

THE INTRODUCTION OF ENGLISH LAW INTO ALBERTA

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I

The majority of the Canadian provinces follow the common law tradition, and do not have a Code to lay down the principles of their law, nor do Imperial, federal, or provincial statutes cover more than a fraction of the entire area of the law. In England this gap has been filled up over centuries by a process of gradual accretion, through the decisions of thousands of judges. No Canadian province is old enough for this process to have produced a reasonably complete body of judge-made law, however, so that in every case resort is had to English law to fill in the gaps not dealt with by statutes.

Such a solution has come naturally, for all the common law provinces were at one time English colonies or parts of colonies, and so subject to the rules of the common law governing the migration of English law to new colonies. The basic outlines of this process have been settled for over three hundred years, and may be briefly sketched here. A colony conquered from a European ruler and possessing its own civilized laws is deemed to retain its law until the English monarch sees fit to alter it,¹ but this rule has no application to any of the Canadian common law provinces, all of which (even Nova Scotia) have been held to have been not conquered, but acquired by settlement.² In a settled colony, the first colonists on arrival are deemed to bring with them such of the laws of England as are reasonably applicable to the circumstances of the new colony.³ This doctrine is probably a survival of the Medieval notion of personal allegiance, which could be lost only by becoming the subject of another sovereign.⁴ Therefore in a settled colony the law would be the law of England as it existed on the founding of the settlement, except where inapplicable to the colony, or where changed since by local statutes, or by Imperial statutes extending to that colony.⁵ This is the situation in all the Maritime provinces, the relevant dates

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¹ *Calvin's Case* (1609) 7 Co. Rep. 1a; 77 E.R. 377; 2 How. St. Tr. 599; see especially p. 17a (Co. Rep.); *Campbell v. Hall* (K.B. 1774) 20 How. St. Tr. 230, 320, 329; see also note (1722) 2 Peere Wms. 75, 24 E.R. 646.

² Dawson, *Government of Canada* 5-6 (3d ed. 1957); Clements' *Canadian Constitution* 280-81 (3d ed. 1916). This is not true of those parts of Ontario ceded by France to Britain in 1763, but as noted below, the same result has been achieved throughout Ontario by statute.

³ *Calvin's Case*, *supra*; 1 Bl. Com. 107; *A.-G. v. Stewart* (Ch. 1817) 2 Mer. 143, 35 E.R. 895; *Cooper v. Stuart* (P.C. (N.S.W.) 1889) 14 App.Cas. 286, 291-92; Gray, *Nature and Sources of the Law 196-97* (2d ed. 1921).

⁴ This is the position taken by Windeyer, *A Birthright and Inheritance* (1962) 1 Tas. U. L. Rev. 635. But on naturalization, and loss of personal allegiance, cf. the Report of the Commissioners on Naturalization (1870), and the common law before 1870: *R. v. Story* (Q.B. 1571) 1 How. St. Tr. 1087, 1090, 1091; *R. v. Macdonald* (K.B. 1747) 18 How. St. Tr. 858, 859.

⁵ We must therefore carefully distinguish British statutes in force this way from those in force *proprio vigore*. Statutes in force *proprio vigore* are (since the Colonial Laws Validity Act, 1865 (Imp.) 28 & 29 Vict. c. 63) those expressly or implied intended to be in force in the colony, whereas those which are dealt with in this essay were intended to apply when enacted only to England, and have been transplanted as part of the law of England to the new colonies. The process somewhat resembles a giant incorporation by reference. See *A.-G. Alta. v. Huggard Assets Ltd.* (P.C. (Can.) 1953) 8 W.W.R. (N.S.) 561, 569-70, and *Bank of Upper Canada v. Bethune* (C.A. 1833) 4 U.C.Q.B. (O.S.) 165, 171 ff.

for the reception of English law being 3 October 1758 for Nova Scotia and New Brunswick, 7 October 1763 for Prince Edward Island, and 31 December 1832 for Newfoundland.⁶

In Ontario (Upper Canada) and British Columbia the situation is much the same, except that legislation has since been passed codifying the common law rule. Ontario received English law as of 15 October 1792, and British Columbia as of 19 November 1858.⁷

The situation in Western Canada is a little more complicated, however. The first settlements in many areas were most probably French fur trading posts, but they had little permanence, and few people seem seriously to have advocated the view that the Prairies, like Quebec, were a conquered colony rather than a settled colony.⁸ This view is largely due to the fact that most of this area was included in the grant made to the Hudson's Bay Company on 2 May 1670. Not only did the Company introduce settlers and so by force of common law introduce English law, but the charter of the company, in granting governmental powers over Rupert's Land to the Company, established the law of England over that territory.⁹ The importance of introduction of English law by settlers lies in the fact that a little of the Prairies and most of the North were not included in Rupert's Land, and so were not subject to the Company's Charter.¹⁰ Though the Company had governmental powers, it did little to exercise them until the founding of the Selkirk colony.¹¹ For the areas outside this colony, the only provision made for the administration of justice was contained in Imperial statutes allowing the

⁶ Falconbridge, *Banking and Bills of Exchange* 11, 12 (6th ed. 1956). 3 October 1758 is the date of meeting of the first general assembly of Nova Scotia (which then included what is now New Brunswick), and the date given for Prince Edward Island was set by proclamation. The first Newfoundland assembly met on 1 January 1833. See *Young v. Blaikie* (1822) 1 Nfld. R. 277, 283. Cf. *Windeyer, loc. cit. supra*, 667.

⁷ (U.C.) 32 Geo. 3 c. 1 s. 3, now the Property and Civil Rights Act, R.S.O. 1860 c. 310, and (U.C.) 40 Geo. 3 c. 1 for criminal law (now covered by the Criminal Code as noted below, nn. 99, 102.) As the Canadian constitution is now interpreted, "property and civil rights" is somewhat narrower than civil (non-criminal) law. If then the terms of the 1792 statute of Upper Canada are narrower than those of the Quebec Act, 1774, is the law of Canada (i.e. New France) still in force in the parts of Ontario included in the old province of Quebec (as defined under the 1774 statute) for some subjects? For British Columbia, see the Governor's Proclamation of 19 November 1858, extended to the mainland by 34 Vict. (1871) no. 70, now found in the English Law Act, R.S.B.C. 1960 c. 129.

See also R.S.C. 1952 c. 85 on the law of divorce in Ontario.

When these provinces entered Confederation, s. 129 of the British North America Act, 1867 of course applied to them, continuing in force the existing law.

⁸ *Sinclair v. Mulligan* (Man. C.A. 1888) 5 Man. R. 18; *A.-G. Alta v. Huggard Assets Ltd.*, *supra*, and *Walker v. Walker* (P.C. (Man.)) [1919] 2 W.W.R. 935, 936-37 take the view that only English law prevailed, though some question has been raised by McCaul, *Constitutional Status of the North-West Territories* (1884) 4 Can. L.T. 1, 9-13, and Anglin J. in *Trusts & Guarantee Co. v. R.* (1916) 54 S.C.R. 107, 125. In any event, subsequent legislation has rendered the question hypothetical.

⁹ 1 Oliver, *The Canadian North-West* 75-76, 144-45, 149 (1914).

¹⁰ *id.* at 143.

¹¹ *id.* at 30-39, 75 ff., 86-90, 154. The Hudson's Bay Company's legislative council for Assinibola on 11 April 1862 introduced the law of England as of the date of Queen Victoria's accession (20 June 1837), and then on 7 January 1864 introduced English law as of that date (R.S.M. 1881 p. lxxix), but as seen below, this was later changed by legislation, though it caused confusion for a time, the effect of these ordinances being said to be purely procedural in *Sinclair v. Mulligan, supra*. See note 14, *infra*; McCaul, *loc. cit. supra*, at 13, *Walker v. Walker, supra*, at 936-37; Oliver, *op. cit. supra* 1323, 1330, 1346-47.

hearing of causes from the Northwest in the courts of adjoining colonies,¹² but the authorities for the most part ignore the possibility that the law of Upper Canada was thereby introduced into these territories.¹³

After the establishment of the Province of Manitoba, some confusion arose as to the date on which English law was received in that area,¹⁴ and a number of statutes were passed to clarify the situation. Both Manitoba and the Dominion passed declaratory acts naming 15 July 1870 (the date of admission of Manitoba into Confederation) as the date on which English law was received into that province¹⁵ and these have continued in force since, covering between them the whole field of legislative competence. In the rest of the Territories, the Legislative Assembly of the Territories passed an ordinance of doubtful validity adopting the same date as that used by Manitoba for the reception of English law into the Territories.¹⁶ This ordinance was, however, soon superseded by the North-West Territories Act of the Dominion, appointing the same date, 15 July 1870, for the reception of English law, and expressly excepting such English law as was "inapplicable".¹⁷ This Act was subjected to several minor amendments (notably in the revision of 1886),¹⁸ but still continues in force today and governs the present

¹² (Imp.) 43 Geo. 3 c. 138 provided for the trial of criminal offences in the territory not included in the Canadas or the U.S.A., in the courts of Upper or Lower Canada, with punishment according to the laws of the place of trial. After Lord Selkirk obtained an opinion that this Act did not apply to Hudson's Bay Company territories, (Imp.) 1 & 2 Geo. 4 c. 66 s. 5 was passed, deeming the statute of 43 Geo. 3 to extend to this area, all other laws and statutes *non obstante*. By s. 6 all contracts, agreements, debts, liabilities, and demands, or wrongs or injuries to the person or property, real or personal, were to be tried in Upper Canada as though arising there, the consequences of the lawsuit to be the same as though the matter had arisen in Upper Canada, except where claims to land were involved, in which case English law was to apply without the admixture of any local Upper Canada statutes. (Imp.) 22 & 23 Vict. c. 26 affirmed the previous legislation and the powers under it (never exercised) to appoint courts of summary jurisdiction for the territory. Summary trials for offences arising in this area by the new statute might be held in British Columbia or Upper Canada. This Act was not to extend to Hudson's Bay Company territory, British Columbia, or Vancouver Island. One may note that (Can.) 38 Vict. c. 49 ss. 64, 65, 71 and 73 somewhat modified the law of the Territories also, introducing parts of the law of Canada.

¹³ See the authorities cited in note 8, *supra*, but cf. McCaul, *loc. cit. supra* 14, 15. McCaul's view is on principle easier to understand, for the provisions of 1 & 2 Geo. 4 c. 66 s. 6 referred to above seem clearly to provide for the settlement of suits by the law of Upper Canada. In any event, the later legislation clarified the situation.

For a general history of the subject, see Oliver, *op. cit. supra* 20-39, 75-90; Harvey, *The Early Administration of Justice in the North-West* (1934) 1 Alta. L.Q. 1; Brown *British Statutes in the Emerging Nations of North America* (1963) 7 Am. J. Leg. Hist. 95.

¹⁴ See the memorandum by J.B. Coyne, K.C. in *The British North America Act and Amendments, 1867-1948*, p. 184 (King's Printer, Ottawa, 1948). (This appears at p. 204 in the 1962 edition.) *Sinclair v. Mulligan, supra*.

¹⁵ (Man.) 38 Vict. c. 12, now R.S.M. 1954 c. 52, s. 50; (Can.) 51 Vict. c. 33 s. 1, now R.S.C. 1927 c. 124 s. 4 (not repealed in 1952, and still in force), deeming the law of England to have been in force as of 15 July 1870 since that date, insofar as relates to matters within the legislative competence of the Parliament of Canada. It is to be noted that the present Manitoba statute contains a proviso saving rights acquired under the laws of Assinibola, so the issue raised in *Sinclair v. Mulligan* may not be dead even yet.

¹⁶ Ordinance No. 26 of 1884 s. 1 (Aug. 6); see (1900) 1 Terr. L.R. xvii. This ordinance was probably invalid because it conflicted with (Can.) 32-33 Vict. c. 3 s. 5, which presumably continued in force English law as of 2 May 1670. For a general history of this period see Oliver, *op. cit. supra* 115-19.

¹⁷ (Can.) 49 Vict. c. 25 s. 3:

"Subject to the provisions of the next preceding section the laws of England relating to civil and criminal matters, as the same existed on the 15th day of July, in the year of our Lord one thousand eight hundred and seventy, shall be in force in the Territories, in so far as the same are applicable to the Territories, and in so far as the same have not been, or may not hereafter be, repealed, altered, varied, modified, or affected by any Act of the Parliament of the United Kingdom applicable to the Territories, or of the Parliament of Canada, or by any ordinance of the Lieutenant-Governor in Council."

¹⁸ In the same year R.S.C. 1886 c. 50 s. 11 replaced the above provision with a slightly different wording:

"Subject to the provisions of this Act, the laws of England relating to civil and criminal matters, as the same existed on the fifteenth day of July, in the year of our Lord one thousand eight hundred and seventy, shall be in force in the Territories, in so far as the same are applicable to the territories, and in so far as the same have not been, or are not hereafter repealed, altered, varied, modified, or affected by any Act of the Parliament of the United Kingdom applicable to the Territories, or of the Parliament of Canada, or by any ordinance of the Lieutenant Governor in Council."

(Can.) 60-61 Vict. c. 28 s. 4 added to the end of this section the words "or of the Legislative Assembly."

