1956

PROCEEDINGS

OF THE

THIRTY-EIGHTH ANNUAL MEETING

OF THE

CONFERENCE OF COMMISSIONERS

ON

UNIFORMITY OF LEGISLATION IN CANADA

HELD AT

MONTREAL, QUEBEC

AUGUST 28TH TO SEPTEMBER 1ST, 1956

MIMEOGRAPHING AND DISTRIBUTING OF REPORTS

By resolution of the Conference the Commissioners who are responsible for the preparation of a report are also responsible for having the report mimeographed and distributed. Distribution is to be made at least three months before the meeting at which the report is to be considered.

Experience has indicated that from 60 to 75 copies are required, depending on whether the report is to be distributed to persons other than members of the Conference.

The local secretary of the jurisdiction charged with preparation and distribution of the report should send enough copies to each other local secretary so that the latter can give one copy to each member of the Conference from his jurisdiction. Three copies should be sent to the Secretary of the Conference and the remaining copies should be brought to the meeting at which the report is to be considered.

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CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA

OFFICERS OF THE CONFERENCE, 1956-57

Honorary President.....L. R. MacTavish, Q.C., Toronto.

President.....H. J. Wilson, Q.C., Edmonton.

1st Vice-President.....H. E. Read, Q.C., Halifax.

2nd Vice-President.....J. A. Y. MacDonald, Q.C., Halifax.

Treasurer.....A. C. DesBrisay, Q.C., Vancouver.

Secretary.....H. F. Muggah, Q.C., Halifax.

LOCAL SECRETARIES

Alberta.....H. J. Wilson, Q.C., Edmonton.

British Columbia.....H. Alan Maclean, Q.C., Victoria.

Canada.....W. P. J. O'Meara, Q.C., Ottawa.

Manitoba.....G. S. Rutherford, Q.C., Winnipeg.

New Brunswick.....M. M. Hoyt, B.C.L., Fredericton.

Newfoundland.....P. L. Soper, LL.B., St. John's.

Nova Scotia.....H. F. Muggah, Q.C., Halifax.

Ontario.....L. R. MacTavish, Q.C., Toronto.

Prince Edward Island.....J. O. C. Campbell, Q.C., Charlottetown.

Quebec.....Chas. Coderre, Q.C., 159 Craig St. West, Montreal.

Saskatchewan.....H. Wadge, Q.C., Regina.

COMMISSIONERS AND REPRESENTATIVES OF THE PROVINCES AND OF THE DOMINION

Alberta:

W. F. BOWKER, Q.C., LL.B., Dean, Faculty of Law, University of Alberta, Edmonton.

J. W. RYAN, Acting Legislative Counsel, Edmonton.

H. J. WILSON, Q.C., Deputy Attorney-General, Edmonton.
(*Commissioners appointed under the authority of the Statutes of Alberta, 1919, c. 31.*)

British Columbia:

A. C. DESBRISAY, Q.C., 675 West Hastings St., Vancouver.

G. P. HOGG, Legislative Counsel, Victoria.

H. ALAN MACLEAN, Q.C., Deputy Attorney-General, Victoria.
(*Commissioners appointed under the authority of the Statutes of British Columbia, 1918, c. 92.*)

Canada:

E. A. DRIEDGER, Q.C., Parliamentary Counsel, Department of Justice, Ottawa.

A. J. MACLEOD, Q.C., Advisory Counsel, Department of Justice, Ottawa.

W. P. J. O'MEARA, Q.C., Assistant Under Secretary of State and Advisory Counsel, Ottawa.

Manitoba:

IVAN J. R. DEACON, Q.C., 212 Avenue Bldg., Winnipeg.

R. MURRAY FISHER, Q.C., LL.D., Deputy Minister of Municipal Affairs, Winnipeg.

ORVILLE M. M. KAY, C.B.E., Q.C., Deputy Attorney-General, Winnipeg.

G. S. RUTHERFORD, Q.C., Legislative Counsel, Winnipeg.
(*Commissioners appointed under the authority of the Revised Statutes of Manitoba, 1940, c. 223, as amended, 1945, c. 66.*)

New Brunswick:

J. A. Creaghan, Q.C., Moncton.

C. L. DOUGHERTY, Q.C., 459 King St., Fredericton.

H. W. HICKMAN, Q.C., Department of Attorney-General, Fredericton.

M. M. HOYT, B.C.L., Legislative Counsel, Department of Attorney-General, Fredericton.

E. B. MACLATCHY, Q.C., Deputy Attorney-General, Fredericton.

JOHN F. H. TEED, Q.C., Royal Securities Bldg., Saint John.

(*Commissioners appointed under the authority of the Statutes of New Brunswick, 1918, c. 5.*)

Newfoundland:

H. P. CARTER, Q.C., Director of Public Prosecutions, St. John's.

C. J. GREENE, Q.C., Assistant Deputy Attorney-General, St. John's.

H. G. PUDDESTER, Q.C., LL.B., Deputy Attorney-General, St. John's.

P. L. SOPER, LL.B., Legal Assistant, Attorney-General's Department, St. John's.

Nova Scotia:

J. A. Y. MACDONALD, Q.C., Deputy Attorney-General, Halifax.

HENRY F. MUGGAH, Q.C., Legislative Counsel, Halifax.

HORACE E. READ, O.B.E., Q.C., Dean, Dalhousie University Law School, Halifax.

(*Commissioners appointed under the authority of the Statutes of Nova Scotia, 1919, c. 25.*)

Ontario:

W. C. ALCOMBRACK, Municipal Legislative Counsel, Toronto.

HON. MR. JUSTICE F. H. BARLOW, Osgoode Hall, Toronto.

L. R. MACTAVISH, Q.C., Legislative Counsel, Toronto.

C. R. MAGONE, Q.C., Deputy Attorney-General, Toronto.

(*Commissioners appointed under the authority of the Statutes of Ontario, 1918, c. 20, s. 65.*)

Prince Edward Island:

J. O. C. CAMPBELL, Q.C., 294 Richmond St., Charlottetown.

F. A. LARGE, Q.C., Royal Bank Chambers, Charlottetown.

J. P. NICHOLSON, Crown Prosecuter, 90 Great George St., Charlottetown.

D. O. Stewart, Q.C., Summerside.

Quebec:

EMILE COLAS, 276 St. James St. W., Montreal.

G. R. FOURNIER, Q.C., 65 St. Anne St., Quebec.

THOMAS R. KER, Q.C., 360 St. James St. West, Montreal.

HON. ANTOINE RIVARD, Q.C., Solicitor General, Quebec.

Saskatchewan:

E. C. LESLIE, Q.C., 504 Broder Bldg., Regina.

J. L. SALTERIO, Q.C., Deputy Attorney-General, Regina.

H. Wadge, Q.C., Legislative Counsel, Regina.

MEMBERS EX OFFICIO OF THE CONFERENCE

Attorney-General of Alberta: Hon. E. C. Manning.

Attorney-General of British Columbia: Hon. Robert W. Bonner, Q.C.

Attorney-General of Canada: Hon. Stuart S. Garson, Q.C.

Attorney-General of Manitoba: Hon. M. N. Hryhorczuk, Q.C.

Attorney-General of New Brunswick: Hon. W. J. West, Q.C.

Attorney-General of Newfoundland: Hon. L. R. Curtis, Q.C.

Attorney-General of Nova Scotia: Hon. M. A. Patterson, Q.C.

Attorney-General of Ontario: Hon. A. Kelso Roberts, Q.C.

Attorney-General of Prince Edward Island: Hon. A. W. Matheson, Q.C.

Attorney-General of Quebec: Hon. Maurice L. Duplessis, Q.C.

Attorney-General of Saskatchewan: Hon. Robert A. Walker, Q.C.

HISTORICAL NOTE

More than thirty years have passed since the Canadian Bar Association recommended that each provincial government provide for the appointment of commissioners to attend conferences organized for the purpose of promoting uniformity of legislation in the provinces.

This recommendation was based upon observation of the National Conference of Commissioners on Uniform State Laws, which has met annually in the United States since 1892 to prepare model and uniform statutes. The subsequent adoption by many of the state legislatures of these statutes has resulted in a substantial degree of uniformity of legislation throughout the United States, particularly in the field of commercial law.

The seed of the Canadian Bar Association fell on fertile ground and the idea was soon implemented by most provincial governments and later by the remainder. The first meeting of commissioners appointed under the authority of provincial statutes and of representatives from those provinces where no provision had been made by statute for the appointment of commissioners took place in Montreal on September 2nd, 1918, and there the Conference of Commissioners on Uniformity of Laws throughout Canada was organized. In the following year the Conference adopted its present name.

Since the organization meeting in 1918 the Conference has met during the week preceding the annual meeting of the Canadian Bar Association, and at or near the same place. The following is a list of the dates and places of the meetings of the Conference:

1918. September 2, 4, Montreal.
1919. August 26-29, Winnipeg.
1920. August 30, 31, September 1-3, Ottawa.
1921. September 2, 3, 5-8, Ottawa.
1922. August 11, 12, 14-16, Vancouver.
1923. August 30, 31, September 1, 3-5, Montreal.
1924. July 2-5, Quebec.
1925. August 21, 22, 24, 25, Winnipeg.
1926. August 27, 28, 30, 31, Saint John.
1927. August 19, 20, 22, 23, Toronto.
1928. August 23-25, 27, 28, Regina.
1929. August 30, 31, September 2-4, Quebec.
1930. August 11-14, Toronto.
1931. August 27-29, 31, September 1, Murray Bay.
1932. August 25-27, 29, Calgary.

1933. August 24-26, 28, 29, Ottawa.
1934. August 30, 31, September 1-4, Montreal.
1935. August 22-24, 26, 27, Winnipeg.
1936. August 13-15, 17, 18, Halifax.
1937. August 12-14, 16, 17, Toronto.
1938. August 11-13, 15, 16, Vancouver.
1939. August 10-12, 14, 15, Quebec.
1941. September 5, 6, 8-10, Toronto.
1942. August 18-22, Windsor.
1943. August 19-21, 23, 24, Winnipeg.
1944. August 24-26, 28, 29, Niagara Falls.
1945. August 23-25, 27, 28, Montreal.
1946. August 22-24, 26, 27, Winnipeg.
1947. August 28-30, September 1, 2, Ottawa.
1948. August 24-28, Montreal.
1949. August 23-27, Calgary.
1950. September 12-16, Washington, D.C.
1951. September 4-8, Toronto.
1952. August 26-30, Victoria.
1953. September 1-5, Quebec.
1954. August 24-28, Winnipeg.
1955. August 23–27, Ottawa.
1956. August 28–Sept. 1, Montreal.

Due to war conditions the annual meeting of the Canadian Bar Association scheduled to be held in Ottawa in 1940 was cancelled and for the same reason no meeting of the Conference was held in that year. In 1941 both the Canadian Bar Association and the Conference held meetings, but in 1942 the Canadian Bar Association cancelled its meeting which was scheduled to be held in Windsor. The Conference, however, proceeded with its meeting. This meeting was significant in that the National Conference of Commissioners on Uniform State Laws in the United States was holding its annual meeting at the same time in Detroit which enabled several joint sessions to be held of the members of both Conferences.

It is interesting to note that since 1935 the Government of Canada has sent representatives to the meetings of the Conference and that although the Province of Quebec was represented at the organization meeting in 1918, representation from that province was spasmodic until 1942, but since then representatives from the Bar of Quebec have attended each year, with the addition since 1946 of a representative of the Government of Quebec.

In 1950 the newly-formed Province of Newfoundland joined the Conference and named representatives to take part in the work of the Conference.

In most provinces statutes have been passed providing for grants towards the general expenses of the Conference and for payment of the travelling and other expenses of the commissioners. In the case of provinces where no legislative action has been taken and in the case of Canada, representatives are appointed and expenses provided for by order of the executive. The members of the Conference do not receive remuneration for their services. Generally speaking, the appointees to the Conference from each jurisdiction are representative of the various branches of the legal profession, that is, the Bench, governmental law departments, faculties of law schools and the practising profession.

The appointment of commissioners or representatives by a government does not of course have any binding effect upon the government which may or may not, as it wishes, act upon the recommendations of the Conference.

The primary object of the Conference is to promote uniformity of legislation throughout Canada or the provinces in which uniformity may be found to be practicable by whatever means are suitable to that end. At the annual meetings of the Conference, consideration is given to those branches of the law in respect of which it is desirable and practicable to secure uniformity. Between meetings the work of the Conference is carried on by correspondence among the members of the executive and the local secretaries. Matters for the consideration of the Conference may be brought forward by a member, the Minister of Justice, the Attorney-General of any province, or the Canadian Bar Association.

While the primary work of the Conference has been and is to achieve uniformity in respect of subject matters covered by existing legislation, the Conference has nevertheless gone beyond this field in recent years and has dealt with subjects not yet covered by legislation in Canada which after preparation are recommended for enactment. Examples of this practice are the Survivorship Act, section 39 of the Uniform Evidence Act dealing with photographic records and section 5 of the same Act, the effect of which is to abrogate the rule in *Russell* v. *Russell*, the Uniform Regulations Act, the Uniform Frustrated Contracts Act, and the Uniform Proceedings Against the Crown Act. In these instances the Conference felt it better to establish and recommend

a uniform statute before any legislature dealt with the subject rather than wait until the subject had been legislated upon in several jurisdictions and then attempt the more difficult task of recommending changes to effect uniformity.

Another innovation in the work of the Conference was the establishment in 1944 of a section on criminal law and procedure. This proposal was first put forward by the Criminal Law Section of the Canadian Bar Association under the chairmanship of J. C. McRuer, K.C., at the Winnipeg meeting in 1943. It was there pointed out that no body existed in Canada with the proper personnel to study and prepare recommendations for amendments to the Criminal Code and relevant statutes in finished form for submission to the Minister of Justice. This resulted in a resolution of the Canadian Bar Association that the Conference should enlarge the scope of its work to encompass this field. At the 1944 meeting of the Conference in Niagara Falls this recommendation was acted upon and a section constituted for this purpose, to which all provinces and Canada appointed special representatives.

For a more comprehensive review of the history of the Conference and of uniformity of legislation, the reader is directed to an article by L. R. MacTavish, K.C., entitled "Uniformity of Legislation in Canada — An Outline" that appeared in the January, 1947, issue of the *Canadian Bar Review*, at pages 36 to 52. This article, together with the Rules of Drafting adopted by the Conference in 1948, was re-published in pamphlet form early in 1949. Copies are available upon request to the Secretary.

In 1950, as the Canadian Bar Association was holding a joint annual meeting with the American Bar Association in Washington, D.C., the Conference also met in Washington. This gave the members an opportunity of watching the proceedings of the National Conference of Commissioners on Uniform State Laws which was meeting in Washington at the same time. A most interesting and informative week was had.

A number of the Uniform Acts have been adopted as ordinances of the Northwest Territories and the Yukon Territory in recent years. As a matter of interest, therefore, these have been noted in the Table appearing on pages 12 and 13.

H.F.M.

TABLE OF

The following table shows the model statutes prepared and adopted by the

Line	Title of Act	Conference	Adopted Alta.	B.C.	Man.	N.B.	Nfld.	N.S.
1	Assignments of Book Debts	1928	1929	....	'29, '51*	1931	1950‡	1931
2	Bills of Sale	1928	1929	....	1929	....	....	1930
3	Bulk Sales	1920	1922	1921	'21, '51*	1927	....	——$
4								
5	Conditional Sales	1922	....	1922	....	1927	....	1930
6								
7	Contributory Negligence	1924	1937*	1925	....	1925	1951*	'26, '54*
8	Corporation Securities Registration	1931	....	....	....	....	....	1933
9	Defamation	1944	1947	....	1946	1952‡	....	....
10	Devolution of Real Property	1927	1928	....	....	1934†	....	....
11	Evidence	1941	....	....	....	....	....	....
12								
13	Foreign Affidavits	1938	1952	1953	1952	1950x	1954*	1952
14	Judicial Notice of Statutes and							
15	Proof of State Documents	1930	....	1932	1933	1931	....	....
16	Officers, Affidavits before	1953	....	....	....	....	1954	....
17	Photographic Records	1944	1947	1945	1945	1946	1949	1945
18	*Russell* v. *Russell*	1945	1947	1947	1946	....	....	1946
19	Fire Insurance Policy	1924	1926	1925	1925	1931	1954‡	1930
20	Foreign Judgments	1933	....	....	....	1950‡	....	....
21	Frustrated Contracts	1948	1949	....	1949	1949	1956	....
22	Highway Traffic and Vehicles—							
23	Rules of the Road	1955	....	....	....	....	....	....
24	Interpretation	1938	....	....	1939‡	....	1951‡	....
25								
26	Intestate Succession	1925	1928	1925	1927‡	1926	1951	....
27	Landlord and Tenant	1937	....	....	....	1938	....	....
28	Legitimation	1920	1928	1922	1920	1920	——$	——$
29	Life Insurance	1923	1924	1923	1924	1924	1931	1925
30	Limitation of Actions	1931	1935	....	32, '46‡	....	....	....
31	Married Women's Property	1943	....	....	1945	1951$	....	....
32	Partnership	....	1899°	1894°	1897°	1921°	1892°	1911°
33	Partnerships Registration	1938	....	....	....	....	....	....
34	Perpetuities and Accumulations							
35	re Pension Trusts	1954	....	....	....	....	....	....
36	Proceedings Against the Crown	1950	....	....	1951	1952†	....	1951$
37	Reciprocal Enforcement of Judgments	1924	1925	1925	1950	1925	....	....
38	Reciprocal Enforcement of Maintenance							
39	Orders	1946	1947	1946	1946	1951‡	1951‡	1949
40	Regulations	1943	....	....	1945‡	....	....	....
41	Sale of Goods	....	1898°	1897°	1896°	1919°	....	1910°
42	Service of Process by Mail	1945	——$	1945	——$	....	....	....
43	Survivorship	1939	1948	1939	1942	1940	1951	1941
44	Testators Family Maintenance	1945	1947‡	....	1946	....	....	....
45	Vital Statistics	1949	....	....	1951‡	....	....	1952‡
46	Warehousemen's Lien	1921	1922	1922	1923	1923	....	1951
47	Warehouse Receipts	1945	1949	1945‡	1946‡	1947	....	1951
48	Wills	1929	....	....	1936	1952‡	....	....
49	Conflict of Laws	1953	....	....	....	....	....	....

* Adopted as revised.

° Substantially the same form as Imperial Act (*See* 1942 Proceedings, p. 18).

$ Provisions similar in effect are in force.

MODEL STATUTES

Conference and to what extent these have been adopted in the various jurisdictions.

Line	ADOPTED							REMARKS
	Ont.	P.E.I.	Que.	Sask.	Can.	N.W.T.	Yukon	
1 –	1931	1931	....	1929	....	1948	1954‡	Am. '31; Rev. '50 & '55
2 –	....	1947	....	1929	....	1948‡	1954‡	Am. '31 & '32; Rev. '55
3 –	....	1933	....	....	....	1948	....	Am. '21, '25, '39 & '49; Rev.
4 –								'50
5 –	....	1934	....	....	....	1948‡	1954‡	Am. '27, '29, '30, '33, '34 &
6 –								'42; Rev. '47 & '55
7 –	....	1938*	....	1944*	....	1950*‡	1955‡	Rev. '35 & '53
8 –	1932	1949	....	1932	....	....	....	.....
9 –	....	1948	....	....	....	1949*‡	1954	Rev. '48; Am. '49
10 –	....	....	....	1928	....	....	1954	.....
11 –	....	....	....	....	....	1948*‡	1955‡	Am. '42, '44 & '45; Rev. '45;
12 –								Am. '51 & '53
13 –	'52, '54*	....	....	1947	1943	1948	1955	Am. '51; Rev. '53
14 –								
15 –	....	1939	....	....	....	1948	1955	Rev. '31
16 –	1954	....	....	....	....	....	1955	.....
17 –	1945	1947	....	1945	1942$	1948	1955	.....
18 –	1946	1946	....	1946	....	1948	1955	.....
19 –	1924	1933	....	1925	....	....	....	Stat. Cond. 17 not adopted
20 –	....	....	....	1934	....	....	....	.....
21 –	1949	1949	....	....	....	....	....	.....
22 –								
23 –	....	....	....	....	....	....	....	.....
24 –	....	1939	....	1943	....	1948*‡	1954*	Am. '39; Rev. '41; Am. '48;
25 –								Rev. '53
26 –	....	1944‡	....	1928	....	1949‡	1954‡	Am. '26, '50 & '55
27 –	....	1939	....	....	....	1949‡	1954‡	Recomm. withdrawn '54
28 –	1921	1920	——$	1920	....	1949‡	1954†	.....
29 –	1924	1933	....	1924	....	....	....	.....
30 –	....	1939‡	....	1932	....	1948†	1954*	Am. '32, '43 & '44
31 –	....	....	....	....	....	1952†	1954†	.....
32 –	1920°	1920°	....	1898°	....	1948°	1954°	.....
33 –	....	....	....	1941†	....	....	....	Am. '46
34 –								
35 –	1954	....	....	....	....	....	....	Am. '55
36 –	1952‡	....	....	1952‡	....	....	....	.....
37 –	1929	....	....	1924	....	....	....	Am. '25; Rev. '56
38 –								
39 –	1948‡	1951‡	1952$	1946$	....	1951†	1955‡	Rev. '56
40 –	1944‡	....	....	....	1950$	....	....	.....
41 –	1920°	1919°	....	1896°	....	1948°	1954°	.....
42 –	....	....	....	——$	....	....	....	.....
43 –	1940	1940	....	1942	....	....	....	Am. '49; Am. 56
44 –	....	....	....	....	....	....	....	.....
45 –	1948$	1950‡	....	1950$	....	1952	1954‡	Am. '50
46 –	1924	1938	....	1922	....	1948	1954	.....
47 –	1946‡	....	....	....	....	....	....	.....
48 –	....	....	....	1931	....	1952	1954‡	Am. '53
49 –	1954	....	....	....	....	....	....	.....

x As part of Commissioners for taking Affidavits Act.
† In part.
‡ With slight modification.

MINUTES OF THE OPENING PLENARY SESSION

(TUESDAY, AUGUST 28TH, 1956)

10 a.m.–11.30 a.m.

Opening

The Conference assembled in the building of the Faculty of Law of McGill University, Montreal.

The President of the Conference, Mr. Wilson, acted as chairman, introduced the new members and outlined the work of the meeting as set out in the Agenda (Appendix A, page 35).

Mr. E. C. Leslie, Dominion Vice-President of the Canadian Bar Association, conveyed to the meeting, on behalf of Mr. Paul P. Hutchison, President of the Association, Mr. Hutchison's welcome to the Conference, his hope that its meetings would be pleasant and productive, and his regrets that other duties prevented him from attending in person.

President's Address

After his opening remarks, the President stated that he had been requested by the Attorney-General of the Province of Alberta to recommend to the Conference that it give consideration to the preparation of a model Uniform Act relating to the powers, privileges and immunities of legislative assemblies in Canada and to problems incidental thereto or connected therewith. Problems arising in the Province of Alberta had led to a study of the Acts of all provinces, which caused the Attorney-General to feel that uniformity on the subject might be desirable and capable of attainment.

The President stated that he had no special report to make to the Conference on its activities over the past year or on matters of concern to the Conference. He said, however, that he would like to suggest that substantial questions of principle or policy in respect of which there was controversy or uncertainty that arose either in the Uniform Law Section or in the Criminal Law Section should be referred to the plenary session for consideration and decision.

Minutes of Last Meeting

The following resolution was adopted:

RESOLVED that the minutes of the 1955 annual meeting as printed in the 1955 Proceedings be taken as read and adopted.

Treasurer's Report

The Treasurer, Mr. DesBrisay, presented his report (Appendix B, page 37). Messrs. Hickman and Hogg were appointed auditors and the report was referred to them for audit and for report to the closing plenary session.

Secretary's Report

The Secretary, Mr. Muggah, presented his report (Appendix C, page 39).

Nominating Committee

The President named a committee, consisting of Messrs. Maclean (chairman), Fisher, Barlow, Driedger and Hickman, to make recommendations respecting officers of the Conference for 1956-1957 and to report thereon at the closing plenary session.

Publication of Proceedings

The following resolution was adopted:

RESOLVED that the Secretary prepare a report of the meeting in the usual style, have the report printed and send copies thereof to the members of the Conference and those others whose names appear on the mailing list of the Conference, and that he make arrangements to have the 1956 Proceedings printed as an addendum to the Year Book of the Canadian Bar Association.

Following considerable discussion about a suggestion that the governments of Canada and the provinces be requested to increase their annual grants to the Conference in order to defray part of the cost of including the Proceedings in the Year Book of the Canadian Bar Association, the following resolution was adopted:

RESOLVED that a committee, consisting of Messrs. Rutherford (chairman), DesBrisay and Teed, investigate the cost of the annual printing of the Proceedings of the Conference for the purpose of ascertaining the most economical method of having them incorporated in the Year Book of the Canadian Bar Association, and submit a recommendation to the Conference respecting the suggestion that increased grants be sought from the governments of Canada and the provinces.

New Business

Highway Traffic

The President read a communication from the Canadian Good Roads Association requesting the Conference to appoint a

representative to sit on a committee of that Association studying the question of uniform Traffic Control Devices. It was agreed that the Conference should not appoint a member to the committee but that the invitation to do so should be acknowledged and that the Canadian Good Roads Association should be advised that the Conference would be glad to make available to the Association such material as the Conference possesses on the subject and that the Conference would welcome suggestions from the Association for amendment to the draft Uniform Rules of the Road as prepared by the Conference.

University of Toronto Law Journal

The Secretary referred to the meeting a suggestion made by Dr. F. E. LaBrie, Editor of the University of Toronto Law Journal, that a summary of the work of the Conference be included in the number of the Journal containing the annual survey of Canadian legislation. Mr. MacTavish was requested to prepare such a summary for submission to Dr. LaBrie.

Law Reform

Mr. MacTavish, for the Ontario Commissioners, presented a memorandum on the subject of law reform (Appendix D, page 40) and asked the Conference to consider the points raised in that memorandum.

