

NOTEWORTHY CHANGES IN STATUTE LAW, 1939 *

CONSTITUTIONAL

Fortunately your Committee is only concerned with Noteworthy Changes in Statute Law. It is therefore spared from commenting on a number of constitutional questions which have been actively discussed in other quarters during the past year. Nevertheless this narrowing of the field does not mean that your Committee has found nothing of constitutional importance on which to report. In a wider sense than mere amendment of the British North America Act profound constitutional changes are taking place and it is still true that as one door closes another opens. In this case the door is the judgment of the Privy Council in *Toronto Corporation v. York Corporation*, [1938] A.C. 415, and the Act which reveals the difficulties which seem bound to flow from that decision is the Income Tax Amendment Act, passed by the Legislature of British Columbia in December, 1938.¹

The issue in the *Toronto v. York* case was the validity of an order for discovery made by the Ontario Municipal Board. The question was whether, in making the order, the Board was exercising judicial or administrative functions. The Privy Council found that some of the functions which the legislature had given to the Board were judicial, but declined to define the border. This was left open for later discussion.

The Income Tax Amendment Act of British Columbia provides in certain circumstances for a fifteen per cent. tax on undistributed profits, but the important thing for the present purpose is not the tax but the right of appeal. The only appeal for which the Act provides is an appeal from the decision of the Minister to the Lieutenant-Governor in Council whose decision shall be final.

Of course it is not for your Committee to say to what extent this provision is valid, but if appeals to the Lieutenant-Governor in Council are valid as being appeals from an administrative tribunal to the supreme administrative authority and if the distinction between what is administrative and what is judicial must await a series of pronouncements from the Privy Council, your Committee cannot help but look on the situation

* Bring a Report of the Committee on this subject presented to the 24th Annual Meeting of the Canadian Bar Association at Quebec, P.Q.

¹ See also The Agricultural Societies Act, Ont. 1939, ch. 1, sec. 2, and The Public Utilities Act, 1938, B.C., Bill 29, sec. 105.

with the greatest misgiving. Under such a regime it is difficult to say whose property is safe from the almost unchecked assumptions of power by the executive and legislative branches of the Government.

There is another piece of Constitutional legislation which has given your Committee a great deal of concern, not so much because of its importance in any circumstances in which it is apt to be invoked now, but because of its far reaching implications for the future.

The Act in question is the Department of Municipal Affairs Act Amendment Act, 1939, of the Province of Alberta. This Act empowers the Minister upon being satisfied by the report of an inspector that the affairs of any municipality are being mismanaged, either to dismiss the council or any of its members or any officer thereof or to direct the council or any officer thereof to take such action as he thinks proper.

This legislation is a direct attack on the freedom of municipal institutions and the responsibility of municipal councils to the people who elect them.

Your Committee is of the view that the freedom of our municipal institutions holds just as important a place in our constitution as freedom of the press, freedom of speech and freedom of the individual to live his own life and run his own business, without constant interference from the Government.²

GENERAL

As the law is not the creator of organized social relationships but merely the framework upon which they rest, it follows that it must develop chiefly along lines which society has already laid down. Accordingly those who profess to interpret and administer the law must for the most part be content to accept growth as they find it. Of course as members of society we have the same right as any one else to say what we think and to mould public opinion in any way we can, but if, as lawyers, we are not only out of sympathy with, but actually misunderstand the objectives which society has set, we unquestionably fail in our function. Our business is to see that the framework fits.

We all know that according to the philosophy which was generally accepted until the middle of the Nineteenth Century the great objective of society was to secure to the individual

² See also an Act to enable Towns and Municipalities to Borrow Money, Nova Scotia, 1939, ch. 15, sec. 2.

the largest possible measure of personal freedom. This was supposed to rest on the attainment of plenty through the private ownership of property. Most responsible people, therefore had clearly defined ideas about such things as the sanctity of contract, the family and the State. Sanctity of contract was absolute, marriage and the family were not merely contractual and biological relationships; they were institutions. The State with some vestiges of the *contrat social* still clinging to it was looked upon rather as the common delegate than as the master of the individual. To put the matter in another way the State was only considered as sovereign in so far as those comprising it banded themselves together for the protection of a limited range of interests equally vital to all. Everyone is familiar with the legal manifestations of these points of view. We still have their survivals down to the present time.³

³ Sanctity of Contract : *Feist v. Société Intercommunale Belge D'Electricité*, [1934] A.C. 161. See also, as tending the other way, *Norman v. Baltimore and Ohio Railway Company*; *United States v. Bankers Trust Company*, 294 U.S. 240, and *Nortz v. U.S.*, *Perry v. U.S.*, 294 U.S. 330. Institutional Aspect of Marriage; *Mordaunt v. Mordaunt* (1870), L.R. 2 P. & M. 109; *Apted v. Apted and Bliss*, [1930] P. 246; Code Napoleon 203-214: "203—Les époux contractent ensemble, par le fait seul du mariage, l'obligation de nourrir, entretenir et élever leurs enfants. 204—L'enfant n'a pas d'action contre ses père et mère pour un établissement par mariage ou autrement. 205—Les enfants doivent des aliments à leurs père et mère et autres ascendants qui sont dans le besoin. 206—Les gendres et belles-filles doivent également, et dans les mêmes circonstances, des aliments à leurs beau-père et belle-mère; mais cette obligation cesse, 1. lorsque la belle-mère a convolé en secondes noces, 2. lorsque celui des époux qui produisait l'affinité, et les enfants issus de son union avec l'autre époux, sont décédés. 207—Les obligations résultant de ces dispositions sont réciproques. 208—Les aliments ne sont accordés que dans la proportion du besoin de celui qui les réclame, et de la fortune de celui qui les doit. 209—Lorsque celui qui fournit ou celui qui reçoit des aliments est remplacé dans un état tel, que l'un ne puisse plus en donner, ou que l'autre n'en ait plus besoin, en tout ou en partie, la décharge ou réduction peut en être demandée. 210—Si la personne qui doit fournir les aliments justifie qu'elle ne peut payer la pension alimentaire, le tribunal pourra, en connaissance de cause, ordonner qu'elle recevra dans sa demeure, qu'elle nourrira et entretiendra celui auquel elle devra des aliments. 211—Le tribunal prononcera également si le père ou la mère qui offrira de recevoir, nourrir et entretenir dans sa demeure, l'enfant à qui il devra des aliments, devra dans ce cas être dispensé de payer la pension alimentaire. 212—Les époux se doivent mutuellement fidélité, secours, assistance. 213—Le mari doit protection à sa femme obéissance à son mari. 214—La femme est obligée d'habiter avec le mari, et de le suivre partout où il juge à propos de résider : le mari est obligé de la recevoir, et de lui fournir tout ce qui est nécessaire pour les besoins de la vie, selon ses facultés et son état." *Howe v. Howe*, [1937] O.W.N. 2 at p. 5: Riddell J.—"The difficult question now to be decided is whether it is better for the community that these two sinners be separated and allowed to form regular unions with others, or be compelled by the continuing bonds of an abhorrent matrimony to be permanently continent or seek the gratification of their natural desire in unlawful and unallowed communion. The learned Justice of Appeal said that he had given this question his best consideration and,

The new objective which only came into full bloom after the Great War reflects quite a different outlook on life. Instead of its being individualistic, it is humanitarian. It seeks social security and a prosperity in which all shall share. Moreover this prosperity is no longer to come and go in fits and starts. Economic laws are now treated as subject to human defiance, and economic forces are henceforth to be subject to human control.