Northwest Territories¹⁹ and Yukon.²⁰ It was therefore in force when in 1905 the new provinces of Alberta and Saskatchewan were established, the relevant Acts²¹ providing that the law existing in the Territories was to continue in the new provinces until modified by legislation. Therefore, for Alberta and Saskatchewan the relevant statutory provision, dating from 1886 and amended since, is as follows:

"Subject to the provisions of this Act the laws of England relating to civil and criminal matters, as the same existed on the fifteenth day of July, in the year of our Lord one thousand eight hundred and seventy, shall be in force in the Territories, in so far as the same are applicable to the Territories, and in so far as the same have not been, or are not hereafter, repealed, altered, varied, modified, or affected by any Act of the Parliament of the United Kingdom applicable to the Territories, or of the Parliament of Canada, or by any ordinance of the Lieutenant-Governor in Council, or of the Legislative Assembly."

It is to be noted that this section (unlike the one for Manitoba²²) is not expressed to be retroactive, and so presumably transactions before 18 February 1887 are governed by the law of England of 1670, or whatever other date may have been relevant before the passage of this statute.^{22a}

It is the purpose of this article to examine the use which the courts have made of these provisions, and what implications they have for the general administration of law in the Canadian West, with particular reference to the decisions of Alberta courts.

II

Before we consider in more detail the meaning of the term "applicable" in the statute quoted above, a few general remarks may be made. Though this enactment and the common law rule it replaced have been taken to apply to statutes as well as to the unwritten law, and to rules of equity as much as legal rules,²³ nevertheless ecclesiastical law

¹⁹ R.S.C. 1952 c. 331 s. 17.

²⁰ (Can.) 61 Vict. c. 6 s. 9, now R.S.C. 1952 c. 298 s. 33.

²¹ The Alberta Act (Can.) 4-5 Ed. 7 c. 3 s. 16; The Saskatchewan Act (Can.) 4-5 Ed. 7 c. 42 s. 16.

²² See R.S.C. 1927 c. 124 s. 4.

^{22a} *Maxwell on Interpretation of Statutes* 204-220 (11th ed. 1962), *Craies on Statute Law* 388-404 (6th ed. 1963).

²³ Falconbridge, *op. cit. supra* 426 suggests that the Act of 1886 was not intended to introduce rules of equity, as only the word "law" was used, and that the substantive rules of equity have been introduced into the Canadian common law provinces only by provincial Judicature Acts modelled upon the English Acts of 1873 and 1875. He supports this conclusion with reference to the history of Upper Canada, as described by him in (1914) 63 U. Pa. L. Rev. 1, reprinted in 34 Can. L.T. 1130. It is submitted, however, with the greatest respect, that this conclusion is unacceptable for several reasons. In the first place, the decisions of the courts of Upper Canada that the rules of equity were not in force there seemed to be based as much on the fact that they had not been given equitable jurisdiction, as upon the wording of the 1792 statute. In the second place, the word "laws" can at least as easily be interpreted as referring to all the rules of decision used by the English courts, and such a construction is to be preferred, for it will avoid the inconvenience and absurdity which would result if English legal rules and English statutes were enforced without any equitable rules. Such a use of the phrase "laws of England" is found in the Judicature Act, R.S.A. 1955 c. 164 s. 16. Thirdly, the Judicature Act's key sections are modelled on the English Act, which as Maitland pointed out, is designed to grant and to allocate powers and jurisdiction of courts, not to change the substantive rules which they are to enforce. Maitland, *Equity* 148 (2d ed. 1949). It is significant that ss. 32 (a) and 32 (b) of the Judicature Act appear on their face to be merely provisions as to remedies and relief, not as to substantive rules, nor do they give any date as of which English rules are to be applied, while s. 34(13), based on the famous English enactment, simply assumes that there are in force equitable rules (which might clash with legal ones). (But as noted in the text of this essay, the meaning of s. 32 is not beyond doubt.) Finally, western Canadian courts have been applying rules of equity for generations without reference to the Judicature Act to see whether the rule in question is provided for in that Act, and they have applied the Act of 1886 when dealing with statutes upon equitable topics. We may note that the Court of Chancery in Nova Scotia from the beginning followed substantive English rules of equity. Townsend, *History of the Court of Chancery in Nova Scotia* (1901) 20 Can. L.T. 14, 37, 74, 105. Accord, 15 *Corpus Juris Secundum* 614 (s. 13), 616 (s. 9).

and local custom of individual parts of England seem never to have been transplanted to the New World.²⁴

However, though there should be no difference between the applicability of statutes and common law rules, in most provinces, especially in the Maritimes,²⁵ the courts have been much more ready to apply English common law rules than to apply English statutes. In principle this seems strange, all the more because the statutes are in a great many cases designed to remedy defects in the common law. The answer, however, probably lies to a great extent in methods of legal research. English reports of decisions, digests, and textbooks have from a very early time been available in all new colonies, so much so that English cases are often looked on not as being merely persuasive, or as expressing a rule which may or may not be applicable for some special reason, but simply as expressing "the law" which is to be followed in precisely the same way as would a domestic decision. English statutes, on the other hand, have until recent times been extremely bulky, prolix, disorderly, and expensive. Few libraries have possessed a set of the Statutes at Large, and if they have it has done little good for want of any serviceable arrangement or index of the statutes, or a pruning out of repealed, obsolete, or inapplicable legislation. This rearrangement and pruning has been done in England in recent years,²⁶ but is of little help to one who wishes to determine what the law of England was in 1870, 1858, 1792, or 1758.²⁷ The practical result, therefore, has been that whatever may be the onus of proof in establishing whether a rule of common law or a statute is in force, the "onus of research" has been on him who wished to prove that an English statute was in force, with a few obvious exceptions, such as *Habeas Corpus*,²⁸ the Statute of Limitations,²⁹ the Statute of Frauds³⁰ and 13 Eliz. c. 5 on fraudulent conveyances.³¹

What does the North-West Territories Act mean when it refers to such of the laws of England as are "applicable"? The courts have taken the word "applicable" in the statute to refer not to the mere physical possibility of applying the English common law or legislation,³² but its

²⁴ *Re Ld. Bishop of Natal* (P.C. (Cape Col.) 1864) 3 Moo. P.C. N.S. 115, 152-53; 16 E.R. 43, 57; *Gray v. Nat. Trust Co.* (S.C. Alta. 1915) 8 W.W.R. 1061; *In re Seidler* (S.C. Alta.) [1929] 2 W.W.R. 645; *Vamvakidis v. Kirkoff* (Ont. C.A.) [1930] 2 D.L.R. 877; cf. 15 *Corpus Juris Secundum* 616 (s. 7), and Dale, *The Adoption of The Common Law by the American Colonies* (1882) 30 U. Pa. L.Rev. (O.S.) 353, 562 ff. But cf. *Baine, Johnstone & Co. v. Chambers* (1819) 1 Nfld. R. 154, 156; *Bishop of Columbia v. Cridge* (S.C. B.C. 1874) 1 B.C.R. (pt. 1) 5.

²⁵ *Clements' Canadian Constitution* 280-81 (3d ed. 1916).

²⁶ Allen, *Law in the Making* 426-28 (6th ed. 1958).

²⁷ The solution so far as English statutes in force on 15 July 1870 are concerned seems to be to consult the 1st edition of the Queen's Printer's *Chronological Table and Index to the Statutes in Force* (London, 1870), which gives a subject index of all statutes in force at the end of 32 & 33 Vict. (the 1869 session), thus omitting only 30 more Acts which received royal assent between then and 15 July 1870 (that is, the first 30 chapters of 33 & 34 Vict.)

²⁸ (Imp.) 1 & 2 Ph. & M. c. 13; 31 Car. 2 c. 2.

²⁹ (Imp.) 21 Jac. 1 c. 16 modified by (Imp.) 4 Anne c. 16; see *U.S. Savings & Loan Co. v. Rutledge* (Y.T. en banc 1903) 2 W.L.R. 471; *Piano etc. Co. v. Peterson* (S.C. 1906) 3 W.L.R. 565, 567, holding these two statutes to be in force.

³⁰ (Imp.) 29 Car. 2 c. 23.

³¹ Cf. *Connors v. Egli* (Alta. C.A.) [1924] 1 W.W.R. 1050.

³² Cf. *Plosted v. McLeod* (Sask. D.C. 1910) 12 W.L.R. 700, *R. v. O'Connor* (Man. Q.B. en banc for N.W.T. 1885) 1 Terr. L.R. 4, 11-12, 13.

reasonable suitability to the new territories,³³ thus in effect treating the Act of 1886 as being a codification of the common law rule,³⁴ with the exception of the fixing of a new date. It is further submitted that in the light of the leading authorities,³⁵ by far the most informative statement of the meaning of applicability is still that given by Blackstone:³⁰

"For it hath been held, that if an uninhabited country be discovered and planted by English subjects, all the English laws then in being, which are the birthright of every subject, are immediately there in force. But this must be understood with very many and very great restrictions. Such colonists carry with them only so much of the English law as is applicable to their own situation and the condition of an infant colony; such, for instance, as the general rules of inheritance, and of protection from personal injuries. The artificial refinements and distinctions incident to the property of a great and commercial people, the laws of police and revenue, (such especially as are enforced by penalties,) the mode of maintenance for the established clergy, the jurisdiction of spiritual courts, and a multitude of other provisions, are neither necessary nor convenient for them, and therefore are not in force."

When considering whether a statute or rule of English law is applicable to some part of the Commonwealth such as Alberta, the time at which the test is to be applied will be very important, for most of the reasons why such a rule might be inapplicable have to do with social and economic conditions rather than physical conditions such as climate or soil. Physical conditions remain the same over centuries, but social conditions vary greatly, the Northwest Territories in 1886 being a very different place from Alberta in 1964 or 2064. England in 1291 or 1886 was a very different place from "Alberta" then or now, but it is less easy to predict that social conditions existing in England in the past will never be relevant in Alberta in the future.

There are five different times which might be relevant in deciding whether any statute or rule of law is applicable:

- (1) the time that the rule was first enunciated or the statute received royal assent, in England
- (2) 15 July 1870 (the date on which English law is chosen for reception into Manitoba, Saskatchewan, and Alberta)
- (3) 18 February 1887 (the date on which the North-West Territories Act came into force)
- (4) the date on which this particular rule of law was first considered by a court in Alberta (or another part of the Canadian West?)
- (5) the present date.

Because on any question as to the applicability of a given rule of law the social conditions of England and of Alberta have to be compared, conditions in each of these areas might be considered at any one of the five times, thus yielding 5² or 25 different formulas, ranging all the way from consideration of both English and Canadian social conditions at the time the rule of law was first formulated in England, through

³³ Gray, *op. cit. supra* 186-97; Windeyer, *loc. cit. supra* at 668; *Fraser v. Kirkpatrick* (S.C. en banc 1907) 6 Terr. L.R. 403; *Brand v. Griffin* (S.C. Alta. 1908) 9 W.L.R. 427, 428; *In re Simpson Est.* (Alta. C.A.) [1927] 3 W.W.R. 534, 537-38; *Clarke v. Edmonton* [1930] S.C.R. 137.

Contra, Stuart J. dissenting in *Mackoweck v. Yachimyc* (Alta. C.A. 1917) 11 W.W.R. 1279, 1284; *Delohery v. Perm. Trustee Co.* (1904) 1 C.L.R. 283, 310 (but cf. *Quan Yick v. Hinds* (1905) 2 C.L.R. 345, and its double test of unsuitability or inapplicability). If a rule is incapable of application it must also be unsuitable: the *Quan Yick* case, at 356. But cf. n. 47 *infra*.

³⁴ Cf. 1 Bl. Com. 107, quoted *infra*.

³⁵ See n. 33 *supra*.

³⁰ 1 Bl. Com. 107

consideration of that time in England and social conditions in the Northwest Territories on 15 July 1870, to consideration of both English and Canadian social conditions at the present date.

We can, however, eliminate several possibilities immediately, for it is obvious that the social conditions of the Northwest Territories or Rupert's Land at any time much before 1870 are likely to be of no use. Before the early 19th century there were no permanent white settlers in the area, and so very few laws other than the simplest criminal law were necessary. Indeed, before 1760, a large proportion of the Europeans present were not English, and before 1670 probably none were. The mere fact that the problems for consideration is the introduction of English law into a "new colony"³⁷ shows that the circumstances of the "colony" are relevant at some date later than that of the first enunciation of the rule of law in question, which may far antedate even Columbus' voyages to the New World. Therefore number (1) can apply only to social conditions in England, and we are reduced to (5 x 4) 20 possible formulas.

There are two more dates which can be eliminated, though possibly they are not quite so obvious. If the law of England which is to be introduced is that of 15 July 1870, then any change in law or social conditions in England since then can have no *direct* relevance.³⁸ It is not the law of England of 1886 or any later date with which we are concerned, and therefore as we do not have to consider whether the law of England in 1886 or any later date is applicable we need not consider English conditions after 1870. Therefore numbers (3), (4), and (5) can apply only to conditions in Alberta, and we are left with (2 x 4) 8 possible formulas, which involve considering English conditions at the time of the introduction of the rule or in 1870, and consideration of Canadian conditions in 1870, 1887, on first consideration by local courts, or at the present.

It is also probable that 1887 (when the North-West Territories Act of 1886³⁹ came into force) or 1886 (when it received royal assent⁴⁰) can be eliminated, for the mere accident of date of passage of an Act should not govern the time from which the Act speaks. This is all the more notable in that the tense in which the relevant provision was written was changed between the North-West Territories Act of 1886, and the version which appeared in the Revised Statutes of Canada of the same year.⁴¹ And in any event, it is a cardinal rule of interpretation that a statute is to be read as always speaking, and the Alberta and Canada Interpretation Acts so provide.⁴² As the provisions of these two Acts are the same, it is unimportant which governs the North-West Territories Act of 1886 in its capacity as part of the law of Alberta within the competence of the Alberta legislature. It would, however, probably be taking this rule

³⁷ *Jez v. McKinney* (P.C. (Br. Hond.) 1889) 14 App.Cas. 77, applied in *Re Simpson Est.*, *supra*.