The following resolutions were adopted:

RESOLVED that the Conference record its thanks to the Ontario Commissioners for bringing the subject to the attention of the Conference, that it be placed on the Agenda for the 1957 meeting, that the Secretary endeavour to obtain and distribute among the members of the Conference copies of the report of the special committee of the Canadian Bar Association on legal research, and that the representatives of the Dominion and of each province be prepared to report at the next meeting on the nature and extent of work in the field of law reform that is being carried on in their respective jurisdictions.

RESOLVED that a committee composed of Messrs. Bowker (chairman), Read and MacTavish study the question of law reform in Canada and report on it at the next meeting of the Conference with recommendations respecting the action that the Conference should undertake in the field.

MINUTES OF THE UNIFORM LAW SECTION

The following commissioners and representatives were present at the plenary sessions and at the sessions of this Section:

Alberta:
MESSRS. W. F. BOWKER and J. W. RYAN.

British Columbia:
MESSRS. A. C. DESBRISAY and G. P. HOGG.

Canada:
MESSRS. E. A. DRIEDGER and W. P. J. O'MEARA.

Manitoba:
MESSRS. I. J. R. DEACON, R. M. FISHER and G. S. RUTHERFORD.

New Brunswick:
MESSRS. J. A. CREAGHAN, M. M. HOYT, and J. F. H. TEED.

Newfoundland:
MR. P. L. SOPER.

Nova Scotia:
MESSRS. H. F. MUGGAH and H. E. READ.

Ontario:
THE HONOURABLE MR. JUSTICE F. H. BARLOW and MESSRS. W. C. ALCOMBRACK and L. R. MACTAVISH.

Quebec:
MESSRS. EMILE COLAS and T. R. KER.

Saskatchewan:
MESSRS. E. C. LESLIE and H. WADGE.

FIRST DAY

(TUESDAY, AUGUST 28TH, 1956)

First Session

11.30 a.m.–11.45 a.m.

The first meeting of the Section was convened immediately after the close of the opening plenary session. Mr. E. C. Leslie, First Vice-President of the Conference, acted as chairman.

Hours of Sittings

The following resolution was adopted:

RESOLVED that this Section of the Conference sit from 9.30 a.m. to 12 noon and from 2 p.m. to 5 p.m. daily during this meeting.

Second Session

2 p.m.–5 p.m.

Amendments to Uniform Acts

Mr. Alcombrack, in accordance with the resolution passed at the 1955 meeting (1955 Proceedings, page 18), presented his report on Amendments to Uniform Acts (Appendix E, page 43).

After discussion the following resolution was passed:

RESOLVED that the amendment of the Reciprocal Enforcement of Maintenance Orders Act, made by the Legislature of Ontario and referred to in Mr. Alcombrack's report, be recommended as an amendment to the Uniform Reciprocal Enforcement of Maintenance Orders Act and to the Uniform Reciprocal Enforcement of Judgments Act.

It was decided, also, that the special Committee, consisting of Messrs. Driedger, Hogg and Puddester, appointed at the 1955 meeting (1955 Proceedings, page 18) to study the effect of an amendment enacted in Newfoundland to its Interpretation Act and referred to in Mr. Treadgold's report at the 1955 Conference (1955 Proceedings, page 37) should continue its study and report at the next meeting of the Conference.

Judicial Decisions affecting Uniform Acts

Dean Read presented his report on Judicial Decisions affecting Uniform Acts (Appendix F, page 46).

After discussions during which expressions of appreciation of the members of the Conference for the valuable work done by Dean Read in preparing the report were stated, the following conclusions were reached:

Bills of Sale Act and Conditional Sales Act—It was decided that the cases on these Acts dealt with in the report be referred to the Alberta Commissioners for study and report at the next meeting of the Conference with their recommendations about the necessity of amendment of the Uniform Acts.

Contributory Negligence Act, Defamation Act, Sale of Goods Act, Survivorship Act, Testator's Family Maintenance Act and

Wills Act—It was agreed that no amendments to these Acts were indicated by the cases on them referred to in the report.

Reciprocal Enforcement of Maintenance Orders Act—The case on this Act mentioned in the report was referred to the special Committee dealing with the Act for consideration by that Committee in completing its work.

Devolution of Real Property Act—The report of the Saskatchewan Commissioners on this Act, made in accordance with a resolution passed at the 1954 Conference was received (Appendix G, page 60), and it was decided that further consideration of the subject should be deferred until the decision of the Supreme Court of Canada in *Re Sykes Estate* is known.

Companies

Mr. O'Meara presented the following report on the work of the Federal-Provincial Committee on Uniformity of Company Law:

The Federal Provincial Committee on Uniformity of Company Law in Canada has held two meetings, each of one week's duration, since the last meeting of this Conference.

Commencing Monday, October 31, 1955, the Committee met in Ottawa, with representatives present from the Federal Government and all the provinces, except Prince Edward Island and Quebec. At the last minute, unforeseen circumstances prevented attendance of any representative from Prince Edward Island. The Province of Quebec, as on previous occasions, had been supplied with minutes of the preceding meeting, and had expressed interest, but did not send any representative.

The Committee met again in Ottawa for the week commencing Monday, May 28, with delegates present from all the provinces except Quebec, together with Federal delegates. Draft uniform sections, prepared by several standing committees, on particular subjects were presented, discussed and modified to some extent. Discussion continued on various items with respect to which uniformity was considered feasible and considerable progress was reported at each of those two meetings. While, in most cases, agreement was unanimous among those present, there are several topics with respect to which one or other of the delegates felt that consultation with their respective governments would be necessary before final decisions could be made as to whether uniformity was feasible.

Summaries of the decisions reached at the last three meetings of the plenary committee had been prepared, together with an index to the summaries.

A further meeting has been arranged for the week commencing Monday, November 19, 1956, at which it is hoped, and expected, that discussion can be completed with respect to the remaining subjects on which uniformity is thought to be feasible. The expectation is that, following the November meeting, formal drafting of various groups of sections can be undertaken. In this respect it is urgently recommended that the federal and provincial representatives on the Conference of Commissioners on Uniformity of Legislation in Canada will hold themselves available to assist the representatives of their provinces on the Company Law Conference in such drafting, in order that uniformity, in principle, may be achieved in so far as possible while these drafts are being separately prepared.

Foreign Torts

At the 1955 meeting of the Section on Administration of Civil Law of the Canadian Bar Association, the following resolution was passed:

"The Section approved the report from British Columbia upon the rule in *Phillips* v. *Eyre* and recommended that the new chairman send this portion of the British Columbia report to the Conference of Commissioners on Uniformity of Legislation."

The resolution and report were sent to the Secretary by Mr. F. L. Bastedo, Chairman of the Section, and the subject was accordingly placed on the Agenda. The relevant portions of the British Columbia report are contained in Appendix H, page 62.

After discussion the following resolution was passed:

RESOLVED that the rule in the case of *Phillips* v. *Eyre* be referred to a Committee, consisting of Dean Read and such other members as he chooses, for study and for report at the next meeting of the Conference with a recommendation for legislation if the Committee considers legislation desirable.

Innkeepers

Mr. Muggah reported orally for the Nova Scotia Commissioners that they had been unable to complete a report for this meeting because of delays in obtaining copies of English legislation on the subject that was passed this year and because the

Committee felt that it would be desirable to consider as well a draft Act that had been prepared under the direction of the Council of Europe. It was decided that the Act should be referred back to a Committee, consisting of the Nova Scotia Commissioners and Mr. Teed, for report at the next meeting of the Conference.

Intestate Succession

In accordance with a resolution passed at the 1955 meeting (1955 Proceedings, page 24), Mr. Hoyt presented the report of the New Brunswick Commissioners (Appendix I, page 64). Consideration of the report was commenced.

SECOND DAY

(WEDNESDAY, AUGUST 29TH, 1956)

Third Session

9.30 a.m.–12 noon

Intestate Succession—(concluded)

Consideration of the New Brunswick report was concluded and the following resolution was adopted:

RESOLVED that in view of the fact that the provisions referred to in the report of the New Brunswick Commissioners have not been adopted in a number of provinces the Conference receive the report but make no recommendations for amendments to the Uniform Act.

Testator's Family Maintenance

Mr. Rutherford presented the report of the Manitoba Commissioners (Appendix J, page 71).

Following discussion the following resolution was adopted:

RESOLVED that the Conference approve in principle the recommendation of the Manitoba Commissioners that Sections 6 and 22 of the Uniform Testator's Family Maintenance Act be amended and that the Act be referred to the Ontario Commissioners for a report and a draft amending Act at the next meeting.

Legislative Assembly

Mr. Ryan, on behalf of the Alberta Commissioners, conveyed to the Conference a request of the Attorney-General of Alberta

that the Conference consider the preparation of a model Uniform Act relating to the powers, privileges and immunities of legislative assemblies in Canada, and to other problems incidental thereto. He stated that the Attorney-General of Alberta had sought the views of the Attorneys-General of the other provinces but that it was not yet known whether more than three jurisdictions were interested in having such a model Act prepared by the Conference. After some discussion the following resolution was adopted:

RESOLVED that the Conference proceed with consideration of the suggestion that a Uniform Legislative Assemblies Act be prepared; that the President of the Conference write to the Attorney-General of each province, stating that the matter had been referred to the Conference and asking whether he considers that it would be advantageous to have a Uniform Act on the subject and whether, if a Uniform Act were prepared, it is likely that a bill to enact it would be introduced by his Government in the provincial legislature and recommended for enactment, subject, of course, to approval thereof by the Government when the Act is completed; and that if favourable replies, as to interest and probable enactment, are received from four or more jurisdictions the matter be referred to the Commissioners for Alberta for study and report at the next meeting of the Conference.

Fourth Session

2 p.m.–5 p.m.

Bulk Sales

Following reports by Mr. DesBrisay, on behalf of the British Columbia Commissioners, and Mr. Rutherford, on behalf of the Manitoba Commissioners, and considerable discussion, the following resolution was adopted:

RESOLVED that the matter of a Uniform Bulk Sales Act be referred to the Alberta Commissioners for study of the work already done by the Conference and for report at the next meeting with a draft Act.

Highway Traffic and Vehicles (Responsibility for Accidents)

Mr. Muggah presented the report of the Nova Scotia Commissioners (1955 Proceedings, page 77).

After discussion of the report and the draft Act attached to it, the following resolution was adopted:

RESOLVED that the draft Highway Traffic (Responsibility for Accidents) Act, attached to the report of the Nova Scotia

Commissioners, be referred back to them for the incorporation in it of the changes made at this meeting, for further study, and for report to the next meeting with a revised draft Act.

Highway Traffic and Vehicles (Rules of the Road)

Following discussion of suggestions for changes in the uniform draft Act as recommended in 1955, the following resolution was adopted:

RESOLVED that the Uniform Highway Traffic and Vehicles (Rules of the Road) Act be referred to Mr. Driedger for consideration of the suggestions for amendments to it that have been made since its adoption, and for report by him at the next meeting, with a draft amending Act if he considers it advisable.

Reciprocal Enforcement of Judgements
Reciprocal Enforcement of Maintenance Orders

Dean Read presented the report (Appendix K, page 73) of the special Committee, consisting of himself and Mr. Magone, and consideration of the report was commenced.

THIRD DAY

(THURSDAY, AUGUST 30TH, 1956)

Fifth Session

9.30 a.m.–12 noon

Wills

In accordance with a resolution passed at the 1955 meeting (1955 Proceedings, page 17), Dean Read presented the report of the special Committee on a Uniform Wills Act, and consideration of the report and the draft Act attached to it was commenced.

Sixth Session

2 p.m.–5 p.m.

Wills—(concluded)

After further consideration of the report and the draft Wills Act, the following resolution was adopted:

RESOLVED that the draft Wills Act, attached to the report of the special Committee, be referred back to Dean Read, as chairman of the Committee, to incorporate in it the changes made at this meeting; that copies of the draft so revised by him be sent to each of the local secretaries for distribution by them to the

members of the Conference in their respective jurisdictions; and that if the draft, as so revised, is not disapproved by two or more jurisdictions by notice to the Secretary of the Conference on or before the 31st day of December, 1956, it be recommended for enactment in that form.

AND IT IS FURTHER RESOLVED that the preparation, printing and distribution of the Proceedings follow its usual time schedule, even though it be impossible to include a note as to whether or not the Uniform Wills Act has been disapproved under the terms of this resolution; and it is further resolved that a note be included to the effect that information as to whether or not the Uniform Wills Act was approved or disapproved could be obtained from the Secretary.

NOTE:—Copies of the revised draft were distributed in accordance with the above resolution on November 20, 1956. In accordance with the second part of the resolution the draft revised Act and a summary of the report of the Special Committee that was presented at the 1956 meeting appear as Appendix M, page 96. Information about approval or disapproval may be obtained from the Secretary of the Conference after December 31, 1956.

Evidence

During consideration of the draft Wills Act, a question arose about the manner of proving that a person, who had informally made a will while in the Armed Forces, was in fact a member of those Forces on Active Service at the time of doing so and accordingly entitled to the privilege conferred by the Act. After some discussion, the following resolution was adopted:

RESOLVED that Mr. Driedger be requested to draft and submit at the next meeting of the Conference an amendment to the Evidence Act providing a method of proving, by certificate of a superior or records officer, or otherwise, that a person was a member of the Armed Forces on Active Service.

FOURTH DAY

(FRIDAY, AUGUST 31ST, 1956)

Seventh Session

9.30 a.m.–12 noon

Appointment of Beneficiaries under Uninsured Pension Plans

The Association of Superintendents of Insurance of Canada, in correspondence with the President of the Conference, suggest-

ed that the Conference consider a recommendation to the legislatures of the provinces for the enactment of legislation on this subject similar to that contained in Section 62 of The Conveyancing and Law of Property Act of Ontario, as that section was enacted by Chapter 12 of the Acts of 1954. The section enables a participant in a pension plan to name a beneficiary to receive the death benefit in much the same way as an insured person may name a beneficiary to receive life insurance money. The following resolution was adopted:

RESOLVED that the suggestion for recommendation as a Uniform Act of provisions similar to those contained in Section 62 of The Conveyancing and Law of Property Act of Ontario be referred to the Manitoba Commissioners for study and report at the next meeting with a draft Act if they consider that advisable.

Reciprocal Enforcement of Judgments

Reciprocal Enforcement of Maintenance Orders—(concluded)

After further consideration of the report on these matters, the following resolution was adopted:

RESOLVED that the Reciprocal Enforcement of Judgments Act and the draft Act to amend the Reciprocal Enforcement of Maintenance Orders Act be referred to the Manitoba Commissioners for revision in accordance with the decisions reached at this meeting; that copies of the Acts so revised be sent by them to each of the local secretaries for distribution by them to members of the Conference in their respective jurisdictions; and that if the Acts as so revised are not disapproved by two or more jurisdictions by notice to the Secretary of the Conference on or before the 30th day of November, 1956, they be recommended for enactment in that form.

NOTE:—Copies of the revised drafts were distributed in accordance with the above resolution. Disapprovals by two or more jurisdictions were not received by the Secretary by November 30, 1956. The drafts as adopted and recommended for enactment are set out in Appendix L, page 80.

Survivorship

In accordance with the resolution passed at the 1955 meeting (1955 Proceedings, page 24), Dean Bowker presented the report of the Alberta Commissioners (Appendix N, page 129). Consideration of the report was then commenced.

Eighth Session

2 p.m.–5 p.m.

Survivorship—(concluded)

Consideration of the report of the Alberta Commissioners was concluded and the following resolution adopted:

RESOLVED that if two or more jurisdictions do not disapprove by notice to the Secretary of the Conference on or before the 30th day of November, 1956, the Conference recommend the enactment of the following amendments to the Uniform Survivorship Act:

That the Uniform Survivorship Act be amended

(*a*) by striking out the figures and word "(2) and (3)" in subsection (1) of section 2; and

(*b*) by substituting the figures and words "(2), (3) and (4)" therefor; and

(*c*) by adding the following new subsection after subsection (3) of Section 2:

(4) Where a will contains a provision for a substitute personal representative in case of the occurrence of any of the following circumstances, namely, that an executor named in the will

(*a*) does not survive the testator,

(*b*) dies at the same time as the testator, or

(*c*) dies in circumstances rendering it uncertain which of them survived the other,

if the testator and any executor named in the will die at the same time or in circumstances rendering it uncertain which of them survived the other or if the named executor does not survive the testator, then, for the purposes of probate, the case for which the will provides shall be deemed to have occurred.

NOTE:—Disapprovals by two or more jurisdictions were not received by the Secretary by November 30, 1956. Accordingly the amendments set out above may be taken as recommended for enactment.

The supplementary report of the Alberta Commissioners dealt with the suggestion of the sub-committee of the Ontario Section on the Administration of Criminal Justice and the Canadian Bar Association that consideration be given to the adoption, in principle, of the Uniform Simultaneous Deaths Act in effect in parts of the United States in place of the Uniform Survivorship

Act. After considerable discussion, it was decided that the Conference should not recommend the repeal of the Survivorship Act, which has now been adopted in all of the common law provinces of Canada, and the enactment in its place of legislation similar to the United States Act.

Trustee Investments

Consideration of the report of the British Columbia Commissioners (1955 Proceedings, Appendix N, page 163), which had been commenced at the 1955 meeting, was resumed. Upon conclusion of the discussion, the following resolution was adopted:

RESOLVED that the draft Act respecting trustee investments, attached to the report of the British Columbia Commissioners, be referred back to them to incorporate in it the changes made at this meeting; that copies of the draft so revised be sent to each local secretary for distribution by him to the members of the Conference in his jurisdiction, and that if the draft, as so revised, is not disapproved by two or more jurisdictions by notice to the Secretary of the Conference on or before the 30th day of November, 1956, it be recommended for enactment in that form.

NOTE:—The draft Act not having been distributed before November 30, 1956, no recommendation for enactment is made.

Legitimation

Mr. Ryan, on behalf of the Alberta Commissioners to whom this Act was referred at the 1954 and 1955 meetings, asked for instructions from the Conference on a number of points of principle that the Alberta Commissioners felt should be settled before a draft Act could be prepared.

FIFTH DAY

(SATURDAY, SEPTEMBER 1ST, 1956)

Ninth Session

9.45 a.m.–10.15 a.m.

Legitimation—(concluded)

After discussion of the questions raised by Mr. Ryan, it was decided that the matter of legitimation should be referred back to the Alberta Commissioners for further study in the light of the principles discussed at this meeting, and for report at the next meeting with a draft Act.

MINUTES OF THE CRIMINAL LAW SECTION

The following members were in attendance:

H. A. MACLEAN, Q.C., Deputy Attorney General, representing British Columbia.

H. J. WILSON, Q.C., Deputy Attorney General, representing Alberta.

J. L. SALTERIO, Q.C., Deputy Attorney General, representing Saskatchewan.

THE HONOURABLE M. N. HRYHORCZUK, Q.C., Attorney General, representing Manitoba.

O. M. M. KAY, C.B.E., Q.C., Deputy Attorney General, representing Manitoba.

C. R. MAGONE, Q.C., Deputy Attorney General, representing Ontario.

G. R. FOURNIER, Q.C., representing Quebec.

H. W. HICKMAN, Q.C., Senior Counsel, Department of Attorney General, representing New Brunswick.

J. A. Y. MACDONALD, Q.C., Deputy Attorney General, representing Nova Scotia.

D. O. STEWART, Q.C., Crown Prosecutor, Prince County, representing Prince Edward Island.

J. C. MARTIN, Q.C., representing the Department of Justice of Canada.

A. J. MACLEOD, Q.C., Director of Criminal Law Section, representing the Department of Justice of Canada.

Chairman—H. W. HICKMAN, Q.C.

Secretary—A. J. MACLEOD, Q.C.

The Criminal Law Section devoted itself largely to discussion of proposals that, since the last meeting, had been received in the Department of Justice for amendment of the new Criminal Code, which came into force on April 1st, 1955. The Section made the following recommendations:

Code Provisions Concerning Firearms

The Section considered that section 82 of the Code, which makes it an offence to carry an offensive weapon for a purpose dangerous to the public peace or for the purpose of committing

an offence, should be amended to include imitations of offensive weapons. It considered also that section 86, which makes it an offence, without lawful excuse, to point at another person a firearm other than a rifle or shotgun, should be amended to cover these types of weapons. It recommended that section 88, which requires a person under the age of 14 years to have a permit before he can have certain firearms in his possession, should also apply in respect of rifles and shotguns. It recommended an appropriate amendment to the Code to authorize the court to order forfeiture of any weapon by means of which an offence has been committed or is alleged to have been committed if, in the opinion of the court, it would be contrary to the public interest to return the weapon to the person who claims to be entitled to it. Finally, the Section considered that where, under the Criminal Code, an authority exists in any person to issue to another person a permit to carry an offensive weapon the issuer should be authorized to attach such conditions to the permit as he may determine.

Carnal Knowledge

Subsection (3) of section 138 of the Code provides that, where an accused is charged with an offence under subsection (2) of that section, the court may find the accused not guilty if it is of opinion that the evidence does not show that, as between the accused and the female person, the accused is wholly or chiefly to blame. The section considered that, in order to remove the difficulty that results from the decision in *R.* v. *Wiberg*, (1955) 16 W.W.R. 442, subsection (3) should be amended by deleting the words "wholly or chiefly to blame" and substituting the words "more to blame than the female person".

Obscene Literature and Crime Comics

The Commissioners discussed the practice that is followed in the respective provinces in dealing with these types of literature. It was decided that the representative of the Department of Justice should, as soon as possible, prepare a memorandum setting out the manner in which, apparently, in the United Kingdom, a distributor may be served with a summons to show cause why literature that he has in his custody for distribution, and which is alleged to be obscene, should not be destroyed upon the order of the court. This memorandum is to be distributed to the members of the Criminal Law Section for their comments.

Motor Vehicle Offences

It was pointed out at the meeting that under the old Criminal Code there existed the offences of motor manslaughter and the included lesser offence of driving a motor vehicle recklessly or in a manner dangerous to the public, while in the new Code criminal negligence must be established whether the charge is for causing death or injury or merely dangerous driving. It was suggested that some consideration should be given to a recommendation for amendment of the Code to provide for an offence of driving in a manner which, while dangerous to the public, does not amount to criminal negligence as defined, and provide that this new offence should be an offence included in those offences where, in relation to the operation of motor vehicles, criminal negligence is the *gravamen*. The representative of the Department of Justice is to prepare a draft section and circulate it to the other Commissioners for their comments.

The Section also recommended the amendment of section 225 of the Code to authorize an order prohibiting driving to be made in the case of a person who is convicted of the offence of failing to stop at the scene of an accident.

Pleading Guilty to Charges in Another Province

Section 421(3) of the Code provides a procedure whereby an accused who "is in custody" in one province may plead guilty to charges against him that are outstanding in another province. The Section approved of a proposal that this section be amended to make it clear that the procedure is applicable only where the accused is in custody pursuant to conviction for an offence.

Publication of Statements Allegedly Made by Accused

It frequently occurs that statements, written or verbal, alleged to have been made by the accused, are tendered in evidence against him at the preliminary inquiry. The Section discussed the possible prejudicial effect on the accused at his trial where publicity has been given to such statements when put in evidence at the preliminary inquiry. The Section recommended that the Criminal Code be amended to provide that, prior to the trial of an accused, no publicity shall be given to any statement alleged to have been made or given by the accused to any person in connection with the charge against him.

Evidence in Criminal Proceedings

The Section recommended that appropriate amendments be made to the statute law of Canada to authorize evidence to be

taken in criminal proceedings in the same manner as it is authorized to be taken in civil proceedings in the province in which the criminal proceedings occur. This would permit the use of recording machines to transcribe evidence in criminal proceedings in the courts of those provinces where provincial legislation authorizes the use of recording machines to transcribe evidence in civil proceedings.

Power of Court of Appeal to Amend Indictment

The Section discussed the effect of the decision of the Ontario Court of Appeal in *R.* v. *Austin*, (1955) 113 C.C.C. 95. In that case the accused was charged with robbing one Emil Savoie while the evidence at the trial established that the victim was one Marcel Savoie. There was no request by the Crown at the trial to amend the information so that it would bear the true name of the victim. The Court of Appeal held that it had no power to make such an amendment on the hearing of the appeal. The Section recommended that the Code be amended so that the Court of Appeal would have power to amend the indictment if thereby there would be no prejudice to the accused, and to order a new trial on an indictment, as amended by the Court of Appeal, if, by reason of the amendment, there arose any possibility of prejudice to the accused. The Department of Justice representative is to prepare draft amendments and submit them to the other Commissioners for comment.

Habitual Criminals

The Section discussed certain matters arising under Part XXI of the Criminal Code, which relates to habitual criminals. The Department of Justice representative is to prepare a draft incorporating some of the proposals that were advanced, and submit the draft to the other representatives for their comments.

Waiver of Jurisdiction by Magistrates

The Section discussed a number of other matters including the power of judges to grant reprieves to persons sentenced to death, waiver of jurisdiction by magistrates and justices of the peace, appeals in summary conviction cases and the competence and compellability of spouses as witnesses against each other in criminal cases.

Mr. H. G. Puddester, Q.C., was appointed Chairman of the Criminal Law Section for 1956-57 and Mr. A. J. MacLeod, Q.C., was appointed Secretary.

MINUTES OF THE CLOSING PLENARY SESSION

(SATURDAY, SEPTEMBER 1ST, 1956)

11 a.m.–11.35 a.m.

Publication of Proceedings

Mr. Rutherford submitted the report of the special Committee set up at the Opening Plenary Session (Appendix O, page 138). After discussion, it was resolved that the report of the Committee be adopted and approved.

Next Meeting

The following resolution was adopted:

RESOLVED that the next meeting of the Conference be held at Calgary during the five days, exclusive of Sunday, before the 1957 annual meeting of the Canadian Bar Association.

Report of Criminal Law Section

Mr. Hickman, Chairman of the Criminal Law Section, presented a report on the work of the Section (Appendix P, page 139).

