Court of Judicature in Ireland, or before a Commissioner authorized by the laws of Ontario to take, in Great Britain or Ireland, affidavits in and for any of the Courts of Record in the Province of Ontario,
   Or, before any Notary Public, certified under his official seal.

4. If made in any British Colony, or Possession, it shall be made before—
   A Judge of a Court of Record, or of any Court of Supreme Jurisdiction in the Colony,
   Or, before the Mayor of any City, Borough or Town corporate, and certified under the common seal of such City, Borough or Town,
   Or, before any Notary Public, certified under his official seal,
   Or, if made in the British Possessions in India, before any Magistrate or Collector, certified to have been such under the hand of the Governor of such Possession,
   Or, before a Commissioner authorized by the laws of Ontario to take, in such British Colony or Possession, affidavits in and for any of the Courts of Record of the Province of Ontario.
5. If made in any Foreign Country, it shall be made before—
   The Mayor of any City, Borough or Town corporate of such country, and certified under the common seal of the City, Borough or Town corporate,
   Or, before a Consul, Vice-Consul, or Consular Agent of Her Majesty, resident therein,
   Or, before a Judge of a Court of Record, or a Notary Public, certified under his official seal,
   Or, before a Commissioner authorized by the laws of Ontario to take, in such country, affidavits in and for any of the Courts of Record of the Province of Ontario. R. S. O. 1887, c. 114, s. 41; 53 V. c. 30, s. 2.
6. When an affidavit of execution is required to be made out of the Province before any of the officers mentioned in clauses 2, 3 and 4, of this section, and the officer has not an official seal, it shall be sufficient for him so to certify

The fees for registering a deed are $1.40 where the document does not exceed 700 words in length; if it exceeds that number, then fifteen cents for every additional 100 words up to 1,400, and ten cents for each 100 words over 1,400. If the instrument embraces different lots or parcels of land situate in different localities in the same county, then the registrar is entitled to 40 cents for the necessary entries and certificates, and fifteen cents for every 100 words up to 1,400, and ten cents for every 100 words over that number.

NOVA SCOTIA.

The same general principles as to registry as are in force in Ontario, apply in Nova Scotia. By cap. 137 of Revised Statutes, 1910, a Registrar is appointed for every county and district in the Province, with whom all deeds, mortgages, judgments and attachments binding lands, are to be recorded. Deeds, etc., are copied out in the registry books in full.

The execution of deeds is proved either on the affidavit of a subscribing witness, or on the personal acknowledgment of the parties under oath.

The execution of an instrument by a corporation must be witnessed in the same way as an ordinary deed, and the subscribing witness must make oath that the parties thereto executed the same in his presence. An oath of a witness to the execution of a deed may be administered, in the Province by a Registrar of Deeds, a Judge of the Supreme or County Courts, a notary public, a barrister of the Supreme Court, a Justice of the Peace, or a Commissioner of the Supreme Court. If administered out of Nova Scotia, it may be made before any Commissioner appointed by the Nova Scotia Government to take affidavits without the Province for use in Nova Scotia; a Judge of any Court of Record, the mayor or recorder of any city or incorporated town, or an ambassador, minister, counsul, vice-cunsul, or consular agent for Great Britain.

No particular form of affidavit is required; the form in general use will be found at the end of this chapter.

If all the witnesses to a deed are dead, or absent from the Province, or have became of unsound mind, the deed may be registered, upon sufficient proof of the handwriting of any witness or of the parties, on application to a Judge of the Supreme or County Courts.

A wife is required to join in a conveyance of her husband's property, in order to bar or release her right to dower therein, and is also required to make an affidavit or acknowledgment separately and apart from her husband to the effect that she has executed the deed freely and voluntarily without compulsion by her husband. The form prescribed by the Married Women's Deeds Act (R. S. N. S. cap. 113), will be found at the end of this chapter. This acknowledgment may be made before any of the funtionaries appointed to take the oath of a witness to a deed.

BRITISH COLUMBIA.

A Land Registry Office is established at Victoria, and district registries in other parts of the Province. Before any deed or instrument is recorded or registered, its execution must first be acknowledged or proved in the manner provided by the Registry Act, and the fact of such acknowledgment or proof must be certified by endorsement upon such deed or instrument. The acknowledgment or proof of execution of instruments, if made within the Province, may be made before—

1. The Registrar, District or Deputy Registrar;

2. Any Stipendiary Magistrate or Justice of the Peace of the Province, or of any town, city, or district thereof;

3. Any Judge or Registrar of a Court having a seal;

4. Any Notary Public practising within the Province.

If acknowledged or proved without the Province, and within British Dominions, it may be made before—

1. Any Judge of a Court, Clerk or Registrar of any Court, having a seal;

2. Any Notary Public;

3. Any magistrate of any town or district, having a seal of office;

4. Any commissioner appointed for the purpose.

MANITOBA.

The law of registration is similar to that of Ontario. The affidavit of execution must be made as follows:

(a) If made in Manitoba, before:

(i) Any person authorized by the Manitoba Evidence Act, to take affidavits for use in this Province; or before

(ii) The Registrar or Deputy Registrar of the district in which the lands lie; or before

(iii) Any Justice of the Peace for this Province;

(b) If made in any of the other Provinces of the Dominion or in Great Britain or Ireland, before

(i) A Judge of any of the Superior Courts of law or equity therein or before

(ii) A Judge of any of the County Courts within his district, or before

(iii) The Mayor or Chief Magistrate of any City or Borough or Town Corporate therein, certified under the common seal of such City, Borough or Town Corporate or before

(iv) Any Notary Public, certified under his official seal; or before

(v) A Commissioner for taking affidavits outside the Province to be used therein:

(c) If made in the North-West Territories of the Dominion of Canada or in the District of Keewatin, before

(i) A Judge of any Court or Police Magistrate; or before

(ii) A Commissioner authorized to take affidavits for use in said Territories or District, or for use in this Province; or before

(iii) Any Notary Public under his official seal, or any Justice of the Peace;

(d) If made in the British Possessions in India, before

Any Magistrate or collector, certified to have been such under the hand of the Governor of such possession;

(e) If made in any other British Colony or possession, before

(i) A Judge of a Court of Record, or of any Court of supreme jurisdiction therein; or before

(ii) The Mayor of any City, Borough or Town Corporate, and under the common seal of such City, Borough or Town; or before

(iii) Any Notary Public, certified under his official seal;

(f) If made in any foreign country; before

(i) The Mayor of any City, Borough or Town corporate of such country, and under the common seal of such City, Borough or Town corporate, or before

(ii) Any Consul or Vice-Consul of His Majesty resident therein; or before

(iii) A Judge of a Court of Record, or a Notary Public, under his official seal.

SASKATCHEWAN AND ALBERTA.

Practically all lands in these Provinces are under the Torrens System as soon as granted by the Crown.

Affidavits made in attestation of instruments must be sworn as follows:

(1) If within the Province, before the Inspector of land title offices or the Registrar or Deputy Registrar of the registration district in which the land is situated or before a Judge, Notary Public, Commissioner for taking affidavits or a Justice of the Peace in and for the Province.

(2) If without the Province:

(a) If made in any Province in Canada before a Judge of any Court of Record, any Commissioner authorized to take affidavits in such Province for use in any Court of Record in the Province or before any Notary Public under his official seal; or,

(b) 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 of the Judiciary Court in Scotland, or a Judge of any of the County Courts within his County, or the Mayor of any City or incorporated Town under the common seal of such City or Town, or before any Commissioner in Great Britain or Ireland authorized to take affidavits therein for use in any Court of Record in the Province, or a Notary Public under his official seal; or,

(c) If made in any British Colony or Possession out of Canada before a Judge of any Court of Record, the Mayor of a City or incorporated Town under the common seal of such City or Town, or Notary Public under his official seal; or,

(d) If made in any foreign country before the Mayor of any City or or incorporated Town under the common seal of any such City or Town, or before the British Consul, Vice-Consul or Consular Agent residing therein, or before any Judge of any Court of Record, or a Notary Public under his official seal.

NEW BRUNSWICK.

Registry offices are established in each county. All instruments affecting land may be registered in the county where the lands lie. Leases for a term of not more than three (3) years, where the lessee goes into actual possession, need not be registered, and it is sufficient to register an instrument executed by any person who in an official capacity conveys an interest in lands sold at public auction, within six months of the day of such sale; also wills may

be registered within six months after the death of the testator, dying within the province, or within three years after his death if he dies without the province. In all other cases instruments not registered within three months of the date of their execution are void as against any person's bona fide judgment creditor if a writ of execution has been issued or a memorial of judgment registered prior to the registry of the conveyance. Before any instrument can be registered its execution must be acknowledged by the party giving it or be proved by an affidavit of a subscribing witness. No one who is a party to any instrument may take such acknowledgement or affidavit. Provision is made for proof of the execution of an instrument where the witness has died, or is insane, or absent from the province and his residence unknown. The execution of an instrument may be acknowledged within the province before a Justice of the Supreme or County Court, a member or ex-member of the Executive Council, and a member or ex-member of the late Legislative Council; any registrar or deputy registrar of deeds; any notary public appointed and residing in the province (who must certify the same under his hand and official seal); and any justice of the peace of the county in which the conveyance is to be registered. If the acknowledgment be taken or made outside the province, it may be made before any notary public; the mayor or chief magistrate of any city, borough, municipality or town corporate, certified under the common seal of such city, etc., or the seal of the mayor, etc.; any justice of the High Court of Great Britain or Ireland or any Judge or Lord of Session in Scotland; any Judge of a Court of supreme jurisdiction in any British colony or dependency; any British minister, ambassador, consul or consular agent of His Majesty exercising functions in any foreign place, and the Governor of any State; the handwriting of any such Judge or Lord of Session must be authenticated under the seal of a notary public, and the taking of an acknowledgment before such minister, ambassador, consul or governor must be certified under his hand and seal of office. If the execution of the instrument be proved in the Province, such proof may be taken before any Judge of the Supreme or County Court; a member of the Executive Council; any registrar or deputy-registrar of deeds; any notary, appointed and residing in the province; any justice of the peace of the county in which the conveyance is to be registered, or any commissioner for taking affidavits to be read in the Supreme Court. If the execution of such instrument be proved out

of the province, such proof is taken before the persons who are authorized to take an acknowledgment made out of the province and also before any commissioner for taking affidavits and administering oaths under chapter 62 of the Consolidated Statutes of N. B. 1903. A registered mortgage may be discharged by a certificate of the satisfaction thereof by the mortgagee or his representatives acknowledged or proved in the same manner as an instrument, and duly registered. When this course is followed, the registrar makes a minute of satisfaction in the margin of the registry of the mortgage with a reference to the book and page where the certificate is registered. The mortgagee or his representatives may attend at the registry office and sign a memorandum in the margin of the registry which will have the same effect. In case it is desired to do so the mortgagee may discharge the property mortgaged from part of the money due or he may release part of the land from the payment of the money. The instrument for this purpose is acknowledged or proved like any other instrument. When a married woman executes an instrument, whether alone or jointly with some other person, her acknowledgment must be taken before a proper official, and the person taking such acknowledgment must certify on the instrument that he has examined such married woman, separate and apart from her husband and that she acknowledged that she executed the instrument, freely and voluntarily, without any threat, fear or compulsion by, of or from her husband. When a corporation executes an instrument there must be an affidavit that the seal affixed to the instrument is the seal of the corporation and was so affixed by order of the corporation or board of directors thereof or by other sufficient and lawful authority and that the signature to the instrument is the signature of the secretary or other authorized officer, before the instrument can be registered. The registry of any instrument constitutes notice to all persons claiming any interest in the lands subsequent to such registration, notwithstanding any defect in the proof for registration.

FORMS.

Deed of Grant.

(Absolute Covenants).

This Indenture made (in duplicate) the day of , 19 , Between A. B., etc., of the first part, C. D., wife of the said party of the first part, of the second part, and G. H., of, etc., of the third

part; Witnesseth, that the said party of the first part, in consideration of the sum of $500, of lawful money of Canada, to him, by the said party of the third part, in hand well and truly paid, at or before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), doth grant unto the said party of the third part, his heirs and assigns, All and singular that certain parcel or tract of land and premises situate, lying and being in the (here describe the lands), Together with the appurtenances: To have and to hold the same lands, tenements, hereditaments, and all and singular other the premises hereby conveyed or intended so to be, with their and every of their appurtenances, unto the said party of the third part, his heirs and assigns, to the sole and only use of the said party of the third part, his heirs and assigns forever. Subject, nevertheless, to the reservations, limitations, provisoes and conditions expressed in the original grant thereof from the Crown.

And this Indenture further witnesseth, that the said party of the second part, with the privity and full approbation and consent of her said husband, testified by his being a party to these presents, in consideration of the premises, and also in consideration of the further sum of five shillings of lawful money of Canada aforesaid, to her by the said party of the third part in hand well and truly paid at or before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), hath granted and released, and by these presents doth grant and release, unto the said party of the third part, his heirs and assigns, all dower, and all right and title thereto, which she, the said party of the second part now hath or in the event of surviving her said husband might or would have in, to or out of the lands and premises hereby conveyed or intended so to be.

And the said party of the first part doth hereby, for himself, his heirs, executors and administrators, covenant, promise and agree with and to the said party of the third part, his heirs and assigns, in manner following, that is to say; That he, the said party of the first part, now hath, in himself, good right, full power and absolute authority to convey the said lands and other the premises hereby conveyed or intended so to be, with their and every of their appurtenances, unto the said party of the third part, in manner aforesaid, and according to the true intent and meaning of these presents; And that it shall be lawful for the said party of the third part, his heirs and assigns, from time to time and at all times hereafter peaceably and quietly to enter upon, have, hold, occupy, possess and enjoy the said lands and premises hereby conveyed or intended so to be, with their and every of their appurtenances, and to have, receive and take the rents, issues and profits thereof, and of every part thereof to and for his and their use and benefit, without any let, suit, trouble, denial, eviction, interruption, claim or demand whatsoever of, from or by him, the said party of the first part, or his heirs, or any other person or persons whomsoever; And that free and clear, and freely and absolutely acquitted, exonerated and forever discharged or otherwise by the said party of the first part, or his heirs well and sufficiently saved, kept harmless, and indemnified of, from and against any and every former and other gift, grant, bargain, sale, jointure, dower, use, trust, entail, will, statute, recognizance, judgment, execution, extent, rent, annuity, forfeiture, reentry, and any and every other estate, title, charge, trouble and incumbrance whatsoever; And lastly, that he, the said party of the first part, his heirs, executors or administrators, and all and every

other person whomsoever having or claiming, or who shall or may hereafter have or claim, any estate, right, title or interest whatsoever, either at law or in equity, in, to or out of the said lands and premises hereby conveyed or intended so to be, or any of them, or any part thereof, by, from, under or in trust for him, them or any of them, shall and will from time to time and at all times hereafter, upon every reasonable request, and at the costs and charges of the said party of the third part, his heirs or assigns, make, do or execute, or cause to be made, done or executed, all such further and other lawful acts, deeds, things, devises, conveyances and assurances in the law whatsoever, for the better, more perfectly and absolutely conveying and assuring the said lands and premises hereby conveyed or intended so to be, and every part thereof, with their appurtenances, unto the said party of the third part, his heirs and assigns, in manner aforesaid, as by the said party of the third part, his heirs and assigns, his or their counsel in the law, shall be reasonably devised, advised or required: so as no person who shall be required to make or execute such assurances shall be compellable, for the making or executing thereof, to go or travel from his usual place of abode.

In witness whereof, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed and delivered in the presence of E. F. — C. D. [L.S.] A. B. [L.S.]

Received, on the day of the date of the within Indenture, the sum of $500, of lawful money of Canada, being the full consideration therein mentioned.

A. B.

Witness,
E. F.

Same with Qualified Covenants.

This Indenture, made (in duplicate) the day of 19 , Between A. B., of, etc., of the first part, C. D., wife of the said party of the first part, of the second part, and G. H., of, etc., of the third part: Witnesseth, that the said party of the first part, in consideration of the sum of $500, of lawful money of Canada, to him by the said party of the third part in hand well and truly paid at or before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), doth grant unto the said party of the third part, his heirs and assigns, All and singular that certain parcel or tract of land and premises situate, lying and being in the (here describe the lands), Together with the appurtenances: To have and to hold the same lands, tenements and hereditaments, and all and singular other the premises hereby conveyed or intended so to be, with their and every of their appurtenances, unto the said party of the third part, his heirs and assigns, to the sole and only use of the said party of the third part, his heirs and assigns, forever. Subject, nevertheless, to the reservations, limitations, provisoes, and conditions expressed in the original grant thereof from the Crown.

And this Indenture further witnesseth, that the said party of the second part, with the privity and full approbation and consent of her said husband, testified by his being a party to these presents, in consideration of the premises, and also in consideration of the further sum of five shillings of lawful money of Canada aforesaid, to

her by the said party of the third part in hand well and truly paid at or before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), hath granted and released, and by these presents doth grant and release, unto the said party of the third part, his heirs and assigns, all dower, and all right and title thereto, which she, the said party of the second part, now hath, or in the event of surviving her said husband might or would have in, to or out of the lands and premises hereby conveyed or intended so to be.

And the said party of the first part doth hereby, for himself, his heirs, executors and administrators, covenant, promise and agree with and to the said party of the third part, his heirs and assigns, in manner following, that is to say: That for and notwithstanding any act, deed, matter or thing by the said party of the first part done, executed, committed or knowingly or wilfully permitted or suffered to the contrary, he, the said party of the first part, now hath in himself good right, full power and absolute authority to convey the said lands and other the premises hereby conveyed or intended so to be, with their and every of their appurtenances, unto the said party of the third part, in manner aforesaid, and according to the true intent of these presents: And that it shall be lawful for the said party of the third part, his heirs and assigns, from time to time, and at all times hereafter, peaceably and quietly to enter upon, have, hold, occupy, possess and enjoy the said lands and premises hereby conveyed, or intended so to be, with their and every of their appurtenances, and to have, receive and take the rents, issues and profits thereof, and of every part thereof, to and for his and their use and benefit, without any let, suit, trouble, denial, eviction, interruption, claim or demand whatsoever of, from or by him, the said party of the first part, or his heirs, or any person claiming or to claim by, from, under or in trust for him, them or any of them: And that free and clear, and freely and absolutely acquitted, exonerated and forever discharged or otherwise by the said party of the first part, or his heirs, well and sufficiently saved, kept harmless, and indemnified of, from and against any and every former and other gift, grant, bargain, sale, jointure, dower, use, trust, entail, will, statute, recognizance, judgment, execution, extent, rent, annuity, forfeiture, reentry and any and every other estate, title, charge, trouble, and incumbrance whatsoever, made, executed, occasioned or suffered by the said party of the first part, or his heirs, or by any person claiming or to claim by, from, under or in trust for him, them or any of them: And lastly, that he, the said party of the first part, his heirs, executors or administrators, and all and every other person whomsoever having or claiming, or who shall or may hereafter have or claim, any estate, right, title or interest whatsoever, either at law or in equity, in, to or out of the said lands and premises hereby conveyed or intended so to be, or any of them, or any part thereof, by, from, under or in trust for him, them or any of them, shall and will from time to time, and at all times hereafter, upon every reasonable request, and at the costs and charges of the said party of the third part, his heirs or assigns, make, do or execute, or cause to be made, done or executed, all such further and other lawful acts, deeds, things, devices, conveyances and assurances in the law whatsoever, for the better, more perfectly and absolutely conveying and assuring the said lands and premises hereby conveyed or intended so to be, and every part thereof, with their appurtenances, unto the said party of the third part, his heirs and assigns, in manner aforesaid, as by

the said party of the third part, his heirs and assigns, his or their counsel in the law, shall be reasonably devised, advised or required, so as no such further assurances contain or imply any further or other covenant or warranty than against the acts and deeds of the person who shall be required to make or execute the same, and his heirs, executors or administrators only, and so as no person who shall be required to make or execute such assurances shall be compellable, for the making or executing thereof, to go or travel from his usual place of abode.

In witness whereof, the said parties to these presents have hereunto set their hands and affixed their seals, the day and year first above written.

Signed, sealed and delivered in the presence of E. F. — C. D. [L.S.] A. B. [L.S.]

Received on the day of the date of the within Indenture, the sum of $500, of lawful money of Canada, being the full consideration therein mentioned.

Signed in presence of E. F. — A. B.

Ontario Short Form under Statute.

This Indenture, made (in duplicate) the day of 19 , in pursuance of The Act respecting Short Forms of Conveyances:

Between A. B., of, etc., of the first part, C. D., wife of the said party of the first part, of the second part, and E. F., of, etc., of the third part: Witnesseth, that in consideration of $500 of lawful money of Canada now paid by the said party of the third part, to the said party of the first part (the receipt whereof is hereby by him acknowledged), He, the said party of the first part, doth grant unto the said party of the third part, in fee simple, All and singular that certain parcel or tract of land and premises situate, lying and being (here describe the premises.) To have and to hold unto the said party of the third part, his heirs and assigns, to and for his and their sole and only use for ever. Subject nevertheless, to the reservations, limitations, provisoes and conditions expressed in the original grant thereof from the Crown. The said party of the first part covenants with the said party of the third part, That he has the right to convey the said lands to the said party of the third part, notwithstanding any act of the said party of the first part; And that the said party of the third part shall have quiet possession of the said lands free from all incumbrances; And that the said party of the first part will execute such further assurances of the said lands as may be requisite; and that he will produce the title deeds enumerated hereunder, and allow copies to be made of them at the expense of the said party of the third part; And that the said party of the first part has done no act to encumber the said lands. And the said party of the first part releases to the said party of the third part all his claims upon the said lands; And the said party of the second part, wife of the said party of the first part, hereby bars her dower in 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 Y. Z. — A. B. [L.S.] C. D. [L.S.]

Received on the day of the date of this Indenture from the said party of the third part, the sum of $500 being the full consideration therein mentioned.

A. B.

Witness,
Y. Z.

Deed of Gift of Lands.

This Indenture, made (in duplicate) the day of 19 , Between A. B., of, etc., of the one part, and C. D. (the eldest son of the said A. B.,) of the other part. Witnesseth, that the said A. B., as well for and in consideration of the natural love and affection which he hath and beareth unto the said C. D., as also for the better maintenance, support, livelihood, and preferment of him the said C. D., hath given, granted and conveyed and by these presents doth give, grant and convey unto the said C. D., his heirs and assigns, All that parcel or tract of land, etc., [describing the premises], together with all and singular the appurtenances to the said parcel or tract of land and premises belonging or in any wise appertaining. To have and to hold the said parcel and tract of land, and all and singular other the premises hereby granted, unto and to the only proper use and behoof of the said C. D., his heirs and assigns, forever.

In witness whereof, the said parties to these presents have hereunto set their hands and seals, the day and year above written.

Signed, sealed and delivered in the presence of Y. Z. — A. B. [L.S.]

Affidavit of Execution of Deed.

County of To wit: I, Y. Z., of, etc., [state here the name, in full, of the witness; his place of residence and occupation] make oath and say:—

1. That I was personally present and did see the within instrument and duplicate duly signed, sealed and executed by and the parties thereto.

2. That the said instrument and duplicate were executed at the of

3. That I know the said parties.

4. That I am a subscribing witness to the said instrument and duplicate.

Sworn before me at in the county of this day of 19 .

A Commissioner for taking Affidavits, etc.

Deed of Right of Way.

This Indenture made this day of 19 , between A. B. of, etc., and C. D., of, etc.

Witnesseth that the said A. B. for and in consideration of the sum of $ lawful money of Canada to him in hand well and

truly paid, the receipt whereof is hereby acknowledged, hath granted, bargained and sold, and by these presents doth grant, bargain and sell unto the said C. D., his heirs and assigns, the free and uninterrupted use, liberty and privilege of, and passage in and along, a certain alley or passage of feet in breadth by feet in depth, extending [describe the passage] together with free ingress, egress and regress to and for the said C. D., his heirs and assigns, and his and their tenants and under-tenants as by him or them shall seem necessary or convenient, at all times and seasons for ever hereafter, into, along, upon, and out of the said alley or passage, in common with him the said A. B., his heirs and assigns, and his and their tenants and under-tenants; to have and to hold all and singular the privileges aforesaid to him the said C. D., his heirs and assigns, to his and their only proper use and behoof, in common with him the said A. B., his heirs and assigns as aforesaid for ever. [Add stipulations as to meeting expenses of paving, repairing, etc., alley, if thought necessary.]

In witness whereof, etc.

Y. Z. A. B. [L.S.]

Release of Dower (by widow).

This Indenture made (in duplicate) the day of one thousand nine hundred and , between A. B., of, etc., of the first part, and C. D., of, etc., of the second part.

Whereas, E. B., late of , of , in the County of , in the Province of by an Indenture dated the day of one thousand nine hundred and for the consideration therein mentioned did grant and convey to the aforesaid C. D., therein described, his heirs and assigns, all that certain piece or parcel of land, situate, lying and being (describe lands.) And whereas the said E. B. departed this life on the day of one thousand eight hundred and leaving his wife the party of the first part him surviving. And whereas the said party of the first part, the wife of the said E. B. did not join in the execution of the said Indenture, and at the request of the said party of the second part she hath agreed to execute these presents for the purpose of releasing her dower in the said lands and premises hereinbefore described.

Now this Indenture witnesseth, that the said party of the first part, in consideration of the premises and of the sum of dollars of lawful money of Canada to her in hand well and truly paid by the said party of the second part, the receipt whereof is hereby acknowledged, doth grant, release and quit claim unto the said party of the second part, his heirs and assigns, all dower and all right and title thereto which she the said party of the first part now hath in the said lands before mentioned, or can or may or could or might hereafter in anywise have or claim whether at common law or otherwise howsoever, in to or out of the lands and premises before mentioned and described. To have and to hold the same unto the said party of the second part, his heirs and assigns for ever.

In witness whereof, the said parties hereto have hereunto set their hands and seals.

Signed, sealed and delivered in the presence of Y. Z. A. B. [L.S.]

Deed of Quit Claim.

This Indenture made (in duplicate) the day of in the year of our Lord one thousand nine hundred and between A. B., of, etc., of the first part, and C. D., of, etc., of the second part. Witnesseth, that the said party of the first part for and in consideration of of lawful money of Canada to him in hand paid by the said party of the second part at or before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged) hath granted, released, and quitted claim, and by these presents doth grant, release, and quit claim unto the said party of the second part, his heirs and assigns for ever: all the estate, right, title, interest, claim and demand whatsoever, both at law and in equity, or otherwise, howsoever and whether in possession or expectancy of him the said party of the first part of into or out of, all and singular that certain parcel or tract of land and premises situate, lying and being (describe lands). Together with the appurtenances thereunto belonging or appertaining.

To have and to hold the aforesaid lands and premises with all and singular the appurtenances thereto belonging and appertaining unto and to the use of the said party of the second part, his heirs and assigns for ever, subject nevertheless to the reservations, limitations, provisoes and conditions expressed in the original grant thereof from the Crown.

In witness whereof the said parties to these presents have hereunto set their hands and seals.

Signed, sealed and delivered in the presence of Y. Z. A. B. [L.S.]

Deed (ordinary form).

Nova Scotia.

This Indenture, made the 1st day of May in the year of Our Lord One Thousand Nine Hundred and Ten, between John Doe, of Halifax, in Nova Scotia, merchant, and Mary Jane Doe, of the same place, his wife, of the one Part, and Richard Roe, of the same place, cooper, of the Other Part, Witnesseth that the said John Doe and Mary Jane Doe for and in consideration of the sum of one hundred dollars of lawful money of the Dominion of Canada, to the said John Doe in hand well and truly paid by the said Richard Roe at or before the sealing and delivery of These Presents, the receipt whereof is hereby acknowledged, has and each of them hath granted, bargained, sold, aliened, enfeoffed, released, remised, conveyed and confirmed, and by these Presents do and each of them doth grant, bargain, sell, alien enfeoff, release, remise, convey and confirm unto the said Richard Roe, his Heirs and Assigns, all (here describe lands) together with all and singular the Buildings, Easements, Tenements, Hereditaments and Appurtenances to the same belonging, or in anywise appertaining, with the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, dower claim, property and demand, both at law and in equity of John Doe and Mary Jane Doe of, in, to or out of the same, or any part thereof. To have and to hold the said land and premises, with the appurtenances, and every part thereof, unto the said Richard Roe, his Heirs and Assigns, to his and their sole use, benefit and behoof forever. And the said John Doe for himself, his Heirs, Executors and Administrators, hereby covenants, promises and agrees to and with the said Richard Roe, his Heirs and Assigns,

in manner following that is to say: That it shall be lawful for the said Richard Roe, his Heirs and Assigns, from time to time and at all times hereafter, peaceably and quietly, to enter into the said Land and Premises, and to have, hold, occupy, possess and enjoy the same without the lawful let, suit, hindrance, eviction, denial or disturbance of, from or by the said John Doe or any person or persons whomsoever, lawfully claiming or to claim the same. And also that the said John Doe hath a good, sure, perfect and indefeasible estate of inheritance in fee simple in the said Land and Premises and good right, full power and lawful authority, to sell and convey the same, in manner and form as they are hereby sold and conveyed or mentioned and intended so to be, and that the same are free from encumbrances. And that he, the said John Doe, his Heirs, Executors and Administrators at the request and at the charges of the said Richard Roe shall and will from time to time, and all times hereafter execute or cause to be executed such further and other acts, conveyances, and assurances in the law for the better assuring to the said Richard Roe, his Heirs and Assigns of the land and premises above described in manner as above conveyed or mentioned and intended so to be as by the said Richard Roe, his Heirs or Assigns or his or their counsel learned in the law shall be reasonably advised or required. And lastly that the said John Doe and his Heirs, the said Land and Premises, and every part thereof, unto the said Richard Roe, his Heirs and Assigns against the lawful claims of all persons whomsoever, shall and will by these presents, Warrant and forever Defend.

In Witness Whereof, the said parties to these presents have hereunto set their Hands and affixed their Seals the day and year first above written.

MARY J. DOE [L.S.]
JOHN DOE [L.S.]

Signed, sealed and delivered in the presence of
THOS. SMITH.

Certificate of Wife's Acknowledgment of Her Execution of Deed.

(Nova Scotia.)

Province of Nova Scotia,
County of Halifax, } SS.:

Be it remembered that on this 1st day of May, 1910, before me, the subscriber, personally came and appeared Mary Jane Doe, wife of John Doe, mentioned in the foregoing indenture, who, having been by me examined separate and apart from her said husband, did declare and acknowledge that she executed the said indenture as and for her act and deed, freely and voluntarily, without fear, threat or compulsion of, from or by her said husband, and for a full release of all her claims to the land (or as the case may be) therein mentioned.

WM. BROWN,
A Barrister of the Supreme Court of Nova Scotia.

Province of Nova Scotia,
County of Halifax, SS.

On this 1st day of May, A. D. 1910, before me the subscriber personally came and appeared Thomas Smith, a subscribing Witness to the foregoing indenture, who having been by me duly sworn, made oath and said that John Doe and Mary Jane Doe, two of the parties thereto, signed, sealed and delivered the same in his presence.

WM. BROWN,
A Barrister of the Supreme Court of Nova Scotia.

Acknowledgment of Husband and Wife before Notary Public.

Province of New Brunswick,
County of SS.:

I, a Notary Public in and for the Province of New Brunswick by Royal Authority duly appointed and sworn, residing and practising at the City of in the County of in said Province, do hereby certify that on the day of A. D. 19 , before me, the said Notary, at the City of aforesaid, personally came and appeared the within named Grantors, A. D. and C. D. his wife, and severally acknowledged to me that they respectively executed the within and aforegoing Deed or Instrument of Conveyance as and for their respective act and deed and to and for the uses and purposes therein mentioned and contained.

And I, the said Notary, do hereby further Certify that I did then and there examine the said C. D., wife of the said A. D., separate and apart from her said husband, and she did then and there acknowledge to me that she executed the said Instrument, freely and voluntarily, without any threat, fear or compulsion by, of or from her said husband.

In Testimony Whereof, I, the said Notary, have hereunto set my hand and affixed my Seal Notarial at the City of aforesaid the day and year in this Certificate first above written.

DITCHES AND WATERCOURSES.

ONTARIO.

Throughout the Provinces of Canada the rights of land owners are, as a rule, governed by the English common law. But, in these Provinces, it was early recognized that the circumstances under which new districts must, to meet the demands of settlement, be quickly brought from a condition of unbroken forest to that of arable or farm land, are naturally different from those which exist where lands have been cleared, settled and cultivated for centuries. To render that law more suitable to a new country, certain alterations were consequently demanded, and such will be found to be generally made by statute wherever reasonably necessary. Thus, under the old law of England, a field or farm might imperatively require, for its proper cultivation, drainage through channels over the land of an adjoining owner, or of some other owner, whose consent to the construction of such drain would have to be secured, by purchase or otherwise. Should such owner refuse to accord it, no drainage could be effected, no matter how necessary to render his neighbour's field or farm cultivable. To remedy this state of the law, the legislatures of certain Provinces have framed statutes for the purpose of enabling such drainage to be carried out in a simple and inexpensive manner, with a just regard, as far as possible, to the rights of all parties interested.

The provisions of the law in Ontario are governed by "The Ditches and Watercourses Act," R. S. O. 1897, c. 285. The Nova Scotia Act (R. S. N. S. cap. 67), and forms follow very closely the provisions of the Ontario Act, and it is considered only necessary to give the provisions of the latter, which are as follows:

Where lands, whether immediately adjoining or not, would be benefited by the making of a ditch or drain, or by deepening or widening a ditch or drain already made in a natural watercourse, or by making, deepening or widening a ditch or drain for the purpose of taking off surplus water, or in order to enable the owners or occupiers of the lands the better to cultivate or use them, the respective owners shall open and make, deepen or widen such drain. Each must undertake a just and fair proportion of the work, according to the interest he may have in its construction. Even should one owner possess no interest whatever in the pro-

posed drain to be made across his land, as in no way benefitting him, he yet cannot on that ground object to its construction, if beneficial to others: though, of course, he could not, in that case, be called upon to share the expense of it. And such ditches or drains, once opened, deepened or widened, must be kept up and maintained in the same proportion (according to interest) by the owners and their successors in the ownership of the lands, unless altered circumstances demand other arrangements.

The ditch or drain must be continued to a sufficient outlet, but must not pass through or into more than seven original township lots exclusive of any parts thereof on or across any road allowance, unless the council of any municipality upon the petition of a majority of the owners of all the lands to be affected by the ditch pass a resolution authorizing the extension thereof through or into any other lots within such municipality. But no ditch, the whole cost of which according to the estimate of the engineer or the agreement of the parties will exceed $1,500, can be constructed under this Act.

An officer denominated an engineer is appointed by every Municipal Council by by-law (Form A); any person whom the Council deem competent may be appointed.

Where it is desired to have such ditch or drain as the statute authorizes constructed, and the owners dispute as to the proportions in which the works should be performed by them, the course to be pursued is as follows: Any owner, after filing with the clerk of the municipality in which the parcel of land requiring the ditch is situate a declaration of ownership thereof (Form B.), may serve upon the other owners or occupants of the lands to be affected a notice in writing signed by him in the form hereafter given marked C, or to the like effect, naming a day, hour and place convenient to such ditch or drain at which the parties are to meet, and, if possible, come to an agreement. Such notice must be served not less than twelve clear days before the time of meeting. If at the meeting an agreement is come to, it is reduced to writing according to Form D. hereafter given, or to the like effect, and is signed by all the parties. It must then be filed, within six clear days of the signing, with the clerk of the municipality in which the land requiring the ditch or drain is situate. It may thereafter be enforced, if necessary, like an award of the engineer.

If no agreement is come to at the meeting or within five days thereafter, any owner may file with the aforesaid clerk a requisition, naming all the lands which will be affected

by it, as well as the several owners, and requesting that the engineer shall attend at the time and place named in the requisition, which is made out according to Form E, or to the like effect. The clerk upon receiving the requisition posts a copy to the engineer, on the receipt of which the engineer notifies the clerk in writing appointing a time and place at which he will attend in answer to the requisition—which time must not be less than ten or more than sixteen clear days from the day on which he received the copy of the requisition. The clerk on receipt of the notice of appointment from the engineer files it with the requisition and posts a copy to the owner making the requisition, who must, at least four clear days before the time so appointed, serve upon the owners named in the requisition a notice (Form F) requiring their attendance at the time and place fixed by the engineer. The owner making the requisition must then endorse on one copy thereof the time and manner of service and leave it with the engineer not later than the day before the time fixed in the notice of appointment. Where such notice is served upon an occupant who is not the owner of the land he occupies, it is his duty immediately to notify the owner, failing in which he is liable for all damages suffered by such owner by reason of his neglect.

It is the engineer's duty upon receiving from the clerk a copy of the requisition, to attend at the time and place named therein and examine the premises. If he deems it proper, or if any of the parties request it, he may hear evidence of the parties or their witnesses on oath. He may also adjourn such examination and may require any other parties interested in the ditch or drain to attend, requiring the usual notice to be served upon them. If he concludes that the work is necessary, he is to make his award in writing, within thirty days from his receipt of the requisition, specifying clearly the location, description and course of the drain, its points of commencement and termination, the portion of the work which each of the parties is to do, and the time in which it must be completed, the amount of his fees and other charges, and by whom these are to be paid. This award is in the form prescribed, or to the like effect, and is to be filed by the engineer with the clerk, who thereupon notifies each of the persons affected thereby of such filing. Any interested person dissatisfied with the award may, within fifteen days of its filing, appeal therefrom to the County Judge in the manner laid down in the Act. The municipality pays the engineer's fees, and also pays any other fees or costs awarded to any person; and, unless such be

repaid by the person liable under the award, the whole amount is placed upon the collector's roll as a charge upon such person's lands in the same manner as municipal taxes. Provision is also made for the inspection of the work by the engineer after the time limited in his award for its completion; should he then find the same not completed in accordance with the award, he may let the same in sections, after giving four clear days' notice in writing of his intention. The extra costs attending this proceeding, together with ten per cent. added, if not paid by the party liable, are placed in the collector's roll as before.

The drain may be continued into an adjoining municipality. No unauthorized person shall use a ditch or drain constructed under the Act, save pursuant to its provisions.

All notices under the provisions of the Act are to be served personally, or by leaving the same at the place of abode of the owner or occupant, with a grown up person residing thereat; and in case of non-residents (who are persons residing out of the municipality in which the lands are situate) then upon the agent of the owner, or by registered letter addressed to the said owner at the post-office nearest to his last known place of abode.

The fees of the engineer are fixed by the Council; the fees to witnesses and for the service of papers are the ordinary Division Court fees.

FORM "A."

By-law for Appointment of Engineer.

A by-law for the appointment of an engineer under The Ditches and Watercourses Act.

Finally passed 19 .

The municipal council of the of in the County of enacts as follows:

1. Pursuant to the provisions of section 4 of The Ditches and Watercourses Act, (name of person) of the town (or township of in the County of is hereby appointed as the engineer for this municipality to carry out the provisions of the said Act.

2. The said engineer shall be paid the following fees for services rendered under the said Act (or as the case may be).

3. This by-law shall take effect from and after the final passing thereof.

Reeve.

Clerk.

[L.S.]

FORM "B."

Declaration of Ownership.

In the matter of The Ditches and Watercourses Act, and of a ditch in the township (or as the case may be), of in the County of

I, of the of in the County of do solemnly declare and affirm that I am the owner within the meaning of The Ditches and Watercourses Act, of lot (or the sub-division of the lot, naming it), number in the concession of the township of , being (describe the nature of ownership).

Solemnly declared and affirmed before me at the of in the County of A.D. 19 .

a Commissioner, (J.P. or clerk)

FORM "C."

Notice to Owners of Lands affected by Proposed Ditch.

To

Township of , (date) 19 .

Sir,

I am within the meaning of The Ditches and Watercourses Act, the owner of lot (or the sub-division as in the declaration) number in the concession of , and as such owner I require a ditch to be constructed (or if for reconsideration of agreement or award to deepen, widen or otherwise improve the ditch, state the object) for the draining of my said land under the said Act. The following other lands will be affected (here set out the other parcels of land, lot, concession and township, and the name of the owner in each case; also each road and the municipality controlling it).

I hereby request that you, as owner of the said (state his land), will attend at (state place of meeting), on , the day of , 19 , at the hour of o'clock in the noon, with the object of agreeing, if possible, on the respective portions of the work and materials to be done and furnished by the several owners interested and the several portions of the ditch to be maintained by them.

Yours, etc.,

(Name of owner.)

FORM "D."

Agreement by Owners.

Township of , (date) 19 .

Whereas it is found necessary that a ditch should be constructed (or deepened, or widened, or otherwise improved) under the provisions

of The Ditches and Watercourses Act, for the drainage of the following lands (and roads if any): (here describe each parcel and give name of owner as in the notice, including the applicant's own land, lot, concession and township, and also roads and by whom controlled.

Therefore we the owners within the meaning of the said Act of the said lands (and if roads proceed and the reeve of the said municipality on behalf of the council thereof) do agree each with the other as follows: That a ditch be constructed (or as the case may be) and we do hereby estimate the cost thereof at the sum of $ and the ditch shall be of the following description: (here give point of commencement, course and termination, its depth, bottom and top width, and other particulars as agreed upon, also any bridges, culverts or catch basins, etc., required). I owner of (describe his lands) agree to (here give portion of work to be done, or material to be supplied) and to complete the performance thereof on or before the day of A.D., 19 . I owner of, etc., (as above, to the end of the ditch).

That the ditch when constructed shall be maintained as follows: I owner of (describe his lands) agree to maintain the portion of ditch from (fix the point of commencement) to (fix the point of termination of his portion). I owner of (describe his lands) agree to maintain, etc., (as above, to the end of the ditch).

Signed in presence of

(Signed by the parties here)

FORM "E."

Requisition for Examination by Engineer.

Township of (date) 19 .

To (name of clerk).
Clerk of
(P. O. address).

Sir,—I am, within the meaning of The Ditches and Watercourses Act, the owner of lot (or sub-division as in the declaration) number , in the concession of and as such I require to construct (deepen, widen or otherwise improve as needed), a ditch under the provisions of the said Act, for the draining of my said land, and the following lands and roads will be affected: (here describe each parcel to be affected as in the notice for the meeting to agree and state the name of the owner thereof), and the said owners having met and failed to agree in regard to the same, I request that the engineer appointed by the municipality for the purposes of the said Act, be asked to appoint a time and place in the locality of the proposed ditch, at which he will attend and examine the premises, hear any evidence of the parties and their witnesses, and make his award under the provisions of the said Act.

(Signature of the party or parties).

FORM "F."

Notice of Appointment for Examination by Engineer.

Township of (date) 19 .

To (Name of owner).
(P. O. Address).

Sir,—You are hereby notified that the engineer appointed by the municipality for the purposes of The Ditches and Watercourses Act, has, in answer to my requisition, fixed the hour of o'clock in the noon of day, the day of to attend at (name the place appointed) and to examine the premises and site of the ditch required by me to be constructed under the provisions of the said Act (or as the case may be), and you, as the owner of lands affected, are required to attend, with any witnesses that you may desire to have heard, at the said time and place.

Yours, etc.,
(Signature of applicant).

BRITISH COLUMBIA.

Under "The Drainage, Dyking and Irrigation Act, R. S. B. C. cap. 54, a majority in interest and number of the proprietors of any marsh, swamp or meadow lands, may select one or more commissioners (who are officers appointed under the Act by the Lieut.-Governor) to carry on any work for reclaiming such lands by draining, dyking or irrigation. The commissioners may require the proprietors of such lands to furnish men, teams, tools and materials to build or repair any dykes or weirs necessary to prevent inundation, to dam, flow, irrigate or drain such lands, or to secure the same from brooks, rivers, or the sea, by flood-gates or break-waters, or in any way they may think proper; and in case of neglect, the commissioners may perform the work at the expense of the proprietors. The owners or occupiers are assessed for necessary expenses incurred, save where they have not agreed to the performance of the work, in which case the land alone is liable for the assessment.

The provisions of the British Columbia "Line Fences and Watercourses Act," R. S. B. C. cap. 76, are in great part identical with those of the Ontario Statute.

MANITOBA.

In this Province drainage is provided for in either of two methods:

(a) Municipal Councils may pass by-laws providing for drainage of lands in the Municipality and for entering upon, breaking up, taking or using any land in or adjacent to the Municipality in any way necessary or desirable in the opinion of the council for the said purposes or for the pur-

pose of providing an outlet for any drain, always making compensation to any persons suffering damage therefrom.

(b) Under the Land Drainage Act, R. S. M. 1902, cap. 50, the Government has formed large areas, comprising lands in different municipalities, into drainage districts, and carried out an extensive system of drainage on the credit of the Province, issuing debentures for the necessary cost and taxing the lands benefited to recoup such cost by levies extending over the life of the debentures.

SASKATCHEWAN.

In this Province drainage is provided for by "the Drainage Ordinance" of 1903, under which necessary ditches and drains may be constructed by the Commissioner of Public Works at the expense of the owners of lands benefited. The Act provides the necessary machinery for carrying out its objects.

ALBERTA.

In this Province drainage is provided for by "The Alberta Drainage Act," cap. 18 of 1908, in practically the same way as in Saskatchewan, but under the control of the Minister of Public Works.

DIVISION COURTS.

ONTARIO.

These Courts have been established in every county in Ontario for the recovery of small debts. For the recovery of larger claims, the High Court of Justice and County Courts exist.

The number of Division Courts varies in different counties; but there must never be less than three nor more than twelve; and there must be at least one Court in every city or county town. They are presided over by the County Judge, or, in some larger counties where Junior Judges have been appointed, by such Junior Judge; or by a deputy Judge; or, in Territorial Districts, by a Stipendiary Magistrate. In case of the illness or absence of a Judge, a barrister may be appointed to hold them. The authority of these Courts is derived from the Act, 10 Edw. VII. cap. 32, as amended by subsequent Acts. Courts are holden in each division once in every two months (or oftener, in the discretion of the Judge) at such times and places within the division as the Judge may appoint. Where, however, it appears inexpedient that they should be holden so often, they may be holden as the Lieut.-Governor appoints.

Division Courts have jurisdiction in the following cases:

1. All personal actions where the amount claimed does not exceed sixty dollars;

2. In any personal action if all the parties consent thereto in writing and the amount claimed does not exceed one hundred dollars;

3. All 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 claimed does not exceed one hundred dollars.

3. All claims for the recovery of a debt or money demand, the amount or balance of which does not exceed two hundred dollars, where the amount, or original amount of the claim is ascertained by the signature of the defendant, or of the person whom, as executor or administrator, the defendant represents.

Interest accumulated upon any claim of this class since the amount or balance was ascertained by the signature of the defendant or of the person whom he represents shall

not be included in determining the question of jurisdiction, but interest so accumulated may be recovered in a Division Court in addition to the said claim, notwithstanding the interest and the amount of the claim so ascertained together exceed the sum of two hundred dollars.

4. Claims combining,

(*a*) A cause or causes of action in respect of which the jurisdiction of the Division Courts is, by the foregoing sub-sections of this section, limited to sixty dollars, which causes of action are hereinafter designated as class (*a*), and

(*b*) A cause or causes of action in respect of which the jurisdiction of the said Courts is, by the said subsections, limited to one hundred dollars, which causes of action are hereinafter designated as class (*b*),

(*c*) A cause or causes of action in respect of which the jurisdiction of the said Courts is by the said subsections limited to two hundred dollars, which causes of action are hereinafter designated as class (*c*),

may be tried and disposed of in one action, and the said Courts shall have jurisdiction so to try the same; provided, that the whole amount claimed in any such action in respect of class (*a*) shall not exceed sixty dollars; and that the whole amount claimed in any action in respect of classes (*a*) and (*b*) combined, or in respect of class (*b*), where no claim is made in respect of class (*a*), shall not exceed one hundred dollars, and that the whole amount claimed in respect of classes (*a*) and (*c*) or (*b*) and (*c*) combined, shall not exceed two hundred dollars, and that in respect of classes (*b*) and (*c*) combined, the whole amount claimed in respect of class (*b*) shall not exceed one hundred dollars.

The finding of the Court upon the claims, when so joined as aforesaid, shall be separate.

These Courts have no jurisdiction in the following cases:

1. Actions for any gambling debt; or

2. For spirituous or malt liquors drunk in a tavern or ale-house; or

4. Actions for the recovery of land or actions in which the right or title to any corporeal or incorporeal hereditaments, or any toll, custom or franchise comes in question; or

5. In which the validity of any devise, bequest or limitation under any will or settlement is disputed; or

6. For malicious prosecution, libel, slander, criminal conversation, seduction or breach of promise of marriage; or

7. Against a Justice of the Peace for anything done by him in the execution of his office, if he objects to such jurisdiction.

No action may be brought in the Division Court upon a judgment for the payment of money made by the High Court or County Court where execution may issue upon such judgment.

Upon a contract for payment of a sum certain in labor or in any kind of goods, or commodities, or in any other manner than in money, the Judge, after the day has passed on which such goods or commodities ought to have been delivered, or the labor or other thing performed, may give judgment for the amount in money, as if the contract had been originally so expressed.

Minors (or persons under twenty-one years of age) may sue in a Division Court for wages not exceeding $100, in the same manner as if of full age.

A claim will not be allowed to be divided into two or more parts, so as to bring it within the jurisdiction of a Division Court; nor can any sum greater than $100 be recovered in an action for the balance of an unsettled account. Where the unsettled account in the whole exceeds $400, no action can be brought in these Courts. But where a sum for principal and also a sum for interest thereon is due and payable to the same person upon a mortgage, bill, note, bond or other instrument he may sue separately for every sum as due.

Ordinarily a suit must be entered and tried in the Court of the division where the cause of action arose (that is, where the debt was contracted), or in that where the defendant or one of the defendants resides or carries on business; but a suit may also be entered in the Court nearest to the defendant's residence, irrespective of the place where the cause of action arose. By leave of the Judge before whom the action is to be tried, a suit may be entered at the Court of the division adjacent to that in which the defendants or one of them resides, if the Judge be satisfied on oath or by affidavit, that it will be more convenient for the parties.

Where the defendant is a corporation not having its head office in the province, and the cause of action arose partly in one division and partly in another the plaintiff may bring his action in either division.

Where the debt or money demand exceeds one hundred dollars, and is made payable by the contract of the parties at any place named therein, the action may be brought thereon in the Court holden for the division in which such

place of payment is situate, subject, however, to the place of trial being changed to any other division in which the Court holden therein has jurisdiction in the particular case. An order may be obtained by the defendant for such change from the Judge of the county in which the action is brought, upon an application therefor made within eight days from the day on which the defendant who makes the application was served with the summons, on a ten days' service; or within twelve days after service, where the service is required to be fifteen or more days before the return.

Where the debt or money payable exceeds one hundred dollars, and is by the contract of the parties made payable out of Ontario, the action may be brought in any Division Court, subject to being changed by Judge's order as aforesaid. Upon consent of all parties, the trial may be had in any Division Court. Where, by mistake or inadvertence, the action is entered in the wrong Court, it may be transferred to the right one by the Judge's order.

6 Ed. VII., c. 19, sec. 22, provides that, "No proviso, condition, stipulation, agreement or statement which provides for the place of trial of any action, matter or other proceeding shall, subject to the provisions hereinafter set out, be of any force or effect.

"The provisions of this section shall not be available in any Division Court action or proceeding unless and until the defendant within the time limited for disputing the plaintiff's claim or within such further time as the judge of the court in which the action or proceedings is commenced shall allow, files with the clerk of the court out of which the summons issued, or wherein the proceedings were commenced, a notice disputing the jurisdiction of such court and an affidavit of the defendant or his agent stating that in his belief there is good defence to the action on the merits, and further stating the Division Court wherein the cause of the action arose, or partly arose, and the defendant resides.

"The provisions of this section shall not apply to or be available in any action, matter or proceeding commenced or pending in any other court than a Division Court unless and until the defendant therein shall make a motion to change the venue or place of trial according to the practice of such court."

The first process in the Division Court is a summons. Summonses are of two kinds: ordinary and special. The former may be used in every case; the latter can only be used where the action is for a debt or money demand; and where the particulars of the plaintiff's claim are given with reasonable certainty and detail. There is also a summons in replevin, used in actions of that nature.

When a suit is to be entered at any Division Court, the first thing for the plaintiff to do is to hand to the clerk a written claim and particulars, which should show the names in full, and the present or last known place of abode of the parties. When the defendant's Christian name is

unknown, he may be described by his initials, or by such name as he is generally known by. The claim must, in every claim admitting thereof, show the particulars in detail; and in other cases must contain a statement of the particulars, or the facts constituting the claim, in ordinary and concise language, and the sum claimed in respect thereof. Where the plaintiff desires to sue the defendant in the Court nearest to his residence, he must add the following words to his claim, "and the plaintiff enters this suit and claims to have it tried and determined in this Court, because the place of sitting thereof is the nearest to the defendant's residence." If the plaintiff's claim is beyond the jurisdiction of the Court, he may abandon the excess; but he must do so in the first instance and on the claim.

In case the defendant does not reside, or in case none of the defendants, if there be more than one, reside in the county in which the action is brought the summons must be served fifteen days at least before the return day thereof.

If a defendant served with a special summons disputes the plaintiff's claim, he must leave with the clerk of the Court a notice to that effect, within eight days after service, when the summons is returnable on the eleventh day; and within twelve days in other cases. If he does not do so, judgment will be entered by default on the return of the summons, and execution may be at once issued. The Judge, however, has a discretion to let a defendant dispute the claim at any time before judgment entered, although notice may not have been given; and he may set aside a judgment and permit the cause to be tried on sufficient grounds being shown. Judgment by default must be entered within one month after the return of a summons, and cannot be entered after. Where a special summons has been issued against several defendants, but all have not been served, the plaintiff may take judgment against those served: in which case his claim against the others will be lost. If he does not wish to abandon those not served, he must proceed in the ordinary way.

An ordinary summons with a copy of the account, or of the particulars of the claim or demand, attached, requires to be served ten days at least before the Court day.

When the claim exceeds fifteen dollars, the service must be personal on the defendant; but where the amount does not exceed fifteen dollars, the service may be on the defendant, his wife or servant, or some grown person being an inmate of the defendant's dwelling house, or usual place of abode, trading or dealing.

The Bailiffs of the Court serve and execute all summonses, orders, warrants, precepts and writs, and so soon as served return the same to the clerk of the Court of which they are bailiffs.

The clerk prepares the affidavit of service of summons, stating how served, the day of service, and the distance the bailiff necessarily travelled to effect service, which is annexed to or indorsed on the summons, but the Judge may require the bailiff to be sworn in his presence, and to answer such questions as may be put to him touching any service or mileage.

In case of a debt or demand against two or more persons, partners in trade, or otherwise jointly liable, but residing in different divisions, or one or more of whom cannot be found, one or more of such persons may be served with process, and judgment may be obtained and execution issued against the person or persons served, notwithstanding others jointly liable have not been served or sued, reserving always to the person or persons against whom execution issues, his or their right to demand contribution from any other person jointly liable with him.

Whenever judgment has been obtained against any such partner, and the Judge certifies that the demand proved was strictly a partnership transaction, the bailiff, in order to satisfy the judgment and costs and charges thereon, may seize and sell the property of the firm, as well as that of the defendants who have been served.

On the day named in the summons, the defendant must, in person, or by some person on his behalf, appear in the Court to answer, and, on answer being made, the Judge without further pleading or formal joinder of issue in a summary way tries the cause and gives judgment; and in case satisfactory proof is not given to the Judge entitling either party to judgment, he may nonsuit the plaintiff; and the plaintiff may, before verdict in jury cases, and before judgment pronounced in other cases, insist on being non-suited. The Judge may also non-suit in a jury case.

When a plaintiff is non-suited, he is at liberty to bring his case again into Court on a new summons; but if a judgment against him be given, he cannot. If on the day named in the summons the defendant does not appear, or sufficiently excuse his absence, or if he neglects to answer, the Judge, on proof of due service of the summons and copy of the plaintiff's claim, may proceed to the trial of the cause on the part of the plaintiff only, and the order, verdict or judg-

ment thereupon will be final and absolute, and as valid as if both parties had attended.

The Judge may adjourn the hearing of any cause in order to permit either party to summon witnesses or to produce further proof, or to serve or give any notice necessary to enable such party to enter more fully into his case or defence; or for any other cause which the Judge thinks reasonable; upon such conditions as to the payment of costs and admission of evidence or other equitable terms as to him seems meet.

If the defendant desires to plead a tender, before action brought, of a sum of money in full satisfaction of the plaintiff's claim, he may do so on filing his plea with the clerk of the Court before which he is summoned to appear, at least six days before the day appointed for the trial of the cause, and at the same time paying into Court the amount of the money mentioned in such plea.

Such sum is to be paid to the plaintiff, less one dollar, to be paid over to the defendant for his trouble, in case the plaintiff does not further prosecute his action; and all proceedings in the action are to be stayed, unless the plaintiff, within three days after the receipt of notice of such payment, signifies to the clerk of the Court his intention to proceed for his demand, notwithstanding such plea; and in such case the action will proceed accordingly.

If such signification is given within the three days, but after the rising of the Court at which the summons is returnable, the case will be tried at the next sitting of the Court.

If the decision thereon be for the defendant, the plaintiff pays the defendant his costs, to be awarded by the Court, and the amount thereof may be paid over to him out of the money so paid in with the plea, or may be recovered from the plaintiff in the same manner as any other money payable by a judgment of the Court; but, if the decision be in favor of the plaintiff, the full amount of the money paid into Court will be applied to the satisfaction of his claim, and a judgment may be pronounced against the defendant for the balance due and the costs of suit.

The defendant may, at any time not less than six days before the day appointed for the trial, pay into Court such sum as he thinks a full satisfaction for the plaintiff's demand, together with the plaintiff's costs up to the time of such payment.

The sum so paid in is to be paid to the plaintiff, and all proceedings in the action stayed, unless within three days after the receipt of the notice the plaintiff shall signify to

the clerk his intention to proceed for the remainder of the demand claimed; in which case the action will proceed as if brought originally for such remainder only.

If the plaintiff recovers no further sum in the action than the sum paid into Court, the plaintiff pays the defendant all costs incurred by him in the action after such payment, and such costs may be duly taxed, and recovered by the defendant by the same means as any other sum ordered to be paid by the Court.

When a defendant desires to put in a set-off, or to take advantage of the claim being outlawed, he must, at least six days before the trial, give notice thereof in writing to the plaintiff, or to leave it for him at his usual place of abode if within the division; or, if living without the division, deliver it to the clerk of the Court in which the action is to be tried; and in case of a set-off, he must also deliver the particulars thereof to the clerk for the plaintiff.

No evidence of set-off can be given by the defendant, beyond that referred to in the particulars of set-off delivered.

If the defendant's demand, as proved, exceeds the plaintiff's, the plaintiff will be non-suited; or if he so elects, the Court may give judgment for the defendant for the excess; provided such excess be an amount within the jurisdiction of the Court; if greater, a portion of it equal to the plaintiff's proved claim may be allowed the defendant to satisfy the plaintiff's claim, and the defendant may, if he choose, sue the plaintiff for the balance.

Any of the parties to a suit may obtain from the clerk a subpœna with or without a clause for the production of books, papers and writings, requiring any witness resident within the Province, or served with the subpœna therein to attend Court; and the clerk, when requested, will give copies of such subpœna.

Any number of names may be inserted in the subpœna, and service thereof may be made by any person who can read and write; and proof of the due service thereof, together with the tender or payment of expenses, may be made by affidavit and proof of service may be received by the Judge either orally or by affidavit.

Every person served with a copy of a subpœna, either personally or at his usual place of abode, and to whom at the same time a tender of payment of his lawful expenses is made, who refuses or neglects, without sufficient cause, to obey the subpœna: and also every person in Court called upon to give evidence, who refuses to be sworn (or affirm where affirmation is by law allowed) or to give evidence, is

liable to such fine not exceeding eight dollars, as the Judge may impose, and may by verbal or written order of the Judge, be in addition, imprisoned for any time not exceeding ten days; and such fine may be levied and collected with costs in the same manner as fines imposed on jurymen for non-attendance; and the whole or any part of such fine, in the discretion of the Judge, after deducting the costs, will be applicable towards idemnifying the party injured by such refusal or neglect.

A witness resident in Ontario, but out of the County, must obey a subpœna, provided the allowance for his expenses, according to the scale settled in the County Court, be tendered to him at the time of service.

A party may give evidence on his own behalf. Commissions may be issued to take the evidence of witnesses residing without the Province; or of witnesses about to leave the Province, or who otherwise through age, sickness or infirmity, are unable to attend the trial; or who reside at a great distance from the place of trial.

In any suit for a debt not exceeding twenty-five dollars, the Judge, on being satisfied of their general correctness, may receive the plaintiff's books as evidence; or in case of a defence of set-off or of payment, so far as the same extends to twenty-five dollars, may receive the defendant's books as evidence, and may also receive as evidence the affidavit or affirmation of any party or witness in the suit resident without the limits of his county.

All affidavits to be used in any Division Court may be sworn before a County Judge, or before the clerk or deputy clerk of a Division Court, or before a Judge, notary public, or commissioner for taking affidavits in the High Court.

The Judge may openly in Court, and immediately after the hearing, pronounce his decision; but if he is not prepared to pronounce a decision instanster, he may postpone judgment until it is convenient for him to give it, when he sends it to the clerk of the Court who enters it and notifies the parties.

The Judge may order the times and proportions in which any sum and costs recovered by judgment of the Court shall be paid, reference being had to the day on which the summons was served; but unless otherwise ordered no execution shall issue on any such judgment within fifteen days after the entering of such judgment; and, at the request of the party entitled thereto, he may order the same to be paid into Court; and the Judge, upon the application of either party,

within fourteen days after the trial, and upon good grounds being shown, may grant a new trial upon such terms as he thinks reasonable, and in the meantime may stay proceedings.

Except in cases where a new trial is granted, the issue of execution will not be postponed for more than fifty days from service of the summons without the consent of the party entitled to the same; but in case it at any time appears to the satisfaction of the Judge, by affidavit or otherwise, that any defendant is unable, from sickness or other sufficient cause, to pay and discharge the debt or damages recovered against him, of any instalment thereof, ordered to be paid as aforesaid, the Judge may stay judgment or execution for such time and on such terms as he thinks fit.

Where the sum in dispute on such appeal, exclusive of costs, exceeds one hundred dollars, there may be an appeal to a Divisional Court of the High Court of Justice, unless, before the Court opens, or without the intervention of the Judge before the commencement of the trial, there is filed with the clerk in any case, an agreement in writing signed by both parties, or their attorneys or agents, not to appeal. Upon the appeal, the evidence taken down in writing by the Judge is used. For extended statement of the rights of parties and procedure upon such appeals, reference must be had to "The Division Courts Act," R. S. O. 1897, cap. 60.

The Judge may, in any case, with the consent of both parties to the action, or of their agents, order the same, with or without other matters in dispute between such parties, being within the jurisdiction of the Court, to be referred to arbitration to such persons, and in such manner, and on such terms, as he thinks reasonable and just; or the parties to an action, may by writing, signed by themselves or their agents, agree to refer the matters in dispute to the arbitrament of a person named in the agreement, which is filed with the clerk and entered on the procedure book as notices are entered.

Such reference cannot be revoked by either party, without the consent of the Judge.

The award of the arbitrator is to be entered as the judgment in the cause, and will be as binding and effectual as if given by the Judge.

The Judge, on application to him within fourteen days after the entry of such award, may, if he thinks fit, set aside the award; or may, with the consent of both parties, revoke the reference, and order another reference to be made in the manner aforesaid.

Any of such arbitrators may administer an oath or affirmation to the parties, and to all other persons examined before such arbitrator.

The costs of any action or proceeding not otherwise provided for are to be paid by, or apportioned between, the parties in such manner as the Judge thinks fit; and in cases where the plaintiff does not appear in person or by some person in his behalf, or appearing does not make proof of his demand to the satisfaction of the Judge, he may award to the defendant such costs and such further sum of money, by way of satisfaction for his trouble and attendance, as he thinks proper, to be recovered as provided for in other cases under the Act; and in default of any special direction, the costs will abide the event of the action, and execution may issue for the recovery thereof in like manner as for any debt adjudged in the Court.

Any Bailiff or Clerk, before or after action commenced, may take a confession or acknowledgment of debt from any debtor or defendant desirous of executing the same. The confession must be in writing and witnessed by the bailiff or clerk at the time of taking it.

Either party may require a jury in actions in tort (i.e., for damages, not for breach of contract), or in replevin, where the sum or value of the goods sought to be recovered exceeds twenty dollars; and in all other actions where such amount exceeds thirty dollars.

In case the plaintiff requires a jury to be summoned to try the action, he must give notice thereof in writing to the clerk one week before the day appointed for the sitting of the Court at which the case is to be tried, and at the same time deposit with the clerk towards costs in the cause, the proper fees for the expenses attending the summoning of such jury; and in case the defendant requires a jury, he must, within five days after the day of service of the summons on him, give to the clerk, or leave at his office, the like notice in writing, and at the same time deposit with the clerk the proper fees as aforesaid; and thereupon, in either of such cases, a jury will be summoned.

Either of the parties to a cause is entitled to challenge jurors, as in other Courts.

Five jurors are empannelled and sworn to do justice between the parties whose cause they are required to try, according to the best of their skill and ability, and to give a true verdict according to the evidence; the verdict of every jury must be unanimous.

The Judge may, if he thinks proper, have any disputed fact in a cause tried by a jury; and in any case, if the Judge is satisfied that a jury cannot agree, he may discharge them and adjourn the cause to the next Court: unless the parties consent to his pronouncing a judgment.

If there be cross judgments between the parties, the party only who has obtained judgment for the larger sum can have execution, and then only for the balance over the smaller judgment; and if both sums are equal, satisfaction will be entered upon both judgments.

In case the Judge makes an order for the payment of money, and in case of default of payment of the whole, or of any part thereof, the party in whose favor such order has been made may sue out execution against the goods and chattels of the party in default.

In case any person against whom a judgment has been entered up removes to another county without satisfying the judgment, the County Judge of the county to which such party has removed may, upon the production of a copy of the judgment duly certified by the Judge of the county in which the judgment has been entered, order an execution for the debt and costs awarded by the judgment to issue against such party.

If the party against whom an execution has been awarded pays or tenders to the clerk or bailiff of the Division Court out of which the execution issued, before an actual sale of his goods and chattels, the debt and costs, or such part thereof as the plaintiff agrees to accept in full of his debt, together with the fees to be levied, the execution will thereupon be superseded, and the goods be released and restored to such party.

The clerk, upon the application of any plaintiff or defendant (or his agent) having an unsatisfied judgment in his favor, will prepare a transcript of the entry of such judgment, and send the same to the clerk of any other Division Court in the same or any other county, with a certificate at the foot thereof signed by the clerk who gives the same, and sealed with the seal of the Court of which he is clerk, and addressed to the clerk of the Court to whom it is intended to be delivered, and stating the amount unpaid upon such judgment and the date at which the same was recovered, and the clerk to whom such certificate is addressed, on the receipt of such transcript and certificate, will enter the transcript in a book to be kept in his office for the purpose, and the amount due on the judgment according to the certificate; and all proceedings may then be taken for the enforcing and

collecting the judgment in such last-mentioned Division Court by the officers thereof that could be had or taken for the like purpose upon judgments recovered in any Division Court.

In case of the death of either or both of the parties to a judgment in any Division Court, the party in whose favor the judgment has been entered, or his personal representative in case of his death, may revive the judgment against the other party, or his personal representative in case of his death, and may issue execution thereon in conformity with any rules which apply to the Division Court in that behalf.

In case an execution be returned nulla bona, and the sum remaining unsatisfied on the judgment under which the execution issued amounts to the sum of forty dollars, the party in whose favor the judgment was entered may sue out an execution against the lands of the party in default, and the clerk of the Court in which it was obtained will, at the request of the party prosecuting the judgment, issue under the seal of the Court a writ of execution against the lands of the party in default to the sheriff of the county in which the return of nulla bona was made, or to the sheriff of any other county in this province in which lands of the party in default are situate; and the sheriff, on receipt of such execution acts on it and it has the same force and effect against the lands of the party in default as if the writ of execution had issued from the County Court.

In case any Bailiff employed to levy an execution against goods and chattels, by neglect, connivance, or omission, loses the opportunity of so doing, then upon complaint of the party aggrieved, and upon proof by the oath of a credible witness of the fact alleged to the satisfaction of the Court, the Judge may order the bailiff to pay such damages as it appears the plaintiff has sustained, not exceeding the sum for which the execution issued; and the bailiff shall be liable thereto; and upon demand made thereof, and on his refusal to satisfy the same, payment may be enforced by such means as are provided for enforcing judgments recovered in the Court.

Goods taken in execution are not to be sold until the expiration of eight days at least next after the seizure thereof, unless upon the request in writing under the hand of the party whose goods have been seized.

In case the Judge is satisfied upon application on oath made to him by the party in whose favor a judgment has been given, or by other testimony, that such party will be

in danger of losing the amount of the judgment, if compelled to wait till the day appointed for the payment thereof before any execution can issue, such Judge may order an execution to issue at any time, as he thinks fit.

A party having an unsatisfied judgment or order in a Division Court, for the payment of any debt, damages or costs, may procure from the Court wherein the judgment has been obtained, if the defendant resides or carries on his business within the county in which the division is situate, or from any Division Court into which the judgment has been removed and within the limits of which Division Court the defendant resides or carries on his business, a summons in the form prescribed, and the summons shall be served personally upon the person to whom the same is directed, requiring him to appear at a time and place therein expressed, to answer such things as are therein named, and if the defendant appears in pursuance thereof, he may be examined upon oath touching his estate and effects, and the manner and circumstances under which he contracted the debt or incurred the damages or liability, which formed the subject of the action, and as to the means and expectation he then had, and as to the property and means he still has of discharging the debt, damages or liability, and as to the disposal he has made of any property.

If the party so summoned (1) does not attend as required by the summons, or allege a sufficient reason for not attending, or (2) if he attends and refuses to be sworn or to make answer to such questions as may be put to him, and which in the opinion of the Judge are proper questions; (3) if it appears to the Judge, either by the examination of the party or by other evidence, that the party obtained credit from the plaintiff or incurred the debt or liability under false pretences, or by means of fraud or breach of trust, or has made or caused to be made any gift, delivery, or transfer of any property, or has removed or concealed the same with intent to defraud his creditors or any of them; or (4) if it appears that the judgment debtor had when or since judgment was obtained against him, sufficient means and ability to pay the debt or damages or costs recovered against him, either altogether or by the instalments which the Court in which the judgment was obtained has ordered, without depriving himself or his family of the means of living, and that he has wilfully refused or neglected to pay the same as ordered, the Judge may, if he thinks fit, order such party to be committed to the common gaol of the county in which

the party so summoned resides or carries on business, for any period not exceeding forty days.

The Judge, before whom such summons is heard, may rescind or alter any order for payment previously made against any defendant so summoned before him; and may make any further or other order, either for the payment of the whole of the debt or damages recovered, and costs, forthwith, or by any instalments, or in any other manner that he thinks reasonable and just.

In case the defendant has been personally served with the summons to appear, or personally appears at the trial, and judgment be given against him, the Judge at the trial may examine the defendant and the plaintiff, and any other person, touching the several things before mentioned, and may commit the defendant to prison, and make an order in like manner as in case the plaintiff had obtained a judgment summons.

No imprisonment under the Act will extinguish the debt, or protect the defendant from being summoned anew and imprisoned for any new fraud or other default, or deprive the plaintiff of any right to take out execution.

We have stated in the foregoing pages the substance of the enactments of the Division Courts Acts, so far as they apply to proceedings for the collection of an ordinary debt, We now proceed to notice the mode of action where the debtor has absconded or attempts to abscond.

If any person indebted in a sum not exceeding one hundred dollars (or not exceeding two hundred dollars where the claim is for the recovery of a money demand not exceeding that amount, and the claim is ascertained by the signature of the defendant, or the person he, as executor or administrator, represents), nor less than four dollars, for any debt or damages, or upon any judgment, (1) absconds from the Province, leaving personal property liable to seizure under execution for debt in any county in Ontario, or (2) attempts to remove such personal property out of Ontario or from one county to another therein, or (3) keeps concealed in any county of Ontario to avoid service of process; any creditor on making an affidavit or affirmation in the form given at the end of this chapter, and filing the same with the clerk of any Division Court, can obtain a warrant, directed to the bailiff or to any constable of the county, commanding such bailiff or constable to attach, seize, take and safely keep all the personal estate and effects of the absconding, removing or concealed person within such county liable to seizure under execution for debt, or a sufficient portion thereof, to

secure the sum mentioned in the warrant with the costs of the action.