³⁸ Of course evidence that the emancipation of women in England led to the abolition of some rule in 1925 in England would be good evidence that the old rule is not applicable to Alberta, where women are similarly emancipated, but that is another matter.

³⁹ (Can.) 49 Vict. c. 25 s. 3, which came into force on 18 Feb. 1887, by Order in Council of 21 January 1887. See (1900) 1 Terr. L.R. xix.

⁴⁰ 2 June 1886.

⁴¹ See n. 27, *supra*.

⁴² Interpretation Act, 1958 (Alta.) c. 32 s. 6(1); Interpretation Act, R.S.C. 1952 c. 158, s. 10.

of construction too far to use it as our sole basis for deciding that the only date appropriate for the consideration of social conditions in Alberta could be the present date (though that is an entirely possible conclusion on broader grounds, as will be shown below.) Thus the possibilities are reduced to (2 x 3) 6.

A little reflection will show that the date on which the rule first came to be considered by Alberta courts cannot be the relevant date either, even though the decision by them may be binding. Consider, for instance, *Board v. Board*⁴³ in which the Judicial Committee of the Privy Council held in 1919 that the Divorce and Matrimonial Causes Act of 1857 had been introduced into the Territories. This is undoubtedly a binding decision on any Alberta court, but without for the moment looking at the actual words of the decision, let us consider what it must mean. The Privy Council cannot have held that the Act was applicable because of social conditions in Alberta in 1964, for they did not know what social conditions in Alberta in 1964 would be. Therefore they must have based their judgment on conditions in Alberta in 1919 (or the beginning of the suit), or at some earlier time, such as 1870. And if it was 1919 (or the beginning of the suit) then they were choosing what was for them "the present date", which is our number (5) above. Therefore, our number (4) cannot be the proper date for the examination of Alberta law, and indeed it would be ridiculous that it should be relevant, for the mere accident of the time of bringing an action should not decide for once and for all whether a certain rule is or is not applicable. After all, what if the Privy Council had decided in *Board v. Board*⁴³ that the Act of 1857 was in force only because of unusual social conditions present in Alberta in the wake of World War I?

The remaining question as to whether the relevant date at which conditions in Alberta should be examined is 1870 or the present date is very difficult, as Story⁴⁴ points out. Was the introduction of English law an instantaneous process, a sudden transplantation of all the law which in 1870 was applicable to the crude condition of the Territories, or is it a continuous process whereby rules of law which were formerly not applicable to the simple circumstances of the Canadian West may become applicable as social conditions change and the economy develops? Is a decision in 1919 that the Divorce and Matrimonial Causes Act, 1857 is in force a decision binding for all times, or is it only a decision that the Act was in force in 1919, and is thereafter only *rebus sic stantibus*?... The authorities differ markedly upon this subject⁴⁵ and as it is submitted that none of them are decisions on the point by way of *ratio* binding on Western Canadian courts, we must consider the question upon principle. Of course the question is not likely to arise often, for the applicability of English statutes and common law rules is not often raised, nor is it likely that in many cases such an evident change in social conditions will have occurred that counsel will seek to avoid an earlier decision upon the

⁴³ (P.C. (Alta.)) [1919] A.C. 956, *affg.* (Alta. C.A.) [1918] 2 W.W.R. 633.

⁴⁴ 1 *Story on the Constitution* 104-05 (5th ed. 1891).

⁴⁵ The clearest authority for applicability from time to time is *Cooper v. Stuart* (P.C. (N.S.W.) 1889) 14 App.Cas. 268, 291-92; though Ontario and New Brunswick courts seem to agree with this approach more than do Nova Scotia courts (Falconbridge, *op. cit. supra* at 11; Clements *op. cit. supra* at 277, 280). *Contra*, *Quan Yick v. Hinds, supra*, at 367, 378; *Mitchell v. Scales* (1907) 5 C.L.R. 405. *In re Simpson Est., supra*, does not really deal with this point, but a valuable discussion is found in Castles, *Reception and Status of English Law in Australia* (1963) 2 Adel. L. Rev. 1, 8-9, 16.

subject. This is all the more true because Canadian society is growing wealthier and more complex, so that more and more rules of property and trusts found in English law will come to bear some relevance to Canadian conditions. The rule in *Allhusen v. Whittell*⁴⁶ is an example. It is in the nature of such a rule, however, that it is unlikely to be raised by counsel until conditions have reached the point at which the rule will bear some relevance to the problems at hand, and so it is unlikely that decisions will be found in which such a rule has been held inapplicable. Therefore questions of whether to follow such decisions will rarely arise. When they do come up, however, the better course would be to consider the applicability of the rule or statute at the present time,⁴⁷ for three reasons. In the first place, as noted above, the law should be read as always speaking, and so the 1886 statute is to be read as referring to applicability from time to time. The 1886 statute says "insofar as the same *are* applicable" [italics added], not "*were* applicable". In the second place, the selection of 1870 as the date for consideration of applicability to the Territories would be arbitrary and senseless: why not 1869 just as well, or 1670 for that matter? A precise date is necessary only to define the body of law which may be applicable; no fixed and immutable date for determining applicability is necessary. Finally, we should seek to interpret the statute in such a way as to produce the most convenient result possible, and this will be achieved by selecting those rules of law which are fitted to our needs, not our grandparents' needs.

Finally, we must decide whether the relevant date at which to consider the English conditions is the date on which the English statute was passed or the rule of law in question was first enunciated, or 1870. There is authority on this point, for the Appellate Division of the Supreme Court of Alberta in *In re Simpson Estate*⁴⁸ held that the first alternative should be selected, because the essence of the problem is whether the reason for the adoption of the English rule in question would be equally applicable to conditions in Alberta. This decision was affirmed on other grounds by the Supreme Court of Canada, and treated as binding in the Trial Division by Egbert J. in *In re Budd Estate*.⁴⁹ The reasoning of Chief Justice Harvey in the *Simpson* case certainly has much merit, but it is submitted that an even stronger case can be made for considering the social conditions in England as they existed in 1870, and therefore the reasons why the rule in question was retained in England rather than the reasons for its original development. It is true that there are a certain number of archaic rules of English law whose *rationale* long ago ceased to apply, but a good many of these had been remedied by legislation before 1870, and in any event the examination of English social conditions in 1870 need not preclude a conclusion that such a rule performed no useful function at that time, and so should not be applied in Canada. Far more important, however, is the large body of statutes and rules of law which were laid down for reasons forgotten centuries ago in England,

⁴⁶ (1867) L.R. 4 Eq. 295; see Maclaren, *Allhusen v. Whittell: Is It Law in Ontario?* (1959) 2 Can. Bar J. 399.

⁴⁷ *Fraser v. Kirkpatrick* (S.C. en banc 1907) 5 W.L.R. 286, 289; *Hellens v. Densmore* [1957] S.C.R. 768 appears also to support this conclusion.

⁴⁸ (Alta. C.A.) [1927] 3 W.W.R. 534, *revg.* [1927] 2 W.W.R. 104; *affd.* on other grounds [1928] S.C.R. 329.

⁴⁹ (S.C. Alta. 1958) 24 W.W.R. 383

yet which persist today as the foundation of our law. Our whole system of land tenure, for instance, depends upon feudal tenure and the statute *Quia Emptores*,⁵⁰ while the Statute of Uses⁵¹ continues to have significance for real property law, even though Henry VIII's motives for securing passage of the statute have been of merely academic concern for three hundred years.^{51a} Indeed, it is entirely possible that the whole motivation for the development of that most cherished institution, the trust, was tied up with the incidents of feudal tenure and the difficulties of livery of seisin. Yet would anyone dare to suggest that the trust or the fee simple was not received as part of the law of any Canadian common law province?

In 1908 an ingenious counsel suggested⁵² a line of reasoning whereby Imperial statutes not intended to have effect outside England might nevertheless be in force in Alberta even if passed after 15 July 1870. His contention was that the law in force in the West was that of 15 July 1870 only insofar as it was not altered by (*inter alia*) Imperial statutes "applicable" to the Territories. "Applicable", he reasoned, must bear the same meaning it had been found to have where it first appeared in the same section of the North-West Territories Act, and so must mean "suitable". Therefore an Imperial Act of (say) 1874 in force *proprio vigore* only in England would, by the 1886 Act, be in force in Alberta and Saskatchewan if it amended rules of law which were in force in these provinces, and so was "suitable" to be applied in them. The answer to this argument was, of course, that the word "applicable" bore different meanings in the two places it was used in the section, for had this line of reasoning been correct, there would have been no point to naming 15 July 1870 or any other date as a "cut-off" point for the reception of English law. Indeed the application of virtually all current Imperial legislation from time to time would in practice largely destroy the legislative autonomy of Canada and Alberta.

The mere fact that the bulk of the English common law was received into the Canadian common law provinces does not, of course, affect the normal rules as to which courts' decisions bind other courts. No Canadian court is bound by the decision of any English court other than the Judicial Committee of the Privy Council,^{52a} and it follows therefore that Canadian courts are free to disagree with English courts as to the proper interpretation of the common law⁵³ (or, presumably, of an English statute). Therefore, Canadian courts should be free not only to disagree with the precise manner in which English courts have developed the common law, but also to develop its details for themselves. An Alberta court ought to be able, for instance, to disagree with an English decision of 1866, or to derive the same conclusions from previous English decisions

⁵⁰ (Imp.) 18 Ed. 1 (st. 1) c. 1.

⁵¹ (Imp.) 27 Hen. 8 c. 10.

^{51a} Hanbury, *Modern Equity* 10, 12-13, 24-25 (8th ed. 1962).

⁵² *Brand v. Griffin* (S.C. Alta. 1908) 9 W.L.R. 427; *Accord, Gray v. National Trust Co.* (S.C. Alta. 1915) 8 W.W.R. 1061.

^{52a} *Safeway Stores Ltd. v. Harris* (Man. C.A.) [1948] 4 D.L.R. 187; *cf. Robins v. National Trust Co.* (P.C. (Can.)) [1927] A.C. 515.

⁵³ *R. v. Cyr.* (S.C. Alta.) [1917] 3 W.W.R. 849, 857; *Mackowecki v. Yachimyc*, *supra*; *Flewelling v. Johnston* (Alta. C.A. 1921) 16 Alta. L.R. 409, 413-14; *Stott v. Raby* (Alta. D.C.) [1934] 3 W.W.R. 625, 628, *reversed* (S.C. Alta.) at 630; *MacIaren*, *loc. cit. supra* at 400; 15 *Corpus Juris Secundum* 619 (s. 11(b)); yet *cf.* the remarks of Idington J. in *In re Church* (S.C.C.) [1923] 3 W.W.R. 405; *R. v. Hyland* (1898) 24 V.L.R. 101, *R. v. Scully* (N.Z. C.A. 1903) 23 N.Z.L.R. 380, 382, 384.

of 1840 and 1812 as an English court happened to derive in 1885. Therefore, the mere fact that an English rule was first enunciated after the date on which a particular province received English law does not preclude the courts of that province from following the English decision.⁵⁴ In practice, of course, this is precisely what Canadian courts have done, and modern English decisions are continually being cited and followed by Canadian courts. It may be otherwise, however, with respect to any rules which have entered the common law in England from custom after the date on which the province received English law, and which rules have not been developed by English courts purely from previous decisions.⁵⁵

III

In practice it is often difficult to predict which rules of law and which statutes will be held to be applicable, and most cases on the subject offer little guidance, being more concerned with the particular rule or statute under consideration than the general principles which must govern the matter. The following principles are, however, capable of being deduced from the authorities, and may be of some assistance:

1. Statutes are less likely to be found applicable than are common law rules.⁵⁶
2. A statute may be applicable only in part.⁵⁷
3. A statute or rule will, however, be in force throughout the entire province, or not at all, and so the question is whether it is applicable to all, or substantially all, of the province.⁵⁸
4. A statute or rule fundamentally necessary to the carrying on of business and the administration of justice as now practised, is in force.⁵⁹
5. A statute or rule recognized expressly or impliedly by the local legislature to be in force is in force.⁶⁰
6. It is a strong indication of applicability that the local courts have impliedly recognized the rule or statute as being in force, over a long period of time.⁶¹
7. A statute or rule is not in force which was originally intended to apply only to one part of England, or to only one particular institution in England.⁶² But it should make no difference that the statute was passed only for England and had no force *proprio vigore* outside England.
8. A statute ameliorating the rigors or injustice or unsuitability of the common law, or simplifying procedure, will probably be in force.⁶³
9. A statute curtailing the royal prerogative will probably be in force.⁶⁴
10. A statute in favor of the liberty of the subject will probably be in force.⁶⁵

⁵⁴ *Re Lotzkar* (B.C. S.C. 1963) 40 D.L.R. (2d) 843, 852; cf. *Maclaren*, loc. cit. supra.

⁵⁵ *O'Keefe v. Toronto Ins. Co.* [1926] 4 D.L.R. 471, *Falconbridge op. cit. supra* 13.

⁵⁶ see n. 25 supra.

⁵⁷ *Fraser v. Kirkpatrick*, supra at 289; but cf. *Quan Yick v. Hinds*, supra, at 364.

⁵⁸ 15 *Corpus Juris Secundum* 621-22 (s. 13(a)).

⁵⁹ *Clements*, op. cit. supra, 288-89.