Report of Auditors

The auditors reported that they had examined the books of the Treasurer and the Treasurer's report and had certified them as being correct.

Report of Nominating Committee

Mr. Maclean, chairman of the nominating committee named at the opening plenary session, submitted the following nominations for the officers of the Conference for the year 1956-1957:

Honorary President.....L. R. MacTavish, Q.C., Toronto
President.....H. J. Wilson, Q.C., Edmonton
1st Vice-President.....H. E. Read, Q.C., Halifax
2nd Vice-President.....J. A. Y. MacDonald, Q.C., Halifax
Treasurer.....A. C. DesBrisay, Q.C., Vancouver
Secretary.....H. F. Muggah, Q.C., Halifax

The report was adopted and those named were declared elected.

Secretarial Assistance

After discussion of clerical and secretarial assistance for officers of the Conference, it was agreed that the secretary of the Treasurer, Mr. DesBrisay, should be remunerated for past services by the payment of an amount of $75 and that in future she should be paid an honorarium of $25 annually, and that the secretary of the Secretary should be paid an honorarium of $50 annually, and that a similar honorarium should be paid annually for assistance in the printing, proofreading and arrangement of the Proceedings.

Appreciations

The following resolution was unanimously adopted:

RESOLVED that the Conference record its appreciation and gratitude for the hospitality and assistance received during this meeting, and particularly,

(*a*) to the Bar of the Province of Quebec for the many kindnesses shown to the members of the Conference through Messrs. Fornier, Colas and Coderre, and other members in attendance at the Conference, and for their thoughtfulness in obtaining tickets to the football game for members of the Conference;

(*b*) to the Bar of Montreal for their daily hospitality and for the baseball tickets;

(*c*) to the Dean of the Faculty of Law, McGill University, and his staff for making space in their building available for the use of the Conference, for permitting the use of the Library, and for assistance, generally, in carrying on the work of the Conference;

(*d*) to the President, Mr. Wilson, and Mrs. Wilson and the Alberta Commissioners for a very enjoyable buffet;

(*e*) to the ladies for their kindness in attending and brightening the hours outside of working sessions,

and that the Secretary convey the Conference's gratitude to the several persons and organizations mentioned.

Close of Meeting

The President, Mr. Wilson, thanked the members of the Conference for their assistance and close attention to the work of the

Conference during the past year and stated that he appreciated the honour that they had conferred upon him in re-electing him for another term.

Mr. Fisher, on behalf of the members of the Uniform Law Section, complimented Mr. Leslie for his success in expediting the work of that Section, and thanked him for the kindness and courtesy shown to all the members while doing so.

The President, Mr. Wilson, then closed the meeting.

APPENDIX A

(*See page 14*)

AGENDA

PART I

OPENING PLENARY SESSION

1. Opening of Meeting.
2. Minutes of Last Meeting.
3. President's Address.
4. Treasurer's Report and Appointment of Auditors.
5. Secretary's Report.
6. Appointment of Nominating Committee.
7. Publication of Proceedings.
8. Next Meeting.

PART II

UNIFORM LAW SECTION

1. Amendments to Uniform Acts—Report of Mr. Alcombrack (1955 Proceedings, page 18).
2. Bulk Sales—Report of British Columbia and Manitoba Commissioners (1955 Proceedings, page 23).
3. Companies—Report of Federal Representatives (1955 Proceedings, page 18).
4. Foreign Torts—Rule in Phillips v Eyre (1870) L. R., 6 Q. B. 1 (added to Agenda at request of the Chairman of the Section on Administration of Civil Justice of the Canadian Bar Association—see 1955 Proceedings of the Association, page 69).
5. Highway Traffic and Vehicles:

   Responsibility for Accidents—Report of Nova Scotia Commissioners (1955 Proceedings, page 20).
6. Innkeepers—Report of Nova Scotia Commissioners (1955 Proceedings, page 22).
7. Intestate Succession—Report of New Brunswick Commissioners (1955 Proceedings, page 24).

8. Judicial Decisions affecting Uniform Acts:
   Report of Dr. Read (1951 Proceedings, page 21)
   Report of Manitoba Commissioners on Testator's Family Maintenance Act (1955 Proceedings, page 23).
9. Legislative Assembly—Report of Alberta Commissioners (placed on Agenda at request of the President).
10. Legitimation—Report of Alberta Commissioners (1955 Proceedings, page 19).
11. Reciprocal Enforcement of Judgments; Reciprocal Enforcement of Maintenance Orders—Report of Special Committee (1955 Proceedings, page 18).
12. Survivorship—Report of Alberta Commissioners (1955 Proceedings, page 24).
13. Trustee Investments—Report of British Columbia Commissioners (1955 Proceedings, page 26).
14. Wills—Report of Special Committee (1955 Proceedings, page 17).
15. New Business.

PART III

CRIMINAL LAW SECTION

The Criminal Law Section will discuss a number of proposals that have been made for amendment of the new Criminal Code. Working papers, prepared in the Department of Justice, will be available for the purpose. Any time that remains when these discussions have been concluded will be devoted to a discussion of the recommendations contained in the report of a committee, under the chairmanship of Mr. Justice Fauteux of the Supreme Court of Canada, appointed to inquire into the principles and procedures followed in the Remission Service of the Department of Justice of Canada.

PART IV

CLOSING PLENARY SESSION

1. Report of Criminal Law Section.
2. Appreciations, etc.
3. Report of Auditors.
4. Report of Nominating Committee.
5. Close of Meeting.

APPENDIX B

(*See page 15*)

TREASURER'S REPORT
1955—1956

Balance on hand August 15th, 1955 (on deposit in Imperial Bank of Canada)		$3,692.21

RECEIPTS

Contributions from Governments of:		
Quebec (for 1955)	$ 200.00	
Manitoba (for 1956)	200.00	
Saskatchewan	200.00	
British Columbia	200.00	
Alberta	200.00	
Canada	200.00	
New Brunswick	200.00	
Prince Edward Island	100.00	
Newfoundland	200.00	
Quebec	200.00	
Ontario	200.00	
Nova Scotia	200.00	
		$ 2,300.00
Bank Interest—Oct. 31/56	$ 34.92	
Bank Interest—Apr. 30/56	38.00	
		72.92

DISBURSEMENTS

Clerical Assistance	$	50.00
Exchange		.25
Rebate to Treasurer of amount charged by Bank to his personal account in error		50.00
Noble Scott Co. Limited re 100 copies of Agenda for Conference		26.40

National Printers Limited—		
Printing Proceedings of the 37th Annual Meeting, 1955	$ 1,590.00	
Plain Manilla envelopes	4.00	
Typing and checking envelopes	18.00	
Sales Tax 10%	161.20	
Mailing	30.80	
Express charges	2.10	
		1,806.10
CASH IN BANK		4,132.38
	$ 6,065.13	$6,065.13

A. C. DESBRISAY,
Treasurer.

August 30th, 1956.

Audited and found correct,

H. W. HICKMAN,
GILBERT HOGG,
Auditors.

APPENDIX C

(*See page 15*)

SECRETARY'S REPORT
1956

Proceedings

The Proceedings of the 1955 meeting were prepared, printed and distributed in accordance with the resolution passed at that meeting (1955 Proceedings, page 15). The Proceedings were also as usual published as part of the Year Book of the Canadian Bar Association.

In the past 500 copies of the Proceedings were printed. The mailing list indicated that 495 copies were to be distributed, leaving a balance of only 5 for Conference files. Accordingly, instructions were given to the printer to increase the run of copies to 550. Since delivery of the Proceedings a substantial number of requests for copies has been received so that there are now fewer than 20 copies in stock. I trust that the order for a larger supply this year than in the past will meet with the approval of the Conference. I would suggest, however, that the mailing list be scrutinized to ascertain whether or not the number of names on it could be reduced without seriously prejudicing proper distribution of notice of the work of the Conference.

Secretarial Assistance

The cost of secretarial assistance during the past year was $50 as shown in the Treasurer's report. This is the same amount as has been expended in each of the past few years.

Sales Tax

In accordance with a resolution of the Conference (1952 Proceedings, page 14) an application for remission of the sales tax paid in respect of the printing of the 1955 Proceedings was made. The Deputy Minister of National Revenue advised that the Treasury Board had authorized the Department to make the refund. An application in the form required by the Department was accordingly made but the refund had not been received up to the time of preparation of this report.

Table of Model Acts

It was intended to include in this Table references to Model Acts that had been adopted as Ordinances of the Yukon Territory (Secretary's Report, 1955 Proceedings, page 36). Unfortunately, particulars of the Ordinances were not received in time for inclusion in the Proceedings. They are now available, however, and can be included in the 1956 and subsequent Proceedings.

General

Early in the year an invitation was received from the Secretary of the International Institute for the Unification of Private Law inviting the Conference to be represented at the first meeting of organizations concerned with the unification of law to be held in Barcelona September 17th to 20th. Notice of the invitation was sent to the local secretaries. Each was asked to notify the members of the Conference in his jurisdiction of the meeting and to make inquiries about the possibility of representation by a member or former member of the Conference who might be in Europe at the time of the meeting. This was without result and the Secretary General of the Institute was advised that the Conference would probably not be represented at the meeting.

Dr. F. E. LaBrie, Editor of the University of Toronto Law Journal, has suggested publication of a report of the work of the Conference in the issue of that Journal containing the annual Survey of Canadian Legislation. Such a publication would no doubt serve to make the work of the Conference more widely known and I would suggest that the Conference consider delegating to some member the duty of preparing a report and submitting it to Dr. LaBrie.

It was suggested during the year that the Governments of Canada and the Provinces be asked to increase their annual grants to the Conference by an amount sufficient to defray the cost of printing the copies of the Proceedings that are published as part of the Year Book of the Canadian Bar Association. This suggestion was made known to representatives of the Dominion and the Provinces and all agreed that a request should not be made until the subject had been considered at a plenary session of the Conference.

HENRY F. MUGGAH,
Secretary.

APPENDIX D

(*See page 16*)

LAW REFORM

MEMORANDUM OF THE ONTARIO COMMISSIONERS

The attention of all members of the Conference is directed to an article entitled "Law Reform" in the current issue of *The Canadian Bar Review* [(1956) 34 Can. Bar Rev. 691]. It is written by R. E. Megarry, an English barrister, who is the assistant editor of *The Law Quarterly Review.*

The article is made up of two parts: The first is a comprehensive review of the law reform situation in England with emphasis on the work of the former Law Revision Committee and the present Law Reform Committee. The second part contains some comments and suggestions as to law reform in Canada. It is Mr. Megarry's contention that lawyers take too little interest in law reform; it is his hope that his article will quicken their interest and so assist in bringing about the establishment of effective law reform organizations throughout the Commonwealth.

Part I of Mr. Megarry's article is taken very largely from a paper contributed by him to the Commonwealth and Empire Law Conference in London last July. This paper was one of eight discussed at that meeting on "The Lawyer's Part in Law Reform". It is interesting to note in passing that another of these eight papers was contributed by our distinguished first vice-president, E. C. Leslie, Q.C., of Regina.

In the opinion of the Ontario Commissioners matters pertaining to law reform in Canada and the place, if any, of this Conference in the development and carrying out of any law reform programme should receive the attention of the Conference as soon as practicable. We therefore propose to suggest that the matter be discussed at a plenary session of the Montreal meeting this month.

Outside of the Canadian Bar Association itself our Conference is pre-eminently suited to have views of value on this subject and thus, as a national organization, is in a position to make a contribution to a movement that unquestionably is serving the national public interest. The Ontario Commissioners feel that an early discussion of this matter would be helpful to all concerned.

Questions along the lines of the following suggest themselves for consideration:

1. Is the present law reform situation throughout Canada or in any province of Canada satisfactory?
2. If the answer to question No. 1 is "No", does the answer lie in constituting a committee or committees for law reform? Should such a committee or system of committees function under the aegis of the Federal Government, the provincial governments, the law societies in the provinces, the Canadian Bar Association, or any combination of them?
3. What would be the composition of such committee or system of committees and how best would it or they function having regard to such matters as meetings, programme, research, secretariat, etc.?
4. What money would be required and where would it come from?
5. What, if any, should be the relationship between such a committee or system of committees and this Conference? Is it possible and advisable "to devise some process of integration, or inter-relation, or inter-representation between such a committee and this Conference"?—See Mr. Megarry's article at page 706.

L. R. MacTavish,
for the Ontario Commissioners.

APPENDIX E

(*See page 18*)

AMENDMENTS TO UNIFORM ACTS 1956

REPORT OF W. C. ALCOMBRACK

Frustrated Contracts

Newfoundland enacted the Uniform Act.

Interpretation

Manitoba amended its Act which is the Uniform Act with slight modification. The section amended does not appear in the Uniform Act.

Saskatchewan amended its Act by adding a new section to the provisions dealing with "enforcement of the law" which do not appear in the Uniform Act. The new section was deemed necessary for the enforcement of payment of fines imposed on corporations under various Saskatchewan Acts.

Partnership

New Brunswick amended subsection 2 of section 37 of its Act to read as follows:

> (2) An advertisement in The Royal Gazette, or the filing a certificate under the Partnerships Registration Act in the registry office for the county in which the principal place of business of the firm is situate, shall be notice as to persons who had not dealings with the firm before the date of the dissolution or change so advertised *or certified.*

The italicized words were added.

Partnerships Registration

New Brunswick amended its Act to do away with the requirement that when a certificate is registered it must be accompanied by a copy thereof.

Proceedings Against the Crown

Saskatchewan amended section 5 of its Act, which is the Uniform Act with slight modification (section 5 of the Uniform Act), by adding thereto the following subsection:

(7) No proceedings lie against the Crown under this or any other section of this Act in respect of anything heretofore or hereafter done or omitted and purporting to have been done or omitted in the exercise of a power or authority under a statute or a statutory provision purporting to confer or to have conferred on the Crown such power or authority, which statute or statutory provision is or was or may be beyond the legislative jurisdiction of the Legislature; and no action shall be brought against any person for any act or thing heretofore or hereafter done or omitted by him under the supposed authority of such statute or statutory provision, or of any proclamation, order in council or regulation made thereunder, provided such action would not lie against him if the said statute, statutory provision, proclamation, order in council or regulation is or had been or may be within the jurisdiction of the Legislature enacting or the Lieutenant Governor making the same.

Reciprocal Enforcement of Maintenance Orders

Ontario amended section 2 of its Act, which is the Uniform Act with slight modification (section 3 of the Uniform Act), by adding thereto the following subsection:

(3) A maintenance order that makes payable sums of money expressed in a currency other than the currency of Canada shall not be registered under this section until the court in which it is sought to register the order, in the case of the Supreme Court, the Registrar of that Court, has determined the equivalent of such sums in the currency of Canada on the basis of the rate of exchange prevailing at the date of the order of the court of the reciprocating state as ascertained from any branch of any charted bank, and the court or Registrar, as the case may be, shall certify on the order the sums expressed in Canadian currency as so determined and upon the registration of such order it shall be deemed to be an order for the payment of the sums so certified.

Vital Statistics

Manitoba amended section 31 of its Act, which is the Uniform Act with slight modification (section 31 of the Uniform Act), by adding thereto the following subsections:

(10) The minister may, by his written order signed by him and directed to the recorder, require the recorder, when issuing a certified copy, photographic print, or certificate under this section,

(*a*) to dispense with the production of the authority in writing of the minister required under subsections (2), (4), (6), (7), and (8), or under any of those subsections; or

(*b*) to dispense with the production of that written authority in such cases, or in such circumstances, as the minister may set forth in the order;

and the recorder shall comply with the order.

(11) Where the Minister has issued an order under subsection (10), he may, at any time, amend or revoke it or issue a further order thereunder.

Manitoba further amended its Act by adding thereto the following section:

33*a*. Where a provision of this Act refers to a copy of any document or paper, or to a copy on a prescribed form of any document or paper, or requires the making or retaining of such a copy or such a copy on a prescribed form, the reference shall be deemed to include, and the requirement shall be deemed to be complied with by the making or retaining of, a photographic film of the document or paper; and a print from such a photographic film shall be deemed to be, and to have the same effect and serve the same purpose as, a copy or a copy on a prescribed form of the document or paper.

Nova Scotia amended the provisions of its Act dealing with the appointment of officials.

W. C. ALCOMBRACK.

APPENDIX F

(*See page 18*)

JUDICIAL DECISIONS AFFECTING UNIFORM ACTS 1955

REPORT OF DR. H. E. READ, O.B.E., Q.C.

This report is submitted in response to the resolution of the 1951 meeting requesting that an annual report be continued to be made covering judicial decisions affecting Uniform Acts reported during the calendar year preceding each meeting of this Conference. Some of the cases reported in 1955 applying Uniform Acts have not been included since they involved essentially questions of fact and raised no significant question of interpretation. It is hoped that Commissioners will draw attention to omission of relevant decisions reported in their respective Provinces during 1955 and will draw attention to any errors in stating the effect of decisions in this report. The cases are reviewed here for information of the Commissioners.

HORACE E. READ.

BILLS OF SALE

Alberta Sections 3 and 13

In *Rennie's Car Sales and R. G. Hicks* v. *Union Acceptance Corp. Ltd.* [1955] 4 D.L.R. 822, a decision of the Appellate Division of Alberta, X finance company operating in Ontario took a chattel mortgage on a motor car from A in that province which was entered there. Later A drove the car to Alberta where he sold it to B on October 15, 1953, who in turn sold it to C. Both B and C were *bona fide* purchasers without notice of X company's mortgage. On April 14, 1954, X company discovered that the car was in Alberta and on April 25 filed a copy of the mortgage in Alberta in compliance with subsection (1) of section 13 of *The Bills of Sale Act*, R.S.A. 1942, c. 217, as re-enacted by 1952, c. 7, s. 5. The subsection reads as follows:

> 13. (1) Where a chattel subject to a mortgage which was executed at a time when the chattel was situate without the Province is permanently removed into the Province, the mortgage shall be registered as a bill of sale by filing as required by subsections (2), (3) or (4) a copy of the mortgage and of all affidavits and documents accompanying or

relating to the mortgage proved to be a true copy of the affidavit by some person who has compared the same with the original, otherwise the grantee shall not be permitted to set up any right of property or right of possession in or to the chattel so removed as against creditors and subsequent purchasers or mortgagees claiming from or under the grantor in good faith for valuable consideration and without notice.

Section 3 of *The Bills of Sale Act* is as follows:

3. Every sale or mortgage which is not accompanied by an immediate delivery and an actual and continued change of possession of the chattels sold or mortgaged shall be absolutely void as against creditors and as against subsequent purchasers or mortgagees claiming from or under the grantor in good faith, for valuable consideration and without notice, whose conveyances or mortgages have been duly registered or are valid without registration, unless the sale or mortgage is evidenced by a bill of sale duly registered; and the sale or mortgage, and the bill of sale, if any, evidencing the sale or mortgage, shall, as against creditors and such subsequent purchasers or mortgagees, take effect only from the time of the registration of the bill of sale.

"Subsequent purchasers" as defined by section 2 (*l*) of the Act are persons "to whom chattels are conveyed or mortgaged,—(i) after the making of the sale or mortgage mentioned in section 3; (ii) after the making of the mortgage mentioned in sections 11, 12 and 13,—as the case may be."

In affirming the right of X company to ownership in the car, Johnson J.A. said:

It is argued that section 3 is of general application applying to mortgages made outside as well as within the Province. It would follow, according to the appellants' argument, that because the mortgage only becomes effective on registration and as appellants acquired title before the mortgage was registered in Alberta, they would acquire a good title to the vehicle which would be unaffected by the subsequent registration in this Province. I am unable to agree with this submission. A careful reading of the two sections and a consideration of sections 4 to 12 makes it clear that the sale or mortgage referred to in section 3 is that which is made within this Province. It follows that the mortgagee in this case having registered its mortgage within the time set out in section 13 is entitled to the priority of his mortgage even against those who acquired title before the mortgage was registered in this Province. As was stated in *Klimove* v. *General Motors Acceptance Corporation* [1955] 2 D.L.R. 215, a judgment of this Division, the common law right of the mortgagee is preserved until the expiration of the time limited for filing. The fact that the *Klimove* decision dealt with a conditional sales contract and that the definition of subsequent purchasers may be different in the two Acts would not, on the wording of section 13 (1), make any difference.

Klimove v. *General Motors Corp.* is discussed infra under Conditional Sales.

CONDITIONAL SALES

Alberta Sections 2 and 3a

In *Klimove* v. *General Motors Acceptance Corporation* [1955] 2 D.L.R. 215, the Appellate Division held that under *The Conditional Sales Act*, R.S.A. 1942, c. 219, as amended by 1951, c. 15, s. 3 and 1952, c. 17, a conditional vendor who registers the conditional sale agreement within the 21-day period prescribed by the Act has priority of title over a *bona fide* subsequent purchaser for value despite the fact that the agreement is registered after the purchase was made. The meaning of "subsequent purchaser" under the Act is "a person who purchases from the conditional purchaser after the time has expired for registration of the conditional sale agreement".

One Danchuk purchased a motor car under a conditional sale agreement from General Motors Acceptance Corporation and three days later sold the car to Klimove. After this sale, but before expiration of the 21 days prescribed by subsection (4) of section 3*a* of the Act, G.M.A.C. registered its agreement and seized the car. The court upheld the seizure.

This decision raises squarely the question whether it is the purpose of section 2 of *The Conditional Sales Act* to protect the interest of the seller at the expense of the *bona fide* purchaser from the conditional purchaser. In the course of his reasons for judgment, Clinton J. Ford J. referred to an Ontario case decided in 1950, *Industrial Acceptance Corporation* v. *Munro* [1950] 1 D.L.R. 817, O.R. 130. He said:

> In this, section 2(1) of *The Conditional Sales Act*, R.S.O. 1937, c. 182, was considered and the words "subsequent purchaser" were held by Smily J. to mean a purchaser subsequent to or following the original purchase; that is, following the conditional sale contract, and not one who purchases after the expiration of the 10 days within which a copy of the contract is to be filed. It was held that the purchaser had priority. This was affirmed on appeal, [1950] 3 D.L.R. 80, O.W.N. 220. However, the relevant part of the section, which is the same as section 3 of the previous Ontario Act that is referred to above, was drafted for the protection of the purchaser for value without notice, and differs from section 2(1) of the Alberta statute.

Nova Scotia Section 2 (1) and (5)

Again in 1955, this time in the Nova Scotia Supreme Court, the rights of a *bona fide* purchaser from a buyer under a conditional sales agreement were considered and *Klimove* v. *General Motors Acceptance Corporation*, supra, was applied. The case

was *McAloney* v. *McInnis & General Motors Acceptance Corporation* (1955) 37 M.P.R. 131 and the facts were as follows: On June 20, 1953, one Anderson bought a motor car in British Columbia under a conditional sales agreement held by General Motors Acceptance Corporation. This agreement was not registered within the thirty days required by the British Columbia Act, in fact, not until March 30, 1954. Between June and August of 1953 the car was taken into Nova Scotia by Anderson, the buyer, or someone on her behalf, and sold to McInnis of Amherst, who, on August 11, 1953, sold it to McAloney. On March 29, 1954, General Motors Acceptance Corporation learned that the car was in Nova Scotia and on April 15, 1954, within the time required by the Nova Scotia Act, registered the agreement in the proper Nova Scotia District. On April 16, 1954, General Motors Acceptance Corporation repossessed the car from McAloney, who sued for recovery.

Mr. Justice Doull gave judgment in favour of the finance company. Undoubtedly, he said, the original buyer under the circumstances could have given good title if she sold the motor car to a *bona fide* purchaser in British Columbia after the thirty days had expired. When the car arrived in Nova Scotia, the buyer was still bound by the contract. But the British Columbia Act applies only to transactions in British Columbia, whereas the sale in Nova Scotia is governed by the Nova Scotia *Conditional Sales Act*, R.S.N.S. 1954, c. 47, section 2 (1) and (5).

Section 2(1) in part reads:

> After possession of goods has been delivered to a buyer under a conditional sale, every provision contained therein shall be void as against subsequent purchasers claiming from or under the buyer in good faith for valuable consideration and without notice . . . and the buyer shall, notwithstanding such provision, be deemed the owner of the goods unless the requirements of this Act are complied with.
>
> (5) If the goods, having been delivered at a place outside the Province, are subsequently removed into the Province by the buyer, the writing or a true copy thereof shall be filed in the registration district to which the goods are removed within twenty days after the removal has come to the knowledge of the seller.

Mr. Justice Doull said:

> Now it is argued that the General Motors Acceptance Corporation lost its rights when in British Columbia its conditional sales agreement was not filed within thirty days after its execution. That is not exactly the fact. It lost its rights against the persons, mentioned in section 3(1) of the British Columbia Act, and I have said above, if there

had been a sale to any of these persons, General Motors Acceptance Corporation would have been unable to succeed as against such person. The contract between Patricia Anderson and the seller was nevertheless quite valid as against Patricia Anderson and against purchasers who were not *bona fide* or in the classes of persons mentioned in section 3 (1) . . . .

I am quite clear that the provisions in the British Columbia Act do not apply to the property in Nova Scotia, also that the conditional sales agreement was binding on Patricia Anderson, whether in British Columbia or Nova Scotia. When the property came into Nova Scotia, not having been disposed of to a *bona fide* purchaser, it was subject to the provisions of section 2(5) of the Nova Scotia Act quoted above. The provisions of that Act having been complied with, the vendor or his assigns under the conditional sales agreement are entitled to enforce their rights. See *Hulbert* v. *Peterson* (1905) 36 S.C.R. 324; *Klimove* v. *Gen. Motors Acceptance Corp. and Dubuc* [1955] 2 D.L.R. 215.

CONTRIBUTORY NEGLIGENCE

Alberta Section 3, as amended

In *Tomashavsky* v. *Young, Nichols and Horst* [1955] 5 D.L.R. 451, the Appellate Division held that the amendment to *The Contributory Negligence Act* hereinafter quoted should be given retrospective operation despite its being neither procedural nor declaratory. Although the amendment is substantive, it is remedial under section 9 of *The Interpretation Act*, R.S.A. 1942, c. 1, which provides that "Every Act shall be deemed remedial . . . and shall accordingly receive such fair, large and liberal construction and interpretation as will best ensure the attainment and object of the Act according to its true intent, meaning and spirit".