Any County Judge, or a Justice of the Peace for the county, may take the affidavit and issue the warrant.

If the person against whose estate or effects an attachment has issued, at any time prior to the recovery of judgment in the cause, executes and tenders to the creditor who sued out the attachment, and files in Court, a bond with good sureties, to be approved of by the Judge or clerk, binding the obligors, jointly and severally, in double the amount claimed, that the debtor will, in the event of the claim being proved and judgment recovered, pay the same, or the value of the property taken, to the claimant, or produced the property whenever required, the clerk may supersede the attachment, and the property attached will be restored.

If within one month from the seizure, the party against whom the attachment issued, or some one on his behalf, does not appear to give such bond, execution may issue as soon as judgment has been obtained, and the property seized upon the attachment, or enough thereof to satisfy the judgment and costs, may be sold for the satisfaction thereof; or if the property has been previously sold as perishable, enough of the proceeds thereof may be applied to satisfy the judgment and costs.

If horses, cattle, sheep or other perishable goods have been taken upon an attachment, the bailiff of the Court may, at the request of the plaintiff, sell the same at public auction to the highest bidder.

Provision has also, in the Act, been made for the attachment of debts, the effect of which may be shortly stated as follows: If a debtor against whom a judgment has been obtained in the Division Court is himself a creditor of some third party, the judgment creditor, who is called the primary creditor, may obtain an order attaching the debt due by such third party to the judgment debtor, who is called the primary debtor: and thereupon proceedings, called garnishee proceedings, may be taken to enforce payment by the third party to the primary creditor of the debt so due , or so much thereof as may be sufficient to satisfy the primary creditor's claim. The form of affidavit required will be found at the end of the chapter. Only the excess of wages over $25 can be attached except in the case of an unmarried person having no family dependent on him for support, or where the debt is contracted for board and lodging.

Besides the ordinary proceedings in a Division Court for the collection of a debt, proceedings may be taken to determine

the right of property seized in execution. Such proceedings are termed interpleader. And if goods are illegally distrained for rent, or if goods are wrongfully detained from the owner, a replevin summons may be issued. Before the bailiff will replevy the goods, he will require a bond to produce the goods replevied if judgment is given against the party replevying, or to pay the value thereof, and to pay all costs. A jury may be required by either party in any interpleader issue.

Special provisions are made by the Act with reference to the Territorial Districts, and in the rules with reference to proceedings by and against executors and administrators, and other matters; but it would swell the limits of this work beyond due bounds if we were to notice them in detail: besides which it will always be found advisable to consult a professional man whenever the matter in dispute is at all out of the ordinary and common course.

We subjoin a few forms which will be found useful in the progress of a suit. They are the forms appended to the new Division Court rules.

FORMS.

Undertaking by next friend of infant to be responsible for defendant's costs.

In the Division Court in the County of

I, the undersigned E. F., being the next friend of A. B., who is an infant, and who is desirous of entering a suit in this Court against C. D., of, etc., hereby undertake to be responsible for the costs of the said C. D., in such cause, and that if the said A. B. fail to pay the said C. D. all such costs of such cause as the Court shall direct him to pay to the said C. D., I will forthwith pay the same to the clerk of the Court.

Dated this day of A.D. 19 .

(Signed) E. F.

Witness

Affidavit for leave to sue a party residing in an adjoining Division.

In the Division Court in the County of

I, A.B., of , yeoman (or I, E. F., of , yeoman, agent for A. B., of, etc.), make oath and say—

1st. That I have a cause of action against C. D., of yeoman, who resides in the Division of the County of (if by agent, "That the said A. B. has a cause of action against C. D., of , yeoman.")

2nd. That I (or the said A. B.) reside in the Division, in the County of

3rd. That the distance from my residence (or from the said A. B.'s residence) to the place where this Court is held is about

miles, and to the place where the Court is held in the Division in the County of is about miles.

4th. That the distance from the said C. D.'s residence to the place where the Court is held in the Division where he resides, is about miles, and to the place where this Court is held about miles.

5th. That the said Division and this Division adjoin each other, and that it will be more easy and inexpensive for the parties to have this cause tried in this Division than elsewhere.

Sworn, etc. A. B. (or E. F.)

Affidavit for leave to sue in a Division adjoining one in which debtors reside, where there are several.

In the Division Court in the County of

I, A. B., of , yeoman, make oath and say (or E. F., of , yeoman, agent for A. B., of, etc., make oath and say):—

1st. That I have (or that the said A. B. has) a cause of action respectively against each of the debtors named in the first column of the Schedule on this affidavit indorsed.

2nd. That the columns in the said Schedule, numbered respectively, 1st, 2nd, 3rd, 4th, 5th, 6th and 7th, are truly and correctly filled up, according to the best of my knowledge and belief.

3rd. That the Divisions named in the second and third columns of the said Schedule, opposite each debtor's name, respectively adjoin each other.

4th. That it will be more easy and inexpensive for the parties to have the said causes, respectively, tried in this Division, than elsewhere.

Sworn, etc. A. B. (or E. F.)

SCHEDULE REFERRED TO IN THE WITHIN AFFIDAVIT

COLUMNS.

1st.	2nd.	3rd,	4th.	5th.	6th	7th.
Debtors' names, place of residence and addition.	Division in which suit is to be commenced.	Division in which debtor resides.	Number of miles from creditor's residence to where Court held in Division in which debtor resides.	Number of miles from creditor's residence to where Court held in Division in which suit to be commenced.	Number of miles from debtor's residence to where Court held in Division where suit to be commenced.	Number of miles from debtor's residence to where Court held in Division where debtor resides.
John Doe, of Saltfleet, in the County of Wentworth, yeoman.	Division No. 3 in the County of Lincoln.	Division No. 1 in the County of Wentworth.	22	1	5	17
Richard Roe, of Moro, County of Simcoe, Esquire.	Division No. 2 in the County of Simcoe	Division No. 8.	28	11	18	4

A. B. (*or* E. F.)

Affidavit for Attachment.

(If made after suit commenced, insert style of Court and cause).

I, A. B., of the in the County of , (or I, E. F., of, etc., agent for the said A B., of, etc.,) make oath and say:—

1st. That C. D., of (or late of) in the County of , is justly and truly indebted to me (or to the said A. B.), in the sum of dollars and cents, on a promissory note for the payment of dollars and cents, made by the said C. D., payable to me (or the said A. B.) at a day now past:

Or for goods sold and delivered
Or for goods bargained and sold
Or for crops bargained and sold by me (or the said A. B.) to
Or for money lent the said C. D.
Or for money paid for the said C. D.

Or for and in respect of my (or the said A. B.) having relinquished and given up to and in favor of the said C. D., at his request, the benefit and advantage of work done and materials found and provided and moneys expended by me (or the said A. B.) in and about the farming, sowing, cultivating and improving of certain land and premises;

Or for the use by the said C. D., by my permission (or by the permission of the said A. B.) of messuages and lands of me (or the said A. B.);

Or for the use by the said C. D., of pasture land of me (or the said A. B.) and the eatage of the grass and herbage thereon, by the permission of me (or the said A. B.);

Or for the wharfage and warehouse room of goods deposited, stowed and kept by me (or the said A. B.) in and upon a wharf, warehouse and premises of me (or the said A. B.) for the said C. D., at his request;

Or for horse-meat, stabling, care and attendance provided and bestowed by me (or the said A. B.) in feeding and keeping horses for the said C. D., at his request; or for work done and materials provided by me (or the said A. B.) for the said C. D., at his request;

Or for expenses necessarily incurred by me (or the said A. B.) in attending as a witness for the said C. D., at his request, to give evidence upon the trial of an action at law then depending in the Court, wherein the said C. D. was plaintiff, and one E. F. defendant;

Or for money received by the said C. D. for my use (or for the use of the said A. B.);

Or for money found to be due from the said C. D. to me, (or to the said A. B.) on an account stated between them, (or other cause of action, stating the same in ordinary and concise language.)

2nd. I further say that I have good reason to believe and do verily believe that* the said C. D. hath absconded from that part of the Dominion of Canada, which heretofore constituted the Province of Canada, leaving personal property liable to seizure under execution for debt in the County of in this Province.*

(Or, instead of matter between the asterisks, the said C. D. hath attempted to remove his personal property, liable to seizure under execution for debt, out of this Province; or the said C. D. hath

attempted to remove his personal property liable to seizure under execution for debt from the County of to the County of , in this Province; or the said C. D. keeps concealed in the County of , in this Province to avoid service of process) with intent and design to defraud me (or the said A. B.) of my (or his) said debt.

3rd. That this affidavit is not made by me, nor the process thereon to be issued, from any vexatious or malicious motive whatever.

Sworn, etc. A. B.

Replevin.

Affidavit to obtain Judge's order for writ of replevin.

In the Division Court in the County of
County of , to wit: I, A. B., of , make oath and say:

1st. That I am the owner of (describe property fully) at present in the possession of C. D.; or that I am entitled to the immediate possession of (describe property), as lessee, (bailee, or agent), of E. F., the owner thereof; or as trustee for E. F.) (or as the case may be), at present in the possession of C. D.

2nd. That the said goods, chattels, and personal property are of the value of dollars, and not exceeding $60.

3rd. That on or about the day of , the said goods, chattels, and personal property, were lent to the said C. D., for a period which has expired, and that although the said goods, chattels and personal property have been demanded from the said C. D., he wrongfully withholds and detains the same from me, the said A. B.; or, that on or about the day of , the said C. D., fraudulently obtained possession of the said goods, chattels and personal property, by falsely representing that (here state the false representation), and now wrongfully withholds and detains the same from me; or, that the said goods, chattels and personal property were on the day of last, distrained or taken by the said C. D., under color of a distress for rent, alleged to be due by me, to one E. F., when in fact no rent was due by me to the said E. F., (or as the case may be, setting out the facts of the wrongful taking or detention complained of with certainty and precision).

4th. That the said C. D. resides (or carries on business at , within the limits of the Division Court in the County of), (or that the said goods, chattels and personal property were distrained), (or taken and detained), (or detained) at , within the limits of the Division Court of the County of

Sworn, etc. A. B.

Affidavit to obtain writ without order in first instance.

[The first four sections may be as above, and the following must be stated in addition:]

5th. That the said personal property was wrongfully taken, (or fraudulently got) out of my possession within two calendar months before the making of this affidavit, that is to say, on the day of last.

6th. I am advised and believe that I am entitled to an order for the writ of replevin now applied for, and I have good reason to

apprehend, and do apprehend, that unless the said writ is issued without waiting for an order, the delay will materially prejudice my just rights in respect to the said property.

[Or if the property was distrained for rent, or damage feasant, then the statement given in the last specific alternative under the 3rd clause of the above form will be sufficient to obtain writ without order.]

Claim of Replevin.

In the Division Court in the County of .

A. B., of , states that C. D., of , did on or about the day of , A.D. 18 , take and unjustly detain (or detain, as the case may be), and still doth detain his goods, chattels and personal property, that is to say (here set out the description of property) which the said A. B. alleges to be of the value of dollars; whereby he hath sustained damages; and the said A. B. claims the said property with damages in this behalf as his just remedy.

A. B

Particulars in cases of contract.

A. B., of , claims of C. D., of , the sum of $, the amount of the following account, viz., (or the amount of the note, a copy of which is under written), together with the interest thereon, [or, for that the said C. D. promised (here state shortly the promise) which undertaking the said C. D. hath not performed] or, for that the said C. D. by deed under his seal dated the day of , A.D. 18 , covenanted to, etc., and that the said C. D. hath broken said covenant whereby the said A. B. hath sustained damages to the amount aforesaid: or, for money agreed by the said C. D. to be paid by the said A. B., together with a horse of the said C. D., in exchange for a horse of the said A. B., delivered by the said A. B. to the said C. D.; or, for that the said C. D., by warranting a horse to be then sound and quiet to ride, sold the said horse to the said A. B., yet the said horse was not then sound and quiet to ride; or, for that the said C. D., in consideration that the said A. B. would supply E. F. with goods on credit, promised the said A. B., that he, the said C. D. would be answerable to the said A. B. for the same, that the said C. D. did accordingly supply the said E. F. with goods to the price of $ and upwards, on credit, that such credit has expired, yet neither the said E. F. nor the said C. D. has as yet paid for the said goods; or, for that the said A. B. let to the said C. D. a house for seven years to hold from the day of , A.D. , at $ a year, payable quarterly, of which rent quarters are due and unpaid.

(The above forms are given merely as examples of statements of causes of action, and the claim must show such further particulars as the facts of the case require).

Particulars in cases of tort.

A. B., of , states that C. D., of , did, on or about the day of , A.D. 19 ; at the Township of .

unlawfully [take and convert one cow and one calf, the property of the said A. B.; or, break and injure a waggon of the said A. B.; or, falsely represent L. O. as fit to be trusted, the said C. D., at the said time knowing that the said L. O. was insolvent, whereby the said A. B. was induced to give him credit: or, assault and beat the said A. B. (or as the case may be, stating the tort sued for in concise language);] The said A. B. hath sustained thereby damages to the amount of , and claims the same of the said C. D.

A. B.

Landlord's claim for rent.

Whereas, I have been informed that you have seized the goods of C. D., of , on his premises at , to satisfy a certain judgment of the Division Court in , against the said C. D., at the suit of A. B.; I hereby give you notice that I am the landlord of the said premises, and that I claim $ for rent now in arrear, being for one quarter (or as the case may be), and I require you to pay the same to me before you apply the proceeds of the sale of said goods or any part thereof to satisfy the said judgment.

E. F.

Dated, etc. Landlord of the said Tenement.

To V. W.,
Bailiff of etc.

Particulars of claim on Interpleader.

In the Division Court in the County of

BETWEEN A———B———, Plaintiff,

AND

C———D———, Defendant.

E———F———, Claimant.

To whom it may concern—

E. F., of , claims as his property the following goods and chattels (or moneys, etc.), seized and taken in execution, (or attached) as it is alleged, namely, (specify the goods and chattels, or chattels or moneys, etc., claimed) and the grounds of claim are (set forth in ordinary language the particulars on which the claim is grounded, as how acquired, from whom, when, and the consideration paid or to be paid, and when) and this the said E. F. will maintain and prove.

E. F.

Dated the day of , 19 .

N.B.—If any action for the seizure has been commenced, state in what Court, and how the action stands.

Application for Judgment Summons.

To X. Y., Clerk of the Division Court in the County of .

Be pleased to summons , of, etc., to answer according to the Statute in this behalf, touching the debt due me by the judgment of the Court of the Division Court of the County of , on my behalf, a minute whereof is hereunto annexed.

A. B., Plaintiff.

Affidavit for order to garnish debt.

In the Division Court in the County of
BETWEEN A——B——, Plaintiff,
AND
C——D——, Defendant.

I, A. B., of the of , in the County of , the plaintiff in this suit, (if the affidavit be made by the plaintiff's attorney or agent, make the necessary alteration) make oath and say, that judgment was recovered in this case against the above named defendant on the day of A.D. 19 , for the sum of $ debt and costs, (or according to the judgment), and that the same remains wholly unsatisfied, (or that $ part thereof yet remains unsatisfied.)

That I have reason to believe, and do believe, that E. F., residing at within this Province is (or if the person indebted to the Defendant be not known, say "that one or more persons residing in this Province, whom I am unable to name, are") indebted to the Defendant in the sum of $, (or if the amount be unknown, say "in an amount which I am unable to name," for goods sold and delivered by the Defendant to the said E. F., (or otherwise according to the nature of the debt sought to be garnished.)

Sworn before me at the of , in the County of this day of , A.D. 19
X. Y.,
Clerk.

A. B.

Defendant's notice to the Plaintiff or Clerk.

In the Division Court in the County of
BETWEEN A——B——, Plaintiff,
AND
C——D——, Defendant.

Take notice that I will admit, on the trial, the first, second and third items of the Plaintiff's particulars to be correct [or the signing and endorsement of the promissory note sued upon (or as the case may be)] or,

Take notice that I dispute the claim of the Plaintiff in full (or here specify all or any of the grounds of defence.)

Dated the day of . A.D. 19 .

Yours, etc.,
C. D.,
Defendant.

To the Plaintiff (or to the Clerk of the said Court.)

The several grounds of defence may be stated as follows where they meet the circumstances:

1. I dispute the following items of your claim, viz., (here specify the items), and admit the residue.

Or 2. I will on the trial claim a set-off against your demand, and the particulars thereof are hereunto annexed.

Or 3. I will on the trial insist that your claim is barred by the Statute of Limitations (or other statutory defence.)

Or 4. I will on the trial insist that I am discharged from payment of your claim by the provisions of the Insolvent Act.

Or 5. I wil admit on the trial the 1st, 9th, 11th (or other) items of your particulars of account to be correct.

Or 6. I will admit on the trial the signing [or endorsement] of the promissory note [or bill of exchange] sued upon, (or as the case may be), and deny the residue of your claim.

Or 7. I will on the trial insist that you are not a duly certified Attorney or Solicitor.

Or 8. I will insist as a defence upon the trial that you have not given the proper notice of action before suit to which I am entitled as a Justice of the Peace (or Peace officer) under Rev. Stat. of Ont. cap. 73, or as a Bailiff of the Division Court under the 231 sec. of the Division Courts Act.

Affirmation by Quakers, etc., and jurat thereto.

(Court and style of cause.)

I, A. B., of , etc., do solemnly, sincerely and truly declare and affirm that I am one of the Society called Quakers (or Mennonites, Tunkers, Unitas Fratrum or Moravians, as the case may be), and I do also solemnly, sincerely and truly declare and affirm as follows, that is to say (state the facts,.

Solemnly affirmed at , in the County of , on , before me. A. B.

X. Y., Clerk, etc.

Or as the case may be.

Affidavit of Disbursements to several witnesses.

In the Division Court in the County of

BETWEEN A——B——, Plaintiff,

AND

C———D———, Defendant.

I, A. B., of , the above Plaintiff (or C. D., the above Defendant, or E. F., agent for the above Plaintiff or Defendant) make oath and say:

1st. That the several persons whose names are mentioned in the first column of the schedule at the foot hereof were necessary and material witnesses on my behalf (or on behalf of the said Plaintiff or Defendant) and attended at the sittings of this Court on the day of as witnesses on my behalf (or on behalf of the said Defendant or Plaintiff) and that they did not attend as witnesses in any other cause; (if otherwise, state the facts.)

2nd. That the said witnesses necessarily travelled in going to the said Court, the number of miles respectively mentioned in figures in the second column of the said schedule opposite to the names of each of the said witnesses respectively.

3rd. That the several and respective sums of money mentioned in figures in the third column of the said schedule opposite to the names of the said witnesses respectively, have been paid by me (or by the Plaintiff or Defendant) to the said witnesses respectively as in the said schedule set forth for their attendance and travel as witnesses in this cause.

A. B.

Sworn before me at this day of 19

X. Y.,
Clerk.

Schedule referred to in the foregoing Affidavit.

Names of Witnesses.	Miles.	Sums paid.

Affidavit for revival of Judgment.

In the Division Court in the County of

BETWEEN A——B——, Plaintiff,

AND

C——D——, Defendant.

I, A. B., of the of , in the County of yeoman (if the affidavit be made by the Plaintiff's attorney or agent, with the necessary alteration), make oath and say as follows:

1st. On the day of , A.D. 18 , I recovered a judgment of this Court against the above named Defendant for $, debt, and $, costs of suit.

2nd. No part of said moneys so recovered has been paid or satisfied, and the said judgment remains in full force (or "the sum of , part only of the said moneys has been paid, and the judgment remains in full force as to the residue of the said moneys so recovered thereby.")

3rd. I (or the said Plaintiff) am entitled to have execution of the said judgment, and to issue execution thereupon (for the sum of $) as I verily believe.

Sworn, etc.

NOVA SCOTIA.

The Supreme Court of Nova Scotia, the County Courts of the Province, and the municipal Courts established in the various cities and towns, and the Courts of Justices of the Peace are the principal Courts by means of which a claim may be litigated. There is no Division Court such as in Ontario.

A justice of the peace for the County in which the defendant resides, or in which the debt or cause of action arose, have jurisdiction to collect a claim where it does not exceed $20.

Two justices of the peace have the same jurisdiction where the claim is between $20 and $80.

Procedure, trial, costs, execution and appeal are regulated by R. S. N. S. cap. 160.

Under the Municipal Courts Act (R. S. N. S. cap. 159), stipendiary magistrates of incorporated towns have the jurisdiction and powers of two justices of the peace. Procedure is similar to that provided under the Act relating to civil procedure in Justices' Courts.

County Courts are established under R. S. N. S. cap. 156, and for this purpose the Province is divided into seven districts, each district being presided over by one County Court Judge.

County Courts have no jurisdiction where the title to land is brought into question, or where the validity of any devise, bequest or limitation is disputed or in any action for criminal conversation or seduction or for breach of promise of marriage. Subject to these exceptions the County Courts have jurisdiction in all personal actions in contract where the debt, demand or damages claimed do not exceed $800, and in all other actions where the damages claimed do not exceed $400. The Court also has jurisdiction in all actions on bail bonds to the sheriff given in any County Court case, irrespective of the amount sought to be recovered; also in all actions against a sheriff or officer of the Court for nonfeasance or malfeasance in connection with any matter in the Court.

The jurisdiction conferred is concurrent with that of the Supreme Court, and subject to some special exceptions arising out of the limited jurisdiction of the Court, the practice and procedure and the process and forms used in the County Court are the same as prescribed for similar actions and matters in the Supreme Court.

The Supreme Court of Nova Scotia (corresponding to the High Court of Judicature in Ontario), has jurisdiction in all actions where the amount of the debt or liquidated demand exceeds $20. Procedure is regulated by "the Judicature Act" (cap. 155, R. S. N. S. 1900), and the Rules of the Supreme Court which follow very closely the English Rules of Court on the same subject, and differ very slightly from the Ontario rules.

Practically all the powers conferred upon the Division Courts in Ontario may be exercised by the County Courts and Supreme Court of Nova Scotia.

MANITOBA.

There are no Division Courts so called in Manitoba, but the County Courts take the place of the Division Courts in Ontario and, to same extent, that of the Ontario County Courts as well. The province is divided into five judicial districts, for each of which there is a County Court Judge, except in the Eastern Judicial District, in which Winnipeg is situated, where there are four County Court Judges. Each judicial district is divided into a number of County Court judicial divisions of which there are about 45 in all, and each County Court Judge presides over the Courts in all the divisions in his judicial district. These Courts have jurisdiction over civil actions to the extent of $500, with the exception of actions of ejectment or for the recovery of land, actions for gambling or liquor debts, malicious prosecutions, libel, slander, criminal conversation, seduction or breach of promise of marriage, and actions against a Justice of the Peace or other peace officer for anything done by him in the execution of his office, unless he consents thereto.

The practice and procedure in these Courts are similar to those in the Division Courts of Ontario, the only pleadings being the writ of summons with particulars of the claim and the dispute note containing the defence or defences, which must be sworn to.

EXEMPTIONS FROM SEIZURE FOR DEBT.

The policy of exempting from seizure for debt certain goods and chattels of the debtor, and of permitting him to retain these notwithstanding the amount or number of the debts he may owe, is one generally recognized in all the Provinces. This policy is based upon the general belief that, were the creditor permitted by law to strip his debtor of all the simplest necessaries of life, leaving the latter altogether dependent upon charity, no commensurate good would be accomplished, while the result would be prejudicial to the interests of the community at large, and even opposed to the commonest sentiments of humanity. Seizures are generally of two kinds: one under landlord's warrant of distress for overdue rent, and the other under warrant or writ of execution for judgment debts. Exemptions from seizure under the first class may be summed up as follows: (i) Things fixed to the freehold (even though the tenant may remove them), as kitchen ranges, coppers, grates, etc. (ii) Chattels not belonging to the tenant, but happening to be upon the premises to be attended to, repaired or worked up in the way of his trade, as a horse left with a blacksmith to be shod, a coat delivered to a tailor to be repaired, goods left with an auctioneer for sale, or with a wharfinger or warehouseman for safe keeping. (iii) Chattels actually at the time in use by some person, as the horse a man is riding, the coat he is wearing, etc. (iv) Goods belonging to guests at an inn. (v) Goods in custody of the law. (vi) Wild animals. (vii) Any perishable article, such as butcher's meat. The foregoing are absolutely privileged from seizure. Certain other chattels are said to be conditionally privileged, that is, they may not be seized if any other sufficient distress is found available on the premises. Such are, beasts of the plow, instruments of husbandry, and the implements or instruments of a man's trade or profession.

With regard to the second class, namely, seizures under writs of execution, the exemptions in the various Provinces are as follows:

ONTARIO.

The exemptions from seizure under execution, as set out in 9 Ed. VII. cap. 47, are as follows:

3. The following chattels shall be exempt from seizure under any writ, in respect of which this Province has legislative authority, issued out of any Court whatever, in this Province, namely:

1. The bed, bedding and bedsteads (including a cradle), in ordinary use by the debtor and his family;

2. The necessary and ordinary wearing apparel of the debtor and his family;

3. One cooking stove with pipes and furnishings, one other heating stove with pipes, one crane and its appendages, one pair of andirons, one set of cooking utensils, one pair of tongs and shovel, one coal scuttle, one lamp, one table, six chairs, one washstand with furnishings, six towels, one looking-glass, one hair brush, one comb, one bureau, one clothes press, one clock, one carpet, one cupboard, one broom, twelve knives, twelve forks, twelve plates, twelve tea cups, twelve saucers, one sugar basin, one milk jug, one tea pot, twelve spoons, two pails, one wash tub, one scrubbing brush one blacking brush, one wash board, three smoothing irons, all spinning wheels and weaving looms in domestic use, one sewing machine and attachments in domestic use, thirty volumes of books, one axe, one saw, one gun, six traps, and such fishing nets and seines as are in common use, the articles in this sub-division enumerated, not exceeding in value the sum of $150.

4. All necessary fuel, meat, fish, flour and vegetables, actually provided for family use, not more than sufficient for the ordinary consumption of the debtor and his family for thirty days, and not exceeding in value the sum of $40.

5. One cow, six sheep, four hogs, and twelve hens, in all not exceeding the value of $75, and food therefor for thirty days, and one dog;

6. Tools and implements of or chattels ordinarily used in the debtor's occupation, to the value of $100. But if a specific article claimed as exempt, be of a value greater than $100, and there are not other goods sufficient to satisfy the execution, such article may be sold by the sheriff, who shall pay $100 to the debtor out of the net proceeds. But no sale of such article shall take place unless the amount bid therefor shall exceed the said sum of $100 and the costs of sale in addition thereto.

7. Bees reared and kept in hives to the extent of fifteen hives.

4. The debtor may in lieu of tools and implements of or chattels ordinarily used in his occupation referred to in clause 6 of section 2 of this Act elect to receive the proceeds of the sale thereof up to $100, in which case the officer executing the writ shall pay the net proceeds of such sale if the same shall not exceed $100, or, if the same shall exceed $100, shall pay that sum to the debtor in satisfaction of the debtor's right to exemption under said sub-division 6, and the sum to which a debtor shall be entitled hereunder shall be exempt from attachment or seizure at the instance of a creditor.

5. The chattels so exempt from seizure as against a debtor shall after his death, be exempt from the claims of creditors of the deceased, and the widow shall be entitled to retain the exempted goods for the benefit of herself and the family of the debtor, or, if there is no widow, the family of the debtor shall be entitled to the exempted goods.

6. The debtor, his widow or family, or, in the case of infants, their guardian, may select out of any larger number the several chattels exempt from seizure.

7. Nothing herein contained shall exempt any article enumerated in sub-divisions 3, 4, 5, 6 and 7 of section 2 of this Act, from seizure in satisfaction of a debt contracted for the identical article.

8. Notwithstanding anything contained in the preceding sections, the various goods and chattels which were, prior to the first day of October, 1887, liable to seizure in execution for debt shall, as respects debts which have already been or shall be contracted prior to the said day, remain liable to seizure and sale in execution provided that the writ of execution under which they are seized has endorsed upon it a certificate signed by the Judge of the Court out of which the writ issues, if a court of record; or, where the execution issues out of a Division Court, by the Clerk of the Court, certifying that it is for the recovery of a debt contracted before the date hereinbefore mentioned.

By "The Free Grant and Homesteads Act," R. S. O. 1897, cap. 29, the lands located under such free grants are exempt from seizure as follows:

25. No land located as aforesaid, nor any interest therein, shall in any event be or become liable to the satisfaction of any debt or liability contracted or incurred by the locatee, his widow, heirs or devisees, before the issuing of the patent for the land.

2. After the issuing of the patent for any land, and while the land or any part thereof, or any interest therein, is owned by the locatee or his widow, heirs or devisees, such land, part or interest, shall during the twenty years next after the date of the location be exempt from attachment, levy under execution, or sale for payment of debts, and shall not be or become liable to the satisfaction of any debt or liability contracted or incurred before or during that period, save and except a debt secured by a valid mortgage or pledge of such land made subsequently to the issuing of the patent. 31 Vic. c. 8, s. 14.

21. Nothing in this Act shall be construed to exempt the land from levy or sale for rates or taxes heretofore or hereafter legally imposed.

NOVA SCOTIA.

The exemptions from seizure under execution are set out in the Ord. XL., sec. 40 of the Rules of the Supreme Court, which reads as follows:

40. The following goods and chattels shall be exempt from seizure under any writ of execution, namely:

(*a*) The necessary wearing apparel, beds, bedding and bedsteads of the debtor and his family;

(*b*) One stove and pipe therefor, one crane and its appendages, one pair of andirons, one set of cooking utensils, one pair of tongs, six knives, six forks, six plates, six teacups, six saucers, one shovel, one table, six chairs, one milk jug, one teapot, six spoons, one spinning-wheel, one weaving loom, one sewing machine if in ordinary domestic use, ten volumes of religious books, one water bucket, one

axe, one saw, and such fishing nets as are in common use, the value of such nets not to exceed twenty dollars;

(*c*) All necessary fuel, meat, fish, flour, and vegetables actually provided for family use, nor more than sufficient for the ordinary consumption of the debtor and his family for thirty days, and not exceeding in value the sum of forty dollars;

(*d*) One cow, two sheep, and one hog, and food therefor for thirty days;

(*e*) Tools and implements of, or chattels ordinarily used in, the debtor's occupation, to the value of thirty dollars.

But nothing in this rule contained shall exempt any article enumerated in (*b*), (*c*), (*d*) and (*e*) from seizure in satisfaction of a debt contracted for such identical article.

NEW BRUNSWICK.

By the C. S. N. B. 1903, cap. 128, sec. 34, exemptions are as follows:—The wearing apparel, bedding, kitchen utensils and tools of his trade or calling, to the value of $100, of any debtor shall be exempted from levy or sale under execution.

By C. S. N. B. cap. 24, sec. 13, the interest of the allottee in free grant lands before the issue of the patent cannot be taken in execution.

As to seizure of the goods of a lodger see chapter on Landlord and Tenant.

PRINCE EDWARD ISLAND.

By the Revised Stat., 30 Vict. cap. 18, exemptions are as follows:

The necessary wearing apparel and bedding of the debtor and his family, and the tools and instruments of his trade or calling, five pounds in money, and his last cow, are exempted from execution.

MANITOBA.

The following personal and real estate are declared by R. S. M. 1902, cap. 58, sec. 29, exempt from seizure by virtue of all writs of execution issued by any Court in the Province, namely:

(*a*) The bed and bedding in the common use of the judgment debtor and his family, and also his household furniture and effects not exceeding in value the sum of five hundred dollars;

(*b*) The necessary and ordinary clothing of the judgment debtor and his family, and the necessary fuel for the judgment debtor and his family for six months;

(*c*) Twelve volumes of books, the books of a professional man, one axe, one saw, one gun, six traps;

(*d*) The necessary food for the judgment debtor and his family during eleven months;

Provided, however, that such exemption shall only apply to such food and provisions as may be in his possession at the time of seizure;

(*e*) Three horses, mules or oxen, six cows, ten sheep, ten pigs, fifty fowls, and food for the same during eleven months;

(i) Provided that the word "horses" shall include colts and fillies, the words "oxen" and "cows" shall include steers and calves and heifers respectively; and

(ii) Provided, also, that the exemption as to horses over the age of four years, shall apply only in case they are used by the judgment 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 five hundred dollars;

(*g*) The articles and furniture necessary to the performance of religious services;

(*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 one hundred and sixty 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 farm, subject, however, as aforesaid;

(*j*) All the necessary seeds of various varieties or roots for the proper seeding and cultivation of eighty acres;

(*k*) The actual residence or home of any person, other than a farmer, provided the same does not exceed the value of one thousand five hundred dollars; and if the same does exceed the value of one thousand five hundred dollars, then it may be offered for sale and, provided a sum greater than one thousand five hundred dollars be offered, such property shall be sold, but the amount to the extent of the exemption shall at once be paid over to the said judgment debtor, and such sum until paid over to the judgment debtor shall be exempt from seizure under execution, garnishment, attachment for debt or any other legal process;

(i) Provided that no such sale shall be made unless the amount offered shall, after deducting all costs and expenses, exceed one thousand five hundred dollars; and

(ii) Provided, further, that no such sale shall be carried out or possession given to any person thereunder, until such time as the amount of exemption shall have been paid over to the debtor entitled to such exemption.

(*l*) The chattel property of any municipality or school district in the province.

The following provisions of the Act should also be noted:

30. Any moneys that may become payable by reason of loss by fire under any policy of fire insurance in respect of any property that is at the time of such loss exempt under this Act from seizure, shall be exempt from seizure under execution or attachment or any other legal process.

30A. Annuities under Government Annuities Act, 1908 (Dom.).

31. A partnership firm cannot claim several exemptions for each partner, but only one exemption for the firm, out of the partnership property.

32. The exemptions in this Act mentioned cannot 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.

33. The judgment debtor shall be entitled to a choice from the greater quantity of the same kind of property or articles which are hereby exempted from seizure.

36. Nothing herein contained shall be construed to exempt from seizure any real or personal estate mentioned in subsections (*a*),

(*e*), (*e*), (*f*), (*g*), (*h*), (*i*), (*j*), and (*k*) of the twenty-ninth section of this Act, the purchase price of which is the subject of the judgment proceeded upon either by way of execution or certificate of judgment or attachment.

37. No sale of any farm or garden crops, whether grain or roots, shall take place until after the same have been harvested or taken and removed from the ground.

40. Every agreement to waive or abandon an exemption from seizure or a benefit, right or privilege of exemption from seizure under this Act and every arrangement, contract or bargain, verbal or written, under seal or otherwise, made or entered into with or without valuable consideration, whereby an attempt is made to prevent any person from claiming the benefit, right or privilege of exemption under this Act, shall be absolutely null and void:

Provided, however, that this section shall not give rise to any inference or implication that such agreement, arrangement, contract or bargain was not heretofore void.

Exemptions from Distress for Rent.

In addition to those things exempt from distress for rent which are enumerated on p. 197, the Distress Act, R. S. M. 1902, c. 49, contains the following provisions:—

2. 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.

5. A landlord shall not distrain for rent on goods and chattels the property of any person except the tenant or person who is liable for the rent, although the same are found on the premises; but this restriction shall not apply to crops or grain in favor of a person claiming title under or by virtue of an execution or attachment against the tenant, or in favor of any person whose title is derived by purchase, gift, transfer or assignment from the tenant, whether absolute or in trust, or by way of mortgage or otherwise, nor to the interest of the tenant in any goods on the premises in the possession of the tenant under a contract for purchase or by which he may or is to become the owner thereof upon performance of any condition, nor where goods have been exchanged between two tenants or persons by the one borrowing or hiring from the other for the purpose of defeating the claim of, or the right of distress by, the landlord; nor shall the restriction apply where the property is claimed by the wife, husband, daughter, son, daughter-in-law or son-in-law of the tenant, or by any other relative of his in case such other relative lives on the premises as a member of the tenant's family; nor shall such restriction apply in favor of any person whose title is derived by purchase, gift, transfer or assignment, whether absolute or in trust, or by way of mortgage or otherwise, from the wife, husband, daughter, son, daughter-in-law or son-in-law of the tenant, or from any other relative of his in case such other relative lives on the premises as a member of the tenant's family.

SASKATCHEWAN AND ALBERTA.

The Exemption Ordinance provides as follows:

2. The following real and personal property of an execution debtor and his family is hereby declared free from seizure by virtue of all writs of execution, namely:

1. The necessary and ordinary clothing of himself and his family;

2. Furniture, household furnishings, dairy utensils, swine and poultry to the extent of five hundred dollars;

3. The necessary food for the family of the execution debtor 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 execution debtor 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 of harrows, one horse rake, one sewing machine, one reaper or binder, one set of sleighs and one seed drill;

6. The books of a professional man;

7. The tools and necessary implements to the extent of two hundred dollars used by the execution debtor 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, 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 execution debtor 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.

Exemptions from Distress for Rent.

The Ordinance in force contains provisions substantially the same as those above copied from the corresponding Manitoba Act.

BRITISH COLUMBIA.

The following personal property is by statute (R. S. B. C. 1897, c. 93, s. 17) exempt from forced seizure or sale, by any process of law or in equity, or from any process in bankruptcy, that is to say:

The goods and chattels of any debtor, at the option of such debtor, or if dead, of his personal representative, to the value of five hundred dollars; Provided that nothing herein contained shall be construed to exempt any goods or chattels from seizure in satisfaction of a debt contracted for or in respect of such identical goods and chattels; Provided further, that this section shall not be construed so as to permit a trader to claim as an exemption any of the goods and merchandize which form a part of the stock in trade of his business.

A homestead registered in pursuance of the provisions of c. 93, R. S. B. C. 1897, is free from forced seizure or sale by any process, for or on account of any debt or liability incurred after such registration, provided it be of a value not greater than $2,500; and if of greater value, the excess only is liable to seizure.

LANDLORD AND TENANT.

The relation of landlord and tenant is that which subsists between the owner of houses or lands and the person to whom he grants the use of them. It may be created by contract in writing, as a lease, or agreement for a lease; or by verbal agreement, as is usually the case in a letting from year to year. The owner, who is called the landlord or lessor, grants the possession and use of the property to the tenant or lessee for a specified time in consideration of the payment of a stipulated sum of money called rent.

A lease may be made for the life of either the landlord or the tenant, or it may be made for any number of years, or it may be at will—that is, determinable at any moment at the will, properly signified, of either the lessor or lessee. An agreement for a lease must be in writing, and in Ontario and Nova Scotia all leases exceeding three years in duration must be by deed, or the tenancy will be held in law a tenancy at will only. "In New Brunswick all leases exceeding three years in duration must be by deed or they will amount to a tenancy at will which the decisions of the Courts have practically changed into a tenancy from year to year. The effect of want of registration has been dealt with under the chapter relating to deeds. If for more than seven years in Ontario and New Brunswick, or three years in Nova Scotia, they must also be registered. A lease in writing, not under seal, for a term not exceeding three years in duration will in Ontario amount only to an agreement for a lease for the term specified. Leases in writing should be made in duplicate, one copy for each party; and it is prudent in all cases that the lease should be in writing; a written lease containing all the terms agreed upon tends to prevent disputes and litigation.

A letting and hiring of land for a year or any less period may arise, by implication of law, from the relative situations of the parties and the silent language of their actions and conduct, as well by express words and stipulations. Whenever the house or land of one man has been occupied and used by another, the presumption is that the use and occupation are to be paid for, and the landlord is entitled to maintain an action to recover a reasonable hire and reward for the use of the land, unless the tenant can show that he entered into possession of the property under circumstances fairly leading to an opposite conclusion. A landlord, on the other hand, who has permitted a tenant to occupy property, and

has received rent from the latter for such use and occupation, will be bound by his own acts, and cannot afterwards treat such tenant as a trespasser, and turn him out of possession, without a proper notice to quit.

Leases may be made to commence from a day that is past, or from a day to come, as well as from the day of the making of the lease.

If a tenant holds over after the expiration of his lease, and the landlord receives from him rent which has accrued due after the expiration of the lease, the former becomes a tenant from year to year upon the terms of the original demise.

A tenancy from year to year is ordinarily implied from the payment and the acceptance of rent; but this prima facie presumption may, of course, be rebutted by showing that the money was paid or received by mistake.

If an annual rent is reserved, the holding is from year to year, although the lease or agreement provides that the tenant shall quit at a quarter's notice. Such a contract differs only from the usual letting from year to year in the agreement by the parties to reduce the ordinary six months' notice to quit to three months. But if it is expressly agreed that the tenant is always to be subject to quit at six months' notice, given him at any time, this constitutes a half-yearly tenancy, and the lessee will be presumed to hold from six months to six months, from the time that he entered as tenant. If he is to hold till one of the parties shall give to the other three months' notice to quit at the expiration of such notice, the tenancy will be a quarterly tenancy.

The landlord's remedy for the non-payment of rent is either by action or distress. Where the rent reserved is a fixed ascertained rent, the landlord may distrain. But if no certain ascertained rent has been reserved or covenanted or agreed to be paid, there is no right to distrain: the landlord can only recover a fair compensation for the use and occupation of the premises in an action at law. It is essential to the lawful exercise of the power of distress that the distrainor be the immediate landlord or owner of the estate. If after the making of the lease the landlord has sold and transferred his estate or interest to some third party, the former has no right or power to distrain. A landlord cannot distrain twice for the same rent, unless the distress has been withdrawn at the instance or request of the tenant, or unless there has been some mistake as to the value of the things taken.

When an annual rent is reserved, it may be made payable monthly or quarterly, or at any period of time that the

parties may think fit to appoint, whatever may be the duration of the term of hiring. It may also be made payable in advance, so as to entitle the landlord to distrain for it at the commencement, instead of at the end of each quarter. There may be a yearly tenancy with an annual rent, payable quarterly; or there may be a quarterly tenancy with a quarterly rent, payable weekly or monthly, or at any successive periods of time.

A distress by the landlord after tender of the rent to him or to his bailiff or agent authorised to distrain, without a fresh demand on the tenant, is illegal; and if the landlord distrains before the rent has become due, the tenant may resist the entry and seizure by force, and, after a seizure has been made, he may rescue his goods at any time before they have been impounded; but when once the goods have been impounded they are in the custody of the law, and the tenant cannot then break pound and retake them. As soon as the bailiff or distrainor has made out and delivered to the tenant, or has left upon the premises, an inventory of the goods he has taken, they are said to be impounded.

Distress must be made within six months after the determination of the lease, and during the continuance of the landlord's title or interest, and during the possession of the tenant from whom the arrears became due.

The tenant has the whole day on which the rent becomes due to pay such rent; and a distress, therefore, cannot be made until the day after the day appointed for the payment of the rent. Unless the rent is made payable at some particular specified place, it is payable upon the land, and the landlord must come there for his money. If, however, there is a covenant in the lease to pay the rent then it is like any other debt and the tenant is bound to seek out the landlord and pay or tender him the money. A landlord or his bailiff cannot lawfully break open gates or break down inclosures, or force open the outer door of any dwelling-house or building, in order to make a distress: but he may draw a staple or undo fastenings which are ordinarily opened from the outside of the house. A distress cannot be made in the night, or after sunset, or before sunrise, nor upon land which does not form part or parcel of the demised premises, and from which the rent reserved does not issue, unless the goods of the tenant have been removed thereto from the demised premises within sight of the distrainor coming to distrain, or unless they have been fraudulently removed thereto by the tenant to avoid distress. If the tenant fraudulently or clandestinely removes goods and chattels from the demised

premises, to prevent the landlord from distraining them for rent in arrear, the landlord may, within thirty days after such removal, take and seize them wherever they may be found, unless they have in the meantime been sold bona fide to some person ignorant of the fraud. But if it be necessary to break open any door in order to seize such goods, the landlord must call a constable to his assistance, and must force the door in his presence and in the daytime. If it appears that rent was due at the time of such removal, and that the goods were taken away on or after the day the rent became due for the purpose of putting them out of the reach of a distress, the removal is fraudulent. It is not necessary that the rent should be in arrear and a right to distrain exist, at the time of the removal. Therefore, if the goods are removed on quarter-day, they may be followed, though the rent is not in arrear, and there is no right to distrain, until the day after. If there are sufficient goods on the demised premises, independently of the goods removed, to satisfy the rent, the removal is not fraudulent, and the landlord cannot follow them.

Goods in the custody of a sheriff's officer or bailiff having been seized under an execution or attachment, cannot be distrained; but before such goods can be removed the sheriff or bailiff must pay the landlord one year's rent, or the rent for any less period that may happen to be due at such seizure. And in Ontario it is enacted that when goods are taken in execution under the process of any Division Court, the landlord shall be entitled by writing under his hand, or under the hand of his agent, stating the terms of holding, and the rent payable for the same, and delivered to the bailiff making the levy, to claim any rent in arrear then due to him, not exceeding the rent of four weeks, where the tenement has been let by the week, and not exceeding the rent accruing due in two terms of payment where the tenement has been let for any other term less than a year, and not exceeding in any case the rent accruing due in one year.

Property of third parties on the demised premises, in the possession and use of the owners, and not in the possession or under the charge of the tenant, cannot be distrained for rent in Ontario, except in the case of persons claiming by purchase, gift, transfer or assignment from the tenant and where the property is claimed by wife, husband, daughter, son, daughter-in-law or son-in-law of the tenant or of any other relative living on the premises as a member of the family; nor can the goods and chattels of third parties placed upon the demised premises in the possession and

under the care of the tenant for the purpose of repair or in the ordinary course of trade; nor the goods and chattels of travellers in hotels, in Ontario and other Provinces, or of lodgers in boarding houses. Fixtures, implements of trade and husbandry, and beasts of the plough are privileged from distress so long as they are in actual use, but not afterwards, or unless there are other goods on the demised premises sufficient to satisfy the rent without them. Trade fixtures are always exempt, but all fixtures must be removed by the tenant before giving up possession, as, once out, he cannot re-enter to remove them.

It is not necessary, in order to make a distress for rent, that the landlord or his agent should take corporal possession of the things intended to be distrained. It is sufficient if the landlord in person, or by his agent or bailiff, enters upon the demised premises and announces the distress to the tenant or his servants, or to the persons in actual possession of the property. When the landlord distrains by an agent or bailiff, he should give his agent authority in writing for the purpose. This authority is called a Distress Warrant.

As soon as the chattels are seized, whether by the landlord or his bailiff, an inventory of them should be made and served upon the tenant, together with the notice of the distress. The notice of the distress should set forth the amount of rent distrained for, and the particular things taken. If the tenant, after he has received notice, neglects for five days —to be computed inclusive of the last day and exclusive of the day of seizure—to pay the rent or replevy the goods, the landlord may sell them for the best price that can be got for them, and apply the purchase money in discharge of the rent and the costs of the distress and sale, paying the overplus, if any, to the tenant.

The costs of distresses are, in some of the Provinces, regulated by statute, and in Ontario, with respect to distresses under eighty dollars are as follows:

1. Levying Distress under $80 ..... $1 00
2. Man keeping possession, per diem 75
3. Appraisement, whether by one appraiser or more, two cents in the dollar on the value of the goods.
4. If any printed advertisement, not to exceed in all 1 00
5. Catalogues, sale, and commission, and delivery of goods, five cents in the dollar on the net produce of the sale.
6. Where the amount due in whole or in part is satisfied after seizure and before sale, three cents in the dollar on the amount realized.

Every bailiff or other person who makes any distress is bound to give a copy of his charges, and of all the costs and

charges of the distress, signed by him, to the person on whose goods and chattels any distress shall have been levied, although the rent demanded may exceed the sum of eighty dollars. When the rent distrained for exceeds eighty dollars, the costs are not, in Ontario, limited to any particular amount or fixed scale of charge; but they must be fair and reasonable.

When, in consequence of the rent not being fixed and ascertained, the landlord has no right to distrain, his only remedy is by action at law, in which he can recover from the tenant a proper compensation for the use and occupation of the premises.

With regard to repairs, it may be remarked generally, that in the absence of an express covenant or agreement to repair, there results from the demise and acceptance of the lease by the tenant an implied covenant or promise to use the property demised in a tenant-like and proper manner; to take reasonable care of it, and restore it, at the expiration of the term for which it is hired, in the same state and condition as it was in when demised, subject only to the deterioration produced by ordinary wear and tear, and the reasonable use of it for the purpose for which it was known to be required. A landlord is not bound to repair, unless by special agreement. Where a tenant covenants unconditionally to repair, he must restore the premises, even though they should be damaged, or even consumed, by fire. Hence the risk of an unqualified covenant to this effect on the tenant's part, for the latter would be not only bound to rebuild, but would be liable for the rent meanwhile.

When a lease is determinable on a certain event or at a particular period, no notice to quit is necessary, because both parties are equally apprised of the determination of the term. If, therefore, a lease be granted for a term of years, or for one year only, no notice to quit is necessary at the end of the term. In the case of a tenancy at will, no notice to quit is necessary, but there must be a formal demand of possession, or notice of the determination of the will, on the part of the landlord, before any action of ejectment can be brought. The tenant at will, too, in order to discharge himself from his liability for rent, or for a reasonable compensation for use and occupation, must give notice to the landlord of the fact of his abandonment of the possession, and of his election to rescind the contract and put an end to the tenancy. If the holding is a general holding for a year, and onwards from year to year so long as both parties please, a half-year's notice must be given by one party or the other in order to

determine the yearly hiring and tenancy; and this notice may be given in the first as well as any subsequent year of the tenancy. The notice may be in writing or by word of mouth, but it is best to have it in writing and signed by the party serving it; a copy should be preserved, endorsed with a memorandum of the date and mode of service. In the case of a yearly tenancy, it must be a full six months' notice, to expire at the period of the year corresponding with the period at which the tenancy commenced.

It is better that a written notice to quit should be served upon the landlord or tenant (as the case may be) personally; but it is sufficient if served upon the wife or servant at the dwelling house of the party to be served.

Where a furnished house is let, there is an implied agreement that it is reasonably fit for habitation at the time let, and the tenant may vacate it upon his discovery that it is not. But in the case of an unfurnished house, the fact that the premises are in an unsanitary state by reason of imperfect drains, cesspools, etc., will not justify the tenant in refusing to pay rent; though if the landlord have specially represented the premises habitable and healthy, he may be liable to the tenant in an action for damages for injuries suffered. If defects are suspected by the tenant, he should, before entering into possession, obtain the landlord's written agreement to put the house in repair.

A tenant may underlet, or assign his lease, unless forbidden by the lease; but he will remain liable to the landlord for rent and upon his covenants unless he be discharged therefrom in writing signed by his landlord.

At the expiry of the term of lease, the tenant should give up possession. Should he refuse, the landlord has no right to gain possession by putting the tenant out by force, though where the premises are vacated by the tenant, though locked up, the landlord may break in to regain possession. Where the tenant refuses to give up possession, the landlord's only remedy is by action of ejectment, save in those Provinces where, as in Ontario, Nova Scotia, New Brunswick and Manitoba, a summary remedy is provided by statute, under order of a Judge or Justices.

LODGERS.

The rules of law as to lodgers are in the main similar to those respecting other lessees. The letting of apartments generally includes the right to use the door-bell, or knocker, entry, water closet, etc. In the Provinces of Ontario, Nova Scotia and Manitoba, lodger's goods are protected from seizure for rent due the superior landlord.

NOVA SCOTIA.

The general law governing the relations of landlord and tenant in Nova Scotia and the statutory provisions dealing with distress (R. S. N. S. cap. 172), follow the English and Ontario law as set out above. Where goods have been fraudulently removed from the leased premises to avoid a distress, the landlord may seize them wherever they may be found within 21 days, provided no sale of them has been made in the meantime to a person ignorant of the fraud. The costs and fees fixed with respect to distresses in Nova Scotia are as follows (R. S. N. S. cap. 185):

	c.
Warrant to bailiff	.50
Appraisement	.20
Notice and each necessary copy	.10
Appraisers, each	.25

On a sale, on payment of money to landlord for a sum not exceeding $200, five per cent.;

On all sums in excess of $200, five per cent. on $200 and one per cent. on all sums in excess of $200.

Where payment is made but no sale takes place, one-half of above commissions, not exceeding $25.

No custody money to be allowed.

"Notice to quit any house or tenement shall be given to or by the tenant thereof:

(*a*) If the house or tenement is let from year to year, at least three months before the expiration of any such year;

(*b*) If from month to month, at least one month before the expiration of any such month;

(*c*) If from week to week, at least one week before the expiration of any such week.

(2) Such notice shall be sufficient although the day on which the tenancy terminates is not named therein." (Sec. 16, cap. 172, R. S. N. S. 1900.)

"The Overholding Tenants' Act" (R. S. N. S. cap. 174) provides a summary remedy in cases where a tenant, after his lease or right of occupation has expired or been determined, in accordance with the provisions of the lease or agreement, wrongfully refuses, upon demand in writing, to go out of possession. The landlord may apply upon affidavit to the County Court Judge for the district to appoint a time for an inquiry into all matters arising concerning the tenancy. Notice in writing setting forth briefly the grounds of application and stating the time and place appointed by the Judge for the inquiry, must then be served on the tenant, together with a copy of the Judge's appointment and the landlord's affidavit and exhibits. If the landlord succeeds in proving his case to the satisfaction of the Judge a writ of possession may be issued to the sheriff of the county commanding him to put the landlord in possession of the premises.

MANITOBA.

The costs of distraining are fixed by R. S. M. 1902, c 49, as follows:—

1. Levying distress, $1.
2. Man in possession, per day, $1.50.
3. Appraisement, whether by one appraiser or more, two cents in the dollar on the value of the goods up to $1,000, and one cent in the dollar for each additional $1,000 or portion thereof.
4. All reasonable and necessary disbursements for advertising.
5. Catalogue, sale, commission and delivery of goods, five per cent. on the net proceeds of the goods up to $1,000, and two and one half per cent. thereafter.
6. Mileage in going to seize, fifteen cents per mile one way.
7. All necessary and reasonable disbursements for removing and storing goods, and removing and keeping live stock, and all other disbursements which, in the opinion of the Judge before whom any question as to the amount of the fees to be allowed under this Act may come for decision, are reasonable and necessary.

No other or more costs or charges may be taken from the proceeds of the goods, or from the tenant whose goods are seized. No charge shall be made except for what is actually done. Any violation of this provision is visited on the offender in treble the amount of the overcharge. The same tariff applies to goods seized under chattel mortgage.

Where a distress is made, a copy of the demand and of all costs and charges of the distress, signed by the person making the distress, must be given the person on whose goods the distress is levied.

Section 5 copied above at p. affords full protection to boarders and lodgers against distress by the landlord for rent due.

Overholding tenants may be proceeded against under an Act similar in its terms to that in force in Ontario.

SASKATCHEWAN AND ALBERTA.

The costs of distraining are regulated by the following schedule:

1. Levying distress, $1.00.
2. Man in possession, per day, $1.50.
3. Appraisement, whether by one appraiser or more, two cents on the dollar on the value of goods up to $500 and one per cent. on the dollar for each additional $500 or fraction thereof up to $2,000, and one-half per cent. on all sums over that amount.
4. All reasonable and necessary disbursements for advertising.
5. Catalogue, sale, commission and delivery of goods, three per cent. on the net proceeds of the goods up to $1,000 and one and one-half per cent. thereafter.

Additional Items for Alberta only.

6. Mileage per mile each way, 10 cents.
7. All necessary and reasonable disbursements for removing and storing goods and removing and keeping live stock and all other disbursements which, in the opinion of the Judge before whom a question as to the amount of the fees to be allowed under this Act may come for decision, are reasonable and necessary.

BRITISH COLUMBIA.

The costs of levying distress are fixed by R. S. B. C. 1897, cap. 61, as follows:

Levying distresses under $100	$1 50
" " over $100 and under $300	1 75
" " over $300	2 00
Man keeping possession per diem	2 00

Appraisement, whether by one appraiser, or more, 2 cents in the dollar on the value of the goods.

Catalogues sale and commission, and delivery of goods:—On the net produce of the sale, if under $100—ten cents in the dollar; if over $100 and under $300—eight cents; and if over $300—six cents.

A copy of the demand and costs of the distress signed by the person making it must be served on the debtor, and the penalty for overcharge is the same as provided in Manitoba.

NEW BRUNSWICK.

By C. S. N. B. cap. 153, sec. 15.

If a superior landlord levies a distress on any furniture, goods or chattels of any lodger or any rent due and in arrear to such superior landlord by his immediate tenant, such lodger may serve such superior landlord or the bailiff or other person employed by him to levy such distress, with a declaration in writing made by such lodger, setting forth that such immediate tenant has no right of property or beneficial interest in the furniture, goods or chattels so distrained or threatened to be distrained upon, and that such furniture, goods or chattels are the property or are in the lawful possession of such lodger and also setting forth whether any and what amount by way of rent is due and for what period from such lodger to his immediate landlord.

A correct inventory signed by the lodger, of the furniture, goods and chattels referred to, must be annexed to the declaration. The lodger may pay the superior landlord or his bailiff or representative, the amount so due or enough to discharge the superior landlord's claim. This payment is good as between the lodger and his immediate landlord. If, notwithstanding the service of such declaration and inventory, a payment or tender by the lodger by him or his representative, the superior landlord proceeds with the distraining the furniture, goods or chattels of the lodger, the superior landlord or his representative would be guilty of an illegal distress. In such case the lodger may apply to the County Court Judge of the district where the goods are, for an order for their restoration. The procedure in this matter is summary and a lodger knowingly making an untrue declaration and inventory is liable to a penalty of not exceeding $50 and in default of payment to imprisonment not exceeding six months.

By sec. 20 of the same Act, when goods liable to rent are taken in execution, the landlord is entitled to the arrears of rent not exceeding one year, which must be paid to the landlord or his bailiff before removing the goods from the place of seizure.

The form of distress warrant in New Brunswick authorizes the bailiff "to distrain the goods and chattels of C. D. (the tenant) in the house he now dwells in, &c." This form is not usually followed literally as it limits the distress to the goods and chattels of the tenant though other property may be liable to distress. It is usual to employ a form reading "to distrain the goods and chattels in the house C. D. (the tenant) now dwells, &c."

FORMS.

Lease of House.

This Indenture, made the day of ,19 , between A. B., of, etc., of the first part, and C. D., of, etc., of the second part, Witnesseth, that in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the said party of the second part, his executors, administrators and assigns, to be paid, observed and performed, he, the said party of the first part, hath demised and leased, and by these presents doth demise and lease, unto the said party of the second part, his executors, administrators and assigns, all that messuage or tenement situate, lying and being, etc., (here describe the premises) together with all houses, out-houses, yards and other appurtenances thereto belonging, or usually known as part or parcel thereof, or as belonging thereto: to have and to hold the same for and during the term of years, to be computed from the day of , 19 , and from thenceforth next ensuing, and fully to be completed and ended.

Yielding and paying therefor yearly and every year during the said term hereby granted unto the said party of the first part, his heirs, executors, administrators or assigns, the sum of $, to be payable quarterly on the following days and times, that is to say, (here state the days of payment) the first of such payments to become due and be made on the day of next.

Provided always, and these presents are upon this express condition, that if the said yearly rent, hereby reserved, or any part thereof, shall at any time remain behind or unpaid for the space of twenty-one days next over or after any of the days on which the same shall become due and payable, then, and in every such case, it shall be lawful for the said party of the first part, his heirs, executors, administrators or assigns, into and upon the said premises, or any part thereof, in the name of the whole, to re-enter, and the same to have again, repossess and enjoy, as if these presents had never been executed.

And the said party of the second part, for himself, his heirs, executors, administrators and assigns, doth hereby covenant, promise and agree to and with the said party of the first part, his heirs, executors, administrators and assigns, in manner following, that is to say:

That he, the said party of the second part, his executors, administrators and assigns, shall and will well and truly pay, or cause to be paid, to the said party of the first part, his heirs, executors, administrators or assigns, the said yearly rent hereby reserved at the times and in manner hereinbefore appointed for payment thereof.

And also shall and will, from time to time, and at all times during the said term, keep in good and sufficient repair the said premises hereby demised (reasonable wear and tear and accident by fire excepted), and the same so kept in repair shall and will, at the end, expiration or other sooner determination of the said term, peaceably and quietly yield and deliver up to the said party of the first part, his heirs, executors, administrators or assigns.

And also shall and will well and truly pay, or cause to be paid, all taxes, rates, levies, duties, charges, assessments and impositions whatsoever, whether parliamentary, local, or otherwise, which now are, or which during the continuance of this demise shall at any time be rated, taxed or imposed on, or in respect of the said demised premises, or any part thereof.

And also that it shall be lawful for the said party of the first part, his heirs, executors, administrators and assigns, and their agents respectively, either alone or with workmen or others, from time to time at all reasonable times in the daytime, during the said term, to enter upon the said demised premises, and every part thereof, to view and examine the state and condition thereof; and in case any want of reparation or amendment be found on any such examination, the said party of the second part, his executors, administrators or assigns, shall and will from time to time cause the same to be well and sufficiently repaired, amended, and made good, within one month next after notice in writing shall have been given to them or left at or upon the said demised premises for that purpose. And if the said party of the second part, his executors, administrators or assigns, fail in making the necessary repairs in manner hereinbefore described, that it shall be lawful for the said party of the first part, his heirs, executors, administrators and assigns, and their agents, to enter into and upon the said hereby demised premises, and have the same repaired in a proper manner, and to render the account for such repairs to the said party of the second part, his executors, administrators and assigns, and demand payment for the same, and if default is made, to sue for the same in any Court of Law having jurisdiction over the same.

And the said party of the second part, his executors, administrators or assigns, shall not, nor will at any time or times during the continuance of this demise, sell, assign, let or otherwise part with this present lease, or the said premises hereby demised, or any part thereof, to any person or persons whomsoever, for the whole or any part of the said term, nor alter, change or remove any part of the said premises, yards or offices, externally or internally, without the license and consent in writing of the said party of the first part, his heirs, executors, administrators and assigns, from time to time first had and obtained.

And the said party of the first part, for himself, his heirs, executors and administrators or assigns, covenants with the said party of the second part, his executors, administrators and assigns, that he, the said party of the second part, his executors, administrators and assigns, well and truly paying the rent hereinbefore reserved, and observing, performing and keeping the covenants hereinbefore contained, shall and may, from time to time, and at all times during

the said term, peaceably and quietly enjoy the said premises hereby demised, without molestation or hindrance.

In witness whereof, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed and delivered in the presence of Y. Z. } A. B. [L.S.] C. D. [L.S.]

Lease of Land.

This indenture, made the day of , 19 , between A. B., of, etc., of the first part, and C. D., of, etc., of the second part, Witnesseth, that in consideration of the rent, covenants, and agreements hereinafter reserved and contained, and to be paid, observed and performed by the said party of the second part, his executors, administrators and assigns, He, the said party of the first part, Hath demised and leased, and by these presents Doth demise and lease, unto the said party of the second part, his executors, administrators and assigns, All that certain parcel or tract of land and premises situate, lying and being (here describe the lands). To have and to hold the said parcel or tract of land, with the appurtenances, unto the said party of the second part, his executors, administrators and assigns, from the day of , 19 , for the term of , from thence next ensuing, and fully to be complete and ended, Yielding and paying therefor, unto the said party of the first part, his executors, administrators and assigns, the yearly rent or sum of $, of lawful money of Canada, by equal yearly payments, on the day of , in each and every year during the said term, the first payment to be made on the day of , next ensuing the date hereof. (The times of payment may be quarterly or half-yearly, if desired.)

And the said party of the second part, doth hereby for himself, his heirs, executors, administrators and assigns, covenant, promise and agree with and to the said party of the first part, his executors, administrators and assigns, that he, the said party of the second part, his executors, administrators and assigns, shall and will well and truly pay, or cause to be paid, to the said party of the first part, his executors, administrators or assigns, the said yearly rent hereby reserved, at the times and in manner hereinbefore mentioned for payment thereof, without any deduction or abatement whatsoever thereout for or in respect of any rates, taxes, assessments, or otherwise: And also shall and will, on or before the day of , now next, at his own costs and charges, fence in the premises hereby demised in a good and substantial manner, (add here such covenants as to the mode of cultivation, etc., as may be agreed on.)

And it is hereby agreed, on the part of the said party of the first part, his heirs, executors, administrators and assigns, that if at any time within the said term of the said party of the second part, his heirs, executors, administrators or assigns, shall desire to purchase the fee simple of the land hereby demised, he shall be allowed to do so by paying the sum of $, of lawful money aforesaid, provided the same rent shall have been regularly paid up to the time when he may so desire to purchase; and provided he gives to the party of the first part, three months previous notice of his intention to purchase.

And it is hereby agreed, on the part of the said party of the second part, his executors, administrators and assigns, that if at any time or times during the said term, the said rent, or any part there-

of, shall be in arrear and unpaid for the space of thirty days after any of the days or times whereon the same ought to be paid, as aforesaid, then it shall be lawful for the said party of the first part, his heirs, executors, administrators or assigns, to enter into and take possession of the premises hereby demised, whether the same be lawfully demanded or not, and the same to sell and dispose of, either by public auction or private sale, as to him or them may seem best, without the let, hindrance or denial of him the said party of the second part, his heirs, executors, administrators and assigns; And further, that the non-fulfilment of the covenants hereinbefore mentioned, or any of them, on the part of the lessee or lessees, shall operate as a forfeiture of these presents, and the same shall be considered null and void to all intents and purposes whatsoever; And also, that the said party of the second part, his executors, administrators and assigns, shall not, nor will, during the said term, grant or demise, or assign, transfer, or set over, or otherwise by any act or deed, procure or cause the said premises hereby demised, or intended so to be, or any part thereof, or any estate, term, or interest therein, to be granted, assigned, transferred, or set over, unto any person or persons whatsoever, without the consent in writing of the said party of the first part, his heirs or assigns, first had and obtained.

In witness whereof, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed and delivered)
in the presence of) A. B. [L.S.]
Y. Z.) C. D. [L.S.]

Lease of a House and Farm.

This Indenture, made the day of , 19 , Between A. B., of, etc., of the one part, and C. D., of, etc., of the other part, Witnesseth, that for and in consideration of the rents, covenants, conditions and agreements hereinafter reserved and contained, and which, on the part and behalf of the said C. D., his executors, administrators and assigns, are or ought to be paid, done and performed, the said A. B. hath demised, leased, set and to farm let, and by these presents doth demise, lease, set and to farm let, unto the said C. D., his executors and administrators, All that parcel or tract of land, etc., (describing the lot) together with the frame dwelling house, barns, stables, and other out-houses thereupon erected, standing and being, together with all ways, paths, passages, waters, watercourses, privileges, advantages, and appurtenances whatsoever, to the same premises belonging, or in any wise appertaining. To have and to hold the said parcel or tract of land, dwelling-house, buildings and premises hereby demised unto the said C. D., his executors, administrators and assigns, from the day of the date of these presents, for, and during, and until the full end and term of years from thence next ensuing, and fully to be complete and ended: Yielding and paying therefor yearly, and every year during the said term hereby granted, unto the said A. B., his heirs and assigns, the yearly rent or sum of $, of lawful current money of Canada by two equal half-yearly payments, to be made on the day of , and the day of in each and every year during the said term, without any deduction or abatement thereout for or upon any account or pretence whatsoever. Provided always, nevertheless, that if it shall happen that the said yearly rent hereby reserved, or any part thereof, shall be behind and unpaid for the space of twenty-one days next over or

after either of the said days hereinbefore mentioned and appointed for payment of the same (being lawfully demanded) or if the said C. D., his executors or administrators, shall assign over, underlet, or otherwise depart with this indenture, or the premises hereby leased, or any part thereof, to any person or persons whomsoever, without the consent of the said A. B., his heirs or assigns, first had and obtained in writing, under his or their hands, for that purpose; then, and in either of the said cases, it shall and may be lawful to and for the said A. B., his heirs or assigns, into the said premises hereby demised, or any part thereof, in the name of the whole, to re-enter and the same to have again, retain, re-possess and enjoy, as in his and their first and former estate or estates, anything herein contained to the contrary thereof in any wise, notwithstanding. And the said C. D. doth hereby for himself, his heirs, executors, administrators and assigns, covenant, promise and agree to and with the said A. B., his heirs and assigns, in manner following, that is to say: That he, the said C. D., his executors, administrators, and assigns, shall and will well and truly pay, or cause to be paid, unto the said A. B., his heirs and assigns, the said yearly rent of $, by equal half-yearly payments, on or at the days or times and in the manner hereinbefore mentioned and appointed for payment thereof. Also that he, the said C. D., his executors, administrators and assigns, shall and will, at his and their own costs and charges, well and sufficiently repair and keep repaired the dwelling-house, buildings, fences and gates now erected, or which shall at any time or times hereafter during the said term be erected, upon the said demised premises, he, the said A. B., his heirs and assigns, upon request and notice to them made, finding and allowing on the said premises, or within miles distance thereof, all rough timber, brick, lime, tiles, and all other materials whatsoever (except straw), for doing thereof, to be carried to the said hereby demised premises at the charge of the said C. D., his executors, administrators or assigns, or otherwise permitting and allowing him or them, at their like costs and charges, to cut and fell such and so many timber-trees upon some part of the premises hereby demised as shall be requisite and necessary for the purpose (damage happening by accidental fire, tempest, or other inevitable accident being always excepted): And further, that he, the said C. D., his executors, administrators and assigns, shall and will at all times during the said term cultivate and farm such part or parts of the said lands and premises as now are or shall hereafter be brought into cultivation during the said term in a proper husbandlike manner. And shall and will at the expiration or other sooner determination of this lease peaceably and quietly leave, surrender and yield up unto the said A. B., his heirs and assigns, the whole of the said premises hereby demised in such good and sufficient repair as aforesaid, (reasonable use and wear thereof, and damage by accidental fire, tempest or other inevitable accident, as aforesaid, always excepted): And also, that it shall and may be lawful to and for the said A. B., his heirs and assigns, after six days' previous notice in writing, twice or oftener in every year during the said term, at seasonable and convenient times in the day, to enter and come into and upon the said demised premises, or any part thereof, to view the condition of the same, and of all defects and wants of reparation and amendment which shall then and there be found, to leave notice in writing at the said demised premises to or for the said C. D., his executors, administrators or assigns, to repair and amend the same within the space of three calendar months. And the said C. D., doth hereby, for himself, his executors, administrators and assigns, covenant,

promise and agree, to and with the said A. B., his heirs and assigns, that he, the said C. D., his executors, administrators or assigns, shall and will within three calendar months next after every and any such notice shall have been so given or left as aforesaid, well and sufficiently repair and amend the same accordingly (except as above excepted and upon being provided or allowed materials for the same, as aforesaid), and also that he, the said C. D., his executors, administrators or assigns, shall not, nor will at any time during the said term, pull down, or cause or permit to be pulled down, or make, or cause or permit to be made, any alteration by cutting new door-ways or otherwise in the said dwelling-house, or in any of the buildings upon the said demised premises, without the consent in writing of the said A. B., his heirs or assigns, for that purpose first had and obtained: And moreover shall not, nor will at any time during the continuance of this demise, bargain, sell, assign, transfer or set over this Indenture of Lease, or let, set, demise, underlease, or underlet the said dwelling-house and premises hereby demised, or any part thereof, or in any other manner part with this Indenture of Lease, or the possession or occupation of the premises hereby demised, without such license and consent as aforesaid. Provided always, nevertheless, and these presents are upon this express condition, that if the said yearly rent or sum of , hereby reserved, or any part thereof, shall be unpaid in part or in all by the space of twenty-one days next after either of the days on which the same ought to be paid as aforesaid, being lawfully demanded; or in case the said C. D., his executors or administrators, shall at any time during the said term hereby granted, without such license as aforesaid, assign, transfer, or set over, underlease or underlet, the premises hereby demised, or any part thereof, or in any other manner part with the possession or occupation of the same, or any part thereof; or if all or any of the covenants, conditions or agreements in these presents contained, on the part and behalf of the said C. D., his executors, administrators and assigns, shall not be performed, fulfilled, and kept according to the true intent and meaning of these presents, then and from thenceforth, in any or either of the said cases, it shall and may be lawful to and for the said A. B., his heirs and assigns, into and upon the said demised premises, or any part thereof, in the name of the whole, wholly to re-enter and the same to have again, retain, re-possess and enjoy as in his or their first and former estate, and thereout and from thence the said C. D., his executors, administrators and assigns, and all other occupiers of the said premises, to expel, put out and amove, this indenture or anything hereinbefore contained to the contrary thereof in anywise notwithstanding. And the said A. B. doth hereby, for himself, his heirs, executors, administrators and assigns, covenant, promise and agree with and to the said C. D., his executors, administrators or assigns, that he, the said C. D., his executors, administrators or assigns, well and truly paying the said yearly rent hereby reserved on the days and in the manner hereinbefore appointed for payment thereof, and observing, keeping and performing all and singular the covenants and agreements in these presents contained, and which, on his and their parts and behalves, are and ought to be paid, kept, done and performed, shall and may lawfully, peaceably and quietly have, hold, use, occupy, possess and enjoy the said demised premises, and every part and parcel thereof, with the appurtenances, during all the said term of years hereby granted, without any lawful let, suit, trouble, interruption, eviction, molestation, hindrance or denial of or by him, the said A. B., his heirs or assigns, or of, from

or by any other person or persons claiming or to claim from, by or under him, them, or any or either of them.