⁶⁰ *ibid.*

⁶¹ *ibid.*

⁶² *ibid.*; 15 *Corpus Juris Secundum* 621-22 (s. 13(a)).

⁶³ *Clements*, op. cit. supra at 280. But on procedure, see *Augustino v. Can. N.W. Ry.* (Alta. C.A.) [1928] 1 W.W.R. 481, 482-83.

⁶⁴ *ibid.*; *Falconbridge*, op. cit. supra 11.

⁶⁵ *ibid.*; *Fraser v. Kirkpatrick*, supra.

11. Applicability may refer to the physical conditions and climate,⁶⁶ or to the social conditions⁶⁷ and public beliefs,⁶⁸ or customs and practice⁶⁹ of the province.
12. In the absence of such a difference in conditions or attitudes between England and the province a rule or statute, it is suggested,⁷⁰ will not be inapplicable merely because it has been criticized by English judges as being unjust or unwise, for this would be to usurp the function of the legislature. *Sed quaere*.
13. A rule or statute will not of course be in force if it is in fact incapable of being applied in the province for want of persons or things to which it could apply⁷¹ or institutions in which it could be applied.⁷² But this rule must be subject to the *caveat* that mere apparent lack of powers or jurisdiction in any provincial court to enforce or apply the rule or statute will not be sufficient for this purpose, for the provincial superior courts are presumed to have all jurisdiction except that which is expressly denied them,⁷³ and as soon as an institution to which the English law could apply is established, the law becomes applicable.⁷⁴
14. A rule or statute will not be in force where its application in the province would result in far more expense and inconvenience, or injustice, than in England. This is seen in the fact that native marriages have been held valid without the offices of a clergyman, contrary to the rule in *R. v. Millis*,⁷⁵ where the majority of the natives were not Christians, and priests were few and far distant.⁷⁶
15. Laws enacting police regulations are probably not in force.⁷⁷
16. Revenue laws are almost certainly not in force.⁷⁸
17. Laws for the establishment of the Church of England and the regulation of worship are probably not in force.⁷⁹

In practice, the courts of Alberta and the Northwest Territories have on almost every occasion treated all the English common law rules as being in force, without any discussion as to why they were applicable. Alberta courts have, however, deviated from the English rule with respect to the right of a proprietor to appropriate surface waters,⁸⁰ the right of a

⁶⁶ *Stott v. Raby*, *supra*; 15 *Corpus Juris Secundum* 621-22 (s. 13(a)).

⁶⁷ *In re Simpson Est.*, *supra*; see also *Edwards v. A.-G. Can.* (P.C. (Can.)) [1930] A.C. 124.

⁶⁸ *Flewelling v. Johnston*, *supra* at 413-14, following *Keewatin Power Co. v. Kenora* (Ont. C.A. 1906) 13 O.L.R. 237.

⁶⁹ 15 *Corpus Juris Secundum* 621-22 (s. 13(a)).

⁷⁰ *ibid.*

⁷¹ *Plested v. McLeod* (Sask. D.C. 1910) 12 W.L.R. 700, 702-03.

⁷² *Quan Yick v. Hinds*, *supra* at 356; *R. v. O'Connor* (S.C. *en banc* 1885) 1 Terr. L.R. 4; *A.-G. v. Stewart*, *supra*, n. 3, at 11-12, 13 (no registry office for enrolment of deeds in Grenada); *Connors v. Egli* (Alta. C.A.) [1924] 1 W.W.R. 1050, 1053.

⁷³ *Board v. Board*, *supra*, n. 43.

⁷⁴ *Hollens v. Densmore* [1957] S.C.R. 768. This case is considerably enlivened by the futile attempt of the British Columbia Legislature to re-enact the Divorce and Matrimonial Causes Act, 1857 (Imp.), in splendid disregard of the fact that the statute deals almost entirely with marriage and divorce, which are *ultra vires* the province, and of the fact that the statute had been held to be in force in the province, so that no re-enactment was necessary.

⁷⁵ (H.L. (E.) 1843) 10 Cl. & F. 534, 8 E.R. 844.

⁷⁶ *R. v. Nanquitsaka* (S.C. *en banc* 1889) 1 Terr. L.R. 211, 215; *Penhas v. Tan Soo Eng* (P.C. (Str. Setts.)) [1953] A.C. 304, 319; *Re Noah Est.* (S.C. N.W.T. 1962) 36 W.W.R. 577, and comment, (1962) 2 Alta L. Rev. 121.

⁷⁷ Rules 15 to 17 inclusive in the text are derived from the extract from 1 Bl. Com. 107 quoted above (n. 36), and approved in *Jez v. McKinney* (P.C. (Br. Hond.) 1889) 14 App.Cas. 77; *A.-G. v. Stewart*, n. 3 *supra*, and *Whicker v. Hume* (H.L. (E.) 1858) 7 H.L.C. 124, 150-51, 161, 166; 11 E.R. 50, 61, 65, 67.

⁷⁸ 1 Bl. Com. 107.

⁷⁹ See n. 24 *supra*.

⁸⁰ *Makowecki v. Yachtmyc* (Alta. C.A. 1917) 11 W.W.R. 1279.

woman to hold office,⁸¹ the applicability of the *ad medium filum aquae* rule,⁸² and the applicability of the Rule in *Shelley's Case*,⁸³ while the English law as to accretions to riparian property,⁸⁴ and exemptions from seizure⁸⁵ were held to be in force. A somewhat larger number of cases deal with the applicability of various English statutes to Alberta, but unfortunately few of the judgments reveal what factors were considered by the court in reaching its decision. *Connors v. Egli*⁸⁶ is an interesting decision, for although the Alberta legislature had by 1923 c. 5 s. 46 declared 13 Eliz. c. 5 (Imp.) on fraudulent conveyances to be in force in Alberta, the court held that section 3 was not in force because it was penal in character (and so conflicted with the Criminal Code), and sections 4 and 5 were not in force because their provisions could not be applied to the existing Alberta legal system. The Statute of Tenures, 1660 (Imp.) 12 Car. 2 c. 24 has been held by the Supreme Court of Canada to be in force in Alberta⁸⁷ with the result that all land in the province is held by free and common socage except where modern legislation has changed the incidents of tenure. Though the Privy Council reversed this decision on other grounds and doubted that the statute was part of the law of the western provinces, their Lordships' decision seems to support the view that landholding by free and common socage was introduced by the Hudson's Bay Company Charter of 1670.⁸⁸ It is unfortunate, however, that in the judgment of the Privy Council the distinction between Imperial statutes in force in Alberta *proprio vigore*, and those passed for England but in force because of the 1886 statute, was not more clearly drawn.⁸⁹ 4 & 5 Anne c. 16 s. 9 (on assignments by lessors) is in force,⁹⁰ but not 26 Geo. 2 c. 33 (marriage) as regards natives in remote areas.⁹¹ Other Acts which have been held in force are 5 & 6 Wm. 4 c. 54 and Archbishop Parker's tables on the prohibited degrees of marriage,⁹² Thellusson's Act (on accumulations),⁹³ the Wills Act, 1837,⁹⁴ the Divorce and Matrimonial Causes Act, 1857,⁹⁵ the Court of Probate Act, 1857,⁹⁶ the Partition Act, 1868,⁹⁷ and the Debtors' Act, 1869.⁹⁸

IV

To this point it has been assumed that the North-West Territories Act, 1886, and the Alberta Act were the only statutes relevant to the introduction of English law into Alberta, but this is in fact not the case, and the

⁸¹ *R. v. Cyr* (Alta. C.A.) [1917] 3 W.W.R. 849. See also *Edwards v. A.G. Can.* (P.C. (Can.)) [1930] A.C. 124.

⁸² *Flewelling v. Johnston* n. 53 *supra*, but cf. *Can. Explorations Ltd. v. Rotter* [1961] S.C.R. 337.

⁸³ *In re Simpson Est.*, n. 48 *supra*.

⁸⁴ *Clarke v. Edmonton* n. 33 *supra*.

⁸⁵ *Stoff v. Raby* n. 53 *supra*.

⁸⁶ See n. 72 *supra*.

⁸⁷ *Huggard Assets Ltd. v. A.-G. Alta.* [1951] S.C.R. 427, 435, 443, 446

(P.C. (Can.)) [1953] A.C. 420, 442; 8 W.W.R. (N.S.) 561, 570.

⁸⁸ [1953] A.C. 420, 441-42. The same may be said of *Syndicat Lyonnais du Klondike v. McGrade* (1905) 36 S.C.R. 251, 271.

⁸⁹ *Skrypnak v. Huculak* (S.C. Alta.) [1947] 1 W.W.R. 713. The statute is c. 16 in *Ruffhead*, but c. 3 in the Statutes of the Realm.

⁹⁰ *R. v. Nanquaisaka* n. 76 *supra*.

⁹¹ *In re Seidler* (S.C. Alta.) [1929] 2 W.W.R. 645.

⁹² (Imp.) 39 & 40 Geo. 3, c. 98; *Re Burns Est.* (Alta. C.A. 1861) 25 D.L.R. (2d) 427

⁹³ *In re Church* (Alta. C.A.) [1922] 3 W.W.R. 1207, 1220, 1226, *affd.* (S.C.C.) [1923] 3 W.W.R. 405, 406.

⁹⁴ *Walker v. Walker* (P.C. (Man.)) [1919] 2 W.W.R. 935; *Board v. Board* (P.C. (Alta.)) [1919] 2 W.W.R. 840.

⁹⁵ *In re Rutherford Est.* (Alta. C.A.) [1942] 1 W.W.R. 567.

⁹⁶ *Wikstrand v. Cavanaugh* [1936] 1 W.W.R. 113; *In re Partition Act* (S.C. Alta. 1951) 1 W.W.R. (N.S.) 183; *Hicks v. Kennedy* (Alta. C.A. 1957) 20 W.W.R. (N.S.) 517.

⁹⁷ *Fraser v. Kirkpatrick* (S.C. en banc 1907) 5 W.L.R. 286.

broad principles outlined above must be qualified in several respects. In the first place, the present Criminal Code, while it continues in force in each province the criminal law which was previously in force there, also expressly continues in force all common law rules which justify or excuse any act.⁹⁹ It is strange that English statutes giving such defences are not mentioned also, and a question might arise as to whether "common law" might here be taken in the sense in which it is taken in many American states, as including some English statutes.¹⁰⁰ Nothing is said about the rules of the common law being "applicable": does this mean that common law defences to crimes are revived whether or not they are suitable to the conditions of present-day Canada? This section bears the qualifying words "except in so far as they are altered by or are inconsistent with this Act or any other Act of the Parliament of Canada." Does that refer only to criminal legislation negating such common law defences, or does it leave untouched the prerequisite of applicability laid down by the 1886 Act of Parliament? Is the North-West Territories Act, 1886, such an "other Act of the Parliament of Canada" which is inconsistent? In such matters one would normally choose the construction most favorable to the liberty of the subject, but one hesitates to do so here lest it lead to absurd results, such as a revival of benefit of clergy.¹⁰¹ An equally important provision of the Criminal Code¹⁰² prohibits convictions for common law offences or offences against Imperial or pre-Confederation statutes, notwithstanding anything in the Code or any other Act. The Code does not specify, however, whether all legal significance is thereby removed from these former offences or not, nor is it clear whether such a provision would be *intra vires* the Parliament of Canada. Does this provision affect tortious liability, deodands, escheat, or forfeiture to the Crown, for instance? Might a contract still be void because its consideration falls within the ancient definitions of engrossing, forestalling, or regrating?¹⁰³

The Bills of Exchange Act¹⁰⁴ makes the common law and law merchant apply to bills of exchange in cases not provided for by the Act, and though no date for the ascertainment of English law is given, presumably that applying previously for each province is intended to be retained, though one might argue that this provision took effect on the date that Canada's first Bills of Exchange Act received royal assent (15 May 1890) or came into force (1 September 1890), and that was the date on which the English law was ascertained and introduced into Canada. However, as the purpose of this Act was for the most part to codify the law rather than to change it, the former alternative is probably preferable. Section 9 of this Act states (as did earlier Upper Canada legislation) that two Imperial statutes of George III are not to apply to Canada, but unfortunately no mention whatever is made of 48 Geo. 3 c. 88, which might still be in force in some Canadian provinces, or

⁹⁹ (Can.) 2-3 Eliz. 2 c. 51 s. 7; It is to be noted that (Can.) 14 Geo. 6 c. 12 had already made the criminal law of Newfoundland uniform with that of Canada by repealing Nfld. Cons. Stat (3d) c. 95.

¹⁰⁰ 15 *Corpus Juris Secundum* 615 (s. 4).

¹⁰¹ In Ontario or the Maritimes, that is, for benefit of clergy was abolished by (Imp.) 7 & 8 Geo. 4 c. 28 s. 6.

¹⁰² (Can.) 2-3 Eliz. 2, c. 51 s. 8.

¹⁰³ These ancient offences' histories are given in 4 Bl. Com. 158-59; they were abolished in 1844 by (Imp.) 7 & 8 Vict. c. 24.

¹⁰⁴ R.S.C. 1952 c. 15.

of 23 & 24 Vict. c. 111 s. 19 or 26 & 27 Vict. c. 105, which were intended to modify the law of bills of exchange.

Another statute which has a great deal to say about the introduction of English rules and statutes is the Judicature Act.¹⁰⁵ Sections 15 (1), 16, and 17 cause no problem, and tie in well with the North-West Territories Act, 1886, for they also make use of the date 15 July 1870:

"15. (1) For the administration of the laws for the time being in force within the province, the Court [the Supreme Court of Alberta] possesses within the Province, in addition to any other jurisdiction, rights, powers, incidents, privileges and authorities that immediately before its organization were vested in or capable of being exercised within the Province by the Supreme Court of the North-West Territories, the jurisdiction that on the fifteenth day of July, 1870, was in England vested in . . ."