The claim is made that it has now become the duty of the State to provide each citizen with a living in conformity with certain accepted minimum standards. He must receive as good an education as his capabilities allow. He is entitled to a good, clean comfortable home at a rent he can afford to pay. It must be well heated, well lighted and in good repair. There must be assured and carefully controlled markets. Everyone must be able to get good food and good clothes at fair prices. The Government must see that the people get medical services, leisure and recreation. They must have a good, safe, cheap and efficient system of transport. The worker must have an effective share in the direction and control of his employer's business. He must have insurance to protect him against unemployment and a decent pension awaiting him when, having reached the age of retirement, the time comes for him to pass on the torch to a younger man.⁴

The attainment of these things is sought in a number of different ways. The first is by taxation, based on capacity to pay and admittedly designed not merely to raise revenue but to secure a more even distribution of wealth. The second is by the public ownership of various key instruments of industry, transportation and finance. The third is by the direct or indirect undertaking, sponsoring, encouragement or assistance of

conscious of his limitations, he was of the opinion that the best interests of the community would be served rather by the former than by the latter course. In so doing, the learned Justice of Appeal said that he adopted in this respect the admirable judgment of McGillivray, J. A., of the Alberta Supreme Court, Appellate Division, in *Sherman v. The King's Proctor*, [1936] 3 D.L.R. 90, which contains a valuable discussion of the whole question." *Matheson v. Matheson*, 46 Man. R. 464. See also Legislation Respecting Mothers' Allowances and Old Age Pensions; Proprietary Aspects of Legitimacy as against Illegitimacy; *re Millar*, [1938] S.C.R. 1; The Intestate Succession Act, 1938, Amendment Act, 1939, Alberta. The State as Common delegate; *Mogul Steamship Company Limited v. MacGregor Gow & Co.*, [1892] A.C. 25; for the modern viewpoint see Legislation regulating Industry, Commerce and Public Utilities, referred to lower down in this report.

⁴"Labour's Immediate Programme" and "For Socialism and Peace," two pamphlets published by the Labour Party, Transport House, Smith's Square, London, S.W.I.

public works and housing. The fourth is by the provision of pensions, allowances and relief. The fifth is by an increasing measure of State control over the limited fields still left to private enterprise.

It is not for your Committee to express an opinion as to whether the end in view can be attained as a practical matter. The changes are alluded to chiefly because they form the background without which your Committee believes it is impossible to fit the new legislation in its proper place.

Under the circumstances it is not surprising to find three important amendments to The Income War Tax Act.⁵ One raises the gift tax; another is designed to deter people from taking their property out of the country in order to avoid payment of the rates which apply to the larger incomes, and the third treats as being wholly income annuities which to the extent of their present worth the Provinces already tax as capital.

Your Committee cannot but regard it as extremely unfortunate that the Dominion Government has not seen fit to deal with the taxation both of purchased annuities and annuities arising under a will or trust in a fair way, by treating the present worth as capital and the difference between present worth and the value of each of the extended payments as income. The use of present worth in this connection is not new. It has prevailed in the Provinces for years. It has been generally accepted as sound, and in the view of your Committee there were enough discriminations in The Income War Tax Act already without adding to their number.

Five years ago by 24-25 George V. ch. 43, the Bank of Canada was incorporated as a privately owned central bank. The capital stock of \$5,000,000 was to be offered to the public for subscription. No one shareholder was to own more than fifty shares and in order that the shares should not fall under the control of those engaged in the general business of banking (who presumably know most about it), no shares were to be held by chartered banks. In fact the Act expressly provided that on the last day of January in each year the general manager of every chartered bank should transmit a statement, in the prescribed form, to the Minister of Finance that he had duly enquired and found that no share of the bank nor any interest therein was or had been during the preceding year held by or

⁵ 1938, 2 George VI. ch. 48. See also Sask. 1939, ch. 9, sec. 3, and Ont. 1939, ch. 10, sec. 14, (2) (e).

for any chartered bank contrary to subsection (2) of section 18 of the Act.

By 1 Edward VIII., ch. 22, the capital stock of the Bank was changed to \$10,000,000, divided into 100,000 Class A shares issued to the public and 102,000 Class B shares issued to the Minister of Finance and held by him on behalf of the Dominion of Canada. The Bank of Canada Amendment Act, 1938,⁶ now completes the circle and gives us outright public ownership of the Central Bank. By this Act the Class A shares held by the public were redeemed without the shareholders' consent; the Class B shares were directed to be surrendered and the Bank now has only one class of shares held by the Minister of Finance.

In passing this legislation the Parliament of Canada has of course gone far beyond anything either in England or in the United States. In England the "Bank" is still a privately owned institution and in the United States the shares of the Federal Reserve Banks are held by the member banks of the Federal Reserve System.

Probably the subject which has given your Committee the greatest concern in preparing this year's report is the legislation respecting mortgages. It is a difficult and delicate subject, because mortgages touch a wide range of vital interests at so many important points.

Before the war the mortgage was not only a favorite form of investment but an essential instrument of credit. Firstly, it provided funds for buildings and improvements which, generally speaking, could not be raised in any other way. Secondly, the mortgage at least gave some degree of liquidity to real estate which is otherwise the most non-liquid of all assets. Thirdly, when chosen with reasonable care it was the one place in which money of dependent people could be invested where the return was good, payment prompt and the security absolute.

Your Committee does not have to draw on generalizations to get the modern viewpoint. In Manitoba it has been legislatively expressed.⁷ Your Committee can also observe its legis-

⁶ 2 Geo. VI., ch. 42.