In witness whereof, the said parties to these presents have hereunto set their hands and seals.

Signed, sealed and delivered in the presence of Y. Z.

A. B. [L.S.]
C. D. [L.S.]

Ontario Statutory Lease.

This Indenture, made the day of , in the year of our Lord one thousand nine hundred and , in pursuance of The Act respecting Short Forms of Leases: Between A. B., of, etc., of the first part; and C. D., of, etc., of the second part: Witnesseth, that in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the said party (or parties) of the first part, his (or their) executors, administrators and assigns to be paid observed and performed, He (or they), the said party (or parties) of the first part, Hath (or have), demised and leased, and by these presents, do (or doth), demise and lease unto the said party (or parties) of the second part, his (or their) executors, administrators and assigns, All that messuage or tenement situate, (or all that parcel or tract of land situate) lying and being (here insert a description of the premises with sufficient certainty): To have and to hold the said demised premises, for and during the term of , to be computed from the day of , one thousand eight hundred and , and from thenceforth next ensuing, and fully to be complete and ended: Yielding and paying therefor, yearly and every year during the said term hereby granted unto the said party (or parties) of the first part, his (or their) heirs, executors, administrators or assigns, the sum of $, to be payable on the following days and times, that is to say: on, etc., (state here the days of payment). The first of such payments to become due and be made on the day of , next. That the said (lessee) covenants with the said (lessor), To pay rent, and to pay taxes, except for local improvements, and to repair, reasonable wear and tear and damage by fire, lightning and tempest only excepted; and to keep up fences, and not to cut down timber, and that the said (lessor) may enter and view the state of repair; and that the said (lessee) will repair according to notice, in writing, reasonable wear and tear, and damage by fire, lightning and tempest only excepted; and will not assign or sub-let without leave; and that he will leave the premises in good repair, reasonable wear and tear and damage by fire, lightning and tempest only excepted. Provided that the lessee may remove his fixtures. Provided that in the event of fire, lightning, or tempest, rent shall cease until the premises are rebuilt. Proviso for re-entry by the said (lessor) on non-payment of rent, or non-performance of covenants: The said (lessor) covenants with the said (lessee) for quiet enjoyment.

In witness whereof, the said parties have hereunto set their hands and seals.

Signed, sealed and delivered in the presence of Y. Z.

A. B. [L.S.]
C. D. [L.S.]

Distress Warrant.

To Mr. A. B., my Bailiff.

I do hereby authorize and require you to distrain the goods and chattels of C. D. (the tenant) in the house he now dwells in, [or on the premises in his possession], situate at , in the county of , for dollars, being one year's rent due to me for the same on the first of May last, and to proceed thereon for the recovery of the said rent, as the law directs.

Dated the day of , 19 .

J. S. (Landlord).

Inventory and Notice.

An inventory of the several goods and chattels distrained by me, J. S. [or if as Bailiff, say A. B., as Bailiff to Mr. J. S.], this day of , in the year of our Lord, 19 , in the dwelling house, out-houses and lands [as the case may be] of C. D., situate at , in the county of , [and if as Bailiff, say, by the authority and on the behalf of the said J. S.], for the sum of dollars, being one year's rent due to me [or to the said J. S.] for the said houses and premises on first of May last, and as yet in arrear and unpaid.

1. In the Dwelling-house. (Kitchen) Two pine tables, six old chairs, five copper sauce-pans, etc., etc. (Parlor) One large pier looking-glass, two sconces in gilt frames, two mahogany card tables, etc., etc. * (Dining Room) Six hair-bottom chairs, mahogany frames, etc., one set of dining tables, etc., etc.

(Out-houses) 2. In the Barn. Six sacks of wheat, six hurdles, etc., etc.

[And so on, describing the things as correctly as may be according to the place from which they are taken. At the bottom of the inventory subscribe one of the following notices to the tenant according as the case may be.]

Mr. C. D.

Take notice that I have this day distrained (or that I, as Bailiff to J. S., your landlord, have this day distrained) on the premises above mentioned, the several goods and chattels specified in the above inventory, for the sum of dollars, being one year's rent due to me (or to the said J. S.), on first of May last, for the said premises, and that unless you pay the said arrears of rent, with the charges of distraining for the same, or replevy the said goods and chattels within five days from the date hereof, the said goods and chattels will be appraised and sold according to law.

Given under my hand the day of , 19 .

J. S. (Landlord.)

or A. B. (Bailiff.)

Notice of Distress of growing crops

Mr. C. D.,

Take notice that I have this day taken and distrained (or that as Bailiff to J. S., your landlord, I have taken and distrained), on

the lands and premises known as lot number one in the township of etc., etc., the several growing crops specified in the inventory for the sum of $, being one year's rent due to me (or to the said J. S.), on the first of May last, for the said lands and premises; and unless you previously pay the said rent with the charges of distraining for the same, I shall proceed to cut, gather, make, cure, carry and lay up the crops when ripe, in the barn or other proper place on the said premises, and in convenient time sell and dispose of the same towards satisfaction of the said rent, and of the charges of such distress, appraisement and sale, according to the form of the statute in such case made and provided.

Given under my hand the day of , 19 .

J. S. (Landlord.)
or A. B. (Bailiff).

A true copy of the above inventory was this day of , delivered to the above mentioned C. D., in the presence of us.

G. H.
J. K.

Tenant's request for delay.

Mr. A. B.,

I hereby desire you will keep possession of my goods which you have this day distrained for rent due or alleged to be due from me to you, in the place where they now are, being the house No. 3 Dean Street, Toronto, for the space of seven days from the date hereof, on your undertaking to delay the sale of the said goods and chattels for that time to enable me to discharge the said rent, and I will pay the man for keeping the said possession.

Witness my hand this day of , 19 .

C. D.

Witness,
R. S.

Notice to quit by Landlord.

To C. D. (Tenant).

I hereby give you notice to quit and deliver up the premises which you now hold of me, situate at (here describe the premises) on the day of , 19 .

Dated this day of , 19 .

Yours, etc.,

A. B. (Landlord).

Notice to quit by Tenant.

To A. B., (Landlord).

I hereby give you notice that on the day of next I shall quit and deliver up to you, the peaceable and quiet possession of the premises now held by me, with the appurtenances situate at , in the township of , in the county of , in this Province.

Dated this day of . 19 .

Yours, etc.,

C. D. (Tenant).

THE LANDLORD AND TENANT ACT.

1 Geo. V. cap. 37.

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

This Act may be cited as The Landlord and Tenant Act, R. S. O. 1897, cap. 170, sec. 1.

INTERPRETATION.

In this Act,

(a) "Crops" shall mean and include all sorts of grain, grass, hay, hops, fruits, pulse, and other products of the soil.

(b) "Landlord" shall mean and include lessor, owner, the person giving or permitting the occupation of the premises in question and his and their heirs and assigns and legal representatives, and in Parts II. and III., shall also include the person entitled to the possession of the premises.

(c) "Standing crops," shall mean crops standing or growing on the demised premises.

(d) "Tenant," shall mean and include lessee, occupant, subtenant, under-tenant, and his or their assigns and legal representatives. R. S. O. 1897, cap. 171, sec. 2. Amended.

PART I.

LANDLORD AND TENANT

The relation of landlord and tenant shall not depend on tenure, and a reversion in the lessor shall not be necessary in order to create the relation of landlord and tenant, or to make applicable the incidents by law belonging to that relation; nor shall it be necessary in order to give a landlord the right of distress that there shall be an agreement for that purpose between the parties. R. S. O. 1897, cap. 170, sec. 3.

COVENANTS RUNNING WITH REVERSION, ETC.

All persons being grantees or assignees of the King or of any other person than the King, and the heirs, executors, successors and assigns of every of them, shall have and enjoy like advantages against the lessees, their executors, administrators, and assigns, by entry for nonpayment of the rent, or for doing of waste, or other forfeiture, and also shall have and enjoy all and every such like and the same advantage, benefit, and remedies, by action only, for not performing of other conditions, covenants, or agreements, contained and expressed in the indentures of their said leases, demises or grants, against all and every of the said lessees, and fermors, and grantees, their executors, administrators, and assigns, as the said lessors or grantors themselves, or their heirs or successors, might have had and enjoyed at any time or times. R. S. O. 1897, cap. 330, sec. 12.

Rent reserved by a lease, and the benefit of every covenant or provision therein contained, having reference to the subject-matter thereof, and on the lessee's part to be observed or performed, and every condition of re-entry and other condition therein contained shall be annexed and incident to, and shall go with the reversionary estate in the land or in any part thereof, immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate, and shall be capable of being recovered, received, enforced, and taken advantage of, by any person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased. New.

All fermors, lessees and grantees of lands, tenements, rents, portions, or any other hereditaments, for term of years, life or lives, their executors, administrators, and assigns shall and may have like action, advantage, and remedy against all and every person who shall have any gift or grant of the King, or of any other persons, of the reversion of the same lands, tenements and other hereditaments so let or any parcel thereof for any condition, covenant, or agreement, contained or expressed in the indentures of their leases, as the same lessees or any of them, might and should have had against their said lessors and grantors, their heirs, or successors. R. S. O. 1897, c. 330, sec. 13.

The obligation of a covenant entered into by a lessor with reference to the subject-matter of the lease, shall, if, and as far as the lessor has power to bind the reversionary estate immediately expectant on the term granted by the lease, be annexed and incident to and shall go with that reversionary estate, or the several parts thereof, notwithstanding severance of that reversionary estate, and may be taken adantage of and enforced by the person in whom the term is from time to time vested by conveyance, devolution in law, or otherwise; and, if, and as far as the lessor has power to bind the person from time to time entitled to that reversionary estate, such obligation may be taken advantage of and enforced against any person so entitled. New.

APPORTIONMENT OF CONDITION OF RE-ENTRY.

Notwithstanding the severance by conveyance, surrender or otherwise, of the reversionary estate in any land comprised in a lease, and notwithstanding the avoidance or cesser in any other manner of the term granted by a lease as to part only of the land comprised therein, every condition or right of re-entry, and every other condition contained in the lease, shall be apportioned, and shall remain annexed to the severed parts of the reversionary estate as severed, and shall be in force with respect to the term whereon each severed part is reversionary, or the term in any land which has not been surrendered, or as to which the term has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, as the case may be, had alone originally been comprised in the lease. New.

Sections 5 and 7, and sec. 8, so far as it is applicable to leases not made by deed, shall apply only to leases made after the coming into force of this Act. New.

SUB-LESSEE NOT TO HAVE RIGHT TO CALL FOR TITLE.

(1) On a contract to grant a lease for a term of years to be derived out of a leasehold interest, with a leasehold reversion, the intended lessee shall not have the right to call for the title to that reversion.

(2) This section applies only if, and as far as the contrary intention is not expressed in the contract and shall have effect subject to the terms of the contract and to the provisions therein contained.

(3) This section shall apply only to contracts made after the coming into force of this Act. New.

DEFECTS IN LEASES MADE UNDER POWERS OF LEASING.

Where, in the intended exercise of any power of leasing, whether derived under a statute, or under any instrument lawfully creating such power, a lease has been, or shall hereafter be granted, which is, by reason of the non-observance or omission of some condition or restriction, or by reason of any other deviation from the terms of such power, invalid as against the person entitled, after the determination of the interest of the person granting such lease, to the reversion, or against other the person who, subject to any lease lawfully granted under such power, would have been entitled to the land comprised in such lease, such lease, in case the same was made in good faith, and the lessee named therein, his heirs, executors, administrators, or assigns, have entered thereunder, shall be considered a contract for a grant, at the request of the lessee, his heirs, executors, administrators, or assigns, of a valid lease under such power, to the like purport and effect as such invalid lease, save so far as any variation may be necessary in order to comply with the terms of such power; and all persons who would have been bound by a lease lawfully granted under such power shall be bound by such contract: Provided always that no lessee under any such invalid lease, his heirs, executors, administrators, or assigns, shall be entitled, by virtue of any such contract, to obtain any variation of such lease, where the persons

who would have been bound by such contract are willing to confirm such lease without variation. R. S. O. 1897, cap. 330, sec. 24.

Where, upon or before the acceptance of rent, under any such invalid lease, any receipt, memorandum or note in writing, confirming such lease, is signed by the person accepting such rent, or some other person by him thereunto lawfully authorized, such acceptance shall, as against the person so accepting such rent, be deemed a confirmation of such lease. R. S. O. 1897, cap. 330, sec. 25.

Where, during the continuance of the possession taken under any such invalid lease, the person for the time being entitled, subject to such possession, to the land comprised in such lease, or to the possession or the receipt of the rents and profits thereof, is able to confirm such lease without variation, the lessee, his heirs, executors, or administrators, or any person who would have been bound by the lease if the same had been valid, upon the request of the person so able to confirm the same, shall be bound to accept a confirmation accordingly; and such confirmation may be by memorandum or note in writing, signed by the persons confirming, and accepting, or by some other persons by them thereunto lawfully authorised; and, after confirmation, and acceptance of confirmation, such lease shall be valid, and shall be deemed to have had from the granting thereof the same effect, as if the same had been originally valid. R. S. O. 1897, cap. 330, sec. 26.

Where a lease granted in the intended exercise of any power of leasing is invalid by reason that, at the time of the granting thereof, the person granting the same could not lawfully grant such lease, but the estate of such person in the land comprised in such lease has continued after the time when such, or the like lease, might have been granted by him in the lawful exercise of such power, such lease shall take effect, and be as valid, as if the same had been granted at such last mentioned time, and all the provisions of sec. 11 to 17 shall apply to every such lease. R. S. O. 1897, cap. 330, sec. 27.

Where a valid power of leasing is vested in, or may be exercised by, a person granting a lease, and, by reason of the determination of the estate or interest of such person, or otherwise, such lease cannot have effect and continuance according to the terms thereof independently of such power, such lease shall, for the purposes of the next preceding four sections, be deemed to be granted in the in-

tended exercise of such power, although such power is not referred to in such lease. R. S. O. 1897, cap. 330, sec. 28.

Nothing in secs. 11 to 17 shall extend to, prejudice, or take away, any right of action, or other right or remedy to which, but for the next preceding five sections, the lessee named in any such lease, his heirs, executors, administrators, or assigns, would or might have been entitled, under or by virtue of any covenant for title or quiet enjoyment contained in such lease on the part of the person granting the same, or prejudice, or take away, any right of re-entry, or other right or remedy to which, but for such sections the person granting such lease, his heirs, executors, administrators, or assigns, or other person, for the time being entitled to the reversion expectant on the determination of such lease, would or might have been entitled, for or by reason of, any breach of the covenants, conditions, or provisoes contained in such lease, and on the part of the lessee, his heirs, executors, administrators, or assigns, to be observed and performed. R. S. O. 1897, cap. 330, sec. 29.

The next preceding six sections shall not extend to any lease where before the 10th day of June, 1857, the land comprised therein has been surrendered or relinquished, or recovered adversely by reason of the invalidity thereof, or there has been any judgment or decree in any action or suit concerning the validity of such lease. R. S. O. 1897, cap. 330, sec. 30.

MERGER, ETC., OF REVERSIONS.

Where the reversion expectant on a lease of land merges or is surrendered, the estate, which for the time being confers, as against the tenant under the lease, the next vested right to the land, shall to the extent of and for preserving such incidents to and obligations on the reversion as but for the surrender or merger thereof would have subsisted, be deemed the reversion expectant on the lease. R. S. O. 1897, cap. 170, sec. 10.

RIGHT OF RE-ENTRY.

In every demise, whether by parol or in writing, and whenever made, unless it is otherwise agreed, there shall be deemed to be included an agreement, that if the rent reserved or any part thereof, shall remain unpaid for fifteen days after any of the days on which the same ought to have been paid, although no formal demand thereof

shall have been made, it shall be lawful for the landlord, at any time thereafter into and upon the demised premises, or any part thereof in the name of the whole, to re-enter and the same to have again, repossess, and enjoy as of his former estate. R. S. O. 1897, cap. 170, sec. 11.

FORFEITURE OF LEASES.

(1) In this section and the next following three sections

(a) "Leases," shall include an original or derivative under-lease and a grant at a fee farm rent or securing a rent by condition and an agreement for a lease where the lessee has become entitled to have his lease granted.

(b) "Lessee," shall include an original or derivative under-lessee and the heirs, executors, administrators and assigns of a lessee and a grantee under such a grant and his heirs and assigns.

(c) "Lessor" shall include an original or derivative under-lessor, and the heirs, executors, administrators and assigns of a lessor and a grantor under such a grant and his heirs and assigns. New.

(d) "Mining Lease," shall mean a lease for mining purposes, that is a searching for, working, getting, making merchantable, smelting or otherwise converting or working for the purposes of any manufacture, carrying away or disposing of mines or minerals, and substances in, on, or under the land, obtainable by underground or by surface working or purposes connected therewith and shall include a grant or license for mining purposes. R. S. O. 1897, cap. 170, sec. 13, 6 (b), amended.

(e) "Under-lease," shall include an agreement for an under-lease where the under-lessee has become entitled to have his under-lease granted.

(f) "Under-lessee," shall include any person deriving title under or from an under-lessee.

(2) A right of re-entry or forfeiture under any proviso or stipulation in a lease, for a breach of any covenant or condition in the lease, other than a proviso in respect of the payment of rent, shall not be enforceable, by action or otherwise, unless and until the lessor serves on the lessee a notice specifying the particular breach complained of, and if the breach is capable of remedy, requiring the lessee to remedy the breach, and, in any case, requiring the lessee

to make compensation in money for the breach, and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the lessor for the breach. New.

(3) Where a lessor is proceeding by action or otherwise, to enforce any right of re-entry or forfeiture, whether for non-payment of rent or for other cause, the lessee may, in the lessor's action, if any, or if there is no such action pending, then in an action brought by himself, apply to the Court for relief; and the Court may grant such relief, as having regard to the proceedings and conduct of the parties under the foregoing provisions of this section and to all the other circumstances the Court thinks fit, and on such terms, as to payment of rent, costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future as the Court may deem just. New.

(4) This section shall apply, although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease, in pursuance of the directions of a statute.

(5) For the purposes of this section, a lease limited to continue as long only as the lessee abstains from committing a breach of covenant shall be and take effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such a breach. R. S. O. 1897, cap. 170, sec. 13, part.

(6) Where the action is brought to enforce a right of re-entry or forfeiture for non-payment of rent and the lessee at any time before judgment pays into Court all the rent in arrear and the costs of the action, the proceedings in the action shall be forever stayed. R. S. O. 1897, cap. 170, sec. 24, part.

(7) Where relief is granted under the provisions of this section the lessee shall hold and enjoy the demised premises according to the lease thereof made without any new lease. R. S. O. 1897, cap. 170, sec. 24, part.

(8) The section shall apply to leases made either before or after the commencement of this Act and shall apply notwithstanding any stipulation to the contrary.

(9) This section shall not extend:—

(a) To a covenant or condition, against the assigning, under-letting, parting with the possession, or disposing of

the land leased; or to a condition for forfeiture on the bankruptcy of the lessee, or on the lessee making an assignment for the benefit of creditors under The Assignments and Preferences Act, or on the taking in execution of the lessee's interest; or

(b) In the case of a mining lease, to a covenant or condition for allowing the lessor to have access to or inspect books, accounts, records, weighing machines, or other things, or to enter or inspect the mine or the working thereof. R. S. O. 1897, cap. 170, sec. 13.

LEASES, UNDER-LEASES, FORFEITURE.

Where a lessor is proceeding by action or otherwise to enforce a right of re-entry or forfeiture under any covenant, proviso, or stipulation in a lease, the Court on application by any person claiming as under-lessee any estate or interest in the property comprised in the lease or any part thereof, either in the lessor's action (if any), or in any action brought by such person for that purpose, may make an order vesting for the whole term of the lease or any less term the property comprised in the lease or any part thereof in any person entitled as under-lessee to any estate or interest in such property upon such conditions, as to execution of any deed or other document, payment of rent, costs, expenses, damages, compensation, giving security, or otherwise as the Court in the circumstances of each case shall think fit, but in no case shall any such under-lessee be entitled to require a lease to be granted to him for any longer term than he had under his original sub-lease. New.

Where a lessor is proceeding by action to enforce a right of re-entry or forfeiture under any covenant, proviso or stipulation in a lease, every person claiming any right, title, or interest in the demised premises under the lease, if it be known to the lessor that he claims such right or interest, or if the instrument under which he claims is registered in the proper registry or land titles office, shall be made a party to the action. New.

In every lease made after the commencement of this Act containing a covenant, condition or agreement against assigning, underletting, or parting with the possession, or disposing of the land or property leased without license or consent, such covenant, condition, or agreement shall, unless the lease contains an expressed provision to the

contrary, be deemed to be subject to a proviso to the effect that such license or consent shall not be unreasonably withheld. New.

LICENSES.

Where a license to do any act which, without such license, would create a forfeiture, or give a right to re-enter, under a condition or power reserved in a lease, is given to a lessee or his assigns, every such license shall, unless otherwise expressed, extend only to the permission actually given, or to any specific breach of any proviso or covenant, or to the actual assignment, under-lease or other matter thereby specifically authorized to be done, but shall not prevent a proceeding for any subsequent breach, unless otherwise specified in such license; and all rights under covenants and powers of forfeiture and re-entry in the lease contained shall remain in full force and virtue, and shall be available as against any subsequent breach of covenant or condition, assignment, under-lease, or other matter not specifically authorized or made dispunishable by such license, in the same manner as if no such license had been given; and the condition or right of re-entry shall be and remain in all respects as if such license had not been given, except in respect of the particular matter authorized to be done. R. S. O. 1897, cap. 170, sec. 14.

Where in a lease there is a power or condition of re-entry on assigning or underletting or doing any other specified act without license, and a license has been, or is given to one of several lessees or co-owners to assign or underlet his share or interest, or to do any other act prohibited to be done without license, or has been or is given to a lessee or owner, or any one of several lessees or owners, to assign or underlet part only of the property, or to do any other such act in respect of part only of such property, such license shall not operate to destroy or extinguish the right of re-entry in case of any breach of the covenant or condition by the co-lessee or co-lessees or owner or owners of the other shares or interest in the property, or by the lessee or owner of the rest of the property, over or in respect of such shares or interest or remaining property, but such right of re-entry shall remain in full force over or in respect of the shares or interests or property not the subject of such license. R. S. O. 1897, cap. 170, sec. 15.

WAIVER OF COVENANT.

Where an actual waiver of the benefit of a covenant or condition in a lease, on the part of a lessor, or his heirs, executors, administrators or assigns, is proved to have taken place, in any one particular instance, such actual waiver shall not be assumed or deemed to extend to any instance or any breach of covenant or condition other than that to which such waiver specially relates, nor to be a general waiver of the benefit of any such covenant or condition, unless an intention to that effect appears. R. S. O. 1897, cap. 170, sec. 16.

COVENANT TO PAY TAXES.

(1) Unless it is otherwise specifically provided in a lease made after the commencement of this Act a covenant by a lessee for payment of taxes shall not be deemed to include an obligation to pay taxes assessed for local improvements.

(As to Drainage Assessment, see 10 Edw. VII., cap. 90, sec. 92.)

(2) In the case of a lease made under The Short Forms of Leases Act, where the words "except for local improvements," are struck out or omitted from the covenant number 3 in Schedule "B." of that Act such striking out or omission shall be deemed to be a specific provision otherwise made within the meaning of sub-section 1. R. S. O. 1897, cap. 170, sec. 17; 1 Edw. VII., cap. 12, sec. 27. Amended.

LENGTH OF NOTICES TO QUIT.

A week's notice to quit and a month's notice to quit, respectively, ending with the week or the month, shall be sufficient notice to determine, respectively, a weekly or monthly tenancy. R. S. O. 1897, cap. 170, sec. 18.

TENANTS TO NOTIFY LANDLORDS.

Every tenant to whom a writ in an action for the recovery of land has been delivered, or to whose knowledge it comes, shall forthwith give notice thereof to his landlord, or to his landlord's bailiff or receiver; and, if he omits

so to do, he shall be answerable to his landlord for all damages sustained by him by reason of the failure to give such notice. R. S. O. 1897, cap. 170, sec. 19. Amended.

EXEMPTIONS FROM DISTRESS.

(1) The goods and chattels exempt from seizure under execution shall not be liable to seizure by distress by a landlord for rent, except as hereinafter provided.

(2) In the case of a monthly tenancy the exemption shall only apply to two months' arrears of rent.

(3) The person claiming such exemption shall select and point out the goods and chattels which he claims to be exempt. R. S. O. 1897, cap. 170, sec. 30.

(1) A landlord shall not distrain for rent on the goods and chattels of any person except the tenant or person who is liable for the rent, although the same are found on the premises; but this restriction shall not apply in favour of a person claiming title under an execution against the tenant, or in favour of a person whose title is derived by purchase, gift, transfer, or assignment from the tenant, whether absolute or in trust, or by way of mortgage or otherwise, nor to the interest of the tenant in any goods or chattels on the premises in the possession of the tenant under a contract for purchase, or by which he may or is to become the owner thereof upon performance of any condition nor where goods or chattels have been exchanged between tenants or persons by the one borrowing or hiring from the other for the purpose of defeating the claim of or the right of distress by the landlord, nor shall the restriction apply where the property is claimed by the wife, husband, daughter, son, daughter-in-law, or son-in-law of the tenant, or by any other relative of his, if such other relative lives on the premises as a member of the tenant's family or by any person whose title is derived by purchase, gift, transfer or assignment, from any relative to whom such restriction does not apply.

(2) Nothing in this section shall exempt from distress goods or chattels in a store or shop managed or controlled by an agent or clerk for the owner of such goods or chattels where such clerk or agent is also the tenant and in default, and the rent is due in respect of the store or shop or premises rented therewith and thereto belonging, if such goods or chattels would have been liable to seizure but for this Act.

(3) Subject to the provisions of section 34 "tenant" in this section shall include a sub-tenant and the assigns of the tenant and any person in actual occupation of the premises under or with the assent of the tenant during the currency of the lease, or while the rent is due or in arrear, whether or not he has attorned to or become the tenant of the landlord. R. S. O. 1897, cap. 170, sec. 31.

PROTECTION OF GOODS OF LODGERS FROM DISTRESS.

(1) If a superior landlord distrains or threatens to distrain any goods or chattels of a boarder or lodger for arrears of rent due to him by his immediate tenant, the boarder or lodger may serve the superior landlord, or the bailiff or other person employed by him to levy the distress, with a statutory declaration, made by the boarder or lodger, setting forth that the immediate tenant has no right of property or beneficial interest in such goods or chattels, and that they are the property or in the lawful possession of such boarder or lodger; and also setting forth whether any and what amount by way of rent, board or otherwise is due from the boarder or lodger to the immediate tenant; and the boarder or lodger may pay to the superior landlord, or to the bailiff or other person employed by him, the amount if any, so due, or so much thereof as is sufficient to discharge the claim of the superior landlord; and to such declaration shall be annexed a correct inventory, subscribed by the boarder or lodger, of the goods and chattels mentioned in the declaration. R. S. O. 1897, cap. 170, sec. 39.

(2) If the superior landlord, bailiff or other person, after being served with the declaration and inventory, and after the boarder or lodger has paid or tendered to him the amount, if any, which, by sub-section 1, the boarder or lodger is authorized to pay, levies or proceeds, with a distress on the goods or chattels of the boarder or lodger, the superior landlord, bailiff or other person shall be guilty of an illegal distress, and the boarder or lodger may replevy such goods or chattels in any Court of competent jurisdiction, and the superior landlord shall also be liable to an action at the suit of the boarder or lodger, in which the truth of the declaration and inventory may be inquired into. R. S. O. 1897, cap. 170, sec. 40.

(3) Any payment made by a boarder or lodger pursuant to sub-section 1 shall be a valid payment on account of the

amount due from him to the immediate tenant. R. S. O. 1897, cap. 170, sec. 41.

(1) A tenant in default for non-payment of rent shall not be entitled to the benefit of the exemption provided for by section 32 unless he gives up possession of the premises forthwith, or is ready and offers to do so.

(2) The offer may be made to the landlord or to his agent; and the person authorized to seize and sell the goods and chattels, or having the custody of them for the landlord, shall be considered an agent of the landlord for the purpose of the offer and surrender to the landlord of possession. R. S. O. 1897, cap. 170, sec. 32, part.

(1) Where a landlord desires to seize exempted goods, he shall, after default has been made in the payment of rent and before or at the time of seizure serve the tenant with a notice, Form 1.

(2) The surrender of possession in pursuance of the notice shall be a determination of the tenancy. R. S. O. 1897, cap. 170, sec. 32, part.

(1) A tenant may set off against the rent due a debt due to him by the landlord.

(2) Notice of the claim of set-off, Form 2, may be given before or after the seizure.

(3) When the notice is given the landlord shall be entitled to distrain, or to proceed with the distress, only for the balance of the rent after deducting any debt justly due by him to the tenant which is mentioned in the notice. R. S. O. 1897, cap. 170, sec. 33.

(1) Service of notices under sections 34, 35 and 36 shall be made either personally or by leaving the same with a grown-up person in and apparently residing on the premises occupied by the person to be served.

(2) If the tenant cannot be found and his place of abode is not known, or admission thereto cannot be obtained, the posting up of the notice on some conspicuous part of the premises shall be good service. R. S. O. 1897, cap. 170, sec. 32, part.

No proceeding under the next preceding four sections shall be rendered invalid by any defect in form. R. S. O. 1897, cap. 170, sec. 32, part.

(1) In case of an assignment for the general benefit of creditors by a tenant the preferential lien of the landlord for rent shall be restricted to the arrears of rent due during the period of one year next preceding, and for

three months following the execution of the assignment, and from thence so long as the assignee retains possession of the premises.

(2) Notwithstanding any provision, stipulation or agreement in any lease or agreement, in case of an assignment for the general benefit of creditors, or of an order being made for the winding-up of an incorporated company, the assignee or liquidator may, within one month from the execution of the assignment or the making of the winding-up order, by notice in writing signed by him given to the landlord elect to retain the premises occupied by the assignor or company at the time of the assignment or winding-up order for the unexpired term of any lease under which such premises were held, or for such portion of the term as he shall see fit, upon the terms of the lease and subject to payment of the rent therefor provided by such lease or agreement. R. S. O. 1897, cap. 170, sec. 34.

DISTRESS.

Every person may have the like remedy by distress, and by impounding and selling the property distrained in cases of rents seck, as in case of rent reserved upon lease. R. S. O. 1897, cap. 342, sec. 1.

A person having any rent due and in arrear, upon any lease for life or lives or for years, or at will, ended or determined, may distrain for such arrears, after the determination of the lease, in the same manner as he might have done if the lease had not been ended or determined, if such distress is made within six months after the determination of the lease, and during the continuance of the landlord's title or interest, and during the possession of the tenant from whom the arrears became due. R. S. O. 1897, cap. 342, sec. 2.

(See R S. O. cap. 127, secs. 4 (3), 5, and cap. 163, secs. 5, 6, 7.)

A person entitled to any rent or land for the life of another may recover by action or distress the rent due and owing at the time of the death of the person for whose life such rent or land depended, as he might have done if the person by whose death the estate in such rent or land determined had continued in life. R. S. O. 1897, cap. 342, sec. 4.

Distress, whether for a debt due to the Crown or to any person, shall be reasonable. R. S. O. 1897, cap. 342, sec. 5.

PROPERTY LIABLE TO DISTRESS.

A person having rent due and in arrear upon any demise, lease, or contract, may seize and secure any sheaves or cocks of grain, or grain loose, or in the straw, or hay, lying or being in any barn or granary, or otherwise upon any part of the land charged with such rent, and may lock up, or detain the same, in the place where the same is found, for or in the nature of a distress until the same is replevied; and, in default of the same being replevied, may sell the same, after appraisement thereof to be made; but such grain, or hay, so distrained shall not be removed by the person distraining, to the damage of the owner thereof, out of the place where the same is found and seized, but shall be kept there (as impounded) until it is replevied or sold in default of replevying. R. S. O. 1897, cap. 342, sec. 6.

(1) A landlord may take and seize as a distress for arrears of rent any cattle or live stock of his tenant, feeding or pasturing upon any highway or on any way belonging to the demised premises or any part thereof.

(2) Subject to the provisions of sub-section 4, a landlord may take and seize standing crops as a distress for arrears of rent, and may cut, gather, make, cure, carry and lay up the same, when ripe, in the barns or other proper place on the demised premises and if there is no barn or proper place on the demised premises, then in any other barn or proper place which the landlord hires or otherwise procures for that purpose as near as may be to the premises, and may in convenient time appraise, sell or otherwise dispose of the same towards satisfaction for the rent for which such distress is made, and of the charges of such distress, appraisement and sale in the same manner as other goods and chattels may be seized, distrained and disposed of, and the appraisement thereof shall be taken when cut, gathered, cured and made and not before. R. S. O. 1897, cap. 342, sec. 7. Amended.

(3) Notice of the place where the goods and chattels so distrained are lodged or deposited shall within one week after the lodging or depositing thereof, be given to the tenant or left at his last place of abode.

(4) If after a distress of standing crops so taken for arrears of rent, and at any time before the same are ripe and cut, cured or gathered, the tenant pays to the land-

lord for whom the distress is taken the whole rent then in arrear, with the full costs and charges of making such distress, and occasioned thereby, then upon such payment or lawful tender thereof, the same and every part thereof shall cease, and the standing crops so distrained shall be delivered up to the tenant. R. S. O. 1897, cap. 342, sec. 8.

(5) Where standing crops are distrained for rent they may, at the option of the landlord, be advertised and sold in the same manner as other goods; and it shall not be necessary for the landlord to reap, thresh, gather or otherwise market the same. R. S. O. 1897, cap. 170, sec. 36.

(6) Any person purchasing standing crops at such sale shall be liable for the rent of the land upon which the same are standing at the time of the sale, and until the same are removed, unless the rent has been paid or has been collected by the landlord, or has been otherwise satisfied, and the rent shall, as nearly as may be, be the same as that which the tenant whose goods were sold was to pay, having regard to the quantity of land, and to the time during which the purchaser occupies it. R. S. O. 1897, cap. 170, sec. 37.

Beasts that gain the land and sheep shall not be distrained for a debt due to the Crown, nor for a debt due to any man, nor for any other cause, if there are other chattels sufficient to satisfy the debt or demand; but this provision shall not affect the right to impound beasts which a man finds on his land damage feasant. R. S. O. 1897, cap. 342, sec. 9.

WHERE DISTRESS MAY BE TAKEN.

Save as provided by section 45, and as hereinafter provided, goods or chattels which are not at the time of the distress upon the premises in respect of which the rent distrained for is due, shall not be distrained for rent. R. S. O. 1897, cap. 342, sec. 10.

FRAUDULENT REMOVAL.

(1) Where any tenant, for life or lives, term of years, at will, sufferance, or otherwise, of any messuages lands, tenements, or hereditaments, upon the demise or holding whereof any rent is reserved due, or made payable, fraudulently or clandestinely, conveys away, or carries off or from such premises his goods or chattels, to prevent the

landlord from distraining the same for arrears of rent so reserved, due, or made payable, the landlord, or any person by him for that purpose lawfully empowered may, within thirty days next ensuing such conveying away, or carrying off, take and seize such goods and chattels wherever the same are found, as a distress for such arrears of rent, and the same sell, or otherwise dispose of, in such manner as if such goods and chattels had actually been distrained by the landlord upon such premises for such arrears of rent.

(2) No landlord or other person entitled to such arrears of rent shall take or seize, as a distress for the same, any such goods or chattels which have been sold in good faith and for a valuable consideration, before such seizure made, to any person not privy to such fraud. R. S. O. 1897, cap. 342, sec. 11.

Where any goods or chattels fraudulently or clandestinely conveyed or carried away by any tenant, his servant or agent, or other person aiding or assisting therein, are or are believed to be in any house, barn, stable, outhouse, yard, close or place, locked up, fastened or otherwise secured, so as to prevent them from being taken and seized as a distress for arrears of rent, the landlord or his agent may take and seize, as a distress for rent, such goods and chattels, first calling to his assistance a constable or peace-officer who is hereby required to aid and assist therein, and in case of a dwelling-house, oath being also first made of a reasonable ground to believe that such goods or chattels are therein, and in the daytime break open and enter into such house, barn, stable, outhouse, yard, close or place and take and seize such goods and chattels for the arrears of rent, as he might have done if they were in an open field or place upon the premises from which they were so conveyed or carried away. R. S. O. 1897, cap. 342, sec. 12.

If a tenant so fraudulently removes, conveys away or carries off his goods or chattels, or if any person wilfully and knowingly aids or assists him in so doing, or in concealing the same, every person so offending shall forfeit and pay to the landlord double the value of such goods, to be recovered by action in any Court of competent jurisdiction. R. S. O. 1897, cap. 342, sec. 13, part.

IMPOUNDING DISTRESS.

(1) Beasts or cattle distrained shall not be removed or driven out of the local municipality (as defined by The

Municipal Act) in which they are distrained, except to a fitting pound or enclosure within the same county or district not more than three miles distant from the place where the distress is taken.

(2) No cattle, or other goods or chattels, distrained or taken by way of distress for any cause at one time shall be impounded in several places.

(3) Every person offending against this section shall forfeit to the person aggrieved $20, in addition to the damages sustained by him.

(As to sheaves and cocks of corn, or corn loose, or in the straw, or hay, see *ante*, sec. 44, and as to growing crops, see sec. 45.)

(4) Any person lawfully taking any distress for any kind of rent may impound or otherwise secure the distress so made, in such place, or on such part of the premises chargeable with the rent, as is most fit and convenient for that purpose, and may appraise, sell or dispose of the same upon the premises; and it shall be lawful for any person to come and go to and from such place or part of the premises where any distress for rent is so impounded and secured to view, appraise and buy, and to carry off or remove the same on account of the purchaser thereof. R. S. O. 1897, cap. 342, sec. 14. Amended.

POUND BREACH, OR RESCUE.

Upon any pound breach or rescue of goods or chattels distrained for rent, the person offending, or the owner of the goods distrained, in case the same are afterwards found to have come to his use or possession, shall forfeit to the person aggrieved $20, in addition to the damages sustained by him. R. S. O. 1897, cap. 342, sec. 15. Amended.

SALE OF GOODS DISTRAINED.

Where any goods or chattels are distrained for any rent reserved and due upon any demise, lease or contract, and the tenant or owner of them does not, within five days next after such distress taken and notice thereof, with the cause of such taking, left at the dwelling house or other most conspicuous place on the premises charged with the rent distrained for, replevy the same, then, after such distress and notice and the expiration of such five

days the person distraining shall cause the goods and chattels so distrained to be appraised by two appraisers, who shall first be sworn to appraise the same truly, according to the best of their understandings, a memorandum of which oath is to be indorsed on the inventory, and after such appraisement the person so distraining may lawfully sell the goods and chattels so distrained for the best price which can be got for the same towards satisfaction of the rent for which the same were distrained and of the charges of such distress, appraisement and sale, and shall hold the overplus, if any, for the owner's use, and pay the same over to him on demand. R. S. O. 1897, cap. 342, sec. 16.

WRONGFUL, OR IRREGULAR, DISTRESS.

Where any distress is made for any kind of rent justly due, and any irregularity, or unlawful act, shall afterwards be done by the person distraining, or by his agent, or if there has been an omission to make the appraisement under oath, the distress itself shall not be therefore deemed to be unlawful, nor the person making it be deemed a trespasser *ab initio*, but the person aggrieved by such unlawful act or irregularity may recover by action full satisfaction for the special damage sustained thereby. R. S. O. 1897, cap. 342, sec. 17.

(As to tender of Amends, see Statute Law Amendment Act, 1911.)

(1) A distrainor who takes an excessive distress, or takes a distress wrongfully, shall be liable in damages to the owner of the goods or chattels distrained. R. S. O. 1897, cap. 342, sec. 18.

(2) Where a distress and sale are made for rent pretended to be in arrear and due, when, in truth, no rent is in arrear or due to the person distraining, or to the person in whose name or right such distress is taken, the owner of the goods or chattels distrained and sold, his executors, or administrators, shall be entitled by action to be brought against the person so distraining, to recover full satisfaction for the damage sustained by the distress and sale. R. S. O. 1897, cap. 342, sec. 18.

GOODS TAKEN IN EXECUTION NOT TO BE REMOVED WITHOUT PAYMENT OF RENT.

(1) Goods or chattels lying or being in or upon any land leased for life or lives, or term of years, at will, or

otherwise, shall not be liable to be taken by virtue of any execution issued out of the High Court, or out of a County or District Court, on any pretence whatsoever, unless the party at whose suit the execution is sued out before the removal of such goods or chattels from the premises by virtue of such execution, pays to the landlord, or his bailiff, all mney due for rent of the premises at the time of the taking of such goods or chattels by virtue of such execution if the arrears of rent do not amount to more than one year's rent.

(2) If such arrears exceed one year's rent the party at whose suit such execution is sued out, on paying the landlord, or his bailiff, one year's rent, may proceed to execute his judgment.

(3) The sheriff, or other officer shall levy and pay to the execution creditor as well the money so paid for rent as the execution money. R. S. O. 1897, cap. 342, sec. 19.

(As to Executions out of Division Courts see The Division Courts Act, section 217.)

CROPS SEIZED UNDER EXECUTION.

Where all or any part of the standing crops of the tenant of any land is seized and sold by any sheriff or other officer by virtue of any writ of execution, such crops, so long as the same remain on the land, in default of sufficient distress of the goods and chattels of the tenant, shall be liable for the rent which may accrue and become due to the landlord after any such seizure and sale, and to the remedies by distress for recovery of such rent, and that notwithstanding any bargain and sale or assignment which may have been made or executed of such crops by any such sheriff or other officer. New.

LIABILITY OF TENANTS OVERHOLDING.

Where a tenant for any term for life, lives or years, or other person who comes into possession of any land, by, from, or under, or by collusion with such tenant wilfully holds over such land or any part thereof, after the determination of such term, and after notice in writing given for delivering the possession thereof by his landlord, or the person to whom the remainder or reversion of such land belongs, or his agent thereunto lawfully authorized, such tenant or other person so holding over shall, for and

during the time he so holds over or keeps the person entitled out of possession, pay to such person, or his assigns, at the rate of double the yearly value of the land so detained, for so long as the same is detained, to be recovered by action in any court of competent jurisdiction, against the recovering of which penalty there shall be no relief. R. S. O. 1897, cap. 342, sec. 20.

Where a tenant gives notice of his intention to quit the premises by him holden at a time mentioned in such notice, and does not accordingly deliver up the possession thereof at the time mentioned in such notice, the tenant shall from thenceforward pay to the landlord double the rent or sum which he should otherwise have paid, to be levied, sued for, and recovered at the same times and in the same manner as the single rent or sum before the giving such notice could be levied, sued for, or recovered; and such double rent or sum shall continue to be paid while such tenant continues in possession. R. S. O. 1897, cap. 342, sec. 21.

EXECUTORS OR ADMINISTRATORS.

The executors or administrators of a landlord may distrain for the arrears of rent due to such landlord in his lifetime, and may sue for the same in like manner as such landlord might have done if living, and the powers and provisions contained in this Act relating to distresses for rent shall be applicable to the distresses so made. R. S. O. 1897, cap. 129, secs. 13 and 14, and cap. 337, sec. 11.

[As to Waste see Conveyancing and Law of Property Act.]

(See R. S. O. cap. 330, secs. 21-23.)

ATTORNMENT.

Every attornment of a tenant of any land to a stranger claiming title to the estate of his landlord shall be absolutely null and void; and the possession of his landlord shall not be deemed to be changed, altered or affected by any such attornment; provided always that nothing herein shall vacate or affect any attornment made pursuant to and in consequence of a judgment or order of a court, or made with the privity and consent of the landlord, or to any mortgagee after the mortgage has become forfeited. R. S. O. 1897, cap. 342, sec. 23.

(1) Every grant or conveyance of any rent or of the reversion or remainder of any land shall be good and effectual without any attornment of the tenant of the land out of which such rent issues, or of the particular tenant upon whose particular estate any such reversion or remainder is expectant or depending.

(2) A tenant shall not be prejudiced, or damaged by the payment of rent to any grantor or by breach of any condition for non-payment of rent, before notice to him of such grant by the grantee. R. S. O. 1897, cap. 342, sec. 24.

RENEWALS.—CHIEF LEASE MAY BE RENEWED WITHOUT SURRENDER OF UNDER-LEASE.

(1) Where a lease is duly surrendered in order to be renewed, and a new lease is made and executed by the chief landlord, the new lease shall, without a surrender of all or any of the under-leases, be as good and valid as if all the under-leases derived thereout had been likewise surrendered at or before the time of taking of such new lease.

(2) Every person in whom any estate for life, or lives, or for years, is from time to time vested by virtue of such new lease shall be entitled to the rents, covenants and duties, and have like remedy for recovery thereof, and the under-lessees shall hold and enjoy the land in the respective under-leases comprised, as if the original lease had been kept on foot and continued, and the chief landlord shall have and be entitled to such and the same remedy by distress or entry in and upon the land comprised in any such under-lease for the rents and duties reserved by such new lease, so far as the same do not exceed the rents and duties reserved in the lease out of which such under-lease was derived, as he would have had if such former lease had been still continued or as he would have had if the respective under-leases had been renewed under such new principal lease. R. S. O. 1897, cap. 342, sec. 25.

(See R. S. O. cap. 170, sec. 10.)

RENEWAL OF LEASE BY ABSENTEES.

(1) Where any person who, in pursuance of any covenant or agreement in writing, if within Ontario and amen-

able to the process of the High Court, might be compelled to execute any lease by way of renewal, is not within Ontario, or is not amenable to the process of the Court, the High Court upon the motion of any person entitled to such renewal, whether such person is, or is not, under any disability, may direct such person as the Court thinks proper to appoint for that purpose to accept a surrender of the subsisting lease, and to make and execute a new lease in the name of the person who ought to have renewed the same.

(2) A new lease executed by the person so appointed, shall be as valid as if the person in whose name the same was made was alive and not under any disability, and had himself executed it.

(3) In every such case it shall be in the discretion of the Court to direct an action to be brought to establish the right of the person seeking the renewal, and not to make the order for such new lease unless by the judgment to be made in such action, or until after it shall have been entered. R. S. O. 1897, cap. 342, sec. 26.

(4) A renewed lease shall not be executed by virtue of this section in pursuance of any covenant or agreement, unless the sum or sums of money, if any, which ought to be paid on such renewal, and the things, if any, which ought to be performed in pursuance of such covenant or agreement by the tenant be first paid and performed, and counterparts of every such renewed lease shall be duly executed by the tenant. R. S. O. 1897, cap. 342, sec. 27.

(5) All sums of money which are had, received or paid for, or on account of, the renewal of any lease by any person out of Ontario or not amenable to the process of the High Court, after a deduction of all necessary incidental charges and expenses, shall be paid to such person or in such manner or into the High Court to such account, and be applied and disposed of as the Court shall direct. R. S. O. 1897, cap. 342, sec. 28.

(6) The High Court may order the costs and expenses of and relating to the applications, orders, directions, conveyances and transfers, or any of them, to be paid and raised out of or from the land or the rents in respect of which the same are respectively made, in such manner as the Court shall deem proper. R. S. O. 1897, cap. 342, sec. 29.

PART II.

DISPUTES AS TO RIGHT TO DISTRAIN.

In this Part—

(a) "Judge" shall mean Judge of the County or District Court of the county or district in which a distress to which this Part applies is made. 10 Edw. VII. cap. 75, sec. 1.

Where goods or chattels are distrained by a landlord for arrears of rent, and the tenant disputes the right of the landlord to distrain in respect of the whole or any part of the goods or chattels, or disputes the amount claimed by the landlord, the tenant may apply to the Judge to determine the matters so in dispute, and the Judge may hear and determine the same in a summary way, and may make such order in the premises as he may deem just. 10 Edw. VII. cap. 75, sec. 2.

Where notice of such an application has been given to the landlord the Judge, pending the disposition of it by him, may make such order as he may deem just for the restoration to the tenant of the whole or any part of the goods or chattels distrained, upon the tenant giving security, by payment into Court or otherwise as the Judge may direct, for the payment of the rent which shall be found due to the landlord and for the costs of the distress and of the proceedings before the Judge and of any appeal from his order, or such of them as the tenant may be ordered to pay. 10 Edw. VII. cap. 75, sec. 3.

The Judge shall have jurisdiction and authority to determine any question arising upon the application which the Court of which he is Judge has jurisdiction to determine in an action brought in that Court. 10 Edw. VII. cap. 75, sec. 4.

Where the amount of the rent claimed by the landlord exceeds $800 or where any question is raised which a County or District Court would not have jurisdiction to try in an action brought in such Court, the Judge shall not, without the consent in writing of the landlord, deal with the application summarily, but shall direct an action to be brought or an issue to be tried in the High Court for the determination of the matters in dispute. 10 Edw. VII. cap. 75, sec. 5.

(1) Where the Judge under the next preceding section directs an action to be brought or an issue to be tried, he

shall have the like power as to the restoration to the tenant of the goods or chattels or of any part of them as is conferred by section 65, and where it is exercised the security shall be as provided in that section, except that, as to costs, it shall be not only for the costs of the proceedings before the Judge, but also for the costs of the action or issue, including any appeal therein or such of them as the tenant may be ordered to pay.

(2) The High Court shall determine by whom and in what manner the costs of the action or issue and of the application to the Judge shall be borne and paid.

(3) Judgment may be entered in accordance with the direction of the Court, made at or after the trial, and may be enforced in like manner as a judgment of the Court. 10 Edw. VII. cap. 75, secs. 6, 7 and 8.

Where the amount claimed by the landlord does not exceed $100, the decision of the Judge shall be final. 10 Edw. VII. cap. 75, sec. 9.

Where the amount claimed by the landlord exceeds $100, an appeal shall lie from any order of the Judge made on an application to him under the provisions of section 65, by which the matters in dispute are determined, in like manner as if the same were a judgment of the Court of which he is Judge, pronounced in an action. 10 Edw. VII. cap. 75, sec. 10.

Where an issue is tried there shall be the same right of appeal from the judgment as if the judgment had been pronounced in an action. 10 Edw. VII. cap. 75, sec. 11.

Where the amount claimed by the landlord does not exceed $100 the costs of the proceedings before the Judge shall be on the Division Court scale, and where the amount claimed exceeds $100 they shall be on the County Court scale, except in an action or issue in the High Court directed under section 69. 10 Edw. VII. cap. 75, sec. 12.

Nothing in this Part shall take away or affect any remedy which a tenant may have against his landlord or require a tenant to proceed under this Part instead of by bringing an action, but where instead of proceeding under this Part he proceeds by action, the Court in which the action is brought, if of opinion that it was unnecessarily brought, and that a complete remedy might have been had by a proceeding under this Part, may direct the tenant although he succeeds, to pay any additional costs occasioned by his having brought the action. 10 Edw. VII., cap. 75, sec. 12.

PART III.

OVERHOLDING TENANTS.

(1) Where a tenant after his lease or right of occupation whether created by writing or by parol has expired or been determined, either by the landlord or by the tenant, by a notice to quit or notice pursuant to a proviso in any lease or agreement in that behalf, or has been determined by any other act whereby a tenancy or right of occupancy may be determined or put an end to, wrongfully refuses or neglects to go out of possession of the land demised to him, or which he has been permitted to occupy, his landlord may apply upon affidavit to the Judge of the County or District Court of the county or district in which the land lies to make the inquiry hereinafter provided for.

(2) The Judge shall in writing appoint a time and place at which he will inquire and determine whether the person complained of was tenant to the complainant for a term or period which has expired or has been determined by a notice to quit or for default in payment of rent or otherwise, and whether the tenant holds the possession against the right of the landlord, and whether the tenant, having no right to continue in possession, wrongfully refuses to go out of possession. R. S. O. 1897, cap. 171, sec. 3.

(3) Notice in writing of the time and place appointed, stating briefly the principal facts alleged by the complainant as entitling him to possession, shall be served upon the tenant or left at his place of abode at least three days before the day so appointed, if the place appointed is not more than twenty miles from the tenant's place of abode, and one day in addition for every twenty miles above the first twenty, reckoning any broken number above the first twenty as twenty miles, to which notice shall be annexed a copy of the Judge's appointment and of the affidavit on which it was obtained, and of the documents to be used upon the application. R. S. O. 1897, cap. 171, sec. 14.

The proceedings under this Part shall be entitled in the County or District Court of the county or district in which the land lies, and shall be styled:

"In the matter of (*giving the name of the party complaining*), Landlord, against (*giving the name of the party complained against*) Tenant."

R. S. O. 1897, cap. 171, sec. 10.

(1) If at the time and place appointed the tenant fails to appear, the Judge if it appears to him that the tenant wrongfully holds against the right of the landlord, may order a writ of possession, Form 3, directed to the sheriff of the county or district in which the land lies to be issued, commanding him forthwith to place the landlord in possession of the land.

(2) If the tenant appears, the Judge shall, in a summary manner, hear the parties and their witnesses, and examine into the matter, and if it appears to the Judge that the tenant wrongfully holds against the right of the landlord, he may order the issue of the writ. R. S. O. 1897, cap. 171, sec. 5.

(1) An appeal shall lie to a Divisional Court of the High Court from the order of the Judge granting or refusing a writ of possession and the provisions of The County Courts Act as to appeals shall apply to such an appeal.

(2) If the Divisional Court is of opinion that the right to possession should not be determined in a proceeding under this Part the Court may discharge the order of the Judge and the landlord may in that case proceed by action for the recovery of possession. New.

(3) When the order is discharged, if possession has been given to the landlord under a writ of possession the Court may direct that possession be restored to the tenant. New.

PART IV.

GENERAL PROVISIONS.

Except as therein otherwise provided the practice and procedure under Parts II. and III. shall be in accordance with the practice and procedure in the County Courts. New.

Chapters 170, 171, and 342, and sections 13 and 14 of chapter 129, and section 8 to 11 of chapter 340, and section 11 of chapter 337 of the Revised Statutes, 1897, and chapter 75 of the Acts passed in the 10th year of the reign of His late Majesty King Edward the Seventh, and all amendments to the said Acts and parts of Acts are repealed.

(As to liability of a tenant to pay for night watchman, see section 548 (2b) of the Consolidated Municipal Act, 1903.)

(As to right of tenant to deduct money paid for taxes from rent, and as to right to pay rent to collector until the taxes are paid, see Assessment Act, sections 91 to 93.)

(As to duty of tenant to notify landlord of the construction of ditches, see The Ditches and Watercourses Act, cap. 285, sec. 15 (2)).

(As to drainage assessment, see 10 Edw. VII. cap. 90, sec. 92.)

This Act shall come into force and take effect from and after the first day of September, 1911.

FORM 1.

NOTICE TO TENANT.

Take notice that I claim $ for rent due to me in respect of the premises which you hold as my tenant, namely, (*here briefly describe them*); and unless the said rent is paid, I demand from you immediate possession of the said premises; and I am ready to leave in your possession such of your goods and chattels as in that case only you are entitled to claim exemption for.

Take notice further, that if you neither pay the said rent nor give me possession of the said premises within three days after the service of this notice, I am by *The Landlord and Tenant Act* entitled to seize and sell and I intend to seize and sell all your goods and chattels, or such part thereof as may be necessary for the payment of the said rent and costs.

Dated this day of 19

A.B. (*landlord*).

To *C. D.* (*tenant*).

R.S.O. 1897, c. 170, s. 32, (4).

FORM 2.

NOTICE TO LANDLORD.

Take notice, that under *The Landlord and Tenant Act* I wish to set off against rent due by me to you, the debt which you owe to me on your promissory note for dated (*or as the case may be.*)

Dated this day of 19. .

C. D. (tenant)

R.S.O. 1897, c. 170, s. 33, (2).

GUARANTIES.

A guaranty is a promise or agreement to answer or be responsible for the payment of some debt, or the performance of some duty of another person (who is in the first instance liable) should that person fail to pay such debt or perform such duty.

Guaranties must be in writing, that is, before they can be enforced in a Court of law the agreement itself, or some memorandum or note of it, must be in writing and signed by the party making it, or who is to be held responsible upon it, or by an agent lawfully authorized to sign it. A verbal guaranty is therefore worthless.

To constitute a concluded or perfect agreement of guaranty, it should be accepted by the party to whom it is offered, and his acceptance of it notified to the maker, and assented to by him. The amount guaranteed need not necessarily appear on the writing, although it is proper that the instrument be fully and carefully worded.

As a rule, it is best to mention in the written guaranty the consideration upon which it is given, though in Ontario and Nova Scotia this is, by statute, no longer necessary.

FORMS.

Guaranty for goods to be furnished.

In consideration that A. B. will furnish dry goods and millinery to a value not exceeding one thousand dollars to C. D. of , I hereby guarantee to him, the said A. B., that such goods to the value furnished (but not exceeding the said sum) will be paid for within the usual time by the said C. D., and if not by him, then by me. This guaranty to continue in force one year and no longer.

E. F.

Guaranty for a clerk.

In consideration that the directors of the Union Bank do engage and receive into their employ A. B. as a clerk, I guarantee that he will well and faithfully and honestly serve them as such, duly accounting for all moneys, property and securities committed to his care as such clerk, and that I will reimburse them for any losses occurring through his misconduct or dishonesty.

Guaranty for a servant.

To Mr. John Edwards, Burlington, Ont.:

Sir,—If you will engage Patrick Stevens as coachman, I guarantee to be responsible for any loss you may suffer by reason of any incompetency or neglect of duty of his in such employment during the space of six months.

SIMON STREET.

LIEN NOTES.

MANITOBA.

In Manitoba by sec. 2 of the Lien Notes Act, R. S. M. 1902, cap. 99, receipt notes, hire receipts, and orders for chattels given by bailees, when the condition of the bailment is such that the possession of the chattels should pass without any ownership therein being acquired by the bailee, are of no validity in the case of manufactured goods or chattels unless, at the time the bailment is entered into, the manufacturer's name or some other distinguishing name is painted, printed, or stamped thereon or otherwise plainly attached thereto, and no such bailment shall be valid unless it be evidenced in writing, signed by the person thus taking possession of the chattel, and by sec. 3, every manufacturer or his agents are bound in penalties to furnish to any applicant full information respecting the balance due on any such manufactured goods or chattels and the terms of payment of such balance.

As to all other chattels, for example, horses or cattle, there is no restriction as to the validity of lien notes or any requirement that they should be registered or filed in any way.

The same Act contains provisions preventing the registration in any land titles or registry office of any "lien notes, hire receipts, orders for chattels or documents or instruments," containing as a portion thereof, or having annexed thereto or indorsed thereon any order, contract or agreement for the purchase or delivery of any chattel.

The manufacturers, however, have avoided the effect of these provisions by taking and registering separate charges on the land, describing it, for the amount of the debt incurred, and not referring in any way to the order for the chattel.

SASKATCHEWAN.

The following provisions of the Ordinance respecting Hire Receipts and Conditional Sales of Goods, will shew the law in this Province as to the necessity of registration of all such documents.

1. Whenever on a sale or bailment of goods of the value of $15 or over, it is agreed, provided or conditioned that the right of property or right of possession in whole or in part shall remain in the seller or bailor notwithstanding that the actual possession of the goods passes to the buyer or

bailee, the seller or bailor shall not be permitted to set up any such right of property or right of possession as against any purchaser or mortgagee of or from the buyer or bailee of such goods in good faith for valuable consideration or as against judgments, executions or attachments against the purchaser or bailee unless such sale or bailment with such agreement, proviso or condition is in writing, signed by the bailee or his agent, and registered as hereinafter provided. Such writing shall contain such a description of the goods the subject of the bailment that the same may be readily and easily known and distinguished.

Provided that nothing in this section shall apply to any bailment where it is not intended that the property in the goods shall eventually pass to the bailee on payment of purchase money in whole or in part or the performance of some condition by the bailee.

2. Such writing or a true copy thereof shall be registered in the office of the registration clerk for chattel mortgages in the registration district within which the buyer or bailee resides within thirty days of such sale or bailment and also in the registration district in which the goods are delivered or to which they may be removed within thirty days of such delivery or removal verified by the affidavit of the seller or bailor or his agent stating that the writing (or copy) truly sets forth the agreement between the parties and that the agreement therein set forth is bona fide and not to protect the goods in question against the creditors of the buyer or bailee, as the case may be.

11. Nothing in the said Ordinance or in this Act shall apply to the sale or bailment of any manufactured goods or chattels of the value of $15, or over, which at the time of the actual delivery thereof to the buyer or bailee have the manufacturer's or vendor's name painted, printed or stamped thereon or plainly attached thereto by a plate or similar device; provided that such manufacturer or vendor (being the seller or bailor of such goods or chattels), keeps an office in the Province where inquiry may be had and information procured concerning the sale or bailment of such goods or chattels; and provided further that such manufacturer or vendor or the agent thereof does within five days after receiving a request so to do, either made in person to him by registered letter, furnish to any applicant therefor a statement of the amounts (if any paid thereon) and the balance remaining unpaid; the person so inquiring shall, if such inquiry is by letter give a name and post office address to which a reply may be sent; and it shall be sufficient if

the information aforesaid be given by registered letter deposited in the post office within the said five days addressed to the person inquiring at his proper post office address or where a name and address is given as aforesaid, addressed to such person by the name and at the post office so given.

ALBERTA.

The law in this Province on this subject is contained in secs. 1 and 2 as copied above for Saskatchewan, without the additional provisions now in force in the latter Province.

LIMITATION OF ACTIONS.

NOVA SCOTIA.

Actions for assault, menace, battery, wounding, false imprisonment or slander, must be brought within one year after the cause of action arose. Actions for penalties, damages or sums of money given to parties aggrieved by any statute, within two years. Actions on a simple contract, such as a negotiable instrument, or loan of money, or for trespass, conversion of property, libel, malicious prosecution, seduction, criminal conversation, within six years.

Actions for rent under a lease, or for money due under a bond judgment, or recognizance, within twenty years.

All actions for an accounting between merchants, or factors and servants, within six years.

If the plaintiff is under 21, time does not begin to run until the plaintiff comes of age. Similarly where a plaintiff is out of the Province, until his return; if a lunatic, until the recovery of his reason; if a married woman, until she is a widow or divorced.

A promise in writing or other acknowledgment of the debt signed or part payment made by the party chargeable thereby, or by his duly authorized agent, will always be a new starting point from which the time again commences to run.

Arrears of rent or interest chargeable on land exceeding six years is not recoverable by action.

CAP. 138, NEW BRUNSWICK CONSOLIDATED STATUTES, 1903.

Actions for assault, battery, wounding, imprisonment or for words must be commenced within two years after the cause of action.

No action or scire facias upon any judgment, recognizance, bond, or other specialty, shall be brought but within twenty years after the cause of action.

No action for any sum of money given to the party aggrieved by any Act or Statute, or for any penalty, shall be brought but within two years after the cause of action, unless the time is otherwise limited by Statute. No other action shall be commenced but within six years after the cause of action.

Actions by or against minors, married women, persons insane, or out of the Province may be commenced within the like period after the removal of the disability, as is allowed for bringing the action in ordinary cases.

Arrears of rent or interest chargeable on land exceeding six years is not recoverable by action.

If any person bring or be liable to any action, and shall die before the time limited therefor expires, or within thirty days thereafter, and the cause of action survives, the action may be commenced by or against his representative within six months thereafter.

No arrears of dower, nor any damages on account of such arrears, shall be recovered or obtained by any action or suit for a longer period than six years next before the commencement of such action or suit.

LINE FENCES.

The provisions of the law upon the subject of the erection and maintenance of line fences are very similar in the Provinces of Ontario, New Brunswick, Prince Edward Island, Manitoba and British Columbia, in all of which special statutes have been enacted governing the subject. The statutory law is concisely embraced in the R. S. O. 1897, cap. 284. The expression "occupied lands," where it occurs below, does not include so much of a lot, parcel or farm as is unenclosed, although a part of such lot, parcel or farm is enclosed and in actual use and occupation. The Act is as follows:

An Act respecting Line Fences.

1. This Act may be cited as "The Line Fences Act." R. S. O. 1887, c. 219, s. 1.

2. (1) In this Act the expression "occupied lands" shall not include so much of a lot, parcel or farm as is unenclosed, although a part of such lot, parcel or farm is enclosed and in actual use and occupation.

(2) Where, within the meaning of section 4 of this Act, there is any dispute between owners or occupants of lands situate in different municipalities, the following words or expressions in this Act shall have the meaning hereinafter expressed, namely:

(*a*) "Fence-viewers" shall mean two fence-viewers of the municipality in which is situate the land of the owner or occupant notified under clause 1 of section 4 of this Act, and one fence-viewer of the municipality in which is situate the land of the person giving the notice; except that in case of a disagreement having occurred within the meaning of clause 4 of said section 4, the said phrase "Fence-viewers" shall mean fence-viewers from either or both municipalities.

(*b*) The expression "in which the lands are situate," and the expression "in which the land lies," shall mean in which are situate the lands of the owner or occupant so notified under said clause 1 of section 4, R. S. O. 1887, c. 219, s. 2.

3. Owners of occupied adjoining lands shall make, keep up and repair a just proportion of the fence which marks the boundary between them, or if there is no fence, they shall so make, keep up and repair the same proportion, which is to mark such boundary; and owners of unoccupied lands which adjoin occupied lands, shall, upon their being occupied, be liable to the duty of keeping up and repairing such proportion, and in that respect shall be in the same position as if their land had been occupied at the time of the original fencing, and shall be liable to the compulsory proceedings hereinafter mentioned. R. S. O. 1887, c. 219, s. 3.

4. Where any owner of such land desires Fence-viewers to view and arbitrate as to what portion of such fences each owner shall

make, keep up and repair, or to view and arbitrate as to the condition of any existing line fence as to repairs being done to the same, the following proceedings shall be adopted:

1. Either owner may notify (Form 1) the other owner, or the occupant of the land of the owner so to be notified, that he will, not less than one week from the service of such notice, cause three Fence-viewers of the locality to arbitrate in the premises.

2. The owners so notifying shall also notify (Form 2) the Fence-viewers, not less than one week before their services are required.

3. The notices in both cases shall be in writing, signed by the person notifying, and shall specify the time and place of meeting for the arbitration, and may be served by leaving the same at the place of abode of such owner or occupant, with some grown-up person residing thereat; or in case of the lands being untenanted, by leaving the notice with any agent of such owner.

4. The owners notified may, within the week, object to any or all of the Fence-viewers notified, and in case of disagreement, the Judge hereinafter mentioned shall name the Fence-viewers who are to arbitrate. R. S. O. 1887, c. 219, s. 4.

5. An occupant, not the owner of land, notified in the manner above mentioned, shall immediately notify the owner; and if he neglects so to do, shall be liable for all damages caused to the owner by such neglect. R. S. O. 1887, c. 219, s. 5.

6. The Fence-viewers shall examine the premises, and if required by either party, they shall hear evidence, and are authorized to examine the parties and their witnesses on oath, and any one of them may administer an oath or affirmation for the purpose as in Courts of Law. R. S. O. 1887, c. 219, s. 6.

7. (1) The Fence-viewers shall make an award (Form 3) in writing, signed by any two of them, respecting the matters so in dispute; which award shall specify the locality, quantity, description and the lowest price of the fence it orders to be made, and the time within which the work shall be done, and shall state by which of the said parties the costs of the proceedings shall be paid, or in what proportion the same shall be paid.

2. In making the award, the Fence-viewers shall regard the nature of the fences in use in the locality, the pecuniary circumstances of the persons between whom they arbitrate, and generally the suitableness of the fence ordered to the wants of each party.

3. Where, from the formation of the ground, by reason of streams or other causes, it is found impossible to locate the fence upon the line between the parties, it shall be lawful for the Fence-viewers to locate the said fence either wholly or partially on the land of either of the said parties, where to them it seems to be most convenient; but such location shall not in any way affect the title to the land.

4. If necessary, the Fence-viewers may employ an Ontario Land Surveyor, and have the locality described by metes and bounds. R. S. O. 1887, c. 219, s. 7.

8. The award shall be deposited in the office of the Clerk of the Council of the Municipality in which the lands are situate, and shall be an official document, and may be given in evidence in any legal proceeding by certified copy, as are other official documents;

and notice of its being made shall be given by the Clerk of the Municipality with whom the same has been deposited to all parties interested. R. S. O. 1887, c. 219, s. 8.

9. (1) The award may be enforced as follows: The person desiring to enforce it shall serve upon the owner or occupant of the adjoining lands a notice in writing, requiring him to obey the award, and if the award is not obeyed within one month after service of the notice, the person so desiring to enforce it may do the work which the award directs, and may immediately take proceedings to recover its value and the costs from the owner by action in any Division Court having jurisdiction in the locality; but the Judge of the Division Court may, on application of either party, extend the time for making such fence to such time as he may think just. R. S. O. 1887, c. 219, s. 9; 59 Vic. c. 65, s. 1.

(2) Instead of requiring execution to be issued upon such judgment the party entitled to enforce the judgment may obtain a certificate from the Clerk of the Division Court of the amount due for debt and costs in respect of such judgment, and shall be entitled upon lodging the same with the clerk of the municipality to have the amount so certified placed upon the collector's roll, and the same may be collected in the same manner as taxes are collected, and shall, until so collected or otherwise paid, be a charge upon the lands liable for the payment thereof, and in such case execution shall not thereafter issue on such judgment. 59 V. c. 65, s. 1.

10. (1) The award shall constitute a lien and charge upon the lands respecting which it is made, when it is registered in the Registry Office of the County, or other Registry Division in which the lands are.

(2) Such registration may be in duplicate or by copy, proved by affidavit of a witness to the original, or otherwise, as in the case of any deed which is within the meaning of "The Registry Act." R. S. O. 1887, c. 219, s. 10.

11. Any person dissatisfied with the award made, may appeal therefrom to the Judge of the County Court of the County in which the lands are situate, and the proceedings on such appeal shall be as follows:

1. The appellant shall serve upon the Fence-viewers, and all parties interested, a notice in writing of his intention to appeal within one week from the time he has been notified of the award; which notice may be served as other notices mentioned in this Act.

2. The appellant shall also deliver a copy of the notice to the Clerk of the Division Court of the Division in which the land lies, and the Clerk shall immediately notify the Judge of such appeal, whereupon the Judge shall appoint a time for the hearing thereof, and, if he thinks fit, order such sum of money to be paid by the appellant to the said clerk as will be a sufficient indemnity against costs of the appeal.

3. The Judge shall order the time and place for the hearing of the appeal, and communicate the same to the clerk, who shall notify the Fence-viewers and all parties interested, in the manner hereinbefore provided for the service of other notices under this Act.

4. The Judge shall hear and determine the appeal, and set aside, alter, or affirm the award, correcting any error therein, and he may examine parties and witnesses on oath, and, if he so pleases, may inspect the premises; and may order payment of costs by either party, and fix the amount of such costs.

5. His decision shall be final; and the award, as so altered or confirmed, shall be dealt with in all respects as it would have been if it had not been appealed from.

6. The practice and proceedings on the appeal, including the fe payable for subpœnas and the conduct money of witnesses, shall be the same, as nearly as may be, as in the case of suit in the Division Court. R. S. O. 1887, c. 219, s. 12.

12. (1) The Fence-viewers shall be entitled to receive $2 each for every day's work under this Act. Ontario Land Surveyors and witnesses shall be entitled to the same compensation as if they were subpœnaed in any Division Court. R. S. O. 1887, c. 219, s. 11.

(2) The municipality shall at the expiration of the time for appeal, or after appeal, as the case may be, pay to the Fence-viewers their fees, and shall, unless the same be forthwith repaid by the person awarded or adjudged to pay the same, place the amount upon the Collector's roll as a charge against the person awarded or adjudged to pay the same, and the same shall thereafter be placed upon the Collector's roll and may be collected in the same manner as ordinary municipal taxes. 52 V. c. 48, s. 1; 58 V. c. 53, s. 1.

13. (1) In case the Judge inspects the premises he shall be entitled to be paid the actual expenses incurred by him, and he shall, in the order setting aside, altering or affirming the award, fix the amount of such expenses and the person by whom the same shall be paid. 53 V. c. 67, s. 1, 2.