[Then follows a list of English courts.]

"16. For the purpose of removing any doubt, but not so as to restrict the generality of section 15, it is declared that the Court has the like jurisdiction and powers that by the laws of England were, on the fifteenth day of July in the year 1870, possessed and exercised by the Court of Chancery in England in respect of

(a) fraud, mistake and accident, . . ."

[The list is then continued with an enumeration of other subject matters.]

"17. The rules of decision in matters mentioned in section 16, except where otherwise provided, shall be the same as governed the Court of Chancery in England in like cases on the fifteenth day of July, 1870."

Section 15 (2) is not so straightforward, however:

"(2) The jurisdiction mentioned in subsection (1) includes

- (a) the jurisdiction that at any time before the organization of the Court was vested in or capable of being exercised by all or any one or more of the judges of the said courts, sitting in Court or chambers or elsewhere, when acting as judges or a judge pursuant to a statute, law or custom,
- (b) all the powers given to any such Court or to any judges or judge by a statute, and
- (c) all ministerial powers, duties and authorities incident to any and every part of the jurisdiction so conferred."

No time is given for measuring the jurisdiction of the English courts referred to, and indeed one may ask whether the reference in paragraph (a) to "any time" does not destroy the certainty of time gained by the mention of 15 July 1870 in section 15 (1). However, the reference in subsection (2) of section 15 to the first subsection may indicate that subsection (2) is to be but a guide to the interpretation of the first subsection, and is not to enlarge the limits set in subsection (1). Even more uncertain is section 26 (b) (v):

"26. The Appellate Division . . .

- (b) has jurisdiction and power, subject to the provisions of the Rules of Court, to hear and determine . . .
- (v) all other petitions, motions, matters or things whatsoever that might lawfully be brought in England before a Divisional Court of the High Court of Justice or before the Court of Appeal."

This is most disconcerting, for if the law is taken as always speaking, then this section seems to work an incorporation into the law of Alberta of whatever legislation is passed from time to time in England on the jurisdiction of appellate courts. Does this mean that an Alberta barrister must look to current British legislation to find the jurisdiction of Alberta courts, and that the powers of the Appellate Division will wax and wane

¹⁰⁵ R.S.A. 1955 c. 164.

as British legislation and rules of procedure are amended? The same comments apply to section 33:

"33. In the case of lunatics and their property and estates, the jurisdiction of the Court includes, subject to the Rules of Court, the jurisdiction that, in England, is conferred upon the Lord High Chancellor by a Commission from the Crown under the Sign Manual."

This pattern is repeated in section 32, paragraphs (a), (b), and (d), where it will suffice to quote only the first paragraph:

"32. In every civil cause or matter commenced in the Supreme Court, law and equity shall be administered by the Court according to the following rules:

- (a) if a plaintiff or petitioner claims to be entitled
 - (i) to an equitable estate or right,
 - (ii) to relief upon any equitable ground
 - (A) against a deed, instrument or contract, or
 - (B) against a right, title or claim whatsoever asserted by a defendant or respondent in such cause or matter,
 - or
 - (iii) to any relief founded upon a legal right,
- the Court shall give to the plaintiff or petitioner such relief as would be given by the High Court of Justice in England in a suit or proceeding for the same or a like purpose; . . ."

Paragraphs (b) and (d) are similarly worded. Here again it appears that the law of England from time to time on these matters is incorporated into the law of Alberta, and this is all the more serious because section 32 lays down substantive rules of law to be followed, not mere procedure or jurisdiction. In order to avoid doubt on these matters and to make all the substantive law of Alberta uniform, it would seem desirable to amend these provisions to make them refer to English law, practice, and jurisdiction as it existed on 15 July 1870. If it is desired to incorporate amendments to English law since that date (and this seems to be the case, in view of the provisions of the Judicature Acts of 1873 and 1875¹⁰⁶), these amendments should be set out in Alberta legislation where they will be easily accessible, and their nature and extent apparent to all.

We have noted above that an English statute or rule of law may be part of the law of Alberta only if it was in force in England on the 15 July 1870, and is not in force in Alberta if enacted later, even though it may deal with subject matter similar to that found in Alberta, and so may be suitable to Alberta conditions. Therefore any changes in the law after 1887 must have come from legislation of Canada, the Northwest Territories, Alberta, or statutes of the Parliament at Westminster specifically intended to apply to the Empire, and passed before 1931.¹⁰⁷ The courts have interpreted such changes in the law since 1887 broadly,¹⁰⁸ and have included not only express or implied repeal or amendment of the laws in force in 1870, but also later laws merely affecting the 1870 laws. Thus the mere fact that Canada in 1875 made a married woman liable to a separate suit in respect of her separate debts and torts was held to remove the *rationale* for the rule which had existed in 1870 that her husband must be joined in any suit against her because he would be liable: the 1875 legislation "affected" the English law, so making it inapplicable.¹⁰⁹ This case is all the more significant in that the later

¹⁰⁶ Cf. n. 23 *supra*.

¹⁰⁷ See Colonial Laws Validity Act, 1865 (Imp.) 28 & 29 Vict. c. 63 s. 1; Statute of Westminster, 1931 (Imp.) 22 Geo. 5 c. 4 s. 4.

¹⁰⁸ As in *Huggard Assets Ltd. v. A.-G. Alta.*, n. 88 *supra*.

¹⁰⁹ *Quinn v. Beales* (Alta. C.A.) [1924] 3 W.W.R. 337, 342-43.

legislation was passed between 15 July 1870 and the passage of the North-West Territories Act in 1886, and so could not be said to have been a later amendment of the law as provided in 1886. This serves to point out the fact that the 1886 legislation refers to English laws which "have not been, or are not hereafter" repealed. [Emphasis added.]

V

The present state of the law in Alberta with respect to the applicability of English law is unsatisfactory, in part because uncertainty exists in some areas as to what the law is, and also because parts of the law are found only in old English statutes, couched in obscure language and printed only in expensive tomes not commonly available to the ordinary lawyer. What is needed is some thorough research on English statutes which might or might not be in force in Alberta. (Rules of English case law are for the most part so well known and accessible through standard reference works that this investigation could place greatest emphasis on statutes). When the research is completed, a reform bill along the lines of that passed in Victoria in 1922 should be put before Parliament and the provincial legislature. This Australian measure

- (i) re-enacted *in toto* certain fundamental English statutes, such as the Statute of Uses,
- (ii) reprinted appropriate parts of other English statutes at the appropriate place in the revised statutes,
- (iii) listed a number of English statutes whose suitability might still be ruled upon in the future by the courts, and
- (iv) expressly repealed a long list of other English statutes.¹¹⁰

The British have been pruning and tidying their statute books for almost a century. The Province of Quebec has had a Civil Code for the same length of time. Is it not time for Canadians in the common law provinces to reorder their own houses in the interest of greater certainty, accessibility, and rationality of the law?

TABLE OF ENGLISH STATUTES IN FORCE IN CANADA

This table was compiled in an attempt to list all the English statutes which have been declared by a Canadian court or legislative body to be in force or not to be in force in some part of Canada. It is an enlarged and up-dated version of one which appeared as Appendix C of Clements' *Canadian Constitution* 1060 (2d ed. 1916), and the Editors wish to acknowledge the kind consent given by the Carswell Company Limited to the use made here of that material.

The references to the Revised Statutes of Ontario, 1897 are up to date, although the statutes mentioned are reprinted for convenience in the latest revision of Ontario statutes. The references to statutes printed in the introductory pages of the Revised Statutes of British Columbia, 1897 may also be read as referring to the volume of miscellaneous statutes published in 1913 (and sometimes referred to as volume 4 of the Revised

¹¹⁰ Paton, *The Commonwealth of Australia: The Development of its Laws and Constitution* 5 (1952). But cf. Moore, *A Century of Victorian Law* (1934) 16 *J. Comp. Leg.* (3d series) 175, 179.

Statutes of British Columbia, 1911). The references to the Revised Statutes of British Columbia, 1911, are taken from the concordance published in volume 3 of that revision, of which there is no more recent version.

Because of the extreme diversity of subject matter of the statutes concerned, systematic research in this area is difficult, so that there are undoubtedly many omissions from this table, which the Editors would be pleased to have called to their attention.

Further cases upon the subject may be found in the *Australian Digest*, and *Corpus Juris Secundum*.

Statute	Subject Matter	Whether In Force Province		J.E.C.
		Force	Province	Authority
Magna Carta	Constit. Law	Yes	N.S.	<i>Meisner v. Fanning</i> 3 N.S.R. 97; <i>The Dart, Stewart</i> 44
		Yes	B.C.	Printed in R.S.B.C. 1897 p. xvii <i>In re Munshi Singh</i> (B.C. C.A. 1914) 6 W.W.R. 1347, 1371
Charter of Hen. 3	Constit. Law	Yes	N.S.	<i>Meisner v. Fanning</i> 3 N.S.R. 97
52 Hen. 3 c. 17	Guardianship	Yes	B.C.	Incorp. into R.S.B.C. 1911 c. 107
13 Ed. 1 c. 18	<i>Elegit</i>	Yes	N.S.	<i>Caldwell v. Kinsman</i> 2 N.S.R. 398
13 Ed. 1 c. 19	Debt	Yes	B.C.	Incorp. into R.S.B.C. 1911 c. 4
13 Ed. 1 c. 23	Personal Rep.	Yes	B.C.	Incorp. into R.S.B.C. 1911 c. 4
18 Ed. 1 (st. 1) c. 1 c. 2	<i>Quia Emptores</i>	Yes	B.C.	Printed in R.S.B.C. 1897 p. xliii
	<i>Quia Emptores</i>	Yes	Ont.	Re-enacted as R.S.O. 1897 c. 330
		Yes?	Alta.	<i>A.-G. v. Huggard Assets</i> [1951] S.C.R. 427, 446, cf. [1953] A.C. 441
33 Ed. 1 c. 1	Champerty	Yes	Ont.	Re-enacted as R.S.O. 1897 c. 327
34 Ed. 3 c. 1	Justices	Yes?	Ont.	<i>Mackenzie v. Martin</i> [1954] S.C.R. 361
4 Ed. 3 c. 7	Personal Rep.	Yes	B.C.	Incorp. into R.S.B.C. 1911 c. 4
15 Ed. 3 c. 5 [sic]		Yes	B.C.	Incorp. into R.S.B.C. 1911 c. 4
25 Ed. 3 (st. 5) c. 5	Executors	Yes	B.C.	Incorp. into R.S.B.C. 1911 c. 4
27 Ed. 3 c. 17	Statute of Staples	Yes	N.S.	<i>The Dart, Stewart</i> 44
28 Ed. 3 c. 13	Aliens	No	N.S.	<i>R. v. Burdell</i> (1861) 5 N.S.R. 126, <i>Nolan v. McAdam</i> (1906) 39 N.S.R. 380
31 Ed. 3 (st. 1) c. 11	Administrators	Yes	B.C.	Incorp. into R.S.B.C. 1911 c. 4
34 Ed. 3 c. 1	Justices	?	Alta.	<i>R. v. Poffenroth</i> [1942] 2 W.W.R. 362, 364
		No	B.C.	<i>Frey v. Fedoruk</i> (B.C. C.A.) [1949] 2 W.W.R. 604
1 Ric. 2 c. 12	Escape	Yes	N.S.	<i>Clements</i>
		No	N.B.	<i>Wilson v. Jones</i> 6 N.B.R. 658, <i>James v. McLean</i> 8 N.B.R. 164, <i>Doe d. Allen v. Murray</i> 4 N.B.R. 359