In this case the cause of action arose out of a collision on a public highway between the automobile being driven by the defendant Young and a motorcycle operated by the defendant Nichols on which the plaintiff was a gratuitous passenger. The trial judge apportioned the respective degrees of fault at 75 per cent to Young and 25 per cent to Nichols, but held that Nichols was not guilty of gross negligence or wilful and wanton misconduct and was therefore not liable to the plaintiff, a gratuitous passenger. Since the injury occurred before the amending Act was passed, the judge held that the defendant Young must pay the entire amount of assessed damages and costs instead of 75 per cent.

On the appeal, reversing the trial judge, Clinton J. Ford J.A. said in part:

> It is now in order to refer particularly to the wording of the relevant portions of *The Contributory Negligence Act.* I think it is necessary to quote section 3(1), as it now reads; that is, as amended in April, 1951, and to point out wherein it differs from the previous section 3.
>
> Subsection (1) of section 3 as renumbered by the amendment reads:
>
> "Where damages have been caused by the default of two or more persons, the court shall determine the degree in which each was at fault, and where two or more persons are found liable they shall be jointly and severally liable for the fault to the person suffering loss or damage *except as provided by subsections (2) and (3)*, but as between themselves, in the absence of any contract express or implied, they shall be liable to make contribution to and indemnify each other in the degree in which they are respectively found to have been at fault."
>
> The words italicized indicate what was added to the section by the amendment, which also added the following two subsections:
>
> "(2) Where no cause of action exists against the owner or driver of a motor vehicle by reason of section 104 of *The Vehicles and Highway Traffic Act*, no damages, contribution or indemnity shall be recoverable from any person for the portion of the loss or damage caused by the negligence of such owner or driver, and the portion of the loss or damage so caused by the negligence of such owner or driver shall be determined although such owner or driver is not a party to the action.
>
> "(3) In any action founded upon negligence and brought for loss or damage resulting from bodily injury to or the death of any married person, where one of the persons found to be negligent is the spouse of such married person, no damages, contribution or indemnity shall be recoverable for the portion of loss or damage caused by the negligence of the spouse, and the portion of the loss or damage so caused by the negligence of the spouse shall be determined although the spouse is not a party to the action." [Enacted, 1951 (Alta.), c. 16, s. 2.]
>
> We are asked to accept the words "shall be recoverable" found in subsection (2) as an indication of the legislative intent that the amendment is to be of prospective operation only so as to affect causes of action that arise in the future rather than to have a general application to causes of action existing at the time of the amendment. To my mind, when the Legislature used the words in subsection (1) "where damages have been caused by the default of two or more persons", and followed these with the words in subsection (2) "where no cause of action exists against the owner or driver of a motor vehicle by reason of section 104 of *The Vehicles and Highway Traffic Act*, no damages . . . shall be recoverable from any person . . . and the portion of the loss or damage so caused by the negligence of such owner or driver *shall be determined*, although such owner or driver is not a party to the action" (the italicizing is mine) it was clearly referring to existing causes of action which had not yet been adjudicated upon. The fact that this is remedial legislation supports this interpretation. It was not necessary for the Legislature, having regard to the purpose of the amendment, which was

to remedy an injustice, to use other words than it did to express its intention that the remedy should apply to all existing causes of action that would come before the Courts for adjudication in the future. Indeed, in my opinion, it would be doing violence to the language used by the Legislature to interpret it otherwise.

I would hold that the amendment is retrospective in operation, or of general application to existing causes of action, and allow the appeal with costs, and reduce the amount awarded at the trial by 25 per cent thereof.

DEFAMATION

Manitoba Section 17

In *Dennis et al* v. *Southam Company Limited and Auger* (1955) 14 W.W.R. 470 the trial judge dismissed an action for libel on the ground that an apology made by the defendants was adequate under the following provision of *The Defamation Act,* 1946 Man., c. 11:

> 17. (1) The plaintiff shall recover only special damages if it appears on the trial, (*e*) that (i) where the alleged defamatory matter was published in a newspaper, a full and fair retraction of and a full apology for any statement therein alleged to be erroneous were published in the newspaper before the commencement of the action, and were so published in as conspicuous a place and type as was the alleged defamatory matter. . . .

The Court of Appeal dismissed an application for leave to appeal to the Supreme Court of Canada on the ground that the sufficiency or insufficiency of an apology to satisfy this provision is solely a question of fact, does not involve an important principle of law, the construction of a public Act or a question of public interest.

New Brunswick Section 17

The Defamation Act, R.S.N.B. 1952, c. 58, section 17, provides in part: "(1) The plaintiff shall recover only special damage if it appears at the trial (*c*) that it did not impute to the plaintiff the commission of a criminal offence. . . ." There follows the same requirement of a published apology as provided for in section 17 of the Manitoba Act above quoted. In *Le Blanc* v. *L'Imprimerie Acadienne Ltee* [1955] 5 D.L.R. 91, the defendant newspaper published a story in which it stated that the plaintiff, Doris Le Blanc of Highland View, New Brunswick, was arrested for a theft. She was not the person arrested and the defendant published a

sufficient retraction and apology. On the question of the meaning of "impute" in paragraph (*c*) Bridges J. said:

> There are several meanings given in dictionaries to the word "impute". Among them are "to set to the account of a person", "to lay to the charge of a person", "to attribute", and "to charge one with the responsibility for". The last mentioned appears appropriate to section 17(1)(*d*) of *The Defamation Act*. Does the publication charge the plaintiff with responsibility for the theft? In my opinion it does not as it merely states facts. Such facts may have caused readers of the newspaper to have believed or suspected that Doris Le Blanc was guilty of a crime but that is very different from the newspaper charging her with being guilty. For a newspaper to state that a person has been charged with a crime is entirely different from the newspaper itself charging such person with having committed a crime. It is my opinion that the publication does not impute to the infant plaintiff the commission of a criminal offence.

RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS

Ontario Section 5, Uniform Act, 1953 Revision Section 6

The decision of the Chief Justice of the High Court at the trial and the unanimous reversal of that decision by the Ontario Court of Appeal in *Re Scott*, reported respectively in [1954] 2 D.L.R. 467 and [1954] 4 D.L.R. 546, were discussed in the Proceedings for 1954 at pp. 143-146. In December, 1955, the Supreme Court of Canada unanimously reversed the decision of the Court of Appeal and restored the judgment of the Chief Justice of the High Court, sub nom *Attorney-General for Ontario* v. *Scott* (1956) 1 D.L.R. (2) 433.

The Ontario Court of Appeal held two provisions of the Act to be unconstitutional: (*a*) subsection (1) of section 5 on the ground that the Legislature had purported to confer on a tribunal other than a court mentioned in section 96 of the *British North America Act* power to determine whether or not a resident of Ontario is liable to maintain a non-resident wife or child by reason of an order made by a tribunal outside the Province; and (*b*) subsection (2) of section 5 on the ground that the Legislature, by providing that in the proceedings in Ontario any defence may be raised that might have been raised if the defendant had been a party to the proceedings in the reciprocating province or state, had in effect wrongfully delegated legislative authority to other provinces and states.

In reversing the Court of Appeal and upholding the validity of both of these provisions as well as the Act generally, three members of the Supreme Court wrote separate opinions in which all reached the same result but with a variety of reasons. The other judges all concurred with one or other of these opinions. In the 1954 Proceedings at pp. 145-146 the effect of recent decisions upon the Uniform Reciprocal Maintenance Orders Act as presently enacted by the provinces was stated in six propositions. The net effect of the decision of the Supreme Court of Canada decision upon them is to delete the fifth and sixth propositions and to substitute a new one for them. These propositions were:

> (5) It is a violation of section 96 of the *British North America Act* if the Legislature of a Province, pursuant to subsection (1) of section 6 of the revised *Uniform Reciprocal Enforcement of Maintenance Orders Act*, authorizes the Lieutenant-Governor in Council to designate as a confirming court a magistrate, juvenile court judge, or any court except a court which by law prior to enactment of the Provincial Act had power to determine the legal effect of a foreign judgment. (*In re Scott*)
>
> (6) Subsection (2) of section 6 of the revised Act is *ultra vires* to the extent that it limits defences to those that the person on whom the summons was served could have raised under the law in force for the time being in the reciprocating Province or State that issued the provisional order. (*In re Scott*).

The new proposition is: The Act in its present form is constitutionally valid as provincial legislation in every respect.

A further important effect of this decision is to uphold the power of the Provinces generally to enact reciprocal legislation. In this regard Rand J. said at 1 D.L.R. (2) 437:

> The arrangement is said to be, in effect, a treaty to which the Province has no authority to become a party. A treaty is an agreement between states, political in nature, even though it may contain provisions of a legislative character which may, by themselves or their subsequent enactment, pass into law. But the essential element is that it produces binding effects between the parties to it. There is nothing binding in the scheme before us. The enactments of the two Legislatures are complementary but voluntary; the application of each is dependent on that of the other: each is the condition of the other; but the condition possesses nothing binding to its continuance. The essentials of a treaty are absent; and it would be an extraordinary commentary on what has frequently been referred to as a quasi-sovereign legislative power that a Province should be unable within its own boundaries to aid one of its citizens to have such a duty enforced elsewhere. The alternative entrance upon such a field by Parliament needs only to be mentioned to be rejected; and that authority must lie in the one or the other to effect such an arrangement is, in my opinion, indubitable.

Now that the Act has been interpreted and upheld in its present form, re-phrasing appears to be unnecessary, but the following judicial comments are pertinent to choice of language when drafting.

At 1 D.L.R. (2) 438 Rand J. said:

> The Chief Justice says [[1954], 4 D.L.R. 546 at p. 553, O.R. 676, 109 Can. C.C. 235 at p. 243]: "In the view I take of this case it becomes unnecessary to decide whether, when the provisional order in question was transmitted to the Family Court of the County of Simcoe, Magistrate Foster was intended to exercise the jurisdiction that existed in him in his capacity of a Judge of the Juvenile Court or his jurisdiction in his capacity of Magistrate, because I am of the opinion that in neither capacity can he lawfully exercise the power of confirmation of provisional maintenance orders made in another Province or in some other country." In this, with great respect, the Chief Justice seems to have been misled by the expression "provisional maintenance orders". The Ontario Court is not completing an operative foreign order whether in relation to a Province or to another country; it is making an original order of its own, the preliminary grounds and condition of which is a step taken elsewhere; that step has no substantive efficacy until by acceptance it is adopted and incorporated in the action of the Ontario Court. From the beginning it is intended to be a constituent of the proceedings against the debtor in Ontario from the law of which it will draw the only substantive effectiveness it can ever possess.

And at 1 D.L.R. (2) 442, Locke J. comments:

> The use of the word "confirmed", both in the English and Ontario statutes, seems to be unfortunate. To speak of confirming an order which of itself has no binding effect seems to me to be a misuse of language and it is, indeed, in my opinion, the use of this expression which has invited the attack upon the legislation. In effect, the evidence in the present matter given before the Magistrate in London, the transcript of which was forwarded by him with the provisional order, is made evidence in the proceedings in Ontario. The provisional order for maintenance made for the wife and children is an indication of what the Magistrate in England considers appropriate in their circumstances. In the proceedings in Ontario, the husband may, by virtue of subsection (2) of section 5, raise any defence that he might have raised in the proceedings in England, and the Magistrate to whom the application is made may "confirm" the order, with such modifications as might be considered just, meaning that he may make such order as he may think proper upon the evidence. The language employed in subsection (3) of section 5 again suggests that some legal effect is given to the order made in England, but this clearly cannot be so. The order made must derive its legal force and effect entirely from the applicable Ontario statute.

Saskatchewan Section 16

In *Yelland* v. *The National Cafe* [1955] 5 D.L.R. 560, the plaintiff Yelland had bought a bottle of coca cola from the defendant's cafe, and shortly after the bottle exploded and a splinter of glass destroyed the plaintiff's eye. It was held that the defendant was liable for a breach of condition under *The Sale of Goods Act*, R.S.S. 1953, c. 353. Section 16, so far as pertinent, reads:

> Subject to the provisions of this Act and of any Act in that behalf there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale except as follows:
>
> 1. Where the buyer expressly or by implication makes known to the seller the particular purpose for which the goods are required so as to show that the buyer relies on the seller's skill or judgment and the goods are of a description which it is in the course of the seller's business to supply, whether he be the manufacturer or not, there is an implied condition that the goods shall be reasonably fit for such purpose:
>
> 2. Where goods are bought by description from a seller who deals in goods of that description, whether he is the manufacturer or not, there is an implied condition that the goods shall be of merchantable quality:
>
> Provided that if the buyer has examined the goods there shall be no implied condition with regard to defects which such examination ought to have revealed.

Davis J., who was upheld by the Saskatchewan Court of Appeal, said that:

> For all practical purposes I cannot see that it matters here whether the claim of the plaintiff is based on an implied warranty at common law or an implied condition under the Act. This may not be true had the plaintiff successfully established that the injury was due to the contents of the bottle. The law seems to be that where a retailer cannot be expected to know, or be reasonably able to examine the contents, there is no implied warranty at common law. Lord Macmillan in the *Donoghue* case, [1932] A.C. at p. 622, states: "But where, as in the present case, the article of consumption is so prepared as to be intended to reach the consumer in the condition in which it leaves the manufacturer, and the manufacturer takes steps to ensure this by sealing or otherwise closing the container so that the contents cannot be tampered with, I regard his control as remaining effective until the article reaches the consumer and the container is opened by him. The intervention of any exterior agency is intended to be excluded, and was in fact in the present case excluded. It is doubtful whether in such a case there is any redress against the retailer."

Thus it would appear that the implied warranty at common law is not absolute. On the other hand, the conditions implied by the Act are absolute where the defects are hidden and unknown to the consumer.

There is ample authority in law that cases such as the present fall within both paras. 1 and 2 of section 16 of the Act. For a recent pronouncement see *Buckley* v. *Lever Bros. Ltd.*, [1953], 4 D.L.R. 16, O.R. 704. It is, therefore, unnecessary to consider the proviso to para. 2. It is enough to say that the examination contemplated means no more than an examination the purchaser could reasonably be expected to make: *Grant* v. *Australian Knitting Mills, supra; Morelli* v. *Fitch & Gibbons*, [1928] 2 K.B. 636. Surely no one could reasonably expect a purchaser to examine every coca cola bottle purchased. In any event, the plaintiff had certainly no opportunity of making any examination. The burden cast upon a retailer is clearly greater than the protection the law affords him. This, I suppose, is a peril of doing business . . . .

As I have reached the conclusion that the fracture in the bottle did not occur after the bottle left the hands of the clerk of the defendant the National Cafe, the implied conditions of *The Sale of Goods Act* apply. I must therefore find, with reluctance, that the defendant the National Cafe is liable to the plaintiff for the unfortunate injury she sustained.

SURVIVORSHIP

Saskatchewan Section 2

Subsection (2) of section 2 of the Saskatchewan *Commorientes Act*, 1942, c. 23, was interpreted and applied in the Queen's Bench in *Re Garnett, Armstrong* v. *Garnett* [1955] 1 D.L.R. 521. The testator and a beneficiary under his will died together in a motor car accident under circumstances that made it impossible to determine which survived the other. Under subsection (1) the beneficiary, Mrs. Charbonneau, being the younger of the two, would be deemed to have survived and entitled to take the property unless the terms of the will fell within subsection (2) which reads:

> (2) Where a testator and a person who, if he had survived the testator, would have been a beneficiary of property under the will, die in circumstances rendering it uncertain which of them survived the other, and the will contains further provisions for the disposition of the property in case that person had not survived the testator or died at the same time as the testator or in circumstances rendering it uncertain which survived the other, then for the purpose of that disposition the will shall take effect as if that person had not survived the testator or died at the same time as the testator or in circumstances rendering it uncertain which survived the other as the case may be.

The will contained a residuary clause under which any residue of his estate was given to named legatees. Their counsel argued

that the residuary clause was within the meaning of "further provisions for the disposition of the property" in subsection (2), and that the beneficiary must therefore be deemed to have predeceased the testator.

With reference to this argument Thomson J. said:

> There are a number of reasons why, in my opinion, that contention cannot be substantiated. In the first place, said section 2(2) is intended to apply to a gift of specific property followed by some further provision or provisions specifically relating to or qualifying in some way the disposition of that particular property. A residuary clause of the usual type which does not refer in express terms to the property which is the subject-matter of the gift would not be a further provision for the disposition of that property within the meaning of said section 2 (2). In the second place, the testator in said clause 5 of his will in express terms directed that Mrs. Charbonneau was to take the property described therein "absolutely". There is no gift over of the property if Mrs. Charbonneau predeceased the testator, nor is any other condition attached to the gift and, in my opinion, there is an unconditional gift of the property; Mrs. Charbonneau was to take it "absolutely".

TESTATORS FAMILY MAINTENANCE

British Columbia Act

Two noteworthy additions to the judicial applications of this statute were reported during 1955.

Both were decisions of Macfarlane J. in the Supreme Court of British Columbia.

In *Re Smith* [1955] 2 D.L.R. 503 at p. 506, the judge enunciated and applied his criteria for determining "proper maintenance and support". He said:

> I had occasion in 1947 in *Re McPhee*, [1947] 1 W.W.R. 741 at p. 744, to set out the things which I have to consider on an application of this kind. In that case I followed an analysis of the subjects to be inquired into made by Robertson J. when sitting as a Judge in this Court [in *Re Morton* (1934), 49 B.C.R. 172 at p. 173]. These were: (1) The station in life of the parties; (2) the age, health and general circumstances of the applicant; (3) the means possessed by the testator at the time of his death, and (4) the property or means which the applicant possessed in her own right.

In *Re Edgelow* (1956) 1 D.L.R. (2) 126, the petitioner was the widow of the testator who separated from him almost eight years before his death and at that time received a property settlement which he signed because she gave him the following statement:

> This is to inform all whom it may concern that I am fully satisfied with the terms of our separation agreement in which I am receiving all I asked for and to state that I have no intention of trying to get anything more from you or your estate at any time whatsoever.

Macfarlane J. said that the law is as stated in *Re McNamara* [1943] 3 D.L.R. 396, that a separation agreement is not in itself a bar to the grant of relief. But on the facts of the instant case he gave the following reasons for dismissing the petition:

> The distinguishing feature of this case is, I think, found in the conduct of the petitioner. After a few short years when he was becoming an old man, and obviously needed assistance, she left him, for the reason she stated, which I think is insufficient, to the care of whom she cared not. She resumed her former name and there is no evidence at all that she gave his comfort another thought. I would find on the evidence that she has adequate provision for her needs. As Duff J. said—the provision must as well be just and equitable. Usually that provision is applied to increase the amount because the testator left an estate out of which it would be just and equitable that the petitioner might be entitled to a greater amount.
>
> But the statute does contain one protection in itself against unjust and inequitable claims where what the petitioner has is adequate.
>
> Section 4 of the *Testator's Family Maintenance Act*, R.S.B.C. 1948, c. 336, provides that the Court may refuse to make an order in favour of any person whose conduct is such as to disentitle him or her to the benefit of an order under the Act. I do not think that that provision is to be limited in its application to bad behaviour in its so-called moral sense. I think it applies to conduct as well such as we have here—abandonment of a spouse for a complaint such as this followed by several years in which she ignored his very existence. She makes no excuse unless it be that she supposed his family would give him what he needed. (The "complaint" was that the husband was "insufferably egotistical".)

WILLS

Manitoba Section 6 (2)

In *Re Bell, Marshall* v. *Montgomery* [1955] 3 D.L.R. 521, Adamson C.J.M. in the Court of Appeal expressed without hesitation the opinion that a typewritten document signed by a person intending it to be his will is not a valid holograph will since "typewriting" is not "handwriting" within the meaning of the statute. (Now see 1956 Report of the Special Committee on the Uniform Wills Act where it is proposed to delete "handwriting" and substitute "writing" in the provision authorizing holograph wills, to bring into operation the definition of "writing" contained in *The Interpretation Act.*)

APPENDIX G

(*See page 19*)

UNIFORM DEVOLUTION OF REAL PROPERTY ACT

REPORT OF SASKATCHEWAN COMMISSIONERS

At the 1954 meeting of the Conference, after discussion of Dr. Read's 1953 report on Judicial Decisions affecting Uniform Acts, the following resolution was passed (1954 Proceedings, page 24):

> RESOLVED that the cases referred to in Dr. Read's report with respect to The Devolution of Real Property Act be referred to the Saskatchewan Commissioners for report to the next meeting as to whether any amendments to the Uniform Devolution of Real Property Act are indicated as a result of the cases.

At the 1955 meeting of the Conference the report of the Saskatchewan Commissioners was submitted, suggesting that they defer making any recommendation respecting amendments to the above mentioned Act, or any change in the law, until the judgment of the Court of Appeal for Saskatchewan, in the Sykes case mentioned in the report, should be pronounced and they had had an opportunity to consider the same.

It was agreed that the matter remain on the Agenda for further consideration at the 1956 meeting (1955 Proceedings, pages 21 and 83).

The citation of the Sykes case, unreported at the time of our 1955 report, is as follows:

> Re Sykes Estate. Re Thompson et al (Executors) and Berkheiser et al. (1955) 16 W.W.R. 172.

The judgment of the Court of Appeal appears at page 459 of the same volume. The appeal from the judgment of Graham, J., mentioned in our 1955 report, was dismissed.

A further appeal is being taken to the Supreme Court of Canada and it is expected that the same will be heard at the Fall sittings of that Court.

We therefore deem it advisable to again defer making any recommendation until the judgment of the Supreme Court of Canada is received and considered.

E. C. LESLIE,
H. WADGE,
Saskatchewan Commissioners.

APPENDIX H

(*See page 20*)

FOREIGN TORTS

REPORT OF BRITISH COLUMBIA SECTION TO SECTION ON ADMINISTRATION OF CIVIL JUSTICE OF CANADIAN BAR ASSOCIATION

Actions Upon Torts Committed Without The Province—
Phillips v. *Eyre.*

At the 1954 annual meeting of the Association at Winnipeg, three subjects were referred to the Subsections for consideration, of which the foregoing was one.

In *Phillips* v. *Eyre,* Mr. Justice Willes stated the English Conflict Rule governing foreign torts as follows:

> In order to found a suit in England for a wrong alleged to have been committed abroad, two conditions must be fulfilled. First, the wrong must be of such character that it would have been actionable if committed in England . . . secondly, the act must not have been justifiable by the law of the place where it was done.

It was your Committee's opinion that the problem arose from the application of the second condition in the above rule and the interpretation by the courts of the expression "non-justifiable" according to the lex loci delicti. Reviewing the cases interpreting this portion of the rule, your Committee considered, among other authorities, the case of *Machado* v. *Fontes* 1897 2 Q.B. 231, *Walpole* v. *Canadian Northern Railway* 1923, A.C. 113, and *MacMillan* v. *Canadian Northern Railway* 1923, A.C. 120, *Canadian National Steamships* v. *Watson* 1939, S.C.R., *McLean* v. *Pettigrew* 1945, 2 D.L.R. 65, as well as material and opinions expressed by Falconbridge in his text on the Conflict of Laws and Schmitthoff in his text on the English Conflict of Laws.

It was noted that the expression "not justifiable" had been interpreted by the courts (1)—in the broad sense to mean or be understood as being any act which is "not innocent according to the foreign legal system" (Machado v. Fontes). This narrow construction has been extended somewhat in some of the cases and been held to mean (2)—without "legal justification" in that an act or neglect which is neither actionable nor punishable cannot be said to be otherwise than justifiable within the meaning

of the rule (Walpole v. Canadian Northern Railway), and this interpretation of "legal justification" is supported by those cases which permit the ratification of a wrong by the legislature of the locus delicti to defeat the injured party's claim (Phillips v. Eyre).

The case of *Koop* v. *Bedd* (1952) Argus Law Reports 37, being a decision of the High Court of Australia, was considered by the Committee and the comment of the Court to the following effect:

> It seems clear that the last word has not been said on the subject and it may be the true view that an act done in another country should be held to be an actionable wrong in Victoria if first it was of such a character that it would have been actionable if committed in Victoria and secondly, it was such as to give rise to a *"civil liability"* in the place where it was done. Such a rule would be consonant with all the decisions before Machado v. Fontes and with later Privy Council decisions.

This expression of the law appeared to your Committee to be a sound one and in line with the decisions of the Privy Council cases above referred to. Your Committee believes it would have the following beneficial effect in that it would dispel any doubts as to the ambiguous situation which results in determining whether or not an act is justifiable in the lex loci delicti and would prevent the inequitable situation arising where a plaintiff could, by his choice of forum, maintain a cause of action which is not recognized by the lex loci delicti. Your Committee further recommends that legislation should be passed to effect the change in the above rules and that such proposed legislation should be considered from a national viewpoint so as to effect uniformity across Canada, but should this not be accomplished, such legislation should in any event be passed in this Province.

APPENDIX I

(*See page 21*)

INTESTATE SUCCESSION ACT

REPORT OF THE NEW BRUNSWICK COMMISSIONERS

On February 21, 1955, Professor Gilbert D. Kennedy of the Faculty of Law at the University of British Columbia wrote to the Secretary of the Conference concerning section 6 of the Intestate Succession Act. The relevant portion of that letter is as follows:

> It has occurred to me since I wrote you earlier that apart from correcting the technical error in the draft Act as it now stands some thought might be given to altering section 6 completely. At present where there are no issue a widow gets the first $20,000 plus one-half the residue, with the other half of the residue going to the persons listed in sections 7 to 10. As you know, Manitoba, in adopting the draft Act, did not accept section 6 but gave everything, where there are no issue, to the widow. The policy in Nova Scotia and in England is somewhat similar giving the widow everything where there are not only no issue but also no parents or brothers and sisters. In these last two countries, of course, the legislation does not necessarily give a husband comparable rights. The Conference might well at this stage consider a revision of section 6.