⁷ See sec. 133 of The King's Bench Amendment Act 1939, Man. 1939, ch. 13, which reads as follows:

"The general purpose of this Part is to retain all honest, industrious and efficient farmers in the use and occupation of their farms as efficient producers and to make such orders that, after allowing for all normal current expenditure and providing for the maintenance of themselves and their families in a reasonable standard of comfort, such farmers may reasonably be expected to meet their liabilities as they become due, and to protect in so far as possible the rights of mortgagees and vendors of farm lands."

lative results, because the statutes of the provinces which have indulged in mortgage legislation either cancel, rewrite or hamstring essential parts of the mortgage contract.⁸

What your Committee cannot tell and what it doubts that anyone can tell is where the mortgage legislation leads, unless it be to ultimate nationalization of the land itself in certain provinces. Your Committee says this because it is almost impossible to visualize the people of any province putting up with a state of affairs where new building must stop; where essential improvements and replacements cannot be made; where land can neither be effectively sold nor borrowed against, and where investments founded on the land can no longer be regarded as a fundamental security.

In the view of your Committee the acquisition of lands under tax lien (now automatic in Saskatchewan)⁹ can only accelerate a process which is bound to work itself out in the same way even if special legislation of this kind did not exist.

It is said that at present there are certain centripetal forces working for unity in Canada, and certain centrifugal forces working the other way. Of the centrifugal forces your Committee unquestionably regards the mortgage legislation as being the most important. Just as it was impossible somewhat over half a century ago to visualize the existence of a union in the United States which was half slave and half free, so now it is equally impossible to visualize a federal union in Canada composed of two groups of provinces possessing social systems which are so utterly different that in the one the land itself or a large part of it has been nationalized, while in the other it has not. Unity must depend on respecting the rights and property of others and giving every man his due.

Your Committee has also considered the Transport Act;¹⁰ the Unemployment and Agricultural Assistance Act, 1938;¹¹ the Municipal Improvements Assistance Act, 1938;¹² the Wheat Co-operative Marketing Act, 1939;¹³ the Agricultural Products

⁸ See 363A of Town and Village Act Amendment Act, Alta., 1939, ch. 26; Limitations of Actions Act, 1935, Amendment Act 1939, Alta., ch. 80; Judicature Act Amendment Act, 1939, Alta., ch. 85. The Limitation of Civil Rights Act, 1939, Sask., ch. 93.; The King's Bench Amendment Act, 1939, Man., ch. 13; The Mortgage Act, 1939, Man., ch. 44; An Act to Amend the Limitations Act, Ont., 1939, ch. 25; An Act to Amend the Mortgages Act, Ont., 1939, ch. 28.

⁹ The Tax Enforcement Act, 1939, Sask., ch. 43.

¹⁰ 1938, Dom., ch. 53.

¹¹ 1938, Dom., ch. 25.

¹² 1938, Dom., ch. 33.

¹³ 1939, Dom., Bill 82.

Co-operative Marketing Act, 1939;¹⁴ the Central Mortgage Bank Act;¹⁵ the Public Utilities Act of British Columbia;¹⁶ the Legal Professions Acts of British Columbia and Alberta;¹⁷ the various Provincial Marketing Acts;¹⁸ the Pipe Line Regulation Act of Alberta;¹⁹ the Petroleum Prices Act of the same Province;²⁰ the Government of Alberta Insurance Act;²¹ and a sheaf of other Acts²² too numerous to mention in the body of this report. In one way or another they all have the same general trend toward the new objective.

¹⁴ 1939, Dom., Bill 89.

¹⁵ 1939, Dom., Bill 132.

¹⁶ 1938, B.C., Bill 29.

¹⁷ 1938, B.C., Bill 88; 1939, Alta., ch. 91.

¹⁸ See footnote 22.

¹⁹ 1939, Alta., ch. 4.

²⁰ 1939, Alta., ch. 6.

²¹ 1939, Alta., ch. 8.

²² The following list of Acts is not intended to be exhaustive :

PUBLIC WORKS :

Municipal Improvements Assistance Enabling Act, 1938, B.C., Bill No. 64; Municipal Improvements Assistance (Alta.) Act, Alta., 1939, ch. 24; Municipal Improvements Assistance (Sask.) Act, 1939, Sask., ch. 56; Municipal Improvements Assistance (Man.) Act, Man., 1939, ch. 45; Municipal Loans' Guarantee Act, N.S., 1939, ch. 14; An Act to Enable Advantage to be taken of the Municipal Assistance Act, P.E.I., 1939, ch. 36.

HOUSING :

The National Housing Act, 1938, Dominion, ch. 49; The Housing Act, 1939, Sask., ch. 57; The Housing Act, 1939, (Man.), ch. 31; An Act to Amend the N.S. Housing Commission Act, 1939 N.S., ch. 53.

TOWN PLANNING :

The Nova Scotia Town Planning Act, Nova Scotia, 1939, ch. 8.

DEBT RELIEF :

An Act to Amend the Farmers' Creditors Arrangement Act, 1938, Dom., ch. 47; An Act to Amend the Farmers' Creditors Arrangement Act, 1939, Dom., Bill 86; Mortgages and Purchasers Relief Act Amendment Act, B.C. 1938, Bill 31; The Statute of Limitations Amendment Act, 1938 B.C., Bill 39; Land Titles Act, 1939, Alta., ch. 79 (cutting attornment clause out of mortgages); Limitations of Actions Act Amendment Act, 1939, Alta., ch. 80; Judicature Act Amendment Act, 1939, Alta., ch. 85; The Limitation of Civil Rights Act, 1939, Sask., ch. 93; Court of King's Bench, Man., Part II., Land Court Div., 1939, ch. 13; The Mortgage Act, Man., 1939, ch. 44; Mortgages and Purchasers Relief Act, 1939, Ont., ch. 29; An Act to Amend the Limitations Act, 1939, Ont., ch. 25; An Act to Amend the Mortgages Act, 1939, Ont., ch. 28.

MARKETING :

Food Products Minimum Loss Act Amendment Act, 1938, B.C., Bill 35; Commodities Retail Sales Act Amendment Act, 1938, B.C., Bill 30; Alta. Marketing Act, Alta., 1939, ch. 3; Petroleum Prices Act, 1939, Alta., ch. 6; An Act to Amend the Co-operative Marketing Associations Act, 1939, Sask., ch. 69; An Act to Amend the Milk Control Act, Sask., 1939, ch. 74; Manitoba Natural Products Marketing Act, 1939, ch. 46; An Act to Assist in the Marketing of Natural

After reviewing this year's product your Committee can only express hope that the voice of the people as reflected in their current legislation is not their voice but the voice of various pressure groups²³ and its own conviction that most of the people in Canada are not Socialists. It does not believe that Canadians as a whole realize how far the process of socialization has gone. It is certain that they do not like to see the Government of the country engaged in business (particularly in certain businesses) and that they are not in favour of the progressive destruction of private property and private credit.

If the Committee is wrong it can only point to its own belief that the institution of private property is the pillar on which our whole civilization rests and that we still live in a world which is so strongly competitive that rigorous internal control only seems to lead to more and sharper international rivalry and bloodshed. The Committee points out that it is precisely in those countries where private property rights were most

Products, 1939, N.B.; The Agricultural Marketing Act, 1939, N.S., ch. 4; An Act relating to the Marketing of Farm Products, 1939, P.E.I., ch. 33.