Statute	Subject Matter	Whether In Force	Province	Authority
5 Ric. 2 c. 7	Forcible Entry	Yes?	B.C.	<i>Frey v. Fedoruk</i> (B.C. C.A.) [1949] 2 W.W.R. 604
2 Hen. 4 c. 7	Nonsuit	Yes	N.S.	<i>Grant v. Protection Ins. Co.</i> 1 N.S.R. 12
8 Hen. 6 c. 29	Aliens	No	N.S.	<i>R. v. Burdell</i> 5 N.S.R. 126
23 Hen. 6 c. 7	Sheriff	Yes	B.C.	Incorp. into R.S.B.C. 1911 c. 210
23 Hen. 6 c. 9 s. 1	Sheriff	Yes	B.C.	Incorp. into R.S.B.C. 1911 c. 17
23 Hen. 6 c. 10	Sheriff, Bail	No?	N.S.	<i>Jackson v. Campbell</i> (1855) 1 N.S.R. 18
11 Hen. 7 c. 12	<i>forma pauperis</i>	No	Alta.	<i>Augustino v. Can. N.W. Ry.</i> (Alta. C.A.) [1928] 1 W.W.R. 481
		Yes	B.C.	<i>Bland v. Agnew</i> (B.C. C.A.) [1932] 3 W.W.R. 222
7 Hen. 8 c. 4	Damages	Yes	N.S.	<i>Freeman v. Harrington</i> 5 N.S.R. 358
8 Hen. 8 c. 16	Forfeiture	Yes	N.S.	<i>Wheelock v. McKeown</i> 1 N.S.R. 41, <i>Miller v. Lanty</i> 1 N.S.R. 161, <i>Scott v. Henderson</i> 3 N.S.R. 115; cf. <i>Smyth v. McDonald</i> 5 N.S.R. 274; but see <i>Emerson v. Maddison</i> [1906] A.C. 569
18 Hen. 8 c. 16	Forfeiture	Yes	N.S.	See note to 8 Hen. 8 c. 16
21 Hen. 8 c. 4	Executor	Yes	B.C.	Incorp. into R.S.B.C. 1911 c. 4
21 Hen. 8 c. 5	Statute of Sewers	Yes	B.C.	Incorp. into R.S.B.C. 1911 c. 5
25 Hen. 8 c. 22	Marriage	Yes	Ont.	<i>Hodgins v. McNeil</i> 9 Grant Ch. 309
27 Hen. 8 c. 10	Statute of Uses	Yes	B.C.	Printed in R.S.B.C. 1897 p. xlv
		Yes	N.B.	<i>Doe d. Hanington v. McFadden</i> (N.B. C.A. 1836) 2 N.B.R. 153
		Yes	N.S.	<i>Shey v. Chisholm</i> (1853) 2 N.S.R. 52
		Yes	Ont.	Re-enacted as R.S.O. 1897 c. 331
27 Hen. 8 c. 10	Enrolment	Yes	N.B.	<i>Doe d. Hanington v. McFadden</i> (N.B. C.A. 1836) 2 N.B.R. 153
		No	N.S.	<i>Berry v. Berry</i> 16 N.S.R. 66
28 Hen. 8 c. 7	Marriage	Yes	Ont.	<i>Hodgins v. McNeil</i> 9 Grant Ch. 309
28 Hen. 8 c. 16	Marriage	Yes	Ont.	<i>Hodgins v. McNeil</i> 9 Grant Ch. 309
31 Hen. 8 c. 1	Partition	Yes	N.S.	<i>Doane v. McKenny</i> 2 N.S.R. 328, <i>Crane v. Blackadar</i> (1895) 40 N.S.R. 100; see <i>Freeman v. Morton</i> 3 N.S.R. 340, 353
32 Hen. 8 c. 9	Pretended Titles	Yes	N.S.	<i>Wheelock v. Morrison</i> 7 N.S.R. 337; <i>Scott v. Henderson</i> 3 N.S.R. 115, 123
		Yes	Ont.	<i>Beasley v. Cahill</i> 2 U.C.Q.B. 320

Statute	Subject Matter	Whether		Authority
		In Force	Province	
32 Hen. 8 c. 34	Leases	Yes	B.C.	Printed in R.S.B.C. 1897 p. li
32 Hen. 8 c. 38	Marriage	Yes	Ont.	<i>Hodgins v. McNeil</i> 9 Grant Ch. 309
32 Hen. 8 c. 39	Crown Debtors	Yes	N.B.	<i>R. v. McLaughlin</i> , Steven's N.B. Dig.
		No	N.S.	<i>Uniacke v. Dickson</i> (N.S. C.A. 1848) 2 N.S.R. 287
5 & 6 Ed. 6 c. 3	Holidays	?	Man.	Referred to, <i>R. v. Sawchuk</i> (Man. K.B.) [1923] 2 W.W.R. 824, 829 ff.
5 & 6 Ed. c. 16	Sale of Offices	Yes	Ont.	<i>R. v. Mercer</i> 17 U.C.Q.B. 602, <i>Foote v. Bullock</i> 4 U.C.Q.B. 480, <i>R. v. Moodie</i> 20 U.C.Q.B. 389
1 & 2 Ph. & M. c. 13	<i>Habeas Corpus</i>	Yes	B.C.	Printed in R.S.B.C. 1897 p. xxxvi
5 Eliz. c. 4	Apprentices	No	Ont.	<i>Fish v. Doyle</i> , (1831) Drap. 328, <i>Dillingham v. Wilson</i> (1841) 6 U.C.Q.B. (O.S.) 35, <i>Shea v. Choat</i> (1845) 2 U.C.Q.B. 211, 221
13 Eliz. c. 4	Crown Debts	No	N.S.	<i>Uniacke v. Dickson</i> (N.S. C.A. 1848) 2 N.S.R. 287
13 Eliz. c. 5	Fraudulent Conveyances	Yes	Alta.	1923, c. 5, s. 46; but see <i>Connors v. Egli</i> (Alta. C.A.) [1924] 1 W.W.R. 1050. The 1923 statute is still in force: <i>Goyan v. Kinash</i> [1945] 2 D.L.R. 749
		Yes	B.C.	Incorp. into R.S.B.C. 1911 c. 93
		Yes	N.B.	<i>Re Geldart</i> 31 C.B.R. 119
		Yes	N.S.	<i>Tarratt v. Sawyer</i> 1 N.S.R. 46, <i>Moore v. Moore</i> (1880) 13 N.S.R. 525, <i>Graham v. Bell</i> (1884) 17 N.S.R. 90, <i>Cromwell v. Comeau</i> (S.C. N.S. 1957) 8 D.L.R. (2d) 676
		Yes	Ont.	<i>Millar v. McTaggart</i> (Ont. C.P.D. 1890) 20 O.R. 617
		Yes	Sask.	<i>Stewart v. Zacharuk</i> (Sask. K.B.) [1949] 1 W.W.R. 213
18 Eliz. c. 5	<i>Qui tam</i> actions	Yes	Ont.	<i>Garrett v. Roberts</i> 10 O.A.R. 650
29 Eliz. c. 4	Sheriff's costs	No	N.B.	<i>Kavanagh v. Phelon</i> 3 N.B.R. 472
31 Eliz. c. 5	Informers	No	B.C.	<i>R. v. Crown Zellerbach Ltd.</i> (B.C. C.A. 1956) 20 W.W.R. 523, but cf. <i>Taylor v. Macintosh</i> (B.C. C.A.) [1924] 3 W.W.R. 97, 98
43 Eliz. c. 2	Poor Relief	Yes	B.C.	<i>R. v. Hall</i> (B.C. Cty. Ct.) [1941] 2 W.W.R. 245
43 Eliz. c. 4, Preamble	Charities	Yes	Man.	<i>Re Angell Est.</i> (Man. Q.B. 1955) 16 W.W.R. (N.S.) 342

Statute	Subject Matter	Whether In Force		Province	Authority
		Yes	No		
—body of statute		Yes		Sask.	<i>Re Patriotic Acre Fund</i> (Sask. C.A.) [1951] 2 D.L.R. 624
		No		Man.	<i>In re Oldfield Est.</i> (No. 2) (Man. K.B.) [1949] 1 W.W.R. 540
43 Eliz. c. 6	Costs	Yes		N.B.	<i>Kelly v. Jones</i> 7 N.B.R. 473
43 Eliz. c. 8	Executors	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 4
7 Jac. 1 c. 5	Not Guilty plea	No		Sask.	<i>Plested v. McLeod</i> (Sask. D.C. 1910) 12 W.L.R. 700
21 Jac. 1 c. 3 s. 1	Monopolies	Yes		Ont.	Re-enacted as R.S.O. 1897 c. 323
21 Jac. 1 c. 12	Not Guilty plea	No		Sask.	<i>Plested v. McLeod</i> (Sask. D.C. 1910) 12 W.L.R. 700
21 Jac. 1 c. 14	Forfeiture	Yes		N.S.	<i>Smyth v. McDonald</i> 5 N.S.R. 274; <i>Scott v. Henderson</i> (1843) 3 N.S.R. 115, 118
21 Jac. 1 c. 16	Limitations	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 145
		Yes		Man.	<i>Bk. of Montreal v. Robshaw</i> (Man. Cty. Ct. 1935) 44 Man. L.R. 114
1 Car. 1 c. 1	Lord's Day	Yes		B.C.	Declared in force by R.S.B.C. 1911 c. 219. But see Criminal Code 1955 ss. 7, 8.
3 Car. 1 c. 1	Lord's Day	Yes		B.C.	See note to 1 Car. 1 c. 1
16 Car. 1 c. 10	Star Chamber	No		Ont.	<i>Stark v. Ford</i> 11 U.C.Q.B. 363
12 Car. 2 c. 24	Statute of Tenures	Yes?		Alta.	<i>Huggard Assets Ltd. v. A.-G. Alta.</i> [1951] S.C.R. 427, 443, 446; but cf. the doubts of the P.C., [1953] A.C. 441, 442.
		Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 107
13 Car. 2 c. 2	Costs	Yes		N.B.	<i>Gilbert v. Sayre</i> 7 N.B.R. 512
17 Car. 2 c. 8	Administrators	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 4
22 & 23 Car. 2 c. 10	Intestacy	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 4
		Yes?		Man.	<i>In re Lama Est.</i> (Man. K.B.) [1941] 3 W.W.R. 35.
		Yes		Alta.	<i>Eiserman v. Stark</i> (Alta. C.A.) [1941] 1 D.L.R. 153
29 Car. 2 c. 3	Statute of Frauds	Yes		B.C.	Re-enacted as R.S.B.C. 1911 c. 92; <i>Robinson v. McAdam</i> [1948] 2 W.W.R. 425
		?		Man.	Not introduced into Man. originally because passed after 1870: <i>Sinclair v. Mulhgan</i> 5 Man. L.R. 17, <i>Templeton v. Stewart</i> 9 Man. L.R. 487
		Yes		N.S.	<i>Crosby v. Temple</i> (N.S. C.A.) [1940] 2 D.L.R. 554
		Yes		Ont.	<i>Richmond v. Simpson</i> [1940] S.C.R. 1

Statute	Subject Matter	Whether In Force		Province	Authority
		Yes	No		
		Yes		Sask.	<i>Balaberda v. Mucha</i> (Sask. C.A. 1960) 25 D.L.R. (2d) 760
29 Car. 2 c. 7	Lord's Day	Yes		B.C.	See note to 1 Car. 1 c. 1, and <i>Gibbons v. Koepke</i> (S.C. B.C. 1951) 4 W.W.R. (N.S.) 560, 561
30 Car. 2 (st. 1) c. 7	Executors	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 4
31 Car. 2 c. 2	<i>Habeas Corpus</i>	Yes		B.C.	Printed with R.S.B.C. 1897 p. xxix. <i>In re Munshi Singh</i> (B.C. C.A. 1914) 6 W.W.R. 1347, 1371. See also 56 Geo. 3 c. 100.
		Yes?		Man.	<i>R. v. Coleman</i> (Man. C.A. Ch.) [1935] 3 W.W.R. 161, but cf. <i>R. v. Collins</i> (Man. C.A. 1962) 39 W.W.R. 32
1 Jac. 2 c. 17	Administrators	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 4
1 Wm. & M. c. 18	Religious meetings	Yes		Ont.	<i>Reid v. Inglis</i> 12 U.C.C.P. 191
2 Wm. & M. c. 5	Distress	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 65
4 Wm. & M. c. 4	Bail	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 17
8 & 9 Wm. & M. c. 11	Admin. of Justice	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 25
9 & 10 Wm. 3 c. 15	Awards	?		B.C.	<i>In re Ward</i> 1 B.C.R. (pt. 1) 114
10 Wm. 3 c. 22 (c. 16 in Ruffhead)	Infants	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 107
1 Anne (st. 2) c. 6	Escape	No		Ont.	<i>Hesketh v. Ward</i> (1867) 17 U.C.C.P. 667
4 Anne c. 16	Bail Bonds	Yes		N.B.	<i>Doe d. Hanington v. McFadden</i> (N.B. C.A. 1836) 2 N.B.R. 153
s 9		Yes		Alta.	<i>Skrypnek v. Huculak</i> (S.C. Alta.) [1947] 1 W.W.R. 713
ss. 9, 10		Yes		B.C.	Incorp. into R.S.B.C. 1911 cc. 4, 126
s. 12		Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 25
s. 19		Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 145
s. 20		Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 17
s. 27	Account by Co-Tenant	Yes		B.C.	<i>Spelman v. Spelman</i> (No. 2) (B.C. C.A.) [1944] 1 W.W.R. 691
		?		N.B.	<i>Bowes v. Bamford</i> [1853] 1 D.L.R. 440, rev'd. [1954] S.C.R. ix
		Yes		Sask.	<i>King v. King</i> (Sask. K.B. Ch.) [1944] 3 W.W.R. 242
4 & 5 Anne c. 3	Account	Yes		Sask.	<i>Blacklaw v. Beveridge</i> (Sask. C.A.) [1939] 3 W.W.R. 511
5 Anne c. 9	Escape	No		Ont.	<i>Hesketh v. Ward</i> (1867) 17 U.C.C.P. 667