(2) The Judge shall be paid by the municipality the amount so fixed by him, and the same shall be collected by the municipality in the same manner as is provided in respect to the fence-viewer's fees by section 12 of this Act. 53 V. c. 67, s. 3.

14. Any agreement in writing (Form 4) between owners respecting such line fence may be filed or registered and enforced as if it was an award of Fence-viewers. R. S. O. 1887, c. 219, s. 13.

15. (1) The owner of the whole or part of a division or line fence which forms part of the fence enclosing the occupied or improved land of another person, shall not take down or remove any part of such fence.

(a) Without giving at least six months' previous notice of his intention to the owner or occupier of such adjacent enclosure;

(b) Nor unless such last mentioned owner or occupier after demand made upon him in writing by the owner of such fence, refuses to pay therefor the sum determined as provided in section 7 of this Act.

(c) Nor if such owner or occupier will pay to the owner of such fence or of any part thereof, such sum as the Fence-viewers may award to be paid therefor under section 7 of this Act.

(2) The provisions of this Act relating to the mode of determining disputes between the owners of occupied adjoining lands: the manner of enforcing awards and appeals therefrom; and the schedules of forms attached hereto, and all other provisions of this Act, so far as applicable, shall apply to proceedings under this section. R. S. O. 1887, c. 219, s. 14.

16. (1) If any tree is thrown down, by accident or otherwise, across a line or division fence, or in any way in and upon the pro-

perty adjoining that upon which such tree stood, thereby causing damage to the crop upon such property or to such fence, it shall be the duty of the proprietor or occupant of the premises on which such tree theretofore stood, to remove the same forthwith, and also forthwith to repair the fence, and otherwise to make good any damage caused by the falling of such tree.

(2) On his neglect or refusal so to do for forty-eight hours after notice in writing to remove the same, the injured party may remove the same, or cause the same to be removed, in the most convenient and inexpensive manner, and may make good the fence so damaged, and may retain such tree to remunerate him for such removal, and may also recover any further amount of damages beyond the value of such tree from the party liable to pay it under this Act.

(3) For the purpose of such removal the owner of such tree may enter into and upon such adjoining premises for the removal of the same without being a trespasser, avoiding any unnecessary spoil or waste in so doing.

(4) All disputes arising between parties relative to this section, and for the collection and recovery of all or any sums of money becoming due thereunder, shall be adjusted by three Fence-viewers of the municipality, the decision of any two of whom shall be binding upon the parties. R. S. O. 1887, c. 219, s. 15.

17. The forms in the Schedule hereto shall guide the parties, being varied according to circumstances. R. S. O. 1887, c. 219, s. 16.

In New Brunswick this is regulated by C. S. N. B. cap. 187, respecting Fences, Trespasses and Pounds.

Line fences are required to be four feet in height. In municipalities where horses, horned cattle, sheep, swine, goats, geese, ducks or other live poultry are prohibited from running at large by a municipal by-law, the boundary of the road constitutes a lawful fence. Barbed wire fences must have a top rail of wood not less than one inch thick and four inches wide or a circular rail not less than three inches in diameter.

Line fences dividing lands under cultivation such as pasture or other places enclosed are to be erected and kept up at the equal expense of the occupiers. No owner or occupier of any woods, barren or parts not cultivated or used as pasture land, although adjoining improved lands, is obliged to erect or repair any line fence.

Disputes between the occupiers are adjusted by the nearest fence-viewer.

When any cattle shall break or escape into any close, the owner, agistor or person having charge of such cattle is liable for any damage arising from such break or escape, but no action may be maintained if the cattle break or escape through or over any water or water fence or gate unless the same is by law or regulations of the County Council made a lawful fence or enclosure or if they broke

or escaped through or over any fence which the plaintiff was bound by agreement or otherwise to maintain or keep in repair at the point where the cattle escaped which at that point was not then of the height and character required for a lawful fence.

SCHEDULE OF FORMS.

FORM 1.

(*Section* 4.)

NOTICE TO OPPOSITE PARTY.

Take notice, that Mr. , Mr. , and Mr. , three fence-viewers of this locality, will attend on the day of , 19 , at the hour of to view and arbitrate upon the line fence in dispute between our properties, being Lots (or parts of Lots) one and two in the Concession of the Township of , in the County of .

Dated this day of , 19 .

A. B.,
Owner of Lot 1.

To C. D.,
Owner of Lot 2.

FORM 2.

(*Section* 4).

NOTICE TO FENCE-VIEWERS.

Take notice, that I require you to attend at on the day of , A.D. 19 , at o'clock a.m., to view and arbitrate on the line fence between my property and that of Mr. , being Lots (or parts of Lots) Nos. One and Two in the Concession of the Township of , in the County of

Dated this day of , 19 .

A. B.,
Owner of Lot 1.

FORM 3.

(*Section* 7.)

AWARD.

We, the fence-viewers of (name of the locality), having been nominated to view and arbitrate upon the line fence between of (name and description of owner who notified, and (name and description of owner notified), which fence is to be made and maintained between (describe properties), and having examined the premises and duly acted according to "The Line Fences Act," do award as follows: That part of the said line which commences at and ends at (describe the points) shall be fenced

and the fence maintained by the said , and that part thereof which commences at and ends at (describe the points) shall be fenced, and the fence maintained by the said . The fence shall be of the following description (state the kind of fence, height, material, etc.,) and shall cost at least per rod. The work shall be commenced within days, and completed within days from this date, and the costs shall be paid by to whom paid; if by both, in what proportion.)

Dated this day of , A.D. 19 .

(Signatures of fence-viewers.)

FORM 4.

(*Section* 14.)

AGREEMENT.

We, and , owners respectively of Lots (or parts of Lots One and Two in the Concession of the Township of , in the County of , do agree that the line fence which divides our said properties shall be made and maintained by us as follows: (follow the same form as award.)

Dated this day of , A.D. 19 .

(Signatures of parties.)

MANITOBA.

By the R. S. M. 1902, cap. 13, An Act respecting Boundary Lines and Line Fences, it is provided that in case the owner of land requires to have any boundary line surveyed, he shall give notice thereof in writing to all parties interested, and in one month thereafter may employ a duly qualified surveyor, who shall survey the said line, and each party interested shall pay his proportionate share of the expenses of the survey.

No line fence shall be removed without the consent of all parties interested, and whenever any owner of land erects a line fence, the owner of the adjoining land shall, as soon as he encloses land adjacent or along the line fence, pay to the person who erected the line fence, or to his assignee, a fair compensation for one-half the line fence; such compensation may be determined by arbitration if not otherwise agreed on.

Each of the parties occupying adjoining tracts of land shall make, keep up, and repair, a just proportion of the division or line fence on the line dividing such tracts, and equally on either side thereof.

The owner of the whole or part of a division or line fence which forms part of a fence enclosing the occupied or improved land of another person, shall not take down or remove any part of such fence without giving at least twelve months' notice of his intention so to do to the owner or occupier of such adjoining enclosure, nor unless the latter, after demand in writing, refuses to pay therefor such sum as three fence viewers, or a majority of them, in writing, determine to be a reasonable value therefor. All disputes relating to line fences are determined by three fence viewers, or a majority of them, who make their award in writing. This award is transmitted to the clerk of the County Court of the Judicial District where the land is situate. If any party neglects or refuses to appoint a fence viewer to act for him, the latter may be appointed by a justice of the peace, who is, for such appointment, entitled to a fee of one dollar. Fence viewers are entitled to a fee of two dollars per day each, for not more than two days, and one dollar for transmitting their award.

NOVA SCOTIA.

By R. S. N. S. 1900, cap. 93, an Act respecting Fences and impounding of Cattle, it is provided that adjacent owners or proprietors shall jointly build and maintain proper and efficient fences between their properties, and that if any proprietor neglects or refuses to build or maintain his proportion of such fencing, any fence-viewer may cause such deficient fence to be built or repaired, after notice in writing to the proprietor in default. In the event of continued refusal or neglect, the proprietor must pay double the expense of building or repairing such fence, with costs, payable to and recoverable by the fence-viewer as a private debt. Fence-viewers' fees are fixed at 60 cents per day. The sufficiency of a line fence may, after three days notice in writing to the proprietors of the adjacent lands, be enquired into by two Justices of the Peace, who must make a formal report in writing to the clerk of the municipality. An appeal lies to the County Court Judge for the district, whose decision is final. Damage resulting from animals breaking into and destroying property surrounded by a sufficient fence must be paid by the proprietor of the animals. Penalties are also prescribed for owners of straying or trespassing cattle.

SASKATCHEWAN AND ALBERTA.

By the Fence Ordinance of 1903, no action for damages caused by domestic animals shall be maintained nor shall they be liable to be distrained for causing damage to property unless the same is surrounded by a lawful fence as defined in the Ordinance. Crops must be at least eight feet, and stacks of hay or grain at least ten feet, from the fence, or it will not be deemed a lawful fence. The owners of adjoining properties must share the expense of the line fence between them, and any disagreement as to fencing or damages must be settled between them by arbitration according to the provisions of the Ordinance.

MARRIAGE.

Marriage is a contract by which the parties, one man and one woman, agree to a voluntary union for life to the exclusion of all others. Ecclesiastically viewed it is a sacrament, but the law only deals with it as a civil contract. It, however, requires that the contract should be entered into in certain modes prescribed by statute. Polygamous marriages, nor common law marriages in the Scotch manner by acknowledgment before witnesses followed by cohabitation are not recognized as valid in Canada. In order to constitute a valid marriage it is necessary:

1. That the parties should be of an age and mental condition enabling them to enter into a contract of marriage.

2. That the parties should know that the ceremony was a marriage ceremony and consent to the marriage.

3. That there should be no legal impediment to their intermarriage.

4. That the marriage should be solemnized in one or other of the modes recognized as lawful.

At the common law the age of capacity to marry was fourteen years for males and twelve for females; and in the case of person above these ages, but under twenty-one, evidence of the consent of parents or persons standing in place of a parent was required before the marriage could be solemnized; but the lack of such consent does not now invalidate a marriage. The parties may, however, be liable to a charge of perjury where the affidavit falsely states that such consent has been obtained. In Ontario, no license or certificate shall be issued to any party under the age of fourteen years, and the consent of the parent or guardian of any of the parties under the age of eighteen years shall be required before the license can issue. In Manitoba similar provisions are in force, except that no license shall be issued to anyone under sixteen years (Statutes 1906, cap. 41). In British Columbia the consent of parents or guardians is required where the parties are under twenty-one years, and the marriage may be solemnized before a Registrar without any religious ceremony. R. S. B. C. 1897, cap. 129.

By the Revised Statutes of New Brunswick (1903) cap. 76, sec. 9, no person shall knowingly solemnize any marriage where either party is under the age of eighteen years

without the consent of the father or guardian. In Nova Scotia such consent is required where either party is under the age of twenty-one years. R. S. N. S. 1900, cap. 111. In Prince Edward Island similar Acts have been passed. Sec. 2. Wm IV. cap. 14, as amended by cap. 7 of the Statutes of 1903.

When the consent of one of the parties is obtained by coercion, undue influence or fraud, the marriage is void. The concealment, however, by the woman that she is pregnant by another man has been held not to be such fraud as renders the contract void. The impediments to marriage are: (1) That the parties are within the prohibited degrees of consanguinity or affinity. (2) That both or either is party to a valid subsisting marriage. In the Statutes of Ontario, 1902, cap. 23, schedules "F" and "G," are set forth the degrees of affinity and consanguinity which bar marriage, the latter schedule containing a list of the marriages prohibited by God's Law referred to in 28 Hen. VIII. cap. 7, sec. 7, as modified by the Dominion Statutes, 1882, cap. 42, and 1890, cap. 36.

SCHEDULE F.

Degrees of affinity and consanguinity which under the statutes in that behalf, bar the lawful solemnization of marriage.

A man may not marry his	A woman may not marry her
1. Grandmother.	1. Grandfather.
2. Grandfather's wife.	2. Grandmother's husband.
3. Wife's grandmother.	3. Husband's grandfather.
4. Aunt.	4. Uncle.
5. Uncle's wife.	5. Aunt's husband.*
6. Wife's aunt.	6. Husband's uncle.
7. Mother.	7. Father.
8. Step mother.	8. Step father.
9. Wife's mother.	9. Husband's father.
10. Daughter.	10. Son.
11. Wife's daughter.	11. Husband's son.
12. Son's wife.	12. Daughter's husband.
13. Sister.	13. Brother.
14. Granddaughter.	14. Grandson.
15. Grandson's wife.	15. Granddaughter's husband.
16. Wife's granddaughter.	16. Husband's grandson.
17. Niece.	17. Nephew.
18. Nephew's wife.	18. Niece's husband.
19. Wife's niece.*	19. Husband's nephew.
20. Brother's wife.	20. Husband's brother.

The relationships set forth in this table include all such relationships whether by the whole or half blood, and whether legitimate or illegitimate.

* By Dominion Act 53 Vict., c. 36, sect. 1, it is enacted that "All laws prohibiting marriage between a man and the daughter of his deceased wife's sister where no law relating to consanguinity is violated, are hereby repealed both as to past and future marriages."

SCHEDULE G.

And furthermore since many inconveniences have fallen as well within this Realm as others by reason of marrying within the degrees of marriage prohibited by God's law, that is to say: The son to marry the mother or step mother carnally known by his father; the brother the sister, the father his son's daughter, or his daughter's daughter, nor shall the son marry the daughter of his father procreate and born by his step mother, nor shall the son marry his aunt, being his father's or mother's sister, nor marry his uncle's wife, carnally known by his uncle, nor shall the father marry his son's wife, carnally known by his son, nor the brother marry his brother's wife carnally known by his brother; nor shall any man married and carnally knowing his wife marry his wife's daughter nor his wife's son's daughter, nor his wife's daughter's daughter . . . And further if it chance any man shall know carnally any woman that then all and singular persons being in any degree of consanguinity or affinity (as is above mentioned) to any of the parties so carnally offending, shall be deemed and adjudged to be within the cases and limits of the said prohibitions of marriage. (28 Hen. 8, c. 7, s. 7, part; and Dominion Act 45 Vict., c. 42; and see 53 Vict., c. 36 (D.))

By the British North America Act the subject matter of "marriages and divorce" is vested in the Dominon, while "the solemnization of marriage" is left to the provinces. The Dominion Parliament has the exclusive power therefore to legislate on all matters relating to the status of marriage, between what persons and under what circumstances, it shall be created and (if at all) destroyed. The solemnization of marriage, which is left to the legislatures of the different provinces, deals with the procedure whereby the status of marriage is created or evidenced and is largely concerned with matters relating to banns and licenses.

Marriage Acts have been enacted in the various provinces of the Dominion, and we subjoin extracts from the Ontario Act, to which the Acts of the other provinces previously referred to are in large part similar.

With regard to legislation and divorce, it may be noted that the pre-Confederation statutes remain unaffected by the British North America Act, and Divorce Courts in virtue thereof exist in the Provinces of British Columbia, Nova Scotia, New Brunswick and Prince Edward Island, while for the other provinces the Dominion Parliament constitutes a Divorce Court, the proceedings being begun in the Senate on account of the attitude of Quebec to divorce. No divorce law has yet been enacted by the Federal Parliament.

In 1907 the Ontario Legislature made an experiment, enacting that in case a form of marriage shall be gone through between two persons, either of whom is under the

age of eighteen years, without the consent of parents or guardians, the High Court shall have jurisdiction to declare the marriage null and void provided that the parties have not cohabited and lived together as man and wife and the action is brought before the person bringing it has obtained the age of nineteen years. This legislation is now contained in section 34 of the Ontario Marriage Act, now consolidated, 1 Geo. V. cap. 32. The legislature and the Court have shewn a tendency to restrict the cases under the Act to those which come strictly within the letter of the Statute, and by an amendment in 1909 the case must be tried in the regular way and no judgment can be made by consent or admission of the parties or by default in appearing or defending the action.

The usual grounds for obtaining a divorce in the Senate are adultery coupled with cruelty or desertion on the part of the husband. Adultery in the wife, and impotence or physical disability in either spouse. A foreign divorce is valid in the Canadian Courts if the foreign Court had jurisdiction over the husband from a *bona fide* domicile or residence by the husband within the jurisdiction of the Court. A residence merely for the purpose of obtaining a divorce is not sufficient. A decree of divorce obtained where there is not a *bona fide* domicile may be good in the State or jurisdiction where it is pronounced, but is of no effect in Canada. A wife's domicile is that of her husband, and a divorce obtained by her from a foreign Court where her husband does not reside is invalid unless the husband has admitted the jurisdiction of the Court by appearing to and defending the action. Where a party who has obtained an invalid decree of divorce from a foreign Court returns to Canada and re-marries there, he is liable to be prosecuted for bigamy under Section 307 of the Criminal Code, which is as follows:—

307. Bigamy defined.—Bigamy is,—

(*a*) the act of a person who, being married, goes through a form of marriage with any other person in any part of the world; or,

(*b*) the act of a person who goes through a form of marriage in any part of the world with any person whom he or she knows to be married; or,

(*c*) the act of a person who goes through a form of marriage with more than one person simultaneously, or on the same day.

2. The fact that the parties would, if unmarried, have been incompetent to contract marriage shall be no defence upon a prosecution for bigamy.

3. No one commits bigamy by going through a form of marriage,—

(*a*) if he or she in good faith and on reasonable grounds believes his wife or her husband to be dead; or,

(*b*) if his wife or her husband has been continually absent for seven years then last past and he or she is not proved to have known that his wife or her husband was alive at any time during those seven years; or,

(*c*) if he or she has been divorced from the bond of the first marriage; or,

(*d*) if the former marriage has been declared void by a court of competent jurisdiction.

4. No person shall be liable to be convicted of bigamy in respect of having gone through a form of marriage in a place not in Canada, unless such person, being a British subject resident in Canada, leaves Canada with intent to go through such form of marriage.

5. Every form of marriage shall for the purpose of this section be valid, notwithstanding any act or default of the person charged with bigamy, if it is otherwise a valid form. 55-56 V. c. 29, s. 275.

The maximum punishment for bigamy is seven years imprisonment. If the divorced party, in the case of an invalid divorce, re-marries outside Canada, it must be shewn that such person being a British subject resident in Canada left Canada with the intention to go through such form of marriage.

The following is the Ontario Marriage Act:—

WHO MAY SOLEMNIZE MARRIAGES.

2. The following persons, being men and resident in Canada, may solemnize marriages between persons not under a legal disqualification to contract such marriage:

(*a*) The ministers and clergymen of every church and religious denomination duly ordained or appointed according to the rites and ceremonies of the church or denomination to which they respectively belong;

(*b*) Any elder, evangelist or missionary for the time being of any church or congregation of the religious people commonly called or known congregationally as "Congregations of God" or "Congregations of Christ," and individually as "Disciples of Christ," who from time to time is chosen by any such congregation for the solemnization of marriages;

(*c*) Any duly appointed commissioner or staff officer of the religious society called the Salvation Army, chosen or commissioned by the society to solemnize marriages. R. S. O. 1897, c. 162, s. 2.

(*d*) Any elder for the time being of the church or congregation of religious people commonly called or known congregationally as "Farringdon Independent Church," who, from time to time, is chosen by such church or congregation for the soemnization of marriages. 4 Edw. VII. c. 10, s. 39.

(*e*) Any recognized evangelist, teacher or elder for the time being of any congregation of Christians commonly called or known as "Brethren," who may be appointed by any such congregation for the solemnization of mar-

riages, and whose appointment has previously been filed in the office of the Provincial Secretary. 6 Edw. VII. c. 19, s. 27.

3. Every marriage duly solemnized according to the rites, usages and customs of the religious Society of Friends, commonly called Quakers, shall be valid; and all the duties imposed by this Act, or by *The Vital Statistics Act*, upon a minister or clergyman, shall, with regard to such marriage, be performed by the clerk or secretary of the society or of the meeting at which the marriage is solemnized; but nothing herein shall require the marriage to be celebrated or solemnized by such clerk or secretary. R. S. O. 1897, c. 162, s. 3.

LICENSE, CERTIFICATE OR PROCLAMATION REQUIRED.

4.—(1) No minister, clergyman or other person shall solemnize any marriage, unless duly authorized so to do by license under the hand and seal of the Lieutenant-Governor or of his deputy, or by a certificate under this Act, unless the intention of the persons to intermarry has been published as provided by subsection 2.

(2) Such intention shall be proclaimed once openly, and in an audible voice, either in the church, chapel or meeting-house in which one of the persons has been in the habit of attending worship, or in some church, chapel, meeting-house or place of public worship of the congregation or religious body with which the minister or clergyman who performs the ceremony is connected, in the local municipality, parish, circuit or pastoral charge, where one of the persons has, for the space of fifteen days immediately preceding had his or her usual place of abode; and where both the persons do not reside in the same local municipality, parish, circuit or pastoral charge, and the marriage is not authorized by license or certificate, a similar proclamation shall be made in the local municipality, parish, circuit or pastoral charge, being within Canada, where the other of the contracting parties has for the space of fifteen days immediately preceding had his or her usual place of abode; and where the proclamation last mentioned is required such marriage shall not be solemnized until there is delivered to the person proposing to solemnize it a certificate, Form 1, showing that such proclamation has been made.

(3) Every such proclamation shall be made on a Sunday, immediately before the service begins or immediately after it ends, or at some intermediate part of the service.

(4) The certificate of proclamation shall be signed by the clergyman, minister, clerk, secretary or other person who actually proclaimed the same, and shall show the official position of the person who signs it. R. S. O. 1897 c. 162, s. 4.

5.—(1) No marriage shall be solemnized under the authority of any proclamation of intention to intermarry, unless such proclamation has been made at least one week previously, nor unless the marriage takes place within three months after the Sunday upon which the proclamation was made; nor shall a marriage be solemnized under the authority of any license or certificate unless within three months after the date thereof.

(2) No clergyman, minister or other person shall solemnize a marriage between the hours of 10 o'clock after noon and 6 o'clock before noon unless he is satisfied from evidence adduced to him that the proposed marriage is legal and that exceptional circumstances exist which render its solemnization between those hours advisable.

(3) No clergyman, minister or other person shall solemnize a marriage without the presence of at least two adult witnesses, and two or more of such witnesses shall affix their names as witnesses to the record in the register prescribed by section 24.

(4) No clergyman, minister or other person who is an issuer of marriage licenses shall solemnize the marriage in any case in which he has issued the license or the certificate provided for by section 7 authorizing such marriage, but this subsection shall not apply to any of the Provisional Judicial Districts except Muskoka. R. S. O. 1897, c. 162, s. 5 (1-4).

(5) The certificate or license to marry or the certificate of proclamation, where such certificate is required, shall be left with the clergyman, minister or other person who solemnizes the marriage, and he shall forthwith after such solemnization endorse upon the certificate or license the date of the marriage and the names and descriptions of the witnesses, and thereupon forward such certificate or license to the Registrar-General. R. S. O. 1897, c. 162, s. 5 (5); 5 Edw. VII. c. 13, s. 15 (1).

6. No clergyman, minister or other person who solemnizes a marriage ceremony after banns have been published or a license or certificate has been issued under this Act in respect thereto, shall be subject to any action or liability for damages or otherwise by reason of there having been any legal impediment to the marriage, unless at the time when he performed the ceremony he was aware of the impediment. R. S. O. 1897, c. 162, s. 6.

7. A certificate, Form 2, according to the circumstances of the case, may, at the option of the applicant, be substituted and shall have the same legal effect as a license. R. S. O. 1897, c. 162, s. 7.

Issue of Licenses and Certificates.

8. Licenses and certificates shall be issued from the office of the Provincial Secretary, and shall be furnished to persons requiring the same by such persons as the Lieutenant-Governor in Council may appoint for that purpose. R. S. O. 1897, c. 162, s. 8.

9. Every license under the hand and seal of the Lieutenant-Governor or his deputy and every certificate signed by the Provincial Secretary, or Assistant Provincial Secretary, for the purpose of the solemnization of a marriage, shall be and remain valid, notwithstanding that the Lieutenant-Governor or his deputy, or the Provincial Secretary, or the Assistant Provincial Secretary, has ceased to hold office before the time of the issue of the license or certificate. R. S. O. 1897, c. 162, s. 19.

10. If any person issues any license or certificate for the solemnization of marriage without the authority of the Lieutenant-Governor in Council unless under the authority of section 11, he shall incur a penalty of $100 for every license or certificate so issued recoverable under *The Ontario Summary Convictions Act.* R. S. O. 1897, c. 162, s. 10.

Appointment of Deputy Issuers.

11.—(1) An issuer of marriage licenses or certificates may with the approval, in writing, of the Mayor or Reeve of the local municipality wherein he resides, when prevented from acting by illness or accident, or where his temporary absence is contemplated, appoint by writing under his hand a deputy to act for him.

(2) The deputy while so acting shall possess the powers and privileges, as to administering necessary oaths and otherwise, of the issuer appointing him.

(3) The issuer shall, upon appointing a deputy, forthwith transmit to the Provincial Secretary a notice of the appointment, and of the

cause thereof, and of the name and official position of the person by whom the appointment has been approved, and the Lieutenant-Governor may at any time annul the appointment.

(4) Where there is no Mayor or Reeve to give the approval required by subsection 1, the issuer may without such consent, appoint such deputy, and the licenses or certificates issued by such deputy shall be deemed to authorize the solemnization of marriages at the same places as licenses or certificates issued by the issuer, and no irregularity in the appointment of a deputy shall affect the validity of a license or certificate issued by him. R. S. O. 1897, c. 162, s. 11.

(5) The deputy shall sign each license and certificate issued by him with the name of the issuer as well as his own name in the following manner:—"*A. B.—Issuer of Marriage Licenses, per C.D., Deputy-Issuer.*" R. S. O. 1897, c. 162, s. 12, *part.*

Effect of Irregular Issue of License or Certificate.

12. No irregularity in the issue of a license or certificate where it has been obtained or acted on in good faith shall invalidate a marriage solemnized in pursuance thereof. R. S. O. 1897, c. 162, s. 12, *part.*

Unissued Licenses or Certificates.

13. Every issuer of licenses or certificates and every other person having unissued licenses or certificates in his possession, power, custody, or control, shall, whenever required so to do, transmit the same to the Provincial Secretary; and the property in all unissued licenses and certificates shall be and remain in His Majesty. R. S. O. 1897, c. 162, s. 13.

Expenses of Procuring Licenses.

14. All expenses incident to providing licenses and certificates shall be paid by the issuer thereof. R. S. O. 1897, c. 162, s. 14.

MARRIAGE OF PARTY UNDER 18 YEARS.

15.—(1) Where either of the parties to an intended marriage not a widower or a widow is under the age of eighteen years, the consent of the father, if living, or, if he be dead, of the mother, if living, or of a guardian, if any has been duly appointed, shall be required before the license is issued, or before the proclamation of the intention of the parties to intermarry is made.

(2) Where such consent is necessary, no license or certificate shall be issued without the production of the consent, and the issuer or deputy-issuer shall satisfy himself of the genuineness of the consent by satisfactory proof in addition to the affidavit required of one of the parties.

(3) In the case of a party under the age of eighteen years and not being a widower or a widow, if the father and mother are dead and there is no guardian duly appointed, the issuer or deputy-issuer, on being satisfied as to the facts, may grant the license or certificate.

(4) Where the parent whose consent is required, though living, is not a resident of Ontario, and is not in Ontario at the time of the application for a license or certificate, and the party under the age of eighteen years is and has been so resident for the next preceding twelve months, the issuer or deputy-issuer, on being satisfied by evidence of these facts, may grant the license or certificate. R. S. O. 1897, c. 162, s. 15.

16. No license or certificate shall be issued to any person under the age of fourteen years, except where a marriage is shown to be necessary to prevent the illegitimacy of offspring, and a certificate to that effect is given by a legally qualified medical practitioner known to the issuer or deputy-issuer, and except in such a case no person shall celebrate the marriage ceremony in any case in which either of the contracting parties is under the age of fourteen years, to the knowledge or information of such person. R. S. O. 1897, c. 162, s. 16. *Part.*

PENALTY FOR MARRYING IDIOT OR INSANE PERSON.

17. If any minister, clergyman or other person solemnizes a marriage knowing or having reason to believe that either of the parties to it is an idiot or insane, he shall incur a penalty of $500, and shall also, in the discretion of the Court, be liable to imprisonment for any period not exceeding twelve months. R. S. O. 1897, c. 162, s. 16, *amended.*

AFFIDAVIT FOR ISSUE OF LICENSE OR CERTIFICATE.

18.—(1) Before a license or certificate is issued, one of the parties to the intended marriage shall personally make an affidavit, Form 3, before the issuer or deputy-issuer which shall state:

(*a*) In what county or district it is intended that the marriage shall be solemnized, and in what city, town, village, or place therein; and

(*b*) That he or she believes there is no affinity, consanguinity, prior marriage, or other lawful cause or legal impediment to bar or hinder the solemnization of the marriage;

(*c*) That one of the parties has for the space of fifteen days immediately preceding the issue of the license or certificate had his or her usual place of abode within the county or district in which, for either municipal or judicial purposes, the local municipality or place in which the marriage is to be solemnized lies;

Or, if the county or district in which it is intended that the marriage shall be solemnized is not that in which either of the parties has for the space of fifteen days immediately preceding the issue of the license or certificate, had his or her usual place of abode, that the reason for having the marriage solemnized in such place is not to evade due publicity or for any other improper purpose;

(*d*) The age of the deponent, and that the other contracting party is of the full age of eighteen years, or the age of such other contracting party, if under the age of eighteen years, as the case may be;

(*e*) The condition in life of each of the parties, whether bachelor, widower, spinster or widow, and

(*f*) The facts necessary to enable the issuer or deputy-issuer to judge whether or not the required consent has been duly given in the case of any party under the age of eighteen years, or whether or not such consent is necessary. R. S. O. 1897, c. 162, s. 17.

(2) Where a party who is not a widower or a widow is under the age of eighteen years, the written consent of the person whose consent to the marriage is required shall be produced and annexed to the affidavit, and its execution shall be verified by affidavit which shall be made before the issuer or deputy-issuer. R. S. O. 1897, c. 162, s. 18.

19.—(1) Upon the back or at the foot of the printed forms of affidavits to be made by the parties shall be printed a memorandum, Form 5, showing the degrees of affinity and consanguinity which bar or hinder the solemnization of marriage between them; and no affidavit shall be acted upon by the issuer or deputy-issuer which has not such memorandum printed thereon; and upon the back or at the foot of the certificates or licenses issued shall be printed such extracts from this Act as are necessary to show what persons are authorized to solemnize marriage in Ontario, or an epitome of the provisions in reference thereto.

(2) The issuer, or deputy-issuer, before administering the oath, shall see that the applicant is aware what degrees of affinity or consanguinity are a bar to the solemnization of marriage. R. S. O. 1897, c. 162, s. 19.

(3) The degrees of affinity and consanguinity within which if persons are related they are prohibited from contracting marriage with each other, as declared in and by the Statute passed in the 28th year of His Majesty King Henry VIII., chapter 7, section 7, as modified by the Revised Statutes of Canada, 1906, chapter 105, are set forth in Schedule A.

(4) If at any time hereafter changes are made in the law affecting the degrees of relationship within which marriage may not be lawfully contracted, the Lieutenant-Governor in Council may direct such changes to be made in Form 5, so as to make it conformable to the law for the time being. 2 Edw. VII. c. 23, s. 1.

LICENSE NOT TO BE ISSUED IN CERTAIN CASES.

20.—(1) Where the person having authority to issue the license or certificate has personal knowledge that the facts are not as required by section 15, he shall not issue the license or certificate; and if he has reason to believe or suspect that the facts are not as so required, he shall, before issuing the license or certificate, require further evidence to his satisfaction in addition to the affidavit prescribed by section 17.

(2) The issuer or deputy-issuer shall keep on record the affidavits or depositions proving the facts of which he is required to be satisfied before issuing a license or certificate.

(3) Every issuer or deputy-issuer of marriage licenses shall immediately upon issuing a marriage license or certificate, fill up on a form, endorsed upon the affidavit prescribed by section 17 the particulars contained in Form 5, or such of them as he is then able to give, and shall forward the same forthwith to the Registrar-General. R. S. O. 1897, c. 162, s. 20, *part. Amended.*

21. Every issuer of marriage licenses shall, on making application to the Provincial Secretary for a new supply of licenses, certify that a complete return of every license issued by him or his deputy has been forwarded to the Registrar-General. R. S. O. 1897, c. 162, s. 20, *part;* 5 Edw. VII. c. 13, s. 15 (2).

FEES FOR LICENSE.

22. No fee shall be payable for a license or certificate, except the sum of $2, which the issuer of the license or certificate shall be entitled to retain for his own use; but the Lieutenant-Governor in Council may from time to time reduce the sum so payable. R. S. O. 1897, c. 162, s. 21.

MARRIAGE OUT OF CHURCH VALID.

23. It shall not be a valid objection to the legality of a marriage that the same was not solemnized in a consecrated church or chapel, or within any particular hours. R. S. O. 1897, c. 162, s. 22.

MARRIAGE CERTIFICATES.

24. Every clergyman, minister or other person who solemnizes a marriage, and the clerk or secretary of a society of Quakers, or of the meeting at which the marriage is solemnized, shall, at the time of the marriage, if required by either of the parties thereto, give a certificate of the marriage under his hand, specifying the names of the persons married, the time of the marriage, and the names of two or more persons who witnessed it, and specifying also whether the marriage was solemnized pursuant to license or certificate under this Act, or after proclamation of intention to intermarry; and the clergyman, minister, clerk or secretary may demand twenty-five cents for a certificate given by him from the person requiring it. R. S. O. 1897, c. 162, s. 23.

REGISTRATION OF MARRIAGES.

25. Every clergyman, minister, or other person authorized to solemnize marriage shall, immediately after he has solemnized a marriage, enter in a register, to be kept by him for the purpose, unless a similar register is kept in the church at which he officiates, in which case the entries shall be made in that book, the particulars mentioned in Form 4, and shall authenticate the same by his signature. R. S. O. 1897, c. 162, s. 24.

26.—(1) Every clergyman, minister or other person authorized to solemnize marriage, where a marriage register is not already possessed by any church or congregation over which he is placed or has charge, shall make application for a register to the clerk of the local municipality within which the church or congregation is situate, and the clerk shall thereupon supply such register at the cost of the municipality.

(2) One additional register may be supplied at the cost of the municipality to any clergyman, minister or other person authorized to solemnize marriage, and a register shall also, on application, be supplied at the like cost to any clergyman or minister in the municipality who is not in charge of a church or congregation.

(3) Every clergyman or minister in charge of a church or congregation in an unorganized township shall, upon a written application to be made by him to the Registrar-General, receive a register, to be supplied by the Registrar-General. R. S. O. 1897, c. 162, s. 25, *amended*.

(*As to returns to be made see The Vital Statistics Act, 8 Edw. VII. c. 28, s. 21.*)

27. The register, by whomsoever furnished, shall be the property of the denomination or body to which the clergyman, minister or other person to whom it is delivered belongs at the time of the delivery thereof, and where he is in charge of a particular congregation of such denomination, it shall belong to the trustees or other body in which the property of the church or meeting house used by such congregation for its ordinary services is vested. R. S. O. 1897, c. 162, s. 26.

COPIES OF ACT TO BE SUPPLIED ON REQUEST.

28. Printed copies of this Act shall be furnished in pamphlet form by the Clerks of the Peace, by mail if desired, post paid, to any person applying therefor, upon payment of ten cents for each copy, and the Clerks of the Peace may obtain from the King's Printer as many copies as they may require at the rate of fifty cents per dozen. R. S. O. 1897, c. 162, s. 27.

CERTAIN MARRIAGES VALIDATED.

29. Any marriages which, before the 1st day of April, 1889, had been solemnized in this Province by clergymen or ministers duly ordained or appointed as such according to the rites and ceremonies of the churches to which they belong, or by commissioners or staff officers of the Salvation Army, between persons not under any legal disqualification for entering into the contract of matrimony are hereby declared to have been and to be lawful and valid marriages, so far as respects the civil rights in this Province of the parties or their issue, and so far as respects all matters within the jurisdiction of the Ontario Legislature, notwithstanding that the person who solemnized any such marriage was not at the time a resident of this Province:

Provided that the parties thereafter lived together and cohabited as man and wife, and that the validity of the marriage had not, before the said date, been questioned in any suit or action; and

Provided, further, that nothing in this section shall make valid any such marriage in case either of the parties thereto has since contracted matrimony according to law; and in such a case the validity of the marriage by a non-resident shall be determined as if this section had not been passed. R. S. O. 1897, c. 162, s. 28; 62 V. (2) c. 11, s. 17.

30. Any marriages which before the 4th day of May, 1891, had been solemnized in this Province according to the rites, usages and customs of the religious society called the Society of Friends, commonly called Quakers, between persons not under any legal disqualification for entering into the contract of matrimony, are hereby declared to have been and to be lawful and valid marriages so far as respects the civil rights in this Province, of the parties, or their issue, and so far as respects all matters within the jurisdiction of the Ontario Legislature.

Provided that the parties thereafter lived together and cohabited as man and wife, and that the validity of the marriage had not been questioned in any suit or action before the tenth day of February, 1891; and

Provided, further, that nothing in this section shall make valid any such marriage in case either of the parties thereto had since such marriage, and before the 4th day of May, 1891, contracted matrimony according to law; and in such case the validity of the marriage shall be determined as if this section had not been passed. R. S. O. 1897, c. 162, s. 29.

31. Every marriage solemnized in this Province before the 26th day of April, 1904, according to the rites, usages and customs of the "Farringdon Independent Church," by an elder thereof, is hereby declared to have been and to be lawful and valid, so far as respects the civil rights in this Province of the parties and their issue, and so far as respects all matters within the jurisdiction of the Ontario Legislature:

Provided that the parties thereafter lived together and cohabited as man and wife, and that the validity of the marriage had not theretofore been questioned in any suit or action; and

Provided, further, that nothing in this section shall make valid any such marriage in case either of the parties thereto had since such marriage and before that date contracted matrimony according to law, and in such case the validity of the marriage shall be determined as if this section had not been passed. 4 Edw. VII. c. 10, s. 40.

32. Any marriages which, prior to the 1st of January, 1890, were solemnized according to the law of the Province of Manitoba in that portion of the Province of Ontario lying west of the meridian of the

confluence of the Ohio and Mississippi Rivers, between persons not under a legal disqualification to contract such marriage, are hereby declared to have been and to be lawful and valid marriages so far as respects the civil rights in this Province of the parties or their issue, and so far as respects all matters within the jurisdiction of the Ontario Legislature.

Provided that the parties thereafter lived together and cohabited as man and wife, and that the validity of the marriage had not theretofore been questioned in any suit or action; and

Provided, further, that nothing in this section shall make valid any such marriage in case either of the parties thereto had since such marriage contracted matrimony according to law, and in such case the validity of the marriage shall be determined as if this section had not been enacted.

Provided, further, that nothing in this section shall validate any marriage or alleged marriage which may have been contracted by one James Gordon Bennett, who died in the City of Winnipeg, in the Province of Manitoba, in the year 1904. 8 Edw. VII. c. 33, s. 40.

33. Every marriage heretofore or hereafter solemnized between persons not under a legal disqualification to contract such marriage shall, after three years from the time of the solemnization thereof, or upon the death of either of the parties before the expiry of such time, be deemed a valid marriage so far as respects the civil rights in this Province of the parties or their issue, and in respect of all matters within the jurisdiction of the Legislature of Ontario, notwithstanding that the clergyman, minister or other person who solemnized the marriage was not duly authorized to solemnize marriage, and notwithstanding any irregularity or insufficiency in the proclamation of intention to intermarry or in the issue of the license or certificate, or notwithstanding the entire absence of both.

Provided that the parties, after such solemnization, lived together and cohabited as man and wife, and that the validity of the marriage was not before such death or before the expiry of such three years questioned in any suit or action; and

Provided, further, that nothing in this section shall make valid any such marriage in case either of the parties thereto has before the death of the other and before the expiration of such three years contracted matrimony according to law, and in such case the validity of the marriage shall be determined as if this section had not been passed. R. S. O. 1897, c. 162, s. 30.

HIGH COURT MAY DECLARE CERTAIN MARRIAGES INVALID.

34.—(1) Where a form of marriage has been or is gone through between persons either of whom is under the age of 18 years without the consent required by section 15, in the case of a license, or where, without a similar consent in fact, such form of marriage has been or is gone through between such persons after a proclamation of their intention to intermarry, the High Court, notwithstanding that a license or certificate was granted or that such proclamation was made and that the ceremony was performed by a person authorized by law to solemnize marriage, shall have jurisdiction and power in an action brought by either party who was at the time of the ceremony under the age of 18 years, to declare and adjudge that a valid marriage was not effected or entered into.

Provided that such persons have not after the ceremony cohabited and lived together as man and wife, and that the action is brought before the person bringing it has attained the age of 19 years.

(2) Nothing in this section shall affect the excepted cases mentioned in section 16 or apply where after the ceremony there has

occurred that which if a valid marriage had taken place would have been a consummation thereof.

(3) The High Court shall not be bound to grant relief in the cases provided for by this section where carnal intercourse has taken place between the parties before the ceremony. 7 Edw. VII., c. 23, s. 8.

35.—(1) No declaration or adjudication that a valid marriage was not effected or entered into shall in any case be made or pronounced upon consent of parties, admissions, or in default of appearance or of pleading or otherwise than after a trial.

(2) At every such trial the evidence shall be taken *viva voce* in open court, but nothing in this subsection shall prevent the use of the depositions of witnesses residing out of Ontario or of witnesses examined *de bene esse*, where, according to the practice of the Court, such depositions may be read in evidence.

(3) The Court may, of its own motion, require both or either of the parties to be examined before the Court touching the matters in question in the action.

(4) No trial shall be had until after ten days' notice to the Attorney-General for Ontario.

(5) The Attorney-General may intervene at the trial or at any stage of the proceedings and may adduce evidence, examine and cross-examine witnesses in like manner as a party defendant, and shall have the same right of appeal from any such declaration or adjudication as a party defendant has. 9 Edw. VII., c. 62.

REPEAL.

36. The following Acts and parts of Acts are repealed: Chapter 162 of the Revised Statutes of 1897; section 17 of Chapter 11 of the Acts passed in the 2nd Session of the 62nd year of the reign of Her late Majesty Queen Victoria; Chapter 23 of the Acts passed in the 2nd year, sections 39 and 40 of Chapter 10 of the Acts passed in the 4th year, section 15 of Chapter 13 of the Acts passed in the 5th year, section 27 of Chapter 19 of the Acts passed in the 6th year, section 8 of Chapter 23 of the Acts passed in the 7th year, section 40 of Chapter 33 of the Acts passed in the 8th year, and Chapter 62 of the Acts passed in the 9th year of the reign of His late Majesty King Edward VII.

37. This Act shall come into force on the 1st day of September, 1911.

MASTER AND SERVANT.

In law the terms "Master" and "Servant" have a wider definition than is given them in their popular signification, and are more nearly construed by the terms "Employer" and "Employed." Contracts of this nature (as, indeed, all other contracts) are best put in writing. If this rule were generally observed, much expensive and vexatious litigation would be avoided. Contracts for service not to be performed within a year must by law be committed to writing, and must be signed by the party to be held liable thereon or his agent duly authorized. If this is not done the contract is invalid and cannot be enforced. Where writing is employed, care should be taken that the full terms and stipulations agreed upon be embraced in the document, and both parties should sign it, before a witness if possible.

A general verbal hiring, without stipulations as to the periods of payment, etc., will be construed by law, and in the absence of facts leading to a contrary conclusion, to be a hiring for a year. But if there be stipulations as to the periods of payment, as, for instance, the payment of wages by the week or month, these circumstances may determine the hiring to be a weekly or monthly hiring, and then the law applicable to a weekly or monthly hiring will apply. General custom will also regulate the determination of this point.

With regard to menial or domestic servants, a well established custom prevails: the master may terminate the contract at any time by giving a month's notice, or by payment of a month's wages, and the servant, on his part, by a similar notice, or forfeiture of a month's wages. But a governess and tutors are not domestic servants, and this rule will not apply to them. Their engagements, in the absence of express stipulation, will be presumed to be yearly engagements, terminable on three months' notice, or payment of three months', or one quarter's salary. The quarter's notice may terminate the engagement at any time, not necessarily the end of a current year.

Employees are sometimes paid by a stated proportion or percentage, of the profits of the employer's business being given them, either in lieu of, or in addition to, wages or salary. Such agreements should invariably be in writing and carefully prepared, in order that the contract may not be construed as one of partnership, with all its incidents, such as the employee's right of demanding an account of the

business, etc., and, on the other hand, his responsibility for its debts.

In the absence of an express contract between the parties, an agreement of hiring may be presumed from the mere fact of the service, unless the service has been with near relations. For example, if a man serves another in the capacity of a book-keeper or farm servant or groom, for a continued period, the law presumes that the service has been rendered in fulfilment of a contract of hiring or service, and if nothing has been said about wages, the law presumes that the parties agreed for such wages as are customary or reasonable in that class of employment. But where the service has been with a parent, or near relation, of the party serving, a hiring is not presumed by the law, but must be expressly proved to support a claim for wages; for such services are often rendered as acts of charity or kindness, and are not presumed to be paid for unless a special agreement has been made.

A groom or coachman, occupying rooms over a coach house, or stable, or a lodge-keeper or farm servant occupying a separate house upon his master's premises, does not thereby become a tenant, requiring due notice to quit before being legally required to give up the premises occupied. The question of whether such person becomes a tenant as well as a servant is sometimes one difficult to determine, but if there is no lease given, or rent paid by the servant (even though the benefit of the occupation of such premises be taken into account in fixing the amount of wages), and if the occupation be for the more convenient rendering of the services required of the employed, there can be, generally speaking, no tenancy implied. The occupation of the servant is that of his master.

The servant must enter upon his duties at the time agreed; and must serve during the period specified, or until the contract is legally put an end to, as by notice, etc. He must obey all lawful commands, and perform all such services as are usually required of one in his class of employment, or such as he has specially agreed to perform; but cannot be required to go beyond this, or serve in a capacity not originally contemplated. He must be faithful, obedient and honest in his employment. His failure in these respects may subject him to dismissal or an action for breach of contract on the part of his master. If the service in which he is employed is one requiring a certain amount of skill, the fact of his entering voluntarily upon the employment is taken as an implied guaranty on his part that he is possessed of such necessary skill, and his want of it is a breach of the

contract. While not generally liable for mere accidents or unintentional acts resulting in loss to the master or destruction of the master's property, he is yet responsible for negligence causing loss, more especially if repeated.

Wilful disobedience, habitual neglect of just and reasonable orders, repeated absence without leave, or refusal to perform work, on the part of the servant, justifies the master in dismissing him without the usual notice.

The servant is also responsible to his master in damages for any fraud or wrongful act which renders the master liable in damages to a third person.

The master must receive the servant into his service, so as to permit him to earn his wages, unless, indeed, he have such grounds for refusing as would justify him in immediately dismissing the servant if received.

Having received him, the master must retain and employ him during the term stipulated, or until the contract is legally dissolved in the performance of the duties contemplated in the agreement of hiring, and pay him his lawful wages or compensation. He cannot require the performance of unusual services, or such as subject the servant to danger of life or limb, where such is not specifically agreed to by the servant. The implements, tools, machinery or engines which he supplies for his servants or workmen in their employment must be in proper condition and reasonably safe to protect the workmen against unnecessary hazards. And should such be in an unsafe condition, the servant is justified in refusing to work with them. If the servant, however, with full knowledge of the defect of the implement or machine, chooses voluntarily to work with it, the master will not be responsible for injuries occasioned the servant through such defects.

A servant or workman has a right to expect that his fellow workmen employed by his master to assist him in any work are reasonably competent for employment in such work, and should they be not so, and it be proved that the master was negligent in their selection, and in fact had no grounds for believing them competent, he would be liable for injuries arising through their ignorance or unskilfulness. But otherwise a master may be said to be not liable for injuries sustained by the latter through the negligence of a fellow servant; but he will be responsible for any accident which occurs to a servant through the master's own personal negligence.

A servant who is aware of the risks incident to his employment, impliedly accepts them, and cannot hold his master

liable for damages he may suffer in the ordinary course of that employment.

Should the servant, in obedience to his master's order, do any act apparently lawful, or not to the servant's knowledge unlawful, but thereby incur any civil responsibility to damages to another person, he is entitled to call upon his master to protect and indemnify him from any loss sustained. But if the servant, in obedience to an order, knowingly performs a criminal act, he cannot seek such indemnity.

In regard to domestic servants, it is impliedly in their contract of hiring that they shall be supplied with proper food, shelter, bedding and other necessaries. The master is not, however, compelled to pay for medicines or medical attendance. Where the servant falls ill or is temporarily incapacitated for work by hurt or accident in his master's service, no deduction of wages for the time lost should be made.

A master is not justified in inflicting corporal punishment upon a servant of full age. Any attempt to do so renders him liable for an assault. Moderate punishment may be resorted to in case of a child who is a servant or apprentice, for sufficient cause, as continued and wilful disobedience.

In the absence of stipulation, the servant is entitled to such wages as are fair, or usual for the class of work performed or services rendered, or such as a jury will award.

Where a servant is discharged by his master for good and sufficient cause, he cannot claim wages already earned by him previous to such discharge, though not yet payable according to the terms of the contract of hiring.

The death of either servant or master concludes the contract, and in the absence of custom or statute, wages for the broken period between the last regular day of payment and the death cannot be recovered.

The right of discharge is based upon the assumed breach of the contract by the servant himself. It implies the right of the master to dismiss the servant immediately, without waiting for the expiration of the stipulated term of service and without giving the ordinary length of notice.

A discharged servant who refuses to leave the premises is a trespasser who may be put off by force.

In the absence of special agreement or custom in the trade or occupation the servant is not entitled to legal holidays.

A master is not bound to provide medical attendance for a servant in case of illness or accident.

The parent of a minor is not entitled to be paid the minor's wages.

The law relating to Apprentices is separately dealt with in a former chapter.

Strikes and Boycotting are treated hereafter in a separate chapter.

ONTARIO.

By the provisions of 10 Ed. VII. cap. 73, no voluntary contract of service is to be binding on any of the parties for a longer term than nine years from the date of the contract.

Verbal agreements of service shall not exceed one year in duration, but all agreements for service shall be binding on the parties thereto for the due fulfilment thereof. Disputes with respect to the terms of the agreement, or anything pertaining thereto, misusage of a servant, non-payment of wages, etc., are determined before a Justice of the Peace. Any agreement or bargain, verbal or written, express or implied, made between any person, and any other person not a resident of Canada, with reference to the employment of such other person within the Province, and made previous to the migration or coming into Canada of the person to be employed, shall be, as against such person, void and of no effect. But this does not apply to the employment of skilled foreign workmen upon new industries, or at any industry where skilled workmen cannot otherwise be obtained; nor to teachers, professional actors, artists, lecturers or singers. Special classes of workmen are also, in this Province, affected by the provisions of "The Railway Accidents Act," R. S. O. 1897, c. 266; "The Ontario Factories Act," R. S. O. 1897, cap. 256; "The Workmen's Compensation for Injuries Act," R. S. O. 1897, cap. 160, the first named of which requires certain safeguards to be taken by Railway Companies in the interests of their employees, the second named secures valuable rights to employees in factories; and the third determines certain rights of employees against their employers for injuries sustained by reason of defective machinery and appliances, or the co-employment of incompetent overseers or workmen. An extended notice of these statutes is not in this place necessary, inasmuch as reference to the very words and terms of the Act is indispensable to all affected by them.

By 10 Ed. VII. cap. 72, upon any assignment for the general benefit of creditors, or upon winding up of joint stock companies, the wages or salary of employees who were such

at the date of the assignment or winding up order, or within one month prior thereto, not exceeding three months' wages or salary, shall rank upon the assets in priority to the claims of ordinary or general creditors. For the residue, if any, of their claims, such persons may rank as ordinary or general creditors. Employees of execution debtors are similarly protected. The Act applies to wages or salary, whether the employment in respect to which the same is payable be by the day, by the week, by the job or piece, or otherwise.

Application may be made to any Justice of the Peace to enforce the above law.

Such Justice may also summon any master or employer, against whom complaint is made by a servant or labourer for non-payment of wages, to appear before such Justice, and may examine into the complaint, and may discharge the servant or labourer from the service or employment of such master, and may direct the payment to him of any wages found to be due, not exceeding forty dollars, to be levied with costs against the master, if not paid in eight days.

NEW BRUNSWICK.

C. S. N. B. cap. 149 respecting the securing of wages to wage-earners is practically identical in terms with R. S. O. 1897, cap. 156. There are no statutory provisions as to terms of service. The Workmen's Compensation for Injuries Act, C. S. N. B. cap. 146, as it has been amended, does away with the Common Law rule that one servant may not sue his master for injuries caused by the negligence of a fellow servant.

NOVA SCOTIA.

The general principles set forth above respecting the relations of master and servant are in force in Nova Scotia. Special classes of workmen are also affected by the provisions of "The Nova Scotia Factories Act" (Acts 1901 cap. 1), "The Employers' Liability Act" (R. S. N. S. 1900 cap. 179). "The Fatal Injuries Act" (R. S. N. S. cap. 178), "The Workmen's Compensation Act (Acts 1910, cap. 3), each of which is similar to the Ontario statute on the same subject.

By R. S. N. S. cap. 145, upon an assignment for the benefit of creditors, the assignee is required to pay in priority to the claims of the ordinary or general creditors all arrears of wages or salaries of all employees of the

insolvent not exceeding three months' wages or salary; employees are entitled to rank as ordinary creditors for any balance of their claims.

MANITOBA.

Contracts of hire for personal service for a period longer than a year must be in writing and signed by the party charged therewith, and no voluntary contract of service is binding on either party for a longer term than nine years from its date.

Any hired clerk, journeyman, apprentice or servant, or labourer, who is guilty of ill-behaviour, drunkenness, refractory conduct, or idleness, or of deserting service or duties, or absenting himself without leave of his employer, or refusing or neglecting to perform his duties, or to obey the lawful commands of his master or mistress, or who is guilty of dissipating the property of his master or mistress, or of any unlawful act injuriously affecting their interests, shall be liable, upon conviction before a Justice of the Peace, to a penalty not exceeding twenty dollars and costs.

The same penalty may be inflicted on any domestic servant, journeyman or labourer, who deserts or abandons his service or job, or who neglects or refuses to perform the job or work for which he or she was engaged, before the time agreed upon, or before the completion of the agreement. Persons knowingly harbouring or concealing a servant or apprentice who has abandoned the service of his master or mistress, or instigating any servant or apprentice to abandon such, are liable to the same penalty.

Suits for wages up to $100 may be brought before any Justice of the Peace or police magistrate in the municipality or (County Court) judicial division in which the person complained against resides.

18. For the purpose of determining the amount which the justice or justices or magistrate may think just and reasonable under the circumstances of the case, he or they may take into consideration any damages or loss alleged to have been occasioned to the employer 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 has arisen, or by reason of any breach committed by the servant or workman of the contract of service between them, and shall state in his finding of fact of having considered such damages and to what extent the same were allowed; but such justice or

justices or magistrate shall have no jurisdiction to award any balance or sum in favour of the employer.

An appeal to a County Court Judge may be taken against any decision of a justice of the peace or police magistrate, except in any case where the amount for which such judgment is rendered or order made does not exceed the sum of twenty-five dollars, and where witnesses have been heard and the judgment has been rendered or order made by any police magistrate having jurisdiction in the territorial division in which the judgment or order may have been rendered or made. An appeal may also be taken in any case where the magistrate has taken into consideration the question of damages occasioned by reason of any wilful or malicious act or negligence of the servant or workman as aforesaid.

Every builder or contractor, whether chief contractor or sub-contractor, employing workmen by time or by piece-work to carry out his contract, is required to keep a pay list drawn up in the form of a schedule "A" (see page 288), showing the names and wages or price of the work of such workmen; and every payment made to them shall be attested by the signature or cross of each of such workmen, made in presence of a witness who shall also sign the pay-list; and any proprietor may require the production of such pay-list before the payment of any amount claimed to be due on such work.

It is the duty of the proprietor for whom the work is being done, from time to time, to see that the workmen who appear by the pay-list to be unpaid, are paid what is owing them by the builder or contractor; and until the workmen are paid in full the proprietor is, to the amount of the contract price, equally liable with the builder or contractor to the workmen directly for such amounts owing, and may be sued as the contractor could be.

The builder or contractor may register a copy of the contract verified by affidavit in any registry or land titles office, when he shall have a lien on the property for the amount of the contract price or any unpaid portion thereof in priority over any subsequent transferee or incumbrancee.

Where suit is brought, several workmen may join in one action, and where the money recovered is less than the full amount of their claims, it must be divided rateably among them. Workmen furnishing labour or materials have a right to inspect the premises they are working on, to enable them to compute their claims, and their witnesses have a

similar right. If the contract is not completed, they are allowed what it is worth. Where the proprietor or contractor makes an assignment for the general benefit of creditors, the overdue wages or salary of all persons employed within one month prior to the assignment, not exceeding three months' wages or salary, is paid as a preferential claim. Such employees are also entitled, on sale of the property of a debtor under execution, to be paid by the sheriff their overdue wages or salary, not exceeding three months' wages or salary, in priority to the claims of other creditors, upon delivering to the sheriff or bailiff a claim under oath, as in Schedule "B."

SCHEDULE "A."

(R. S. M. 1902, cap. 14.)

Pay-list of the workmen employed by A. B. (name of the contractor) upon the works being contracted for by C. D. (name of the proprietor).

Name of Workman.	No. of Days.	Wages per Day.	Nature of Job.	Price of Job.	Total Amount due.	Receipt Signature of Workman.	Signature of Witness

SCHEDULE "B."

(R. S. M. 1902, c. 58, s. 9.)

A. B. - - Claimant

v.

C. D. - - Defendant.

I, A. B., of in the County of , make oath and say:

1. I am the above named claimant.

2. The above named defendant is justly and truly indebted to me in the sum of dollars for (here state shortly the nature and particulars of the claim).

Sworn, etc. A. B.

SASKATCHEWAN AND ALBERTA.

Contracts of hire of personal service for any period longer than one year must be in writing and signed by the contracting parties. The law in force contains provisions similar to those of Manitoba in relation to the misconduct of servants and their remedies for non-payment of wages, but in Saskatchewan in case the master sets up

a set-off or counterclaim under oath the proceedings must be taken out of the hands of the justice of the peace and sent to the Supreme Court for trial. In Alberta the justice may allow such set-off or counterclaim to the extent of the wages found due.

PRINCE EDWARD ISLAND.

By chapter 26 of the Act Wm. IV., it was enacted that all contracts that shall be entered into relative to the hire of servants, if for the term of one month or for any longer period, shall be made in writing and signed by the parties thereto; or shall be made verbally in presence of one or more credible witnesses.

Servants engaging for one calendar month or more may be punished for misconduct, absence from duty, etc., upon complaint before two justices, by confinement in gaol for any term not exceeding one calendar month. Similarly, masters convicted before two justices of ill-treating servants may be punished by fine.

Any person knowingly hiring the servant of another, or hiring any servant without a written discharge from his or her last master or mistress being produced (if such master or mistress is resident in the Island), may be fined £5, and any master refusing a discharge to a servant justly demanding the same may be fined a similar sum.

MECHANICS' LIENS.

A mechanics' lien is the right which any mechanic, machinist, builder, miner, labourer, contractor or other person, doing work upon any building, erection or mine, or furnishing materials to be used in its construction, alteration or repair, or erecting, furnishing or placing machinery of any kind in, upon, or in connection with it, has to claim an interest in what his labour and materials have contributed to make valuable, as though he were a part owner; his right being limited to the just price of such work, materials or machinery.

The lien does not exist save where established by special statutes, but such have been enacted in at least five of the Provinces of the Dominion.

This lien is practically a mortgage in favour of the mechanic, or person furnishing labour or materials upon the building or erection, and the lands upon which it stands, or on the mine. The statutes generally declare a lien-holder a purchaser to the amount of the claim; and his interest in the building or erection may be insured by him against destruction by fire; but if the building be destroyed or blown down before the lien is filed, it cannot then be filed.

The Acts upon this subject in the Provinces of Ontario, Nova Scotia, Prince Edward Island, Manitoba and British Columbia are so nearly identical in all their features that it is considered unnecessary in a work of this nature to give each in detail.

The exact statute law of Ontario, with all amendments to date, is given below. The Nova Scotia statute, the short title of which (sec. 1) is "The Mechanics' Lien Act," is cap. 171 of the Revised Statutes of that Province, and may be said to be identical with the Ontario Acts with regard to the rights of the parties, as well as the procedure and forms to be followed. The essential differences from the Ontario Act are given in the notes to the Ontario statute below.

By cap. 31 of Acts N. S. 1905, workmen to whom wages are due for work or labour performed at a mine or in connection with mining operations have a lien upon the property and mining leases or licenses to the extent of two months' wages. Their lien has priority over all other liens, mortgages or charges whether prior or subsequent to the performing of such work. The lien must be registered both in the office of the Commissioner of Mines at

Halifax and in the Registry Office for the district in which the mine is situated. Proceedings to enforce the lien may be taken at any time within six months from the registration of the lien.

The same may be said of the law governing the subject in Prince Edward Island, the statute being the 42 Vict. cap. 8, amended by the 45 Vict. cap. 11; and of the law in force in Manitoba, which is cap. 110 of the R. S. M. 1902, as amended by chapter 28 of the statutes of 1908. The statutory requirements must be strictly complied with.

The law on this subject is very nearly the same in Saskatchewan and Alberta.

In New Brunswick C. S. N. B. cap. 147, The Mechanics' Lien Act, is practically the same as the Ontario statute. A lien must be filed within 30 days from the last day of performing labour or supplying materials. A wage earner is entitled to enforce a lien in respect of an unfinished building to the same extent as if it were completed. Proceedings under the Act require the services of a lawyer.

C. S. N. B. cap. 148, The Woodmen's Lien Act, gives to any person who has performed any labour or services in connection with any logs or timber intended to be stream driven, a lien which must be filed within 30 days in respect to work done in the woods and within 20 days in respect to work done in stream driving or otherwise than in the woods. "Labour or services" includes cutting, skidding, felling, hauling, scaling, barking, rafting or booming any logs or timber and any work done by cooks, blacksmiths, artisans or others, used or employed in connection therewith.

Like the Mechanics' Lien Act, the services of a lawyer are necessary to insure the correctness of the proceedings.

ONTARIO.

10 Ed. VII., cap. 69.

His 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 Mechanics and Wage-Earners Lien Act.*" R. S. O. 1897, c. 153, s. 1.

2. In this Act,

(*a*) "Contractor" shall mean a person contracting with or employed directly by the owner or his agent for the doing of work or service or placing or furnishing materials for any of the purposes mentioned in this Act;

(*b*) "Material" or "materials" shall include every kind of movable property;

(*c*) "Owner" shall extend to any person, body corporate or politic, including a municipal corporation and a railway company, having any estate or interest in the land upon or in respect of which the work or service is done, or materials are placed or furnished, at whose request and

(i) Upon whose credit or

(ii) On whose behalf or

(iii) With whose privity and consent or

(iv) For whose direct benefit

work or service is performed or materials are placed or furnished, and all persons claiming under him or them whose rights are acquired after the work or service in respect of which the lien is claimed is commenced or the materials furnished have been commenced to be furnished;

(*d*) "Registrar" shall include Master of Titles and Local Master of Titles;

(*e*) "Registry Office" shall include Land Titles Office;

(*f*) "Sub-contractor" shall mean a person not contracting with or employed directly by the owner or his agent for the purposes aforesaid, but contracting with or employed by a contractor, or under him by another sub-contractor;

(*g*) "Wages" shall mean money earned by a mechanic or labourer for work done, whether by the day or other time or as piece work. R. S. O. 1897, c. 153, s. 2.

3. Nothing in this Act shall extend to any public street or highway, or to any work or improvement done or caused to be done by a municipal corporation thereon. R. S. O. 1897, c. 153, s. 7 (1); 1 Edw. VII. c. 12, s. 30.

4.—(1) Every agreement, verbal or written, express or implied, on the part of any workman, servant, labourer, mechanic, or other person employed in any kind of manual labour intended to be dealt with in this Act, that this Act shall not apply, or that the remedies provided by it shall not be available for the benefit of such person, shall be null and void.

(2) This section shall not apply to a manager, officer or foreman or to any other person whose wages are more than $5 a day. R. S. O. 1897, c. 153, s. 3.

NATURE AND EXTENT OF LIEN.

5. No agreement shall deprive any person otherwise entitled to a lien under this Act, who is not a party to the agreement, of the benefit of the lien, but it shall attach, notwithstanding such agreement. R. S. O. 1897, c. 153, s. 6.

6. Unless he signs an express agreement to the contrary, and in that case subject to the provisions of section 4, and person who performs any work or service upon or in respect of, or places or furnishes any materials to be used in the making, constructing, erecting, fitting, altering, improving or repairing of any erection, building, railway, land, wharf, pier, bulkhead, bridge, trestlework, vault, mine, well, excavation, fence, sidewalk, paving, fountain, fish-pond, drain, sewer, aqueduct, roadbed, way, fruit or ornamental

trees, or the appurtenances to any of them, for any owner, contractor or sub-contractor, shall by virtue thereof have a lien for the price of such work, service or materials upon the erection, building, railway, land, wharf, pier, bulkhead, bridge, trestlework, vault, mine, well, excavation, fence, sidewalk, paving, fountain, fishpond, drain, sewer, aqueduct, roadbed, way, fruit and ornamental trees, and appurtenances, and the land occupied thereby or enjoyed therewith, or upon or in respect of which such work or service is performed, or upon which such materials are placed or furnished to be used, limited, however, in amount to the sum justly due to the person entitled to the lien and to the sum justly owing, except as herein provided, by the owner. R. S. O. 1897, c. 153, s. 4.

7. Where work or service is done or materials are furnished upon or in respect of the land of a married woman with the privity and consent of her husband he shall be conclusively presumed to be acting as well for himself so as to bind his own interest, and also as her agent for the purposes of this Act, unless before doing such work or service or furnishing such materials the person doing or furnishing the same shall have had actual notice to the contrary. R. S. O. 1897, c. 153, s. 5.

8.—(1) The lien shall attach upon the estate or interest of the owner in the property mentioned in section 6.

(2) Where the estate or interest upon which the lien attaches is leasehold the fee simple may also, with the consent of the owner thereof, be subject to the lien, provided that such consent is testified by the signature of the owner upon the claim of lien at the time of the registering thereof, verified by affidavit.

(3) Where the land upon or in respect of which any work or service is performed, or materials are placed or furnished to be used, is incumbered by a prior mortgage or other charge, and the selling value of the land is increased by the work or service, or by the furnishing or placing of the materials, the lien shall attach upon such increased value in priority to the mortgage or other charge. R. S. O. 1897, c. 153, s. 7 (2-3).

9. Where any of the property upon which a lien attaches is wholly or partly destroyed by fire, any money received by reason of any insurance thereon by an owner or prior mortgagee or chargee shall take the place of the property so destroyed, and shall be subject to the claims of all persons for liens to the same extent as if such money was realized by a sale of such property in an action to enforce the lien. R. S. O. 1897, c. 153, s. 8.

10. Save as herein otherwise provided the lien shall not attach so as to make the owner liable for a greater sum than the sum payable by the owner to the contractor. R. S. O. 1897, c. 153, s. 9.

11. Save as herein otherwise provided where the lien is claimed by any person other than the contractor, the amount which may be claimed in respect thereof shall be limited to the amount owing to the contractor or sub-contractor or other person for whom the work or service has been done or the materials placed or furnished. R. S. O. 1897, c. 153, s. 10.

12.—(1) In all cases the person primarily liable upon any contract under or by virtue of which a lien may arise shall, as the work is done or materials are furnished under the contract, deduct from any payments to be made by him in respect of the contract, and retain for a period of thirty days after the completion or abandonment of the contract twenty per cent. of the value of the work, service and materials actually done, placed or furnished as mentioned in section 6, and such value shall be calculated on the basis

of the contract price, or if there is no specific contract price then on the basis of the actual value of the work, service or materials.

(2) Where the contract price or actual value exceeds $15,000 the amount to be retained shall be fifteen per cent. instead of twenty per cent.

(3) The lien shall be a charge upon the amount directed to be retained by this section in favour of sub-contractors whose liens are derived under persons to whom such moneys so required to be retained are respectively payable.

(4) All payments up to eighty per cent., or eighty-five per cent. where the contract price or actual value exceeds $15,000, of such price or value made in good faith by an owner to a contractor, or by a contractor to a sub-contractor, or by one sub-contractor to another sub-contractor before notice in writing of such lien given by the person claiming the lien to him, shall operate as a discharge *pro tanto* of the lien.

(5) Payment of the percentage required to be retained under sub-sections 1 and 2 may be validly made so as to discharge all liens or charges in respect thereof after the expiration of the period of thirty days mentioned in subsection 1 unless in the meantime proceedings have been commenced to enforce any lien or charge against such percentage as provided by sections 23 and 24. R. S. O. 1897, c. 153, s. 11.

13. If an owner, contractor or sub-contractor makes a payment to any person entitled to a lien under section 6 for or on account of any debt justly due to him for work or service done or for materials placed or furnished to be used as therein mentioned, for which he is not primarily liable, and within three days afterwards gives, by letter or otherwise, written notice of such payment to the person primarily liable, or his agent, such payment shall be deemed to be a payment on his contract generally to the contractor or sub-contractor primarily liable but not so as to affect the percentage to be retained by the owner, as provided by section 12. R. S. O. 1897, c. 153, s. 12.

14.—(1) The lien shall have priority over all judgments, executions, assignments, attachments, garnishments and receiving orders recovered, issued or made after such lien arises, and over all payments or advances made on account of any conveyance or mortgage after notice in writing of such lien to the person making such payments or after registration of a claim for such lien as hereinafter provided.

(2) Where there is an agreement for the purchase of land, and the purchase money or part thereof is unpaid, and no conveyance has been made to the purchaser, he shall, for the purposes of this Act, be deemed a mortgagor and the seller a mortgagee.

(3) Except where it is otherwise provided by this Act, no person entitled to a lien on any property, or money, shall be entitled to any priority or preference over another person of the same class entitled to a lien on such property or money, and each class of lien holders shall rank *pari passu* for their several amounts, and the proceeds of any sale shall be distributed among them *pro rata* according to their several classes and rights. R. S. O. 1897, c. 153, s. 13.

WAGES.

15.—(1) Every mechanic or labourer whose lien is for wages shall, to the extent of thirty days' wages, have priority over all other liens derived through the same contractor or sub-contractor to the extent of and on the twenty per cent. or fifteen per cent.,

as the case may be, directed to be retained by section 12, to which the contractor or sub-contractor through whom such lien is derived is entitled, and all such mechanics and labourers shall rank thereon *pari passu*.

(2) Every wage-earner shall be entitled to enforce a lien in respect of a contract not completely fulfilled.

(3) If the contract has not been completed when the lien is claimed by the wage-earner, the percentage shall be calculated on the value of the work done or materials furnished by the contractor or sub-contractor by whom such wage-earner is employed, having regard to the contract price, if any.

(4) Where the contractor or sub-contractor makes default in completing his contract the percentage shall not, as against a wage-earner claiming a lien, be applied by the owner or contractor to the completion of the contract or for any other purpose, nor to the payment of damages for the non-completion of the contract by the contractor or sub-contractor, nor in payment or satisfaction of any claim against the contractor or sub-contractor.

(5) Every device by an owner, contractor or sub-contractor to defeat the priority given to a wage-earner for his wages, and every payment made for the purpose of defeating or impairing a lien shall be null and void. R. S. O. 1897, c. 153, ss. 14 and 15.

MATERIAL.

16.—(1) During the continuance of a lien no part of the material affected thereby shall be removed to the prejudice of the lien. R. S. O. 1897, c. 153, s. 16.

(2) Material actually brought upon any land to be used in connection with such land for any of the purposes enumerated in section 5 shall be subject to a lien in favour of the person furnishing it until placed in the building, erection or work, and shall not be subject to execution or other process to enforce any debt other than for the purchase thereof, due by the person furnishing the same. *New.*

REGISTRATION OF LIEN.