REGULATORY :

The Radio Act, 1938, Dom., ch. 50; The Grain Futures Act, 1939, Dom., Bill 81; An Act to Amend the Canada Grain Act, Dom., 1939, Bill 62; The Engineering Act Amendment Act, 1938, B.C., Bill 9; Municipal Act Amendment Act, 1938, B.C., Bill 81, sec. 9; The Hours of Work Act Amendment Act, 1939, Alta., ch. 52; Male Minimum Wage Act Amendment Act, 1939, Alta., ch. 53; Early Closing Act Amendment Act, 1939, Alta., ch. 54; Grain Charges Limitation Act, 1939, Alta., ch. 46; 1939 Sask., ch. 76; The Vehicles Act, 1939, Sask., ch. 83; The Industrial Standards Act, N.B., 1939; An Act to Amend the Theatres Cinematographs and Amusements Act, N.S., 1939, ch. 34; The Athletic Commission Act, 1939, Ont., ch. 4; An Act Respecting Collection Agencies, 1939, Ont., ch. 7; An Act to Amend the Law Society Act, 1939, Ont., ch. 24.

MEDICAL AND HOSPITAL SERVICES :

The Municipal Medical and Hospital Services Act, 1939, Sask., ch. 55.

MATERNAL WELFARE :

The Maternal Welfare Act, 1939, Alta., ch. 69.

UNEMPLOYMENT INSURANCE :

The Unemployment Insurance Act, Ont., 1939, ch. 52.

YOUTH TRAINING :

The Youth Training Act, 1939, Dom., Bill 94.

ENGAGING IN BUSINESS :

Municipal Act, 1939, Man., ch. 87 and 90.

Municipal District Act Amendment Act, 1939, Alta., ch. 27.

²³ Resolution Passed at Winnipeg by the Canadian Dairy Farmers Federation, Oct., 1938; Resolution of Eastern Canada Conference, March 28-31, 1939.

seriously impaired by the late war that personal and political freedom have been extinguished first.

If the average Canadian citizen underrates the noteworthy changes which have occurred in our statute law and thinks of our legislation merely as more or less expensive toying with things which do not affect him or which only put someone else's dollars into his pocket, disillusionment must necessarily have very much more far reaching effects than anything which has yet occurred.²⁴

DOMINION

CANADA EVIDENCE ACT.

By an amendment to subsection (2) of section 4 of The Canada Evidence Act, the wife or husband of a person charged with an offence under Section 354 of the Code is now made a competent and compellable witness for the prosecution, without the consent of the person charged.

CANADA SHIPPING ACT, 1934.

A new section numbered 703A has been added to The Canada Shipping Act, prohibiting the shipment in Canadian ships of articles of war to countries in a state of war, designated by the Governor in Council.

COPYRIGHT AMENDMENT ACT, 1931.

A new section numbered 6(a) is added to section 10-B of The Copyright Amendment Act 1931, as amended by Chapter 28 of the Statutes of 1936. This subsection makes provision for the Copyright Appeal Board providing as far as possible for the collection in advance from radio broadcasting stations or gramophone manufacturers of fees, charges and royalties appropriate to the new conditions produced by the provisions of the subsec-

²⁴ Report of Imperial Oil Limited, 1938: "All contemplated capital expenditures in Canada must, therefore, take into consideration the increasing difficulties of obtaining reasonable returns and also the increasing risks of functional obsolescence resulting from rapid technological progress. These difficulties and risks, together with the economic limitations imposed by foreign sources of product supply, must be given full weight in determining the extent to which your Company's Canadian earnings justify the use of its liquid assets for manufacturing facilities in Canada. Plans drafted earlier in the year for certain changes, contemplated for 1939 in manufacturing equipment, were subsequently modified in line with the foregoing considerations. . . . The increasing interference with the free conduct of business and the excessive diversion of income to public treasuries, which restrict capital available for productive purposes, are factors which inevitably must seriously affect the business of your Company as well as of other companies."

tion, in respect of public performances by means of a radio receiving set or gramophone in any place other than a theatre which is ordinarily and regularly used for entertainments, to which an admission charge is made, instead of fees, charges or royalties being collected from the owner or user of the radio receiving set or gramophone.

THE EXCHEQUER COURT ACT.

Paragraph (c) of subsection (1) of section 19 of the Exchequer Court Act, chapter 34, of the Revised Statutes of Canada, 1927, is repealed and the following substituted therefor: "(c) Every claim against the Crown arising out of any death or injury to the person or to property, resulting from the negligence of any officer or servant of the Crown while acting within the scope of his duties or employment."

The old subsection read as follows :

"Every claim against the Crown arising out of any death or injury to the person or to property, resulting from the negligence of any officer or servant of the Crown while acting within the scope of his duties or employment upon any public work."

THE NATIONAL HARBOURS BOARD ACT, 1936.

This Act was amended by adding three new sections. The new sections deal with certain rights of action against the Board which are to be dealt with as though they were rights of action as between subjects. They also provide for the practise and procedure in actions against the Board.

THE CRIMINAL CODE

The Criminal Code has been amended by adding a new section numbered 207A after Section 207.

This section is to suppress the publication of subject matter calculated to injure public morals arising out of divorce and other trials of a similar nature.

No prosecution for an offence under the section shall be commenced, however, without the leave of the Attorney-General for the Province in which the offence is alleged to have been committed.

Section 285 of the Criminal Code has also been amended both with regard to the liability of a driver of a car for failure to stop after an accident and with respect to reckless and dangerous driving.

Another new section 424A has also been added to the Criminal Code relating to the salting of mines and the salting of samples.

Subsection 3 of section 951 of the Criminal Code, as enacted by section 25 of chapter 11 of the Statutes of 1930, is repealed and the following substituted therefor :

“(3) Upon a charge of manslaughter arising out of the operation of a motor vehicle the jury, if they are satisfied that the accused is not guilty of manslaughter but is guilty of an offence under sub-section six of section two hundred and eighty-five may find him guilty of that offence, and such conviction shall be a bar to further prosecutions for any offence arising out of the same facts.”