Statute	Subject Matter	Whether		Authority
		In Force	Province	
7 Anne c. 5	Citizenship	Yes	N.S.	<i>Salter v. Hughes</i> (1863) 5 N.S.R. 409
8 Anne c. 18	Distress	Yes	B.C.	Incorp. into R.S.B.C. 1911 c. 126
9 Anne c. 14	Gaming	?	B.C.	See <i>Carr v. Abbs</i> (B.C. Cty. Ct.) [1939] 1 W.W.R. 249
6 Geo. 1 c. 18	Bubble Act	No	Ont.	<i>Bk. of Upper Can. v. Bethune</i> (Ont. C.A. 1835) 4 U.C.Q.B. (O.S.) 165
2 Geo. 2 c. 19	Distress for Rent	Yes	Alta.	<i>Royal Trust Co. v. Mills</i> [1923] 1 W.W.R. 796
4 Geo. 2 c. 21	Citizenship	Yes	N.S.	<i>Salter v. Hughes</i> (1863) 5 N.S.R. 409
4 Geo. 2 c. 28	Distress	Yes	B.C.	Incorp. into R.S.B.C. 1911 c. 126
7 Geo. 2 c. 20	Foreclosure	Yes	B.C.	Incorp. into R.S.B.C. 1911 c. 168
9 Geo. 2 c. 5	Fortune Telling	Yes	Ont.	<i>R. v. Milford</i> 20 O.R. 306
9 Geo. 2 c. 36	Mortmain	No	B.C.	<i>In re Pearce Est.</i> (S.C. B.C. 1903) 10 B.C.R. 280 and cases cited there
		No	Man.	<i>In re Fenton Est.</i> (Man. C.A.) [1920] 2 W.W.R. 367
		No	N.B.	<i>Ray v. Methodist Church</i> (1881) 6 S.C.R. 308; <i>Doe d. Hagen v. St. James</i> (1879) 18 N.B.R. 479
		Yes	Ont.	But only on the grounds of local legislative recognition: <i>Doe d. Anderson v. Todd</i> (C.A. 1846) 2 U.C.Q.B. 82; <i>Whitby v. Lipscombe</i> (C.A. 1875) 23 Grant Ch. 1, and cases there cited; <i>Smith v. Methodist Church</i> 16 O.R. 199; <i>Butland v. Gillespie</i> 16 O.R. 486
		No	Sask.	<i>Re Miller Est.</i> (Sask. S.C.) [1918] 1 W.W.R. 929
		No	Gren-ada	<i>A.-G. v. Stewart</i> (Ch. 1817) 2 Mer. 143, 35 E.R. 895
		No	N.S.W.	<i>Whicker v. Hume</i> (1858) 7 H.L. Cas. 124, 11 E.R. 50
		No	Victortia	<i>Canterbury v. Wyburn</i> (P.C. (Vict.)) [1895] A.C. 89
		No	Br. Hon-duras	<i>Jez v. McKinney</i> (P.C. (Br. Hond.) (1889)) 14 App. Cas. 77
11 Geo. 2 c. 19	Apportionment	Yes	B.C.	Incorp. into R.S.B.C. 1911 c. 65
13 Geo. 2 c. 18	Certiorari	Yes	B.C.	Incorp. into R.S.B.C. 1911 c. 35
		No	N.B.	<i>Ex parte Ritchie</i> 4 N.B.R. 75; <i>Ex parte Bustin</i> 7 N.B.R. 211

Statute	Subject Matter	Whether In Force		Province	Authority
		No	Yes		
		No		N.S.	<i>R. v. Porter</i> (1888) 20 N.S.R. 352, 357; <i>cf. R. v. McFadden</i> 18 N.S.R. 426, <i>McDonald v. Ronan</i> 19 N.S.R. 25
		Yes		Ont.	See reference in <i>R. v. Porter</i> 20 N.S.R. 352, 358.
14 Geo. 2 c. 17	Nonsuit	Yes		N.B.	<i>Doe d. Hanington v. McFadden</i> (N.B. C.A. 1836) 2 N.B.R. 153
14 Geo. 2 c. 37	Bubble Act	No		Ont.	<i>Bk. of Upper Can. v. Bethune</i> (C.A. 1835) 4 U.C.Q.B. (O.S.) 165
15 Geo. 2 c. 30	Lunatics' Marriage	No		Man.	<i>Meanwell v. Meanwell</i> (Man. C.A.) [1941] 1 W.W.R. 154
19 Geo. 2 c. 37	Marine Ins.	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 116
20 Geo. 2 c. 19	Apprentices	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 107
		No		Ont.	See note to 5 Eliz. c. 4
22 Geo. 2 c. 40	Sale of Liquor	No		Ont.	<i>Leith v. Willis</i> 5 U.C.Q.B. (O.S.) 101, <i>Heartley v. Hearns</i> 6 U.C.Q.B. (O.S.) 452
22 Geo. 2 c. 46	Attorneys	Yes		Ont.	(In part) <i>Dunn v. O'Reilly</i> 11 U.C.C.P. 404
24 Geo. 2 c. 40	Debt	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 142
24 Geo. 2 c. 44	Constables' Protection	Yes		B.C.	<i>Savinkoff v. Borodula</i> (S.C. B.C. 1957) 26 W.W.R. 370
26 Geo. 2 c. 33	Marriage	Yes		Ont.	<i>R. v. Roblin</i> (1862) 21 U.C.Q.B. 355, <i>Hodgins v. McNeil</i> 9 Grant Ch. 309; <i>O'Connor v. Kennedy</i> (1888) 15 O.R. 22; <i>Lawless v. Chamberlain</i> (1889) 18 O.R. 309
		No		N.W.T.	<i>Connolly v. Woolrich</i> (1867) 11 L.C. Jur. 197; not as regards Indians in remote parts: <i>R. v. Nanequisaka</i> 1 Terr. L.R. 211
ss. 11, 12		No		Ont.	<i>Lawless v. Chamberlain, supra; May v. May</i> (1910) 22 O.L.R. 559
32 Geo. 2 c. 28 s. 4	Arrest	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 12
s. 12		Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 210
6 Geo. 3 c. 25	Apprentices	Yes		B.C.	Incorp. into R.S.C.B. 1911 c. 107
9 Geo. 3 c. 16	Nullum Tempus Act	Yes		B.C.	<i>A.-G. Can. v. W. Highbie Investments Ltd.</i> [1945] S.C.R. 385, 428
		Yes		N.S.	<i>Scott v. Henderson</i> (1843) 3 N.S.R. 115, 117
		Yes		Ont.	<i>R. v. McCormick</i> (1859) 18 U.C.Q.B. 131; <i>A.-G. Can. v. Krause</i> (Ont. C.A.) [1956] O.R. 675

Statute	Subject Matter	Whether In Force Province		Authority
		Yes	No	
		Yes	N.S.W.	<i>A.-G. v. Love</i> (P.C. (N.S.W.)) [1898] A.C. 679
13 Geo. 3 c. 21	Citizenship	Yes	N.S.	<i>Salter v. Hughes</i> (1863) 5 N.S.R. 409
14 Geo. 3 c. 48	Life Insurance	Yes	B.C.	Incorp. into R.S.B.C. 1911 c. 115
		No	Sask.	<i>Crown Bakery v. Pfd. Accident</i> (Sask. C.A.) [1933] 2 W.W.R. 33
14 Geo. 3 c. 78 s. 83 s. 86	Fires Spreading	Yes	Ont.	<i>Stinson v. Pennock</i> (1868) 14 Grant Ch. 604; <i>Carr v. Fire Assce. Assn.</i> (Ont. C.P.D. 1887) 14 O.R. 487
		No	Sask.	<i>Royal Bank v. Pischke</i> (Sask. D.C.) [1933] 1 W.W.R. 145
		Yes	Alta.	<i>Johnson v. Conrow</i> (S.C. Alta.) [1951] 4 D.L.R. 493, 503
		Yes	B.C.	<i>Laidlaw v. Crow's Nest Ry.</i> 14 B.C.R. 169, 42 S.C.R. 355; <i>Ingre v. Barker</i> (S.C. B.C. 1860) 31 W.W.R. 590; <i>Flynn v. Vallstrom</i> (S.C. B.C. 1955) 16 W.W.R. (N.S.) 335
		Yes	Man.	<i>Mainella v. Wilding</i> (Man. C.A.) [1948] 1 W.W.R. 366
		Yes	Ont.	<i>Gaston v. Wald</i> (1860) 19 U.C.Q.B. 586; <i>Canada S. Ry. v. Phelps</i> (1888) 14 S.C.R. 132
		Yes	Sask.	<i>Bettcher v. Turner</i> (Sask. D.C. 1913) 25 W.L.R. 136, 139, 140; <i>Walt v. Newton Motors</i> (Sask. C.A.) [1950] 2 D.L.R. 351
19 Geo. 3 c. 70	Certiorari	Yes	Ont.	<i>Baldwin v. Roddy</i> 3 U.C.Q.B. (O.S.) 166, and see <i>Gregory v. Flanagan</i> 2 U.C.Q.B. (O.S.) 552
21 Geo. 3 c. 49	Lord's Day	Yes	Ont.	<i>R. v. Barnes</i> 45 U.C.Q.B. 276
26 Geo. 3 c. 86	Fire on Ships	Yes	Ont.	<i>Torrance v. Smith</i> 3 U.C.C.P. 411, <i>Hearle v. Ross</i> 15 U.C.Q.B. 259
28 Geo. 3 c. 49	Magistrates	No	Ont.	<i>R. v. Row</i> (1864) 14 U.C.C.P. 307
28 Geo. 3 c. 56	Marine Ins.	Yes	B.C.	Incorp. into R.S.B.C. 1911 c. 116
35 Geo. 3 c. 113	Licensing	Yes	Nfld.	<i>Yonge v. Blaikie</i> (1822) 1 Nfld. R. 277, 283 (1901 ed.)
38 Geo. 3 c. 87	Administrators	Yes	B.C.	Incorp. into R.S.B.C. 1911 c. 4
39 & 40 Geo. 3 c. 98	Accumulations (Thellusson's Act)	Yes	B.C.	Incorp. into R.S.B.C. 1911 c. 3
		Yes	Alta.	<i>Re Burns Est.</i> (Alta. C.A. 1961) 25 D.L.R. (2d) 427

Statute	Subject Matter	Whether In Force		Province	Authority
		Yes	No		
		Yes		Man.	<i>Fonseca v. Jones</i> (1911) 21 Man. R. 168, <i>Re Aikins Trusts</i> (1961) 35 W.W.R. 143
		Yes		Sask.	<i>Re Fossum Est.</i> (1960) 32 W.W.R. 372
43 Geo. 3 c. 46	Costs	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 12 (Repealed in part, 32 & 33 Vict. c. 83 s. 20)
43 Geo. 3 c. 140	<i>Habeas Corpus</i>	Yes		B.C.	Printed with R.S.B.C. 1897 p. xxxvi
44 Geo. 3 c. 102	<i>Habeas Corpus</i>	Yes		B.C.	Printed with R.S.B.C. 1897 p. xxxvii
48 Geo. 3 c. 106	Expiration of Acts	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 1
48 Geo. 3 c. 143	Licensing	?		Nfld.	See <i>Yonge v. Blaike</i> (1822) 1 Nfld. R. 277 (1901 ed.)
51 Geo. 3 c. 37	Lunatics' Marriage	No		Man.	<i>Meanwell v. Meanwell</i> (Man. C.A.) [1941] 1 W.W.R. 154
56 Geo. 3 c. 100	<i>Habeas Corpus</i>	Yes		B.C.	Printed with R.S.B.C. 1897 p. xxxviii <i>R. v. Shin Shim</i> (B.C. C.A. 1937) 52 B.C.R. 80, [1938] S.C.R. 378, 384-85
		Yes		Man.	<i>R. v. Artiss</i> (Man. K.B.) [1950] 1 W.W.R. 60
56 Geo. 3 c. 139	Apprentices	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 107
59 Geo. 3 c. 69	Foreign Enlistment	Yes		Ont.	<i>R. v. Schram</i> (1864) 14 U.C.C.P. 318
4 Geo. 4 c. 34	Apprentices	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 107
4 Geo. 4 c. 76 s. 22	Marriage	No		B.C.	<i>Penner v. Penner</i> (S.C. B.C.) [1947] 4 D.L.R. 879
7 & 8 Geo. 4 c. 71	Execution	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 12
9 Geo. 4 c. 14	Infants' Contracts	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 145
		Yes		Sask.	<i>Molyneux v. Traill</i> (Sask. D.C. 1915) 32 W.L.R. 292
11 Geo. 4 & 1 Wm. 4 c. 40	Executors	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 4
		Yes		Man.	Re-enacted in Man.; <i>In re Aitken Est.</i> (Man. Q.B. 1953) 8 W.W.R. (N.S.) 385
11 Geo. 4 & 1 Wm. 4 c. 46	Appointment	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 181
11 Geo. 4 & 1 Wm. 4 c. 47	Debt	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 4
11 Geo. 4 & 1 Wm. 4 c. 65	Infants	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 107
11 Geo. 4 & 1 Wm. 4 c. 68	Stage Coaches	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 27
11 Geo. 4 & 1 Wm. 4 c. 70	Admin. of Justice	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 17
1 & 2 Wm. 4 c. 32	Lord's Day	Yes		B.C.	See note to 1 Car. 1 c. 1.
2 & 3 Wm. 4 c. 71	Prescription	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 182