At the 1955 meeting of the Conference, it was resolved that Professor Kennedy's suggestion be referred to the New Brunswick Commissioners for study and for report at the next meeting with a draft of such amendment as they feel is desirable.

Section 6 refers to sections 7, 8, 9 and 10, and section 11 extends their scope. Those sections are as follows:

> 6. (1) If an intestate dies leaving a widow but no issue, his estate, where the net value thereof does not exceed $20,000, shall go to his widow.
>
> (2) Where the net value exceeds $20,000, the widow shall be entitled to $20,000 and shall have a charge upon the estate for that sum, with legal interest from the date of the death of the intestate.
>
> (3) Of the residue of the estate, after payment of the said sum of $20,000, and interest, one-half shall go to the widow and one-half to those who would take the estate, if there were no widow, under section 7, 8, 9 or 10, as the case may be.
>
> (4) In this section "net value" means the value of the estate wherever situate both within and without the Province, after payment of the charges thereon and the debts, funeral expenses, expenses of administration and succession duty.

7. If an intestate dies leaving no widow or issue, his estate shall go to his father and mother in equal shares if both are living but if either of them is dead the estate shall go to the survivor.

8. If an intestate dies leaving no widow, issue, father or mother, his estate shall go to his brothers and sisters in equal shares, and if any brother or sister is dead, the children of the deceased brother or sister shall take the share their parent would have taken if living.

9. If an intestate dies leaving no widow, issue, father, mother, brother or sister, his estate shall go to his nephews and nieces in equal shares and in no case shall representation be admitted.

10. If an intestate dies leaving no widow, issue, father, mother, brother, sister, nephew or niece, his estate shall be distributed equally among the next of kin of equal degree of consanguinity to the intestate and in no case shall representation be admitted.

11. For the purposes of this Act, degrees of kindred shall be computed by counting upward from the intestate to the nearest common ancestor and then downward to the relative; and the kindred of the half-blood shall inherit equally with those of the whole-blood in the same degree.

Without some other provision to the contrary, it follows that if an intestate dies leaving a widow but no other next of kin within the classes prescribed, the widow, after taking her statutory legacy of $20,000, will share the residue equally with the Crown.

Here then, if we are to determine policy, is the first question. If an intestate dies leaving a widow but no issue or other next of kin, is the widow to take the whole estate to the exclusion of the Crown? In England, Nova Scotia and Manitoba she takes the whole estate.

If the Crown is to be excluded, we have a second question to be determined. If an intestate dies leaving a widow but no issue, parent, brother, sister, nephew or niece, is the widow to take the whole estate to the exclusion of all other next of kin, i.e. those entitled under section 10? In England, Nova Scotia and Manitoba she takes the whole estate.

If the next of kin group, i.e. those entitled under section 10, are to be excluded, we now have a third question to be determined. If an intestate dies leaving a widow, but no issue, is the widow to take the whole estate to the exclusion of any other group, i.e. nephew, niece, brother, sister, parent or half-blood? In Manitoba, if an intestate dies leaving a widow, but no issue, his estate goes to his widow.

In England on October 13, 1950, a committee was appointed with the following terms of reference:

(*a*) to consider the rights under section 46 of the Administration of Estates Act, 1925, of a surviving spouse in the residuary estate of an intestate;

(*b*) to consider whether, and if so to what extent and in what manner, the provisions of the Inheritance (Family Provision) Act, 1938, ought to be made applicable to intestacies;

(*c*) to report whether any, and if so what, alteration in the law is desirable.

Since the law of intestate succession in England was amended considerably as a result of and in accordance with that committee's report, it would seem appropriate to include here a complete summary of those recommendations as follows:

SUMMARY

52. When a person dies intestate leaving a surviving spouse, the latter should receive:

(*a*) the personal chattels (paragraph 15);

(*b*) the benefit of a charge on the residuary estate in the sum of 5,000 pounds, free of death duties and costs (paragraphs 16–20);

(*c*) interest on the sum of 5,000 pounds at 4 pounds per cent per annum, payable, in the first place, out of the income of the residuary estate (paragraphs 21–22);

(*d*) in certain circumstances, an option to purchase the deceased's interest in the matrimonial home at a fixed price (paragraphs 23–27);

(*e*) a life interest in half the remaining estate with power to redeem such interest for a capital sum, if there are issue (paragraphs 28–32);

(*f*) the benefit of a further charge on the residuary estate in the sum of 15,000 pounds and half the remaining estate absolutely, if there are parents or brothers or sisters of the whole-blood or issue of such brothers or sisters, but no issue of the intestate (paragraphs 33–35);

(*g*) the whole of the residuary estate absolutely if there are no issue, parents or brothers or sisters of the whole-blood or issue of such brothers or sisters (paragraph 36);

and the next of kin of the deceased should receive:

(i) if they are issue, the whole of the residuary estate on the statutory trusts, subject to the provision made for the surviving spouse (paragraphs 28–32);

(ii) if they are parents, or brothers or sisters of the whole-blood or issue of such brothers or sisters, half the remaining estate after provision has been made for the spouse (paragraphs 33–35);

(iii) no share at all, if they are kin more remote than brothers or sisters of the whole-blood or issue of such brothers or sisters (paragraph 36).

53. The provisions set out in the previous paragraph should apply to cases of partial intestacy (paragraph 37).

54. No provision should be made out of the estate of an intestate for an "unmarried wife" nor further provision for illegitimate children (paragraph 38).

55. As there is some doubt on the subject, it should be made clear that the Inheritance (Family Provision) Act, 1938, is applicable to cases of partial intestacy (paragraphs 42–44). Furthermore, the Act should also be made to apply to cases of total intestacy (paragraphs 45–51).

Since we are primarily interested in the last two clauses of paragraph 52, numbered (ii) and (iii), we should refer to paragraphs 33-36 where those clauses are dealt with in more detail. Those paragraphs are as follows:

33. *Surviving spouse and parents but no issue.* It seems natural that as between the interests of the spouse and the children, the intestate would have wished to make provision for his children even if this is to be to the detriment of the spouse. However, when the intestate's next of kin are the parents or the surviving parent we feel that different considerations are applicable and that the intestate would have wished to make quite certain that the position of the surviving spouse is secure before the parents are entitled to a share in the estate. Particularly is that so in the case of a widow. It is no benefit that the spouse should be enabled to purchase the home out of the statutory legacy if the income which she receives, under the present law (England), from a life interest in the whole of the residuary estate is insufficient to allow her to maintain the house and to retain a decent standard of living. Supposing the residuary estate to be invested to obtain interest at 4 pounds per cent per annum, it would need quite a large capital sum to produce an income sufficient for these purposes.

34. To meet such a problem several organizations, including the Council of the Law Society, have suggested in their evidence that when there are no issue, the surviving spouse should take the whole of the estate to the exclusion of all other classes of kin. This seems rather a striking proposal. It means that the spouse would take the whole estate even if the intestate left a very large estate, for instance, one of a quarter of a million pounds. We feel that under such circumstances a childless person, dying intestate, would wish that close relatives, such as parents or brothers and sisters, should take some benefit from the estate, subject always to adequate provision being made for the spouse. It often happens that a large portion of the intestate's estate has been derived from his family and it seems just, therefore, that the family should have an opportunity of sharing in it after the intestate's death. It may also be that the parents have been dependent on the intestate during his lifetime. But, it is said, in the case of a large estate, the owner would have specifically considered the law of intestacy during his lifetime and, finding that the spouse received the whole of the estate, he would have made a Will if he had wished his parents to receive a share. This, however, is an argument which is equally applicable in

reverse if the law of intestate succession were to provide, as it does now, that the parents should share in the estate. In our opinion, most testators disposing of a large estate would wish to give some share to their parents. A solution which goes some way towards striking a mean between the views of those who would give the whole estate to the spouse and the views of those who would give some benefit to the parents is to allow the spouse to have a larger specific amount out of the estate. The sum of 20,000 pounds should be sufficient to allow the spouse to maintain a comfortable standard of living and we are, therefore, recommending that, as against the parents, the spouse's statutory legacy should be increased from 5,000 pounds to 20,000 pounds, payable in the same manner as the 5,000 pounds. With regard to any further estate after this provision has been made, we are not in favour of the creation of life interests and we are of the opinion, therefore, that a fair distribution would be to give half the residuary estate to the spouse absolutely and to give the other half absolutely to the parents in equal shares or to the sole surviving parent. A criticism of the existing law (England) on the subject is that the parents do not usually survive to enjoy the possessory interest which comes to them on the death of the spouse. Our proposal avoids this result.

35. *Surviving spouse and brothers and sisters of the whole-blood but no issue or parents.* In the last paragraph mention is made of the suggestion that the surviving spouse should take the whole estate to the exclusion of all next of kin with the exception of issue. We see no reason for distinguishing between parents and brothers and sisters of the whole-blood, whom we regard as being sufficiently closely related to the deceased to deserve a share in a large estate. We recommend, therefore, that similar provision should be made for the spouse by giving him or her a statutory legacy of 20,000 pounds out of the estate and, if there is a balance remaining, one-half should be given to the spouse absolutely and the other half to the brothers and sisters of the whole-blood on the statutory trusts.

36. *Spouse and other next of kin.* We think that the average individual would not wish next of kin who are remoter than brothers and sisters of the whole-blood or the issue of such deceased brothers and sisters to benefit from the estate at the expense of the surviving spouse. In support of this view, several persons who have written to us have instanced the hardship and distress which is caused to a widow when she finds that she is entitled only to a life interest in the bulk of her husband's estate which will devolve upon her death to some relative, for instance a cousin, of whose existence the deceased may not even have been aware. We are, therefore, recommending that whenever an intestate leaves a surviving spouse, the following classes of next of kin, who at present take a share in an intestate's estate, namely brothers and sisters of the half-blood and their issue, grandparents, uncles and aunts of the whole-blood and uncles and aunts of the half-blood and their respective issue, should be excluded.

So far we have dealt mainly with the groups that should share in the residuary estate of an intestate leaving a widow but no issue. Since the widow's statutory legacy was increased in

England, we now have a fourth question to be determined. If an intestate dies leaving a widow but no issue, is the widow's statutory legacy of $20,000 adequate?

In England the widow's statutory legacy was first established in 1890 at 500 pounds. In 1925 it was increased to 1,000 pounds, and in 1952 it was again increased to 5,000 pounds in certain cases and in cases where the intestate dies leaving a widow but no issue, it was increased to 20,000 pounds or approximately $55,000. In the report of the committee on the law of intestate succession (England), the committee reports the following in paragraph 16 in addition to what has already been quoted from paragraphs 33-36 above:

> 16. *Statutory legacy.* Under our first Term of Reference we were asked simply to consider the rights of a surviving spouse. It should be said at the outset that no one has suggested to us that these rights should be in any way reduced. On the contrary those who have submitted memoranda of evidence to us have been unanimous in stressing that the rights of the surviving spouse, and in particular the rights of the widow, ought to be increased. The two main reasons which have been stated to justify such a course are:
>
> (*a*) that there has been considerable depreciation in the value of the pound sterling since 1926, and
>
> (*b*) that, even in the case of small estates, the matrimonial home, by reason of the present-day inflated market price with vacant possession, is valued at a sum greatly in excess of the spouse's statutory legacy of 1,000 pounds and cannot, therefore, be appropriated to the whole or part of such sum.

In Canada it should be pointed out that only five provinces have adopted $20,000 as the widow's statutory legacy. Nova Scotia makes no provision for a widow's statutory legacy; Ontario provides $5,000; Prince Edward Island, $8,000 and in Manitoba if an intestate dies leaving a widow, but no issue, his estate goes to his widow.

It would appear then, that before the New Brunswick Commissioners can prepare a draft of any amendment that may be desirable, it will be necessary to have at least four questions on policy determined. Those questions again are as follows:

First. If an intestate dies leaving a widow, but no issue or other next of kin, is the widow to take the whole estate to the exclusion of the Crown?

Second. If an intestate dies leaving a widow, but no issue, parent, brother, sister, nephew or niece, is the widow to take the whole estate to the exclusion of all other next of kin, i.e. those entitled under section 10?

Third. If an intestate dies leaving a widow, but no issue, is the widow to take the whole estate to the exclusion of any other group, i.e. nephew, niece, brother, sister, parent or half-blood?

Fourth. If an intestate dies leaving a widow, but no issue, is the widow's statutory legacy of $20,000 adequate?

M. M. HOYT,
for the New Brunswick Commissioners.

APPENDIX J

(*See page 21*)

TESTATOR'S FAMILY MAINTENANCE ACT

REPORT OF THE MANITOBA COMMISSIONERS

At the 1955 meeting of the Conference the following resolution was passed:

> *Testator's Family Maintenance Act*—This Act was referred to the Manitoba Commissioners for study and report at the next meeting as to whether or not an amendment was indicated by reason of the case of *Pope* v. *Stevens*.

The difficulty to which the judgment in the case above mentioned calls attention, is in the interpretation of section 22. After study of the matter, the Manitoba Commissioners now report that in their opinion section 22 should be re-enacted. They also find that it is desirable, in order to prevent further doubts, that a short amendment should be made to section 6.

The Manitoba Commissioners have drafted the amendments they propose should be adopted and they are attached as a Schedule to this report.

I. J. R. DEACON,
R. M. FISHER,
G. S. RUTHERFORD,
Manitoba Commissioners.

SCHEDULE

The Testator's Family Maintenance Act

1. Add, at the end of section 6 of the Act, the following words: "or may include provisions made under any two or more of clauses (*a*), (*b*), and (*c*)".

2. Strike out the present subsection (1) of section 22 and substitute the following two subsections, and re-number the present subsection (2) as subsection (3):

22.—(1) Where an order is made for the maintenance and support of the widow or widower of a testator

(*a*) if it is made wholly or partially under clause (*a*) of subsection (1) of section 6, the amount payable in each twelve months under the order shall not be less than the amount payable in each twelve months under the largest annuity, not guaranteed for any specific term, that could, at the date the order is made, be purchased by the widow or widower from the Government of Canada under the Government Annuities Act (Canada) with an amount equal to

(i) the share of the estate of the testator which the widow or widower would receive under The Dower Act, if she or he were entitled to, and did, elect to take under that Act,

(ii) reduced by any lump sum ordered under clause (*b*) of subsection (1) of section 6, and by the current sale value of any property ordered to be transferred or assigned under clause (*c*) of subsection (1) of section 6; and

(*b*) if it is made

(i) under clause (*b*) alone of subsection (1) of section 6, the lump sum,

(ii) under clause (*c*) alone of that subsection, the current sale value of the property,

(iii) under both clauses (*b*) and (*c*) of that subsection, the total of the lump sum and the current sale value of the property,

shall not be less than the share of the estate of the testator which the widow or widower would receive under The Dower Act, if she or he were entitled to, and did, elect to take under that Act.

(2) Where an order is made for the maintenance and support of a dependant other than the widow or widower of a testator, it shall not have the effect of reducing

(*a*) the share of the estate of the testator which the widow or widower will receive to an amount that, in the opinion of the judge, is less than the amount which she or he would receive under The Dower Act, if she or he were entitled to, and did, elect to take under that Act; or

(*b*) the amount of any order that might be made in favour of the widow or widower under subsection (1) if she or he should apply for an order under that subsection.

APPENDIX K

(*See page 23*)

RECIPROCAL ENFORCEMENT OF JUDGEMENTS RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS

REPORT OF SPECIAL COMMITTEE

The following entry appears at pages 19-20 of the 1954 Proceedings of the Conference under the above heading:

> Mr. MacTavish presented the report of the Ontario Commissioners on the Uniform Reciprocal Enforcement of Judgments Act and the Uniform Reciprocal Enforcement of Maintenance Orders Act (Appendix G, page 94).
>
> Messrs. Magone and Read discussed these two Acts particularly with regard to the case of *Re Scott* referred to in the Ontario report, copies of the decision in which had been distributed to the members by the Secretary.
>
> Mr. Teed referred to a problem he had raised in correspondence with the Secretary as to the effect of The Reciprocal Enforcement of Maintenance Orders Act in relation to certain alimony orders made in foreign jurisdictions.
>
> Mr. Rutherford then referred to certain procedural matters under The Reciprocal Enforcement of Judgments Act which were dealt with in a report prepared by the Manitoba Commissioners (Appendix H, page 96).
>
> After discussion the following resolution was adopted:
>
> RESOLVED that the current drafts of the Uniform Reciprocal Enforcement of Judgments Act and the Uniform Reciprocal Enforcement of Maintenance Orders Act be referred to a committee, composed of Messrs. Read and Magone, for study having regard to the decision of the Supreme Court of Canada in the *Re Scott* case when it is given, the currency section, the question raised by Mr. Teed, and the matters dealt with in the Manitoba report, and for report at the next meeting after the decision in *Re Scott* has been given.

A. On appeal from the decision of the Court of Appeal of Ontario in *Re Scott* [1954] 4 D.L.R. 546, the Supreme Court of Canada rendered its decision unanimously upholding the constitutionality

of the Reciprocal Enforcement of Maintenance Orders Act in its present form on December 22, 1955. The case is reported as *Attorney-General for Ontario* v. *Scott* (1956) 1 D.L.R. (2) 433, which is noted in the report on Judicial Decisions affecting Uniform Acts, 1955, where it is suggested that the decision of the Supreme Court makes no amendments to either of the above Acts strictly necessary.

With reference to the foreign currency provisions of both Acts (Foreign Judgments, Section 4; Maintenance Orders, subsection (3) of section 3 and subsection (8) of section 16) Rand J. at 1 D.L.R. (2) 439 said:

> Finally, it is said that the provision in the order stating the maintenance in terms of sterling currency is beyond the authority of an inferior Court to confirm; but as pointed out by McRuer C.J.H.C. under subsection (3) of section 5 the confirmation may be made with such modifications "as to the court may seem just". The modification from one currency to that of this country is simply adopting a measure to determine the amount which the law of Ontario will obligate the husband to pay for maintenance. I cannot agree that a reasonable basis of that sort can be objected to as beyond provincial legislative power.

Although the *Scott* case may not strictly require any rephrasing of the Reciprocal Enforcement of Maintenance Orders Act as revised in 1953, it may be desirable to change the wording of sections 6, 7 and 12 to accord with the Supreme Court's explanation of the true legal nature of a "provisional order" and a so-called "confirming order". The following changes are therefore suggested: (Words in parentheses are to be deleted and those italicized to be substituted).

(CONFIRMATION OF) *ORDERS BASED ON PROVISIONAL* MAINTENANCE ORDERS MADE IN RECIPROCATING STATES

6.—(1) Where,

(*a*) a maintenance order has been made by a court in a reciprocating state and the order is provisional only and has no effect until (confirmed) *an order based upon it is made* by a court in (province);

the Attorney-General may send the documents to a court designated by the Lieutenant-Governor in Council as a court for the purposes of this section, and upon receipt of the documents the court shall issue a summons calling upon the person against whom the order was made to show cause why (the order should not be confirmed) *the court should not make an order against him in like terms* and cause it to be served upon such person.

(3) Where, at a hearing under this section, the person who was served with the summons does not appear or, having appeared, fails to satisfy the court that the order ought not to be (confirmed) *made*, the court may (confirm) *make* the order either without (modification) *varying it from the terms of the provisional order* or with such (modifications) *variations* as the court after hearing the evidence considers just.

(5) Where *an order based on* a provisional order has been (confirmed) *made* under this section, it may be varied or rescinded, (in like manner as if it had originally been made by the confirmation court) and where on an application for rescission or variation the court is satisfied that it is necessary to remit the case to the court that made the *provisional* order for the purpose of taking further evidence, the court may so remit the case and adjourn the proceedings for the purpose.

(6) Where an order has been (confirmed) *made* under this section, the person bound thereby has the same right of appeal, if any, against (the confirmation of) the order as he would have (had) against the making of (the order if the order had been an) *any other maintenance* order made by the court (confirming the order).

(7) An order (confirmed) *made* under this section (has, from the date of its confirmation, the same force and effect, and, subject to this Act, all proceedings may be taken thereon, as if it had been) *is* an order originally obtained in the court (in which it is so confirmed, and that court has power to enforce the order accordingly) of (*province*).

GENERAL

7. A court in which an order has been registered under this Act or by which an order has been (confirmed) *made* under this Act, and the officers of the court, shall take all proper steps for enforcing the order.

12. Where a maintenance order sought to be registered or (confirmed) *made the basis of an order* under this Act is in a language other than the (English) language, the maintenance order or a certified copy thereof shall have attached thereto for all purposes of this Act a translation of the (English) language approved by the court, and upon such approval being given the maintenance order shall be deemed to be in the (English) language.

B. It was suggested by the Ontario Commissioners (1954 Proceedings p. 94) that constitutional matters arising from *Smith* v.

Smith [1953] 3 D.L.R. 682 should be examined with reference to both Acts. The effect of that case was discussed under the heading "Judicial Decisions affecting Uniform Acts, 1953" in the 1954 Proceedings, pages 136 to 143. It is believed that that case does not affect the Foreign Judgments Act. However, for the reasons stated in that discussion, some modifications of the Maintenance Orders Act are indicated and the following are suggested: (Deletions in parentheses; additions italicized.)

(*a*) the definition of "dependant" in clause (*c*) of section 2 to be:

"dependant" means the person(s) that a person against whom a maintenance order *is sought or* has been made is liable to maintain according to the law in force in the place where the maintenance order *is sought or* was made.

(*b*) Section 4 and subsection (1) of section 5 amended to limit competence to cases where either the applicant or the person against whom a maintenance order is sought is resident in the province:

4. Where either before or after the coming into force of this Act a court in (province) has, *on the application of a dependant who is resident in the province,* made a maintenance order against a person and it is proved to the court that the person against whom the order was made is resident in a reciprocating state, the court shall, on the request of the person in whose favour the order was made, send a certified copy of the order to the Attorney-General for transmission to the proper officer of the reciprocating state.

5.—(1) Where an application is made to a court in (province) *by a dependant who is resident in the province* for a maintenance order against a person and it is proved that that person is resident in a reciprocating state, the court may, in the absence of that person and without service of notice on him, if after hearing the evidence it is satisfied of the justice of the application, make any maintenance order that it might have made if a summons had been duly served on that person and he had failed to appear at the hearing; but an order so made is provisional only and has no effect until it is confirmed by a competent court in the reciprocating state.

C. All of the amendments that were suggested by the Manitoba Commissioners, as set out in the 1954 Proceedings, pages 96 to

99, to the 1953 revision of the Reciprocal Enforcement of Judgments Act are recommended to the Conference for approval for the reasons there given. With reference to the suggested subsection (2) of section 3, attention is hereby drawn to the corresponding provision of the English Act which reads as follows:

> (3) For the purposes of this section, a judgment shall be deemed to be final and conclusive notwithstanding that an appeal may be pending against it, or that it may still be subject to appeal, in the courts of the country of the original court.—(Foreign Judgments (Reciprocal Enforcement) Act, 1933, section 1 (3).)

D. The following appears in the memorandum of the Manitoba Commissioners at page 99 of the 1954 Proceedings:

> 9. In clause (*a*) of subsection (3) of section 3 it is stated that an order shall not be made if the original court acted without jurisdiction. We were asked whether this meant "without jurisdiction" under the law of the country, state, or province of the original court, or "without jurisdiction" under the law of the country, state, or province of the registering court. Without doubt the law in this respect may be different in the two countries, states, or provinces.
>
> Mr. Teed raised this point also in his correspondence.
>
> We make no suggestion as to how this matter should be dealt with, but feel that it is important and should be decided.

It is recommended that clause (*a*) of subsection (3) of section 3 be amended to make it clear that "without jurisdiction" as used therein means without either jurisdiction under the local law of the original court or jurisdiction under the conflict of laws of the registering court. This is in accord with the common law governing recognition of foreign judgments. A foreign judgment rendered by a court which has no jurisdiction in the local sense, that is no competence to adjudicate on the cause of action or concerning the person of the defendant, is a nullity, although the country, state or province in which the court sits has jurisdiction in the conflict of laws sense (See *Papadopoulos* v. *Papadopoulos* [1930] p. 55).

Jurisdiction, as will be seen, is an attribute of the legal unit, and its courts merely are its agents for the purpose of exercising that jurisdiction judicially. How, then, can a court exercise a jurisdiction not included in the competence conferred upon it by the law of its country, state or province?

At Anglo-Dominion common law it is a commonplace rule that a judgment rendered by a court totally without competence is a nullity in the country of that court. Thus, in 1886, *Concha* v. *Concha,* a House of Lords decision, where the English Probate

Court purported to make a disposition of property subject to a will, Lord Blackburn said:

> The judge of the Court of Probate had no jurisdiction to decide what was to be done with the residuary sum of the testator's property after all creditors who had a right to come upon it had been sufficiently paid off. He had no jurisdiction to decide that—that would be done by the Court of Chancery now—it could not be done by the Court of Probate. That being so, I think it is quite clear that this is not a decision *in rem* which would bind anyone. (II App. Cas 541, 565 (1886). See also *Attorney-General* v. *Eriche*, [1893] A.C. 518; *Nicle* v. *Douglas*, 37 U.C.B.Q. 51 (1875); *Toronto Railway Co.* v. *Corporation of the City of Toronto*, [1904] A.C. 809; *McIntosh* v. *Parent*, 55 Ont. L.R. 552, esp. at 557-559 (1924) citing authorities. See also authorities cited in SPENCER BOWER, RES JUDICATA (1924) at 104 (note n).

The same rule exists in the Anglo-American law. (See BLACK, JUDGMENTS (2d ed. 1902) 218, citing *Fisher* v. *Harnden*, 1 Paine, 55; *Towns* v. *Springer*, 9 Ga. 130; *Mobley* v. *Mobley*, id. 247; *Beverly* v. *Burke*, id. 440, 54 Am. Dec. 351; *Central Bank* v. *Gibson*, 11 Ga. 453; *Johnson* v. *Johnson*, 30 Ill. 215; *St. Louis & S. Coal Co.* v. *Sandoval Coal Co.*, III Ill. 32; *Swiggart* v. *Harber*, 4 Scam. 364, 39 Am. Dec. 418; *Miller* v. *Snyder*, 6 Ind. 1; *Seely* v. *Reid*, 3 Greene (Iowa), 374).