Another new section has been added to the Criminal Code, providing as follows :

“Any employer or his agent, whether a person, company or corporation, who wrongfully and without lawful authority

- (a) refuses to employ or dismisses from his employment any person for the sole reason that such person is a member of a lawful trade union or of a lawful association or combination of workmen or employees formed for the purpose of advancing in a lawful manner their interests and organized for their protection in the regulation of wages and conditions of work;
- (b) seeks by intimidation, threat of loss of position or employment, or by actual loss of position or employment, or by threatening or imposing any pecuniary penalty, to compel workmen or employees to abstain from belonging to such a trade union or to such an association or combination to which they have a right to belong; or
- (c) conspires, combines, agrees or arranges with any other employer or his agent to do any of the things mentioned

is guilty of an offence punishable on indictment or on summary conviction before two justices, and liable on conviction, if an individual, to a fine not exceeding one hundred dollars or to three months' imprisonment, with or without hard labor, and, if a company or corporation, to a fine not exceeding one thousand dollars.”

THE CRIMINAL CODE

Subsection 2 of section 406 of the Code has been amended to make the provisions of the subsection apply not only to a false advertisement of the sale of real or personal property but also to a false advertisement promoting any business or commercial interest.

Section 999 of the Criminal Code has also been amended so as to permit the evidence given by a witness at a preliminary hearing to be received at the trial if such person has, since giving his evidence, become insane. The former section only provided for the receiving of such evidence if the witness had died or was so ill as not to be able to travel or was absent from Canada.

THE CARRIAGE BY AIR ACT, 1939

The purpose of this Act is to give effect to the Warsaw Convention, signed at Warsaw the 12th October, 1929, for the unification of certain rules relating to international carriage by air, and to give power to the Governor in Council to apply the rules of the Convention to internal carriage by air in Canada.

The Warsaw Convention consists of provisions concerning the carriage of passengers, goods and baggage, the liability of carriers and limitation of liability, known as the Warsaw Rules, which are designed to govern contracts of carriage in relation to international carriage by air and which form the First Schedule to the Act.

The Second Schedule to the Act contains provisions relating to the liability of a carrier in the event of the death of a passenger, which follow, generally, the provisions of the Fatal Accidents Acts.

PRINCE EDWARD ISLAND

Save for two notable exceptions the work of the Prince Edward Island Legislature during its 1939 session has been practically confined to the revision and consolidation of existing statutes. The Principal Acts of this character are :

- The Affidavits Act;
- The Apportionment Act;
- The Bailable Proceedings Act;
- The Habeas Corpus and Certiorari Act;
- The Joint Stock Companies Act;
- The Evidence Act;
- The Indigent Debtors Act;

The Dower Act;
The Escheats Act;
The Forest Fires Act;
The Frauds on Creditors Act;
The Magistrates Estate Act;
The Married Women's Property Act;

The Legislature has also passed The Uniform Interpretation Act, The Landlord and Tenant Act and Limitations Act, prepared by the Commissioners on Uniformity of Legislation.

BAILABLE PROCEEDINGS ACT :

While in the view of your Committee the work of revision and consolidation is of the utmost importance and requires every encouragement, your Committee notices one feature of the Bailable Proceedings Act which goes beyond revision and makes a substantial change in the law.

Under the law as it stood before the present Act, no bailable writ could issue without a judge's order. Under section 23 of the new Act in cases where :

- (a) the defendant debtor is not a resident of the Province;
- (b) the claim or cause of action is for any penalty, debt, tax, rate, imposition or forfeiture imposed by any statute or by-law of any municipal corporation, or for any school rate or assessment;
- (c) the claim or cause of action is for trespass or assault, criminal conversation or seduction, libel or slander or breach of promise of marriage;

no judge's order shall be necessary to hold the defendant debtor to bail upon mesne process, nor to take him in execution after judgment, nor shall the plaintiff creditor be required to make affidavit, either that there is any cause for believing that the debtor is about to quit the Province or that after judgment he has parted with his property or made some secret or fraudulent conveyance thereof. Instead of this all that is required in order to enable the plaintiff to have a bailable writ issued is that he shall file with the prothonotary an affidavit against the defendant debtor to the amount of Thirty-two dollars or upwards, and state that the defendant debtor either is not a resident of the province or the cause of action, naming it, is one of those mentioned in the section.

This Act would appear to your Committee to remove the very important safeguard of a judge's order in a number of classes of cases where that safeguard is extremely important.

STATUTE OF FRAUDS

A new amendment of substantial importance appears in the Statute of Frauds.

The new section is as follows :

4. (1) "Whenever any subscription shall be opened and made in aid of the erection, addition to, alteration of, or repairs of any Road, Bridge, Place of Worship, Schoolhouse, or for any undertaking of public utility, or which may be designated in the Subscription list, as or appears to be, a public undertaking, and such undertaking shall be commenced, every person who may have engaged, by written subscription, to contribute money, labor, or other aid towards the undertaking, shall be held legally liable and bound to perform his engagements, notwithstanding any apparent want of consideration in the agreement for the same.
- (2) In the case of public grants made in aid of such undertaking, the commissioner or other person appointed to expend such grant, or where no public grant shall be made, then the person to whom the performance or superintendence of such undertaking may have been entrusted, or the person who may himself have engaged in and be then carrying on such undertaking may require all persons who may have so subscribed, to perform their engagement; and in case any subscriber shall, after a written notice of at least one month, refuse or neglect so to do, he may be sued by such commissioner or other person hereinbefore mentioned, or the person to whom such subscription may be payable as if such subscription were a private debt for the like amount.
- (3) All moneys or other aid so subscribed and recovered shall be applied and expended for the purposes for which the same shall have been so subscribed, and for no other purpose whatever."

NOVA SCOTIA

CORPORATION TAX ACT

This Act, like a number of other Provincial Tax Acts passed in recent years, imposes certain taxes on the paid up capital of

every company which has its head office, or holds assets or transacts any part of its business in the Province.²⁵

Your Committee raises the question for whatever it may be worth, whether in the case of a foreign company a tax on paid up capital is within the powers of a Provincial Legislature. While the capital with which a company carries on business and which is usually represented by certain fixed and other property is an asset, the paid up capital is really the liability of the company to its shareholders. If, in the case of a foreign company the situs of this liability is where the company has its head office, it would seem to your Committee that the tax imposed on this extra provincial liability is not direct taxation within the province.

THE TOWN PLANNING ACT

It is said that one of the distinctive features of this Act is the provision in subsection (g) of section 12, which enables the Municipal Council, subject to the approval of the Minister of Municipal Affairs, to control by regulation the architectural design, character and appearance of any or all buildings proposed to be erected in any district or fronting upon any street or part of a street, and prohibiting the erection of any building in contravention of such regulation.

THE TRUSTEE ACT.

The former section relating to trustee investments has been repealed and a new subsection substituted therefor. The new section contains one provision which your Committee cannot help but regard as a serious departure from the accepted principles. By the combined effect of the old and new provisions a trustee may now invest in certain securities and in such other securities as are authorized either by a general order of the Supreme Court or in such other securities as the court or a judge upon application in any particular case selects as fit and proper.