17.—(1) A claim for a lien, Forms 1, 2 and 3, may be registered in the registry office of the registry division, or where the land is registered under *The Land Titles Act* in the Land Titles Office, of the locality in which the land is situate, and shall set out:—

(*a*) The name and residence of the person claiming the lien and of the owner, or of the person whom the person claiming the lien, or his agent, believes to be the owner of the land, and of the person for whom the work or service was or is to be done, or materials furnished or placed, and the time within which the same was or was to be done or furnished or placed;

(*b*) A short description of the work or service done or to be done, or materials furnished or placed or to be furnished or placed;

(*c*) The sum claimed as due or to become due;

(*d*) A description of the land sufficient for the purpose of registration and, where the land is registered under *The Land Titles Act*, also a reference to the number of the parcel of the land and to the register in which such land is registered in the Land Titles Office;

(*e*) The date of expiry of the period of credit when credit has been given.

(2) The claim shall be verified by the affidavit, Form 4, of the person claiming the lien or of his agent or assignee having a personal knowledge of the matters required to be verified, and the affidavit of the agent or assignee shall state that he has such knowledge.

(3) When it is desired to register a claim for lien against a railway, it shall be a sufficient description of the land of the railway company to describe it as the land of the railway company, and every such claim shall be registered in the general registry in the registry office for the registry division within which such lien is claimed to have arisen. R. S. O. 1897, c. 153, s. 17.

18. A claim for lien may include claims against any number of properties, and any number of persons claiming liens upon the same property may unite therein, but where more than one lien is included in one claim each lien shall be verified by affidavit as provided in section 17. R. S. O. 1897, c. 153, s. 18.

19.—(1) A substantial compliance with sections 17 and 18 shall be sufficient, and no lien shall be invalidated by reason of failure to comply with any of the requisites of those sections unless, in the opinion of the court, judge or officer who tries an action under this Act, the owner, contractor or sub-contractor, mortgagee or other person, is prejudiced thereby, and then only to the extent to which he is thereby prejudiced.

(2) Nothing in this section shall dispense with registration of the claim for lien. R. S. O. 1897, c. 153, s. 19.

20.—(1) The Registrar, upon payment of the proper fee, shall register the claim, describing it as "Mechanics' Lien" against the land therein described in like manner as if it were a mortgage, but he shall not copy the claim or affidavit in any registry book.

(2) The fee for registration of a claim for lien shall be twenty-five cents, and if several persons join in one claim the registrar shall be entitled to a further fee of ten cents for each person after the first. R. S. O. 1897, c. 153, s. 20.

21. Where a lien is so registered, the person entitled to the lien shall be deemed a purchaser *pro tanto* and within the provisions of *The Registry Act* and *The Land Titles Act*, but except as herein otherwise provided those Acts shall not apply to any lien arising under this Act. R. S. O. 1897, c. 153, s. 21.

22.—(1) A claim for lien by a contractor or sub-contractor, in cases not otherwise provided for, may be registered before or during the performance of the contract or within thirty days after the completion or abandonment thereof.

(2) A claim for lien for materials may be registered before or during the furnishing or placing thereof or within thirty days after the furnishing or placing of the last material so furnished or placed.

(3) A claim for lien for services may be registered at any time during the performance of the service or within thirty days after the completion of the service.

(4) A claim for lien for wages may be registered at any time during the performance of the work for which such wages are claimed, or within thirty days after the last work is done for which the lien is claimed. R. S. O. 1897, c. 153, s. 22.

(5) In the case of a contract which is under the supervision of an architect, engineer or other person upon whose certificate payments are to be made, the claim for lien by a contractor may be registered within the time mentioned in subsection 1, or within

seven days after the architect, engineer or other person has given, or has, upon application to him by the contractor, refused to give a final certificate. 2 Edw. VII., c. 21, s. 1.

EXPIRY AND DISCHARGE OF LIEN.

23. Every lien for which a claim is not registered shall absolutely cease to exist on the expiration of the time hereinbefore limited for the registration thereof unless in the meantime an action is commenced to realize the claim, or in which the claim may be realized under the provisions of this Act, and a certificate thereof is registered in the registry office in which the claim for lien might have been registered. R. S. O. 1897, c. 153, s. 23.

24.—(1) Every lien for which a claim has been registered shall absolutely cease to exist on the expiration of ninety days after the work or service has been completed or materials have been furnished or placed, or after the expiry of the period of credit, where such period is mentioned in the claim for lien registered, or in the cases provided for by subsection 5 of section 22 on the expiration of thirty days from the registration of the claim, unless in the meantime an action is commenced to realize the claim or in which the claim may be realized under the provisions of this Act, and a certificate is registered as provided by the next preceding section.

(2) Where the period of credit mentioned in the claim for lien registered has not expired it shall nevertheless cease to have any effect on the expiration of six months from the registration or any re-registration thereof, if the claim is not again registered within that period, unless in the meantime an action is commenced and a certificate thereof has been registered as provided by subsection 1. R. S. O. 1897, c. 153, s. 24.

25. If there is no period of credit, or if the date of the expiry of the period of credit is not stated in the claim so registered, the lien shall cease to exist upon the expiration of ninety days after the work or service has been completed or materials furnished or placed, unless in the meantime an action is commenced and a certificate thereof registered as provided by section 23. R. S. O. 1897, c. 153, s. 25.

26. The right of a lien holder may be assigned by an instrument in writing and, if not assigned, upon his death shall pass to his personal representative. R. S. O. 1897, c. 153, s. 26.

27.—(1) A lien may be discharged by a receipt signed by the claimant, or his agent duly authorized in writing, acknowledging payment, and verified by affidavit and registered.

(2) The receipt shall be numbered and entered like other instruments, but shall not be copied in any registry book, and there shall be entered against the entry of the lien to which the discharge relates the word "discharged" and the registration number of such discharge.

(3) The fee shall be the same as for registering a claim. R. S. O. 1897, c. 153, s. 27 (1).

(4) Upon application the court, judge or officer having jurisdiction to try an action to realize a lien, may allow security for or payment into court of the amount of the claim, and may thereupon order that the registration of the lien be vacated or may vacate the registration upon any other proper ground and a certificate of the order may be registered. R. S. O. 1897, c. 153, s. 27 (2) (3): 62 V. (1), c. 2, s. 1.

(5) Where the certificate required by sections 23 or 24 has not been registered within the prescribed time, and an application is made to vacate the registration of a claim for lien after the time for registration of the certificate required by sections 23, 24 or 25, the order

vacating the lien may be made *ex parte* upon production of the certificate of the proper Registrar certifying the facts entitling the applicant to such order. R. S. O. 1897, c. 153, s. 27 (4).

EFFECT OF TAKING SECURITY OR EXTENDING TIME.

28.—(1) The taking of any security for, or the acceptance of any promissory note or bill of exchange for, or the taking of any acknowledgment of the claim, or the giving of time for the payment thereof, or the taking of any proceedings for the recovery or the recovery of a personal judgment for the claim, shall not merge, waive, pay, satisfy, prejudice or destroy the lien unless the claimant agrees in writing that it shall have that effect. R. S. O. 1897, c. 153, s. 28 (1).

(2) Where any such promissory note or bill of exchange has been negotiated the lien holder shall not thereby lose his lien if, at the time of bringing his action to enforce it, or, where an action is brought by another lien holder he is, at the time of proving his claim in such action, the holder of such promissory note or bill of exchange. *New.*

(3) Nothing in subsection 2 shall extend the time limited by this Act for bringing the action to enforce the lien. *New.*

(4) A person who has extended the time for payment of a claim for which he has a lien to obtain the benefit of this section shall commence an action to enforce such lien within the time prescribed by this Act, and shall register a certificate as required by sections 23, 24 or 25, but no further proceedings shall be taken in the action until the expiration of such extension of time. R. S. O. 1897, c. 153, s. 28 (1-2).

29. Where the period of credit in respect of a claim has not expired, or where there has been an extension of time for payment of the claim, the lien holder may nevertheless, if an action is commenced by any other person to enforce a lien against the same property, prove and obtain payment of his claim in such action as if the period of credit or the extended time had expired. R. S. O. 1897, c. 153, s. 28 (3).

INFORMATION TO BE GIVEN LIEN HOLDER.

30.—(1) Any lien holder may at any time demand of the owner or his agent the terms of the contract or agreement with the contractor for and in respect of which the work, service or material is or is to be performed or furnished or placed, and if such owner or his agent does not, at the time of such demand, or within a reasonable time thereafter, inform the person making such demand of the terms of such contract or agreement, and the amount due and unpaid upon such contract or agreement, or if he knowingly falsely states the terms of the contract or agreement, or the amount due or unpaid thereon, and if the person claiming the lien sustains loss by reason of such refusal or neglect or false statement, the owner shall be liable to him in an action therefor for the amount of such loss. R. S. O. 1897, c. 153, s. 29.

(2) The court, judge, or officer having jurisdiction to try an action to realize a lien may, on a summary application at any time before or after an action is commenced for the enforcement of such lien, make an order requiring the owner or his agent to produce and allow any lien holder to inspect any such contract or agreement upon such terms as to costs as he may deem just. R. S. O. 1897, c. 153, s. 30.

ACTION TO REALIZE CLAIM.

31.—(1) A lien may be realized by action in the High Court, according to the ordinary procedure of that court, excepting where the same is varied by this Act.

(2) Without issuing a writ of summons, an action shall be commenced by filing in the proper office a statement of claim, verified by affidavit, Form 5.

(3) The statement of claim shall be served within one month after it is filed, but a judge or officer having jurisdiction to try the action may extend the time for service thereof, and the time for delivering the statement of defence shall be the same as for entering an appearance in an action in the High Court.

(4) It shall not be necessary to make any lien holders parties defendant to the action, but all lien holders served with the notice of trial shall for all purposes be deemed parties to the action. R. S. O. 1897, c. 153, s. 31.

32. Any number of lien holders, claiming liens on the same land, may join in an action, and an action brought by a lien holder shall be taken to be brought on behalf of the other lien holders. R. S. O. 1897, c. 153, s. 32.

33. The action may be tried before the Master in Ordinary, a local master of the High Court, an official referee, or a judge of the County or District Court, in any county or district in which the land is situate, or before a judge of the High Court. R. S. O. 1897, c. 153, s. 33.

34. The Master in Ordinary, the Local Masters, Official Referees, and the Judges of the County and District Courts, in addition to their ordinary powers, shall have all the jurisdiction, powers and authority of the High Court to try and completely dispose of the action and all questions arising therein. R. S. O. 1897, c. 153, s. 34.

35. Where more actions than one are brought to realize liens in respect of the same land, a judge or officer having jurisdiction to try such actions may, on the application of any party to any one of them, or on the application of any other person interested, consolidate all such actions into one action, and may give the conduct of the consolidated action to any plaintiff as he may see fit. R. S. O. 1897, c. 153, s. 37.

36. Any lien holder entitled to the benefit of an action may apply for the carriage of the proceedings, and the judge or officer may make an order giving such lien holder the carriage of the proceedings. R. S. O. 1897, c. 153, s. 38.

37.—(1) After the delivery of the statement of defence where the plaintiff's claim is disputed, or after the time for delivery of defence in all other cases, where it is desired to try the action otherwise than before a judge of the High Court, either party may apply to a judge or officer who has jurisdiction to try the action, to fix a day for the trial thereof, and the judge or officer shall appoint the day and place of trial.

(2) The party obtaining an appointment for the trial shall, at least eight clear days before the day appointed, serve notice of trial, Form 6, upon the solicitors for the defendants who appear by solicitors, and upon defendants who appear in person and on all lien holders who have registered their claims as required by this Act, or who are known to him, and on all other persons having any charge, incumbrance or claim on the land subsequent in priority to

the lien, who are not parties, and such service shall be personal, unless otherwise directed by the judge or officer, who may direct in what manner the notice of trial may be served. R. S. O. 1897, c. 153, s. 36.

(3) The judge or officer shall try the action and all questions which arise therein or which are necessary to be tried in order to completely dispose of the action and to adjust the rights and liabilities of the persons appearing before him or upon whom the notice of trial has been served, and shall take all accounts, make all enquiries, give all directions, and do all other things necessary, to finally dispose of the action and of all matters, questions, and accounts arising therein or at the trial, and to adjust the rights and liabilities of and give all necessary relief to all parties to the action and all persons who have been served with the notice of trial, and shall embody the results in a judgment, Form 7.

(4) The judge or officer may order that the estate or interest on which the lien attaches to be sold, and where, by the judgment, a sale is directed he may direct the sale to take place at any time after the judgment, allowing a reasonable time for advertising such sale.

(5) The judge or officer may also direct the sale of any materials and authorize the removal thereof.

(6) A lien holder who has not proved his claim at the trial, on application to the judge or officer before whom the action was tried, may be let in to prove his claim on such terms as to costs and otherwise as may be deemed just at any time before the amount realized in the action for the satisfaction of liens has been distributed, and where such a claim is allowed the judgment shall be amended so as to include such claim.

(7) Every lien holder for an amount not exceeding $100 may be represented by a solicitor or by an agent who is not a solicitor.

38. Where a sale is had, the judge or officer with whose approbation the sale takes place shall make a report there on and therein direct to whom the money realized shall be paid, and may add to the claim of the person conducting the sale his actual disbursements in connection therewith, and where enough to satisfy the judgment and costs is not realized he shall certify the amount of the deficiency and the names of the persons, with their amounts, who are entitled to recover the same, and the persons by the judgment adjudged to pay the same, and the persons entitled may enforce payment by execution or otherwise as on a judgment. R. S. O. 1897, c. 153, s. 35.

39. Where property subject to a lien is sold in an action to enforce a lien, every lien holder shall be entitled to share in the proceeds of the sale in respect of the amount then owing to him, although the same or part thereof was not payable at the time of the commencement of the action or is not then presently payable. *New.*

NEW TRIAL AND APPEAL.

40.—(1) Where the aggregate amount of the claims of the plaintiff and all other persons claiming liens is not more than $100, the judgment shall be final and without appeal, but the judge or officer who tried the action may, upon application within fourteen days after judgment is pronounced, grant a new trial.

(2) Where the aggregate amount of the claims of the plaintiff and all other persons claiming liens is more than $100 and not more than $500, any person affected by the judgment may appeal therefrom to a Divisional Court of the High Court, whose judgment shall be final and without appeal.

(3) In all other cases an appeal shall lie and may be had in like manner and to the same extent as from the decision of a judge trying an action in the High Court without a jury. R. S. O. 1897, c. 153, s. 39.

FEES AND COSTS.

41.—(1) No fees in stamps or money shall be payable to any officer, nor on any filing, order, record, judgment, or other proceeding, excepting that every persons other than a wage-earner shall, on filing his statement of claim where he is a plaintiff, or on filing his claim where he is not a plaintiff, pay in stamps one dollar on every one hundred dollars or fraction of one hundred dollars of the amount of his claim up to one thousand dollars. R. S. O. 1897, c. 153, s. 40.

(2) When the proceedings are taken before a local master who is paid by fees, such amount shall be payable to him in cash instead of in stamps. 1 Edw. VII., c. 12, s. 13.

42. The costs of the action, exclusive of actual disbursements, awarded to the plaintiffs and successful lien holders, shall not exceed in the aggregate twenty-five per cent. of the total amount awarded to them by the judgment, and shall be apportioned and borne in such proportion as the judge or officer who tries the action may direct. R. S. O. 1897, c. 153, s. 41.

43. Where costs are awarded against the plaintiff or other persons claiming liens, they shall not exceed twenty-five per cent. of the claim of the plaintiff and the other claimants, besides actual disbursements, and shall be apportioned and borne as the judge or officer may direct. R. S. O. 1897, c. 153, s. 42.

44. Where the least expensive course is not taken by a plaintiff the costs allowed to him shall in no case exceed what would have been incurred if the least expensive course had been taken. R. S. O. 1897, c. 153, s. 43.

45. Where a lien is discharged or vacated under section 27 or where judgment is given in favour of or against a claim for a lien, in addition to the costs of the action, the judge or officer may allow a reasonable amount for the costs of drawing and registering the claim for lien or of vacating the registration thereof. R. S. O. 1897, c. 153, s. 44.

46. The costs of and incidental to all applications and orders not otherwise provided for shall be in the discretion of the judge or officer. R. S. O. 1897, c. 153, s. 45.

PAYMENT OUT OF COURT.

47.—(1) Except in actions tried by a judge of the High Court, the judge or officer who tries the action, where money has been paid into court and the time for payment out has arrived, shall forward a requisition for cheques with a certified copy of his judgment and of the report on sale, if any, to the Accountant of the Supreme Court, who shall, upon receiving the same, make out and return to the judge or officer cheques for the amounts payable to the persons mentioned in the requisition, and the judge or officer, on receipt of cheques, shall distribute them to the persons entitled.

(2) No fees or stamps shall be payable on any cheques or on proceedings to pay money into court or to obtain money out of court, in respect of a claim for lien, but sufficient postage stamps to prepay a return registered letter shall be enclosed with every requisition for cheques. R. S. O. 1897, c. 153, s. 46.

JUDGMENTS IN ACTIONS.

48. All judgments in favour of lien holders shall adjudge that the party personally liable for the amount of the judgment shall pay so much of any deficiency which may remain after sale of the property directed to be sold, as might have been recovered in an ordinary action against him, and where on the sale enough to satisfy the judgment and costs is not realized, such part of the deficiency may be recovered by execution against the property of such party. R. S. O. 1897, c. 153, s. 47.

49. Where a claimant fails to establish a valid lien he may nevertheless recover a personal judgment against any party to the action for such sum as may appear to be due to him and which he might recover in an action against such party. R. S. O. 1897, c. 153, s. 48.

LIENS ON CHATTELS.

50.—(1) Every mechanic or other person who has bestowed money or skill and materials upon any chattel or thing in the alteration and improvement of its properties or for the purpose of imparting an additional value to it so as thereby to be entitled to a lien upon such chattel or thing for the amount or value of the money or skill and materials bestowed, shall, while such lien exists, but not afterwards, in case the amount to which he is entitled remains unpaid for three months after the same ought to have been paid, have the right, in addition to any other remedy to which he may be entitled, to sell by auction the chattel or thing, on giving one week's notice by advertisement in a newspaper published in the municipality in which the work was done, or in case there is no newspaper published in such municipality, then in a newspaper published nearest thereto, setting forth the name of the person indebted, the amount of the debt, a description of the chattel or thing to be sold, the time and place of sale, and the name of the auctioneer, and leaving a like notice in writing at the last known place of residence, if any, of the owner, if he is a resident of such municipality.

(2) Such mechanic or other person shall apply the proceeds of the sale in payment of the amount due to him and the costs of advertising and sale, and shall, upon application, pay over any surplus to the person entitled thereto. R. S. O. 1897, c. 153, s. 51.

51. Chapter 153 of the Revised Statutes, 1897, and all amendments thereto are repealed.

FORM 1.

Claim for Lien.

A. B. (*name of claimant*) of (*here state residence of claimant*), (*if claimant is a personal representative or assignee set out the facts*) under *The Mechanics and Wage-Earners Lien Act* claims a lien upon the estate of (*here state the name and residence of owner of the land upon which the lien is claimed*), in the undermentioned land in respect of the following work (*or* service *or* materials) that is to say (*here give a short description of the nature of the work done or to be done, or materials furnished or to be furnished, and for which the lien is claimed*), which work (*or* service) was (*or* is to be) done (*or* materials were *or* are to be furnished) for (*here state the name and residence of the person upon whose request the*

work is done or to be done, or the materials furnished or to be furnished) on or before the day of 19

The amount claimed is due (or to become due) is $

The following is the description of the land to be charged (*here set out a concise description of the land to be charged sufficient for the purpose of registration*).

Where credit has been given, insert: The work was done (*or* materials were furnished) on credit, and the period of credit agreed to expired (*or* will expire) on the day of 19 .

Dated at this day of 19 .

(*Signature of claimant.*)

FORM 2.

Claim for Lien for Wages.

A. B. (*name of claimant*) of (*here state residence of claimant*), (*if claimant is a personal representative or assignee set out the facts*) under *The Mechanics and Wage-Earners Lien Act* claims a lien upon the estate of (*here state the name and residence of owner of the land upon which the lien is claimed*), in the undermentioned land in respect of work performed (*or* to be performed) thereon while in the employment of (*here state the name and residence of the person upon whose request the work was or is to be performed*) on or before the day of 19 .

The amount claimed as due (*or* to become due) is $

The following is the description of the land to be charged (*here set out a concise description of the land to be charged sufficient for the purpose of registration*).

Dated at this day of 19 .

(*Signature of claimant.*)

FORM 3.

Claim for Lien for Wages by Several Claimants.

The following persons claim a lien under *The Mechanics and Wage-Earners Lien Act* upon the estate of (*here state the name and residence of the owner of land upon which the lien is claimed*) in the undermentioned land in respect of wages for labour performed (*or* to be performed) thereon while in the employment of (*here state name and residence or names and residences of employers of the several persons claiming the lien*).

A.B. of (*residence*) $ for wages.
C.D. " $ "
E.F. " $ "

The following is the description of the land to be charged (*here set out a concise description of the land to be charged sufficient for the purpose of registration*).

Dated at this day of 19 .

(*Signatures of the several claimants.*)

FORM 4.

Affidavit Verifying Claim.

I, *A.B.*, named in the above (*or* annexed) claim, make oath that the said claim is true.

Or We *A.B.* and *C.D.*, named in the above (*or* annexed) claim, make oath, and each for himself makes oath that the said claim, so far as relates to him, is true.

(*Where affidavit is made by agent or assignee a clause must be added to the following effect*:—I have full knowledge of the facts set forth in the above (*or* annexed claim.)

Sworn before me at , in the county of , this day of 19 .

Or, The said *A.B.* and *C.D.* were severally sworn before me at , in the county of , this day of , 19 .

Or, The said *A.B.* was sworn before me at , in the county of , this day of 19 .

FORM 5.

Affidavit Verifying Claim on commencing an Action.

(*Style of Court and Cause.*)

I, , make oath and say, that I have read (*or* heard read), the foregoing statement of claim, and that the facts therein set forth are, to the best of my knowledge and belief, true, and the amount claimed to be due to me in respect of my lien is the just and true amount due and owing to me after giving credit for all the sums of money or goods or merchandise to which (*naming the debtor*) is entitled to credit as against me.

Sworn before me, etc.

FORM 6.

Notice of Trial.

(*Style of Court and Cause.*)

Take notice that this action will be tried at the , in the of , in the County (*or* District) of , on the day of by and at such time and place the will proceed to try the action and all questions which arise in or which are necessary to be tried completely to dispose of the action and to adjust the rights and liability of the persons appearing before him, or upon whom this notice of trial has been served, and at such trial he will take all accounts, make all enquiries and give all directions and do all things necessary to try and otherwise finally dispose of this action, and of all matters, questions, and accounts arising therein and will give necessary relief to all parties.

And further take notice that if you do not appear at the trial and prove your claim, if any, (*or* your defence, if any) to the action the proceedings will be taken in your absence and you may be deprived of all benefit of the proceedings and your rights disposed of in your absence.

This is a Mechanics Lien action brought by the above named plaintiff against the above named defendants to enforce a Mechanics Lien against the following lands:—(*set out description of lands*).

This notice is served by, etc.

Dated 19 .
To

FORM 7.

Judgment.

In the High Court of Justice.

Monday, the day of 19 .

Name of Judge or officer:

William Spencer, Plaintiff.

and

Thomas Burns, Defendant.

This action coming on for trial before at upon opening of the matter and it appearing that the following persons have been duly served with notice of trial herein, (*set out names of all persons served with notice of trial*) and all such persons (*or as the case may be*) appearing at the trial (*or* and the following persons not having appeared (*set out names of non-appearing persons*) and upon hearing the evidence adduced and what was alleged by counsel for the plaintiff and for *C.D.* and *E.F.* and the defendant (*or* and by A.B. appearing in person).

1. This Court doth declare that the plaintiff and the several persons mentioned in the first schedule hereto are respectively entitled to a lien under *The Mechanics and Wage Earners Lien Act*, upon the land described in the second schedule hereto, for the amounts set opposite their respective names in the 2nd, 3rd and 4th columns of the said 1st schedule, and the persons primarily liable for the said claims respectively are set forth in the 5th column of the said schedule.

2. (And this Court doth further declare that the several persons mentioned in schedule 3 hereto are also entitled to some lien, charge or incumbrance upon the said land for the amounts set opposite their respective names in the 4th column of the said schedule 3, *according to the fact.*)

3. And this Court doth further order and adjudge that upon the defendant (*A.B.* the owner) paying into court to the credit of this action the sum of (*gross amount of liens in schedules 1 and 3 for which owner is liable*) on or before the day of next, that the said liens in the said 1st schedule mentioned be and the same are hereby discharged, (and the several persons in the said 3rd schedule are to release and discharge their said claims and assign and convey the said premises to the defendant (*owner*) and deliver up all documents on oath to the said defendant (*owner*) or to whom he may appoint) and the said money so paid into court is to be paid out in payment of the claims of the said lien holders (*or* and incumbrancers).

4. In case the said defendant (*owner*) shall make default in payment of the said money into court, this court doth order and adjudge that the said land be sold with the approbation of the Master of this Court at and that the purchase money be paid into court to the credit of this action and that all proper parties do join in the conveyances as the said Master shall direct.

5. And this Court doth order and adjudge that the said purchase money be applied in or towards payment of the several claims in the said 1st (and 3rd) schedule (s) mentioned as the said Master shall direct, with subsequent interest and subsequent costs to be computed and taxed by the said Master.

6. And this Court doth further order and adjudge that in case the said purchase money shall be insufficient to pay in full the claims of the several persons mentioned in the said 1st schedule, the persons primarily liable for such claims as shewn in the said 1st schedule do pay to the persons to whom they are respectively primarily liable to the amount remaining due to such persons forthwith after the same shall have been ascertained by the said Master.

7. (And this Court doth declare that have not proved any lien under *The Mechanics and Wage Earners Lien Act*, and that they are not entitled to any such lien, and this Court doth order and adjudge that the claims of liens registered by them against the land mentioned in the said 2nd schedule be and the same are hereby discharged, *according to the fact*).

SCHEDULE 1.

Names of lien holders entitled to mechanics' liens.	Amount of debt and interest (if any.)	Costs.	Total.	Names of primary debtors.

(Signature of officer)

SCHEDULE 2.

The lands in question in this matter are
(Set out by a description sufficient for registration purposes).

(Signature of officer)

SCHEDULE 3.

Names of persons entitled to incumbrances other than mechanics' liens.	Amount of debt and interest (if any).	Costs.	Total.

(Signature of officer)

MORTGAGES OF LANDS.

A mortgage is a pledge of lands as security for a debt, whereby the debtor, or pledgor, or, as he is commonly called, the mortgagor, conveys the land to the creditor or pledgee, or, as he is commonly called, the mortgagee, subject to a condition or proviso that, if the debt is discharged by the day named, the pledge shall be void, and the mortgagor shall be entitled to receive back and hold the lands free from all claims created by the mortgage. What is called the legal ownership of the lands is vested in the creditor, but in equity, the debtor and those claiming under him remain the actual owners, until debarred by judicial sentence, or by legislative enactment.

It may be said generally that all kinds of property in land which may be absolutely sold, may be the subject of a mortgage, unless prohibited by specific legislation.

Mortgages may be legal or equitable.

A legal mortgage is described above, but may be given for the performance of a covenant as well as the repayment of a debt. It must be in writing, but may be made either in one deed containing the whole contract, or in two separate instruments, the first a conveyance in the form of an ordinary deed of grant, and the second a memorandum or statement of the conditions upon the performance of which the conveyance is to be defeated, or rendered void: the latter is called a defeasance, and though its use was common in ancient times it is now rarely seen.

An equitable mortgage is not in writing, but is evidenced by some act whereby the owner of land manifests an intention to pledge the same as security for a debt, as by depositing his title deeds with his creditor, at the same time concluding a verbal agreement with him to effect the charge.

Courts of Equity, whose rule it is to regard the substance of contracts rather than the form which parties may adopt to express them, will sometimes hold an absolute written conveyance of property to be a mortgage only, if such is established by evidence to have been the intention of the parties.

Assuming the mortgage to have been drawn in the usual form, with a proviso that on payment of the debt and interest the mortgage should be void; upon payment at the time specified in the instrument, the property will revest in the mortgagor without any deed or instrument of re-conveyance. In practice, however, it is usual to take a discharge of mort-

gage, which also operates as a re-conveyance. If the debt be not paid on the day named, the land, at law, becomes the absolute property of the mortgagee, and he may proceed to take possession of it; quietly, if he can; if not, by means of ejectment. A Court of Equity will, however, give the mortgagor liberty to redeem, at any time within twenty (in Ontario ten) years, on payment of what is due for principal and interest. When the debt is paid after the appointed day, a re-conveyance or discharge of mortgage is requisite in order to re-vest the property in the mortgagor.

In Ontario a mortgagee may take a release of the mortgagor's interest (called a release of the equity of redemption) from the mortgagor, without thereby losing the right to hold the lands against any person having a claim on them subsequent to the mortgagee's, until his debt and interest be paid; and if such subsequent creditor should afterwards take legal proceedings to foreclose his mortgage, he will only be allowed to do so subject to the rights of the mortgagee who has so acquired the equity of redemption.

Mortgages should be executed in duplicate, and one part left in the Registry Office, as in the case of a deed of land. A mortgagee has several remedies if his mortgage money be not paid when it is due. He may bring an action at law to obtain payment of the amount of principal and interest due upon the mortgagor's covenant, or he may bring an action of ejectment (called in Ontario an action to recover the land) and obtain possession of the premises by judgment of the Court: in which case he will be entitled to hold the lands until the full amount of principal and interest has been discharged out of the rents and profits; or he may bring suit to have the mortgage foreclosed: in which case he will acquire an absolute title to the lands discharged of all equity of redemption; or to have the lands sold: in which case the premises will be sold under the direction of the Court, and the debt due paid out of the proceeds, if sufficient; and if insufficient, the mortgagor will be ordered to pay the deficiency. If the mortgage contains a power of sale, the lands may be sold without going to the Court. In Ontario, all mortgages are declared by legislative enactment to include power of sale.

When a registered mortgage is paid off, a discharge should be signed and registered: it will then be marked as discharged in the books of the Registry Office. A discharge must be signed by the mortgagee, or, if the mortgage has been assigned, by his assignee, or by his executor or administrator, if he be dead. Where a mortgage has been made

in favour of a married woman, both husband and wife should properly sign the discharge. One witness to the signature is sufficient, and he must make and subscribe the usual affidavit of execution.

It is a good practice to have all payments by the mortgagor, whether of instalments of principal or interest, receipted by the mortgagee under a full written memorandum upon the back of the original mortgage itself.

When a mortgage is paid, care should be taken that it is at once properly discharged and the discharge registered.

Courts of Equity are indulgent in assisting mortgagors who may not repay the mortgage money at the stipulated time, and who are hence subject (according to the strict letter of their contract) to lose their estate; and if the land is of greater value than the amount of the money due the mortgagee, they will interfere and permit the mortgagor, within a reasonable time, to redeem his land upon payment of the full amount due the mortgagee. In further protection of mortgagors who are unfortunate, Courts of Equity will sometimes, upon proper terms, require that the mortgagee should bring the lands to sale instead of foreclosing them, so that any balance of the purchase money remaining over after payment to the mortgagee of his debt and costs should be paid over to the mortgagor.

Where, upon default of payment, the mortgagee takes possession of the property under his mortgage, the mortgagor is barred of all claim after the expiry of ten years, unless the mortgagee has acknowledged in writing the mortgagor's right during that time.

The mortgagee is entitled to the custody of all deeds and documents of title until he is paid off, and he should be careful to enquire for and secure them. He should also register his mortgage promptly.

If the wife of the mortgagor does not join with him in executing the mortgage to bar her dower claim, the mortgage will be subject to it.

In Nova Scotia the same general principles exist regarding mortgages, and the respective rights of mortgagors and mortgagees as exist in Ontario. The exercise of a power of sale contained in a mortgage is unusual, foreclosure and sale being the remedy generally adopted by mortgagees when payments are in default. There is no Short Forms Act similar to the Ontario statute.

C. S. N. B. cap. 151, secs. 36-39, where any mortgage of realty contains a power of sale requiring notice of the

time and place of such sale to be given, such notice may be registered at full length in the Registry Office of the proper registration division; but before such registration the signature of the person giving such notice must be proved in the usual way as well as a publication of the notice. The production of the notice, with the certificate of proof of the execution of the same and of the said registration is declared to be *prima facie* evidence of such facts in all Courts or at the request of the person offering such notice it, with the affidavits and other proof for registration, may be filed in the office of the Registrar and an entry made in the index of documents registered.

By the Property Act, C. S. N. B. cap. 152, a mortgagor upon redeeming may require the mortgagee to assign the mortgage to a third party except in cases where the mortgagee has been in possession. The Act gives a power of sale upon two months' notice in writing or published for that period in the Royal Gazette or in some daily or weekly newspaper published in the county where the lands lie and also by printed handbills, one posted at the Court House, one at the Registry Office and one in some public place in the parish in which the lands are situate.

By Acts 1909 cap. 10, in addition to the publication in a newspaper in the county where the lands are situate, there must be published in the Royal Gazette within ten days from the publication of the newspaper advertisement and also in the succeeding issue of the Royal Gazette a notice setting out the names of the original mortgagor or mortgagors; the name of the present holder of the mortgage; whether the property is freehold or leasehold; the county in which the land is situate; the date of the proposed sale, and the name of the newspaper in which such advertisement has been inserted. Failure to comply with these requirements renders the sale invalid.

The Property Act also permits the mortgagee to insure and charge the premiums to the mortgagor as a further lien upon the property mortgaged.

Mortgages are not usually executed in duplicate in N. B. The statutory provisions referred to have materially shortened the forms of mortgage hitherto in use.

In British Columbia the Short Forms Act (R. S. B. C. 1897, c. 142) is nearly identical with the Ontario statute.

In Manitoba the "Act respecting Short Forms of Indentures," R. S. M. 1902, cap. 157, provides short forms

of conveyances, mortgages and leases, and is almost identical with the corresponding Ontario statutes.

In Saskatchewan and Alberta short forms of leases and mortgages are provided for by the Land Titles Act, chapter 24 of the 1906 statutes of the Provinces respectively.

In Prince Edward Island, by the provisions of 43 Vict. cap. 7, where, upon the death of a mortgagee, his executor or administrator has become entitled to receive the moneys due upon the mortgage, then, upon default of payment, and if the heirs or devisees of the mortgagee are minors, or are otherwise incapable of disposing of the real estate, the executor or administrator may exercise any power of sale contained in the mortgage, and upon sale may convey the land as fully and effectually in all respects as the mortgagee could have done if alive. The administrator or executor may also execute a discharge of a mortgage, or a release of any part of the mortgaged premises.

Most mortgages, as now drawn, contain what is called a power of sale. This is a provision or stipulation whereby the mortgagee, or his assigns, upon default of payment of interest, or of principal, for a certain specified time, may have the right to sell and absolutely dispose of the property, upon giving proper notice, but without any proceedings in a Court, recouping themselves the amount of the debt and costs out of the proceeds of the sale, and accounting to the mortgagor or his representatives for the balance. In Ontario, it is provided by statute that such power of sale shall by implication, be inserted and contained in every mortgage where no express power is found therein.

The provisions of the power of sale with regard to the length and kind of notice to be given the mortgagor, or his representatives or assigns, must be strictly adhered to. If notice be required, but no length of time specially stipulated for it, a reasonable length of notice must be given. The notice may be served upon an infant or a lunatic, if such be persons required by the terms of the power to be served, and the service upon them will be a proper service; though it is best in such case to serve their guardians, if any, as well. Sufficient and proper notice must, in all cases, be given; and if a sale be had without such, the mortgagee may be rendered liable to the mortgagor and his representatives, or to a subsequent mortgagee, in damages.

The mortgagee, in exercising a power of sale, must act in such a way as to secure a fair sale of the property, so as to bring its reasonable value. He is considered in a certain

sense a trustee for the mortgagor, and must act in a provident way in the disposal of the mortgaged property, and with a due regard to the rights and interests of the mortgagor, or those entitled to the surplus after payment of the mortgage debt. Should he act maliciously or from any improper motive, he may render himself liable for the mortgagor's loss thereby sustained. The general rule is that he should act with the same prudence as he would if his intention were to sell an estate of his own for the highest price.

Where an auction sale is had, the conditions of the sale should not be such as are calculated from their stringency, or their unusual nature, to deter buyers, and hence injure the sale. Thus, to require that the purchase money of a valuable property should be paid in full in cash at the sale, would be an extraordinary and unreasonable condition, and might vitiate the sale, or render it abortive.

After a valid sale, under a power, the mortgagee conveys the property by a deed which recites the power, and the fact that default of payment has occurred whereby the exercise of the power has become proper. The conveyance should also contain a covenant by the mortgagee that default has occurred such as would justify such exercise. The disposal of the surplus purchase money is a matter which requires care. Liens upon the land subsequent to the mortgages must be paid in the same priority as that in which they bound the premises before the sale. In this matter the services of a professional man will generally be found necessary.

FORMS.

Ontario Statutory Short Form of Mortgage.

This indenture made the day of , one thousand nine hundred and , in pursuance of the Act respecting Short Forms of Mortgages, between (here insert the names of parties, and recitals, if any), witnesseth that in consideration of of lawful money of Canada, now paid by the said mortgagee (or mortgagees) to the said mortgagor (or mortgagors) the receipt whereof is hereby acknowledged, the said mortgagor (or mortgagors) doth (or do) grant and mortgage unto the said mortgagee (or mortgagees) his (her or their) heirs and assigns forever all (parcels). And the said (A. B.), wife of the said mortgagor, hereby bars her dower in the said lands. Provided this mortgage to be void upon payment of (amount of principal money) of lawful money of Canada, with interest at (here specify the rate of interest) per cent. as follows: (terms of payment of principal and interest), and taxes and performance of statute labour. The said mortgagor covenants with the said

mortgagee, That the mortgagor will pay the mortgage money and interest, and observe the above proviso; That the mortgagor has a good title in fee simple to the said lands; And that he has 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 also that the said mortgagor will produce the title deeds enumerated hereunder, and allow copies to be made, at the expense of the mortgagee; And that the said mortgagor has done no act to encumber 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 doth release to the said mortgagee, all his claims upon the said lands subject to the said proviso. Provided that the said mortgagee, on default of payment for (three) months, may on (one month's) 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 Y. Z. — A. B. [L.S.] C. D. [L.S.] E. F. [L.S.]

Affidavit of Execution of above.

County of , to wit: I, Y.Z., of, etc., make oath and say:—

1st. That I was personally present and did see the annexed (or within) mortgage, (and duplicate, if any, according to the fact,) duly signed, sealed and executed by A. B., C. D. and E. F., the parties thereto.

2nd. That the said mortgage, (and duplicate, if any, according to the fact), were executed at (state here the place of execution).

3rd. That I know the said parties (or one, or more of them, according to fact).

4th. That I am a subscribing witness to the said mortgage, (and duplicate, according to the fact).

Sworn before me at , in the county of , this day of , A.D. 19 . L. M. A Commissioner, etc. — Y. Z.

Ontario Statutory Discharge of Mortgage.

To the Registrar of the county of , I, E. F., of, etc., do certify that A. B., of, etc., hath satisfied all moneys due on, or to grow due on (or hath satisfied the sum of $, mentioned in), a certain mortgage made by A. B., of, etc., to me, (or if the mortgage

has been assigned, to G. H., of, etc.,) which mortgage bears date the day of A.D. 19 ; and was registered in the Registry office for the county of , on the day of A.D. 19 , at minutes past o'clock noon, in liber for , as number . [If the mortgage has been assigned, go on to say, "and which mortgage was assigned to me by indenture, dated the day of , 19 , made between, etc., (stating the names of the parties to the assignment) registered in the said Registry office, on the day of A.D. , at minutes past o'clock noon, in liber for , as No. "; and so on, in the same manner, with reference to all assignments, where there are several. If the mortgage has not been assigned, state the fact thus: "and that the said mortgage has not been assigned."] And that I am the person entitled by law to receive the money, and that such mortgage, (or such sum of money as aforesaid; or such part of the lands as is herein particularly described, that is to say: (here set out the lands intended to be discharged, if a part only of the lands is to be released), is therefore discharged.

Witness my hand this day of , A.D. 19 .

Signed in the presence of A. B.
Y. Z.

(One witness is sufficient) of, etc., (here state residence and occupation).

(An affidavit of execution of the discharge, unless the latter be made by a corporation, must be made by the witness; it will be in a form similar to that of the execution of the mortgage).

Assignment of Mortgage.

This Indenture, made the day of , 19 , Between E. F., of, etc., (hereinafter called the assignor) of the first part; and G. H., of, etc., (hereinafter called the assignee) of the second part. Whereas, by indenture of mortgage, bearing date the day of , 19 , made between one A. B., of, etc., of the first part; C. D., (wife of the said A. B., and for the purpose of barring her dower) of the second part; and the said E. F., of the third part; the said A. B. did convey and assure the lands and premises hereinafter described, unto the said E. F., his heirs, executors, administrators and assigns, subject to a proviso for redemption on payment of $, and interest thereon, at the rate of per cent. per annum, on the days and times, and in the manner, in the said indenture of mortgage mentioned. And whereas, there is now due upon the said mortgage, for principal money, the sum of $; and for interest, the sum of $ Now this indenture witnesseth, that in consideration of the sum of $, of lawful money of Canada, now paid by the said assignee to the said assignor, the receipt whereof is hereby acknowledged, He, the said assignor, doth hereby grant, assign, and transfer unto the said assignee, his heirs, executors, administrators and assigns, the said indenture of mortgage, and the principal and interest moneys thereby secured, and the lands and premises thereby conveyed: to wit, All and singular (here describe the premises). To have, hold, receive and take, the said indenture of mortgage, and the principal and interest moneys thereby secured, and the lands and premises thereby conveyed unto the said assignee, his heirs, executors, administrators

and assigns, to and for his and their sole and only use; subject nevertheless to the proviso for redemption in the said mortgage contained. And for the better enabling the said assignee, his executors, administrators and assigns, to recover and receive the said principal moneys and interest, from the said A. B., his executors or administrators, he the said assignor doth hereby nominate and appoint the said assignee, his executors, administrators and assigns, to be the true and lawful attorney and attorneys of him the said assignor, his executors or administrators, for him, the said assignor, his executors or administrators, and in his, or their, names or name, but at the cost and charges of the assignee, his executors, administrators or assigns, to sue for and recover the said principal moneys and interest, in any Court of Law or Equity; and on receipt or recovery, to give good and sufficient discharges; and generally to do, and execute, all such acts, deeds, matters and things, as may be requisite and necessary, for the recovery of the said mortgage money and interest. And the said assignor doth hereby, for himself, his heirs, executors and administrators, covenant, promise and agree, to and with the said assignee, his executors, administrators and assigns, that the said indenture of mortgage is a good, valid and subsisting security, free from all incumbrances; and not discharged or released; and that the principal moneys and interest hereinbefore mentioned, are now justly due and owing upon the security of the said mortgage; and that the said assignor has a good right to assign and transfer the said mortgage; and will not at any time hereafter release or discharge the same, without the consent of the said assignee, his executors, administrators or assigns; and that the said assignor, his heirs, executors or administrators, will at all times, on the request, but at the costs and charges of the assignee, his executors, administrators and assigns, execute such further assignments or assurances of the said indenture, and the moneys thereby secured, and the lands therein comprised, as may be necessary; and the said assignee doth hereby, for himself, his executors, administrators and assigns, covenant, promise and agree, to and with the assignor, his heirs, executors and administrators, that he the said assignee, his executors or administrators, in case he or they shall act upon the power of attorney hereinbefore contained, will save harmless, and indemnify, the said assignor, his heirs, executors and administrators, of and from all costs, charges and expenses, to which he or they may become liable, or be put unto, in consequence thereof.

In witness whereof, the parties to these presents, have hereunto set their hands and seals, the day and year first above written.

Signed, sealed and delivered in the presence of Y. Z. — G. H. [L.S.] E. F. [L.S.]

Mortgage of Lease.

This Indenture, made the day of , 19 , Between A. B., of, etc., of the first part, and C. D., of, etc., of the second part. Whereas, by an indenture of Lease, bearing date on or about the day of , 19 , and made between, etc., The said lessor therein named did demise and lease unto the said lessee therein named, his executors, administrators and assigns, All and singular that certain parcel or tract of land and premises situate, lying and

being, etc., (set out the lands) To hold the same, with their appurtenances, unto the said lessee, his executors, administrators and assigns from the day of , 19 , for and during the term of years from thence next ensuing, and fully to be complete and ended,, at the yearly rent of $, and under and subject to the lessee's covenants and agreements in the said Indenture of Lease reserved and contained.

Now this Indenture witnesseth, that in consideration of the sum of $, of lawful money of Canada, now paid by the said party of the second part to the said party of the first part, (the receipt whereof is hereby acknowledged), He, the said party of the first part, Doth hereby grant, bargain, sell, assign, transfer and set over unto the said party of the second part, his executors, administrators and assigns, All and singular the said parcel or tract of land, and all other the premises comprised in and demised by the said hereinbefore in part recited Indenture of Lease: Together with the said Indenture of Lease, and all benefit and advantage to be had or derived therefrom: To have and to hold the same, with the appurtenances thereunto belonging, unto the said party of the second part, his executors, administrators and assigns, from henceforth for and during all the residue of the said term granted by the said Indenture of Lease, and for all other the estate, term, right of renewal (if any), and other the interest of the said party of the first part therein. Subject to the payment of the rent, and the observance and performance of the lessee's covenants and agreements, in the said Indenture of Lease reserved and contained; and to the proviso for redemption hereinafter contained.

Provided always, that if the party of the first part, his executors or administrators, do and shall well and truly pay, or cause to be paid, unto the said party, of the second part, his executors, administrators or assigns, the full sum of $, with interest for the same, unto the said party of the second part, his executors, administrators or assigns, the full sum of $, with interest for the same, at per cent. per annum, on the days and times and in manner following, that is to say, (here specify terms of payment) without making any deduction, defalcation or abatement thereout, on any account whatsoever, then these presents, and every clause, covenant, matter and thing herein contained, shall cease, determine and be absolutely void to all intents and purposes whatsoever, as if the same had never been executed.

And the said party of the first part doth hereby, for himself, his heirs, executors and administrators, covenant, promise and agree to and with the said party of the second part, his executors, administrators and assigns, in manner following, that is to say:

That he, the said party of the first part, his executors and administrators, or some or one of them, shall and will well and truly pay, or cause to be paid, unto the said party of the second part, his executors, administrators or assigns, the said principal sum and interest in the above proviso mentioned, at the times and in manner hereinbefore appointed for payment thereof, without any deduction or abatement whatsoever, and according to the true intent and meaning of these presents.

And that the said hereinbefore in part recited Indenture of Lease is, at the time of the sealing and delivery of these presents, a good, valid, and subsisting lease in the law, and not surrendered, forfeited or become void or voidable; and that the rent and covenants therein reserved and contained have been duly paid and performed by the said party of the first part, up to the day of the date thereof.

And that the said party of the first part now hath in himself good right, full power, and lawful and absolute authority to assign the said lands and premises in manner aforesaid, and according to the true intent and meaning of these presents.

And that in case of default in payment of the said principal money or interest, or any part thereof, contrary to the proviso and covenant aforesaid, it shall be lawful for the said party of the second part, his executors, administrators and assigns, to enter into and upon and hold and enjoy the said premises for the residue of the term granted by the said Indenture of Lease, and any renewal thereof (if any), for their own use and benefit, without the let, suit, hindrance, interruption, or denial of the said party of the first part, his executors, administrators and assigns, or any other persons whomsoever; and that free and clear, and freely and clearly acquitted, exonerated and discharged, or otherwise, by and at the expense of the said party of the first part, his executors and administrators, well and effectually saved, defended and kept harmless of, from and against all former and other gifts, grants, bargains, sales, leases, and other incumbrances whatsoever.

And that the said party of the first part, his executors, administrators and assigns, and all other persons claiming any interest in the said premises, shall and will, from time to time, and at all times hereafter, so long as the said principal sum or any part thereof shall remain due and owing on this security, at the request and costs of the said party of the second part, his executors, administrators or assigns, make, do and execute, all such further assignments and assurances in the law of the said premises for the residue of the said term, and any renewal thereof (if any), subject to the proviso aforesaid, as by the said party of the second part, his executors, administrators or assigns, or his or their counsel in the law, shall be reasonably advised or required.

And that the said party of the first part, his executors, administrators or assigns, shall and will, from time to time, until default in payment of the said principal sum or the interest thereof, and until the said party of the second part shall enter into possession of the said premises as aforesaid, well and truly pay, or cause to be paid, the said yearly rent by the said Indenture of Lease reserved, and all taxes payable on the said premises, and perform and keep all the lessee's covenants and agreements in the said lease contained, and indemnify and save harmless the said party of the second part therefrom, and from all loss, costs, charges, damages, and expenses in respect thereof.

And also shall and will, from time to time, and at all times hereafter, so long as the said principal money and interest, or any part thereof, shall remain due on this security, insure and keep insured the buildings erected or to be erected on the land hereby assigned, or any part thereof, against loss or damage by fire in some Insurance Office, to be approved of by the party of the second part, in the full amount hereby secured, at the least, and, at the expense of the said party of the first part, immediately, assign the policy, and all benefit thereof to the said party of the second part, his executors, administrators and assigns, as additional security for the payment of the principal money and interest hereby secured; and that in default of such insurance it shall be lawful for the said party of the second part, his executors, administrators or assigns, to effect the same, and the premium or premiums paid therefor shall be a charge or lien on the said premises hereby assigned, which shall not be

redeemed or redeemable until payment thereof, in addition to the said principal money and interest as aforesaid.

Provided, lastly, that until default in payment of the said principal money and interest hereby secured, it shall be lawful for the said party of the first part, his executors, administrators or assigns, to hold, occupy possess and enjoy the said lands and premises hereby assigned, with the appurtenances, without any molestation, interruption or disturbance of, from or by the said party of the second part, his executors, administrators or assigns, or any person or persons claiming or to claim by, from, through, under or in trust for him, them, or any of them.

In witness whereof the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed and delivered in the presence of Y. Z. — A. B. [L.S.] C. D. [L.S.]

Received on the date hereof, the sum of $, being the full consideration above mentioned.

A. B.

Witness,
Y. Z.

NATURALIZATION AND ALIENS.

An alien is one born outside British Dominions, or the subject or citizen of a Foreign Government or State, who has not been naturalized.

Naturalization is the process whereby an alien becomes a citizen and entitled to the privileges of one native-born.

In Ontario, Nova Scotia and Manitoba, by Provincial statutes, real and personal property of every kind may be acquired, held and disposed of by an alien, in the same manner as though he were a British subject; aliens may not, however, sit upon juries, or hold municipal or legislative offices.

The law upon this subject is now contained in "The Naturalization Act," R. S. C. 1906, cap. 77, as amended by Dominion Statutes of 1907, cap. 31, and of 1908, cap. 48. By this statute various important changes are made in the law theretofore existing.

Expatriation takes place when a person loses his nationality, and abjures his allegiance to the country of his birth by becoming the citizen of another country. Under the common law of England, and until a recent period, it was held impossible for a British subject, by any act of his to expatriate himself; but this has, of recent years, been permitted by statute, if the purpose for which it is sought is not unlawful nor in fraud of his duties in the country of his origin.

Repatriation occurs when an expatriated person regains his original nationality.

The more important clauses of the above mentioned statute are as follows:

SHORT TITLE.

1. This Act may be cited as the Naturalization Act. R.S., c. 113. s. 1.

INTERPRETATION.

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

(*a*) 'disability' means the disability of being an infant lunatic, idiot, or married woman;

(*b*) 'officer in the diplomatic service of His Majesty' means an ambassador, minister, *chargé d'affaires*, secretary of legation, or any person appointed by such ambassador, minister, *chargé d'affaires*, or secretary of legation, to execute any duty imposed upon an officer in the diplomatic service of His Majesty by the *Naturalization Act, 1870*, passed by the Parliament of the United Kingdom:

(c) 'officer in the consular service of His Majesty' means and includes consul-general, consul, vice-consul or consular agent, and any person for the time being discharging the duties of consul-general, consul, vice-consul or consular agent;

(d) 'county' includes a union of counties and a judicial district or other judicial division;

(e) 'alien' includes a statutory alien;

(f) 'statutory alien' means a natural-born British subject who becomes an alien under this Act or any Act in that behalf;

(g) 'subject' includes a citizen, when the foreign country referred to is a republic;

(h) 'form' means a form in the schedule to this Act. R. S. c. 113, s. 2.

3. For the purposes of this Act, the clerk of the peace of any county in Ontario shall be deemed to be the 'clerk' of the General Sessions of the Peace of that county, and the prothonotary of the Supreme Court of Nova Scotia for any county shall be deemed to be the 'clerk' of that court in relation to matters arising in or dealt with respect to such county. 2 E. VII., c. 23, s. 1; 3 E. VII., c. 38, s. 2.

RIGHTS OF PROPERTY OF ALIENS.

4. Real and personal property of any description may be taken, acquired, held and disposed of by an alien in the same manner, in all respects, as by a natural-born British subject. R. S., c. 113, s. 3.

5. A title to real and personal property of any description may be derived through, from, or in succession to an alien, in the same manner in all respects as through, from, or in succession to a natural-born British subject. R. S., c. 113, s. 3.

6. Nothing in the two last preceding sections shall qualify an alien for any office, or for any municipal, parliamentary, or other franchise, or to be the owner of a British ship; nor shall anything therein entitle an alien to any right or privilege as a British subject, except such rights and privileges in respect of property as are hereby expressly conferred upon him. R. S., c. 113, s. 3.

7. The provisions of the three last preceding sections shall not affect any estate or interest in real or personal property to which any person has or may become entitled, either mediately or immediately, in possession or expectancy, in pursuance of any disposition made before the fourth day of July, one thousand eight hundred and eighty-three, or in pursuance of any devolution by law on the death of any person dying before the said date. R. S., c. 113, s. 3.

EXPATRIATION.

8. Whenever His Majesty has entered into a convention with any foreign state to the effect that the subjects of that state who are naturalized as British subjects may divest themselves of their status as British subjects, and whenever His Majesty, by order in council, passed under the third section of *The Naturalization Act, 1870*, enacted by the Parliament of the United Kingdom, has declared that such convention has been entered into by His Majesty, from and after

the date of such order in council, any person originally a subject of the state referred to in such order who has been naturalized as a British subject within Canada, may, within such limit of time as is prescribed in the convention, make a declaration of alienage, and from and after the date of his so making such declaration, such person shall, within Canada, be regarded as an alien, and as a subject of the state to which he originally belonged, as aforesaid. R. S., c. 113, s. 4.

9. Any such declaration of alienage may be made,—

(*a*) in the United Kingdom, before any justice of the peace;

(*b*) elsewhere, in His Majesty's dominions, before any judge of any court of civil or criminal jurisdiction, or of any justice of the peace, or of any other officer for the time being authorized by law in such place to administer an oath for any judicial or other legal purpose; and,

(*c*) out of His Majesty's dominions, before any officer in the diplomatic or consular service of His Majesty. R. S., c. 113, s. 5.

10. Any person who, by reason of his having been born within British dominions, is a natural-born subject of His Majesty, but who, at the time of his birth, under the law of any foreign state, was and still is a subject of such state, may, if of full age, and not under any disability, make a declaration of alienage in manner aforesaid, and, from and after the making of such declaration of alienage, such person shall, within Canada, cease to be a British subject. R. S., c. 113, s. 6.

11. Any person who is born out of British dominions of a father being a British subject, may, if of full age and not under any disability, make a declaration of alienage in manner aforesaid, and from and after the making of such declaration shall, within Canada, cease to be a British subject. R. S., c. 113, s. 6.

EFFECT OF NATURALIZATION ABROAD.

12. Any British subject who has, at any time before or at any time after the fourth day of July, one thousand eight hundred any eighty-three, when in a foreign state and not under any disability, voluntarily become naturalized in such state, shall, from and after the time of his so having become naturalized in such foreign state, be deemed, within Canada, to have ceased to be a British subject, and shall be regarded as an alien. R. S., c. 113, s. 7.

TAKING OATH.

13. Any alien who, within such limited time before taking the oaths or affirmations of residence and allegiance and procuring the same to be filed of record as hereinafter prescribed, as may be allowed by order or regulation of the Governor in Council, has resided in Canada for a term of not less than three years, or has been in the service of the Government of Canada or of any of the provinces of Canada, or of two or more of such governments, for a term of not less than three years, and intends, when naturalized, either to reside in Canada or to serve under the Government of Canada or the Government of one of the provinces of Canada, or two or more of such

governments, may take and subscribe the oaths of residence and allegiance or of service and allegiance in form A and apply for a certificate in form B. R. S., c. 113, s. 8.

14. The following persons shall be competent to administer such oath, namely:—

(*a*) A judge of a court of record in Canada;

(*b*) A commissioner authorized to administer oaths in any court of record in Canada;

(*c*) A commissioner authorized by the Governor General to take oaths under this Act;

(*d*) A justice of the peace of the county or district where the alien resides;

(*e*) A notary public;

(*f*) A stipendiary magistrate, or a police magistrate. R. S., c. 113, s. 9.

EVIDENCE OF RESIDENCE OR SERVICE.

15. The alien shall adduce, in support of such application, such evidence of his residence or service, and intention to reside or serve, as the person before whom he takes the oaths aforesaid requires; and such person, on being satisfied with such evidence, and that the alien is of good character, shall grant to such alien a certificate in form B. R. S., c. 113, s. 10.

PRESENTATION OF CERTIFICATE AND NOTICE.

16. Such certificate shall be presented,—

(*a*) in Ontario, to the court of general sessions of the peace of the county in which the alien resides, or to the court of assize and *nisi prius* during its sittings in such county;

(*b*) in Quebec, to any circuit court within the territorial limits of the jurisdiction of which the alien resides;

(*c*) in Nova Scotia, to the Supreme Court, during its sittings in the county in which the alien resides, or to the county court having jurisdiction in such county;

(*d*) in New Brunswick, to the Supreme Court, during its sittings in the county in which the alien resides, or to the circuit court, as the case may be, in such county, or to the county court having jurisdiction in such county;

(*e*) in British Columbia, to the Supreme Court of British Columbia, during its sittings in the electoral district in which the alien resides, or to the court of assize and *nisi prius* during its sittings in such electoral district, or to the county court of such electoral district;

(*f*) in Manitoba, to the county court having jurisdiction where the alien resides, or, if there is no county court having jurisdiction there, then to the county court of the county nearest to his residence or the county court the place of holding which is nearest to his residence;

(*g*) in Prince Edward Island, to the Supreme Court of Judicature, during its sittings in the county within which the alien resides, or to the court of assize and *nisi prius* during its sittings in such county, or to the county court of such county;

(*h*) in the provinces of Saskatchewan or Alberta, to a judge of the Supreme Court of the Northwest Territories sitting in chambers in the judicial district in which the alien resides, pending the abolition of that Court by the legislature of the province, and thereafter to a judge of such superior court as, in respect of the civil jurisdiction of the said Court is established for the province in lieu thereof;

(*i*) in the Yukon Territory, to the Territorial Court, during its sittings in the circuit within which the alien resides. 3 E. VII., c. 38, s. 1; 4 E. VII., c. 25, s. 1; 4-5 E. VII., c. 3, s. 16; c. 42, s. 16.

17. Except in the provinces of Saskatchewan and Alberta, when it is intended to present a certificate under the last preceding section ,on behalf of any alien, notice in writing of such intention stating the name, residence and occupation or addition of such alien shall be given to the clerk of the court at least three weeks before the sittings thereof.

2. The clerk shall post up in a conspicuous place in his office three weeks before such sittings, and keep posted there until such sittings are ended, a list showing the names, residences, and occupations or additions of all aliens as to whom due notice has been received by him of such intention. 3 E. VII., c. 38, s. 2.

18. Except in the provinces of Saskatchewan and Alberta, at any time after the filing of any such notice and previous to the sittings of the court, any person objecting to the naturalization of the alien may file in the office of the clerk an opposition in which shall be stated the grounds of his objection. 3 E. VII., c. 38, s. 2.

19. Except in the provinces of Saskatchewan and Alberta, presentation of such certificates shall be made in open court and on the first day of some general sittings of the court, and thereupon the judge shall cause the particulars of all such certificates to be openly announced in court, the name, residence, and occupation or addition of each applicant for naturalization being stated.

2. Where no opposition has been filed to the naturalization of an applicant, and no objection thereto is offered during the sittings, the court on the last day of the sittings shall direct that the certificate of the applicant be filed of record in the court.

3. If such opposition has been filed or objection offered, the court shall hear and determine the same in a summary way, and shall make such direction or order in the premises as the justice of the case requires. 3 E. VII., c. 38, s. 2.

20. In the provinces of Saskatchewan or Alberta, the procedure with regard to such certificate shall be as follows:—

(*a*) Before its presentation to the judge, such certificate shall, pending the abolition of the Supreme Court of the Northwest Territories by the legislature of the province, he filed in the office of the clerk of that Court for the judicial district in which the alien resides, unless he resides in a portion of such district assigned to a deputy clerk, in which case it shall be filed in the office of such deputy clerk, and thereafter, in the office of the clerk for such district or, as the case may be, of the deputy clerk, of such superior court as, in respect of the civil jurisdiction of the said Supreme Court, is established for the province in lieu thereof;

(*b*) A copy of the certificate shall thereupon be posted up in a conspicious place in the office of the clerk of the court, or of the deputy clerk, as the case may be, and shall remain so posted up for a period of not less than two weeks;

(*c*) At any time after such copy is first so posted up any one may file with the clerk of the court, or with the deputy clerk, as the case may be, a written notice of objection to the certificate of naturalization being granted, stating the grounds of such objection;

(*d*) Not later than three weeks after the certificate is so filed, the clerk of the court, or the deputy clerk, as the case may be, shall present to the judge, or transmit to him by registered letter, the certificate and all notices of objection filed with him, if any, with a certificate under his hand and the seal of the court that a copy of the certificate has been duly posted up in his office as above required, and, if no notice of objection has been filed with him, that such is the case;

(*e*) Within one week following the receipt by the judge of the certificate and such other material, he shall hold a sitting in chambers, at which, if no notice of objection has been filed, and if the certificate appears to be regular and sufficient, he shall direct the issue to the alien of a certificate of naturalization, and, if any notice of objection has been received, or if the certificate is defective or otherwise open to objection, he shall decide such objection in a summary way, and shall make such direction or order as the justice of the case requires;

(*f*) The judge shall have power to adjourn the hearing of any such case from time to time. 4-5 E. VII., c. 25, s. 1; c. 3, s. 16; c. 42, s. 16.

21. In the Northwest Territories such certificate shall be presented to such authorities or persons as are prescribed by order or regulation of the Governor in Council, and thereupon such authority or person shall take such proceedings with respect to such certificate, and shall cause the same to be filed of record in such way as is prescribed by such order or regulation. R. S., c. 113, s. 12; 3 E. VII., c. 38, s. 3.

22. The alien shall after the filing of such certificate be entitled to a certificate of naturalization in form C authenticated,—

(*a*) under the seal of the court, if such certificate has been presented to a court; or,

(*b*) if the certificate has been presented to an authority or person, as prescribed by order or regulation of the Governor in Council in manner prescribed by such order or regulation. R. S., c. 113 s. 13.

23. The certificate granted to an alien who applies for naturalization on account of service under the Government of Canada or of any province or of any two or more of such Governments shall be filed of record in the office of the Secretary of State of Canada.

2. After such filing, the Governor in Council may authorize the issue of a certificate of naturalization to such alien, in form D. R. S., c. 113, s. 14.

RIGHTS OF ALIENS NATURALIZED.

24. An alien to whom a certificate of naturalization is granted shall, within Canada, be entitled to all political and other rights, powers and privileges, and be subject to all obligations, to which a natural-born British subject is entitled or subject within Canada, with this qualification, that he shall not, when within the limits of the foreign state of which he was a subject previously to obtaining his certificate of naturalization, be deemed to be a British subject, unless he has ceased to be a subject of that state in pursuance of the laws thereof, or in pursuance of a treaty or convention to that effect. R. S., c. 113, s. 15.

SPECIAL CERTIFICATE.

25. A special certificate of naturalization, in form E. may, in manner aforesaid, be granted to any person with respect to whose nationality, as a British subject, a doubt exists.

2. Such certificate may specify that the grant thereof is made for the purpose of quieting doubts as to the rights of such persons to be deemed a British subject.

3. The grant of such special certificate shall not be deemed to be any admission that the person to whom it was granted was not previously a British subject. R. S., c. 113, s. 16.

CERTIFICATE AS TO ALIENS NATURALIZED.

26. An alien naturalized previously to the fourth day of July, one thousand eight hundred and eighty-three, may apply for a certificate of naturalization under this Act.

2. Such certificate may be granted to such naturalized alien upon the same terms and subject to the same conditions upon which such certificate might have been granted if such alien had not been previously naturalized. R. S., c. 113, s. 17.

CERTIFICATE OF READMISSION.

27. A statutory alien may, upon the same terms and subject to the same conditions as are required in the case of an alien applying for a certificate of naturalization, except that residence in Canada for not less than three months shall be sufficient, apply to the proper court or authority or person in that behalf for a certificate in form F. hereinafter referred to as a 'certificate of admission to British nationality,' readmitting him to the status of a British subject within Canada. R. S., c. 113, s. 18; 3 E. VII., c. 38, s. 4.

28. A statutory alien, to whom a certificate of readmission to British nationality within Canada has been granted, shall, from the date of the certificate of readmission, but not in respect of any previous transaction, resume his position as a British subject within Canada, with this qualification, that within the limits of the foreign state of which he became a subject, he shall not be deemed to be a British subject within Canada, unless he has ceased to be a subject of that foreign state according to the laws thereof, or in pursuance of a treaty or convention to that effect. R. S., c. 113, s. 19.

PROVISIONS IN CASE OF CONVENTION WITH FOREIGN STATE.

29. When any foreign state has, before or after the fourth day of July, one thousand eight hundred and eighty-three, entered into a

convention with His Majesty to the effect that the subjects of that state who have been naturalized as British subjects may divest themselves of their status as subjects of such foreign state, and, when such convention, or the laws of such foreign state require a residence in Canada of more than three years of a service under the Government of Canada, or of any of the provinces of Canada, or of two or more of such Governments, of more than three years, as a condition precedent to such subjects divesting themselves of their status as such foreign subjects, an alien being a subject of such foreign state, who desires to divest himself of his status as such subject, may, if at the time of taking the oath of residence or service, he has resided or served the length of time required by such convention or by the laws of the foreign state, instead of taking the oath showing three years' residence or service, take an oath showing residence or service for the length of time required by such convention or by the laws of the foreign state. R. S., c. 113, s. 20.

30. The certificate of naturalization granted to the alien under the last preceding section shall state the period of residence or service sworn to; and such statement shall be sufficient evidence of such residence or service in all courts and places whatsoever. R. S., c. 113, s. 20.

31. An alien who, either before or after the fourth day of July, one thousand eight hundred and eighty-three, has, whether under this Act or otherwise, become entitled to the privileges of British birth in Canada, and who is a subject of a foreign state with which a convention to the effect above mentioned has been entered into by His Majesty, and who desires to divest himself of his status as such subject, and who has resided or served the length of time required by such convention or by the laws of the foreign state, may take the oath of residence or service showing residence or service for the length of time required by such convention or by the laws of the foreign state, and apply for a certificate, or a second certificate, as the case may be, of naturalization under this Act. R. S. c. 113, s. 21.

STATUS OF MARRIED WOMEN AND INFANT CHILDREN.

32. A married woman shall, within Canada, be deemed to be a subject of the state of which her husband is, for the time being, a subject. R. S., c. 113, s. 22.

33. A widow who is a natural-born British subject and who has become an alien by or in consequence of her marriage, shall be deemed to be a statutory alien, and may, as such, at any time during her widowhood, obtain a certificate of readmission to British nationality, within Canada, as hereinbefore provided. R. S., c. 113, s. 23.

34. If the father, being a British subject, or the mother, being a British subject and a widow, becomes an alien in pursuance of this Act, every child of such father or mother who, during infancy, has become a resident in the country where the father or mother is naturalized, and has, according to the laws of such country, become naturalized therein, shall, within Canada, be deemed to be subject of the state of which the father or mother has become a subject, and not a British subject. R. S., c. 113, s. 24.

35. If the father, or the mother being a widow, has obtained a certificate of readmission to British nationality within Canada, every child of such father or mother who, during infancy, has become resident within Canada with such father or mother, shall be deemed to have resumed the position of British subject within Canada, to all intents. R. S., c. 113, s. 25.

36. If the father, or the mother being a widow, has obtained a certificate of naturalization within Canada, every child of such father or mother who, during infancy, has become resident with such father or mother within Canada, shall, within Canada, be deemed to be a naturalized British subject. R. S., c. 113, s. 26.

37. Nothing in this Act contained shall deprive any married woman of any estate or interest in real or personal property to which she became entitled before the fourth day of July, one thousand eight hundred and eighty-three, or effect such estate or interest to her prejudice. R. S., c. 113, s. 27.

REGULATIONS.

38. The Governor in Council may make regulations respecting the following matters:—

(*a*) The form and registration of declarations of British nationality;

(*b*) The form and registration of certificates of naturalization in Canada;

(c) The form and registration of certificates of readmission to British nationality within Canada;

(*d*) The form and registration of declarations of alienage;

(*e*) The transmission to Canada, for the purpose of registration or safe keeping or of being produced as evidence, of any declarations or certificates made in pursuance or for the purposes of this Act, out of Canada, or of any copies of such declarations or certificates, and of the originals or copies of oaths received under this Act out of Canada; also, of copies of entries of such oaths contained in any register kept out of Canada in pursuance or for the purposes of this Act;

(*f*) The persons by whom the oaths may be administered under this Act;

(*g*) Whether or not such oaths are to be subscribed as well as taken, and the form in which such taking and subscription are to be attested;

(*h*) The registration of such oaths;

(*i*) The persons by whom certified copies of such oaths may be given;

(*j*) The proof, in any legal proceedings, of such oaths;

(*k*) With the consent of the Treasury Board, the imposition and application of fees not fixed by this Act, in respect of any registration, or of the making or granting of any declaration or certificate, and the administration or registration of any oaths authorized by this Act. R. S., c. 113, s. 28.

39. Any regulation made by the Governor in Council under this Act shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if it had been enacted in this Act. R. S., c. 113, s. 29.

EVIDENCE.

40. Any declaration authorized to be made under this Act may be proved in any legal proceedings, by the production of the original declaration, or of any copy thereof certified to be a true copy by the clerk or acting clerk of the King's Privy Council for Canada, or by any person authorized by regulation of the Governor in Council to give certified copies of such declaration.

2. The production of such declaration or copy shall be evidence of the person therein named as declarant having made the same at the date in the said declaration mentioned. R. S., c. 113, s. 30.

41. A certificate of naturalization or of readmission to British nationality may be proved in any legal proceeding by the production of any original certificate, or of any copy thereof certified to be a true copy by the clerk or acting clerk of the King's Privy Council for Canada, or by any person authorized by regulation of the Governor in Council to give certified copies of such certificate. R. S., c. 113, s. 31.

42. The statement of the period of residence or service in a certificate of naturalization shall be sufficient evidence of such residence or service in all courts and places whatsoever. R. S., c. 113, s. 31.

43. Entries in any register authorized to be made in pursuance of this Act may be proved by such copies and certified in such manner as is directed by regulation of the Governor in Council, by the clerk or acting clerk of the King's Privy Council for Canada, or by the Secretary of State.

2. The copies of such entries shall be evidence of any matters by this Act or by any regulation of the Governor in Council authorized to be inserted in the register. R. S., c. 113, s. 32.

44. A copy of any certificate of naturalization may be registered in the land registry office of any county or district or registration division within Canada, and a copy of such registry, certified by the registrar or other proper person in that behalf, shall be sufficient evidence of the naturalization of the person mentioned therein, in all courts and places whatsoever. R. S., c. 113, s. 33.

GENERAL.

45. The Governor in Council may, from time to time, appoint commissioners to take and administer oaths under this Act R. S., c. 113, s. 34.

46. If any British subject has, in pursuance of this Act, become an alien, he shall not thereby be discharged from any liability in respect of any acts done before the date of his so becoming an alien. R. S., c. 113, s. 35.

47. The clerk of the court and the persons or authorities by whom the certificate of naturalization is issued shall, for all services and

filings in connection with such certificate, be entitled to receive, from the person naturalized, the sum of twenty-five cents and no more; and no further or other fee shall be payable for or in respect of such certificate. R. S., c. 113, s. 36.

48. The registrar shall, for recording a certificate of naturalization, be entitled to receive from the person producing the same for registry, the sum of fifty cents, and a further sum of twenty-five cents for every search and certified copy of the same and no more. R. S., c. 113, s. 36.