Turning to foreign judgments, it is found that the decision in the *Papadopoulos* case cited above was indicated by the judgment of Sir George Jessel, Master of the Rolls, in *The City of Mecca* in 1881. There a ship "The City of Mecca", while in a Portuguese harbor, was the subject of a suit. The ship being in Portugal, that law district had international jurisdiction in rem. The plaintiff, relying on the Portuguese judgment, proceeded against the ship in England, alleging that the Portuguese judgment was in rem. Sir George Jessel held that as by the law of Portugal there was no such thing as an action in rem but all judgments operated in personam, the judgment here must be in personam or nothing. The obvious process of reasoning here was that since the law of Portugal contained no such institution as a judgment in rem, the Portuguese court, if it purported to grant one, would ex necessitate act without any competence whatever and therefore produce a nullity.

It is, of course, commonplace that a foreign judgment to be entitled to recognition must have been rendered by a court whose country, state or province had jurisdiction according to the conflict of laws rules of the country, state or province in which recognition is sought. (See, for example, *Re Kenny* [1951] 2 D.L.R. 98.)

In view of the foregoing, it is suggested that clause (*a*) of subsection (3) of section 3 be re-phrased as follows:

(3) No order for registration shall be made if it is shown *by the judgment debtor* to the court to which application for registration is made that,

(*a*) the original court acted *either or both*

(i) *without jurisdiction under the conflict of laws rules of the court to which application is made,*

(ii) *without authority under the law of the original court to adjudicate concerning the cause of action or subject matter that resulted in the alleged judgment or concerning the person of the alleged judgment debtor.*

C. R. MAGONE,
HORACE E. READ.

APPENDIX L

(*See page 25*)

RECIPROCAL ENFORCEMENT OF JUDGMENTS ACT
RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS ACT

At the meeting of the Conference of Commissioners on Uniformity of Legislation in Canada in Montreal this year the following resolution was passed:

> "RESOLVED that the Reciprocal Enforcement of Judgments Act and the draft Act to amend the Reciprocal Enforcement of Maintenance Orders Act be referred to the Manitoba Commissioners for revision in accordance with the decisions reached at this meeting; that copies of the Acts so revised be sent by them to each of the local secretaries for distribution by them to members of the Conference in their respective jurisdictions; and that if the Acts as so revised are not disapproved by two or more jurisdictions by notice to the Secretary of the Conference on or before the 30th day of November, 1956, they be recommended for enactment in that form."

It is our understanding that the following decisions were made by the Conference:

As to Reciprocal Enforcement of Maintenance Orders Act:

1. The recommendations in Part B of the report made this year by Messrs. Read and Magone and found on pages 3 and 4 of their report were adopted.
2. The amendment made by the Legislature of Ontario to The Reciprocal Enforcement of Maintenance Orders Act of that province respecting the conversion into Canadian currency of sums expressed in foreign currency, as set out in chapter 77, Statutes of Ontario, 1956, were approved for adoption in subsection (3) of section 3 and subsection (8) of section 6 of the Uniform Act.

As to Reciprocal Enforcement of Judgments Act:

1. The recommendations of the Manitoba Commissioners set out in Appendix H at page 96 et seq. of the Conference Proceedings for 1954 were approved for adoption except No. 8.

2. The amendment respecting conversion of sums expressed in foreign currency approved for The Reciprocal Enforcement of Maintenance Orders Act was also approved for this Act.

In accordance with the resolution of the Conference we have revised the above-mentioned Acts and enclose copies herewith.

I. J. R. DEACON,
R. M. FISHER,
G. S. RUTHERFORD,
Manitoba Commissioners.

AN ACT TO FACILITATE THE RECIPROCAL ENFORCEMENT OF JUDGMENTS

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of....., enacts as follows:

Short title

1. This Act may be cited as "The Reciprocal Enforcement of Judgments Act".

Interpretation

2.—(1) In this Act,

"judgment"

(*a*) "judgment" means a judgment or order of a court in a civil proceeding, whether given or made before or after the commencement of this Act, whereby a sum of money is made payable, and includes an award in an arbitration proceeding if the award, under the law in force in the jurisdiction where it was made, has become enforceable in the same manner as a judgment given by a court in that jurisdiction, but does not include an order for the payment of money as alimony or as maintenance for a wife or former wife or a child, or an order made against a putative father of an unborn child for the maintenance or support of the mother thereof;

"judgment creditor"

(*b*) "judgment creditor" means the person by whom the judgment was obtained, and includes his executors, administrators, successors, and assigns;

"judgment debtor"

(*c*) "judgment debtor" means the person against whom the judgment was given, and includes any person against whom the judgment is enforceable in the jurisdiction in which it was given;

"original court"

(*d*) "original court" in relation to a judgment means the court by which the judgment was given;

"registering court"

(*e*) "registering court" in relation to a judgment means the court in which the judgment is registered under this Act.

(2) All references in this Act to personal service mean actual delivery of the process, notice, or other document, to be served, to the person to be served therewith personally; and service shall not be held not to be personal service merely because the service is effected outside the jurisdiction of the original court.

3.—(1) Where a judgment has been given in a court in a reciprocating jurisdiction, the judgment creditor may apply to the.....Court (*name of appropriate court in province*) within six years after the date of the judgment to have the judgment registered in that court, and on any such application the court may order the judgment to be registered accordingly. Application for registration of judgment

(2) An order for registration under this Act may be made *ex parte* in any case in which the judgment debtor, Application *ex parte*

(*a*) was personally served with process in the original action; or

(*b*) though not personally served, appeared or defended, or attorned or otherwise submitted to the jurisdiction of the original court,

and in which, under the laws of the country of the original court, the time within which an appeal may be made against the judgment has expired and no appeal is pending or an appeal has been made and has been dismissed.

(3) In a case to which subsection (2) applies, the application shall be accompanied by a certificate issued from the original court and under its seal and signed by a judge thereof or the clerk thereof. Certificate from original court required

(4) The certificate shall be in the form set out in the Schedule, or to the like effect, and shall set forth the particulars as to the matters therein mentioned. Form of certificate

(5) In a case to which subsection (2) does not apply, such notice of the application for the order as is required by the rules or as the judge deems sufficient shall be given to the judgment debtor. Notice of application in other cases

(6) No order for registration shall be made if it is shown by the judgment debtor to the court to which application for registration is made that, Conditions of registration

(*a*) the original court acted either

(i) without jurisdiction under the conflict of laws rules of the court to which application is made, or

(ii) without authority under the law of the original court to adjudicate concerning the cause of action or subject matter that resulted in the alleged judgment or concerning the person of the alleged judgment debtor,

or without such jurisdiction and without such authority; or

(*b*) the judgment debtor, being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original court, did not voluntarily appear or otherwise submit during the proceedings to the jurisdiction of that court; or

(*c*) the judgment debtor, being the defendant in the proceedings, was not duly served with the process of the original court and did not appear, notwithstanding that he was ordinarily resident or was carrying on business within the jurisdiction of that court or agreed to submit to the jurisdiction of that court; or

(*d*) the judgment was obtained by fraud; or

(*e*) an appeal is pending or the time within which an appeal may be taken has not expired; or

(*f*) the judgment was in respect of a cause of action that for reasons of public policy or for some similar reason would not have been entertained by the registering court; or

(*g*) the judgment debtor would have a good defence if an action were brought on the original judgment.

Method of registration

(7) Registration may be effected by filing the order and an exemplification or a certified copy of the judgment with the (*proper officer*) of the court in which the order was made, whereupon the judgment shall be entered as a judgment of that court.

Conversion to Canadian currency

4. Where a judgment sought to be registered under this Act makes payable a sum of money expressed in a currency other than the currency of Canada, the registering court, or, where that court is the (*Supreme*) Court, the (*registrar*) of that court, shall determine the equivalent of that sum in the currency of Canada on the basis of the rate of exchange prevailing at the date of the entry of the judgment in the original court, as ascertained from any branch of any chartered bank; and the registering court or the (*registrar*), as the case may be, shall certify on the order for registration the sum so determined expressed in the currency of Canada; and, upon its registration, the judgment shall be deemed to be a judgment for the sum so certified.

Where judgment is in a language other than (*English*)

5. Where a judgment sought to be registered under this Act is in a language other than the (*English*) language, the judgment or the exemplification or certified copy thereof, as the case

may be, shall have attached thereto for all purposes of this Act a translation in the (*English*) language approved by the court, and upon such approval being given the judgment shall be deemed to be in the (*English*) language.

Effect of registration

6. Where a judgment is registered under this Act,

(*a*) the judgment, from the date of the registration, is of the same force and effect as if it had been a judgment given (*or* entered) originally in the registering court on the date of the registration and proceedings may be taken thereon accordingly, except that where the registration is made pursuant to an *ex parte* order, no sale or other disposition of any property of the judgment debtor shall be made under the judgment before the expiration of the period fixed by clause (*b*) of subsection (1) of section 7 or such further period as the registering court may order;

(*b*) the registering court has the same control and jurisdiction over the judgment as it has over judgments given by itself; and

(*c*) the reasonable costs of and incidental to the registration of the judgment, including the costs of obtaining an exemplification or certified copy thereof from the original court and of the application for registration, are recoverable in like manner as if they were sums payable under the judgment if such costs are taxed by the proper officer of the registering court and his certificate thereof is endorsed on the order for registration.

Ex parte orders

7.—(1) Where a judgment is registered pursuant to an *ex parte* order,

(*a*) within one month after the registration or within such further period as the registering court may at any time order, notice of the registration shall be served upon the judgment debtor in the same manner as a (*writ of summons or statement of claim*) is required to be served; and

(*b*) the judgment debtor, within one month after he has had notice of the registration, may apply to the registering court to have the registration set aside.

Idem

(2) On such an application the court may set aside the registration upon any of the grounds mentioned in subsection (6) of section 3 and upon such terms as the court thinks fit.

Application for garnishment order

8.—(1) At the time of, or after, making an application under section 3, the applicant may further apply, *ex parte*, to the registering court for an order that all debts, obligations, and liabilities owing, payable, or accruing due to the judgment debtor from such person as may be named in the application be attached.

Making of garnishing order

(2) A judge of the registering court, upon considering the application for registration of the judgment and the certificate of the original court accompanying it, and upon production of such further evidence as he may require, may, if he deems it proper, make the order mentioned in subsection (1); and the order when made shall be deemed to be a garnishment order before judgment, and the rules of the registering court with respect to such garnishment orders shall apply thereto.

NOTE: — *The inclusion of section 8 to be optional in each adopting province; and, if adopted, the wording to be varied to suit the procedure in the courts of the province.*

Rules of practice

9. Rules of court may be made respecting the practice and procedure, including costs, in proceedings under this Act; and, until rules are made under this section, the rules of the registering court, including rules as to costs, *mutatis mutandis*, apply. (*This section to be changed to suit the rule-making procedures in the province.*)

Exercise of powers

10. Subject to the rules of court, any of the powers conferred by this Act on a court may be exercised by a judge of that court.

Reciprocating jurisdictions, establishment

11.—(1) Where the Lieutenant-Governor in Council is satisfied that reciprocal provisions will be made by a jurisdiction in or outside Canada for the enforcement therein of judgments given in (*name of province*), he may by order declare it to be a reciprocal jurisdiction for the purposes of this Act.

Disestablishment

(2) The Lieutenant-Governor in Council may revoke any order made under subsection (1) and thereupon the jurisdiction with respect to which the order was made ceases to be a reciprocating jurisdiction for the purposes of this Act.

Saving

12. Nothing in this Act deprives a judgment creditor of the right to bring action on his judgment, or on the original cause of action,

(*a*) after proceedings have been taken under this Act; or

(*b*) instead of proceeding under this Act,

and the taking of proceedings under this Act, whether or not the judgment is registered, does not deprive a judgment creditor of the right to bring action on the judgment or on the original cause of action.

General purpose

13. This Act shall be so interpreted as to effect its general purpose of making uniform the law of the provinces that enact it.

SCHEDULE

UNDER THE RECIPROCAL ENFORCEMENT OF JUDGMENTS ACT OF THE PROVINCE OF

CERTIFICATE

CANADA

Province of

(*or as the case may be*)

To all whom these Presents shall come.....GREETING:
It is hereby certified that, among the records enrolled in the court of.....at , before the Honourable.....a Justice (Judge) of the said Court, in the Procedure Book there is record of an action, numbered as No.

BETWEEN:

.....

Plaintiff(s)

and

.....

.....

Defendant(s)

1. The writ of summons (statement of claim) (*or as the case may be*) was issued on the day of 19 , and proof was furnished to this court that it was served on the defendant by delivery of a copy thereof to him and leaving it with him and exhibiting the original thereof to him at the time of the service.

2. No defence was entered, and the judgment was allowed by (proof, default, or order).....
.....

or

2 A defence was entered and judgment was allowed at the trial (*or as the case may be*).....
.....

3. Judgment was entered on the day of 19 .

4. Time for appeal has expired and no appeal is pending (*or* An appeal against the judgment was made and was dismissed by the Court of Appeal and the time for any further appeal has expired and no further appeal is pending.)

5. Further details if any.

6. Particulars:

Claim	$
Costs to judgment	$
Subsequent costs	$
Interest	$
	$
Paid on	$
And the balance remaining due on said judgment for debt, interest and costs is the sum of	$

All and singular which premises by the tenor of these presents we have commanded to be certified.

IN TESTIMONY WHEREOF we have caused the Seal of our said Court at .....to be hereunto affixed.

WITNESS, The Honourable.....a Justice (Judge) of our said Court at.....this.....day of.....A.D. 19 .

SEAL

A Justice (Judge) of the Court of

or

Clerk of the Court of

AN ACT TO FACILITATE THE ENFORCEMENT OF MAINTENANCE ORDERS

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of....., enacts as follows:

1. This Act may be cited as "The Reciprocal Enforcement of Maintenance Orders Act". Short title

2. In this Act, Interpretation

(*a*) "certified copy", in relation to an order of a court, means a copy of the order certified by the proper officer of the court to be a true copy; "certified copy"

(*b*) "court" means an authority having statutory jurisdiction to make maintenance orders; "court"

(*c*) "dependant" means a person that a person against whom a maintenance order is sought or has been made is liable to maintain according to the law in force in the place where the maintenance order is sought or was made; "dependant"

(*d*) "maintenance order" means an order, other than an order of affiliation, for the periodical payment of money towards the maintenance of the wife or any other dependant of the person against whom the order was made; and "maintenance order"

(*e*) "reciprocating state" means a jurisdiction declared under section 14 to be a reciprocating state. "reciprocating state"

ENFORCEMENT OF MAINTENANCE ORDERS MADE IN RECIPROCATING STATES

3.—(1) Where, either before or after the coming into force of this Act, a maintenance order has been made against a person by a court in a reciprocating state, and a certified copy of the order has been transmitted by the proper officer of the reciprocating state to the Attorney-General, the Attorney-General shall send a certified copy of the order for registration to the proper officer of a court in (*province*) designated by the Lieutenant-Governor in Council as a court for the purposes of this section, and on receipt thereof the order shall be registered. Enforcement in (*province*) of maintenance orders made elsewhere

(2) An order registered under subsection (1) has, from the date of its registration, the same force and effect, and, subject to Effect of registration

this Act, all proceedings may be taken thereon, as if it had been an order originally obtained in the court in which it is so registered, and that court has power to enforce the order accordingly.

Conversion to Canadian currency

(3) A maintenance order that makes payable sums of money expressed in a currency other than the currency of Canada shall not be registered under subsection (1) until the court in which it is sought to register the order, or, where that court is the (*Supreme*) Court, the (*registrar*) of that court, has determined the equivalent of those sums in the currency of Canada on the basis of the rate of exchange prevailing at the date of the order of the court in the reciprocating state, as ascertained from any branch of any chartered bank; and the court or the (*registrar*), as the case may be, shall certify on the order the sums so determined expressed in the currency of Canada and, upon the registration of the order, it shall be deemed to be an order for the payment of the sums so certified.

MAINTENANCE ORDERS AGAINST NON-RESIDENTS

Transmission of maintenance orders made in (*province*)

4. Where, either before or after the coming into force of this Act, a court in (*province*) has, on the application of a dependant who is resident in the province, made a maintenance order against a person and it is proved to the court that the person against whom the order was made is resident in a reciprocating state, the court shall, on the request of the person in whose favour the order was made, send a certified copy of the order to the Attorney-General for transmission to the proper officer of the reciprocating state.

Provisional maintenance orders against person residing outside (*province*)

5.—(1) Where an application is made to a court in (*province*) by a dependant who is resident in the province, for a maintenance order against a person and it is proved that that person is resident in a reciprocating state, the court may, in the absence of that person and without service of notice on him, if after hearing the evidence it is satisfied of the justice of the application, make any maintenance order that it might have made if a *summons* had been duly served on that person and he had failed to appear at the hearing; but an order so made is provisional only and has no effect until it is confirmed by a competent court in the reciprocating state.

NOTE:—*In this subsection and elsewhere in the draft where the word "summons" is used, each province should use the term appropriate to its own courts.*

Depositions and transcripts

(2) Where the evidence of a witness who is examined on an application mentioned in subsection (1) is not taken in shorthand, the evidence shall be put into the form of a deposition; and the deposition shall be read over and signed by the witness and also by the judge or other person presiding at the hearing.

Preparation of statements and transmission of documents to Attorney-General

(3) Where an order has been made pursuant to subsection (1),

(*a*) the court shall prepare,

(i) a statement showing the grounds on which the making of the order might have been opposed if the person against whom the order was made had been duly served with a *summons* and had appeared at the hearing, and

(ii) a statement showing the information that the court possesses for facilitating the identification of the person against whom the order was made and ascertaining his whereabouts; and

(*b*) the court shall send to the Attorney-General for transmission to the proper officer of the reciprocating state,

(i) a certified copy of the order,

(ii) the depositions or a certified copy of the transcript of the evidence, and

(iii) the statements referred to in clause (*a*).

Power to take new evidence on renvoy

(4) Where a provisional order made under this section has come before a court in a reciprocating state for confirmation, and the order has by that court been remitted to the court in (*province*) that made the order for the purpose of taking further evidence, the court in (*province*) shall, after giving the notice prescribed by the rules, proceed to take the evidence in like manner, and subject to the like conditions, as the evidence in support of the original application.

Further powers on renvoy

(5) Where upon the hearing of the evidence taken under subsection (4) it appears to the court in (*province*) that the order ought not to have been made, the court may rescind the order, but in any other case the depositions or a certified copy of the transcript of the evidence, if it was taken in shorthand, shall be sent to the Attorney-General and dealt with in like manner as the depositions or transcript of the original evidence.

Power of original court to vary or rescind

(6) The confirmation of an order made under this section does not affect any power of the court that originally made the

order to vary or rescind the order, but an order varying an original order has no effect until it is confirmed in like manner as the original order.

Transmission of varying or rescinding order

(7) Where, after an order made under this section is confirmed, the court that originally made the order makes a varying or rescinding order, that court shall send a certified copy thereof, together with the depositions or a certified copy of the transcript of any new evidence adduced before the court, to the Attorney-General for transmission to the proper officer of the reciprocating state in which the original order was confirmed.

Right of appeal

(8) An applicant for a provisional order under this section has the same right of appeal, if any, against a refusal to make the order as he would have had against a refusal to make a maintenance order if a summons had been duly served on the person against whom the order is sought to be made.

CONFIRMATION OF MAINTENANCE ORDERS MADE IN RECIPROCATING STATES

Confirmation of maintenance orders made outside (*province*)

6.—(1) Where,

(*a*) a maintenance order has been made by a court in a reciprocating state and the order is provisional only and has no effect until confirmed by a court in (*province*);

(*b*) a certified copy of the order, together with the depositions of witnesses and a statement of the grounds on which the order might have been opposed if the person against whom the order was made had been a party to the proceedings, is received by the Attorney-General; and

(*c*) it appears to the Attorney-General that the person against whom the order was made is resident in (*province*),

the Attorney-General may send the documents to a court designated by the Lieutenant-Governor in Council as a court for the purposes of this section; and upon receipt of the documents the court shall issue a *summons* calling upon the person against whom the order was made to show cause why the order should not be confirmed, and cause it to be served upon such person.

Right of defence on application for confirmation

(2) At a hearing under this section the person on whom the *summons* was served may raise any defence that he might have raised in the original proceedings if he had been a party thereto, but no other defence; and the statement from the court that made

the provisional order, stating the grounds on which the making of the order might have been opposed if the person against whom the order was made had been a party to the proceedings, is conclusive evidence that those grounds are grounds on which objection may be taken.

Power to confirm with or without modification

(3) Where, at a hearing under this section, the person who was served with the *summons* does not appear or, having appeared, fails to satisfy the court that the order ought not to be confirmed, the court may confirm the order, either without modification or with such modifications as the court, after hearing the evidence, considers just.

Power to remit to court that made provisional order

(4) Where the person against whom a summons was issued under this section appears at the hearing and satisfies the court that, for the purpose of any defence, it is necessary to remit the case to the court that made the provisional order for the taking of any further evidence, the court may so remit the case and adjourn the proceedings for the purpose.

Variation or rescission of order that has been confirmed

(5) Where a provisional order has been confirmed under this section, it may be varied or rescinded in like manner as if it had originally been made by the confirming court; and where, on an application for rescission or variation, the court is satisfied that it is necessary to remit the case to the court that made the order for the purpose of taking further evidence, the court may so remit the case and adjourn the proceedings for the purpose.

Right of appeal

(6) Where an order has been confirmed under this section, the person bound thereby has the same right of appeal, if any, against the confirmation of the order as he would have had against the making of the order if the order had been an order made by the court confirming the order.

(7) An order confirmed under this section has, from the date of its confirmation, the same force and effect, and, subject to this Act, all proceedings may be taken thereon, as if it had been an order originally obtained in the court in which it is so confirmed, and that court has power to enforce the order accordingly.

Conversion to Canadian currency

(8) Where an order sought to be confirmed under this section makes payable sums of money expressed in a currency other than the currency of Canada, the confirming court, or where that court is the (*Supreme*) Court, the (*registrar*) of that court, shall determine the equivalent of those sums in the currency of Canada on the basis of the rate of exchange prevailing at the date of the

provisional order of the court in the reciprocating state, as ascertained from any branch of any chartered bank; and the confirming court or the (*registrar*), as the case may be, shall certify on the order when confirmed the sums so determined expressed in the currency of Canada, and the order when confirmed shall be deemed to be an order for the sums so certified.

GENERAL

Enforcement of order

7. A court in which an order has been registered under this Act or by which an order has been confirmed under this Act, and the officers of the court, shall take all proper steps for enforcing the order.

Transmission of documents by A. G to reciprocating state

8. Where under this Act a document is sent to the Attorney-General for transmission to the proper officer of a reciprocating state, the Attorney-General shall transmit the document accordingly.

Rules of practice

9. The Lieutenant-Governor in Council may make rules prescribing the practice and procedure, including costs, under this Act.

NOTE:—*To be varied to suit the requirements of each adopting province.*

Proof of documents signed by officer of court

10. A document purporting to be signed by a judge or officer of a court in a reciprocating state shall, until the contrary is proved, be deemed to have been so signed without proof of the signature or judicial or official character of the person appearing to have signed it, and the officer of a court by whom a document is signed shall, until the contrary is proved, be deemed to have been the proper officer of the court to sign the document.

Depositions to be evidence

11. Depositions or transcripts from shorthand of evidence taken in a reciprocating state, for the purposes of this Act, may be received in evidence before the Courts in (*province*) under this Act.

Where order in foreign language

12. Where a maintenance order sought to be registered or confirmed under this Act is in a language other than the (*English*) language, the maintenance order or a certified copy thereof shall have attached thereto, for all purposes of this Act, a translation in the (*English*) language approved by the court; and upon such approval being given the maintenance order shall be deemed to be in the (*English*) language.

13. Nothing in this Act deprives a person of the right to obtain a maintenance order instead of proceeding under this Act. Saving

14.—(1) Where the Lieutenant-Governor in Council is satisfied that reciprocal provisions will be made by a jurisdiction in or outside Canada for the enforcement therein of maintenance orders made within (*province*), the Lieutenant-Governor in Council may by order declare it to be a reciprocating state for the purposes of this Act. Designation of reciprocating states

(2) The Lieutenant-Governor in Council may revoke any order made under subsection (1); and thereupon the jurisdiction with respect to which the order was made ceases to be a reciprocating state for the purposes of this Act. Revocation of designation

15. This Act shall be so interpreted as to effect its general purpose of making uniform the law of the provinces that enact it. Uniform interpretation

APPENDIX M

(*See page 24*)

WILLS

At the 1956 meeting of the Conference of Commissioners on Uniformity of Legislation in Canada, held in Montreal in August, the following resolution was passed:

> "RESOLVED that the draft of the Revised Wills Act be referred to Dr. Horace E. Read for revision in accordance with the decisions reached at this meeting, that copies of the Act as so revised be sent by him to each of the local secretaries for distribution by them to members of the Conference in their respective jurisdictions, and that if the Act as so revised is not disapproved by two or more jurisdictions by notice to the Secretary of the Conference on or before the 31st day of December, 1956, it be recommended for enactment in that form."

It is understood that the following decisions were made by the meeting:

(1) Provisions of the draft Act not mentioned in this memorandum were approved without change.

(2) The suggestion made by the Special Committee that a definition of "issue" be included in section 2 was not adopted. It was instead decided to recommend that the definition be included in the Uniform Interpretation Act. Only New Brunswick and Nova Scotia now define "issue" in the Interpretation Act. Definitions of the term in provincial statutes are as follows:

(A) *In Interpretation Acts.*

(*a*) *New Brunswick*
R.S.N.B. 1952, c. 114, s. 38(24) "issue" means lawful lineal descendants of the ancestor.