Your Committee is of the view that the two mentioned powers carries with it an entire misconception of the functions of a court. In this respect it prefers the views expressed by Mr. Justice Middleton in *re Fulford*, 29 O.L.R. p. 375 : "It is suggested that some scheme should be devised by which the Court should approve of realization in each particular case,

²⁵ But see *Bank of Toronto v. Lamb*, 12 App. Cas. page 575.

taking the opinion of some advisory committee, if necessary, upon each particular transaction. I do not think that any such scheme can be authorized. The executors are protected from all liability if they honestly and with due care exercise the discretion vested in them. But the responsibility is theirs, and cannot be shifted upon the Court. The executors cannot come to the Court and ask whether the present is a good time or a bad time to sell stock or anything else, or ask whether a price offered is sufficient or insufficient. The advice which the Court is authorized to give is not of that type or kind; it is advice as to legal matters or legal difficulties arising in the discharge of the duties of the executors, not advice with regard to matters concerning which the executors' judgment and discretion must govern."

NEW BRUNSWICK

THE BANG'S DISEASE ERADICATION ACT.

This Act provides for the creation of restricted areas for the suppression of Bang's disease in cattle. Under the Act seventy-five per cent. of the cattle owners in the proposed area can apply to the Minister of Agriculture to have the area established as a restricted area.

Your Committee regards legislation of the type embodied in this Act and in a further Act respecting the Potato Industry as of the utmost importance in a country where agricultural costs must necessarily be high and where adequate earnings can only be expected if high standards of production are maintained. In the view of your Committee legislation of this type is apt to do more toward leading agriculture out of its present unfortunate plight than all the legislation respecting price fixing and market control, which your Committee has had to review in the course of its work.

INDUSTRIAL STANDARDS ACT.

This legislation is similar in principle to The Industrial Standards Acts already enacted by other Provinces in the Dominion.

AN ACT TO PROVIDE FOR THE SURVIVAL OF ACTIONS AFTER DEATH.

Subject to the provisions of the Act, on the death of any person after its commencement all causes of action subsisting against or vested in him shall survive against, or, as the case

may be, for the benefit of his estate; provided that this shall not apply to causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other or to claims for damages on the ground of adultery. Where the cause of action survives for the benefit of the estate of a deceased person, the damages recoverable shall not include any exemplary damages or damages for loss of expectation of life, or in the case of a breach of promise to marry, the damages, shall be limited to such if any to the estate of the person damnified as flow from the breach of promise to marry.

Proceedings against the estate of a deceased are only maintainable if proceedings in respect of the cause of action were pending at the date of his death or arose not earlier than six months before his death and proceedings are taken in respect thereof not later than six months after his personal representative took out representation. As to proceedings that have survived for the benefit of the estate of a deceased person they must be taken within six months after his personal representative took out representation and in any event within two years after the death of such deceased person.

AN ACT TO ASSIST IN THE MARKETING OF NATURAL PRODUCTS.

This is another marketing Act. As your Committee has already expressed its views on the general principles of such legislation in another section of this report it makes no further comment.

QUEBEC

Statutes not printed.

ONTARIO

AN ACT RESPECTING THE CHANGING OF NAMES.

This is a new Act dealing with the above subject matter, which provides for a change of name being effected by order of a County judge on certain consents and certain material being furnished.

THE CONSTABLES ACT.

Under a new section numbered 1a, every constable or other police officer is given authority to act as a constable throughout

Ontario to arrest any person who has committed or whom the constable suspects of having committed any offence within the municipality for which he is constable.

THE CORONERS ACT.

Under an amendment to subsection Two of Section 2 the Lieutenant-Governor in Council is given power to appoint a supervising coroner, who shall have jurisdiction throughout the province and shall act in an advisory capacity to coroners generally, and shall have such powers and perform such duties with respect to the office of coroner throughout the province, as the Lieutenant-Governor in Council may prescribe.

A new Section numbered (10a) provides for the holding of an inquest even though the body has been destroyed or removed from Ontario, and also provides that the Attorney-General may direct any coroner to conduct an inquest. (See *re Sidley*, [1938] O.W.N. 414.)

AN ACT TO AMEND THE HIGHWAY IMPROVEMENT ACT

Section 75 of the above Act has been amended by adding a new subsection numbered (2a) which reads as follows :

"No action shall be brought against the Department for the recovery of damages caused by the presence or absence or insufficiency of any wall, fence, guard-rail, railing or barrier or caused by or on account of any construction, obstruction or erection or any situation, arrangement or disposition of any earth, rock, tree or other material or thing adjacent to or in, along or upon the highway lands or any part thereof not within the travelled portion of such highway."

This subsection was undoubtedly passed as a result of the decision of the Ontario Court of Appeal in *Groves et al v. The County of Wentworth*, [1939] O.W.N. 133.

THE JUDICATURE ACT

Three new subsections have been added to section 16 to deal with actions restraining the publication of articles or pictures insulting His Majesty.

THE MUNICIPAL AMENDMENT ACT, 1939

Section 23 of The Municipal Act has been amended to enlarge the powers of the Ontario Municipal Board as to amalgamations and annexations.

THE POWER COMMISSION ACT

A new section numbered (33a) has been added to the above Act, which provides: "Where works of the Commission have been affixed to realty, they shall remain subject to the rights of the Commission as fully as they were before being so affixed unless otherwise agreed by the Commission in writing."

THE REGISTRY ACT

A new subsection numbered (1a) has been added to section 51. It provides as follows: "Where an assurance, deed, conveyance, mortgage, release or quit claim is made by a man and someone joins therein as his wife to bar dower, it shall not be registered unless there be made on or securely attached to it an affidavit or statutory declaration by such man that he is married, that the person joining therein to bar dower is his lawful wife and that she is of the full age of twenty-one years."

MANITOBA

THE TORTFEASORS AND CONTRIBUTORY NEGLIGENCE ACT, Ch. 75

This Act provides that judgment against one joint tortfeasor is no bar to an action against the others and for contribution between joint tortfeasors. It also abrogates the Common Law rule respecting contributory negligence by permitting degrees of fault to be found and the damages to be apportioned according to the degree of fault.

THE EXECUTIONS ACT, Ch. 20

Under an amendment to the Executions Act, the exemptions have been extended (in the case of a farmer) to include a tractor and a motor vehicle, which has been in use for not less than one year.

LIMITATIONS ACT, Ch. 39

Under an amendment to the above Act its application to the Crown has been excluded in respect to actions for penalties.

THE MUNICIPAL ACT, Ch. 87, 90

Under an amendment to the Municipal Act, municipalities have been empowered to become members or shareholders of co-operative corporations, whose objects include the buying and

selling of gasoline and petroleum products. They may also pass by-laws to provide for carrying on the business of buying and selling gasoline and petroleum products, such by-laws to be approved by a three-fifths vote of the ratepayers.