49. Every person who, being by birth an alien, had, on or before the fourth day of July, one thousand eight hundred and eighty-three, become entitled to the privileges of British birth within any part of Canada, by virtue of any general or special Act of naturalization in force in such part of Canada, shall hereafter be entitled to all the privileges of this Act conferred on persons naturalized under this Act. R. S., c. 113, s. 37.

50. Nothing in this Act contained shall repeal or in any manner impair or affect,—

(*a*) the Act of the Legislature of Upper Canada, passed in the fifty-fourth year of the reign of His late Majesty King George the Third, initituled *An Act to declare certain persons, therein described, aliens, and to vest their estates in His Majesty;* or,

(*b*) the Act of the Legislature of the late province of Canada, passed in the twenty-fourth year of the reign of Her late Majesty Queen Victoria, chapter forty-four and intituled *An Act respecting forfeited estates in Upper Canada*: or,

(*c*) any proceedings had under the said Acts; or,

(*d*) the Act of the Legislature of the late province of Canada, passed in the session held in the fourth and fifth years of the reign of Her late Majesty Queen Victoria, chapter seven, intituled *An Act to secure to, and confer upon, certain inhabitants of this Province, the civil and political rights of natural-born British subjects*; or,

(*e*) the first, second or third sections of the Act of the said Legislature, passed in the twelfth year of the reign of Her late Majesty Queen Victoria, chapter one hundred and ninety-seven, intituled *An Act to repeal a certain Act therein mentioned and to make better provision for the naturalization of Aliens*; or,

(*f*) the naturalization of any person naturalized under the said two last mentioned Acts, or either of them, or any rights acquired by such person or by any other person by virtue of such naturalization, all which shall remain valid and be possessed and enjoyed by such person respectively. R. S., c. 113, ss. 38-39.

51. Every person who, being by birth an alien, did, prior to the first day of January, one thousand eight hundred and sixty-eight, take the oaths of residence and allegiance required by the laws respecting naturalization then in force in that one of the provinces now forming the Dominion of Canada, in which he then resided, shall, within Canada, be entitled to all the rights and privileges of a natural-born British subject conferred upon naturalized persons by this Act; and the certificate of the judge, magistrate, or other person before whom such oaths were taken and subscribed, shall be evidence of his

having taken them; or, he may take and subscribe the oath in form G, before some judge, justice, or person authorized to administer the oaths of residence and allegiance under this Act, in the county or district in which he resides. R. S., c. 113, s. 40.

52. All aliens who had their settled place of abode,—

(*a*) in either of the late provinces of Upper Canada, or Lower Canada, or Canada, or in Nova Scotia or New Brunswick, on or before the first day of July, one thousand eight hundred and sixty-seven; or,

(*b*) in Rupert's Land or the Northwest Territories, on or before the fifteenth day of July, one thousand eight hundred and seventy; or,

(*c*) in British Columbia, on or before the twentieth day of July, one thousand eight hundred and seventy-one; or,

(*d*) in Prince Edward Island, on or before the first day of July, one thousand eight hundred and seventy-three;

and who are still residents of Canada, shall be deemed, adjudged, and taken to be, and to have been entitled to all the privileges of British birth within Canada as if they had been natural-born subjects of His Majesty. R. S., c. 113, s. 41.

53. No such person referred to in the last preceding section, being a male, shall, however, be entitled to the benefit of this Act, unless he takes the oaths of allegiance in form A, and of residence in form H, before some justice of the peace or other person authorized to administer oaths under this Act. R. S., c. 113, s. 41.

54. The oaths taken by any person, under the two last preceding sections shall be filed of record,—

(*a*) in the province of Ontario, with the clerk of the peace of the county in which such person resides;

(*b*) in the province of Quebec, with the clerk of the circuit court of the circuit within which such person resides;

(*c*) in Nova Scotia, with the prothonotary of the Supreme Court;

(*d*) in New Brunswick, with the clerk of the Supreme Court;

(*e*) in British Columbia, with the clerk of the Supreme Court;

(*f*) in Prince Edward Island, with the clerk of the Supreme Court of Judicature;

(*g*) in Manitoba, with the clerk of the Court of King's Bench, or with the clerk of the county court of the county in which such person resides;

(*h*) in the province of Saskatchewan or Alberta, with the clerk of the Supreme Court of the Northwest Territories pending the abolition of that Court by the legislature of the province, and thereafter with the clerk of such superior court of justice as in respect of the civil jurisdiction of the said Court is established for the province in lieu thereof;

(*i*) in the Yukon Territory, with the clerk of the Territorial Court;

(*j*) in the Northwest Territories, with such person or authority as is prescribed by order or regulation of the Governnor in Council. R. S., c. 113, s. 42; 4-5 E. VII., c. 3, s. 16; c. 42, s. 16.

55. Upon the oath being so filed, the person taking it shall be entitled to the benefit of this Act and to the privileges of British birth within Canada, and shall also, upon payment of a fee of twenty-five cents, be entitled to a certificate, in form I, from the person with whom the oaths have been filed.

2. The production of such certificate shall be *prima facie* evidence of the naturalization of such person under this Act, and that he is entitled to and enjoys all the rights and privileges of a British subject. R. S., c. 113, s. 42.

56. No alien shall be naturalized within Canada except under the provisions of this Act. R. S., c. 113, s. 43.

RETURN TO THE SECRETARY OF STATE.

57. The clerk of every court which is, and the person or authorities who are, required to grant certificates under this Act shall, on or before the fifteenth days of January and July in each year, make a return of the half years ending respectively with the thirty-first day of December and the thirtieth day of June next preceding the date of such returns, to the Secretary of State of Canada of all persons to whom certificates of naturalization or of readmission to British nationality have been granted by such court, person or authority, as the case may be, or who have taken the oath and been granted the certificates above referred to. 2 E. VII., c. 23, s. 2.

58. Such returns shall set forth with respect to each such person,—

(*a*) his name, residence and addition, and his former residence and nationality;

(*b*) the nature of the certificate granted or oath taken;

(*c*) the date when and the place where the same were granted or taken; and,

(*d*) any other particulars which the Governor in Council may require. 2 E. VII., c. 23, s. 3.

59. Such term shall be accompanied by certified copies of each certificate granted during the half year. 2 E. VII., c. 23, s. 3.

60. All returns made pursuant to this Act and all copies of certificates received with any such returns shall remain of record in the Department of the Secretary of State. 2 E. VII., c. 23, s. 5.

61. There shall be prepared and kept in the Department of the Secretary of State two alphabetical lists of the persons appearing from such returns, and from the records of the said Department, to have been naturalized or readmitted to British nationality, one of which shall contain the names of persons naturalized or readmitted to British nationality prior to the fifteenth day of May, one thousand nine hundred and two, and the other, those of persons thereafter or who may henceforth be naturalized or readmitted to British nationality. 2 E. VII., c. 23, s. 5.

62. The fees for the preparation and transmission of returns made pursuant to this Act may, from time to time, be fixed by the Governor in Council. 3 E. VII., c. 38, s. 6.

63. Any person shall be entitled during the usual office hours of the said Department, and upon payment of such fees as may be prescribed by the Governor in Council, to have a search made of such lists, and of the returns and copies of certificates of record under this Act. 2 E. VII., c. 23, s. 6.

64. The Secretary of State, upon request, and upon payment of such fees as are so prescribed, shall issue certificates as to the details shown by such lists or such return with respect to any person whose name appears therein as having been naturalized or readmitted to British nationality, and furnish certified copies of or extracts from any matter of record in the Department under this Act. 2 E. VII., c. 23, s. 6.

PENALTIES.

65. Any person who refuses or neglects to make any return required of him by this Act, within the time limited therefor, is guilty of an offence and liable, upon summary conviction, to a penalty of fifty dollars. 2 E. VII., c. 23, s. 7.

66. Every person who wilfully swears falsely, or makes any false affirmation under this Act, shall, on conviction thereof, in addition to any other punishment authorized by law, forfeit all the privileges or advantages which he would otherwise, by making such oath or affirmation, have been entitled to under this Act; but the rights of other persons, in respect of any property or estate derived from or held under him, shall not thereby be prejudiced, unless such persons were cognizant of the false swearing or the making of the false affirmation at the time the title by which they claim to hold under him was created. R. S., c. 113, s. 44.

SCHEDULE.

A.

THE NATURALIZATION ACT.

Oath of Residence.

I, A. B., do swear (*or*, being a person allowed by law to affirm in judicial cases, do affirm) that, in the period of years preceding this date I have resided three (*or* five, *as the case may be*) years in the Dominion of Canada with intent to settle therein, without having been, during such three years (*or* five years, *as the case may be*) a stated resident in any foreign country. So help me God.

Sworn before me at }
on the }
day of } A.B.

R. S., c. 113, sch.

THE NATURALIZATION ACT.

Oath of Service.

I, A. B., do swear (*or*, being a person allowed by law to affirm in judicial cases, do affirm), that, in the period of years preceding this date, I have been in the service of the Government of Canada (*or* of the Government of the province of , in Canada, *or, as the case may be*) for the term of three years, and I intend, when naturalized, to reside in Canada (*or* to serve under the Government of *as the case may be*).

Sworn before me at }
on the }
day of } A.B.

R. S., c. 113, sch.

THE NATURALIZATION ACT.

Oath of Allegiance.

I, A. B., formerly of (*former place of residence to be stated here*), in (*country of origin to be stated here*), and known there by the name of (*name and surname of alien in his country of origin to be stated here*), and now residing at (*place of residence in Canada and occupation to be stated here*), do sincerely promise and swear (*or*, being a person allowed by law to affirm in judicial cases, do affirm) that I will be faithful and bear true allegiance to His Majesty King Edward VII. (*or reigning sovereign for the time being*) as lawful Sovereign of the United Kingdom of Great Britain and Ireland, and of the Dominion of Canada, dependent on and belonging to said Kingdom, and that I will defend Him to the utmost of my power against all traitorous conspiracies or attempts whatsoever which shall be made against His Person, Crown and Dignity, and that I will do my utmost endeavour to disclose and make known to His Majesty, His heirs or successors, all treasons or traitorous conspiracies and attempts which I shall know to be against Him or any of them; and all this I do swear (*or* affirm) without any equivocation, mental evasion or secret reservation. So help me God.

Sworn before me at }
on the }
day of } A.B.

4-5 E. VII., c. 25, s. 2.

B.

THE NATURALIZATION ACT.

Certificate.

I, C. D., (*name and description of the person before whom the oaths have been taken*) do certify that A. B., an alien, (*describing him as formerly of such a place, in such a foreign country, and now*

of such a place in Canada, and adding his occupation or addition) on the day of subscribed and took, before me, the oaths (*or* affirmations) of residence and allegiance (*or* service and allegiance, *as the case may be*) authorized by the thirteenth section of the Naturalization Act, and therein swore (*or* affirmed) to a residence in Canada (*or* service, etc.), of years; that I have reason to believe, and do believe, that the said A. B., within the period of years preceding the said day, has been a resident within Canada for (three *or* five, *as the case may be*) years, (*or* has been in the service of the Government of Canada for three years, *or as the case may be*), that the said A. B. is a person of good character, and that there exists, to my knowledge, no reason why the said A. B. should not be granted all the rights and capacities of a natural-born British subject.

Dated the day of

C. D.

If the above certificate is applied for by a person, with respect to whose nationality a doubt exists, and who desires a special certificate of naturalization under section twenty-five, add the following:—

'I further certify that the said A. B. has doubts as to his nationality as a British subject, and desires a special certificate of naturalization under section twenty-five of said Act.'

If the above certificate is applied for by a person previously a natural-born British subject, but who became an alien by naturalization, an appropriate statement to that effect should be inserted in the certificate.

R. S., c. 113, sch.; O. C.'s, Dec. 21, 1903, and Nov. 3, 1905.

C.

THE NATURALIZATION ACT.

Certificate of Naturalization.

Dominion of Canada, }
Province of }

In the (*name of court*) Court of

Whereas formerly of
(*name of country*) now of
in the province of (*occupation*)
has complied with the several requirements of the Naturalization Act, and has duly resided in Canada for the period of years;

And whereas the particulars of the certificate granted to the said under the fifteenth section of the said Act have been duly announced in court, and thereupon by order of the said court, the said certificate has been filed of record in the same pursuant to the said Act: (¶)

This is therefore to certify to all whom it may concern, that under and by virtue of the said Act has become naturalized as a British subject, and is within Canada, entitled to all political and other rights, powers and privileges, and subject to all obligations to which a natural-born British subject is entitled or subject within Canada, with this qualification that he shall not, when within the limits of the foreign state

of which he was a subject (*or* citizen) previous to the date hereof, be deemed to be a British subject unless he has ceased to be a subject (*or citizen*) of that state, in pursuance of the laws thereof, or in pursuance of a treaty or convention to that effect.

Given under the seal of the said court this
day of one thousand nine hundred and

A. B.,

Judge, Clerk (or other proper officer of the Court.)

This form may be altered so as to apply to the provinces of Saskatchewan and Alberta and the Yukon Territory.

R. S., c. 113, sch.; O. C.'s, 21st Dec., 1903, and 3rd Nov., 1905.

D.

THE NATURALIZATION ACT.

Certificate of Naturalization to a Person after Service under Government.

Whereas A. B., of (*describing him, and adding his occupation or addition*), has complied with the several requirements of the Naturalization Act, and has been in the service of the Government of Canada (*or as the case may be*) for a term of not less than three years, and intends, when naturalized, to reside in Canada (*or* to serve under the Government of , *as the case may be*); and whereas the certificate granted to the said A.B., under the fifteenth section of the said Act, has been duly filed of record in the office of His Majesty's Secretary of State of Canada, pursuant to the said Act; and whereas the Governor in Council has duly authorized the issue of this certificate of naturalization: This is, therefore, to certify to all whom it may concern that under and by virtue of the said Act, the said A. B. has become naturalized as a British subject and is, within Canada, entitled to all political and other rights, powers and privileges, and subject to all obligations to which a natural-born British subject is entitled or subject within Canada, with this qualification, that he shall not, when within the limits of the foreign state of which he was a subject (*or* citizen) previous to the date hereof, be deemed to be a British subject, unless he has ceased to be a subject (*or* citizen) of that state in pursuance of the laws thereof, or in pursuance of a treaty or convention to that effect.

Given under my hand, this day of

Secretary of State of Canada.

R. S., c. 113, sch.

E.

THE NATURALIZATION ACT.

Special Certificate of Naturalization to a person with respect to whose Nationality a doubt exists.

Follow Form C down to the sign ¶—then add:

And whereas the said A. B. alleges that he is a person with respect to whose nationality as a British subject a doubt exists, and this

certificate is issued for the purpose of quieting such doubts, and the application of the said A. B. therefor and the issuing thereof shall not be deemed to be any admission that the said A. B. was not heretofore a British subject—(*then continue the rest of form C to the end*).

Form D to be altered in a similar way when necessary.

R. S., c. 113, sch.

F.

THE NATURALIZATION ACT.

Certificate of Readmission to British Nationality.

Dominion of Canada,)
Province of)
In the (*name of court*) court of
Whereas formerly of (*name of country*) now of in the province of (*occupation*) who alleges that he was a natural-born British subject and that he became an alien by being naturalized as a subject (*or* citizen) of has complied with the several requirements of the Naturalization Act and has duly resided in Canada for the period of at least three months. And whereas the particulars of the certificate granted to the said under the fifteenth section of the said Act have been duly announced in court; and thereupon by order of the said court, the said certificate has been filed of record in the same pursuant to the said Act: This is therefore to certify to all whom it may concern, that, under and by virtue of the said Act the said from the date of this certificate, but not in respect of any previous transaction, is readmitted to the status of a British subject, and is, within Canada, entitled to all political and other rights, powers and privileges, and is subject to all obligations to which a natural-born British subject is entitled or subject within Canada, with this qualification, that he shall not, when within the limits of the foreign state of which he was a subject (*or* citizen) previous to the date hereof, be deemed to be a British subject, unless he has ceased to be a subject (*or* citizen) of that state, in pursuance of the laws thereof, or in pursuance of a treaty or convention to that effect.

Given under the seal of the said court this day of one thousand nine hundred and

A. B.,

Judge, Clerk (or other proper officer of the Court.)

R. S., c. 113, sch.; 3 E. VII., c. 38, s. 5; O.C.'s, 21st Dec. and 3rd Nov., 1905.

G.

THE NATURALIZATION ACT.

I, A. B., of , do swear (*or* affirm) that on or about the day of , one thousand eight hun-

dred and , at , in the (county, *or as the case may be*), of , in the province of , I did take and subscribe before (*a judge, magistrate or other person, naming him*) the oaths (*or* affirmations) of residence and allegiance required by the laws respecting the naturalization of aliens then in force in the said province. So help me God.

A.B.

Sworn to before me at , on
the day of , 19 .
R. S., c. 113, sch.

H.

THE NATURALIZATION ACT.

I, A. B., of , do swear (*or* affirm) that I had a settled place of abode in Upper Canada (Lower Canada, Nova Scotia *or* New Brunswick, *as the case may be*), on the first day of July, A.D. 1867 (*or* in Rupert's Land or the Northwest Territories, on the fifteenth day of July, A.D. 1870), (*or* in British Columbia, on the twentieth day of July, A.D. 1871), (*or* in Prince Edward Island, on the first day of July, 1873), and I resided therein with intent to settle therein; and I have continuously since resided in the Dominion of Canada. So help me God.

A.B.

Sworn before me at , on
the day of 19 .
R. S., c. 113, sch.

I.

THE NATURALIZATION ACT.

I hereby certify that A. B., of , has filed with me as clerk of the peace (*or as the case may be*) the oath (*or* affirmation) of which the following is a copy:—

(*Copy the Oath of Affirmation.*)

This certificate is issued pursuant to the fifty-fifth section of the Naturalization Act, and is to certify to all to whom it may concern that

Follow Form C.

R. S., c. 113, sch.

AN ACT TO AMEND THE NATURALIZATION ACT.

His 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 Naturalization Amendment Act, 1907.*

2. Any person resident in Canada, or in the service of the Government of Canada or of any province of Canada, who has obtained a certificate or letters of naturalization in the United Kingdom, or

in any part thereof, or in any British colony or possession, which certificate or letters remains or remain in full force and effect, and who desires to be naturalized in Canada, may, if he intends when naturalized either to reside in Canada or to serve under the Government of Canada or the government of any such province, apply for a certificate of naturalization in manner hereinafter prescribed, without having complied with the condition as to residence required under section 13 of *The Naturalization Act*, chapter seventy-seven of the Revised Statutes, 1906.

3. The applicant shall take and subscribe, before some person competent to administer oaths under section fourteen of the said Act, the oath of allegiance, in form A in the schedule to the said Act, and one of the oaths, forms 1 and 2 in the schedule to this Act, and shall produce to such person his certificate or letters of naturalization aforesaid, and adduce, in support of his application, such evidence of his residence or service, and intention to reside or serve, as such person requires, and such person, on being satisfied with such evidence and that the applicant is of good character, shall grant to him a certificate in form 3 in the schedule of this Act.

4. The provisions of sections sixteen to twenty-three of the said Act with regard to the presentation and filing of the certificate in form B and the proceedings thereupon and with respect thereto shall, *mutatis mutandis*, and except as hereinafter provided, apply to the presentation and filing of the certificate granted under the last preceding section, and the proceedings thereupon and with respect thereto.

5. There shall in such cases be presented to the court, or to the authority or person prescribed under section twenty-one of the said Act, together with the certificate in form 3, the certificate or letters of naturalization aforesaid.

6. The certificate of naturalization to be granted to the applicant may be in form 4 in the schedule to this Act.

SCHEDULE.

FORM 1.

The Naturalization Amendment Act, 1907.

Oath of Residence.

I, A. B., do swear (*or*, being a person allowed by law to affirm in judicial cases, do affirm) that I have obtained in the United Kingdom of Great Britain and Ireland (*or as the case may be*) a certificate (*or* letters) of naturalization dated which I now produce and which is (*or* are), to the best of my knowledge or belief, in full force and effect; that I desire to be naturalized in Canada; that I now reside in Canada, and that I intend, when naturalized to continue to reside therein.

Sworn before me at
on the
day of 19 .

FORM 2.

The Naturalization Amendment Act, 1907.

Oath of Service.

I, A. B., do swear (*or*, being a person allowed by law to affirm in judicial cases, do affirm), that I have obtained in the United King-

dom of Great Britain and Ireland (*or as the case may be*) a certificate (*or* letters) of naturalization dated , which I now produce, and which is (*or* are), to the best of my knowledge and belief in full force and effect; that I desire to be naturalized in Canada; that I am now in the service of the Government of Canada (*or* of the government of the province of , in Canada), and that I intend, when naturalized, to reside in Canada (*or* to serve under the government of , (*as the case may be*).

Sworn before me at }
on the }
day of 19 . }

FORM 3.

The Naturalization Amendment Act, 1907.

Certificate.

I, C. D., (*name and description of the person before whom the oaths have been taken*) do certify that A. B., a British subject formerly of (*country of origin*), who was naturalized as a British subject in as testified by certificate (*or* letters) of naturalization, dated , and produced before me, and now of , in the province of , (*occupation or addition*) on the day of 19 , subscribed and took, before me, the oaths (*or* affirmations) of residence and allegiance (*or* service and allegiance, *as the case may be*) prescribed by section 3 of *The Naturalization Amendment Act, 1907*; that I have reason to believe, and do believe, that the said A. B. is a resident of Canada (*or* is in the service of the Government of Canada, *or* of the province of , in Canada); that the said A. B. intends, when naturalized, to continue to reside in Canada (*or* to serve under the Government of , *as the case may be*); that the said A. B. is a person of good character, and that there exists, to my knowledge, no reason why the said A. B. should not be granted the rights and capacities in Canada of a natural born British subject.

Dated at , the }
day of 19 . }

FORM 4.

Certificate of Naturalization.

Dominion of Canada, }
Province of . }

In the (*name of court*) Court of

Whereas formerly of (*name of country of origin*) and a British subject by naturalization, obtained within the (*as the case may be*), (*occupation or addition*), has taken the oath of residence (*or* service) prescribed by the third section of *The Naturalization Amendment Act, 1907*, and has otherwise complied with the several requirements of the said Act, and whereas the particulars of the certificate granted to the said under the fourth section of the said Act have been duly announced in court, and thereupon by order of the said court the said certificate has been filed of record in the same pursuant to the said Act; this

is, therefore, to certify to all to whom it may concern that, under and by virtue of *The Naturalization Act* and of the said Amendment Act, has become naturalized as a British subject, and is, within Canada, entitled to all political and other rights, powers and privileges, and subject to all obligations to which a natural born British subject is entitled or subject within Canada, with this qualification that he shall not, when within the limits of a foreign state of which he was a subject (*or* citizen) previous to his naturalization in aforesaid, be deemed to be a British subject unless he has ceased to be a subject (*or* citizen of that state, in pursuance of the laws thereof, or in pursuance of a treaty or condition to that effect.

Given under the seal of the said court this day of , one thousand nine hundred and

Judge (*or clerk or other proper officer of the court*).

NOTE.—This form may be altered so as to apply to the Provinces of Saskatchewan and Alberta and the Yukon Territory.

AN ACT TO AMEND THE NATURALIZATION ACT.

7-8 Edw. VII., chap. 48.

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. Section 16 of *The Naturalization Act*, chapter 77 of the Revised Statutes, 1906, is hereby amended by striking out paragraph (*f*) therein, and substituting the following paragraph:—

"(*f*) in Manitoba, to the Court of King's Bench during its sittings in the judicial district within which the alien resides; to a judge of the Court of King's Bench, sitting in court in the judicial district within which the alien resides; or to the county court during its sittings in the division within which the alien resides."

2. Section 54 of the said Act is hereby amended by striking out paragraph (*h*) therein, and substituting the following paragraph:—

"(*h*) in Saskatchewan or Alberta with the clerk of any district court in the judicial district in which the alien resides."

3. Section 16 of the said Act is hereby amended by adding after the word "certificate" in the first line thereof, the words "and oaths of residence and allegiance or service and allegiance."

4. Section 47 of the said Act is hereby amended by inserting after the word "payable" in the last line thereof, the words "by the person naturalized."

PARTNERSHIPS.

A partnership is an association of two or more persons, contributing, in equal or unequal proportions, money, labor, skill, care, attendance or services in the prosecution of some trade or manufacture or business, upon the express or implied understanding that the profit or loss attending the operations is to be shared among the parties in certain proportions. The capital may be supplied by one alone, and the skill and labor by another alone, or both may furnish both capital and labor. A person under the age of 21 years, being unable to make a valid contract, cannot form a partnership; nor can an idiot or lunatic, for the same reason; and, as a rule, and in the absence of statutory provision, a married woman cannot, save where her husband is a convicted felon, or an alien enemy and abroad, or where by order of a competent Court, she is permitted to do so. The contract of partnership is founded wholly on the consent of parties, and may be created and evidenced by their acts and deeds, and their common participation in the profit and loss of a trade or business, or of a particular speculation or adventure, as well as through the medium of an express contract. If parties are not to share the profit and loss, there can be no partnership as between themselves, whatever may be their apparent situation and position as regards the public. If one man joins another in the furtherance of a particular undertaking, and contributes work and labor, services and skill, towards the attainment of the common object, upon the understanding that the remuneration is to depend upon the realization of profits, so that, if the business is a losing business, he is to get nothing, he stands in the position of a partner in the undertaking, and not in that of a laborer or servant for hire. But a person who merely receives out of the profits the wages of labor, or a commission, as a hired servant or agent, such as a factor, foreman, clerk or manager, and who has no interest or property in the capital stock of the business, is not a partner in the concern, although his wages may be calculated according to a fluctuating standard, and may rise and fall with the accruing profits. Statutes of the various Provinces provide for the legal rights of such persons.

A partner in a private commercial partnership (not being a public joint-stock company with transferable shares) cannot introduce a stranger into the firm, as a partner, without the consent of all the members of the co-partnership.

Every person who shares in the profits of a business carried on by himself personally, or by others as his agents, is a partner in the business as regards the public and third parties, and is liable to such, whatever may be the private stipulations and agreements between him and the parties who appear to the world as the managers and conductors of the business; because the profits form a portion of the fund on which the creditors have a right to rely for payment.

A general partnership is one formed for trade or business generally, without limitations. A special partnership is one in which the joint interest extends only to a particular concern, as, for example, in the erection of a hotel. A limited partnership is one in which one or more of the partners put in a certain amount of capital, which is liable for the contracts of the firm, but beyond that amount the party advancing is not liable.

A person who lends his name as a partner, or who suffers his name to continue in the firm after he has actually ceased to be a partner, is still responsible to third persons as a partner.

A partner may buy and sell partnership effects; make contracts in reference to the business of the firm; pay and receive money; draw and endorse and accept bills and notes; release ordinary partnership debts, payable on demand under seal; and all acts of such a nature, even though they be upon his own private account, will bind the other partners, if connected with matters apparently having reference to the business of the firm, and transacted with other parties ignorant of the fact that such dealings are for the particular partner's private account. So also the representation, or misrepresentation, of any fact, made in any partnership transaction by one partner, or the commission of any fraud in such transaction, will bind the entire firm, even though the other partners may have no connection with, or knowledge of the same.

A partner will bind the firm by his representations and admissions made to others in the general course of the partnership business, but cannot bind them by deed, unless empowered by deed so to do; nor by giving guaranties, unless the giving of such is part of the regular business of the firm. He can hire clerks and workmen, but cannot discharge them against the will of his partners. In lawsuits, he may prosecute or defend an action for the firm, but if his partners object to his course they have a right to demand that he shall indemnify them against law costs.

Dormant and secret partners, whose names do not appear to the world, may be made responsible for the engagements of a trading firm of which they are members.

Persons may become clothed with the legal liabilities and responsibilities of partners as regards the public and third parties, by holding themselves out to the world as partners, as well as by contracting the legal relationship of partners among themselves. If a man, therefore, allows himself to be published to the world as a member of a particular firm; if he permits his name to appear in the partnership name or to be used in the business; if he suffers it to be exhibited to the public over a shop window; or to be written or printed in invoices or bills of parcels or prospectuses; or to be published in advertisements, as the name of a member of the firm, he is an ostensible partner and is chargeable as a partner, although he is not in point of fact a partner in the concern, and has no share or interest in the profits of the business. But if a man's name is used without his knowledge or consent, and he is represented by others to be a partner without his authority or permission, he cannot, of course, be made responsible as a partner upon the strength of such false and fraudulent representation.

An incoming partner cannot be made responsible for the non-performance of contracts entered into by the firm before he became an actual or reputed member of it.

Dormant and secret partners may release themselves from all further liability by a simple withdrawal and relinquishment of their share in the profit and loss of the business; but, if they are not strictly secret as well as dormant partners, notice of the termination of their connection with the co-partnership must be given. A general notice is sufficient as to all but actual creditors; these must have some kind of actual notice.

If no time has been limited for the dissolution of a general trading partnership, it is a partnership at will, and may be dissolved at any time at the pleasure of any one or more of the partners. If the partnership was established by deed, the renunciation and disclaimer of it by the party who withdraws from the firm ought to be made by deed. But if the partnership was contracted without deed, or, as it is technically called, by parol, it may be renounced in the same manner. If the partners have agreed that the partnership shall continue for a definite period, it cannot be dissolved before the expiration of the term limited, except on the mutual consent of all the parties, or by the outlawry, felony or death of any one or more of them, or by the decree of a Court of Equity.

The Courts will interfere to prevent gross breaches of the partnership agreement on the part of a member, or improper conduct likely to cause great loss to the partnership, and will grant an injunction or award damages; and where these remedies appear insufficient, or other good cause exist, may dissolve the partnership. If a partnership for a definite term has been created by deed, the mutual agreement of the parties to dissolve it must be by deed also. The partnership is dissolved by the death or insolvency of one of the partners; or by an assignment by any partner of his share and interest in the business. A dissolution by one partner is a dissolution as to all.

An executor, administrator or personal representative of a partner, continuing in the business after the death of the partner, is personally responsible as partner for all debts contracted.

Immediately after a dissolution, a notice of the same should be published in the public papers, and in the official Gazette, for general information, and a special notice sent to every person who has had dealings with the firm. If these precautions be not taken, each partner will still continue liable for the acts of the others to all persons who have had no notice of the dissolution.

The strictest good faith, and an adherence to the highest principles of business honour and integrity will be required of partners in all dealings between themselves. Where differences of opinion arise as to the conduct of business affairs, the voice of the majority should be allowed to govern; but the majority cannot commit any partner to the risk of transactions outside the scope of the business contemplated in the partnership articles. It will be found a wise course to provide in these articles, very carefully, as to all matters about which there is likely otherwise to be misunderstanding. Each partner is liable to the others for a breach of any express covenant in the articles, and each may sue the others for any balance of profit admitted to be due him, or upon outside transactions unconnected with the partnership. Upon a dissolution, any Superior Court having equity jurisdiction will direct the accounts to be taken by one of its officers, if the partners cannot otherwise agree upon a divison of profits and losses.

In Ontario, agreements whereby an employee receives a defined share of the net profits or proceeds of a business, in lieu of or in addition to salary or wages, do not create the relation of partnership, with the rights and liabilities attending such relation. Persons advancing

money by way of loan, on similar terms, the widow and children of a deceased partner receiving a portion of the profits by way of annuity, and persons receiving a portion of such profits in consideration of the sale of the good-will of the business are likewise similarly protected.

In Manitoba similar provisions are enacted by the Partnership Act, R. S. M. 1902 cap. 129.

The law in Saskatchewan and Alberta on this subject will be found in pages 900-920 of the General Ordinances of the N. W. T. 1905. It is very much the same as in Manitoba, having been codified in both Provinces.

In Ontario persons desirous of forming a limited partnership for the transaction of any mercantile, mechanical, manufacturing or other business in the Province are required by 10 Ed. VII. cap. 67, to file with the Clerk of the County Court of the county in which the principal place of business of the partnership is situate a certificate in the form given below signed before a notary. Such certificate must contain :

1. The name or firm under which the partnership is to be conducted;
2. The general nature of the business intended to be transacted;
3. The names of all the general and special partners interested, distinguishing which are general and which are special partners, and their usual places of residence ;
4. The amount of capital stock which each special partner has contributed; and

The period at which the partnership is to commence and the period at which it is to terminate.

Under this Act partners are distinguished as general partners who are jointly and severally responsible as general partners are by law, and special partners, who contribute in actual cash payments a specific sum as capital to the common stock, and who are not liable for the debts of the partnership beyond the amounts contributed by them. Only general partners are to be authorized to transact business and sign for the partnership and bind it. No partnership is deemed to have been formed until the required certificate is filed, and if any false statement is made in the certificate all the persons interested in the partnership are liable for its engagements as general partners. Every renewal or continuance of a partnership beyond the time originally fixed for its duration must be certified and filed in the same manner as its original formation—if this is not done and

the partnership is continued, it is deemed to be a general partnership. So also every alteration made in the names of the partners, in the nature of the business or in the capital or shares, etc., is deemed a dissolution of the partnership, and if carried on afterwards it is held to be a general partnership unless renewed as a special partnership. The business of the partnership must not be conducted under a name or firm in which the name of a special partner is used, if it is used with his knowledge he is liable as a general partner. A special partner cannot withdraw the sum contributed by him during the continuance of the partnership, but he may receive interest upon it in addition to a share in the profits, if the payment of such interest does not reduce the original amount of the capital. A special partner renders himself liable as a general partner if he transacts business for the partnership or acts as its agent or attorney. In case of the insolvency of the partnership a special partner is not allowed to claim as a creditor until all other creditors are satisfied. To dissolve a partnership a notice of dissolution must be filed in the office in which the original certificate was recorded, and must be published once in each week for three weeks, in a newspaper published in the county or district where the partnership has its principal place of business, and for the same time in the Ontario Gazette.

MANITOBA.

The Partnership Act also contains provisions on the subject of limited partnerships similar to those of Ontario.

If the principal place of business of the partnership is in the Eastern Judicial District the declaration is to be filed with the Prothonotary of the Court of Queen's Bench, if in one of the other Judicial Districts, in the office of the Deputy Clerk of the Crown and Pleas.

NOVA SCOTIA.

Partnership law in Nova Scotia is governed by the same general principles as prevail in England and Ontario as set forth above. Persons associated in partnership for trading, manufacturing or mining purposes are required by R. S. N. S. cap. 143, to file in the registry of deeds for the district in which the business is to be carried on, a declaration in writing signed by the several partners setting forth the names, additions and residences of the partners, the firm name, the time during which the partnership has existed, and that the persons named therein are the only partners. Any changes in any particular mentioned

in this declaration must be embodied in a new declaration stating such change and signed and filed as before. A dissolution of the partnership may also be published in the same way by any one of the partners. Any person trading, manufacturing or mining on his own account, but using a business name such as his own and the words " and company " or other word or phrase indicating a plurality of members, is also required by the Act to file a declaration of partnership setting forth his name, addition and residence, the proposed business name, and stating that no other person is associated with him. All declarations required to be filed are to be filed within three months. Where a firm name is used, the names of all the partners must be printed on all billheads and letterheads. The penalty for not filing a declaration required by the Act shall not be less than $5 nor more than $100, half of which belongs to the prosecutor. Non-compliance with the provisions of the Act, however, does not affect the rights of partners with regard to each other, nor exempt a partner from liability as a partner.

The statute law relating to limited partnerships in Nova Scotia is with some minor differences identical with the statute law of Ontario on the same subject. Such partnerships cannot engage in banking, or marine, fire or life insurance business. The partnership certificate must be acknowledged by all the partners before a Judge of the Supreme or County Court or a justice of the peace. The terms of partnership after registration must be published for at least six weeks in the Royal Gazette, and also a Halifax newspaper, as well as by handbills posted up in the proposed places of business. Notice of dissolution must also be published in the Royal Gazette for four weeks, and in a newspaper published in the counties in which the partnership had places of business.

Partnerships may sue and be sued in the firm name. Sureties to or for partnerships are not liable as such after any change in the constitution of the firm, unless the intention of the parties is expressly stipulated to be otherwise.

NEW BRUNSWICK.

In New Brunswick by C. S. N. B. cap. 144, two or more persons may form a limited partnership consisting of one or more general partners who incur the usual responsibilities of partners, and one or more other persons who

contribute to the capital in actual cash. The latter are termed "special partners" and are not liable as partners beyond the possible loss of the capital contributed unless they allow their names to be used either as the firm name or as a part thereof or unless they act in partnership affairs as a general partner may do. A special partner is permitted to examine into the state and progress of the partnership concerns and to advise as to its management; he may also loan money to and advance and pay money for the partnership and may take and hold the notes, drafts, acceptances and bonds of or belonging to the partnership as security for the repayment of such moneys and interest and may use and lend his name and credit as security for the partnership in any business thereof and has the same rights and remedies in these respects as any other creditors might have. He may also negotiate sales, purchases and other business for the partnership, but no business so negotiated is binding on the partnership until it has been approved by a general partner or a majority of the general partners. He may not transact any other business on account of the partnership, nor be employed for that purpose as agent, attorney or otherwise. Breach of these regulations makes him a general partner.

General partners must make and sign a certificate containing the name or firm of the partnership and the names and respective places of residence of the partners, which certificate must be acknowledged or proved in the same manner as a conveyance of land and be filed in the office of the Registrar of Deeds for the county or counties in which the business of the partnership is to be carried on. A change in partnership or a dissolution is evidenced by a similar certificate acknowledged and filed as before. A copy of all certificates must be published in the Royal Gazette for two consecutive weeks next after the filing thereof.

In the case of a special partnership the certificate must show the name or firm; the names and residences of the partners distinguishing the general from the special; the amount of the capital each partner has contributed; the general nature of the business and the time of commencement and termination of the partnership. This certificate must be acknowledged and filed like that of a general partnership and must be published for three months immediately following such registry in a newspaper published in the city or county where their principal place of business is situated, or if there is no news-

paper published there, then in the Royal Gazette. Failure to do so makes the partnership general.

The registration of trading partnerships is also required by the statute law of New Brunswick, under provisions similar to the above.

In all of the Provinces, limited partnerships may be formed, consisting of general and special partners, the latter of whom are not liable for the debts of the partnership beyond the amount they contribute to the capital. The general partners only can transact the business, sign for the partnership and bind the firm. A certificate in a given form must be signed by all the partners and deposited with the Registrar and Prothonotary. The provisions of the statutes upon these subjects should be carefully followed.

PRINCE EDWARD ISLAND.

By the statute 39 Vict. cap. 8, it is enacted that all persons composing a partnership for the transaction of mercantile, mechanical or manufacturing business, except banking and insurance, shall make and severally sign a certificate in the presence of one or more witnesses, which shall contain the name or firm of the partnership, the names and respective residences of the partners, the general nature of the business to be transacted, and the time when the partnership is to commence and terminate; to be in the form given in the schedule in the Act. No partnership is deemed to be formed until such certificate is registered in the office of the Prothonotary of the Supreme Court, in the county where the business of the partnership shall be carried on; such certificate to be proved on the acknowledgment of the several partners, or on the oath of the subscribing witness, to be made before such Prothonotary or Deputy Prothonotary, or before a Commissioner; and no suit or action can be brought for any debt due the partnership until such certificate is registered.

The partnership is held to continue until a certificate, made and acknowledged as aforesaid by the partner or partners desiring to be discharged from further liability, is registered as in the first instance, declaring such termination or dissolution, or the withdrawal of any of the partners therefrom.

No dissolution (except by operation of law) can take place unless a notice thereof shall be registered in the same manner as the original certificate, and unless such notice shall be published for three weeks in the Royal Gazette, and in at least one other newspaper published in the Province.

When a new member is admitted, a certificate must be filed, under the hands of the members of the firm; and no new

member shall be considered as between himself and other members as a partner, until such certificate has been filed, although he shall be as fully liable for its debts contracted while he was connected with it.

FORMS.

Certificate of Partnership.

10 Edw. VII. cap. 67.

We, the undersigned, do hereby certify that we have entered into co-partnership under the style or firm of (B., D. & Co.), as (Grocers and Commission Merchants), which firm consists of (A. B.), residing usually at , and (C. D.), residing usually at , as General Partners; and (E. F.), residing usually at , and (G. H.), residing usually at , as Special Partners. The said (E. F.) having contributed ($4,000), and the said (G. H.) ($8,000) to the capital stock of the said Partnership.

The said Partnership commenced on the day of , 19 , and terminates on the day of , 19 .

Dated this day of , 19 .

(Signed). A. B.,
C. D.,
E. F.,
G. H.

Signed in the presence of me,
L. M.,
Notary Public.

Partnership Deed.

Articles of agreement, made the day of , 19 Between A. B., of, etc., C. D., of, etc., E. F., of, etc., and G. H., of, etc.

Whereas, the said parties, hereto respectively are desirous of entering into a co-partnership in the business of , at , for the term and subject to the stipulations hereinafter expressed: Now, therefore, these presents witness that each of them, the said parties hereto respectively, for himself, his heirs, executors and administrators, hereby covenants with the others and other of them, their and his executors and administrators, in manner following; that is to say:

1st. That the said parties hereto respectively will henceforth be and continue partners together in the said business of , for the full term of years, to be computed from the day of , 19 , if the said partners shall so long live, subject to the provisions hereinafter contained for determining the said partnership.

2nd. That the said business shall be carried on under the style or firm of A. B. & Co.

3rd. That the said partners shall be entitled to the profits of the said business in the proportions following that is to say (here state the shares); and that all losses in the said business shall be borne by them in the same proportions, unless the same shall be occasioned by the wilful neglect or default of one or either of the said partners, in which case the same shall be made good by the partner through whose neglect the same shall arise.

4th. That the said partners shall each be at liberty, from time to time during the said partnership, to draw out of the said business, weekly, any sum or sums, not exceeding for each the sum of $ per annum; such sums to be duly charged to each of them respectively, and no greater amount to be drawn by either of the said partners, except by mutual consent.

5th. That all rents, taxes, salaries, wages and other outgoings and expenses incurred in respect of the said business shall be paid and borne out of the profits of the said business.

6th. That the said partners shall keep, or cause to be kept, proper and correct books of account of all the partnership moneys received and paid, and all business transacted on partnership account, and of all other matters of which accounts ought to be kept according to the usual and regular course of the said business; which said books shall be open to the inspection of all partners, or their legal representatives; and a general balance or statement of the said accounts, stock in trade, and business, and of accounts between the said partners, shall be made and taken on the day of , in each year of the said term, and oftener, if required.

7th. That the said partners will be true and just to each other in all matters of the said co-partnership, and will at all times during the continuance thereof diligently and faithfully employ themselves respectively in the conduct and concerns of the said business, and devote their whole time exclusively thereto, and will not transact or engage in any other business or trade whatsoever; and will not either in the name of the said partnership, or individually in their own names, draw, accept or endorse any accommodation bill or bills, promissory note or notes, or become bail or surety for any person or persons, or knowingly or wilfully do, commit or permit any act, matter or thing, by which, or by means of which, the said partnership moneys or effects shall be seized, attached, or taken in execution for their own private debts or liabilities; and in case any partner shall fail or make default in the performance of any of the agreements or articles of the said partnership in so far as the same is or are to be observed by him, then the other partners, or any one or more of them, may give notice in writing to such partner offending, stating in what respects he is deemed to be so in default; and in case such failure or default is not rectified by a time to be specified for that purpose in such notice, the said partnership shall thereupon at once, or at any other time to be so specified as aforesaid, be dissolved and determined accordingly.

8th. That in case any of the said partners shall die before the expiration of the term of the said co-partnership, the said partnership shall thereupon cease, and the surviving partner or partners shall within six calendar months after such decease, settle and adjust with the representative or representatives of such deceased partner, all accounts, matters and things relating to the said co-partnership.

In witness whereof, the said parties have hereto set their hands and seals, the day and year first above written.

Signed, sealed and delivered in the presence of Y. Z.

A. B. [L.S.]
C. D [L.S.]
E. F. [L.S.]
G. H. [L.S.]

Dissolution of Partnership.

By Indorsement.

We, the undersigned, do hereby mutually agree that the partnership heretofore subsisting between us, as Wholesale Grocers, under the within articles of co-partnership, be, and the same is hereby dissolved, except for the purpose of the final liquidation and settlement of the business thereof; and upon such settlement wholly to cease and determine.

In witness whereof, we have hereunto set our hands and seals this day of , A.D. 19 .

Signed, sealed and delivered in the presence of Y. Z.

A. B. [L.S.]
C. D. [L.S.]
E. F. [L.S.]
G. H. [L.S.]

Notice thereof.

Notice is hereby given that the partnership heretofore subsisting between us, the undersigned, as Wholesale Grocers, has been this day dissolved by mutual consent. All debts owing to the said partnership are to be paid to A. B., at , and all claims against the said partnership are to be presented to the said A. B., by whom the same will be settled.

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

Witness,
Y. Z.

A. B.
C. D.
E. F.
G. H.

Notice when business to be continued.

Notice is hereby given that the partnership heretofore subsisting between us, the undersigned A. B., C. D., E. F. and G. H., as Wholesale Grocers, was this day dissolved by mutual consent, so far as regards the said A. B. All debts due to the said partnership are to be paid, and those due from the same discharged, at , where the business will be continued by the said C. D., E. F. and G. H., under the firm of "D. & Co."

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

Witness,
Y. Z.

A. B.
C. D.
E. F.
G. H.

PATENTS OF INVENTION.

The Patent Office in Canada is attached to the Department of Agriculture, and the Minister of Agriculture, for the time being, is the Commissioner of Patents. Patents of inventions are granted by the Crown of the exclusive right to make, use and sell any new and useful art, machine, manufacture or composition of matter, or any new and useful improvement not known and used by others. The principal statute now in force relating to patents is the Revised Statute of Canada, c. 69, with subsequent Acts and amendments. Under the Act, the Commissioner is empowered to make rules and regulations, subject to the approval of the Governor in Council.

Any person who has invented or discovered any new and useful art, machine, manufacture or composition of matter, or any new and useful improvement on any art, machine, manufacture or composition of matter, not known or used by others before his invention thereof, or not being for more than one year previous to his application in public use, or on sale, in Canada, with the consent or allowance of the inventor, may petition for a patent. But if a patent for the invention has been in existence in any other country more than twelve months prior to the application for the patent in Canada, the Canadian inventor is not, under the statute, entitled to a patent: where a foreign patent exists, the Canadian patent must expire at the earliest date at which any foreign patent for the same invention expires. The executors or administrators, or other legal representatives, of a deceased inventor, or persons to whom he has assigned or bequeathed the right of obtaining the patent, may secure the issue of it.

A patent will issue for the improvement of an invention already patented, but this does not confer upon either holder the right to infringe the patent of the other.

Where joint applications are made, the patent is issued in the name of all the applicants.

No patent will issue for an invention or discovery having an illicit object in view, nor for any mere scientific principle or abstract theorem.

Every application for a patent must be by petition, addressed to the Commissioner of Patents.

Every applicant must make oath, or when entitled by law to make an affirmation instead of an oath, then an affirmation, that he verily believes that he is, or where the inventor

is dead, that the person whose assignee or representative he is, is, or was, the inventor of the invention for which the patent is solicited, and that the several allegations in his petition are true and correct. This oath or affirmation may be made before a minister plenipotentiary, chargé d'affairs, consul, vice-consul, or consular agent, Judge of any Court, a Notary Public, a justice of the peace or the mayor of any city, borough or town, or a commissioner for taking affidavits, having authority or jurisdiction within the place where the oath may be administered.

The petitioner must elect some known and specified place in Canada as his domicile or place of residence, and mention the same in his petition. The petitioner must insert the title or name of his invention, and distinctly allege all the facts which are necessary to entitle him to a patent. A specification, in duplicate, must accompany the petition, describing the same in such full, clear and exact terms as to distinguish it from all contrivances or processes for similar purposes. It must correctly and fully describe the mode or modes of operating contemplated by the inventor; and state clearly and distinctly the contrivances and things which he claims as new, and for the use of which he claims an exclusive property and privilege; and it must bear the name of the place where made, and date, and be signed by the inventor, if alive, and if not, by the applicant and two witnesses to the signature of the inventor or applicant. In the case of a machine, the specification must fully explain the principle and the several modes in which it is intended to apply and work out the same. Where the invention admits of illustration by means of drawings, the applicant must also, with his application, send in drawings, in duplicate, showing clearly all parts of the invention. Each drawing must bear the signature of the applicant, or of his attorney, and contain written references corresponding with the specification; but the Commissioner may, in his discretion, require further drawings, or dispense with any of them; and with the duplicate specification and drawings, and in lieu thereof, may cause copies of the specifications and drawings in print, or otherwise, to be used.

Where the invention admits of it, a model showing the parts in due proportion must also be delivered, unless the Commissioner specially dispenses with it. Specimens of ingredients and composition, where these are the subject of the invention, sufficient in quantity for experiment, must also be furnished when required by the Commissioner.

Where they are explosive or dangerous they are to be furnished with such precautions as are prescribed by him.

Forms of petition and specification, etc., will be found at the end of this chapter.

The patent, when issued, will grant to the patentee, his executors, administrators, assigns and legal representatives, for the period of time mentioned therein, the exclusive right, privilege, and liberty of making, constructing, using, and selling to others to be used, the invention patented, subject to the adjudication of the Court. It will be valid for six, twelve or eighteen years at the option of the applicant; but the holder of a six or twelve years' patent may obtain an extension for one or two separate periods of six years each; making a period of fifteen years in all, beyond which extensions are not granted.

Where an error occurs in the specification, through mistake or inadvertence, and without fraudulent intention, a patent may be surrendered and a new one issued. And if an inventor obtains, through inadvertence and mistake, without wilful intent to defraud, a patent for more than he is entitled to, he may disclaim. Such disclaimer must be in writing, and in duplicate, and attested by two witnesses, one copy to be filed and the other attached to the patent.

Patents may be assigned either in whole or in part. The assignment must be in writing, and must be registered in the Patent Office. An unregistered assignment will be void as against one subsequently registered. The Government have a right to use any patented invention or discovery, but they will pay the patentee therefor such sums as the Commissioner may report to be a reasonable compensation for the use thereof.

The remedy for the infringement of a patent is by an action at law, for damages, and an injunction may be obtained to restrain any future infringement. Such an injunction may be obtained from the Court of Law in which any action for damages is pending; or it may be obtained from a Court of Equity.

If any material allegation in the petition or declaration of the applicant be untrue, or if the specifications and drawings contain more or less than is necessary, and such omission or addition be wilfully made for the purpose of misleading, the patent will be void.

A patent will cease to be operative after two years, unless the patentee or his assignee or assignees has or have within that period, commenced, and since continuously carried on in Canada, the construction or manufacture of the invention.

The importing of the invention into Canada after twelve months after issue of the patent may also void it, unless permitted by the Commissioner, by whom the time may be extended.

Patents issued under any of the Acts of the several Provinces now forming the Dominion, prior to the 1st day of July, 1869, remain in force for the term for which they were originally granted, subject to the provisions of the new Act, so far as applicable.

The following fees are payable to the Commissioner, and must be paid in advance:

Full fee for 18 years	$60 00
Partial fee for 12 years	40 00
Partial fee for 6 years	20 00
Fee for further term of 12 years	40 00
Fee for further term of 6 years	20 00
On lodging a caveat	5 00
On asking to register a judgment pro tanto	4 00
On asking to register an assignment or any other document affecting or relating to a patent	2 00
On asking to attach a disclaimer to a patent	2 00
On asking for a copy of patent with specification	4 00
On petition to re-issue a patent after surrender, and on petition to extend a former patent to the whole of Canada for every unexpired year of the duration of the provincial or sub-patent, the fee shall be at the rate of	4 00
On office copies of documents, not above mentioned, the following charges shall be made:—	
For every single or first folio of certified copy	25
For every subsequent hundred words (fractions from and under fifty not being counted, and over fifty being counted as one hundred)	10

If an inventor or applicant is afraid that some person may get the advantage of him by applying for a patent before he (the inventor) has perfected his invention, he may file a description of such invention in the Patent Office (to be there left sealed) with or without plans; and such filing will operate as a caveat, and will entitle him to notice in case anyone else should apply for a patent.

Every patentee must stamp or engrave on each patented article or on a label on a package of such articles sold or offered for sale, the year of the date of the patent, thus: "Patented, 1899" (or as the case may be). The penalty for neglect to do this is fine and imprisonment.

By R. S. C. 1906, c. 119, ss. 14, 15, 16, a bill of exchange or promissory note, the consideration of which consists in whole or in part of the purchase money of a patent right, or of a partial interest in a patent right, must have written or printed across its face, before it is issued, the words "given for a

patent right." Any transferee will then take the same subject to any defence or set-off which would have existed between the original parties.

The issuing, selling or transferring of such bill or note without such words, may be punished by imprisonment and fine.

FORMS.

Petition for Patent.

TO THE HONORABLE THE COMMISSIONER OF PATENTS FOR INVENTIONS.

The petition of A. B., of, etc., (state here name, residence and occupation in full).

SHEWETH:

That your petitioner has invented, (or discovered) a new and useful (art, machine, manufacture, or composition of matter, or a new and useful improvement on such art, etc.; inserting here the title or name of his invention, or discovery, its object, and a short description of the same), not known or used by others before this invention (or discovery) thereof, (or not at this time in public use, or on sale in any of the Provinces of the Dominion, with the consent or allowance of the inventor or discoverer thereof).

That your petitioner has elected his domicile at (state here some known place in Canada), and that he has resided for one year and upwards, prior to the time of this application for a patent at (state where, and if in several places, state where, and the period of residence at each place).

Your petitioner therefore prays that a patent may issue in his favor granting him the exclusive property in the said invention (or discovery).

Dated this day of , 19

A. B.

Oath or Affirmation.

Province of , County of , to wit: I, A. B., of, etc., (insert name, residence and occupation), make oath and say (or if an affirmation, say, do solemnly and sincerely declare and affirm) as follows:

1. That I verily believe that I am (or that E. F., of, etc., whose assignee (or representative) I am, (or) was) the true inventor (or discoverer) of the (here insert the name or title of the invention or discovery), for which I am soliciting a patent. And I further say that the several allegations contained in the said petition are respectively true and correct.

Sworn (or affirmed) before me, at , in the County of , this day of , A.D., 19 } A. B.

Y. Z.

J. P. (or as the case may be).

Specification.

Whereas, I, A. B., of, etc., have invented (or discovered) a new and useful (art, machine, etc., state here the proper name or title of the invention or discovery; or if an improvement only, so state it); and the following is a full, clear and exact description of the same; (here describe the invention or discovery in such exact and clear terms, as to distinguish it from all contrivances or processes for similar purposes: correctly and fully describe the mode of operating; and the contrivance and things which are claimed as new. If the invention is a machine, explain fully the principle and several modes of appliance. Where the invention or discovery admits of illustration by drawings, refer to them here thus): The plans and drawings accompanying this specification show clearly all parts of the invention (or discovery). Figure No. 1 shows, etc., (stating clearly what each figure illustrates).

Witness my hand at , this day of , 19 .

Signed in presence of A. B.

C. D.

E. F.

[NOTE.—The specification and drawings must be in duplicate, and the latter must bear the name of the inventor, and contain written references to the specification, and be certified by the applicant to be the drawings referred to in the specification].

Surrender for Re-issue.

TO THE HONORABLE THE COMMISSIONER OF PATENTS FOR INVENTIONS.

The petition of A. B., of, etc., sheweth:

That your petitioner did obtain letters-patent under the seal of the patent office, for a new (thrashing machine), which letters-patent are dated the day of , A.D., 19 .

That your petitioner now believes that the same letters-patent are inoperative, or invalid, by reason of insufficient description or specification (or by reason of his claiming more than he had a right to claim as new), which error has arisen from inadvertence, accident or mistake, and without any fraudulent or deceptive intention.

Your petitioner therefore prays that he may be allowed to surrender the said letters-patent, and that new letters-patent may issue to him for the same invention for the residue of the period for which the original patent was issued, in accordance with the corrected description and specification herewith presented.

A. B.

(A corrected specification and declaration must accompany this petition).

Disclaimer.

Know all men by these presents, That I, A. B., of, etc., to whom letters-patent under the seal of the Patent office for a new (thrashing machine), did issue on the day of , A.D. 19 , did by mistake, accident or inadvertence, and without any wilful intent to defraud or mislead the public, make my specification too broad, claiming more than that of which I was the original or first

inventor, [or, claiming to be the first inventor, or discoverer of a material and substantial part of the said (thrashing machine), of which I was not the first inventor or discoverer, and which I have no legal or just right to claim]; Now know ye, That I, the said A. B., do hereby disclaim that part of the specification and claim which is in the following words, to wit: [Insert here that part which is disclaimed, in the words of the original. State also the extent of the interest which the disclaiming party has in the patent, whether an entire or partial interest.]

Witness my hand, at , this day of , A.D. 19 .

Signed in the presence of A. B.
C. D.
E. F.

Assignment of an Entire Interest in a Patent.

To all to whom these presents shall come, A. B., of, etc., sends greeting:

Whereas, the said A. B. has invented a certain ( ), and has applied for and obtained letters-patent from the patent office in Canada, granting to him and to his assigns the exclusive right to make and vend the same; which letters-patent are dated on the day of , A.D. 19 .

And whereas, C. D., of, etc., has agreed to purchase from the said A. B. all the right, title and interest which he, the said A. B., now hath in the said invention under the said letters patent, for the price or sum of dollars.

Now these presents witness, that for and in consideration of the said sum of dollars, by the said C. D. paid to the said A. B. at or before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), he, the said A. B., hath assigned and transferred, and by these presents doth assign and transfer, unto the said C. D. his executors, administrators and assigns, the full and exclusive right to the invention made by him, and secured to him by the said letters patent, together with the said letters patent, and all his interest therein or right thereto.

In witness whereof, the said A. B. hath hereunto set his hand and seal, this day of , A.D. 19 .

Signed, sealed and delivered in the presence of X. Y. A. B. [L.S.]

(An assignment of a partial interest may be readily framed from the foregoing. Every assignment must be registered in the patent office).

POWERS OF ATTORNEY.

A power of attorney, or letter of attorney, is a writing under seal, given to authorize another person, who is, in such case, termed the "attorney" of the person executing the power, to execute a deed, or sign a cheque, or receive rents, or perform any other lawful act in his stead. It is usually given to enable the attorney to do such acts as the person giving the power is unable, owing to absence, illness, etc., to perform. It is either general, or special: general when so drawn as to empower the attorney to do any act which the principal could delegate an attorney to do, and special when limited to some specific act or acts.

It is revocable at any time unless given for consideration and expressed to be irrevocable.

Any person of full age may execute a power of attorney. In drawing the power, care should be taken to describe fully and accurately the duties the attorney may fulfil, and the exact extent to which he may bind his principal. The attorney cannot bind his principal further than the power warrants, and cannot appoint a substitute, or delegate his powers, unless the instrument so provides. He should sign his principal's name to acts done under the power, adding his own name after the words "by his attorney."

A power of attorney should be executed before a witness in the usual manner of executing deeds. Where conveyances or mortgages of land are executed under it, it should be registered with the deed or conveyance, in the proper Registry Office.

The revocation of a power is effected by the execution of an instrument of revocation. The death of the principal also effects, *ipso facto*, a revocation. By statute, however, acts done by the attorney under the power before notification of the death to the parties concerned are generally protected.

BRITISH COLUMBIA.

By R. S. B. C. c. 30, it is enacted that every power of attorney continues in force until the death, bankruptcy, insolvency or (if a female) the marriage of the principal, or until the revocation of such power shall have been filed in the office of the Registrar-General of Titles; and lawful acts done by the attorney, after such death, bankruptcy, insolvency, marriage or revocation, and before the filing of such revocation, shall be effectual in favour of any person dealing

with the attorney in good faith and without notice of such death, etc.

A confirmation in writing by the principal of any conveyance, mortgage, or other specialty, or simple contract in writing, purporting to be signed by such person, by his attorney, or of any act of his attorney, is conclusive evidence of the attorney's authority.

MANITOBA.

Sections 53-56 of the Manitoba Trustee Act, R. S. M. 1902, cap. 170, are as follows:—

53. In case a power of attorney, for the sale or management of real or personal estate or for any other purposes, provides that the same may be exercised in the name and on behalf of the heirs or devisees, executors or administrators, of the person executing the same, or provides by any form of words that the same shall not be revoked by the death of the person executing the same, such provision shall be valid and effectual to all intents and purposes, both at law and in equity, according to the tenor and effect thereof, and subject to such conditions and restrictions, if any, as may be therein contained.

54. Independently of any such special provision in a power of attorney, every payment made and every act done under and in pursuance of any power of attorney, or any power, whether in writing or verbal, and whether expressly or impliedly given, or an agency expressly or impliedly created, after the death of the person who gave such power or created such agency, or after he has done some act to avoid the power or agency, shall, notwithstanding such death or act last aforesaid, be valid as respects every person, party to such payment or act, to whom the fact of the death or of the doing of such act as last aforesaid was not known at the time of such payment or act *bona fide* done as aforesaid, and as respects all claiming under such last mentioned person.

55. Any person making or doing any payment or act in good faith, in pursuance of a power of attorney, shall not be liable in respect of the payment or act by reason that, before the payment or act, the donor of the power had died or become lunatic, of unsound mind or bankrupt, or had revoked the power, if the fact of death, lunacy, unsoundness of mind, bankruptcy or revocation was not at the time of the payment or act known to the person making or doing the same:

Provided that this section shall not affect any right against the payee of any person interested in any money so paid; and that person shall have the like remedy against the payee as he would have had against the payer if the payment had not been made by him.

56. Every power of attorney shall, unless otherwise expressed, confer upon the donee of such power the same rights and powers in respect to property acquired by the donor of such power after the execution of such power of attorney, as is conferred upon the said donee by such power of attorney in respect to the property owned by the donor at the time of the execution of such power of attorney.

FORMS.

General Power of Attorney.

I, A. B., of in the County of and Province of , have made, constituted and appointed, and by these presents do make, constitute, and appoint C. D. of , my true and lawful attorney for me, and in my name and stead and on my behalf to (here state what acts the attorney is empowered to do) giving and granting unto my said attorney full and ample power and authority to perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully to all intents and purposes, as I might or could do if personally present, I hereby ratifying and confirming all that my said attorney shall lawfully do or cause to be done by virtue hereof.

In witness whereof, I have hereunto set my hand and seal, this day of , A.D. one thousand nine hundred and ,

Signed, sealed and delivered in the presence of
E. F.
G. H.

A.B. [L.S.]

GENERAL FORMS IN COMMON USE.

(*Formal parts as before.*)

To sell and convey real estate:

To grant, bargain and sell my farm, known and described as follows (describe fully) or such part or parcel thereof as he shall deem advisable, for such price and upon such terms as to payment or otherwise as he may deem proper, and for me, and in my name to make, execute and deliver such good and sufficient deeds and conveyances of the same as may be requisite, with the usual covenants.

To lease real estate:

To lease and let to any person, as tenant, my house property being, etc., and to execute any proper instrument of lease for that

purpose upon such terms as are usual, and as my attorney may deem advantageous to me, and to ask, demand, distrain for, receive, collect and recover all moneys or sums of money which may become due, or owing me as rent or otherwise in connection with the said lease, and to sign and deliver all proper receipts and acquittances therefor.

To transfer stock:

To assign, transfer and set over unto of , shares of stock now held by me, and in my name in the , upon which per cent. is now paid.

To accept drafts, etc.:

To accept all drafts drawn upon me in the usual course of my business, and to sign my name as acceptor thereof.

Revocation of Power of Attorney.

Know all men by these presents that I, A. B. of , in the County of and Province of , , for divers good causes and considerations me thereunto specially moving, do hereby by these presents revoke, retract, countermand, annul and make void a certain power of attorney, given by me under my hand and seal dated the day of , 19 , to C. D. of , and all powers and authorities therein expressed and delegated.

In witness whereof, etc.

PROTECTION OF GAME.

The following laws upon this subject will be found of interest to sportsmen, farmers, game inspectors and others.

ONTARIO.

The law is governed by Ontario Statute, 1907, cap. 49, as amended by Statutes 1907, cap. 23, sec. 57, and Statutes 1908, cap. 65, 10 Edw. VII., cap. 101, and 1 Geo. V., cap. 76.

1. An Act respecting the *Game, Fur-bearing Animals and Fisheries* of Ontario, and Amendments of 1908, 1909, 1910, 1911 and 1912.

2. This Act and all regulations made thereunder shall apply to all game, hunting, shooting, fish, fisheries, fishing, and all rights and matters relating thereto in respect of which the Legislature of Ontario has authority to legislate, but shall not authorize or be deemed to authorize any interference with the navigation of any navigable waters. 63 V. c. 50, s. 2. (*Amended.*)

3. When the following expressions occur in this Act, and in any regulations made thereunder, they shall be construed in the manner hereinafter mentioned unless a contrary intention appears:—

(1) "Angling" shall mean the taking of fish with hook and line held in the hand, or with hook and line and rod, the latter held in the hand, and shall not include set lines.

(2) "Bass" shall mean and include the species ordinarily known and described as "large-mouthed bass" and "small-mouthed bass."

(3) "Close season" shall mean the period in which any species of game or fish is protected, and "open season" shall mean the period in which any species of game or fish is permitted to be hunted, taken, killed, sold or possessed, by this Act or any regulation made thereunder, or by the laws and regulations of the Dominion of Canada.

(4) "Fishery" shall mean and include the stretch of water, locality, premises, place or station described in any regulation, lease or license, and in or from which fish are to be taken, and also all nets, plant and appliances used in connection therewith.

(5) "Game" shall mean and include all or any animals and birds protected by this Act or by any regulation made thereunder, and the head, skin, or any part of such animals and birds.

(6) "Lease" shall mean an instrument issued under the authority of this Act and of regulations made thereunder, conferring upon the lessee therein named, for purposes of fishing, the rights therein mentioned, subject to the conditions, restrictions and limitations therein and in the said Act and regulations contained.

(7) "License" shall mean an instrument issued under the authority of this Act and of regulations made thereunder, conferring upon the licensee therein named the right, permission, and license to do such things, subject to such conditions, restrictions and limitations as are therein and in this Act and any regulations contained, provided that no license shall be deemed to be or to operate as a demise or lease.

(8) "Minister" shall mean the member of the Executive Council for the time being charged with the administration of this Act.

(9) "Overseer" shall mean and include a game and fishery overseer and any officer or person authorized to assist in the enforcement of this Act and of regulations made thereunder.

(10) "Regulation" shall mean a regulation made by the Lieutenant-Governor in Council under the authority of this Act.

(11) "Superintendent" shall mean the chief officer in charge of the Game and Fisheries Branch of the Public Service.

4.—(1) The Lieutenant-Governor in Council may make regulations:—

(*a*) For making, keeping, searching for, obtaining and taking over all archives, records, books, regulations, orders in council, documents and accounts heretofore in the custody of the Government of the Dominion of Canada or of the Government of this Province or otherwise existing, or which may hereafter be recorded or accumulate, in any way relating to the game or fisheries of the Province; 63 V. c. 50, s. 29.

(*b*) Providing that all or any persons holding any lease or license issued under this Act, and all fish companies and fish dealers, shall keep such records and make such reports and returns as may be deemed necessary or expedient; 63 V. c. 50, ss. 9, 33; 1 Edw. VII., c. 37, s. 37 (2).

(*c*) Containing such further and other provisions as may be necessary or desirable for the administration and enforcement of this Act and of any regulation made thereunder as hereinafter more particularly authorized.

(2) All regulations may be from time to time amended and repealed by the Lieutenant-Governor in Council and shall be read herewith and shall for all purposes be deemed to be a part hereof and to have the same force and effect as if herein contained. 1 Ed. VII., c. 37, s. 3.

(3) All regulations shall come into force upon publication thereof in the *Ontario Gazette*, or upon such later date as may be therein stated, and a copy of the *Ontario Gazette* containing any regulations shall be admitted in all courts as sufficient evidence thereof. 63 V. c. 49, s. 33; 63 V. c. 50, s. 11; 1 Ed. VII., c. 37, s. 3.

5.—(1) The administration of this Act and of all matters relating to fish and game in the Province, shall be under the control and direction of the Minister and shall constitute a branch of the Public Service to be known as the Game and Fisheries Branch. 63 V. c. 50, s. 4.

(2) The remuneration of all officers of the Game and Fisheries Branch and of all other persons employed to perform any duty in connection therewith, or to assist in the enforcement of this Act and of all regulations, and all expenses incident to the due enforcement thereof, shall be paid out of such moneys as may be appropriated for that purpose by the Legislature. 63 V. c. 49, ss. 22, 23; 63 V. c. 50, ss. 4, 8.

(3) The Board of Game Commissioners of the Province of Ontario is hereby abolished.

6. The grant by patent, legal construction or implication of the bed of any navigable water, or of any lake or river in Ontario, whether such patent has been issued before or after the passing of this Act, shall not, unless such exclusive right of fishing is expressly granted by such patent, be deemed to carry or include the exclusive right of fishing in the navigable waters which cover or flow over the land so granted, any statute, law, usage or custom to the contrary notwithstanding. R. S. O. 1897, c. 288, s. 9.

7. Save as otherwise provided by this Act, all rentals, license fees, fines, penalties, proceeds of sales of articles confiscated, and

other receipts, fees, revenue and payments payable under the provisions of this Act or of any regulation, or under the terms of any lease, license or other instrument therein authorized, shall be payable to the Treasurer of the Province. 63 V. c. 49, s. 29 (6).

INDIANS AND SETTLERS.

8. Nothing herein contained shall be construed to affect any right specially reserved to or conferred upon Indians by any treaty or regulations in that behalf made by the Government of the Dominion of Canada with reference to hunting on their reserves or hunting grounds, or in any territory especially set apart for the purpose; nor shall anything in this Act contained apply to Indians hunting in any portion of the provincial territory as to which their claims have not been surrendered or extinguished. 63 V. c. 49, s. 32 (1).

PART II.

GAME.

9. The Lieutenant-Governor in Council may make regulations:

(*a*) Forbidding for a period of not more than three years at a time the hunting, shooting and sale in any part of the Province of any non-migratory game which may appear or require further protection than is afforded by this Act; 63 V. c. 49, s. 7 (3); 5 Edw. VII., c. 33, ss. 1, 2.

(*b*) Forbidding the hunting, shooting or sale of any migratory game which may at any time be in danger of extinction, for the same period and in the same manner as the same is at any time forbidden in any two or more of the United States of America, one of such states being New York, Pennsylvania, or Michigan; 63 V. c. 49, s. 7 (2).

(*c*) Varying the close seasons for that portion of the territory of the Province lying north and west of French River, Lake Nipissing and Mattawa River, or any part of the said territory; 63 V. c. 49, s. 7 (1).

(*d*) Forbidding or regulating the possession of guns, rifles or other firearms in any part of the Province in which it may appear that it is desirable to take special means to prevent violations of this Act;

(*e*) Forbidding guides or persons assisting hunters or hunting parties from acting as guides except under the authority of a license;

(*f*) Requiring non-resident holders of hunting licenses to employ licensed guides while hunting deer, moose or caribou;

(*g*) Designating certain counties or portions of counties in the Province in which it shall be unlawful to hunt, take, pursue, kill, wound or destroy any deer at any time of the year, subject to such reservation in favour of the residents or settlers in such counties as may be deemed reasonable; 63 V. c. 49, s. 18.

(*h*) Encouraging the propagation of game by authorizing any person owning game and having the same on his property to sell or dispose of such game at any time for propagation or stocking purposes; 63 V. c. 49, s. 19 (2).

(*i*) Regulating the shooting, hunting, taking or killing of any game protected by the provisions of this Act, within two miles of Rondeau Park or within Rondeau harbour; 63 V. c. 49, s. 17 (3).

(*j*) Exempting Indians or actual *bona fide* settlers in the northern and northwesterly, or other sparsely settled portions of the Province, whether the same be organized or unorganized, from any of the provisions of this Act, which may be specified in such Order-in-Council; provided that no settler shall hunt, take, kill or have in his possession any moose, reindeer or caribou except in any year when the same may be lawfully killed according to the provisions of this Act. 63 V. c. 49, s. 32 (2).

10. No person not a British subject and no person not residing and domiciled in the Province of Ontario shall hunt, take, kill, wound or destroy any game, or carry or use any gun or rifle in the Province for hunting purposes except under the authority of a license. 63 V. c. 49, s. 3 (1).

OPEN SEASONS.

