

LEGISLATION

THE CHANGE OF NAME ACT OF ONTARIO, 1939

The ordinary right to use or change a name¹ has been seriously affected by the Ontario *Change of Name Act, 1939*,² apparently modelled on a recent Manitoba statute of a similar nature.³ Section 2 of the Ontario Act provides: "Any person of the full age of twenty-one years, who is a British subject by birth or naturalization, except a married woman, may make an application for a change of name." Section 13 (1) states, *inter alia*, that "no person shall change or attempt to change his name except under the provisions of this Act"; an exception is made in the case of a change of name to that of her husband by a woman upon her marriage.

It is apparent that the effect of the Act is to prevent a husband from taking his wife's name except by resorting to its provisions, but it raises a more interesting problem in connection with federal legislative jurisdiction over aliens.⁴ Are aliens included within the prohibition of s. 13 (1), or must we, by applying the rule of construction that the legislature must not be taken to have intended to exceed its legislative powers, conclude that the words "no person" in s. 13 (1) must be construed with reference to the words of s. 27. It is a question of considerable importance whether the province can confine the right to resort to the Act to British subjects of full age and yet purport to prohibit aliens from exercising common law rights in respect of change of name. If this is what the Act attempts, it is arguable that it is *ultra vires* as being in pith and substance legislation establishing a statutory prohibition affecting aliens, within the principles laid down in *Union Colliery Co. Ltd. v. Bryden*.⁵

¹ Linell, *The Law of Names*; Halsbury, 2nd ed., vol. 23, p. 554. Although no formality is generally required when one assumes a new name, in order to preserve testimony and obviate doubt and confusion which a change of name is likely to involve one of three courses is usual (Halsbury, p. 558). A private Act is obtained, or a Royal Licence, or a deed poll is executed. Execution of a deed poll is the commonest method. Private acts are not unusual in Nova Scotia: see *Statutes of Nova Scotia, 1939*, c. 109-112.

² 1939 (Ont.), c. 6.

³ *The Change of Name Act, 1937-38* (Man.), c. 5; amended, 1939 (Man.), c. 9.

⁴ *The British North America Act, 1867*, s. 91(25).

⁵ [1899] A.C. 580, 68 L.J.P.C. 118, 81 L.T. 277, 15 T.L.R. 598. Cf. *In re The Coal Mines Regulation Act* (1904), 10 B.C.R. 408, 24 C.L.T. 342 (C.A.); *Brooks-Bidlake and Whittall, Ltd. v. Atty.-Gen. for B.C.*, [1923] A.C. 450, 92 L.J.P.C. 124, 128 L.T. 801, 39 T.L.R. 220, [1923] 1 W.W.R. 1150, [1923] 2 D.L.R. 189.

THE LEGAL PROFESSION ACT AMENDMENT ACT OF ALBERTA,
1939

This statute gives power to the benchers of the Law Society of Alberta to create a special fund by the levy of an annual assessment upon members of the Law Society for the purpose of the reimbursement in whole or in part of persons sustaining pecuniary loss by reason of misappropriation or conversion by any member of the Society of money or other property entrusted to or received by such member in his professional capacity, to administer the fund, and for that purpose to make such rules and regulations as they may deem necessary.¹

The foregoing provisions do not match in elaborateness the provisions of The New Zealand Law Practitioners Act, 1931,² or of The New South Wales Legal Practitioners Act, 1898-1936,³ both of which deal in detail with the "Solicitors' Fidelity Guarantee Fund" created by them, but they indicate a response to the need for safe guarding clients against defalcations and a recognition of the corporate responsibility of the Law Society to the public at large for the conduct of its members.

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THE MANITOBA EVIDENCE ACT AMENDMENT ACT, 1939

The English Evidence Act, 1938, ss. 1, 2 and 6, applicable "in any civil proceedings", has been copied in Manitoba which has, however, extended its statute to "any legal proceedings" so as to embrace the field of "provincial crimes".¹ Readers of the REVIEW are referred to (1938), 16 Canadian Bar Review 632, (1939), 17 Canadian Bar Review 302 and (1939), 17 Canadian Bar Review 469, for discussions of the English Act. Lord Maugham who introduced it concedes that it "proceeds on conservative lines", but his assertion that it "is not the last word of the subject" should encourage those who would have liked a more thorough-going reform of some of our antiquated rules of evidence.

¹ 1939 (Alta.), c. 91, amending R.S.A. 1922, c. 206.

² New Zealand Acts, 1931, No. 46, part III, The Solicitors' Fidelity Guarantee Fund, ss. 71-93.

³ Incorporated Acts of New South Wales, vol. 12, p. 579, part VIII, The Solicitors' Fidelity Guarantee Fund, ss. 45-65.

¹ 1939 (Man.), c. 19, amending The Evidence Act, 1933 (Man.), c. 11.