(*b*) *Nova Scotia*
R.S.N.S. 1954, c. 136, s. 6 (1)(*a*) "issue" as applied to the descent of an estate includes all lawful lineal descendants of the ancestor.

(B) *Intestate Succession Acts.*

(*a*) *British Columbia*

R.S.B.C. 1948, c. 6, s. 109, for the purposes of intestate succession "issue" includes all lawful lineal descendants of the ancestor.

(*b*) *Alberta*

R.S. Alta. 1941, c. 211, s. 2(*b*)—(Distribution of Estates of Intestates), "Issue" includes all lawful lineal descendants of the ancestor.

(*c*) *Saskatchewan*

R.S.S. 1953, c. 119, s. 2(2)—(Intestacy Act)—"Issue" includes all lawful lineal descendants of the ancestor.

(*d*) *Manitoba*

R.S. Man. 1954, c. 63, s. 5(*b*)—(Devolution of Estates of Intestates)—"Issue" includes all lawful lineal descendants of the ancestor.

(*e*) *Ontario*

No definition.

(*f*) *New Brunswick*

No definition, but see R.S.N.B. 1952, c. 114, s. 38 (24) (Interpretation Act) (above).

(*g*) *Nova Scotia*

R.S.N.S. 1954, c. 69, s. 1(1) (Descent of Property Act)—"Issue" includes all lawful lineal descendants of the ancestor.

(*h*) *Prince Edward Island*

R.S.P.E.I. 1951, c. 124, s. 96 (*b*) (Intestacy provisions of the Probate Act)— "Issue" includes all lawful lineal descendants of the ancestor.

(*i*) *Newfoundland*

R.S. Newfoundland 1952, c. 153, s. 2(*b*) (Intestate Succession Act)—"Issue" includes all lawful lineal descendants of the ancestors.

(C) *Wills Acts.*

(*a*) *British Columbia*
No definition of "issue".

(*b*) *Alberta*
No definition of "issue".

(*c*) *Saskatchewan*
R.S. Sask. 1953, c. 119, s. 2(2)—"Issue" includes all lawful lineal descendants of the testator.

(*d*) *Manitoba*
No definition of "issue".

(*e*) *Ontario*
No definition of "issue".

(*f*) *New Brunswick*
No definition of "issue".

(*g*) *Nova Scotia*
R.S.N.S. 1954, c. 315, s. 1(*a*)—"Issue" includes all lawful lineal descendants of the testator.

(*h*) *Prince Edward Island*
No definition of "issue".

(*i*) *Newfoundland*
No definition of "issue".

(3) Section 4 was rephrased to read "A will is valid only when it is in writing".

(4) The words "at its end" were inserted in clause (*a*) of section 5.

(5) Sections 6 and 9 were to be amended to give effect to the suggestions made by Brigadier W. J. Lawson, Judge Advocate General, Department of National Defence, in the following communication to the Deputy Minister of Justice:

> "I have your letter of 7th August concerning the draft revision of a uniform Wills Act that will be considered at the conference of Commissioners on Uniformity of Legislation at its meeting in Montreal during the last week of this month. You have asked for my comments on clauses 6 and 9 of the proposed Act.

"Clause 6 provides for the making of a will by a serviceman when on active service. The definition of active service in this clause appears to be based on the judgment of the U.K. Court of Appeal in the case of re Wingham (1948) 2 All E.R., 908. I would suggest that in Canadian legislation it would be better to base the definition on the National Defence Act and that it would be preferable to use the terminology of the National Defence Act wherever possible throughout the clause.

"Section 32 of the National Defence Act relates to active service. It provides that the Governor in Council may place the Canadian Forces or any Service, component, unit or other element thereof or any officer or man thereof on active service anywhere in or beyond Canada at any time when it appears advisable so to do:

(*a*) by reason of an emergency, for defence of Canada, or

(*b*) in consequence of any action undertaken by Canada under the United Nations Charter, the North Atlantic Treaty or any other similar instrument for collective defence that may be entered into by Canada.

The section further provides that an officer or man of Her Majesty's Forces, which of course includes all the Canadian Forces, who is a member of, serving with, or attached or seconded to a Service, component or unit of the Canadian Forces that has been placed on active service or who has been placed on active service, or who pursuant to law has been attached or seconded to a portion of a force that has been placed on active service, shall be deemed to be on active service for all purposes.

"Provision might also be made for a simple method of proving that the deceased was on active service when the will was made as I know from experience that this has caused difficulty in the past. I suggest the following redraft of the clause for your consideration:

6.—(1) A member of the Canadian Forces while placed on active service pursuant to the National Defence Act, or a mariner or a seaman when at sea or in the course of a voyage, may make a will by a writing signed by him or by some other person in his presence and by his direction without any further formality or any requirement of the presence of or attestation or signature by a witness.

(2) A certificate signed by or on behalf of the officer having custody of the records of the service in which the testator was serving on active service at the time the will was made setting out that the testator was on active service at the time in question, is sufficient proof of that fact.

"The proposed clause 9 should, I suggest, be redrafted to conform with the changes in clause 6 . . . . ."

(6) In section 7, "handwriting" was substituted for "writing".

(7) The words "or has been" were inserted in clause (*a*) of subsection (1) of section 9.

(8) Subsection (2) of section 9 was to be redrafted to confer on all persons who were included in subsection (1) power to revoke a will while under twenty-one years of age in the ways now set out in subsection (2). It was agreed that while the policy of Section 6 is to take care only of cases where it is difficult or impossible to make a formal will, the policy of Section 9 is to recognize testamentary capacity in minors who are effectively emancipated either in law or fact during the time that emancipation exists. The respective cases of Sections 6 and 9 differ accordingly. The rules in clauses (*a*), (*b*) and (*c*) of subsection (2) of section 9, differ according to the duration of testamentary capacity of the persons in the corresponding clauses of subsection (1). It was agreed by the Conference that the revoking power of servicemen and mariners or seamen whose testamentary capacity had ceased while still minors should be coextensive.

(9) Subsections (3) and (4) of section 21 of the Committee's draft act were not adopted by the Conference. Mr. Teed suggested a rephrasing of subsection (2) which was approved. The new subsection that was suggested by the Committee as a result of the Supreme Court of Canada case, Diocesan Synod v. Protestant Orphans Home [1955] 3 D.L.R. 255, was approved for insertion as subsection (3).

(10) Instruction was given to redraft the concluding clause of section 27 to clarify its meaning. This is now clause (*b*) of section 27. Dr. Gilbert Kennedy has made the following comment:

> "(i) If the adoption legislation of the province goes far enough, then nothing should be said in this (Wills) Act about adoption. B.C.'s adoption legislation (as of March 1956) does so. . . .

(ii) On the other hand, if the adoption legislation does not go far enough, then the wills legislation should make temporary provision. That provision should be carefully worded to bring in all relationships by adoption."

(11) It was agreed that in view of the decision of the House of Lords in Chichester v. Simpson [1944] A.C. 341, Section 31 should include outright gifts as well as gifts in trust.

(12) Instruction was given to redraft Section 32 in tabular form. Mr. Rutherford's suggestion was approved that the phrase "in a common disaster" should be replaced by "in circumstances rendering it uncertain which of them survived the other". The alternative cases within the intention of this Section now are set out in clause (a).

(13) Instruction was given to include a section governing application of Part I similar to subsection (1) of section 38 of the Manitoba Wills Act.

In accordance with the resolution of the Conference I have revised the draft Wills Act and enclose a copy of the revised Act.

HORACE E. READ,
Chairman, Special Committee on the Wills Act.

REVISED UNIFORM WILLS ACT

Short title

1. This Act may be cited as The Wills Act.

Interpretation

2. In this Act, "will" includes a testament, a codicil, an appointment by will or by writing in the nature of a will in exercise of a power and any other testamentary disposition.

PART I

GENERAL

Property disposable by will

3. A person may by will devise, bequeath or dispose of all real and personal property, (whether acquired before or after making his will), to which at the time of his death he is entitled either at law or in equity, including,

Estate *pur autre vie*

(*a*) estates *pur autre vie,* whether there is or is not a special occupant and whether they are corporeal or incorporeal hereditaments;

Contingent interests

(*b*) contingent, executory or other future interests in real or personal property, whether the testator is or is not ascertained as the person or one of the persons in whom those interests may respectively become vested, and whether he is entitled to them under the instrument by which they were respectively created or under a disposition of them by deed or will;

Rights of entry

(*c*) rights of entry.

Writing required

4. A will is valid only when it is in writing.

Signatures required on formal will, execution

5. Subject to sections 6 and 7, a will is not valid unless,

(*a*) at its end it is signed by the testator or signed in his name by some other person in his presence and by his direction;

(*b*) the testator makes or acknowledges the signature in the presence of two or more attesting witnesses present at the same time; and

(*c*) two or more of the attesting witnesses subscribe the will in the presence of the testator.

Military forces and mariners

6.—(1) A member of the Canadian Forces while placed on active service pursuant to the National Defence Act, or a member of any other naval, land or air force while on active service,

or a mariner or a seaman when at sea or in the course of a voyage, may make a will by a writing signed by him or by some other person in his presence and by his direction without any further formality or any requirement of the presence of or attestation or signature by a witness.

(2) For the purpose of this section a certificate signed by or on behalf of the officer having custody of the records of the force in which a person was serving at the time the will was made setting out that the person was on active service at that time, is sufficient proof of that fact.

(3) For the purpose of this section if a certificate under subsection (2) is not available, a member of a naval, land or air force is deemed to be on active service after he has taken steps under the orders of a superior officer preparatory to serving with or being attached to or seconded to a component of such a force that has been placed on active service.

Holograph will

7. A testator may make a valid will wholly by his own handwriting and signature, without formality, and without the presence, attestation or signature of a witness.

Place of signature: All Wills

8.—(1) In so far as the position of the signature is concerned, a will is validly made if the signature of the testator, made either by him or the person signing for him, is placed at or after or following or under or beside or opposite to the end of the will so that it is apparent on the face of the will that the testator intended to give effect by the signature to the writing signed as his will.

(2) A will is not rendered invalid by the circumstance that,

(*a*) the signature does not follow or is not immediately after the foot or end of the will; or

(*b*) a blank space intervenes between the concluding words of the will and the signature; or

(*c*) the signature is placed among the words of a testimonium clause or of a clause of attestation or follows or is after or under a clause of attestation either with or without a blank space intervening, or follows or is after or under or beside the name of a subscribing witness; or

(*d*) the signature is on a side or page or other portion of the paper or papers containing the will on which no clause or paragraph or disposing part of the will is written above the signature; or

(*e*) there appears to be sufficient space on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written to contain the signature.

(3) The generality of subsection (1) is not restricted by the enumeration of circumstances set out in subsection (2), but a signature in conformity with sections 5 or 6 or 7 or this section does not give effect to a disposition or direction that is underneath the signature or that follows the signature or to a disposition or direction inserted after the signature was made.

Infants

9.—(1) A will made by a person who is under the age of twenty-one years is not valid unless at the time of making the will the person,

(*a*) is or has been married; or

(*b*) is a member of a component of the Canadian Forces,

(i) that is referred to in the National Defence Act as a regular force, or

(ii) while placed on active service under the National Defence Act; or

(*c*) is a mariner or seaman.

(2) A certificate signed by or on behalf of the officer having custody of the records of the force in which a person was serving at the time the will was made setting out that the person was at that time a member of a regular force or was on active service within clause (*b*) of subsection (1), is sufficient proof of that fact.

(3) (*a*) A person who is or has married and has made a will while under the age of twenty-one years may while still under that age revoke the will by any method provided under section 16.

(*b*) A person who made a will under clause (*b*) or (*c*) of subsection (1) and has ceased to be a person described in either clause, may, while still under the age of twenty-one years, revoke the will by any of the methods provided under clauses (*a*), (*c*) or (*d*) of section 16.

Will Exercising Power of Appointment

10. A will made in accordance with this Act is as to form a valid execution of a power of appointment by will notwithstanding that it has been expressly required that a will in exercise of

the power be made in some form other than that in which it is made.

Publication

11. A will made in accordance with this Act is valid without other publication.

Incompetency of Witness

12. Where a person who attested a will was at the time of its execution or afterward has become incompetent as a witness to prove its execution, the will is not on that account invalid.

Gift to Attesting Witness

13.—(1) Where a will is attested by a person to whom or to whose then wife or husband a beneficial devise, bequest or other disposition or appointment of or affecting real or personal property, except charges and directions for payment of debt, is thereby given or made, the devise, bequest or other disposition or appointment is void so far only as it concerns the person so attesting, or the wife or the husband or a person claiming under any of them; but the person so attesting is a competent witness to prove the execution of the will or its validity or invalidity.

(2) Where a will is attested by at least two persons who are not within subsection (1) or where no attestation is necessary, the devise, bequest or other disposition or appointment is not void under that subsection.

Creditor as Witness

14. Where real or personal property is charged by a will with a debt and a creditor or the wife or husband of a creditor whose debt is so charged attests a will, the person so attesting, notwithstanding such charge, is a competent witness to prove the execution of the will or its validity or invalidity.

Executor as Witness

15. A person is not incompetent as a witness to prove the execution of a will, or its validity or invalidity solely because he is an executor.

Revocation in general

16. A will or part of a will is revoked only by,

(*a*) marriage, subject to section 17; or

(*b*) another will made in accordance with the provisions of this Act; or

(*c*) a writing declaring an intention to revoke and made in accordance with the provisions of this Act governing the making of a will; or

(*d*) burning, tearing or otherwise destroying it by the testator or by some person in his presence and by his direction with the intention of revoking it.

Revocation by marriage

17. A will is revoked by the marriage of the testator except where,

(*a*) there is a declaration in the will that it is made in contemplation of the marriage; or

(*b*) the will is made in exercise of a power of appointment of real or personal property which would not in default of the appointment pass to the heir, executor or administrator of the testator or to the persons entitled to the estate of the testator if he died intestate.

No revocation by presumption

18. A will is not revoked by presumption of an intention to revoke it on the ground of a change in circumstances.

Making alterations

19.—(1) Subject to subsection (2), unless an alteration that is made in a will after the will has been made is made in accordance with the provisions of this Act governing making of a will, the alteration has no effect except to invalidate words or meanings that it renders no longer apparent.

(2) An alteration that is made in a will after the will has been made is validly made when the signature of the testator and subscription of witnesses to the signature of the testator to the alteration, or, in the case of a will that was made under section 6 or section 7, the signature of the testator, are or is made,

(*a*) in the margin or in some other part of the will opposite or near to the alteration; or

(*b*) at the foot or end of or opposite to a memorandum referring to the alteration and written in some part of the will.

Revival

20.—(1) A will or part of a will that has been in any manner revoked is revived only,

(*a*) by a will made in accordance with the provisions of this Act; or

(*b*) by a codicil that has been made in accordance with the provisions of this Act;

that shows an intention to give effect to the will or part that was revoked.

(2) Except when a contrary intention is shown, when a will which has been partly revoked and afterwards wholly revoked, is revived, the revival does not extend to the part that was revoked before the revocation of the whole.

21.—(1) A conveyance of or other act relating to real or personal property comprised in a devise or bequest or other disposition, made or done after the making of a will, does not prevent operation of the will with respect to any estate or interest in the property that the testator had power to dispose of by will at the time of his death. Subsequent conveyances, etc.

(2) Except when a contrary intention appears by the will, where a contract respecting, a conveyance of, or other act relating to real or personal property comprised in a devise or bequest, made or done after the making of a will, creates a right or chose-in-action or equitable estate or interest that is retained by the testator at the time of his death, a devisee or donee of that real or personal property takes the right or chose-in-action or equitable estate or interest that is retained by the testator.

(3) Except when a contrary intention appears by the will, where the testator has bequeathed proceeds of the sale of property and the proceeds are received by him before his death, the bequest is not adeemed by commingling the proceeds with the funds of the testator if the proceeds are traced into those funds.

22. Except when a contrary intention appears by the will, a will speaks and takes effect as if it had been made immediately before the death of the testator with respect to, Will speaking from death

(*a*) real and personal property;

(*b*) the right or chose-in-action or equitable estate or interest

or the proceeds under subsections (2) and (3) of section 21.

23. Except when a contrary intention appears by the will, real or personal property or an interest therein that is comprised or intended to be comprised in a devise or bequest that fails or becomes void by reason of the death of the devisee or donee in the life-time of the testator, or by reason of the devise or bequest being contrary to law or otherwise incapable of taking effect, is included in the residuary devise or bequest, if any, contained in the will. Lapsed and void devises and bequests

24. Except when a contrary intention appears by the will, where a testator devises, Inclusion of Leaseholds in General Devise

(*a*) his land; or

(*b*) his land in a place mentioned in the will, or in the occupation of a person mentioned in the will; or

(*c*) land described in a general manner; or

(*d*) land described in a manner that would include a leasehold estate if the testator had no freehold estate which could be described in the manner used,

the devise includes the leasehold estates of the testator or any of them to which the description extends, as well as freehold estates.

Exercise of general power of appointment by general gift

25.—(1) Except when a contrary intention appears by the will, a general devise of,

(*a*) the real property of the testator; or

(*b*) the real property of the testator in a place mentioned in the will or in the occupation of a person mentioned in the will; or

(*c*) real property described in a general manner,

includes any real property or any real property to which the description extends, that he has power to appoint in any manner he thinks proper and operates as an execution of the power.

(2) Except when a contrary intention appears by the will, a bequest of,

(*a*) the personal property of the testator; or

(*b*) personal property described in a general manner;

includes any personal property or any personal property to which the description extends, that he has power to appoint in any manner he thinks proper and operates as an execution of the power.

Devise without words of limitation

26. Except when a contrary intention appears by the will, where real property is devised to a person without words of limitation, the devise passes the fee simple or the whole of any other estate in the real property that the testator had power to dispose of by will.

Devise to "heir"; meaning of "child"

27. Except when a contrary intention appears by the will, where property is devised or bequeathed to the "heir" of the testator or of another person,

(*a*) the word "heir" means the person to whom the beneficial interest in the property would go under the law of the Province if the testator or the other person died intestate; and

(*b*) where used in that law the word "child" includes for the purpose of this section a person related by or through adoption to the testator or the other person.

Meaning of "die without issue"

28.—(1) Subject to subsection (2), in a devise or bequest of real or personal property,

(*a*) the words

(i) "die without issue", or

(ii) "die without leaving issue"; or

(iii) "have no issue"; or

(*b*) other words importing either a want or failure of issue of a person in his lifetime or at the time of his death or an indefinite failure of his issue;

mean a want or failure of issue in the lifetime or at the time of death of that person, and do not mean an indefinite failure of his issue unless a contrary intention appears by the will.

(2) This section does not extend to cases where the words defined in subsection (1) import,

(*a*) if no issue described in a preceding gift be born; or

(*b*) if there be no issue who live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to that issue.

Devise to trustees otherwise than for a term

29. Except when there is devised to a trustee expressly or by implication an estate for a definite term of years absolute or determinable or an estate of freehold, a devise of real property to a trustee or executor passes the fee simple or the whole of any other estate or interest that the testator had power to dispose of by will in the real property.

Unlimited devise to trustees

30. Where real property is devised to a trustee without express limitation of the estate to be taken by him and the beneficial interest in the real property or in the surplus rents and profits;

(*a*) is not given to a person for life; or

(*b*) is given to a person for life but the purpose of the trust may continue beyond his life,

the devise vests in the trustee the fee simple or the whole of any other legal estate that the testator had power to dispose of by will in the real property and not an estate determinable when the purposes of the trust are satisfied.

Charitable trusts

31.—(1) Where a testator leaves property, with or without the intervention of a trust, for a charitable object or purpose that is linked conjunctively or disjunctively in the will with a non-charitable object or purpose, and the non-charitable object or purpose is void for uncertainty or for any other cause, the trust or gift is valid and operates solely for the benefit of the charitable object.

(2) Where a testator leaves property, with or without the intervention of a trust, for a charitable object or purpose that is linked conjunctively or disjunctively in the will with a non-charitable object or purpose, and the non-charitable object or purpose is not void, the trust or gift is valid for both objects and purposes, and, where the will has not divided the property among the charitable and non-charitable objects and purposes, the trustee or executor shall divide the property among the charitable and non-charitable objects and purposes according to his discretion.

Devise of Estate Tail

32. Except when a contrary intention appears by the will, where a person to whom real property is devised for what would have been, under the law of England, an estate tail or in quasi entail,

(*a*) (i) dies in the lifetime of the testator, or

(ii) dies at the same time as the testator, or

(iii) dies in circumstances rendering it uncertain whether that person or the testator survived the other; and

(*b*) leaves issue who would inherit under the entail if that estate existed;

if any such issue are living at the time of the death of the testator, the devise does not lapse but takes effect as if the death of that person had happened immediately after the death of the testator.

Gifts to issue predeceasing testator

33. Except when a contrary intention appears by the will, where a person dies in the life-time of a testator either before or after the testator makes the will and that person,

(*a*) is a child or other issue or a brother or sister of the testator to whom, either as an individual or as a member of a class, is devised or bequeathed an estate or interest in real or personal property not determinable at or before his death; and

(*b*) leaves issue any of whom is living at the time of the death of the testator,

the devise or bequest does not lapse, but takes effect as if it had been made directly to the persons among whom and in the shares in which the estate of that person would have been divisible if he had died intestate and without debts immediately after the death of the testator.

Illegitimate children

34. Except when a contrary intention appears by the will, an illegitimate child is entitled to take, under a testamentary gift by or to his mother or to her children or issue, the same benefit as the child would have been entitled to if legitimate.

Primary liability of mortgaged land

35.—(1) Where a person dies possessed of, or entitled to, or under a general power of appointment by his will disposes of, an interest in freehold or leasehold property which, at the time of his death, is subject to a mortgage, and the deceased has not, by will, deed or other document, signified a contrary or other intention, the interest is, as between the different persons claiming through the deceased, primarily liable for the payment or satisfaction of the mortgage debt; and every part of the interest, according to its value, bears a proportionate part of the mortgage debt on the whole interest.

(2) A testator does not signify a contrary or other intention within subsection (1) by,

(*a*) a general direction for the payment of debts or of all the debts of the testator out of his personal estate or his residuary real or personal estate, or his residuary real estate; or

(*b*) a charge of debts upon that estate,

unless he further signifies that intention by words expressly or by necessary implication referring to all or some part of the mortgage debt.

(3) Nothing in this section affects a right of a person entitled to the mortgage debt to obtain payment or satisfaction either out of the other assets of the deceased or otherwise.

(4) In this section, "mortgage" includes an equitable mortgage, and any charge whatsoever, whether equitable, statutory or of other nature, including a lien or claim upon freehold or leasehold property for unpaid purchase money and "mortgage debt", has a meaning similarly extended.

Executor as trustee of residue

36.—(1) Where a person dies after this Part takes effect, having by will appointed a person executor, the executor is a trustee of any residue not expressly disposed of, for the person or

persons, if any, who would be entitled to that residue in the event of intestacy in respect to it, unless the person so appointed executor was intended to take the residue beneficially.

(2) Nothing in this section affects or prejudices a right to which the executor, if this Part had not been passed, would have been entitled, in cases where there is not a person who would be so entitled.

Application of this Part

37. This Part applies only to wills made on or after the day of ; and for the purposes of this Part a will that is re-executed or revived by any codicil shall be deemed to be made at the time at which it is re-executed or made.

UNIFORM WILLS ACT

Report of Special Committee

At the 1953 Meeting of the Conference it was "Resolved that Part I of the draft Act attached to the Nova Scotia report be referred to a committee to revise and restate the substantive law on the subject and in particular to consider the desirability of including as separate Parts the law governing holograph wills and wills of members of the armed forces, mariners and seamen." At this meeting the Commissioners also considered and agreed on some changes in the form and substance of the first twenty-two sections of the same draft Act.

At the 1954 meeting the work of this Committee had advanced to the extent of preparing an annotation of Part I of the draft Act showing:

(*a*) corresponding Provincial enactments, and

(*b*) cases interpreting and applying them up to April, 1954. (See 1954 Proceedings p. 38 et seq.)

Work on the Act has now progressed sufficiently to present for criticism and suggestions a draft that includes changes,

(*a*) agreed on by the Commissioners in 1953,

(*b*) indicated by the annotations prepared in 1954, and

(*c*) indicated by some recent judicial decisions.

The draft Act is accompanied by an explanatory memorandum. A comparison of this draft with the draft published in the 1954 Proceedings will reveal some rearrangement in the order of the various provisions.

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Chairman.

CONDENSED EXPLANATORY MEMORANDUM

The following is a condensation of the annotations concerning questions of substance that were contained in the memorandum that accompanied the draft Act that was prepared by the special committee and considered by the Conference at the 1956 meeting. The draft Act as revised after consideration by the Conference is set out supra, beginning on page 96.

Section 2. INTERPRETATION.

It is suggested that the following definition of "issue" should be inserted in Section 2: "In this Act and in a devise or bequest or disposition of real or personal property "issue" includes all lawful lineal descendants of the ancestor, and, unless a contrary intention appears by the will, is a word of purchase and not a word of limitation."

In a deed "issue" is always construed as a word of purchase, but in a will "issue" prima facie is a word of limitation meaning "heirs of the body", and creating an estate tail. See *Re Fonger* [1945] O.W.N. 872. Ordinarily the term is used as one of purchase, particularly by laymen, and when used as such its primary legal meaning includes lineal descendants of every degree and excludes collateral kindred.

It is believed that the proposed definition displaces the so-called rule in *Sibley* v. *Perry* (1802) 7 Ves. 522, that "Where the 'parent' of 'issue' is spoken of, the word 'issue' is prima facie restricted to children of the parent". In *Re Hipwell* [1945] 2 All E.R. 476, in the Court of Appeal, Morton L.J. remarked "Brett L.J., in *Ralph* v. *Carrick* said '. . . I should have no objection to

be present at the funeral of *Sibley* v. *Perry*'. For my part, I should be very glad to be present at the funeral." See recently, *Eastern Trust Co.* v. *Stairs* [1955] 1 D.L.R. 280.