11.—(1) No person may hunt, take, kill or destroy—

(*a*) Any deer, except between the 1st day of November and the 15th day of November, both days inclusive;

(*b*) Any moose, reindeer, or caribou in that part of Ontario lying south of the main line of the Canadian Pacific Railway from the Town of Mattawa to the City of Port Arthur, except between the 1st day of November and the 15th day of November, both days inclusive;

(*c*) Any moose, reindeer, or caribou throughout that part of the Province lying to the north of the said main line of the Canadian Pacific Railway from Mattawa to the Manitoba boundary and that part of the Province lying to the south of the Canadian Pacific Railway from the Town of Port Arthur to the Manitoba boundary, except between the 16th day of October and the 15th day of November, both days inclusive.

(*d*) Any grouse, pheasants, prairie fowl, partridge or woodcock, except from the 15th day of October to the 15th day of November in any year, both days inclusive; but no person shall take or kill more than ten partridges in any one day; 63 V. c. 49, s. 4, ss. 4*a*; 5 Edw. VII. c. 33, s. 8.

Any woodcock, except from the 1st day of October to the 15th day of November, both days inclusive.

(*e*) Any quail or wild turkeys, black or grey squirrels, except from the 15th day of November to the 1st day of December in any year, both days inclusive; 2 Edw. VII. c. 39, s. 2 (*b*).

(*f*) Any swans or geese, except from the 15th day of September to the 15th day of April in the following year, both days inclusive;

(*g*) Duck of all kinds or any other water-fowl, and snipe, rail, plover or any other birds known as shore birds or waders in the Northern District of the Province of Ontario as hereinafter described, except from the first day of September to the fifteenth day of December in any year, both days inclusive.

(*h*) Duck of all kind or any other water-fowl and snipe, rail, plover or any other birds known as shore birds or waders in the Southern District of the Province of Ontario as hereinafter described except from the fifteenth day of September to the fifteenth day of December in any year, both days inclusive.

(*i*) Capercailzie, except from the 15th day of September to the 15th day of December in any year, both days inclusive, but no capercailzie to be hunted, taken or killed before the 15th day of September, 1915; 4 Edw. VII., c. 28, s. 2.

(*j*) Hares, except from the 1st day of October to the 15th day of December in any year, both days inclusive. Provided that between the 15th day of December and the 31st day of December in any year, both days inclusive, the wood-hare or cotton-tail rabbit may be taken or killed by means of snares, ferrets or by any other means than by shooting. 5 Edw. VII., c. 33, s. 9.

(2) Notwithstanding anything in this Act, the wood-hare or cotton-tail rabbit may be taken or killed in any manner by the owner, occupant or lessee of any land upon which it can be proved to cause actual damage to trees and shrubs, or by any member of the family of such owner, occupant or lessee, or by any person holding a written license or permit to shoot from such owner, occupant or lessee. Provided that any of these animals killed under this subsection shall be handed over to the nearest officer of the Department for distribution to charitable institutions. 2 Edw. VII., c. 39, s. 3.

(3) Notwithstanding anything in this Act contained, persons who have heretofore put, bred or imported, or who shall hereafter put, breed or import deer upon their own lands with the desire to breed and preserve the same, and the licensees of any such person may hunt, take or kill any such deer from the 1st day of October to the 15th day of November in any year, both days inclusive, but the onus of proof that such deer were so put, bred or imported shall rest on the person hunting or killing the same. 63 V. c. 49, s. 4; 2 Edw. VII., c. 39, s. 4.

(4) The expression "the Northern District of the Province of Ontario" shall mean and include all that part of the Province of Ontario lying northerly and westerly of the lines of the Canadian Pacific Railway Company described as follows, that is to say: Commencing where the main line of the Canadian Pacific Railway from Montreal to Toronto enters the Province of Ontario, thence following the said main line along the southerly extension thereof, now under construction, and lying to the south of Rice Lake, and thence following the said main line to the City of Toronto, thence following the line of the Canadian Pacific Railway Company to the City of Guelph and Goderich Railway Company to the Town of Goderich.

The expression "the Southern District of the Province of Ontario" shall mean and include all that part of the Province of Ontario lying to the south of the said line.

BEAVER, OTTER, MUSKRATS, ETC.

12.—(1) No mink or beaver or otter shall be hunted, taken or killed or had in possession by any person before the 1st day of November, 1915, and thereafter no beaver or otter shall be hunted, taken or killed, or had in possession of any person between the 1st day of April and the 1st day of November, nor shall any traps, snares, gins or other contrivances be set for them during such period. 5 Edw. VII., c. 33, s. 2.

(2) No muskrat shall be hunted, taken or killed or had in possession of any person between the 1st day of May and the 1st day of December following, except as provided for in the next succeeding subsection hereof, nor shall any traps, snares, gins or other contrivances be set for them during such period; and any such traps, snares, gins or other contrivances so set may be destroyed by any person without such person thereby incurring any liability therefor. This shall apply to Indians in respect of private or leased land.

(a) The close season in the Districts of Thunder Bay, Fort William, Rainy River and Kenora shall be from the first day of May to the first day of March following.

(3) No muskrat shall be shot during the month of April or speared at any time; nor shall any muskrat house be cut, speared, broken or destroyed at any time.

(4) Nothing in this Act shall apply to any person destroying any of the said animals in defence or preservation of his property nor shall he be held to prevent the destruction of the muskrats by any means, at any time, in the vicinity of dams, or drainage embankments where there is a probability of injury being caused by them to the said dams or drainage embankments. 63 V. c. 49, s. 5 (4).

Provided that the onus of proof shall be on the person destroying any such animals.

(a) No mink shall be hunted, taken or killed or had in possession of any person between the 1st day of May and the first day of November following.

(5) The Superintendent may at any time make an order in writing directing the taking or killing of beaver by an overseer or other officer named in the order in any designated locality in the Province in which in the opinion of the Superintendent beaver are causing damage to highways or to private property, but all beaver so taken or killed shall be duly accounted for to the Superintendent.

SUNDAY.

13. No person shall, on the Lord's day, hunt, take, kill or destroy any game, or use any gun or other engine for that purpose. 63 V. c. 49, s. 6.

DEER.

14.—(1) No person shall hunt, take, kill, wound or destroy any deer, moose, reindeer, or caribou except under the authority of a license.

(2) No person shall at any time hunt, kill or take any cow moose, or moose, reindeer or caribou under the age of one year. 63 V. c. 49, s. 8 (2).

(3) No person shall during any one year or season kill or take more than one deer, one bull moose or one bull reindeer or caribou; provided that this shall not apply in the case of deer which are the private property of any person, and which may have been killed or taken by such person or by his direction, or with his consent, in or upon his own lands or premises; provided always that two or more persons hunting together, and holding licenses as hereinafter provided, may kill an aggregate of not more than one deer for each member of the party.

(4) No owner of any hound, or other dog, known by the owner to be accustomed to pursue deer, shall permit any such hound or dog to run at large in any locality where deer are usually found, during the close season for deer. Any person harboring or claiming to be the owner of such hound or dog shall be deemed to be the owner thereof; and any hound or dog found running deer during the close season shall be deemed to be at large with the permission of the owner thereof, and may be killed on sight by any person, who shall not be liable to any penalty or damage therefor. 63 V. c. 49, s. 8 (6).

WATER FOWL.

15.—(1) No wild ducks, geese or other water fowl shall be hunted, taken or killed from sail boats, yachts or launches propelled by steam or other power. 63 V. c. 49, s. 9, ss. 1.

(2) No swivel gun, or guns of any kind of a larger bore or gauge than 8, and none of the contrivances for taking or killing wild swans, geese or ducks, which are described or known as sunken punts or batteries, shall be used at any time. 63 V. c. 49, s. 9 (2).

(3) No blinds or decoys for use in hunting duck or other water fowl shall be placed at a greater distance than two hundred yards from the shore or a natural rush bed thick enough to conceal a boat or water lying bounding private property, and all decoys shall be removed from the water during prohibited hours for shooting.

POISONS, TRAPS AND CONTRIVANCES.

16.—(1) No person shall kill or take any game by the use of poison, or poisonous substances, or expose poison, poisoned bait or other poisoned substances, in any place or locality where any game or any dogs or cattle may usually have access to the same. 63 V. c. 49, s. 10 (1).

(2) None of the said hereinbefore mentioned animals or birds other than those mentioned in section 12, shall be trapped or taken by means of traps, nets, snares, gins, baited lines or other similar contrivances, nor shall such traps, nets snares, gins, baited lines or contrivances be set for them or any of them, at any time; and such traps, nets, snares, gins, baited lines or contrivances may be destroyed by any person without incurring any liability therefor, if he finds them so set. 63 V. c. 49, s. 10 (2).

17. No person shall discharge any gun or other firearm at any game between sunset and sunrise.

SHOOTING FOR HIRE FORBIDDEN.

18. No person shall for hire, gain or hope of reward, hunt, kill or shoot any game, or employ, hire or for valuable consideration induce any other person so to do. Provided that this shall not be held to apply to the *bona fide* employment of any person as guide to accompany any person lawfully hunting or shooting in this Province. 63 V. c. 49, s. 12.

EGGS.

19. No eggs of any game bird shall be taken, destroyed or had in possession by any person at any time. 63 V. c. 49, s. 13.

MASKS AND DISGUISES.

20. Any person being masked or disguised and carrying or having in his possession any gun or other fire-arm near any preserve or shooting ground (or, in close season, near any place where game is usually found), shall be guilty of an offence under this Act. 63 V. c. 49, s. 14.

AUTOMATIC GUNS.

21. No gun of the description known as "automatic" in which the recoil is utilized to reload the gun, shall be used in this Province in the killing of game.

22. No person employed in connection with the construction of any railway or Public Work in this Province shall carry or have in possession in the vicinity of such railway or other work, any gun, rifle or other fire-arm except as may be authorized by special license,

which special license may be subject to such terms as the Lieutenant-Governor in Council may direct, and the ordinary hunting license provided for in this Act shall not be deemed to be a license under this section.

PRESERVES.

23.—(1) No person shall at any time shoot, hunt, take or kill any partridge, prairie fowl, quail, woodcock, snipe, wild turkey or other bird or fowl whatsoever within the boundaries of the Rondeau Provincial Park; nor shall any one shoot, hunt, trap, take or kill any wild bird or animal in the said park, except foxes, skunks, weasels, owls, hawks or other noxious birds or animals, and then only with the consent and authority of the Ranger of the said Park in writing first had and obtained.

(2) The preceding subsection shall not prevent or apply to the shooting or taking of wild duck or geese in the waters around and along the coasts of the said park during the lawful season. 63 V. c. 49, s. 17 (1), (2).

PRIVATE PRESERVES—PROPAGATION FOR STOCKING PURPOSES.

24. In order to encourage persons who have heretofore put, bred or imported, or may hereafter put, breed or import any kind of game upon their own lands with the desire to breed and preserve the same, it is enacted that it shall not be lawful for any person knowing it to be such game, to hunt, shoot, kill or destroy any such game without the consent of the owner of the lands upon which such game has been heretofore or is hereafter so put, bred or imported; provided that this section shall not be held to prevent any person from shooting, hunting, taking or killing upon his own lands, or upon any lands over which he has a legal right to shoot or hunt any game which he does not know, or has not good reason to believe had been theretofore put, bred or imported by some other person upon his own lands with the desire to breed and preserve the same. 63 V. c. 49, s. 19 (1).

TRESPASS IN PURSUIT OF GAME.

25.—(1) No person shall, at any time, enter into any growing or standing grain not his own with sporting implements about his person, nor permit his dog or dogs to enter into such growing or standing grain without the permission of the owner or occupant thereof, and no person shall at any time hunt, shoot, or with a gun or other sporting implement about his person or in his possession go upon any enclosed land of another after having had notice not to hunt or shoot thereon; and any person who, without the right to do so, hunts or shoots, or with a gun or other sporting implement about his person or in his possession goes upon any enclosed land of another after having had notice not to hunt or shoot thereon, shall be deemed guilty of a violation of this Act.

(2) Any owner or occupant of land may give such notice:

(*a*) Verbally or in writing; or

(*b*) By maintaining sign boards at least one foot square, containing such notice in the following form, or to the like effect: "Hunting or shooting forbidden" on or near the boundary of the land intended to be protected; or

(*c*) By maintaining such sign board on or near the boundary of such land, or upon or near the shores of any water covering the same, or any part thereof, to the number of two for each forty acres thereof.

(3) Any person who, without authority in that behalf, puts up, or causes to be put up, any such notice on any lands of which he is not the owner, or to the possession of which he is not legally entitled, or who tears down, removes, injures, defaces, or interferes with any such notice, shall be deemed guilty of a violation of this Act.

(4) Nothing in this section contained shall be so construed as to limit or in any way affect the remedy at common law of any such owner or occupant for trespass.

(5) For the purposes of this section, land, the boundary or any part of the boundary of which is a waterline or line between land and water, or passes through a marsh or swamp, or any land covered with water, or any land without sufficient trees or obstructions to prevent any post hereinafter mentioned being clearly visible from the nearest post on either side thereof, shall be deemed to be enclosed, if posts are put up and maintained on the boundary thereof, or on the boundary of the part thereof sought to be enclosed, at distances which will permit of every post being clearly visible from the nearest post on either side thereof, and so placed that the boundaries will be sufficiently indicated by such posts. 63 V. c. 49, s. 20.

PART III.

FISH.

26.—(1) The Lieutenant-Governor in Council may make regulations:—

(*a*) Forbidding fishing in any waters within the Province except under the authority of a license to be issued on the terms and conditions by the regulations provided; 1 Edw. VII. c. 37, s. 3.

(*b*) Preventing the destruction of fish and improper, wasteful and excessive taking thereof; 1 Edw. VII. c. 37, s. 3.

(*c*) Regulating the number, size and weight of any species of fish that may be caught, possessed, purchased or sold; 63 V. c. 50, s. 29.

(*d*) Regulating the taking of frogs and setting apart any suitable provincial waters for the cultivation and propagation of frogs; 63 V. c. 50, s. 43.

(2) Except under the authority of a license no person not residing and domiciled in the Province of Ontario shall angle in the waters of the Province.

27. Except under the authority of a license, no sturgeon shall be caught, taken or killed by any means whatever. 1 Edw. VII. c. 37, s. 14.

28. Except as authorized by special license, no fish or spawn shall be taken in any manner or at any time from provincial waters for the purpose of stocking, artificial breeding, or for scientific purposes. 1 Edw. VII. c. 37, s. 8.

29.—(1) Except under the authority of a license, no one shall fish in the waters of Lake Nepigon in the District of Thunder Bay, in the River Nepigon in the same District, nor in any tributaries of the said Lake or River. 63 V. c. 50, s. 51, ss. 1; 1 Edw. VII. c. 37, s. 17 (1).

(2) This section and the conditions applicable to licenses authorizing such fishing shall apply to Indians as well as to all other guides, boatmen, canoemen, camp assistants or helpers of any kind of any fishing party or persons who may hold any such license. 63 V. c. 50, s. 52.

30. The Superintendent may authorize to be set apart, and to be leased, any waters for the natural or artificial propagation of fish; and any person who wilfully destroys or injures any place so set apart, or used for the propagation of fish therein, without written permission from an overseer or from the lessee or licensee thereof, or uses therein a fishing light, or other like implement for fishing or fishes therein, during the period for which the waters are so set apart' shall be guilty of a violation of this Act. 63 V. c. 50, s. 27.

31. All nets shall have the name of the owner or owners legibly marked on two pieces of metal or wood attached to the same; and such mark shall be preserved on such nets during the fishing season, in such a manner as to be visible without taking up the net or nets; and any net used without such mark shall be liable to confiscation. 63 V. c. 50, s. 35.

32. Every proprietor, owner, agent, tenant, occupant, partner or person actually in charge of any fishery, either as occupant or servant, shall be jointly and severally liable for any penalties or moneys recoverable under any of the provisions of this Act or any regulations made thereunder.

33. No lessee shall have the right to sub-let, transfer or assign any right, interest or privilege granted or conferred upon him under the provisions of this Act without first having obtained the written consent of the Superintendent. 63 V. c. 50, s. 17.

34. If, in consequence of any incorrectness of survey, or other error or cause whatsoever, a lease comprises lands included in a lease of a prior date, the lease last granted shall be void in so far as it interferes or purports to interfere with that previously issued, but the lessee shall have no claim for indemnity or compensation on account thereof. 63 V. c. 50, s. 18.

35. Every lease shall be deemed to have been made and granted subject to the right of passage to and from any water in favour of the occupants (if any), under title from the Crown, of the lands in rear of those included in the lease, whether so expressed therein or not. 63 V. c. 50, s. 19.

36. Disputes between persons relative to fishing limits or claims to fishery locations or stations in provincial waters or relative to the position and use of nets and other fishing apparatus in provincial waters, shall be settled by the local overseer, subject to appeal to the Superintendent. 63 V. c. 50, s. 36; 1 Edw. VII. c. 37, s. 10.

37.—(1) A lease shall, as against trespassers, entitle the lessee to all the rights of an owner in fee simple of the land and premises described therein.

(2) Every person not authorized by law so to do, who enters upon or passes over any fishery, or any land or premises described in any lease, without permission of the lessee or his representative, shall be deemed a trespasser, and shall be liable to all the penalties by law provided, and to pay all damages which any lessee or owner may be entitled to recover, and shall in addition be guilty of a violation of this Act.

(3) This section shall not apply to any person entering upon or passing over such lands in discharge of any duty imposed by law, nor, when the lands are included in a timber license, to the holder thereof, who shall at all times have the right to cut and take away all trees, timber and lumber within the limits of his license; nor to prevent the owners or occupiers of land bordering on any waters using a general right of passage to and from such waters, nor to prevent the public use of any waters or the banks thereof either for

the conveyance of timber or lumber of any kind, or for the free navigation thereof by vessels, boats or other craft; nor to any user under license by the Crown of any such lands or waters for any purpose or occupation not inconsistent with the provisions of this Act. 63 V. c. 50, ss. 24, 25.

38. Every person shall be guilty of an offence against this Act who, without permission of the owner, lessee or proprietor of the right of fishing, fishes, or employs or induces any other person to fish, or assist in fishing, in any fishery or in any lake, pond, stream or water in which fish are lawfully preserved, cultivated, owned or maintained, or shall remove or carry away, or employ or induce or assist any other person to remove or carry away any fish in any such fishery or waters, and any net, article, apparatus or appliance used contrary to the provisions of this section, may be seized on view by any overseer or by the lessee, owner or proprietor, to be afterwards dealt with according to law; provided always, that the occupation of any fishing grounds or waters leased for the express purpose of net fishing, shall not interfere with, nor prevent, angling for other purposes than those of sale or traffic. 63 V. c. 50, s. 26.

PART IV.

POSSESSION—SALE—TRANSPORTATION.

39. The Lieutenant-Governor in Council may make regulations:

(*a*) Prohibiting or regulating the purchase and sale of, or traffic in, snipe, quail, woodcock, partridge, speckled trout, bass and maskinonge. 5 Edw. VII. c. 33, s. 3.

(*b*) Authorizing and regulating the sale of game imported into the Province of Ontario and lawfully hunted, killed or procured according to the law of the province, state or country where the same was killed or procured.

(*c*) Prohibiting the possession, purchase, sale and transportation of any species of fish in close season. 63 V. c. 50, s. 14.

40.—(1) No person shall have in his possession, or in the possession of any servant, agent or other person on his behalf, any game, no matter where killed or procured, during the close season therefor, or any fish in close season contrary to the prohibition of any law, or regulation except as in this subsection expressly provided and excepted, that is to say:—

(*a*) Game lawfully killed or procured may be kept during the period between the end of the open season in any year and the sixteenth day of January in the following year;

(*b*) Skins of moose, deer, caribou and fur-bearing animals may be had in possession during close season under the authority of a license issued not later than ten days after the end of the open season, and specifying the number and description of such skins. 63 V. c. 49, s. 15, ss. 1; 5 Edw. VII. c. 33, s. 4.

(2) Except as expressly authorized by license, no person other than the actual owner, for the use of himself and family, shall keep game in cold storage during the season in which the same may be lawfully possessed as aforesaid.

41.—(1) Except as expressly authorized by license, and as in this section expressly provided, no person shall, by himself, his servant, clerk or agent, buy, sell or expose or keep for sale, or directly or indirectly, on any pretence or device, for any valuable consideration, barter, give or obtain, to or from any other person, any game,

no matter where killed or procured; Provided that the person who has actually and lawfully hunted, taken and killed any game may sell the same, or any part thereof, during the open season therefor. Provided also that it shall be lawful to buy from such person, or from the holder of a game dealer's license, any game which such person or licensee is at the time of sale authorised to sell under the provisions of this Act. 63 V. c. 49, s. 15, ss. 2.

(2) Except as expressly authorized by license, no hotel, restaurant or club shall supply for or as a part of any meal for which a charge is made, any game, no matter where killed or procured, during the close season therefor, or any fish contrary to the prohibition of any law or regulation. 63 V. c. 49, s. 15, ss. 3.

(3) It shall be an additional offence against this Act, punishable by a penalty of not less than the maximum penalty which would be otherwise applicable, to unlawfully supply at any hotel, restaurant or club, for, or as part of, a meal, any game or fish under any pretended name or under the designation of anything which might at the time be lawfully supplied.

42. Every express company and common carrier, every person or corporation engaged in the business of cold storage, every person or corporation engaged in the business of purveying or dealing in game or fish, every person or corporation engaged in the business of lumbering, or in charge of any camp near any fishery or near any place in which game is usually found, every person fishing or in charge of any fishery, and every person or corporation holding any lease or license, shall, upon request, permit any inspector, warden, overseer or other officer to enter and inspect any car, building, premises or enclosure, and to open any receptacle for the purpose of examining all game and fish taken and all implements and appliances for hunting and fishing and for the purpose of searching for game or fish illegally killed or procured, and to inspect any books, invoices, or documents containing any entries or memoranda relating to game or fish illegally killed or possessed, and shall afford any such officer who may make any such request all reasonable facilities for any such search, and in case of refusal such officer shall have power, without a search warrant, to break such locks and fastenings as may be necessary in order to make such examination, using no more force than necessary for such purpose. 63 V. c. 49, s. 16 (6); 63 V. c. 50, s. 30.

43.—(1) No railway or express company, or other common carrier, and no other person whatever shall transport or receive, or have in possession for any purpose in this Province any deer, moose, elk, reindeer or caribou, or any head, skin or other part thereof unless there is attached thereto one of the shipping coupons belonging to a license authorizing the shipper to hunt or kill the same, together with an affidavit of the shipper (if required) that the same was legally hunted or taken. 63 V. c. 49, s. 16 (1).

(2) No railway or express company, or other common carrier, and no other person whatever, shall transport or receive or have in possession for that purpose in this Province any game during the close season therefor, or in open season after the date of expiry of the shipping coupon attached thereto, unless there be attached thereto (in addition to a shipping coupon if required) an affidavit of the shipper that the same was lawfully hunted or taken. 63 V. c. 49, s. 16 (2).

(3) The two preceding subsections shall not apply to prevent the transportation of any game if accompanied by an affidavit that the same was lawfully killed in some other Province or district of the Dominion of Canada, according to the law of such Province or district. 63 V. c. 49, s. 16, ss. 3; 5 Edw. VII. c. 33, s. 5.

(4) No common carrier or other person shall ship or transport out of this Province or shall receive or have in possession for the

purpose of shipping or transporting out of this Province, any salmon trout, lake trout or white fish weighing less than two pounds undressed, taken or caught in Provincial waters. 63 V. c. 50, s. 39.

(5) No common carrier or other person shall receive or have in his possession or shall ship or transport to any point or place any fish caught or killed within this Province at a time or in a manner prohibited by law. 63 V. c. 50, s. 40.

44. All receptacles, including bags, boxes, baskets, crates, packages and parcels of every kind in which game or fish is packed for transportation, shall be so constructed as to show the contents thereof, or shall be marked with the description of the contents, and in either case shall be marked or labelled with the names and addresses of the consignee and consignor; and in case of failure to comply with the provisions of this section, the owner, consignor and person actually shipping and claiming such receptacles shall be deemed guilty of an offence against this section. 63 V. c. 49, s. 16, ss. 7; 63 V. c. 50, s. 42.

45.—(1) Any non-resident who may at any time be entitled to hunt or shoot within the Province of Ontario by virtue of a license under this Act, shall, so far as the authority of the Legislature of the Province of Ontario extends, be at liberty to export out of the Province in any one open season game actually and lawfully killed by him, as follows: one deer, one moose, reindeer or caribou, 100 duck; but a shipping coupon attached to such license shall be attached to every such deer and to every receptacle containing such other game, and such person must, if required by any overseer, make a statutory declaration of the fact that such game has been lawfully killed by him. 63 V. c. 49, s. 16, ss. 4.

(2) Except as aforesaid, no person shall at any time export from the Province of Ontario, or with such intent hunt, take or kill any game, except any deer, moose, elk, reindeer or caribou which are not wild but which are the private property of any person and have been killed or taken by such person or by his consent or direction in and upon his own lands and premises. 63 V. c. 49, s. 16, ss. 5.

PART V.

LICENSES.

46. The Lieutenant-Governor in Council may make regulations:

(*a*) Governing the issue of licenses and (subject to the provisions of this Act) establishing the terms and conditions thereof, the period for which the same shall issue, and fees payable in respect thereof; 63 V. c. 49, s. 24, ss. 2.

(*b*) Increasing the fee payable for non-resident hunting licenses as to deer, moose and caribou to $50;

(*c*) Granting without fee a special license to enable a guest of a resident of the Province to hunt and shoot therein for a term not exceeding one week; 63 V. c. 49, s. 3, ss. 2.

(*d*) Reducing the fee for non-resident hunting license to residents of other Provinces of the Dominion of Canada by providing that such licenses may issue upon the same terms and conditions as residents of Ontario are under the laws of such other Provinces respectively permitted to hunt, shoot or fish therein. 63 V. c. 49, s. 3, ss. 3.

47. The following terms and conditions in addition to any others imposed by regulation shall apply to all licenses issued under this Act, or any regulation.

(*a*) No license shall be issued to any person, or to any corporation employing any person who in such employment may have been convicted of any offence against this Act within two years next preceding the date of application for such license. 63 V. c. 49, s. 24, ss. 4.

(*b*) Licenses shall not be transferable, and every person shall be guilty of an offence under this Act who shall buy, sell, exchange or in any way become a party to the transfer of any license, or coupon, or who shall in any way use, or attempt to use, a license or coupon issued to any other person.

(*c*) Licenses shall be subject to be cancelled by the Superintendent subject to appeal to the Minister, by reason of contravention by the license (or by any other person with his connivance) of this Act or of any regulation or of any of the terms and conditions of such license, notwithstanding that no prosecution has been instituted or conviction had in respect of such contravention. 63 V. c. 50, s. 12; 1 Ed. VII. c. 37, s. 34.

(*d*) A conviction for any offence under this Act or any regulation shall operate as a cancellation of every license held by the person convicted. 63 V. c. 50, s. 22; 1 Ed. VII. c. 37, s. 7.

(*e*) The issue of licenses under this Act and under regulations from time to time in force, shall be in the discretion of the Superintendent, subject to appeal to the Minister, but no person shall be deemed to have any claim to the issue of a license as of right.

48.—(1) Licenses authorizing hunting and shooting in the Province of Ontario may be issued as follows:—

(*a*) Authorizing persons not resident in the Province of Ontario to carry guns, rifles and firearms and to hunt and shoot therein. The fee for such license shall be $25, until otherwise provided by regulation increasing the fee to not more than $50.

(*b*) Authorizing residents of the Province of Ontario to hunt deer during any season. The fee for such license shall be $2.

(*c*) Authorizing residents of the Province of Ontario to hunt moose, reindeer or caribou. The fee for such license shall be $5. 63 V. c. 49, s. 25 (1).

(*d*) Authorizing persons not residents in the Province of Ontario to hunt and trap fur-bearing animals therein. The fee for such license shall be $20.

(2) Licenses issued under the authority of this section shall be subject to the following in addition to any conditions imposed by regulation:

(*a*) Every person who has obtained a license under this section shall at all times when hunting carry such license on his person, and shall at all reasonable times and as often as reasonably requested, produce and show the same to any person requesting him so to do, and on failure or refusal to do so shall forfeit such license, and if found hunting or taking any deer or other animal, for hunting which such license may be required, shall, on proof of failure or refusal to comply with such request, be deemed to have been guilty of an offence against this Act. 63 V. c. 49, s. 25 (2).

Clauses (*b*) and (*c*) repealed in 1908.

(*d*) There shall be attached to every license authorizing the hunting of deer, one shipping coupon, plainly marked with the description of the game for hunting which the license has been applied for and to every license authorizing the hunting of moose, one shipping coupon similarly marked and there shall be printed or stamped upon each coupon the date when the same shall expire, which shall not be later than ten days after the last day of the open season for which the license thereto attached has been issued, and when any deer, moose, reindeer or caribou, or any part thereof, or any game for export under section 45 of this Act, is presented for shipment at any railway station, steamboat landing or other point of shipment, one of the said coupons shall be signed and detached by the person to whom the license is issued, in the presence of the shipping agent or clerk in charge of the office at such point of shipment, and attached to each deer or other animal, or part thereof, or package as aforesaid, and thereupon such shipping agent shall write across the face of such coupon the word "cancelled"; and any person, shipping agent or clerk neglecting so to do, or using a shipping coupon after the date of expiry thereof and shipping or assisting in the shipment of anything to which a shipping coupon is required to be attached, without complying in all respects with the provisions of this section, shall be guilty of an offence against this Act. 63 V. c. 49, s. 26 (1).

49. Licenses may be issued upon such terms and conditions as may be imposed by regulation:—

(*a*) Authorizing any person or corporation engaged in the business of cold storage of perishable articles to keep any game during the open season and during the period in close season extending from the end of the open season in any year to the 16th day of January of the following year. The fee for such license shall be $25;

(*b*) Authorizing any person or corporation during the open season and during the period in close season extending from the end of the open season in any year to the 1st day of January of the following year to buy and sell, and, within the limits of the municipality for which such license is issued, to expose for sale, game lawfully killed and procured, and during such period and upon such conditions as may be fixed and established by regulation, game imported into the Province of Ontario, specified and described in such regulation, and lawfully hunted, killed or procured according to the law of the Province, State or country where the same may have been killed or procured. The fee for such license shall be in cities having a population of 100,000 or over, $25; in other cities having a population of over 50,000, $10; in other cities having a population under 50,000 and over 25,000, $5; in cities having a population under 25,000 and in towns, $2; and in incorporated villages and townships, $1;

(*c*) Authorizing a hotel, restaurant or club to supply for or as part of a meal served upon the premises of such hotel' restaurant or club, any game lawfully obtained during the period in which the same may be legally kept in cold storage as hereinbefore provided. The license fees shall be for cities having a population of over 100,000, $10; for cities having a population over 50,000, $5; and all other municipalities, $1. 63 V. c. 49, s. 27 (1).

50. Licenses may be issued authorizing fishing in the Nepigon River, Nepigon Lake and adjacent waters subject to the following in addition to any other conditions imposed by regulation:

(*a*) One license only may be issued to any applicant and shall not be for a longer period than four weeks from the date of issue.

(*b*) The fee for such license shall be $15 for a period of two weeks or less, $20 for three weeks and $25 for four weeks, where the applicant is not a permanent resident of Canada; and $5 for two weeks and $10 for four weeks where the applicant is a permanent resident of Canada.

(*c*) The said license shall not be transferable and the holder thereof shall produce and exhibit the same whenever called upon so to do by an overseer.

(*d*) All fishing camps, and fishing parties visiting the said waters shall be subject to the supervision of overseers.

(*e*) Such sanitary arrangements as an overseer may direct shall be made, and such directions as he may give for the disposal of refuse and the extinction of fires shall be complied with.

(*f*) The cutting of live timber the property of Ontario by persons holding a license or permit to fish in said waters, their servants or agents, is prohibited except where absolutely necessary for the purpose of camping and shelter, such as for tent poles, tent pins, and the like. 63 V. c. 50, s. 51; 1 Edw. VII. c. 37, s. 17.

51.—(1) —Licenses may be issued authorizing fishing in any waters within the Province subject to any terms, conditions or limitations, and for any district, or fishery, and within any boundaries, therein and in any regulation set forth. 63 V. c. 50, s. 12; 1 Ed. VII. c. 37, s. 4.

(2) Licenses may be issued authorizing non-residents of the Province of Ontario to angle in the waters of the said Province, except in such waters as are specially provided for in this Act. The fee for such angling license shall be for an individual the sum of $2, and for a family $5, and such license shall be valid only for the calendar year in which the same is issued.

52. Licenses may be issued on such terms and conditions as may be imposed by regulation, giving authority to act as guides for hunting, shooting or fishing, in any part or district of the Province specified in any such licenses, to such person applying therefor as may be certified by any Inspector or Warden to be fit and proper persons and qualified so to act. The fee for any such license shall not exceed $2. 63 V. c. 49, s. 28, ss. 4.

(*a*) The Minister may direct the return or refund of the fee paid for any license issued under this Act or any part of such fee, when owing to the license not having been used, he thinks it just so to do, and the Treasurer of Ontario upon the written request of the Minister shall cause a cheque to be issued for the amount of such refund.

PART VI.

ADMINISTRATION.

53. The Lieutenant-Governor in Council may make regulations:

(*a*) For the proper administration of the Game and Fisheries Branch.

(*b*) For the appointment and for the remuneration of the superintendent, inspectors, wardens, overseers, officers, servants and other persons, including private prosecutors, whose assistance may be from time to time required or given for the purposes of this Act. 63 V. c. 49, s. 23 (2); 63 V. c. 50, s. 5 (1).

(*c*) Conferring upon certain overseers by special appointment powers of justices of the peace for the purposes of this Act and of all regulations. 63 V. c. 50, s. 5.

54. The administration of the Game and Fisheries Branch shall, under the Minister, be in charge of the chief officer threeof, who shall be known as the Superintendent of Game and Fisheries.

55. There shall also be appointed Inspectors of Game and Fisheries, not exceeding three in number, who shall, in addition to such duties as may be imposed upon them by regulation examine and report upon the enforcement of the Act in all parts of the Province, the manner in which all Wardens and Overseers have during the year performed their duties, and shall also examine all applicants for the office of Game and Fishery Overseer.

56. There shall also be appointed Wardens of Game and Fisheries, not exceeding ten in number, who, subject to the Superintendent shall have charge of and be responsible for the enforcement of this Act in the districts for which they shall respectively be appointed, being such portions of the Province as shall be described in the regulation providing for their appointment. 63 V. c. 49 s. 22 (1); 5 Edw. VII. c. 33, s. 6.

(1) The open season for snipe, rail, plover, and other birds known as shore birds or waders, shall hereafter commence on the 15th day of September instead of the 1st day of September.

57.—(1) The Superintendent, Inspectors and Wardens of Game and Fisheries, Overseers authorized by their appointment to act as Justices of the Peace, and those members of the Provincial Police Force known as Inspectors of Criminal Investigations, having taken the oath of office hereinafter prescribed, shall be Justices of the Peace in and for every County or District of the Province for the purposes of this Act and of all regulations, and shall have power as such Justices to take informations and issue warrants or summonses in any County or District of the Province, the same to be returnable in the County or District in which the offence charged in such warrant or summons is alleged to have been committed. 63 V. c. 49, s. 22 (4); 5 Edw. VII. c. 33, s. 7.

(2) The said Superintendent, Inspectors, Wardens and Overseers shall, before acting as Justices of the Peace as aforesaid, take and subscribe the following oath:—

> I, A. B., Superintendent (*or as the case may be*), appointed under the provisions of *The Ontario Game and Fisheries Act*, do solemnly swear that to the best of my judgment I will faithfully, honestly and impartially fulfil, execute and perform the office and duty of such Superintendent (*or as the case may be*) according to the true intent and meaning of *The Ontario Game and Fisheries Act* and of all regulations made thereunder. So help me God.
>
> 63 V. c. 49, s. 22 (5).

58.—(1) Subject to the approval of the Minister, the Superintendent of Game and Fisheries shall have power to appoint and from time to time in his discretion dismiss game and fishery overseers in and for any part of the Province. 63 V. c. 49, s. 23 (1).

(2) Overseers shall be paid by salary or by special remuneration for work performed, prosecutions conducted or convictions obtained under this Act, or partly by salary and partly by special remuneration as aforesaid, but shall not be entitled to receive directly any fines imposed for offences against this Act. 63 V. c. 49, s. 23 (2); 63 V. c. 50, s. 8.

59.—(1) Every overseer shall, before acting as such, obtain and deposit with the Superintendent a written certificate signed by an Inspector or Warden, certifying that he is a fit and proper person to be appointed to the office of Overseer, and shall take and subscribe the following oath:—

> I, A. B., a Game and Fishery Overseer in and for the (County, District *or* Territory) described in my appointment, do solemnly swear that to the best of my judgment I will faithfully, honestly and impartially fulfil, execute and perform the office and duty of such Overseer according to the true intent and meaning of *The Ontario Game and Fisheries Act* and of all regulations made or to be made thereunder. So help me God.

63 V. c. 49, s. 23 (12); 63 V. c. 50, s. 6.

(2) Persons duly appointed Overseers and having obtained the certificate and taken the oath hereinbefore provided, shall be, and exercise the authority of constables for the purposes of this Act and of all regulations. 63 V. c. 49, s. 23, s. 6.

(3) It shall be the duty of every Overseer (not being himself a Justice of the Peace or authorized to act as such), on view of a violation of this Act, to arrest the person committing the same, without process, and to bring him with reasonable diligence before a Justice of the Peace or Magistrate to answer therefor. 63 V. c. 49, s. 23 (9)

(4) It shall be the duty of every Overseer, if he has reason to suspect and does suspect that game, peltries or fish have been killed, taken or shipped or are possessed contrary to the provisions of this Act, or of any regulation, and are contained in any trunk, box, bag, parcel, or receptacle, to open the same, entering all premises which he may be authoriezd to enter under the terms of this Act, and using necessary force, in case the owner or person in charge refuses to facilitate his search, and if such overseer has reason to believe and does believe that it is necessary to enter any store, private house, warehouse, car or building which he is not authorized under the terms of this Act to enter without a search warrant, he shall make a deposition according to Form A in the schedule annexed to this Act before a Justice of the Peace, and demand a search warrant to search such store, private house, warehouse, car or building, and thereupon such Justice of the Peace may issue a search warrant according to Form B in the said schedule. 63 V. c. 49, s. 23, ss. 4, 5.

(5) It shall be the duty of every Overseer forthwith to seize all game and fish and all boats, guns, decoys, nets, lines, tackle, appliances, materials and articles used or possessed contrary to the provisions of this Act or of any regulation, and to deal therewith according to law, provided that all articles the use whereof is at all time unlawful shall be forthwith destroyed. 63 V. c. 49, s. 23 (3); 63 V. c. 50, s. 56.

(6) Overseers shall have all powers and duties conferred upon them for the purposes of this Act by any regulation and by the terms and conditions of any lease or license.

(7) It shall be the duty of every Overseer to investigate all cases of violations of this Act or of any regulation which may be brought to his notice, and to prosecute all persons whom he may have reasonable cause to believe guilty of any offence against this Act or any regulation. 63 V. c. 49, s. 23, ss. 4.

(8) In the discharge of his duties every Overseer and every person by him accompanied, or authorized for that purpose, may enter upon, and pass through, or over, private property, without being liable for trespass. 63 V. c. 50, s. 7.

(9) Overseers shall make such annual and other reports and returns as the Superintendent may from time to time require.

(10) Any person who shall obstruct, hinder, delay or interfere with any Overseer appointed under this Act in the discharge of his duty under the provisions of this Act or while enforcing or attempting to enforce, or while acting under any Act or Regulation of Canada relating to fish, fishing or fisheries, by violence, hindrance or by the means of threats, or by giving false information, or in any other manner whatsoever, shall be guilty of a violation of this Act. 63 V. c. 50, s. 31.

(11) Every Overseer or other person authorized to enforce the provisions of this Act, and neglecting or refusing so to do, or to perform any of the duties pertaining to their office as above set forth, shall be guilty of an offence under this Act. 63 V. c. 49, s. 23, ss. 11.

(12) Any officer who maliciously, or without probable cause, abuses his power in such proceedings, shall be guilty of an offence under this Act. 63 V. c. 49, s. 23, ss. 10.

(13) All the provisions of this section as to Overseers shall apply to the Superintendent, Inspectors and Wardens so far as is consistent with their respective duties, otherwise imposed, and all sheriffs, deputy sheriffs, provincial police or constables, county constables, police officers, wood rangers, Crown lands agents, timber agents and fire wardens are hereby constituted Overseers with all the powers and duties by this section conferred and imposed upon Overseers who have duly taken the oath of office as hereinbefore provided. 63 V. c. 49, s. 23, ss. 7, 13; 63 V. c. 50, s. 5, ss. 2.

59a.—(1) Subject to the approval of the Minister, the Superintendent of Game and Fisheries shall have power to appoint, and from time to time in his discretion, dismiss Deputy Game and Fishery Wardens, in and for any part of the Province.

(2) Deputy Game and Fishery Wardens shall be appointed without salary, except when on special service, and shall receive one-half of all fines resulting from convictions obtained by them.

(3) Every Deputy Game and Fishery Warden shall take and subscribe the following oath:—

> I (*A.B.*), a Deputy Game and Fishery Warden for the Province of Ontario, do solemnly swear that to the best of my judgment I will faithfully, honestly and impartially fulfil, execute and perform the office and duty of such Deputy Game and Fishery Warden according to the true intent and meaning of *The Ontario Game and Fisheries Act*, and of all regulations made or to be made thereunder. So help me God.

(4) Persons duly appointed Deputy Game and Fishery Wardens, and having taken the oath hereinbefore provided, shall be and exercise the authority of constables for the purposes of this Act, and of all regulations.

PART VII.

PROCEDURE—EVIDENCE—PENALTIES.

60.—(1) The following provisions shall have effect with respect to summary proceedings for offences, fines and penalties under this Act or any regulation.

(2) All prosecutions under this Act may be brought and heard before any person authorized by this Act to act as a Justice of the Peace or before any of His Majesty's Justices of the Peace in and for the county or district where the penalty was incurred or the offence was committed, or wrong done, or if near any boundary between different counties or districts, then in either, or in the county or district where the offender lives or is found, and in cities, towns and incorporated villages in which there is a Police Magistrate before such Police Magistrate, but no person charged with an offence under this Act shall be compelled to attend before a magistrate at a greater distance from the place where he may have been found or arrested or from his place of residence or the place where the offence was committed than ten miles, if there is a magistrate residing within that distance who is willing to dispose of the case and is not interested in any way therein, or related to or connected with any of the parties thereto. 63 V. c. 49, s. 31, ss. 2.

(3) The information or complaint shall be laid within six months after the commission of the offence provided that this shall not apply to prosecutions for omissions to make any returns required by this Act or by any regulation. 63 V. c. 50, s. 54.

(a) A complaint or information may be for two or more offences.

(4) Any contravention of, or offence against any regulation or the terms or conditions of any lease or license issued thereunder shall be and may be stated as being an offence against this Act. 63 V. c. 50, ss. 11, 12; 1 Edw. VII. c. 37, ss. 3, 4, 15.

(5) The description of an offence, in the words either of this Act or of any regulation, or in any similar words shall be sufficient in law.

(6) Any exception, exemption, proviso, excuse or qualification, whether or not it accompanies the description of the offence in this Act, or in any regulation, may be proved by the defendant, but need not be specified or negatived in the information or complaint, and if so specified or negatived, no proof in relation to the matter so specified or negatived shall be required on the part of the informant or complainant. 63 V. c. 49, s. 31 (5).

(7) Any justices of the peace or other person authorized under the provisions of this Act to act as justice of the peace for the purposes thereof, may upon his own view convict for any offence against this Act or any regulation. 63 V. c. 49, s. 22 (3).

(8) A violation of this Act or of any regulation shall constitute a separate offence in respect of each game animal, bird or fish which is the subject thereof, though more than one violation of the same kind or of a different kind and in respect of more than one game animal, bird or fish takes place at the same time or upon the same day. 63 V. c. 49, s. 29 (3); 63 V. c. 50, s. 57.

(9) Upon the trial of any prosecution under this Act, the Justice or Justices before whom the same is tried, shall, if it appears that more than one offence of the same kind was committed at the same time, or on the same day, impose all the penalties in one conviction which he or they are empowered to do. 63 V. c. 49, s. 31 (5).

(10) The Justice or Justices shall, in any such conviction, adjudge that the defendant be imprisoned unless the penalty, and also the costs and charges of prosecution and commitment, and of conveying the defendant to prison, are sooner paid. 63 V. c. 49, s. 31 (6); 63 V. c. 50, s. 61.

(11) The amount of the costs and charges of the commitment and conveying of the defendant to prison shall be ascertained and stated in the warrant of commitment. 63 V. c. 49, s. 31 (7).

(12) A conviction or order made in any matter arising under this Act, either originally or on appeal, shall not be quashed for want

of form, and a conviction or order made by a court of summary jurisdiction, against which a person is authorized to appeal, shall not be removed by *certiorari* or otherwise either at the instance of the Crown or any private person into the High Court, except for the purpose of the hearing and determination of a special case.

(13) In all prosecutions under this Act, save when herein otherwise provided, the procedure shall be governed by *The Ontario Summary Convictions Act*. 63 V. c. 49, s. 31, ss. 9; 63 V. c. 50, s. 62.

EVIDENCE.

61.—(1) In all actions and prosecutions under this Act the onus shall be upon any person found in possession of any game or fish in close season, to prove that such game was lawfully taken, killed and obtained. 63 V. c. 49, s. 30, ss. 2.

(2) The finding of any nets, fishing devices or other articles set or maintained in violation of this Act shall be *prima facie* evidence of the guilt of the person or persons owning, possessing or operating the same. 63 V. c. 50, s. 32.

(3) In all actions and prosecutions under this Act the possession of guns, decoys or other implements of shooting or hunting in or near any place where any game has been, or is likely to be found, shall be sufficient evidence *prima facie* that the person or persons in possession thereof, were hunting or shooting such game. 63 V. c. 49, s. 30 (1).

(4) On the trial of any complaint, proceeding, matter or question under this Act, the person opposing or defending, or who is charged with any offence against or under any of the provisions of this Act, shall be competent and compellable to give evidence in or with respect to such complaint, proceeding, matter or question, and on any such trial no person, witness or party shall be excused from answering any question upon the ground that the answer to such question may tend to criminate him, or may tend to establish his liability to a civil proceeding at the instance of the Crown or any other person, provided, however, that no evidence so given shall be used or receivable in evidence against such person in any criminal proceeding thereafter instituted against him, other than a prosecution for perjury in giving such evidence. 63 V. c. 49, s. 30 (4); 63 V. c. 50, s. 60.

PENALTIES.

62.—(1) Any person committing any offence under this Act in respect of deer, moose, elk, reindeer, caribou, beaver or otter shall be liable for each offence to a fine not exceeding $100 and not less than $20, together with the costs and any person committing any other offence against any of the provisions of this Act, shall be liable for each offence to a fine not exceeding $50 and not less than $5, together with the costs, and in default of immediate payment of any fine and costs imposed under this section the offender shall be imprisoned in the common gaol of the county where such conviction takes place for a period not exceeding three months. 63 V. c. 49, s. 29 (1).

(2) Any person offending against any of the provisions of this Act who has been convicted of the same or any other offence against this Act within two years theretofore, shall be liable to a penalty of not less than double the minimum penalty hereinbefore provided for such second offence, and upon a third or any subsequent conviction at any time thereafter such person shall be liable to a penalty of not less than the maximum penalty hereinbefore provided. 63 V. c. 49, s. 29 (4).

(3) Any person convicted of any offence under this Act shall, if such person be proved to have been masked or disguised and in pos-

session of any gun or other fire-arm at the time such offence was committed, be liable to be imprisoned for a period not exceeding three months without the option of a fine, in addition to the penalty elsewhere provided for such offence. 63 V. c. 49, s. 29 (2).

(4) Repealed in 1908.

(5) No justice of the peace shall have any power to remit any penalty or to reduce the amount of penalties in case of conviction for more than one offence upon the same prosecution, but in any case in which the aggregate penalties upon conviction for more than one offence committed at the same time or included in the same conviction shall amount to more than the sum of $500, the Minister shall have power in his discretion to remit any part of the excess over said amount.

(6) All fines imposed and collected in prosecutions under this Act in which overseers appointed under this Act are prosecutors, shall be paid to the Treasurer of the Province. 63 V. c. 49, s. 29, ss. 6.

(7) One-half of every fine imposed and collected under the provisions of this Act in which any other person acts as prosecutor, shall be paid to such prosecutor, or to the person on whose evidence the conviction is made, as the Justice may determine, and the other one-half shall be paid to the Treasurer of the Province. 63 V. c. 49, s. 29, ss. 8.

(8) All guns, ammunition, boats, skiffs, canoes, punts and vessels of every description, decoys, nets, rods, lines, tackle, and all appliances of every kind used for fishing and hunting, and all game and fish found in the possession of any person committing an offence against this Act or any regulation or in respect of which any such offence was committed, shall be confiscated upon seizure and, save as hereinafter provided, shall become the property of His Majesty and shall be forwarded to the Superintendent to be sold and the proceeds paid to the Treasurer of the Province. Except only that articles of which the use is at all times unlawful shall be destroyed on seizure and that perishable game and fish may in the discretion of the Overseer be immediately given to any charitable institution. 63 V. c. 49, s. 29. ss. 5; 63 V. c. 50, s. 65.

(9) Upon seizure of any game or fish illegally killed or possessed, or in respect of which any offence against this Act or any regulation has been committed, all packages, boxes, crates, parcels or other articles containing the same shall, together with all other contents thereof of every kind and description, be confiscated, and shall be deemed to be the property of the Crown, and shall be sold and the proceeds applied as provided in the next preceding subsection in the case of such illegal contents.

(10) No person committing any offence against this Act or any regulation shall have or acquire any right of property in game or fish caught or taken by him while committing such offence or in respect of which such offence was committed, but the same shall be forfeited and shall become the property of the owner, lessee or licensee, if any, in breach of whose rights such offence was committed; otherwise shall become the property of His Majesty.

(11) The penalties in the three preceding subsections provided as to confiscation and loss of property shall take effect upon seizure if any offence has been in fact committed notwithstanding that no conviction be had against the person actually committing such offence.

(12) All leases or licenses held by any person convicted of any offence against this Act or any regulation shall be deemed to be cancelled upon conviction without further action or notice given by any officer of the Game and Fisheries Branch.

63. *The Ontario Game Protection Act, The Ontario Fisheries Act, 1900*, and all amendments of the said Acts are hereby repealed.

SCHEDULE.

FORM A.

(*Section 59.*)

Deposition for a Search Warrant.

I, undersigned do hereby declare that I have reason to suspect, and do suspect, that game, furs or fish unlawfully killed or taken or possessed (*as the case may be*) are at present held and concealed (*describe the property, occupant, etc., and the place*).

Wherefore, I pray that a warrant may be granted and given to me to effect the necessary searches (*describe here the property, etc., as above*).

Sworn before me at this day of A.D. 19 .

X.Y.

L. B.,
J.P.

63 V. c. 49.

FORM B.

(*Section 59.*)

Search Warrant.

Province of Ontario,
County of

To each and every the constables of , County of .

Whereas has this day declared, under oath, before me, the undersigned, that he has reason to suspect that (*furs or fish unlawfully taken or possessed, as the case may be*) are at present held and concealed (*describe property, occupant, place, etc.*).

Therefore you are commanded by these presents, in the name of His Majesty, to assist the said , and to diligently help him to make the necessary searches to find the (*state the game, furs or fish unlawfully taken or possessed, etc.*) which he has reason to suspect, and does suspect, to be held and concealed in (*describe the property, etc., as above*), and to deliver, if need there be, the said game, etc., (*as the case may be*) to the said to be by him brought before me, or before any other magistrate, to be dealt with according to law.

Given under my hand and seal at county of this day of , A.D. 1 .

L. B.,
J.P.

[L.S.]

NOVA SCOTIA.

The following provisions exist in Nova Scotia for the protection of game:

Moose—Open season, Sept. 16th to Nov. 16th.

No person after having taken or killed one moose shall shoot at or attempt to kill or take another in the same year or season.

No person shall kill or hunt any calf moose under the age of one year, or any cow moose before Sept. 20, 1912, or any moose whatever on the Island of Cape Breton before Oct. 1st, 1915.

Moose meat must be taken out of the woods within seven days after killing.

No person shall set any snare or trap for moose or hunt moose with dogs.

Every person killing a moose must within ten days thereafter send a notice in writing giving full particulars to the Chief Game Commissioner.

Caribou and Deer—Close season until Oct. 1st, 1912.

Beaver and Martin—Unlawful to hunt, kill or have in possession at any time.

Mink—Open season, Nov. 1st to March 1st.

Otter—Open season, Nov. 1st to May 1st.

Rabbits and Hares—Open season, Nov. 1st to March 1st.

Other Furbearing Animals—Open season, Nov. 1st to April 1st.

Bear, Wolf, Loupcervier, Wildcat, Skunk, Raccoon, Fox, Woodchuck and Weasel—Not protected.

Woodcock, Blue-winged Duck, Wood Duck—Open season, Sept. 1st to March 1st.

Open season for Ducks in Cumberland County, Sept. 1st to May 1st.

No person shall kill more than fifteen Woodcock in one day.

Snipe, Teal, Plover, Sandpipers, Yellow Legs, Beach Birds—Open season, Aug. 15th to March 1st.

Partridges—Open season, Oct. 1st to Nov. 1st. No one shall kill more than five in one day.

Pheasants, Spruce Partridge, Blackcock, Capercailze or Chucker Partridge—Unlawful to hunt, kill or have in possession at any time.

Non-residents of the province must take out a license to hunt. For all game $30; for small game $15.

Residents hunting woodcock or English snipe outside the county in which they reside, are required to take out a license, fee $5.

Licensed guides must accompany all non-residents proposing to hunt, fish or camp.

It is unlawful to hunt or kill any game on Sunday.

Fines imposed for violations of the Game Laws vary in amount according to the nature of the offence. Full information, and a complete transcript of the Game Laws may be obtained by addressing the Chief Game Commissioner, Halifax.

NEW BRUNSWICK.

The close season is as follows:

Moose, Caribou and Deer, from 30th November to 15th September then next following.

Mink, Otter, Fisher or Sable, from 31st March to 1st November, then next following.

Partridge, from 30th November to 1st September then next following.

Wild Goose, Brant, Teal, Wood Duck, Dusky Duck (commonly called the Black Duck), Snipe or Woodcock, from the first day of December to the first day of September then next following at twelve o'clock noon.

Shore, marsh or beach birds on or along the beaches, islands or lagoons bordering the tidal waters of the countries along the Northumberland Strait, the Gulf of St. Lawrence and the Bay Chaleur, from 31st December to 15th August then next following at twelve o'clock noon.

Wild Black Duck, Wood Duck, Teal Duck or other kind of wild duck, or any Snipe, Wild Goose or other wild fowl, after sunset and before sunrise, from 1st September to 1st December then next following, in or upon certain marsh lands situate in the Parish of Shediac, in the County of Westmorland.

Muskrat, from 1st May to 10th March then next following at twelve o'clock noon.

Beaver cannot be taken until the 1st July, 1912.

No person is allowed to kill more than one moose, one caribou and two deer.

Partridge may not be sold until 15th September, 1912.

PRINCE EDWARD ISLAND.

The close season is as follows:

Otter, Martin and Muskrat,	from	1st April	to 1st November.
Hares and Rabbits,	"	1st March	" 1st September.
Woodcock and Snipe,	"	1st January	" 1st October.
Wild Duck,	"	1st January	" 20th August.
Bittern,	"	15th April,	" 20th August.
Salmon,	"	1st September	" 31st December.

For two years after the 14th of May, 1898, it is unlawful to shoot partridge. Shooting ducks at night with a light is prohibited.

BRITISH COLUMBIA.

The close season is as follows:

Beaver, marten or land otter, from 1st April to 1st November.

East of the Cascade Range: Blue grouse, ptarmigan, Franklin's or fool hen, and meadow lark, from 16th November to 31st August, inclusive.

Wild duck of all kinds, bittern, plover and heron, from 1st March to 31st August, inclusive.

Throughout the Province: Caribou, deer, wapiti, commonly known as elk, moose, hare, mountain goat and mountain sheep, from 1st January to 31st July, inclusive.

West of the Cascades: Ptarmigan and meadow larks, from 31st January to 20th August, inclusive.

Wild ducks, bittern, plover and heron, from 1st March to 31st August, inclusive.

Grouse or pheasants, from 2nd January to 30th September, inclusive.

Robins may be killed in orchards or gardens from 1st June to 1st September.

Deer must not be hunted with dogs, and must not be killed for their hides alone, nor exposed for sale without the head. Game birds must not be caught by traps or snares.

MANITOBA.

The close season is as follows:

Deer of all kinds, from 15th December to 1st of the next December.

Grouse, prairie chickens and partridges, from 20th October to 1st of the next October.

Pheasants, until 1st October, 1920.

Plover, quail, woodcock, snipe and sandpipers rrom 1st January to 1st August.

Upland plover from 1st January to 1st July.

Ducks of all kinds, from 1st December to 1st of the next September.

Mink, marten, fisher or pekan or sable, from 1st April to 1st November.

Buffaloes, otter and beaver, all the year round.

Muskrat in any municipality, from 1st May to 1st November, except otherwise provided for by by-law.

Female deer and fawns are absolutely protected at all times and a person is only allowed to kill one male deer in each season.

Motor driven vessels must not be used in hunting water fowl.

Hunting on Sundays or at night is prohibited.

SASKATCHEWAN.

The close season is as follows:

Antelope (pronghorn), from 15th November to 1st of the next October.

Deer of all kinds, from 15th December to 1st of the next December.

Grouse, prairie chickens, pheasants, ptarmigan and partridges, from 1st December to 15th of next September.

English pheasants, all the year round.

Cranes, from 1st January to 1st August.

Ducks, geese and swans, rails and coots, from 1st January to 1st September.

Shore birds, including snipe, sandpiper, plover and curlew, from 1st January to 1st September.

Bison or buffalo, all the year round.

Beaver, until 31st December, 1910.

Mink, fisher and marten, from 1st April to 1st November.

Otter, from 1st May to 1st November.

Muskrat, from 15th May to 1st November.

Female deer and fawns under one year old are absolutely protected at all times, and a person is only allowed to take two male deer in each open season.

Hunting on Sundays and at night is prohibited.

ALBERTA.

The close season is as follows:

Bison and buffalo, all the year round.

Elk and wapiti, until 15th November, 1912.

Antelope (prong horn), from 1st November to 1st of the next October.

Other kinds of deer, from 1st December to 1st of the next November.

Female deer, moose, mountain sheep or antelope or the young (under one year old) of any of these animals, are absolutely protected at all times.

Ducks and swans, from 1st January to 23rd August.

Cranes, rails, coots and shore birds, including snipe, sandpiper, plover and curlew, from 1st January to 1st September.

Grouse, partridge, pheasant, ptarmigan and prairie chicken, from 1st of November to 1st of next October, with limitation of number to be taken by one person, in one day, 10; in one season, 100.

English pheasants all the year round.

Beaver, until 31st December, 1915.

Mink, fisher or marten, from 1st April to 1st November.

Otter and muskrat, from 1st May to 1st November.

A person is only allowed to take one animal of the deer kind during each open season.

Hunting on Sundays and at night is prohibited.

RECEIPTS AND RELEASES.

A receipt is an acknowledgment in writing that the party by or for whom it is signed has received from the party named therein money or goods as specified. It is, as a rule, only *prima facie* evidence that such money or goods were received, and if shown to be obtained by fraud or misrepresentation, or given under mistake of the facts, it may, as between the parties to it, be annulled or treated as invalid by a Court of Equity. Payment of money or delivery of goods may of course be proved by verbal evidence as well as by receipt, even where the latter was given, but has been lost or mislaid.

A release is a written discharge of any right, title, or demand which one man may claim against another. No special form of words is essential if the intention be plain, though the words commonly used, where money-claims or goods are referred to, are "remise, release, acquit and discharge." With reference to lands, or interests in lands, the release is commonly called a "quit-claim," and is a conveyance of whatever interest the releasor may have in the property, the words used being, "remise, release and forever quit-claim." A quit-claim of interest in lands is only effectual where the releasee, or person in whose favour it is given, already holds the possession of the lands, or some interest therein. It should be executed with the same formalities as a deed.

All releases are made under seal. A release of all demands is a bar to all actions, claims, demands, and causes of action which the party executing the same may have against the releasee up to the date of its execution. A release of one of two joint debtors is a legal release of both. One of several executors may legally release a debt due the estate without the signature of the others.

FORMS.

Receipt for cash payment on Account.

Kingston, Ont., January 7th, 1907. Received from A. B. five hundred dollars to be applied on account.

$500.00. C. D.

Receipt in full of Account.

Halifax, N.S., May 20th, 1907. Received from Messrs. E. F. & Co., seventy dollars and sixty-three cents, in full balance of account rendered to 1st instant.

$70.63. G. H.

Receipt for Promissory Note delivered.

Victoria, B.C., March 1st, 1907. Received from Messrs. E. F. & Co., their note in favour of ourselves or order dated this day, payable four months after date at the Merchants' Bank here, for one thousand dollars, which, when paid, will be in full of all demands.

$1,000.00. G. H. & Co.

Receipt for Deeds left.

Moncton, N.B., May 3rd, 1907. I have this day received from J. K., the following title deeds of his farm lately purchased by me, to wit: (here describe deeds, etc., giving names of parties, dates and nature of instrument), for which I agree to be accountable, and to return the same on demand.

Mutual Release on settling Partnership Accounts.

Whereas a partnership has heretofore subsisted between us, A. B. and C. D., and has been this day dissolved by mutual consent, and the accounts of all transactions and dealings thereof up to such dissolution have been to our mutual satisfaction adjusted and balanced whereby nothing remains due from the one of us to the other. And whereas to ratify and confirm such settlement and adjustment, and to prevent and obviate any further disputes or disagreements touching and concerning all or any of such accounts or partnership transactions we have mutually agreed to release each other, and these presents are executed with such intention.

Now know all men that I the said A. B., for the consideration hereinbefore expressed have remised, released and forever discharged, and by these presents, etc. (follow general form, each partner executing a separate general release to his co-partner, with necessary change of names in operative part.)

General Release of all Demands.

Know all men by these presents, that I, A. B., of as well for and in consideration of the sum of one dollar to me in hand paid by C. D., of the same place, at and before the sealing and delivery hereof, the receipt whereof I do hereby acknowledge, as for divers other good causes and valuable considerations me thereto specially moving, have remised, released, quit-claimed, and

forever discharged, and by these presents, for me, my heirs, executors and administrators, do remise, release, quit-claim, and forever discharge, the said C. D., his heirs, executors and administrators, each and every of them, of and from all and all manner of action and actions, suits, debts, dues, duties, sum and sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, agreements, promises, variances, damages, judgments, extents, executions, claims, and demands whatsoever, in law, equity, or otherwise howsoever which against the said C. D. I ever had, now have, or which I, my heirs, executors, and administrators hereafter can, shall, or may have, for, upon, or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the day of the date of these presents.

In witness whereof I have hereunto set my hand and seal this tenth day of May, A.D. 1907.

Witness: A. B. [L.S.]

SALE OF GOODS.

Respecting Conditional Sales of Chattels.

Chapter 143, Con. Stat. N. B., 1903, provides that:

Where in the sale of any chattel the condition of the sale is such that the possession of the chattel passes but no ownership is acquired by the vendee or purchaser until the payment of the purchase or consideration money or some stipulated part thereof, such condition is valid only as against a subsequent purchaser or mortgagee from the vendee without notice, in good faith and for valuable consideration, when the said sale is evidenced in writing signed by the bailee or his agent and a copy of such writing filed with the registrar of deeds of the county in which the bailee or conditional purchaser resided at the time of the bailment or conditional purchase. The copy of such writing must be filed with the registrar within fifteen days from the delivery of possession of the chattel mentioned in the agreement. The registrar's fee on filing such paper is ten cents and the cost for every search in respect thereof is five cents.

A clerical error which does not mislead, or an error in an immaterial part of the copy filed, does not invalidate the filing or destroy the effect thereof.

The vendor must leave a copy of the instrument by which a lien on the chattel is retained, or which provides for a conditional sale, with the bailee or conditional vendee. This must be done at the time of the execution of the instrument or within twenty days thereafter.

In case any creditor or interested person demands a sworn statement of the amount due on the instrument, the vendor must file same with the registrar within twenty days from the making of the demand. If he fails to do this he forfeits all rights accruing under the instrument as against such creditor or interested person.

Should any manufacturer, bailor or vendor of any chattel in respect of which there has been a conditional sale, or promise of sale, or his successor in interest take possession for breach of condition, he shall retain the same for twenty days, and the bailee or his successor in interest, may redeem the same within the said period of twenty days, upon paying in full amount then in arrear, together with the interest and the actual costs and expenses of taking possession.

Where the goods or chattels have been sold or bailed originally for a greater sum than thirty dollars ($30), the same have been taken possession of, such goods or chattels must not be sold without five days' notice of the intended sale being first given to the bailee or his successor in interest. Such notice may be served as follows: personally or in the absence of such bailee or his successor in interest; the notice may be left at his residence, or last known place of abode in New Brunswick, or may be sent by registered letter deposited in the post office at least seven days before the time when the said five days will elapse, addressed to the bailee or his successor in interest, at his last known post office address in Canada. The said five days or seven days, may be part of the twenty days in the last preceding section mentioned.

Where any goods or chattels have been sold or bailed under any receipt note, hire receipt, or other instrument by which it is agreed that no ownership therein shall be acquired by the purchaser or the bailee until the payment of the purchase or consideration money, or some stipulated part thereof, and such goods or chattels are affixed to any realty, without the consent in writing of the owner of the goods or chattels, such goods and chattels shall not be or become part of the realty, but shall continue to be and remain personal property, and the rights of the owner or owners thereof shall not be in any way altered or affected by such goods or chattels being so affixed to the realty; but the owner of such realty, or any purchaser, or any mortgagee, or other incumbrancer on such realty, shall have the right as against the manufacturer, bailor, or vendor of such goods or chattels, or any person claiming through or under them, to retain the said goods and chattels upon payment of the amount due and owing thereon.

STRIKES AND BOYCOTTING.

A strike may be defined as a simultaneous and concerted refusal, on the part of workmen, to continue work, or an agreement to simultaneously quit the employment of their common master or employer. This may be regarded in law in two aspects;—either as the common act of a body of persons banded together, or with reference to the individual acts of the employees. In the latter view, the act of quitting employment may or may not amount to a breach of contract according to the terms of the agreement under which the workman is employed, and to determine this question reference must be had to the principles enunciated in the chapter on Master and Servant, where the legal rights and remedies of the parties respectively are pointed out.

Regarded further, as a joint act, for the responsibility of which each individual is answerable, the following considerations may be applicable.

Any workman is at liberty to peaceably quit the employment of him who hires him, at any time; and the fact that others of his fellow employees also choose the same time to quit work, cannot be held to restrict his liberty in this re-

gard. So long as he commits no breach of his own agreement of hiring, he has done no wrong. The matter is personal with himself. Should, however, he interfere with, threaten or molest other workmen in the service of his former employer, for the purpose of forcing them also to desert their employment, or should he even unfairly entice them away from, or procure them to desert, such employment, he is guilty of an improper act, and may be sued by their employer in damages.

There is, further, a criminal liability on the part of workmen guilty of such improper acts, as is more fully set forth in the statutes of Canada, extracts from which are appended.

The Criminal Code, sec. 501, provides as follows:—

501. Everyone is guilty of an offence punishable at the option of the accused, on indictment or on summary conviction, before two justices of the peace, to a fine not exceeding $200, or to three months' imprisonment, with or without hard labor, who wrongfully and without lawful authority, with a view to compel any other person to abstain from doing anything which he has a lawful right to do, or to do anything from which he has a lawful right to abstain—

(*a*) Uses violence to such other person, or his wife or children, or injures his property; or—

(*b*) Intimidates such other person, or his wife or children, by threats of using violence to him, her or any of them, or of injuring his property; or—

(*c*) Persistently follows such other person about from place to place; or—

(*d*) Hides any tools, clothes or other property owned or used by such other person, or deprives him, or hinders him in the use thereof; or—

(*e*) With one or more other persons follows such other person in a disorderly manner in or through any street or road; or—

(*f*) Besets or watches the house or other place where such other person resides or works or carries on business or happens to be

Boycotting may be defined as a method of injuring or persecuting a citizen, with the object of ruining his business, or compelling him to remove from the district where he resides. It is generally sought to be accomplished by the conjoint agreement of a large number to hold no intercourse, and have no dealings of any kind, with him or with any who assist him or who decline to join in the boycott.

Where this treatment is the result of a common and concerted agreement on the part of several individuals, it may constitute the crime of conspiracy, for which those guilty are liable to be indicted before the Grand Jury. It is in such cases a crime of grave magnitude, and if accompanied by acts of violence, merits the severest punishment. Happily it is little known in Canada, and no extended reference to it is necessary.

THE SUCCESSION DUTY ACT.

9 Edw. VII. cap. 12.

This Act applies to the Estates of all persons dying after 1st July, 1892.

The word "property" 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.

The word "child" shall be deemed to include any lawful child of the deceased or any lineal descendant of such child or any person or persons adopted before the age of twelve years by the deceased as his child or children or any infant to whom the deceased for not less than ten years immediately prior to his death stood in the acknowledged relationship of a parent or any lineal descendant of such adopted child as aforesaid born in lawful wedlock.

The phrase "aggregate value" means the value of the property after the debts, encumbrances or other allowances (set out in the act) are deducted therefrom and shall include property situate outside of the Province as well as within.

"Dutiable value" means the value of the property after the debts, encumbrances or other allowances are deducted therefrom.

In determining the dutiable value of any property the value shall be taken as at the date of the death of the deceased, and allowance shall be made for reasonable funeral expenses and for his debts and encumbrances, but an allowance shall not be made (*a*) for debts incurred by the deceased or encumbrances created by a disposition made by the deceased unless such debts or encumbrances were incurred or created *bona fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit and take effect out of his interest. (*b*) For any debt in respect whereof there is a right to reimbursement from any other estate or person. (*c*) More than once for the same debt or encumbrance charged upon different portions of the estate.

No duty shall be leviable:—

(1) On any estate the aggregate value of which does not exceed $10,000. (2) On property devised or bequeathed for religious, charitable or educational purposes to be carried on by a corporation or persons domiciled within the Province

of Ontario. (3) On property passing under a will intestacy or otherwise to or for the use of a father, mother, husband, wife, child, daughter-in-law or son-in-law of the deceased, where the aggregate value of the property as defined by this Act passing to the persons mentioned does not exceed $50,000. (4) Life insurance moneys not exceeding $5,000. (5) Bonds and debenture stock of corporations having head office in Ontario. (6) Where the whole of the value of any property passing to any one person does not exceed $300.

Save as aforesaid the following property shall be subject to a succession duty:—

(*a*) All property situate within this Province and any interest therein or income therefrom and debts by specialty whether the deceased person owning or entitled thereto was domiciled in Ontario at the time of his death or was domiciled elsewhere.

(*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 April, 1896, or taken under a disposition made by any person so dying purporting to operate as an immediate gift, during life, whether by transfer, delivery, declaration of trust, or otherwise which shall not have been *bona fide* made twelve months before death of deceased.

(*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 in writing or otherwise, and whether for valuable consideration or not, made by any person dying on or after 7th April, 1896, by deed or other

instrument not taking effect as a will whereby any interest in such property or the proceeds thereof for life or any other period is reserved to the settlor, or whereby the settlor may have reserved the right to exercise any power to restore to himself the absolute interest in such property.

(*f*) Any annuity or other interest purchased or provided by any person dying on or after 17th April, 1896, either by himself alone or in concert with any other person to the extent of the beneficial interest arising by survivorship or otherwise on the death of the deceased.

(*g*) Any interest in dower or by the courtesy 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.

Where the aggregate value of the deceased's property 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, son-in-law or daughter-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 at the rate and on the scale as follows:—

(*a*) Where the said aggregate value exceeds $50,000 and does not exceed $75,000, 1 per cent.

(*b*) Exceeds $75,000 and does not exceed $100,000, 2 per cent.

(*c*) Exceeds $100,000 and does not exceed $150,000, 3 per cent.

(*d*) Exceeds $150,000 and does not exceed $200,000, 4 per cent.

(*e*) Exceeds $200,000, 5 per cent.

Provided where the value of any dutiable property exceeds $100,000 and the amount passing in manner aforesaid to any one person exceeds the amount hereinafter mentioned, a further duty shall be paid on the amount so passing in addition to the rates in the foregoing paragraph mentioned as follows:—

(*a*) Where the whole amount so passing to one person exceeds $100,000 and does not exceed $200,000, 1 per cent.