SASKATCHEWAN

THE INCOME TAX ACT

Where any person who is not resident in the province has earned income within the province and the commission is unable to obtain the information required to compute the net income of that person, his tax payable under section 9 shall be an amount equal to two per cent. of his gross income within the province during the year in question. Such gross income shall, for the purpose of this subsection, be deemed to be an amount equal to the amount of his total sales within the province if he is engaged in selling and otherwise shall be deemed to be an amount equal to the amount of his total receipts from within the province.

Where any person who is not resident in the province enters the province temporarily for the purpose of transacting business for gain, his tax payable under section 9 shall be an amount equal to two per cent. of his gross income within the province during the year in question. Such gross income shall, for the purpose of this subsection, be deemed to be an amount equal to the amount of his total sales within the province if he is engaged in selling and otherwise shall be deemed to be an amount equal to the amount of his total receipts from within the province.

The provisions of this Act as to the filing of returns and notice of assessment shall not apply to the tax imposed under subsections (1) and (2), but such tax may be assessed and levied by the commission from time to time as the income accrues, and shall be due and payable forthwith after notice of assessment together with a demand for payment is given by the commission to the taxpayer.

Where, in the opinion of the commission, any corporation carrying on business in the province purchases any commodity from a parent, subsidiary or associated corporation at a price in excess of the fair market price, or sells any commodity to such corporation at a price less than the fair market price, or where the commission is unable to obtain the information

required to compute the net income of any corporation carrying on business in the province, the commission may direct that the tax payable by such corporation under section 9 shall be an amount equal to two per cent. of its gross income within the province during the fiscal year in question; and the commission shall give a notice of assessment to the corporation, fixing a date on which the tax shall be payable. Such gross income shall, for the purpose of this section, be deemed to be an amount equal to the amount of the total sales of such corporation within the province if the corporation is engaged in selling, and otherwise shall be deemed to be an amount equal to the amount of its total receipts from within the province.

THE CROWN SUITS (COSTS) ACT, 1939

In any action or other civil proceeding instituted before any court in Saskatchewan by His Majesty or by the Attorney General or any person on behalf of His Majesty, or in any other action or civil proceeding to which His Majesty or the Attorney General or any person on behalf of His Majesty is a party, the costs of and incidental to the action or proceeding shall be in the discretion of the court, to be exercised in the same manner and on the same principles as between subject and subject, and the court may order payment of costs by or to His Majesty accordingly.

When costs are awarded to His Majesty, the same remedies as are authorized for enforcing payment of costs as between subject and subject shall be available for the recovery thereof.

When costs are awarded to any party against His Majesty, such party shall obtain from the taxing officer and forward to the Provincial Treasurer a certificate of taxation stating the total amount of such costs as taxed.

Upon receipt of such certificate the Provincial Treasurer shall pay out of moneys in his hands for the time being applicable thereto, or which may thereafter be voted by the Legislature for that purpose, the amount of the costs as taxed.

This Act shall not apply to suits against the Crown by petition under The Petition of Right Act.

This Act shall apply to proceedings pending when this Act comes into force.

THE RECOVERY OF POSSESSION OF LAND ACT, 1939

When any person refuses or fails to cease using or occupying land which he is wrongfully or without lawful authority using

or occupying, the person entitled to possession may, upon affidavit of the facts, apply *ex parte* to the judge of the district court of the judicial district within which the land is situated for an order granting him leave to serve a notice of motion directed to the person in possession and returnable before the judge at such time and place as may be fixed by the order, requiring the person to whom the notice is directed to show cause why an order should not be made for his removal from the land, and to compel him to vacate it, and to cease using or occupying it.

THE TAX ENFORCEMENT ACT, 1939

This is a re-enactment and consolidation of "The Tax Enforcement Act" under which proceedings against land to enforce payment of taxes are taken in lieu of the former "Arrears of Taxes Act." The municipality now obtains title in default of payment instead of private purchasers with the municipality only as an alternative.

AN ACT TO AMEND THE HOMESTEADS ACT

Section 4 of the Act is repealed and a new section substituted. The purpose of the new section is to clear up doubts which have arisen as to the validity of the execution of a great many documents by wives owing to forms printed by some law stationers and adopted by a considerable number of the legal profession. It is now declared that the declaration of the wife may either be in the instrument or annexed thereto or endorsed or written thereon. If the declaration is in the instrument the wife's signature to the instrument shall be sufficient signature also to the declaration. If the declaration is endorsed on or written at the end of the instrument the wife's signature to the declaration shall be sufficient signature also to the instrument, but if the declaration is annexed to the instrument the wife shall sign both the declaration and the instrument. The new section is declared to have been operative since the beginning of the Act so as to validate all existing instruments where there might be doubt under this head.

In case of a transfer to a person who holds a mortgage on a homestead, or of a quitclaim deed back to a vendor of a homestead, an additional precaution is enacted to ensure that the wife fully understands and agrees. There shall be also annexed to or endorsed on the instrument a certificate by a practising solicitor that he has explained to the wife separate

and apart from her husband, and that she understands the purpose and effect of the instrument. Outside of the Province the certificate can be made before a notary public. The provisions of the Homesteads Act with respect to dispensing with the wife's signature in proper case where she is living apart from her husband are also made applicable.

THE CONDITIONAL SALES ACT

Under amendments to the above Act in every conditional sale contract, save in respect of farm implements, there are now implied warranties of, quiet possession; the vendor's right to sell; freedom from encumbrance; merchantable quality, subject to certain conditions (save in the case of second hand goods); and fitness, save in the case of second hand goods where the contract contains a statement to that effect and where the buyer either expressly or by implication makes known the particular purpose for which the goods are required.

A further amendment nullifies provisions, the application of which depends merely on the opinion of the seller that a circumstance or state of things exists which affects his security.

Another amendment provides that the benefits of the Act cannot be waived save in respect of the warranty of fitness, in cases where the seller proves that before the contract was made, the provision excluding the warranty was brought to the notice of the buyer and its contents made clear to him.

THE LIMITATIONS OF CIVIL RIGHTS ACT, 1939

In addition to dealing with the rights of mortgagees as mentioned in the general section of this report, this Act also deals with conditional sales, the sale of farm implements, the enforcement of judgments and payment in currency. It also provides that every agreement or bargain, verbal or written, express or implied, waiving the Act shall be null, void and have no affect.

Section 31 of the Act is certainly a departure from settled lines of legislation, if there are any such. It reads as follows :

"Where an appeal is taken under this Act each court appealed to shall have and exercise a similar discretion to that of the court or judge appealed from, notwithstanding that the judgment or order appealed from was made in the discretion of the court or judge or local master, and may draw inferences of

fact and pronounce the judgment or make the order which in its judgment the court or judge or officer whose judgment or order is appealed from ought to have pronounced or made."