Statute	Subject Matter	Whether In Force		Province	Authority
		Yes	No		
		Yes		Man.	<i>Stall v. Yarosz</i> (Man. C.A. 1964) 47 W.W.R. 113
3 & 4 Wm. 4 c. 27	Administrators, etc.	Yes		B.C.	Incorp. into R.S.B.C. 1911 cc. 4, 68, 145
3 & 4 Wm. 4 c. 42	Admin. of Justice	Yes		B.C.	Incorp. into R.S.B.C. 1911 cc. 4, 12, 145
		Yes?		Sask.	<i>Adlard v. Greensill</i> (Sask. D.C. 1910) 14 W.L.R. 536, 537-38
3 & 4 Wm. 4 c. 74 s. 28	Admin. of Justice	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 77
		?		B.C.	<i>Triangle Storage Ltd. v. Porter</i> (B.C. C.A.) [1941] 3 W.W.R. 892, 896
3 & 4 Wm. 4 c. 104	Debt	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 4
3 & 4 Wm. 4 c. 105	Dower	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 68
4 & 5 Wm. 4 c. 22	Landlord and Tenant	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 126
4 & 5 Wm. 4 c. 76	Poor Relief	?		B.C.	<i>Dedek v. Mantyka</i> (B.C. Fam. Ct. 1960) 32 W.W.R. 361; <i>Re Creery</i> (B.C. Cty. Ct. 1960) 39 W.W.R. 620; <i>Lang v. Lang</i> (Sask. K.B.) [1948] 1 W.W.R. 479
5 & 6 Wm. 4 c. 41	Gaming	?		B.C.	<i>See Carr v. Abbs</i> (B.C. Cty. Ct.) [1939] 1 W.W.R. 249
		Yes		Man.	<i>Windsor Hotel Co. v. Silverman</i> (Man. K.B.) [1934] 3 W.W.R. 249
5 & 6 Wm. 4 c. 54	Marriage	Yes		Alta.	<i>In re Seidler</i> (S.C. Alta.) [1929] 2 W.W.R. 645
		No		Ont.	<i>Hodgins v. McNeil</i> 9 Grant Ch. 309
5 & 6 Wm. 4 c. 62	Oaths	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 241
7 Wm. 4 & 1 Vict. c. 26	Wills Act	Yes		Alta.	<i>In re Church</i> (Alta. C.A.) [1922] 3 W.W.R. 1207, 1220, 1226, <i>affd.</i> (S.C.C.) [1923] 3 W.W.R. 405, 406
7 Wm. 4 & 1 Vict. c. 28	Limitations	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 145
1 & 2 Vict. c. 45	<i>Habeas Corpus</i>	Yes		B.C.	Printed with R.S.B.C. 1897 p. xli
1 & 2 Vic c. 110	Int. on Judgment	Yes		B.C.	<i>Foley v. Webster</i> (S.C. B.C. 1893) 3 B.C.R. 30. Incorp. into R.S.B.C. 1911 cc. 12, 79
ss. 14, 15		Yes		Sask.	<i>Miller-Morse Hdwe. Co. v. Smart</i> (Sask. C.A.) [1917] 3 W.W.R. 1113
2 & 3 Vict. c. 11	<i>Lis Pendens</i>	No		Yukon	<i>Syndicat Lyonnais v. McGrade</i> (1905) 36 S.C.R. 251
	Infants	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 107. Repealed in part, 12 & 13 Vict. c. 106 s. 1

Statute	Subject Matter	Whether In Force	Province	Authority
3 & 4 Vict. c. 82	Infants	Yes	B.C.	Incorp. into R.S.B.C. 1911 c. 107
s. 1		Yes	Sask.	<i>Miller-Morse Hdwe. Co. v. Smart</i> (Sask. C.A.) [1917] 3 W.W.R. 1113
3 & 4 Vict. c. 86	Church Discipline	Yes	B.C.	<i>Bishop of Columbia v. Cridge</i> (S.C. B.C. 1874) 1 B.C.R. (pt. 1) 5
3 & 4 Vict. c. 90	Infants	Yes	B.C.	Incorp. into R.S.B.C. 1911 c. 107
5 & 6 Vict. c. 45	Copyright	Yes	Ont.	<i>Black v. Imp. Book Co.</i> (1804) 8 O.L.R. 9, <i>aff'd.</i> 35 S.C.R. 488
6 & 7 Vict. c. 73	Solicitors	Yes	Man.	<i>Re a Solicitor</i> (Man. Q.B. 1955) 16 W.W.R. (N.S.) 463
8 & 9 Vict. c. 16	Companies	Yes	B.C.	Incorp. into R.S.B.C. 1911 c. 40
8 & 9 Vict. c. 18	Lands Clauses	Yes	B.C.	Incorp. into R.S.B.C. 1911 c. 128
8 & 9 Vict. c. 106	Real Property	Yes	B.C.	Printed with R.S.B.C. 1897 p. liii
8 & 9 Vict. c. 109	Gaming	?	B.C.	See <i>Carr v. Abbs</i> (B.C. Cty. Ct.) [1939] 1 W.W.R. 249
9 & 10 Vict. c. 93	Executors	Yes	B.C.	Incorp. into R.S.B.C. 1911 c. 82
10 & 11 Vict. c. 96	Trustees	Yes	B.C.	Incorp. into R.S.B.C. 1911 c. 232
11 & 12 Vict. c. 44	Limitations	Yes	B.C.	Incorp. into R.S.B.C. 1911 c. 150
11 & 12 Vict. c. 49	Lord's Day	Yes	B.C.	See R.S.B.C. 1897 c. 177, and Criminal Code ss. 7, 8
12 & 13 Vict. c. 45	Admin. of Justice	Yes	B.C.	Incorp. into R.S.B.C. 1911 c. 35
12 & 13 Vict. c. 74	Trustees	Yes	B.C.	Incorp. into R.S.B.C. 1911 c. 232
13 & 14 Vict. c. 21	Statutes	Yes	B.C.	Incorp. into R.S.B.C. 1911 c. 1
13 & 14 Vict. c. 23	Lord's Day	Yes	B.C.	See R.S.B.C. 1897 c. 177, and Criminal Code ss. 7, 8
13 & 14 Vict. c. 60	Trustees	Yes	B.C.	Incorp. into R.S.B.C. 1911 c. 232
14 & 15 Vict. c. 99	Evidence	Yes	Ont.	<i>Wyer v. Wyer</i> [1947] O.R. 292
15 & 16 Vict. c. 24	Wills	Yes	B.C.	Incorp. into R.S.B.C. 1911 c. 241
15 & 16 Vict. c. 55	Trustees	Yes	B.C.	Incorp. into R.S.B.C. 1911 c. 232
15 & 16 Vict. c. 57	Corrupt Practices	Yes	B.C.	Incorp. into R.S.B.C. 1911 c. 72 Repealed in part, 26 & 27 Vict. c. 29 s. 10
15 & 16 Vict. c. 86	Chancery Procedure	?	B.C.	Not in force: <i>Fieldhouse v. Nisbet</i> (B.C. S.C.) [1950] 1 W.W.R. 142, yet incorporated in part into R.S.B.C. 1911 c. 86

Statute	Subject Matter	Whether In Force		Province	Authority.
		Yes	No		
		Yes		Man.	<i>Jonasson v. Royal Transport</i> (Man. C.A.) [1936] 3 W.W.R. 540
16 & 17 Vict. c. 59 s. 19	Stamp Act	No.		B.C.	<i>Hinton Electric Co. v. Bk. of Montreal</i> (S.C. B.C. 1903) 9 B.C.R. 545
17 & 18 Vict. c. 80 s. 58	Evidence	Yes		Ont.	<i>R. v. Inness</i> [1933] O.R. 169
17 & 18 Vict. c. 113	Administration	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 4
		Yes		Man.	Incorp. into Man. Wills Act: <i>In re McEwen</i> (Man. C.A.) [1941] 1 W.W.R. 129, 138; <i>In re Kluner Est.</i> (Man. K.B.) [1940] 3 W.W.R. 221
18 & 19 Vict. c. 43	Infants	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 107
18 & 19 Vict. c. 67	Bills of Exchange	Yes		Man.	<i>Can. Bk. of Commerce v. Adamson</i> (S.C. Man. 1883) 1 Man. L.R. 3
18 & 19 Vict. c. 90 s. 2	Crown Costs	No		B.C.	<i>A.-G. v. Ruffner</i> (S.C. B.C. 1906) 12 B.C.R. 299
		Yes		Man.	Incorp. into Man. Q.B. Act: <i>R. v. Thomas</i> (Man. C.A.) [1948] 2 W.W.R. 444, 453-54
		No		Sask.	<i>R. v. Meilicke</i> (No. 2) (Sask. C.A.) [1938] 2 W.W.R. 97, 138-39, 424
19 & 20 Vict. c. 97	Admin. of Justice	Yes		B.C.	Incorp. into R.S.B.C. 1911 cc. 133 (ss. 1, 5), 92 (s. 3), 145 (ss. 9-11, 13, 14)
19 & 20 Vict. c. 108 s. 4	County Courts	No		B.C.	Imperial Order in Council not in force: <i>Reynolds v. Vaughan</i> (S.C. B.C. 1872) 1 B.C.R. (pt. 1) 3
19 & 20 Vict. c. 120	Settled Estates	Yes		Sask.	<i>Re Moffat Est.</i> (Sask. Q.B. 1955) 16 W.W.R. (N.S.) 314
20 & 21 Vict. c. 43	Summary Convictions	Yes		B.C.	<i>R. v. Ah Pow</i> (S.C. B.C.) 1880) 1 B.C.R. (pt. 1) 147
		Yes		Alta.	<i>In re Rutherford Est.</i> (Alta. C.A.) [1942] 1 W.W.R. 567
20 & 21 Vict. c. 77	Probate Court	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 4
20 & 21 Vict. c. 85	Divorce and Matrimonial Causes Act	Yes		Alta.	<i>Board v. Board</i> (P.C. (Alta.)) [1919] A.C. 958
		Yes		B.C.	<i>Sheppard v. Sheppard</i> (1908) 13 B.C.R. 486, <i>Watts v. Watts</i> (P.C. (B.C.)) [1908] A.C. 573; see <i>Brown v. Brown</i> (B.C. C.A. 1956) 20 W.W.R. 321, <i>Densmore v. Densmore</i> (B.C. C.A. 1956) 19 W.W.R. 252, [1957] S.C.R. 768, and R.S.B.C. 1911 c. 67
		Yes		Man.	<i>Walker v. Walker</i> (P.C. (Man.)) [1919] A.C. 947

Statute	Subject Matter	Whether In Force		Province	Authority
		Yes	No		
		Yes		Ont.	20 & 21 Geo. 5 c. 14 (Can.); <i>H. v. H.</i> [1936] O.W.N. 78 (rev'd. on other grounds, [1936] O.R. 432)
s. 28		Yes		Sask.	<i>Fletcher v. Fletcher</i> (Sask. C.A.) [1920] 1 W.W.R. 5
		No		Sask.	<i>May v. May</i> (Sask. C.A.) [1934] 3 W.W.R. 471, <i>Hauer</i> <i>v. Hauer</i> (Sask. Q.B. 1956) 20 W.W.R. 89
s. 32		Yes		Sask.	<i>In re Belaney Est.</i> (Sask. K.B.) [1939] 3 W.W.R. 591
s. 41		No		Sask.	<i>Davidson v. Davidson</i> (Sask. C.A. 1952) 7 W.W.R. (N.S.) 272
s. 55		No		B.C.	<i>Scott v. Scott</i> (B.C. C.A. 1891) 4 B.C.R. 316
21 & 22 Vict. c. 27	Chancery Amendment	Yes		B.C.	<i>Robinson v. McAdam</i> [1948] 2 W.W.R. 425
21 & 22 Vict. c. 95	Probate	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 4
21 & 22 Vict. c. 108	Divorce	Yes			See notes to 20 & 21 Vict. c. 85
22 & 23 Vict. c. 35	Admin. of Justice	Yes		B.C.	Incorp. into R.S.B.C. 1911, cc. 133 (s. 21), 232 (ss. 23, 29, 30)
23 & 24 Vict. c. 106	Land	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 128
23 & 24 Vict. c. 126	Common Law Procedure	Yes		P.E.I.	<i>Pictou Foundry Co. v. Dicks</i> [1935] 2 D.L.R. 593
23 & 24 Vict. c. 127 s. 28	Solicitors	Yes		Man.	<i>In re McCormack</i> (Man. C.A.) [1936] 2 W.W.R. 78, 509
23 & 24 Vict. c. 145	Ld. Cranworth's Act	Yes		Man.	<i>In re Nanton Est.</i> (Man. K.B.) [1948] 2 W.W.R. 113
24 & 25 Vict. c. 62	Limitations	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 145
24 & 25 Vict. c. 100 s. 45	Offences Against the Person	Yes		Sask.	<i>Nyktforuk v. Kohut</i> (Sask. D.C.) [1949] 1 W.W.R. 708
26 & 27 Vict. c. 118	Companies	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 40
27 & 28 Vict. c. 95	Executors	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 82
28 & 29 Vict. c. 60	Dogs	Yes		Sask.	<i>Popp v. Hoffman</i> (Sask. D.C. 1953) 10 W.W.R. (N.S.) 337
28 & 29 Vict. c. 78	Mortgages, Trustees	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 41
30 & 31 Vict. c. 69	Mortgages	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 4
31 & 32 Vict. c. 40	Partition	Yes		Alta.	<i>Hicks v. Kennedy</i> (Alta. C.A. 1957) 20 W.W.R. 517, and cases cited there
		Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 40
		Yes		Sask.	<i>Grunert v. Grunert</i> (Sask. Q.B. 1960) 32 W.W.R. 509
32 & 33 Vict. c. 48	Companies	Yes		B.C.	Incorp. into R.S.B.C. 1911 c. 40

Statute	Subject Matter	Whether In Force	Province	Authority
32 & 33 Vict. c. 62	Debtors	Yes	Alta.	<i>Fraser v. Kirkpatrick</i> (S.C. 1907) 5 W.L.R. 286
		Yes	Man.	<i>Re Bremner</i> (Man. C. A. 1889) 6 Man. L.R. 73
		Yes	Sask.	<i>Pearce v. Kerr</i> (Sask. D.C. 1908) 9 W.L.R. 504
32 & 33 Vict. c. 68 s. 2	Corroboration	Yes	Man.	<i>Cockerill v. Harison</i> (Man. C.A. 1903) 14 Man. L.R. 366
33 & 34 Vict. c. 20	Mortgages	Yes	B.C.	Incorp. into R.S.B.C. 1911 c. 41
33 & 34 Vict. c. 23	Forfeiture	No	Sask.	<i>In re Noble Est.</i> (Sask. D.C.) [1927] 1 W.W.R. 938