(*b*) Exceeds $200,000 and does not exceed $400,000, 1½ per cent.

(*c*) Exceeds $400,000 and does not exceed $600,000 2 per cent.

(*d*) Exceeds $600,000 and does not exceed $800,000, 2½ per cent.

(*e*) Exceeds $800,000, 3 per cent.

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 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 descendant 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, shall be subject to a duty of $5 for every $100 of the value.

Provided that where the value of any dutiable property exceeds $50,000, and the amount passing in manner aforesaid to any one person mentioned in the next preceding sub-section, except the father and mother, exceeds the amount hereinafter mentioned, a further duty shall be paid on the amount so passing in addition to the duty in the next preceding subsection mentioned as follows:—

(*a*) Where the whole amount so passing to one person exceeds $50,000 and does not exceed $100,000, 1 per cent.

(*b*) Exceeds $100,000 and does not exceed $150,000, 1½ per cent.

(*c*) Exceeds $150,000 and does not exceed $200,000, 2 per cent.

(*d*) Exceeds $200,000 and does not exceed $250,000, 2½ per cent.

(*e*) Exceeds $250,000 and does not exceed $300,000, 3 per cent.

(*f*) Exceeds $300,000 and does not exceed $350,000, 3½ per cent.

(*g*) Exceeds $350,000 and does not exceed $400,000, 4 per cent.

(*h*) Exceeds $400,000 and does not exceed $450,000, 4½ per cent.

(*i*) Exceeds $450,000, 5 per cent.

Where the aggregate 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 every $100 of the value.

Any portion of an estate where the deceased at time of death is domiciled in Ontario, and which is brought into Ontario by executors or administrators to administer shall be liable to duty, but if any succession duty or tax has been paid thereon elsewhere than in Ontario, and such duty or tax so collected is greater than the duty payable in this Pro-

vince no duty shall be payable thereon; but if the duty so paid elsewhere is less than the Ontario duty then the difference must be paid.

Where any duty or tax shall have been paid by the estate upon any moveable or personal property locally situate outside of Ontario or any interest therein, an allowance shall be made for any outside duty paid thereon; the difference, if any, between the outside and Ontario duty shall be likewise paid. Provided the above allowances and differences are only made with respect to any country, state or British Province or possession where a similar allowance is made for the duty or tax paid under this Act on property in Ontario passing on the death of any person domiciled in any such outside country.

Should an executor or administrator, in order to escape payment of Succession Duty, distribute any part of said estate without bringing the same into Ontario, such executor or administrator shall be liable, personally, to pay His Majesty the amount of duty as if such assets had been brought within Ontario, provided that this shall not apply to payments made to persons domiciled out of Ontario from assets situate without the Province.

No foreign executor or administrator shall assign or transfer any stocks or shares in Ontario 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 given therefor as provided, and any corporation allowing a transfer of any stocks or shares contrary to this provision shall be liable to pay the duty.

An executor or administrator applying for letters probate or administration to the estate of a deceased person shall, before the issue of such letters to him, make and file with the Surrogate Registrar a full and correct statement under oath, giving (*a*) full itemized inventory of all the property of the deceased 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 in which they stand to the deceased; and such executor or administrator shall, before the issue of such letters probate, deliver to the Surrogate Registrar a bond, in a penal sum equal to ten per cent. of the sworn value of such property liable to Succession Duty, executed by himself and two sureties to be approved of by the Registrar conditioned for the due payment of any duty to which the property may be found liable.

Should the Treasurer of Ontario be not satisfied with the value so sworn to or with the correctness of the inven-

tory, he shall direct the Sheriff of the County or City to make a valuation and appraise the said property, and provision is made for an appeal from such appraisement to the Surrogate Judge of the County within thirty days after making and filing such assessment. The duties imposed by the Act unless otherwise provided for shall be due and payable at the death of the deceased or within eighteen months thereafter. Should they not then be paid interest at 5 per cent. per annum from death of deceased shall be charged and collected, and same shall be a lien upon the property in respect to which they are payable until fully paid. Provision is made however as regards postponement of the duty payable on any future or contingent estates, income or interest, with the consent of the Provincial Treasurer in writing, until such estate, income or interest comes into possession. 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 in part thereof shall, if required, give to the person accounting for the duty a certificate which shall discharge from any further claim the property shown by the certificate to form the estate.

An administrator, executor or trustee having in charge or trust any estate, legacy or property subject to duty shall deduct same therefrom or collect the duty thereon from the person entitled to such property, and shall not deliver any property subject to duty to any person until he has collected the duty thereon.

MANITOBA.

The corresponding Act in Manitoba is chapter 161, R. S. M. 1902, as amended since, which differs very slightly from the Ontario statute, but, as amended, now provides for payment of the succession duty within six months after the death of the deceased.

SASKATCHEWAN.

The corresponding statute in force in this Province is "The Succession Duty Ordinance" of 1903, with the amendments made by cap. 24 of the statutes of 1908. It is framed on the same lines as the similar Acts of Ontario and Manitoba.

ALBERTA.

No amendments to the Succession Duty Ordinance of 1903 in force in the Territories have been made up to the

close of 1909, so that the law in this Province is the same as in Saskatchewan, omitting the amendments made there in 1908.

NEW BRUNSWICK.

In this Province life insurance moneys are liable to duty.

Those estates and properties which are exempt from duty are identically the same as in Ontario.

The percentage charged in New Brunswick but slightly differs from that in Ontario.

In New Brunswick it is incumbent on the Judge of Probate for the county in which the estate is being wound up to see that the duty is paid (should it be a case where duty must be paid) and to compel the executor or administrator to pay such duty.

THE TORRENS SYSTEM OF LAND TRANSFER.

This system is now in force in Alberta, British Columbia, Manitoba, Ontario, Saskatchewan, and three counties in Nova Scotia.

The Torrens system was introduced into Manitoba in the year 1885, and into Ontario during the same year. The bill for its introduction into Alberta and Saskatchewan was passed by the Parliament of Canada in the year 1886. The following statements, explanatory of the system, have been compiled from various sources, to enable readers to familiarize themselves with its objects and methods.

The Torrens system offers to the owners of land alienated from the Crown prior to the coming into operation of the Act, the opportunity of causing their lands to become subject to a law which will free them forever from the old system of conveyancing by deed, while imposing upon them a certain new procedure.

Land once brought under the system cannot, in the absence of special circumstances, be withdrawn from its operation, but all dealings with it must, thenceforth, be conducted as the Act directs.

Alienated land not brought under the operation of the Act remains subject to the general law regarding real property, conveyances, mortgages, etc., affecting them, continue to be drawn up in the old forms, and to be registered in the General Registry Office.

The old and new systems of Transfer and Registration continue, therefore, to exist side by side.

In Manitoba, Alberta and Saskatchewan, and parts of Ontario (namely, Muskoka, Parry Sound, Nipissing, Algoma, Manitoulin, Thunder Bay and Rainy River), land granted by the Crown subsequent to the introduction of the Torrens Act is under the Act *ipso facto*. The Crown Grant is registered under the Act without the grantee taking any steps in the matter. The old system of conveyancing, therefore, cannot there be applied to land bought from the Crown after the introduction of the Torrens system, but all dealings with such land must be conducted on the system of *registration of title*.

Any other land may be brought under the Act on the application of the persons interested. The application, with the deeds, is left at the Lands Titles' Office, and the title is

there investigated by the officers appointed for that purpose. If it be found that the title, although perhaps not technically perfect, is yet secure against ejectment and against the claims of any other person, the land will be brought under the act, and the proprietor, or his nominee, will receive a certificate of title. In Ontario, provision is made for the issue of three kinds of certificates: (1) an absolute certificate; (2) a qualified certificate; (3) a possessory certificate. The latter should more properly be called a certificate of recorded possession. It is merely a certificate that the person claiming is in possession as owner subject to any defects there may be in his title prior to registration. It is, of course, possible that the certificate of title may through error issue to the wrong person, and that injustice may be done. In such case the person injured has a remedy in damages against the Government, and, in order to form a fund to meet claims of this nature, a fee is charged of one quarter of one per cent. on the value of all land brought under the Act, where a certificate of absolute or qualified title is granted, and one-eighth of one per cent. where a possessory title. On the issue of the certificate, the old deeds, if they relate exclusively to the land applied for, are cancelled and retained in the office. If they relate to other property, they are returned, each deed being marked as cancelled, so far as relates to the land brought under the Act. In any case, they are of no use to the land brought under the Act, since from thenceforth the certificate of title is conclusive evidence that the person named in it is entitled to the land it describes. The certificate of title operates as a Government guarantee that the title is perfect. It is indefeasible, and there is no going behind it.

Any person entitled to any estate of freehold in possession in land under the Act may have a certificate of title issued to him.

Every certificate is in duplicate. One duplicate is given to the proprietor, the other is retained in the Land Titles Office. The certificate in the office constitutes the register book, which, in the words of Mr. Torrens, is the pivot on which the whole mechanism turns. Every certificate is marked with the number of the volume and the folium of the register book. Crown Grants of land bought since the Acts came into operation are also issued in duplicate, one of which is bound up in the register book, and such grants are, in all respects, equivalent to certificates of title.

So far, it will be said, the title is simplified, but how is this simplicity to be retained—how will future complications be prevented? This is the problem which the Act endeavours to solve.

For the purpose of facilitating transactions, forms of transfer, mortgage, lease, and other dealings are furnished in the Act, the forms ordinarily in use in Ontario being set out below. Any person of ordinary education can, with very little trouble, learn to fill them up in the more simple cases, without professional assistance. If a proprietor holding a certificate of title wishes to sell the whole of the land included in it, he fills up and executes a printed form of *memorandum of transfer*, which may be endorsed by the purchaser. The transfer is presented at the office, and a memorial of the transfer is recorded by the proper officer on both duplicates of the certificate of title. The purchaser, by the recording of the memorial, stands in precisely the same position as the original owner. If only a part of the land in a certificate is to be transferred, such part is described in the memorandum of transfer, the transfer is noted on both duplicates of the original certificate, a fresh certificate is issued to the purchaser for the part transferred, and the original certificate is noted as cancelled with respect to such part. The process is repeated on every sale of the freehold, and it will thus be seen that every person entitled to a freehold under the Act has but one document to show his title, through however many hands the property may have passed, and such document vests in him an absolutely indefeasible title to the land it describes.

If the proprietor wishes to mortgage or lease his land, or to charge it with the payment of a sum of money, he executes in duplicate a memorandum of mortgage, lease or encumbrance, in the form provided in the Act, altered so as to meet the particular circumstances of the case. This is presented at the Lands Titles Office with the certificate of title: a memorial of the transaction is entered by the proper officer on the certificate of title, and on the duplicate certificate forming the register book. The entry of this memorial constitutes registration of the instrument, and a note, under the hand and seal of the proper officer, of the fact of such registration is made on both duplicates of the instrument. Such note is conclusive evidence that the instrument has been duly registered; one of the duplicates is then filed in the office, and the other is handed to the mortgagee or lessee. The certificate of title will thus show that the original proprietor is entitled to the land it describes, subject to

the mortgage, lease, or encumbrance; while the duplicate instrument held by the mortgagee, lessee, or encumbrancee, will show precisely the nature of his interest. Each person has, and can have, but one document of title, and this shows conclusively the nature of the interest he holds and to that interest his title is indefeasible. If a mortgage is paid off, under the Torrens Act proper, as passed in Manitoba, a simple receipt is endorsed on the duplicate mortgage held by the mortgagee. This is brought to the office, and the fact that the mortgage has been paid off is noted on the certificate of title. A mortgage under the Act does not involve a transfer of the "legal estate," though the mortgagee is made as secure as if such transfer had taken place. The necessity, therefore, for a deed of reconveyance, when the mortgage is paid off, at once vanishes. If a lease is to be surrendered, it has merely to be brought to the office with the word "surrendered" indorsed upon it, signed by the lessor and lessee, and attested and the proper officer will note the fact that it has been surrendered, on the certificate of title. Mortgages or leases are transferred by indorsement by a simple form. The Act provides implied powers of sale and foreclosure in mortgages; and in leases, implied covenants to pay rent and taxes, and to keep in repair, together with power for the lessor to enter and view the state of repair, and to re-enter in case of non-payment of rent or breach of covenant. All these may be omitted, or modified if desired. In order to save verbiage, short forms are provided, which may used for covenants in leases, or mortgages, the longer forms which they imply being set out in the Act.

Every person, therefore, entitled to a freehold estate in possession, has (if his land is subject to the Act) a certificate of title, or land-grant, on which are recorded memorials of all mortgages, leases or encumbrances, and of their discharge or surrender. If he transfers his entire interest, a memorial of the transfer is recorded on the certificate, and the transferee takes it subject to recorded interests. The transferee can, if he chooses, have a fresh certificate issued in his own name, and in that case the old certificate is cancelled, and the memorials of the leases or mortgages to which the land is subject are carried forward to the new one. If a proprietor transfers only a part of his land, his certificate is cancelled so far, a fresh certificate is issued, and memorials of outstanding interests are similarly carried forward. Memorials of dealings with leases or mortgages are noted on the duplicate lease or mortgage held by the lessee or mortgagee, and on the folium of the register book. The officers of the

department, therefore, and persons searching, can see at a glance the whole of the recorded dealings with every property; while each person interested can see, by the one document he holds, the precise extent of his interest.

It cannot be too emphatically pointed out that it is not the execution of the memorandum of transfer, lease or mortgage, *but its registration in the Lands Titles' Office*, that operates to shift the title. No instrument, until registered in the manner prescribed by the Act, is effectual to pass any estate or interest in any land under the operation of the Act, or to render such land liable to any mortgage or charge; but *upon such registration*, the estate or interest comprised in the instrument passes, or the legal effect of registration, whatever it may be, is complete. Registration takes effect from the time of the receipt of the instrument, not from the time of the actual making of the entry.

The publicity attending an ordinary mortgage is sometimes avoided under the old system by an equitable mortgage. Registration of title does not do away with this mode of charging land, but an equitable mortgage or lien upon land may be created by deposit of the grant or certificate of title. The following description of the practice as regards equitable mortgage is extracted from a pamphlet recently published by Sir R. R. Torrens:—"The borrower executes a *contract for charge* in the authorized form, either for a specified sum, or, as is more usual, for such sum as may appear due upon balance of account at any future date. This instrument, with the certificate of title, is held by the creditor, who does not register, but lodges a Caveat for bidding the registration of any dealing with the land until fourteen days, or other named period, have elapsed after notice of intention to register the same has been served by the Registrar at an address given. A red ink cross, with the number of the Caveat, is then inscribed on the proper folium of the register. The creditor, upon receipt of such notice, or at any time, may turn his equitable mortgage into a registered charge, by presenting the contract for charge with the deposited certificate of title at the Registry Office.

A very important principle in the Torrens system of registration of title, and one which should be most jealously guarded, if that system is to retain the simplicity which is the main-spring of its success, is the non-recognition of trusts. No notice of trusts may be entered on the register, nor may any instrument declaring trusts be registered. The usual simple transfer must be registered, and the transferees, notwithstanding their fiduciary position, appear there as the registered proprietors for all intents and purposes. An

instrument declaring the trust may, however, be deposited in the Registry Office for safe custody, and the rights of the persons beneficially interested are protected by the execution by the transferees of such an instrument, which is lodged in the Registry for safe custody and reference. A protection against fraud is provided by enacting that whenever the words "No Survivorship" are written on the instrument of title held by trustees, the land in respect of which they are registered cannot be dealt with by a less number of trustees than those registered, without the sanction of the Supreme Court. A Caveat prohibiting the registration of any dealing, except in accordance with the trusts so declared, may be lodged by any person interested in the trust property. These safeguards do not interfere with the principle sought to be maintained, namely, that the trustee, being the registered proprietor, can give an absolutely indefeasible title to a person with whom he deals, and that beneficiaries, though the Caveats provide a check upon frauds and breaches of trust, must rely mainly on the integrity of their trustees.

REGISTRATION OF DEALINGS WITH LAND UNDER THE LAND TITLES ACT.

It is an essential part of the Torrens System that every instrument purporting to deal with any interest or estate in land subject to it must be registered in order to give legality to the transaction. It is the registration, not the signature of the parties, which gives such a transaction its binding force, and no change in the title is effected by an unregistered instrument.

The principle transactions and instruments which have to be notified to the Lands Titles' Office, and registered there in order to give a valid title to any person claiming under them, are:—

Transfer in fee.
Lease.
Mortgage.
Encumbrance or charge.
Endorsement of Transfer of Lease.
Ditto of Mortgage.
Ditto of Encumbrance.
Ditto of Surrender of Lease.
Ditto of Discharge of Mortgage.
Power of Attorney.
Transmission by Marriage.
Ditto by Insolvency.
Ditto by Will, or Intestacy.
Fi. fa., or Order or Decree of Supreme Court.

TRANSFERS, LEASES, AND MORTGAGES.

Of a transfer in fee, only one copy need be presented for registration; a mortgage must be in duplicate, and a lease in triplicate.

The instruments presented for registration are received by the proper official, who examines them to see that they fulfil all the requirements of the Act, namely, that they are free from erasures, properly witnessed and proved; also that they are accompanied by diagrams, if necessary, and by the certificate of title.

The Master of Titles or other official has to satisfy himself that the transaction is one to the registration of which no objection exists, and for this purpose he has to compare the original and duplicate and to see that the instrument is sufficiently clear and explicit, and that the parties are legally in a position to deal as proposed in it.

After registration, the memorandum of transfer is of no further use to the transferee, for he obtains, instead of it, either a new certificate declaratory of his title, or else, if he prefers it (where the whole of a holding is transferred), the original certificate, with a memorial recording the transfer.

If the fee of part only of the land is included under an existing grant or certificate of title be transferred, the transferee gets a certificate for the portion acquired by him, while the proprietor has the choice either of leaving in the office his old certificate, cancelled as to the portion transferred, or of taking out a new certificate for the balance of the land retained by him, his old certificate being altogether cancelled.

A proprietor who intends to sub-divide his land with the view of disposing of it in lots is required to deposit in the Land Titles' Office a plan, in duplicate, certified by a declaration of a licensed surveyor, in which all allotments, streets, etc., must be distinctly delineated, the allotments being marked with numbers or symbols.

ASSIGNMENT, ETC., OF MORTGAGES, ENCUMBRANCES, OR LEASES.

Mortgages, encumbrances, and leases, may be transferred by a simple endorsement written upon the copy of the instrument retained by the proprietor of the interest dealt with, and duly registered.

The surrender of a lease is effected by endorsing the simple word "Surrendered," signed by the lessee, and "Accepted" by the lessor, this being attested in the prescribed manner and duly registered.

A mortgage or encumbrance may be discharged (in Manitoba) by the simple endorsement on the instrument of a receipt for the money secured, signed by the party entitled, attested by a witness, and duly registered. In Ontario, the same form of discharge of mortgage is used as under the Ontario Registry Act.

TRANSMISSION.

Upon the death of the registered owner of any land which is subject to the Land Titles Act, his executor or administrator makes an application in writing to the Master of Titles, to be registered as proprietor, producing in substantiation of his claim the duplicate grant or certificate of title, and the probate, or letters of administration. This is received, entered and examined in the manner described relating to transfers, and a memorial is entered on the duplicate grant or certificate of title and in the register-book, recording the date of the will and probate, or of the letters of administration, the date and hour of their production, the date of the death of the proprietor, etc. This having been done, the executor or administrator becomes the registered proprietor, holding in trust for the persons beneficially entitled, and his title has relation back to the time of the death of the deceased proprietor, etc.

If the registered proprietor of an estate or interest in land becomes insolvent, or makes any statutory assignment for the benefit of his creditors, his assignees or trustees are entitled to be registered as proprietors in respect of the same. An application in writing is made by them to the Master of Titles to have the particulars of their appointment entered in the register-book, and evidence of such appointment is furnished to him. A memorandum notifying the same having been entered in the register-book, the trustees become the proprietors of the estate or interest of the insolvent, or assignor, in the land.

LOSS, OR DESTRUCTION, OF CERTIFICATE OR GRANT.

The proprietor of land whose grant or certificate of title has been lost, mislaid, or destroyed, may obtain a "provisional certificate" from the Lands' Titles' Office which is an exact copy of the duplicate bound up in the register-book

with all the memorials (if any) recorded thereon. He has to make a statutory declaration setting out the facts and all particulars affecting the title, and the intended issue of the provisional certificate must be notified by advertisement.

Any one who chooses to apply for it may obtain, upon payment of a small fee, a certified copy of any registered instrument affecting land under the provisions of the Act, and this is available as evidence in all Courts of Justice.

In Nova Scotia, the Land Titles Act, 1903, has been proclaimed to be in force in three counties of the Province. It has, however, not been adopted in these counties in more than a few instances. Its provisions follow the principles of the Ontario Act but one or two amendments have made the Act somewhat unworkable in certain cases.

1.—*Form of Application for first Registration of Ownership.*

LAND TITLES ACT.

A. B., of, etc., being entitled for his own benefit to an estate in fee simple in the land (or as the case may be, according to sections 5 to 9 of the Act), in the township of , in the County called or known as containing by estimation . . . . and described as follows (or described in the schedule hereto, as the case may be), applies to be registered (or where applicable, to have registered in his stead C. D., of, etc.), as owner of such land (or leasehold land), with (in the case of freehold land), a Possessory title (or with an Absolute title, or, in the case of leasehold land, with or without a declaration of the lessor's title to grant the lease, as the case may be).

Subject to the following charges and incumbrances (where the property is incumbered).

The address of the said A. B. (and C. D. respectively) for service is at (if the application is made through a solicitor, the office of such solicitor should be given).

Dated this day of , 19 .

(Signature of the applicant or his solicitor).

The above mentioned C. D. (or the vendor, or the person whose consent is required to the execution of the trust or power to sell) hereby consents to the above application.

(Signature of C. D., or of the vendor, or his solicitor, or of the other consenting parties).

2.—*Applicant's Affidavit where Absolute Title is applied for.*

LAND TITLES ACT.

I, of make oath and say:—

1. I am the absolute owner in fee simple in possession (or as the case may be, repeating the words of the application) of the following land (describing the property) being the land mentioned in my application.

2. There is no charge or other incumbrance affecting my title to the said land (except, stating any incumbrances which may exist).

3. I am not aware of any claim adverse to or inconsistent with my own to any part of the land claimed by me, or to any interest therein, (except, specify the adverse claim, if any, giving the name and address of the claimant if known and stating how the claim arises).

4. The deeds, instruments and evidences of title which I produce in support of my application, and of which a list is set out in the Schedule A, hereto annexed, are all the title deeds, instruments, and evidences of title relating to the said land which are in my possession or power.

5. The title deeds and evidence of title relating to the said land which are set out or mentioned in Schedule B hereto annexed, are in the possession or power of (naming the person).

6. I do not know where, or in whose possession or power the title deeds and evidences of title set out or mentioned in Schedule C. hereto annexed, are For the said last mentioned title deeds I have caused the following searches to be made (set out the facts shewing the searches which have been made for the missing deeds and upon which it is intended to rely as sufficient to let in secondary evidence. Where there are no other title deeds, etc., except those named in Schedule A, this fact should be stated, the fifth and sixth paragraphs of this form omitted).

7. I am (or A. B. is, shew under what claim or title) in possession of the said land, and to the best of my knowledge and belief possession has always accompanied the title under which I claim, since the year when one through whom I claim took possession, and prior thereto the land was in a state of nature (if possession has not always accompanied the title under which the petitioner claims, state correctly the facts as to the actual possession).

8. I am now in actual occupation of the said land (or, if a tenant of the applicant is in occupation, state how he claims to hold, and how he in fact holds; if the tenancy is under an instrument in writing, this should be produced. If not under an instrument in writing this fact should be stated. If no one is in actual occupation state the fact).

9. To the best of my knowledge, information and belief this affidavit and the other papers produced herewith in support of my application, and which are set forth in the schedules hereto, fully and fairly disclose all facts material to my title, and all contracts and dealings which affect the same or any part thereof, or give any right as against me. (Vary these statements according to the facts).

10. There are no arrears of taxes due upon the said land, nor has the said land been sold for taxes during the past eighteen months, nor under execution during the past six months, and I do not know of any writs of execution in the hands of the Sheriff against me, or affecting the said lands.

11. To the best of my knowledge, information and belief, no person or body corporate has any right of way, or of entry, or of damming back water, or of overflowing, or of placing or maintaining any erection, or of preventing the placing of maintaining any erection, on, in, to or over the said land, other than myself (except, giving the names and addresses of any parties having any easement or right, and stating the particulars and nature thereof), and the said land is not subject to any right of way or to any other easement or dominant right whatever (except as aforesaid).

12. The said land is not worth more than $
13. I am married, and the name of my wife is (or I am not married).

3.—*Form of first entry of Ownership in the Register.*

LAND TITLES ACT.

A. B., of is the owner in fee simple of (description of property), subject to the exceptions and qualifications mentioned in section 13 of The Land Titles Act, and numbered therein (as the case may be, if the title is free from some of them).

In witness whereof I have hereunto subscribed my name and affixed my seal this day of , A.D. 19 .

(Signed)

Where an easement is enjoyed with the land, say:

Together with a right of way on foot, or with horses, carriages, and other vehicles, over and upon the lane adjoining the said land, at the west side thereof (or according to the fact).

Where title is Possessory, say:

The title of A. B. is subject to the claims (if any) which can be enforced to the said land by reason of any defect in the title of (name of the first registered owner) prior to the day of 19 , being the date of the first registration of said land.

When the land is subject to a Life Estate, say:

The title of A. B. is subject to the life estate of G. H., of in the said land.

And if subject to a mortgage, say:

The title of A. B. is subject to a mortgage dated the day of , made by A. B. to W. B., to secure $3,000 and interest at the rate of 6 per cent., per annum from the 17th day of July, 19 .

[If registered give particulars of registration.]

Where the land is subject to a lease, say:

The title of A. B. is subject to a lease, dated the day of , made by A. B. to Y. Z., for the term of ten years from the said date.

3a.—*Form of Certificate of Ownership.*

LAND TITLES ACT.

This is to certify that A. B. is the owner (etc., in terms of the entry in the register).

4.—*Certificate of Justice of the Peace.*

LAND TITLES ACT.

I, C. D., of the Town, etc., a Justice of the Peace in and for the County of do hereby certify.

1. That I am acquainted with A. B., who proposes to apply to be registered under The Land Titles Act as owner (or as the case may be), of the following lands, namely (describing the land as in the application).

2. That I believe him to be entitled to the said land as the owner thereof (or as the trustee with power to sell the same or otherwise, in accordance with the title under which applicant applies to be registered).

5.—*Sheriff's Certificate.*

Sheriff's office, County of
day of 19

I hereby certify that I have not at the date hereof in my office any writ of execution against the lands of (or any or either of them), nor are there any outstanding for renewal or with return of lands on hand for want of buyers or to the like effect.

I further certify that I have not sold lot in the concession of the township of , under any writ of execution for six months preceding the date hereof.

F. M.,
Sheriff.

6.—*Affidavit of Publication of Advertisement.*

LAND TITLES ACT.

In the matter of the application of E. F.

I, A. B., of, etc., make oath and say:

1. The advertisement, of which a duplicate is hereto annexed, and marked A., appeared and was published in the issues of the Ontario Gazette of the . and days of , 19 .

2. The advertisement, of which a duplicate is hereto annexed, and marked B., appeared and was published in the issue of the newspaper of the day of , 19 .

3. The advertisement, of which a duplicate is hereto annexed, and marked C., appeared and was published in the issue of the newspaper of the day of , 19 .

4. I have examined copies of the said Gazette and newspapers issued on each of the said days.

Sworn, etc.

7.—*Affidavit of posting up the Advertisement in the Court House.*

LAND TITLES ACT.

In the matter of the application of E. F.

I, A. B., of, etc., make oath and say:

1. I did on the day of , post up in a conspicuous place in the Court House in the town of , a true copy of the advertisement hereto annexed, marked D., the copy so posted up being a cutting from the newspaper.

2. The said advertisement so posted up by me as aforesaid remained affixed up in the said place for the full period of one month, as I verily believe (state the reasons for this belief).

3. The said Court House is the Court House of the County in which the lands in question in this matter are situated.

Sworn, etc.

8.—*Affidavit of posting up Advertisement at the nearest Post Office.*

LAND TITLES ACT.

In the matter of the application of E. F.

I, A. B., of, etc., make oath and say:

1. I did on the day of , post up in a conspicuous place in the post office, in the village of , a true copy of the advertisement hereto annexed, marked D., the copy so posted up being a cutting from the newspaper.

2. The said advertisement remained where it was posted up by me continuously for the full period of one month, as I verily believe, (state the reasons for this belief).

3. The post office in the village of , is the post office nearest the land in question in this matter.

Sworn, etc.

9.—*Caution under Section 75 after Registration.*

LAND TITLES ACT.

I, A. B., of, etc., being interested in the land registered in the name of as parcel in the Register for (or in the charge registered as No. , in the name of E. F., of, etc., as owner, and being on Parcel), the day of 18 , in the name of E. F., of, etc., on the lands, etc., (as the case may be), require that no dealing with such land (or charge) be had on the part of the registered owner until notice has been served upon me.

My address for service of notice is lot , in the concession, in the County of York, and my Post Office address is

Dated this day of , 19 .

Signature of the cautioner or his solicitor.

10.—*Affidavit in support of Caution lodged under Section 75.*

LAND TITLES ACT.

I, A. B., of, etc., make oath and say as follows:

1. I am interested in the land (or charge) mentioned in the above (or annexed) caution, and the particulars of my interest are as follows (here state particulars).

Sworn, etc.

11.—*Charge or Mortgage.*

LAND TITLES ACT.

I, A. B., the registered owner of the land entered in the office of Land Titles at , as Parcel , in the register for , in consideration of ($2,000) paid to me, charge such land with the

payment to C. D., of, etc., on the day of , 19 , of the principal sum of ($2,000) with interest at the rate of per cent. per annum, and with a power of sale to be exercised after default, and months' subsequent notice of the intention to sell (or, as the case may be). (Add any covenants which are agreed to and are not implied under the Act or otherwise).

I, E. B., wife of the said A. B., hereby bar my dower in the said land.

This charge is made in pursuance of "The Act respecting Short Forms of Mortgages" (where it is desired that the covenants, etc., should operate under that Act).

Dated the day of , 19 .

(Signatures of A. B., and E. B.

Witness,
X. Y. (no seal necessary).

12.—*Authority to Notify Cessation of Charge.*

LAND TITLES ACT.

To the Master of Titles:

I, , of the , of in the County of , the registered owner of charge made by to dated the day of 19 , and registered as No. , on the land registered in the office of Land Titles at as Parcel , in the register for hereby authorize the Master of Titles to notify on the register the cessation of the said charge.

Dated the day of A.D. 19 .

Witness.

Affidavit Proving Signature of Owner in Charge.

LAND TITLES ACT.

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

I am well acquainted with named in the within document authorizing the Master of Titles to notify the cessation of the charge mentioned, and the signature purporting to be his signature at the foot of the said document is in his handwriting.

The said , is, as I verily believe, the owner of the said charge, he is of the age of 21 years or over, is of sound mind, and signed the said document voluntarily at in the County of in the Province of Ontario.

I am a subscribing witness to the said signature.

Sworn before me at the of
in the County of
this day of A.D. 19 .
A Commissioner, etc.

13.—*Transfer of Charge or Mortgage.*

LAND TITLES ACT.

I, C. D., the registered owner under the Land Titles Act of the charge dated the day of , 19 , made by A. B., etc., and registered as number , charging the land registered as parcel 6, Township of York (or as the case may be), under the above number, in consequence of ($2,000) paid to me, transfer such charge to E. F., of., etc., as owner.

Dated the day of 19 .

(Signature of registered owner).

Witness, (no seal necessary).
X. Y.

14.—*Transfer of Freehold or Leasehold Land.*

LAND TITLES ACT.

I, A. B., the registered owner of the land (or leasehold land) registered in the office of the Land Titles at , as Parcel 6, Township of York (or as the case may be), in consideration of ($3,000) paid to me, transfer such land to C. D., of, etc.

Dated the day of 19 .

(Signature of registered owner).

Witness,
X. Y.

15.—*Transfer of Freehold or Leasehold Land in Parcels.*

LAND TITLES ACT.

I, A. B., the registered owner of the freehold (or leasehold) land registered in the office of Land Titles at , as Parcel . in the Register for North-West Toronto, in consideration of ($1,500) paid to me, transfer to C. D., of, etc., the land hereinafter particularly described, namely (describe portion transferred), being part of the said parcel.

And I, E. B., wife of the said A. B., hereby bar my dower in the said land.

Witness, Signatures.
X. Y.

16.—*Transmission of Registered Ownership on death of Owner. Application under Sections 47 or 49.*

LAND TITLES ACT.

A. B., the registered owner of the leasehold land, registered as Parcel (or charge, dated the day of , 19 , on the land, etc., as the case may be giving the number in the register),

died on the day of , 19 , (or otherwise, as the case may be, within section 60 of the Act); C. D., of, etc., is entitled to the said land (or charge), and applies to be registered as the owner thereof accordingly.

The evidence in support of the above application consists of (here state the evidence to be lodged herewith).

The address of the said C. D. is (here give address).

Dated the day of , 19 .

(Signature of C. D., or his solicitor).

17—*Transmission of Registered Ownership.*

Application under Sections 59 and 61.

LAND TITLES ACT.

A. B., the registered owner of the land entered in the register for , as Parcel , died on the day of , 19 , (or otherwise, as the case may be); C. D., of, etc., being interested in the said land, applies to be registered (or to have E. F., of, etc., registered), as owner of the said land.

The interest of the said C. D., (or E. F.,) and the existing rights of the several other persons interested in the said land, are stated in the affidavit* of the said C. D. and G. H., of, etc., the solicitor of the said C. D., filed herewith. The other evidence in support of this application is left herewith, and consists of (here state of what evidence consists).

The address of said C. D. is (here give address).

Dated the day of , 19 .

(Signature of C. D. or his solicitor)

* Affidavit, etc., to be left with application.

18.—*Affidavit attesting Execution of Instrument, when Bar of Dower, and Identifying Parties.*

LAND TITLES ACT.

I, G. H., of, etc., a Solicitor of the Supreme Court of Judicature, 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. B., is reported to be, and is, as I verily believe, his wife.

The said A. B. and C. B. 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 .

I am a subscribing witness to the said document.

Sworn, etc.

19.—*Form of Power of Attorney to make Transfers.*

LAND TITLES ACT.

I, A. B., do appoint C. D. my attorney to transfer to E. F. absolutely (or by way of mortgage, as the case may be) all my lands as entered and described in the register for the Township of , in the office of Land Titles at , as parcel , and my estate therein.

Dated this day of , 19 .

Witness (as above.) A. B.
X. Y.

(If such is the intention, add, this power shall not be revoked by the death of the said A. B., and the exercise of the same after his death shall be binding on his representatives).

20.—*Form of Revocation of Power.*

LAND TITLES ACT.

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

(Signature of A. B.)

Witness (as above).

TRUSTS AND TRUSTEES.

A trust is an obligation constructively imposed or expressly undertaken by a person (the trustee) under which he is bound to deal with certain property under his control (the trust property) for the benefit of certain persons (the beneficiaries). A trustee may himself be one of the beneficiaries. Any excess of authority or neglect is a breach of trust. The interest of a beneficiary in the trust property is called an equitable estate; the trustees generally hold what is known as the legal estate in the trust property.

If the trust is created by a document such as a deed or marriage settlement it is an express trust; if the trust arises out of circumstances themselves, in order to satisfy the demands of justice and equity, it is a constructive or implied trust. The object of a trust must be lawful, and the person creating an express trust (the settlor) must comply with the provisions of statutes as to form and evidence. A settlor must have the legal capacity to create a trust, that is, must be of full age and of sound mind. A beneficiary must have the legal capacity to hold property; corporations, aliens and married women in most Provinces may lawfully be beneficiaries under a trust. Fraud in connection with the creation of the trust may void a trust.

No particular technical words or expressions are essential in the creation of a trust. It is sufficient if ordinary language is used, indicating an intention to create a trust or to confer a benefit on some one. Equity regards the intention rather than the form. An imperative direction such as is found in most wills that property shall be held by some person for a certain expressed purpose creates a trust. Precatory words themselves, (for instance where a testator bequeaths property to A. and "recommends" or "hopes" or "entreats" that it will be applied for B's benefit), do not create a trust; the intention to create a trust must be clear. A trust may be created as the result of an agreement for valuable consideration to create a trust.

All real and personal property of every nature and kind, whether capable of actual enjoyment at the present time or subject to life or other interests, or whether in this country or abroad, may in general be the subject of a trust.

Among the illegal trusts may be included those which tie up property for an indefinite period, or beyond the lifetime of the grantor and a further twenty-one years, or which provide for the enjoyment of property by a debtor in derogation of the rights of his creditors or which tend to

encourage immorality or which tend to restrain marriage or otherwise against public policy. Trusts for the erection of a monument or tomb or for the repair of a church or churchyard, or for the maintenance of a pet such as a dog or a horse are valid trusts.

The terms of a trust in which everything is perfected and declared and is definite is called an executed trust and will be construed strictly. Where something yet remains to be done, as where an agreement or covenant is made for the creation of a trust upon certain trusts for certain beneficiaries it is called an executory trust and the language will be construed liberally by a Court of law.

Constructive trusts arise in everyday life when property is placed in the name of some person other than the real purchaser, or when some person holding a fiduciary position makes a profit "on the side." The holder of the property would be held under the circumstances of the first case a trustee for the real purchaser. If the money is lent there is no trust, nor where the holder of the property is the wife or child of the person advancing the money, for it might probably be presumed that the property was bought for the benefit of the holder.

The occupant of a position such as the treasurer or other official of a town or a director or official of a company, or a guardian of a child or a solicitor or agent will not be permitted to make a profit through his position.

Another very common instance of a constructive trust arises where A and B contract as vendor and purchaser of property. A is a trustee (constructively) to hold the land and convey it when paid for. If the property is conveyed before it is paid for in full, the purchaser is a trustee (constructively) for the vendor in respect of the unpaid portion of the purchase price.

No one is bound to accept the office of trustee. Where a trust arises under a will or other document, an unwilling trustee should reject or disclaim, by a written document; acquiescence may be inferred from delay; exercising any act of ownership over the trust property is tantamount to acceptance; or the taking out of probate of a will, or permitting an action concerning the property to be brought in his name.

If a trustee becomes insolvent, the trust property cannot be included among his assets and cannot be touched by his creditors.

A trustee must obey the terms of the instrument creating the trust, should acquaint himself with the nature of

the trust and its investment; must exercise reasonable care in the management and investment of the property and funds, must prevent waste, must not in general delegate his powers or duties to others, must act impartially, as between the beneficiaries interested, must confer with his co-trustees, if any, must pay trust moneys to the right persons, will not be permitted to profit himself by transactions with the trust property, and must be always prepared with accurate accounts. Unless expressly remunerated by the terms of the instrument creating the trust or by the statute law, a trustee is bound to perform his duties gratuitously. A trustee who allows a co-trustee to manage the property alone, will himself be liable in case of loss. The purchase of speculative property or stocks is improper. Where repairs are necessary application should in general be made to the Court for directions. The principal fund (corpus) is generally made to bear charges on capital account, the income bearing expenses incident to the possessory ownership of the property such as taxes, fire insurance premiums A trustee is not liable for a mere error of judgment, where he has exercised diligence and good faith. Great care must be exercised in selling and purchasing property to anticipate by every means any charge of negligence or collusion. A trustee is bound to take reasonable care to see that a marketable title is obtained and that deeds, stock certificates, &c., are properly registered. Where power is given to invest, a trustee may vary the investments from time to time, within the terms of the document creating the trust Trust funds cannot unless expressly authorized be lent (without a breach of trust) on the security of a personal promise or of personal property. A trustee who invests in securities authorized by the terms of the trust is not necessarily protected; he must be reasonably cautious having regard to all beneficiaries present and future. He must be even more prudent and careful than he would be if the money were for his own benefit.

The association of even an expert in the management of the property is not advisable and may result in a breach of trust. The choice of a valuer, auctioneer or solicitor or other adviser should not be left to a third person. As a trustee is liable for the negligence of persons employed by him, great care must be exercised in the employment of debt collectors, investment brokers, and others.

A beneficiary, if under no disability, such as infancy or lunacy may compel a trustee to carry out the terms of the trust, and may apply to the Court for the removal of a

trustee who has behaved improperly or who has become insane or otherwise incapable or who has become a bankrupt or removed out of the jurisdiction of the Court.

Where there are several trustees, the office survives to the surviving trustee or trustees on the removal or death of any one of their number. Unless the instrument creating the trusts indicates a contrary intention, the survivors may act as if there were no vacancy. A trustee cannot retire from mere caprice; he may do so if circumstances arising out of the administration of the trust alter the nature of his duties, provided they arose through no act of his own or anything relating to himself. The consent of all beneficiaries should be obtained, and in most cases an order of the Court is necessary. Sometimes the document creating the trust or the general provincial statute provides a method of retirement. A retiring trustee is not entitled to his discharge until his accounts have been passed upon by the Court.

A trustee may apply to the Court for directions in the execution of his trust. This should be done under the guidance and advice of a competent lawyer. Sometimes it is advisable to apply to the Court to administer the trust property; such an application should be made under professional legal advice.

Where a trustee is put to necessary and proper expense in connection with the trust, he is entitled to reimbursement. If he uses trust funds for his own purposes, and makes both losses and profits he will not be allowed to set-off one against the other; both are breaches of trust, and the losses must be made good. Property improperly purchased with trust funds becomes subject to the terms of the trust. The liability of co-trustees is joint and several. Fraudulent breach of trust (known as embezzlement) is punishable under the Criminal Code.

Where a breach of trust has been committed, action must in general be commenced to recover money or other trust property within six years after the breach.

VESSELS.

Under this head it is not judged necessary to introduce more than such forms as are in most general demand among those engaged in maritime pursuits; the special forms connected with the various departments of Custom House business being all of them individual in their nature, and easily procured at the several ports as needed.

FORMS.

Bill of Sale of Vessel.

Know all Men by these Presents, that Thomas Brown, of Halifax, in the Province of Nova Scotia, ship captain, owner of the schooner or vessel called "The Ariadne," of the burden of four hundred tons or thereabouts, now lying at the Port of Kingston, Ontario, for and in consideration of the sum of five thousand dollars of lawful money of Canada, to him paid by James Jackson, of Halifax aforesaid, mariner, the receipt whereof he doth hereby acknowledge, hath bargained, sold and assigned, and by these presents doth bargain, sell and assign unto the said James Jackson, his executors, administrators and assigns, All and Singular, the hull or body of the said schooner or vessel called "The Ariadne," now lying at the said Port of Kingston, Ontario, together with the masts, yards, bowsprit, spars, standing and running rigging and gear, boats, anchors, chains, cables, blocks and all other necessaries belonging or appertaining to the said schooner or vessel, which said schooner or vessel has been duly registered at Toronto, Ontario, and the certificate of such registry is as follows:

(Copy Certificate of Registry.)

And on the back of such certificate is also endorsed an account of the shares held by each of the owners mentioned in such certificate in the form following:—

(Copy Endorsement).

To have and to hold the said schooner or vessel and all other the before mentioned necessaries belonging or appertaining thereto unto the said James Jackson, his executors, administrators and assigns, to his and their own use and uses; and as his and their own proper goods and chattels from henceforth forever.

And the said Thomas Brown doth hereby for himself, his executors and administrators, covenant, promise and agree to and with the said James Jackson, his executors, administrators and assigns, in manner following, that is to say: That at the time of the ensealing and delivery hereof he hath in himself good right, full power and lawful authority to grant, bargain, sell, assign and set over the said schooner or vessel and all the necessaries belonging or appertaining thereto unto the said James Jackson, his executors,

administrators and assigns, in manner and form aforesaid: And that the said schooner or vessel and all other the necessaries belonging or appertaining thereto and every part thereof now are and so from henceforth for ever shall be, remain and continue unto the said James Jackson, his executors, administrators and assigns free and clear and freely and clearly acquitted and discharged of and from all former bargains, sales, gifts, grants, titles, debts, charges and incumbrances whatsoever;

And further, that the said Thomas Brown, his executors and administrators shall and will from time to time and at all times hereafter at the requests, costs and charges of the said James Jackson, his executors, administrators and assigns, make, do and execute, or cause or procure to be made, done and executed, all and every such further and other lawful and reasonable act and acts, deed and deeds, devices, conveyances and assurances in law whatsoever for the further, better and more effectually conveying, assigning and assuring the said schooner or vessel, and all the necessaries belonging or appertaining thereto, and every part thereof, unto the said James Jackson, his executors, administrators or assigns as by him, them any or either of them, or his or their any or either of their counsel in the law shall be reasonably devised, advised and required.

In witness whereof, I have hereunto set my hand and seal the day of January, in the year of our Lord one thousand nine hundred and

Signed, sealed and delivered in the presence of X. Z. } THOMAS BROWN. [L.S.]

Mortgage of Vessel

For		Port of	
Record No.	Where Built.	When Launched.	Port of Registry.
18,722.	Pictou, N.S.	2 August, 1907.	Halifax, N.S.

Measurement.	Tonnage and Name.
Length..... 62 .....feet Breadth..... 17 .....feet Depth..... 9 .....feet	Tonnage 200 Name *Flora McAllister.*

To all to whom these Presents shall come—Greeting:

Whereas: (state nature of mortgage debt and the transaction between mortgagor and mortgagee out of which it arises, as) J. S., of, etc., mariner, the owner of the above named schooner the "Flora McAllister, hath borrowed of A. B., of, etc., the sum of $800, and it hath been agreed between them that the said schooner shall be mortgaged to secure such debt. Now, therefore, the undersigned J.

S. in consideration of the premises, for himself and his heirs, covenants with the said A. B., and his assigns, to pay to him or them the sums for the time being due on this security, whether by way of principal or interest, at the times and in the manner following, that is to say: in one year from date, with interest at ten per cent.; and for better securing to the said A. B. the payment of such sums as last aforesaid the said J. S. doth hereby mortgage to the said A. B. the ship above described.

Lastly, J. S., for himself and his heirs, covenants with the said A. B., and his assigns, that he hath power to mortgage, in manner aforesaid, the above-mentioned ship, and that the same is free from incumbrances. (If any incumbrances, add "save as appears by the record of the said ship.")

In witness whereof, we have hereto subscribed our names and affixed our seals at Pictou, N. S., this day of June, one thousand nine hundred and

Executed by the above named in the presence of } A. B. [L.S.] J. S. [L.S.]

Transfer of Mortgage.

I, A. B., of, etc., the within mentioned mortgagee, in consideration of eight hundred dollars this day paid to me by E. F., of, etc., hereby transfer to him the benefit in full of the within written security.

In witness whereof, I have hereunto subscribed by name and affixed my seal, this tenth day of November, one thousand nine hundred and

Executed by the above named A. B. in the presence of X. Z. } A. B. [L.S.]

Discharge of Mortgage.

Received the sum of eight hundred and fifty dollars in discharge of the within written security.

Dated at Charlottetown, P. E. I., this fourth day of January one thousand nine hundred and

Witness, etc. A. B.

WILLS.

A will, or testament, is a writing by which the owner of property declares how he wishes his property to be disposed of after his death. When a man makes a will he is called a testator; and when a woman makes a will she is called a testatrix. A person who dies without making a will is said to die intestate. The person to whom a will bequeaths a legacy is called a legatee, and he to whom it devises land is called a devisee. A will may be written on paper, parchment, or any other material, and in any hand; but it must be legible and intelligible. No precise form of words is essential to its validity, but great care should be taken that the wishes of the testator be expressed in plain, clear, terms.

Any person twenty-one years of age or over, and of sound and disposing mind and memory who is not at the time under the influence of fear, fraud, or coercion, is competent to make a will. The wills of persons of sound mind are not affected by their subsequent insanity. All wills, save as hereinafter mentioned, whether of personal or real estate, require to be in writing.

No will takes effect until the death of the testator. It may be rendered void by cancellation or revocation, or by execution of a will of later date. The will is revoked if the testator destroy it by burning, tearing, etc., with intent to revoke it, or if some other person do so by his direction. The subsequent marriage of the testator will revoke a will previously made. To pass real estate the will must be made in accordance with the laws of the country where such real estate is situated; but to effect personal property it need only be in accordance with the law of the country of the testator's residence or domicile.

A will must be signed at the foot or end thereof, by the testator, or for him by some other person in his presence or by his direction. A testator who is unable to write, may have his hand guided in making a mark against his name if he understands the purport of what is being done and assents to the act. The testator must make or acknowledge the signature in the presence of two or more witnesses present at the same time, and such witnesses must attest and must write their names to the will in the presence of the testator. No seal is necessary to a will, though it is customary to attach one; nor is any special form of memorandum or certificate of attestation necessary, though it is well to write the following form, which will generally answer:

"Signed, published and declared by the said A. B. as and for his last will and testament in the presence of us, both present at the same time, who at the request of the said A. B. and in his presence, and in the presence of each other, have hereunto set and subscribed our names as witnesses." It is well to write the residence and occupation of each witness beneath his signature, as he may be called upon to make oath when the will is proved. Care must be taken that only parties who take nothing under the will should be witnesses, as otherwise the devise or bequest to the witness or to the husband or wife of the witness is void. Creditors of the testator may be witnesses without defeating bequests for payment of their debts, and executors may be witnesses; but it is best to choose others. The witnesses should note well the mental and physical condition of the testator, and satisfy themselves that he fully understands the will and what is being done.

The will should begin with a statement of the name, occupation and residence, of the testator. The full name of the devisees or legatees should also be given, and, if necessary to prevent mistakes where there are two of the same name, their occupation or residence, or such other description as may obviate all misunderstanding. The testator may know well enough when he bequeaths a legacy to "John," or "Maria," whom he means, but if there are two "Johns" or two "Marias" among his relatives (which may not be unlikely) disputes may arise. A devise to "children" will not include illegitimate children.

A devise or bequest to a wife in lieu of her dower must be clearly so expressed, or she may be held entitled to both. No devise or bequest can deprive her of her dower if she prefers to take the latter; she has her choice between her dower and the bequest.

By what are called the Statutes of Mortmain, no lands, or money to be laid out in the purchase of lands, can be given by the will to any religious or superstitious uses, though this may be done by deed executed and deposited as required by the statutes; but by the Mortmain and Charitable Uses Act (Ontario Statutes 1909, cap. 58), lands may be devised to religious or other charitable uses but must be sold by the charity within two years from the testator's death. The Statutes of Mortmain have been held not to be in force in New Brunswick. In Nova Scotia all grants, devises and bequests of real and personal property to any religious or charitable corporation, or educational institution, are valid and effectual for the purpose of vesting such property in such corporation.

A man can leave but one will, though he may execute

many codicils to it, the more recent of which govern the former. Hence, the dating of the will, and of each codicil, must never be omitted. If two wills are left by the testator, and neither is dated, neither will takes effect, and there is an intestacy.

The will is construed as though the testator made it immediately before his death, unless a contrary intention clearly appears on the face of the will.

If the same estate is devised by the same will to two different parties, they will divide it in equal shares.

Alteration in a will by interlineations will not affect its validity, but to take effect they must be initialed in the margin of the will, opposite where they occur, by the testator and the witnesses, to show that they were made before the will was signed; or they may be referred to in the attestation clause, or in a memorandum in another part of the will attested as before mentioned.

The only kind of will which does not require to be in writing is what is called a nuncupative will. This is a will which is made by the verbal declarations of the testator, and depends for proof merely upon oral testimony, though it is, after the testator's death, reduced to writing. It may be made only by a soldier in actual military service or by a mariner at sea. It effects personal property only.

A codicil is a supplement, or an addition, made to a will by the testator, intended for a further explanation or alteration of the will, or to make some addition to or subtraction from the former dispositions of the testator. It may be written upon the same paper as the will, or upon a separate sheet, and it may be left attached to the will or separate in another place, though it is best to attach it. It should be executed in the same manner, and with the same formalities, as the original will, and should be read as part of it. It may also be nuncupative, under the same circumstances that a will may be.

In every will of personalty, there should be an appointment of some person or persons as executor or executrix. A married woman may be appointed executrix of her husband's will.

In selecting executors, regard should be had to their trustworthiness, as the estate is very much in their control, and they have not, generally, to give bonds as have administrators. They should be, if possible, men of reputation and of business habits, and acquainted to some extent with the business affairs of the testator.

Any person may be appointed executor; but if a person under twenty-one be appointed, he will not be allowed to

exercise the office during his minority; and during this time the administration of the goods of the deceased will be granted to the guardian of the infant, or to such other person as the Surrogate or Probate Court may think fit.

There is this difference between a will of lands and a will of personal property. Under the former, in the absence of contrary statutory provisions, the devisee, or person to whom the land is given, takes the land direct, without the intervention of any executor; while, on the other hand, a legatee of personal property can only get the same through the executor or administrator. The moment a testator dies, the executor becomes entitled to the possession of the whole of the personal property, and is bound to see that all the testator's debts are paid, before he pays a single legacy, or parts with any of the property to the legatees to whom it may be given. In those Provinces, however, where, as in Ontario, real estate now descends to the executor, or personal representative, for the payment of debts, the distinction between real and personal property, in matters of descent, is less clearly marked than it formerly was.

Before an executor can act, he should get himself lawfully clothed with the necessary authority. This he does by proving the will. Wills must be proved in the Surrogate or other proper Court of the county where the testator had, at the time of his death, his fixed place of abode; and if he had no fixed place of abode in, or resided out of the Province, at the time of his death, then in the Court of any county in which he had any personal or landed property. The first thing, then, for an executor to do is, to take the will to the clerk of the proper Court; there the necessary affidavits and documents can be filled up and the will proved in due form.

When the will has been proved, it is the duty of the executor to pay the testator's debts out of the personal estate, to which such executor becomes entitled by virtue of his office. For this purpose the executor has reposed in him by the law the fullest powers of disposition over the personal (and in some Provinces certain powers over the real) estate of the deceased, whatever may be the manner in which it has been bequeathed by the will. If he suspects there are debts or claims of which he has not accurate knowledge, he should advertise for them to be sent in to him for payment. In Nova Scotia and other Provinces an executor must advertise for claims against the estate, in the official government newspaper or Gazette, and creditors are required to file their claims supported by affidavit within one year from the date of the letters of probate. When the debts

have been paid, the legacies left by the testator are then to be discharged. In order to give the executor sufficient time to inform himself of the state of the assets and to pay the debts of the deceased, he is allowed a twelve-month from the date of the death of the testator, before he is bound to pay any legacies. Notwithstanding the lapse of a year from the testator's death, the executor is still liable to pay to any creditor of the deceased to the amount of the property which may have come to the executor's hands; and if he should have paid any legacies in ignorance of the claims of the creditor, his only remedy is to apply to the legatees to refund their legacies, which they will be bound to do, in order to satisfy the debt. From this liability to creditors an executor cannot be discharged, unless he throw the property into Court, in which case the Court undertakes the administration, and the executor is consequently exonerated from all risk. The executor, however, is, of course, not answerable to the testator's creditors beyond the amount of property which has come to his hands, unless he should, for a sufficient consideration, have given a written promise to pay personally, or should do any act amounting to an admission that he has property of the testator sufficient for the payment of the debts. In Ontario, however, after advertising for claims of creditors, he may, by statute, be exempt from personal liability to creditors who neglect, after due notice, to inform him of their claims, and of whose claims he has no notice.

After payment of the testator's debts and legacies, the residue of the personal estate must be paid over to the residuary legatee, if any, named in the will; and if there be no residuary legatee, then to the testator's next of kin.

Every codicil revokes and alters the will and earlier codicils in so far as its direction, devises and bequests change those of the will and the earlier codicils. But if a legacy be revoked under the mistake of fact, as if the testator revokes under the erroneous impression that the legatee is dead, whereas in fact he is alive, the revocation is void.

A father may, by his will, appoint a guardian to his child or children, who shall have custody of their persons and estates until they reach full age.

Wills in Ontario made before and not re-executed or revived after the 1st January, 1874, are governed by rules slightly different from those above set out, but it is not deemed necessary in this treatise to explain them.

In Ontario and Nova Scotia, lands which are at the testator's death encumbered by mortgages, pass subject to

them, and the devisee cannot call upon the executors to pay off the mortgages out of the personal estate, unless the will specially directs it.

Where the testator leaves real or personal property to a child or grandchild, and such child or grandchild dies before the testator, leaving issue, the devisee or bequest may be taken by the latter.

Wills may be deposited for safe keeping with the clerk of the Surrogate Court in any county in Ontario, upon payment of a small fee. Upon the death of the testator they may be proved before the same official, and may be registered, if they affect lands, in the proper Registry office.

By the statute law of Manitoba, a holograph will, or one wholly written and signed by the testator himself, shall in that Province, be subject to no particular form, nor shall it require an attesting witness or witnesses.

In New Brunswick, a married woman may, with the consent of her husband, make a will, such consent to be expressed in writing on the will, and executed in like manner. Such consent canot be revoked by the husband save in the wife's lifetime, and with her consent in writing, executed in like manner. But the wife may revoke or cancel the will without her husband's consent, by any writing executed like a will, or by burning, tearing, etc., the document, with intention to revoke.

The general law of Prince Edward Island and Nova Scotia is similar to that of Ontario as indicated above. Wills in these Provinces must be proved within a certain fixed time from the death of the testator;—thirty days after the death of the testator where the executor is resident in the Province, and six months after notification to the executor where the executor is non-resident in the Province. The Court may order executors to give security to the estate if this is reasonably requested by a creditor or legatee.

The Wills Act of Saskatchewan, cap. 44 of the Revised Statutes of 1909, is similar to that of Manitoba, except that it makes no provision for any exception in the case of a holograph will.

There has been as yet no legislation respecting wills passed by the Province of Alberta so that Wills there are governed by the law of England as it stood on the 15th day of July, 1870, modified by the provisions of sections 17 to 25 inclusive of the North West Territories Act, R. S. C. 1906, cap. 62. The last of these sections provides that a holograph will, though not witnessed, shall be valid.

FORMS.

Short Form of Will.

This is the last will and testament of me, A. B., of, etc., made this day of , in the year of our Lord one thousand nine hundred and , as follows:

I give, devise and bequeath all my messuages, lands, tenements and hereditaments, and all my household furniture, ready money, securities for money, money secured by life assurance, goods and chattels, and all other my real and personal estate and effects whatsoever and wheresoever, unto C. D., his heirs, executors, administrators and assigns, to and for his and their own absolute use and benefit, according to the nature and quality thereof respectively; subject only to the payment of my just debts, funeral and testamentary expenses, and the charges of proving and registering this my will. And I appoint E. F., of , executor of this my will; and hereby revoking all other wills, I declare this only to be my last will and testament.

In witness whereof, I have hereunto set my hand and seal, the day and year above written.

A. B. [L.S.]

Signed, sealed, published and declared by the said A. B., the testator, as and for his last will and testament, in the presence of us, who at his request, in his presence, and in the presence of each other, have hereunto subscribed our names, as witnesses to the due execution thereof.

R. S.
X. Z.

Codicil to a Will.

This is a codicil to the last will and testament of me, A. B., of, etc., bearing date the day of , A.D. 19 , (the date of the will).

I do hereby revoke the bequest of all my household furniture to my son John, and do give and bequeath the same to my daughter Jane, to and for her own absolute use and benefit forever.

I give and bequeath to my daughter Mary, in addition to the legacy bequeathed to her by my said will, the further sum of $400.

In all other respects I do confirm my said Will.

In witness whereof, I have hereunto set my hand and seal, this day of , A.D. 19 .

A. B. [L.S.]

Signed, published and declared by the said A. B., the testator, as and for a codicil to his last will and testament, in the presence of us, both present at the same time, who, at his request, in his presence and in the presence of each other, have hereunto subscribed our names as witnesses to the due execution hereof.

R. S.
X. Z.

Nuncupative Will.

In the matter of the Nuncupative Will of Thomas Atkins, deceased. On the third day of May, in the year one thousand eight

hundred and——, Thomas Atkins, Sergeant in Her Majesty's Regiment of foot, being in extremis in his last sickness, in his tent or dwelling, situate in ..... etc., [describing the situation; if in the dwelling of another, so stating and describing], in the presence of the subscribers, did declare his last will and testament in the following words, or to that effect, viz.:—

"He mentioned that he had about one hundred pounds in the Scottish and Colonian Bank of Birmingham, and ten pounds in the hands of Captain Loftus Hay." He then said, "I want Captain Hay to act as my trustee and executor, and put it out at interest for my mother's use during her life, and after her death, to go to my sisters. All my other property I want my brother to have for his separate use."

At the time the said Thomas Atkins pronounced the foregoing will, he was of sound and disposing mind, memory, and understanding, and did bid us who were present, to bear witness that such was his Will.

Reduced to writing this fifth day of May, in the year one thousand nine hundred and .

JOHN BROWN.
EDWARD BAKER.
SAMUEL NELSON.

General form of a Will disposing of Real and Personal Estate, in Legacies.

I, A. B., of , in the County of , gentleman, being of sound and disposing mind and memory, do make and publish this my last will and testament, hereby revoking all former wills by me at any time heretofore made

1st. I hereby constitute and appoint my wife, E. T., to be sole executrix of this my last will, directing my said executrix to pay all my just debts and funeral expense, and the legacies hereinafter given, out of my estate.

2nd. After the payment of my said debts and funeral expenses, I give to each of my children the sum of dollars, to be paid to each of them as soon after my decease, but within one year, as conveniently may be done.

3rd. And for the payment of the legacies aforesaid, I give and devise to my said executrix all the personal estate owned by me at my decease (except by household furniture and wearing apparel), and so much of my real estate as will be sufficient, in addition to the said personal estate herein given, to pay the said legacies.

4th. I give to my said executrix all my household furniture and wearing apparel, for her sole use.

5th. I devise to my said executrix all the rest and residue of my real estate, as long as she shall remain unmarried, and my widow, with remainder thereof, on her decease or marriage, to my said children and their heirs respectively, share and share alike.

In witness whereof, I have hereunto set my hand and seal, this day of , in the year of our Lord one thousand nine hundred and

A. B. [L.S.]

Signed, published and declared by the said A. B., as and for his last will and testament, in the presence of us, who in the presence of each other, and at his request, have subcribed our names as witnesses hereto.

C. D.
R. S.

DICTIONARY OF LAW TERMS IN COMMON USE.

Abate. To abate a nuisance is to cause it to be discontinued.
Administrator cum Testamento Annexo. One appointed to administer an estate, the will having named no executor.
Agistment. Pasturage of cattle.
Alias. A term applied to a second writ issuing for the same purpose as a prior writ.
Alibi. In another place.
A Mensa et Thoro. From bed and board; a judicial separation of man and wife which does not annul the marriage.
Amicus Curiæ. Friend of the Court; a bystander in Court who may suggest to the Court matters of factor law for its guidance.
Anno Domini. The year of Our Lord.
Assets. Property of any kind which may be found to belong to the estate of an insolvent or a deceased person liable to the payment of debts.
Assignee. One to whom property is assigned. In bankruptcy, a person appointed to take charge of the debtor's estate.
Assizes. Sittings of the Courts (generally twice a year) in each county, for the disposal of criminal and civil business.
Attachment. The arrest of a person or seizure of his goods under process of law.
A Vinculo Matrimonii. A divorce which absolutely dissolves a marriage.

Bailment. The receiving and keeping of goods by one for another.
Bill of Lading. A memorandum signed by the masters or captains of vessels acknowledging the shipment of goods.
Blackmail. To levy blackmail is to extort money by threats of publishing injurious matter, or of criminal proceedings.
Bona Fide. In good faith.

Capias. A writ authorizing an arrest of a person.
Causa Mortis. On account of death.
Caveat. "Let him take heed"; a warning.
Cepi Corpus. The return endorsed by a sheriff upon a writ of arrest.
Certiorari. A writ directing the proceedings or record of a cause to be brought before a higher Court.
Cestui que Trust. The party in whose interest a trustee holds property.
Codicil. A supplement or addition made to a will by a testator, intended to explain or alter a disposition made in the will itself.
Compos Mentis. Of sound mind.
Contra Bonos Mores. Inconsistent with good morals.
Covert. Married.
Crim. Con. Criminal conversation; adultery.
Curtesy of England. A tenancy by the curtesy is the right of a widower to enjoy for life the lands left by his deceased wife.
Curtilege. A court yard.

De facto. Actually existing.
De jure. According to law.
De novo. Anew; from the beginning.
Depositions. Written testimony taken down upon a legal investigation
Detinet. "He detains;" a form of action at law to recover possession of specific property.

Devastavit. "He has wasted;" wasteful and improper conduct of administrators with estates.
Dies non. A legal holiday.
Domicile. The place where a man habitually resides.
Donatio Mortis Causa. A gift of personal property made in contemplation of death and by manual transfer.
Dower. A widow's life interest in one-third of her husband's property.

Easement. A right to do some act upon the land of another.
Emblement. The profits of land, as grass, fruit and crops.
Enciente. Pregnant.
Entail. Property descending to heirs of the body only.
Escheat. Property reverting to the Crown.
Escrow. A deed signed, but left with another to be delivered upon performance of some stipulated act by the grantee.
Estoppel. A bar to an action arising from a man's own act or deed.
Estray. An animal straying upon the highway or on another's lands.
Estreat. Where the condition of a bail-bond is broken, the bond is estreated that payment of the penalty may be enforced.
Executor de Son Tort. One who intermeddles with an estate without proper authority.
Ex officio. By virtue of the office.
Ex parte. On one part; without participation of both parties.
Ex post facto. After the act has been done.
Ex tempore. Off-hand; without premeditation.

Felo de se. A suicide.
Feme Covert. A married woman.
Feoffment. A deed of grant of lands.
Feræ Naturæ. Animals and birds feræ naturæ are such as are wild and not capable of being domesticated.
Fiat. An imperative command or decree.
Fieri facias. A writ of execution.
Flotsam. Goods found floating in the sea.
Forma Pauperis. A poor person is sometimes allowed by the Courts to bring suit in this manner, without payment of fees.
Forum. A Court of Justice.
Franchise. A privilege or exemption.

Garnishment. The attachment of debts due a debtor in the hands of his creditors.

Habeas Corpus. A writ whereby the legality of any imprisonment may be enquired into.
Half Blood. Where the relationship proceeds from a single ancestor only; thus two brothers having the same father but different mothers, or vice versa, are of the half blood.
Hotchpot. Bringing all moneys into one sum or account for equal division.

Incest. Illicit intercourse within the prohibited degrees of consanguinity.
In esse. In being.
In extremis. In immediate danger of death.
In posse. Within probability.
In propria persona. In one's own person.
In terrorem. By way of warning or menace.
In transitu. On the passage.

In ventre sa mere. The condition of a child begotten but not born before the death of the father.
Ipso facto. By that fact.
Ipso jure. By the law itself.

Joint tenants. Are such as possess a common title to the same land.
Jointure. Lands or money set apart for the support and maintenance of a woman, to take effect after her husband's death.
Jurat. The memorandum or certificate appended to an affidavit to show when, where, and before what officer it was sworn.
Jure gentium. By the law of nations.
Justifying bail. If exception be taken to the bail offered by a person arrested, the bail must justify, by proving on oath that they are possessed of sufficient property, are resident freeholders or householders, etc.

Laches. Negligence or culpable delay in prosecuting legal rights.
Levari facias. A writ of execution against goods and chattels.
Lex talionis. The law of retaliation in kind.
Livery of seisin. The delivery, or handing over from one to another, of the possession of lands.
Loco parentis. In the place of the parent.
Locus sigilli (commonly abb. L. S.). The place of the seal.

Malfeasance. A wrongful act.
Malum in se. Bad in itself; that which is forbidden by natural or moral justice.
Malum prohibitum. Bad because forbidden; that which is forbidden by express statutory or common law.
Mandamus. A peremptory writ to enforce the fulfilment of a duty.
Mesne. Middle; intervening.
Messuage. The legal term for a house.
Misfeasance. A wrongful act.
Mittimus. A precept, under the hand and seal of a magistrate, for the imprisonment of an offender.
Mutatis mutandis. Changing what ought to be changed.
Mystery. An art, trade, craft or occupation.

Ne exeat provincia. A writ to arrest a debtor about to abscond from the province.
Nemine contradicente. None dissenting.
Nisi prius. A Court where actions are tried before a Judge and jury.
Nolle prosequi. A discontinuance of further proceedings in criminal cases.
Non est inventus. The return of a sheriff endorsed upon a summons or subpœna where the party is not found in his bailiwick.
Nudum pactum. A contract invalid at law.
Nuncupative Will. A will of personal property made by a soldier or sailor on active service, when made orally as a dying declaration.

Onus probandi. The burden of proof.
Overt. Open, public.
Oyer and terminer. To hear and to determine Superior Courts for the trial of criminal offences.

Paraphernalia. The wearing apparel, jewels, etc., of a wife or widow, which she is entitled to retain at her husband's death in addition to her dower and jointure.

Parol. By word of mouth, verbally; not under seal.
Party wall. A wall used jointly by two tenements which it separates.
Per capita. "By the heads;" share and share alike.
Per se. By himself, or itself.
Plough bote. The right of a tenant to cut sufficient timber to make and repair implements of husbandry.
Pluries. "Very often;" a third writ, after two have issued against a defendant.
Posse comitatus. A body of citizens summoned by the sheriff to assist him in maintaining the public peace, or enforcing the law.
Postea. "Afterwards;" the endorsement of the verdict upon the record.
Post mortem. After death.
Prima facie. At first glance.
Prochein amy. The next (or nearest) friend.
Prohibition. A writ whereby a Superior Court stays proceedings in an inferior.
Pro rata. According to the proportion or allowance.
Pro tanto. For so much.
Puisne. A name applied to Judges of Superior Courts who are not chief justices.
Pur autre vie. For the life of another.
Purview. The preamble to a statute.
Putative. Suspected.

Quamdiu se bene gesserit. During good behaviour.
Quantum meruit. As much as he has earned.
Quantum valebat. As much as it is worth.
Quare clausum fregit. "Why he broke the close;" the name of an action brought for trespass to land.
Quash. To set aside; to nullify.
Qui tam. A proceeding by an informer to recover a penalty imposed upon, or reward given by a penal statute.
Quo animo. With what intent.
Quorum. The number of persons whose presence is required before a legislative or corporate body can proceed to act.
Quo warranto. By what authority; a writ to determine the right or ownership of a franchise or office.

Realty. Real property; lands, houses, etc.
Record. A copy of the pleadings in an action at law preserved in Court for reference.
Relator. An informer.
Remainder. What is left of an estate in fee of lands after a smaller estate has been granted out of it.
Remanet. A cause left undisposed of at an assize.
Res integra. An entire matter.

Scintilla. A spark; a very small quantity.
Scire facias. "That you declare;" a writ commanding a party to show cause why a certain thing should not be done.
Seisin. Possession.
Sequestration. A process employed by Courts of Equity for enforcing obedience to their decrees, whereby the delinquent party is deprived of his entire estate.
Set-off. The mutual liquidation of opposing demands.
Severalty. An estate in severalty is one held by a single person independent of any claim thereto by another.
Severance. The cutting and carrying away of grain.
Sine die. Without day; where no day is, at the adjournment of a meeting, appointed for its reassembling, it is said to adjourn sine die.

Ss. (scilicet). To wit; namely.
Specialty. A contract under seal.
Spinster. Any unmarried woman.
Subpœna. A writ to compel witnesses to attend a trial.
Sui generis. Of its kind.
Summons. A mandate from a justice of the peace to an accused person, requiring the appearance of the latter.
Supersedeas. A writ to stay proceedings.

Tender. An offer of money to be accepted in full of a claim.
Tenement. A house dwelling.
Terse tenant. The person having actual possession of land.
Tort. A wrong or injury independent of contract.
Trover. An action at law to recover goods or their value.

Usance. Interest; usury.

Venditioni exponas. A writ of execution.
Vendor. A seller.
Vendee. One to whom a thing is sold.
Venire. A writ directing a sheriff to summon jurors.
Venue. The place from which the jury are summoned.
Vice versa. On the contrary.
Vi et armis. By force and arms unlawfully.
Viva voce. Verbally.
Voire dire. A witness who is suspected of being incompetent to give evidence at a trial, as by reason of partiality or otherwise, may be examined upon the voire dire before being examined in chief.

Waiver. The omission to avail one's self in proper time of a legal right or claim.
Warrant. A written authority or precept under the hand and seal of a justice of the peace, empowering a constable to make an arrest, search for stolen goods, etc.

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