Another of the interesting things in the Act is section 12, which provides :

"Notwithstanding anything contained in any agreement for sale of land hereafter made or in any mortgage of land hereafter given, or in any agreement renewing or extending the same, no premium upon or in respect of an insurance policy on the life of the purchaser or mortgagor taken by or assigned to the vendor or mortgagee as collateral security for the amount owing under the agreement for sale or mortgage, shall be charged or added by the vendor or mortgagee to the account of the purchaser or mortgagor in respect of the amount so owing or form a lien or charge on the land; and any agreement, stipulation or covenant to the contrary is and shall be null, void and of no effect."

ALBERTA

WATER RESOURCES ACT AMENDMENT ACT, 1939.

The new section 5 of this Act vests in the Province the property in all water to which the legislative authority of the Province extends and which is not vested in the Province by the Natural Resources Transfer Agreement, and declares that no person shall have any right of water diversion unless by virtue of a license under the Act, save persons who had such right on the First of April, 1931, under a grant, permit or license given under the Irrigation Act, the Dominion Lands Act or the Dominion Water Powers Act.

TOWN AND VILLAGE ACT AMENDMENT ACT, 1939.

A new section numbered 363A makes the taxes on a parcel a first charge upon any money payable under a fire insurance policy on any building or erection thereon, save and except any fire insurance policy effected and maintained by a mortgagee for his own protection.

GUARANTEES ACKNOWLEDGMENT ACT.

This Act does not apply to guarantees given by a corporation or to bills of exchange, promissory notes, cheques, bonds or recognizances to the Crown or to any Court or judge, or made pursuant to any statute, nor to guarantees given on the sale of any interest in land or upon the sale of any interest in any goods or chattels.

Save as above mentioned no guarantee entered into after the Act came into force on July First, 1939, shall be of any force or effect, unless the person entering into the obligation created thereby appears before a notary public and satisfies the notary that he is aware of and understands the contents of the deed or instrument and unless the notary public issues under his seal his certificate to that effect, in the form set out in the Act.

GARAGEMEN'S LIEN ACT AMENDMENT ACT, 1939.

This Act extends the time within which a lien must be filed from seven days to nineteen days from the last day upon which the car was repaired, serviced or stored. It also extends the time within which seizure of the car is to be made from ninety to one hundred and eighty days from the filing of the lien.

LAND TITLES ACT.

This Act has been amended by striking out section 105. The effect of this is to cancel all attornment clauses in mortgages or agreements for sale whether made before or after the Act comes into force.

LEGAL PROFESSION ACT AMENDMENT ACT, 1939.

This Act empowers the Benchers of the Law Society of Alberta to create a special fund for the purpose of reimbursing in whole or in part persons who sustain pecuniary loss by reason of the misappropriation or conversion by any barrister or solicitor of money or other property entrusted to him in his professional capacity. The fund is to be raised by a special annual levy on members of the society of such amount as may be fixed by the Benchers.

BRITISH COLUMBIA

THE PUBLIC UTILITIES ACT.

This is a general Act for the regulation of public utilities. The Commission constituted by the Act is not as is usually the case—a mere rate-making body. It not only has jurisdiction over rates but has a general supervision over all public utilities as defined by the Act, regarding equipment, appliances, safety devices, extension of works, convenience or service to the public and the issue of corporate securities.

THE MARRIAGE ACT AMENDMENT ACT, 1938.

Upon proclamation by the Lieutenant-Governor in Council, sections 39, 40, 41 and 42 of the above Act are to come in force. These sections provide, subject to the exception contained in subsection 2 of Section 39, that no issuer of marriage licenses shall issue a license nor shall any marriage commissioner solemnize a marriage nor shall any minister or clergyman publish the banns of a marriage unless there has first been filed with the issuer of marriage licenses or with the marriage commissioner or with the minister or clergyman as the case may be a certificate in a prescribed form in respect of each party to the intended marriage showing:—

- “(a) That a standard laboratory test has been made in a laboratory approved by the Provincial Board of Health of the blood of the party to the intended marriage, with a view to the determination of syphilis :
- “(b) That the blood specimen was taken by a medical practitioner registered under the ‘Medical Act’ within twenty days’ prior to the issuance of the marriage license or the solemnization of the marriage :
- “(c) That the result of the blood test has been made known to both parties to the intended marriage.”

THE COMPANIES ACT.

Mention was made in last year's Report of an amendment to the British Columbia Companies' Act, which was evidently intended to go hand in hand with Succession Duty Legislation, and which was obviously an attempt to fix the situs in B.C. of shares on a branch register, which but for the amendment would have their situs elsewhere. This year's amendment adds a proviso to the subsection so that the subsection shall not apply to the shares held at the date of his death by a deceased member not ordinarily resident in the Province in any public company whose business operations are of an industrial, mining, commercial investment or financial nature and are principally carried on outside of Canada, either directly or through subsidiary, affiliated or associated companies and whose assets (except securities acquired by the investment of accumulated income, bank deposits held in Canada, and shares of subsidiary, affiliated, or associated companies) are situate outside of Canada.

THE MOTOR VEHICLE ACT.

The Motor Vehicle Act is amended so as to abolish the passenger hazard. The new section reads as follows :

"74 B. No action shall lie against either the owner or the driver of a motor-vehicle by a person who is carried as a passenger in that motor-vehicle, or by his executor or administrator or by any person who is entitled to sue under the 'Families Compensation Act,' for any injury, loss, or damage sustained by such person or for the death of such person by reason of the operation of that motor-vehicle by the driver thereof while such person is a passenger on or is entering or alighting from that motor-vehicle; but the provisions of this section shall not relieve :—

"(a) Any person transporting a passenger for hire or gain; or

"(b) Any person, to whose business the transportation of passengers is normally incidental, transporting a passenger in the ordinary course of the transporter's business—from liability for injury, loss, or damage to such passenger, or arising from the death of such passenger. The provisions of this section shall not apply in respect of any cause of action which arose prior to the date of this enactment."

CREDIT UNIONS ACT.

This is a general enabling Act for the incorporation of credit unions.

LEGAL PROFESSIONS ACT AMENDMENT ACT, 1939.

Under this Act no person shall carry on the practice of profession of a barrister or solicitor unless qualified under the Act. If he does so he is liable on summary conviction to a fine not exceeding one hundred dollars or to imprisonment for a term not exceeding six months.

If the offence is committed by a corporation, every director, manager, secretary or other officer is deemed to be guilty and liable to the same penalties whether the corporation has been convicted or not.

The definition of practising the profession of a barrister or solicitor has been made wide enough to cover everything that could possibly be called legal work, whether it has heretofore lain exclusively within the ambit of our profession or not.

W. S. MONTGOMERY, Chairman.