This definition is meant to ensure that "issue" will include grand-children, great-grand-children etc. Cf. *Re Sheardown* [1951] 3 D.L.R. 323. It is similar to that already to be found in several provincial descent of property acts and interpretation acts for purpose of descent of real property on intestacy.

Section 5. SIGNATURES REQUIRED ON FORMAL WILLS. Formerly subsection (1) of section 6.

This provision now clearly applies only to making a formal will. What was formerly subsection (2) of this section is now Section 7. The words "present" and "in the presence of" have been defined by some Courts as meaning a situation where the testator has the ability to see an act or actually sees it. See *Re Wozciechowiecz* [1931] 4 D.L.R. 585.

Section 6. MILITARY FORCES AND MARINERS.

The substance of this section remains the same, except for an extension of the concept of active service in accordance with the decision of Denning L.J. in *Re Wingham* [1948] 2 All E.R. 913. Former subsection (3) is deleted and is now covered by clause (b) of Section 9.

Section 7. HOLOGRAPH WILL.

Formerly subsection (2) of Section 6. The only change is the omission of "hand" and "handwriting" which was tentatively agreed upon at the 1954 meeting of the Commissioners, in view of *Re Brown* [1954] 1 D.L.R. 638 which was there discussed. See now *Re Bell* [1955] 3 D.L.R. 521. This change brings into operation the definition of "writing" contained in the Interpretation Act. This definition generally in force is: " 'writing', 'written' or any term of like import includes words printed, painted, engraved, lithographed, photographed, or represented or reproduced by any mode of representing or reproducing words in any visible form". This will permit a holograph will to be in any form of writing, but preserves the requirement that the writing must be done by the testator himself. See *In re Nesbitt Estate* [1935] 3 W.W.R. 171. This is evidently the law in Quebec. The difficult problems of proof that may arise are obvious.

Mr. Ker has provided the following memorandum concerning holograph wills under Quebec Law:

"The Civil Code of the Province of Quebec (Article 842) states that Wills may be made:

1) in notarial or authentic form;
2) in the form required for holograph wills;
3) in writing and in presence of witnesses, in the form derived from the laws of England.

"Wills in notarial or authentic form must be before two notaries or a notary and two witnesses. The original remains with the notary who issues authentic copies. This form of will does not require probate. Both of the other two forms of will mentioned in Article 842 do require probate.

"By Article 849 C.C. wills made in Lower Canada or elsewhere by military men on active service out of garrison, or of marines during voyage, on board ship or in hospital which would be valid in England as regards their form, are likewise valid in the Province of Quebec.

"According to Article 850 C.C. a holograph will must be wholly written and signed by the testator. Such a will requires neither notary nor witnesses and is subject to no particular form. The character of the writing matters very little so long as it really expresses the last wishes of the testator entirely written and signby him.

A. "The terms and the form of the Holograph will may vary considerably:—

"In the celebrated case of Dansereau v. Berget, a letter in the following form (translated) was offered for probate as a holograph will and a contestation ensued. The Superior Court at Montreal maintained the contestation and decided that this was not a valid will. The letter was as follows:

August 21st, 1946.

My very dear Collette:

I have been feeling very tired lately and I have not had the time to occupy myself with my will. However, I would like to say to you that if anything happens to me, all that belongs to me will be yours.

I am happy to learn that you are having a pleasant time on your holidays and I hope to see you soon.

Your affectionate uncle,

Eug. Berthiaume.'

"The Superior Court judgment was reversed by the Court of Appeals which held that in its form it constituted a valid holograph will. The judgment of the Court of Appeals was taken to the Supreme Court af Canade and was maintained, it being held by the Supreme Court that the writing fulfilled the requirements of a valid will in holograph form. The Privy Council was of opinion that the nature of the case was not such as gave any jurisdiction to the Supreme Court of Canada, but the Court of Appeals judgment still stands. The following (translated) is quoted from the Supreme Court judgment rendered by Taschereau, J. because it is of interest in the matter of interpretation to be given to holograph wills:

> " 'There remains, therefore, to decide whether this writing constitutes a will in the legal sense. There has not been any doubt for a very long time that a letter may constitute a valid holograph will which, as everyone knows, does not have to be couched in sacramental language.
>
> 'So long as a document is written entirely in the hand of the testator; that it is signed by him; that it contains a disposition of his property to the exclusion of simple recommendations; that it reveals in its author the will to make a testamentary disposition and that it is not merely a draft, then this document is really a will.
>
> 'It is admitted that this document is written entirely and signed by the testator but it is the appellant's contention that it does not reveal an intention to bequeath but rather a promise to complete another will already commenced and made under the English form. Furthermore, that the use of the conditional "I would like to say to you" (J' aimerais a te dire) would create enough ambiguity and uncertainty to indicate on the part of Berthiaume certain conditions and reserves which would prevent this letter from being a disposition *mortis causa.*
>
> 'I cannot agree with these contentions. In the first place the reference to a prior incomplete will which the testator was unable to complete because of fatigue or illness, indicates clearly on Berthiaume's part, the intention of willing in favour of the respondent. The purpose of this letter is obviously to assure the respondent that "de toutes facons", that is to say, whether the deceased had time or not to complete the prior will, she would be his heir. He wants to tell her that if, in the

interim, something happened to him, that is to say, in the event of his death, all that belongs to him is hers.

'All these words clearly make the respondent a universal legatee. I cannot see any ambiguity, any reserve, any indication that only a desire to make a future will, is involved. To my mind we are in the presence of a completed testamentary disposition.' "

B. "The question whether a holograph will may be typewritten has been the subject of considerable controversy. In France it has been decided that a will typewritten by the testator is null as a holograph will (Savatier 3 No. 1013, 1936, D. H. Page 345). Nevertheless, decisions cited by Planiol & Ripert (1933 T.S. 533) make it appear that the French jurisprudence has shown itself to be hesitant on this subject.

"In the Province of Quebec certain judgments have granted probate of typewritten wills. There is a judgment of the Supreme Court in 1905, in the case of *Aird et vir*, 28 Superior Court Reports 235. More recently Judge Gerald Fauteux, then of the Superior Court of Montreal, now of the Supreme Court of Canada, allowed the probate of a typewritten will (Record No. 827 S.C. Montreal Tutelles). This judgment was in 1946. Proof was made that the testator had the exclusive use of a typewriter. A comparative study of the will and other writings done on the testator's typewriter was offered by experts. In March 1946 the Superior Court decided that the typewritten will of one Francoise Labat should be recognized (S.C. Montreal 235, Tutelles 1946). In that case proof was accepted that the typewriting instrument on which the will had been written had always been in the testator's room where no one else had access to it. A typewritten will was accepted as valid by Judge Fernand Choquette in the Superior Court of Quebec in the case of Rene Lefaivre (Record 19-064, April 14th, 1954).

"On the contrary there have been cases where the Court has refused typewritten wills (S.C. Tutelles No. 403, 1954).

"The difficulties in making proof that the will was actually typewritten by the testator will be evident and this proof will in most cases require to be much stronger than where the will is in the handwriting of the testator which can easily be recognized. In general, in the case of holograph wills, it is necessary that the hand of the testator has taken a sufficiently direct part to confer on the writing a personal character, for the writing itself must be

a means of identification. The illiterate testator whose hand is guided by another or who covers with a pen, letters already traced in pencil by a third party, will be considered as having made a document which is void as a holograph will. The testator must know to how write. The testator who has become blind or paralyzed may be helped physically provided he is not illiterate. His hand may be guided to show him where to write, but his hand must keep sufficient liberty in order that one may be able to say that the will is his work and that his writing remains recognizable (Savatier 3, No. 1015).

C. "By Quebec law, whatever comes after the signature of the testator in a holograph will, is looked upon as a new Act and must likewise be written and signed by the testator.

"The absence of the date or absence of the mention of the place where a Holograph will is made, does not necessarily nullify the will. The judges or courts must decide in each case whether their absence creates any presumption against the will or renders uncertain any of its particular provisions."

As directed by the resolution of the 1953 meeting, consideration was given to including the provisions relating to holograph wills as a separate Part of the Act. The Committee believes that in the light of Mr. Ker's memorandum and the fact that all provisions of the Act except those relating to witnesses, (Sections 5, 12, 13, 14 and 15), apply to holograph wills, it is not necessary to make Section 7 into a separate Part. Any Province that desires to omit section 7 needs only to delete reference to it in Sections 5 and subsection (3) of Section 8, and the phrase "or, in the case of a holograph will, the signature of the testator" in subsection (2) of Section 19.

Section 9. INFANTS.

In subsection (1) the exception of married persons in clause (a) is new. The "mariner on the sea of matrimony" should be sufficiently emancipated from parental control and equally capable with the mariner on the high seas to make his own will. To make Section 9 self contained regarding capacity of minors, clauses (b) and (c) were transferred from former Section 5. Subsection (2) is designed to enable a member of a military force who ceases to be on active service or is discharged while still a minor to revoke his will but not to make a new one.

Section 19. MAKING ALTERATIONS.

This section has been amended to bring holograph wills and wills of members of military forces and of mariners clearly within its scope.

Section 27. REVIVAL.

In clause (b) of subsection (1) the words "give effect to" have been substituted for "revive" in order to remove any logical arguments which might be made against the decision of the court in *Re Mardon* [1944] 2 All E.R. 397, in which it was held that a codicil to a revoked will revived part of the will, although the testatrix did not know that the will had been revoked, having forgotten the existence of the later wills. There was clear evidence that the mind of the testatrix when drafting the codicil had been applied to certain provisions of the will which she considered effective and did not therefore strictly intend to revive.

Section 21. SUBSEQUENT CONVEYANCES ETC.

A. Subsection (2) is new and is designed to meet the following problem:

In *Church* v. *Hill* [1923] S.C.R. 642, the Supreme Court of Canada held with regret that the English cases interpreting section 23 of the English Wills Act, on which Section 21 of this draft act is based, compelled a decision that where a testator in his will makes a specific devise of land but subsequently sells it under agreement for sale, the devise is rendered immediately inoperative, and the devisee is consequently not entitled to any part of the unpaid purchase money, which therefore falls into the residue. The Committee agrees that when the ordinary layman makes a will disposing of real property and later agrees to sell it but still retains the legal title, he believes that he still owns the property and that it remains subject to his testamentary disposition until he has actually completed the conveyance of legal title. The above interpretation thus clearly defeats the intention of most of such testators. (See also annotations to Section 19 in 1954 Proceedings, pp. 56-57.)

B. (*New Subsection suggested*) In *Diocesan Synod* v. *Protestant Orphans Home* [1955] 3 D.L.R. 255, Cartwright J. in his dissenting opinion agreed with the New Brunswick trial judge who had applied the rule laid down by the Supreme Court of Nova Scotia in Re Stephens [1946] 4 D.L.R. 322, that where a

testator bequeaths "the proceeds" of the sale of property and before his death sells the property and commingles the proceeds with his own funds, the proceeds have lost their identity and the bequest is ipso facto adeemed. (The majority of the Supreme Court of Canada, Rand and Kellock JJ., held that the bequest of "proceeds" was not of them as such, but the word "proceeds" in the context was used merely to designate the amount of the legacy to be paid out of the total estate. If this were not so, Kellock J. indicated that it would be necessary to consider the rule of *Re Stephens*.) It is suggested that consideration should be given to inserting a subsection in Section 21 to provide that a gift of this sort will not be adeemed by loss of identity when the proceeds can be traced in a manner similar to that now applied to trust funds. The following is a tentative draft:

> "Except when a contrary intention appears by the will, where there is a bequest of proceeds of the sale of the property and the property is sold before the death of the testator, if the proceeds are traced into the funds of the testator the bequest is not adeemed by loss of identity of the proceeds by commingling them with those funds."

Section 23. LAPSED AND VOID DEVISES AND BEQUESTS.

This section has been amended to include the common law position regarding lapsed gifts or personalty.

Section 31. CHARITABLE TRUSTS. New.

In 1954 the Supreme Court of Canada, in the case of *Brewer* v. *McCauley* [1954] S.C.R. 645, [1955] 1 D.L.R. 415, held itself bound by the English precedents to decide that a residuary bequest "for charitable, religious, educational, or philanthropic purposes" is void. Kellock J. said: "The fundamental principle is that a testator must, by the terms of his will, himself dispose of the property with which the will proposes to deal. He may not depute that duty to his executors or trustees, save in the case of a gift for charitable purposes, when he may depute the selection of the charities, The Courts in such case are able to determine whether or not a particular gift is charitable. But where the testator employs such words as "charitable or benevolent" or "charitable or philanthropic", it is impossible for the Courts to be able to decide with accuracy the ambit of these expressions as it is well settled that neither of them mean the same as "charit-

able". The result is that where a testator has left to his trustees a discretion to devote the whole of his property to one or the other, the gift fails.

The basic rule is well established: "Where a bequest is made for charitable purposes and also for an indefinite purpose not charitable, and no apportionment is made by the will, so that the whole might be applied for either purpose, the whole bequest is void." (*Hunter* v. *Attorney General*, [1899] A.C. 309, per Lord Halsbury at 315; quoted with approval by Starke, J. and Dixon, J. in *Roman Catholic Archbishop Melbourne* v. *Lawlor*, (51 C.L.R. 1 at pp. 26, 37). For example, the following have all been held void for uncertainty: "such charitable or religious institutions and societies" as the trustees may select: *Grimond* v. *Grimond* [1905] A.C. 124; "such charitable or public purposes as my trustee thinks proper": *Blair* v. *Duncan* [1902] A.C. 37; for "charity or works of public utility": *Langham* v. *Peterson* (1903) 87 L.T. 744; for charitable and other indefinite purposes according to the discretion of the trustee: *Hunter* v. *Attorney General* [1899] A.C. 309; for "charitable or philanthropic purposes": *In re Macduff* [1896] 2 Ch. 451. In the case of *Re Greaves* [1917] W.W.R. 007, the testator left a gift to "such charitable or benevolent institutions as my said trustees shall think deserving of support". The court held the gift void for uncertainty. (See also *Houston* v. *Burns* [1918] A.C. 337; *Re Macduff* [1896] 2 Ch. 451; *Re Poole* (1931) 40 O.W.N. 558.)

On the other hand, most jurisdictions seem to accept the theory laid down by the equity judges, under the influence of Lord Eldon, that if a man by a will leaves his property to trustees to distribute to "charitable *and* benevolent" purposes, the trust is good. "Or" is more usually construed as disjunctive, thereby invalidating the trust, while "and" may be more favourably construed as conjunctive, which will enable the court to uphold the validity of the trust.

The language of Goddard L.J., as he then was, in *Re Diplock* [1941] 1 All E.R. 193 at 204, is particularly pertinent for our problem. In that case, Diplock, who made his will on November 3, 1919, died on March 23, 1936. He directed, among other things, his executors to "apply the residue for such charitable institution or institutions or other charitable or benevolent object or objects in England" as they should in their absolute discretion select. The executors distributed the residuary estate, which amounted to more than £250,000, among 130 charitable institutions. The

next of kin, at a later date, claimed that the gift was invalid. The Court of Appeal upheld the claim, reversing the trial judge. The House of Lords upheld the decision of the Court of Appeal sub nom. *Chichester* v. *Simpson* [1944] A.C. 341. Lord Goddard in a concurring opinion in the Court of Appeal said: "I agree, because the cases which have been cited, which are binding on this court, make it impossible for the judgment below to be upheld. For myself, perhaps owing to the fact that I was not brought up in this branch of law, I cannot feel any enthusiasm for this rule. Indeed, when I find a rule which says that, if property is left to trustees to give to charitable and benevolent purposes, that is good, but, if it is for charitable or benevolent purposes, it is not, I regard it with some distaste. That was described by Sir Wilfrid Greene, M.R., in *Re Horrocks, Taylor* v. *Kershaw* (1939 P. 198) as a trap into which the unskilled draughtsman not infrequently falls. For myself, I cannot have any doubt that the draughtsman in this case fell into a trap, because it is obvious that the testator's intention was to leave the money to charity in the popular sense of the term, and, if he had said, "I want to leave it to charitable or benevolent objects," and if it had been pointed out to him, "If you use those words, the money will go, not to charity, but to your first cousins once removed", of whose existence he himself probably did not know, then, provided that the testator was of sound mind and memory and understanding, there is not the least doubt that he would have said: 'Cut out the word 'benevolent'.' The fact that I do not regard this rule with the respect which one should ever pay to long-existing rules is neither here nor there, and the cases oblige me to hold that the gift is void. It may be that the legislature will think fit to intervene and by means of a private Act restore to deserving charities the benefits which the testator intended them to receive."

In the course of a commentary on *Brewer* v. *McCarthy*, in (1955) 33 Canadian Bar Review, Eric Todd remarked at p. 336: "The courts thus appear to have got themselves into the unhappy position of feeling compelled to invalidate what were obviously intended to be charitable bequests simply because technical words of art are not used by "philanthropic" testators. Obviously legislation is the only available method of cutting this Gordian knot, and legislation has in fact been adopted in the states of Victoria and New South Wales in Australia and in New Zealand. Broadly speaking, this legislation empowers the court to use a blue-pencil technique to strike out any non-charitable ob-

jects, so that the general charitable objects take the whole fund." The commentator does not set out the Australian legislation, but the enactments to which he refers were the following. In 1914 the legislature of Victoria passed the Charitable Trusts Act (Now the Property Law Act, 1928, s. 131). New South Wales followed in 1938 with section 37D of the Conveyancing Act. This legislation reads:

> "(1) No trust shall be held to be valid by reason that some non-charitable and invalid purpose (purposes) is (are) or could be deemed to be included in any of the purposes to or for which an application of the trust funds or any part thereof is by such trust directed or allowed".
>
> "(2) Any such trust shall be construed and given effect to in the same manner in all respects as if no application of the trust funds or any part thereof to or for any such non-charitable and invalid purpose had been or could (should) be deemed to have been so directed or allowed".

The Australian courts have given this language a wider effect than a restrictive interpretation would require. The effect of their decisions may be summarized as follows:

(1) Clearly instruments containing such phrases as "charitable or benevolent" are validated.

(2) A gift to alternative objects, one charitable and one not, is valid. (*Re Griffiths* [1926] V.L.R. 212; *Re Bond* [1929] V.L.R. 333).

(3) The testator must disclose a charitable intent (*Re Hollole* [1945] V.L.R. 295).

(4) An invalid trust which the settler intended will not be altered into a charitable trust which he did not intend. (*R. C. Archbishop* v. *Lawlor* (1935) 51 C.L.R. 1). In this case the High Court of Australia refused to turn a trust to found a Roman Catholic daily newspaper into one to found a Roman Catholic religious newspaper, for that was not what the testator intended. Similarly in *Union Trustee Company of Australia Limited* v. *Church of England Property Trust* (1946) 46 S.R. (N.S.W.) 298, the Court refused to convert an invalid trust for females with an income of less than £200, into a valid charitable trust for poor females.

(5) It is not necessary for the testator to use a word, which, by itself, would be upheld as charitable. Adopting the principle of *Perrin* v. *Morgan* [1943] A.C. 399, the Australian Courts will construe the testator's language reasonably and will recognize that language such as "benevolent" has a very substantial charitable content.

(6) A gift for the purposes of an organization, some of whose purposes are charitable and some not, may be saved by the statute as a gift for the charitable purposes only. (*Perpetual Trustee Company* v. *King George's Fund for Sailors* (1950) S.R. (N.S.W.) 145.

For the purposes of the Uniform Wills Act it is believed that there are four different situations which deserve consideration:

(1) The testator leaves property in trust for charitable *and* non-charitable purposes, where the non-charitable purpose is void for uncertainty, (e.g. charitable *and* benevolent). As has been seen, in the vast majority of cases the courts have held such gift to be a valid one, but the charitable purpose alone receives the entire benefit. Since the court is unable to give effect to the wishes of the testator with regard to the non-charitable purpose, rather than have the money go to the residue of the estate, some part of the testator's desires now are carried out by allowing the charitable purpose alone to benefit.

(2) The testator leaves property in trust for charitable *or* non-charitable purposes where the non-charitable purpose is void for uncertainty, (e.g. charitable *or* benevolent), or for some other reason. The courts now hold that the trust is invalid. There would be no violation of the testator's wishes here, if it were provided by statute that the charitable purpose should take the entire fund, because by the express use of the word "or", the testator has indicated that the trust money shall go either to a charitable or a non-charitable purpose. Since the gift cannot pass to the non-charitable purpose, it is reasonable to surmise that the testator would rather have effect given to part of his intention than not at all.

(3) The testator leaves property in trust for charitable purposes *and* non-charitable purposes where the non-charitable purposes would not be declared void. The courts

hold this is invalid. Here there would be some violation of the testator's intention if charity takes all the benefit, since by specifically using the word "and", the testator has indicated that the non-charitable as well as the charitable purpose should benefit; unless it is possible to ascertain from the rest of the will which of the two he favours, it is not reasonable to favour one over the other.

(4) The testator leaves property in trust for charitable purposes *or* non-charitable purposes where the non-charitable purposes are not void for uncertainty. Part of the wishes of the testator would be given effect if, since the whole gift is void, the charitable purposes receive the entire benefit for the reasons enumerated in (2) above.

What should be the legislative solution of the third and fourth situations? As has been seen, if the testator leaves part of his estate in trust for charitable purposes *and* a non-charitable purpose that is void for uncertainty or for some other reason, rather than completely thwart the testator's wishes, the court gives the entire fund to charitable purposes. But if the non-charitable purpose is not, in itself, void, the problem arises as to which of the two the law should favour. There are four possible solutions:

(a) The trust is invalid and fails. This has been the solution in the past which fails to carry out the intention of the testator, and for that reason alone should not be adopted.

(b) Leave the division of the property to the discretion of the trustees. This method, however, is subject to objections. The trustees, in their discretion, might leave 99% of the funds to non-charity, and only 1% to charity, which would again probably frustrate the testator's wishes. The question also arises whether the testator is merely intending his trustees to administer the funds of the trust or whether he intends them to take an active part in determining the distribution of those funds.

(c) Let charity receive all the benefit of the fund (or non-charity receive all the benefit). The New Zealand remedy has been to give everything to charity. This, no doubt, is a greater benefit to the public at large, but certainly does not consider what was the intention fathering the gift.

(d) Set up an arbitrary division such as dividing the trust funds equally among charity and non-charity. The disadvantages in this method are readily apparent.

On balance, the best solution seems to be to leave the division of the trust to the discretion of the trustees. If a testator chooses his trustees with care, as any reasonable man would, no glaring injustice or contravention of intention should result.

Section 32. DEVISES OF ESTATE TAIL.

A. *Note on Estate Tail Based on Cheshire, Real Property; Halsbury, Laws of England (1ed.); and Blackstone, Commentaries.*

1. Nature of Estate Tail. An estate tail is an estate of inheritance. It is inferior to the fee simple estate because it can be inherited only by descendants of the original grantee and never by his ascendants, and also because it is descendible only to his lineal issue and not to his collateral relatives. There are different classes of estate tail which depend upon the class of heirs indicated in the original grant. Examples: "A and the heirs of his body"; "A and the heirs of his body begotten of his wife Mary"; "A and the heirs male (female) of his body."

   An estate tail is an estate that is limited to a succession of owners in a descending line only, and on a failure of these owners reverts to the grantor, unless the estate is barred.

2. Descent of an estate tail. Within the limits marked out by the original grant the descent of an estate tail is the same, and the rules for ascertaining the heir are the same, as for an estate in fee simple.

Rules of descent for estate in fee simple:

(1) Descent is traced from the purchaser. (2) Descent is in the first place to the issue of the purchaser lineally, the male issue being admitted before the female. (3) Where there are two or more males of equal degree, the eldest only inherits, but females who inherit together are called coparceners; coparceners are said to be one heir to their ancestor; but on the death of the coparcener intestate her share descends to her heirs and is subject to her husband's right of curtesy. Even

after a partition each coparcener continues entitled to her share by descent and not by purchase. (4) The lineal descendants in infinitum of any deceased person represent their ancestor, that is, they occupy the same position he would have occupied if he had been alive. Thus a child, grandchild, or great grandchild (either male or female) of the eldest son succeeds before the younger son, and so ad infinitum; e.g. if A dies having had an elder son, B, who predeceased his father, and having a son, D, and a younger son, C, who survives A, A's heir is his grandson D.

Qualifications to these rules for estates tail:

If the estate is limited in tail male or females, rules (2) and (3) are accordingly unnecessary. (In cases, however, where there is a special custom of descent, that custom is to be taken into account in ascertaining the heirs in tail; thus, an estate tail in gavelkind land descends to all the sons of the donee in equal shares while borough English lands granted to a man and the heirs of his body descend to his youngest son (or youngest brother by special custom), and copy-hold lands granted to a man and the heirs of his body descend to his heir according to the custom of the manor.)

Application of the law on Estates Tail to Section 32.

The foregoing is the "law of England" incorporated in the Wills Act by section 32. The law so incorporated is important to know because:

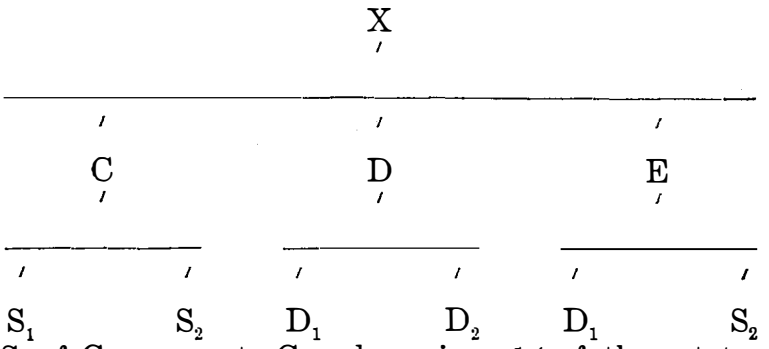
(1) It shows that the purpose of a devise in estate tail is to confer a benefit on persons in succession. The grantor has in mind a succession of grantees. The policy of section 32 is to prevent lapse because of a missing link in that succession—i.e. death of the first grantee.

(2) The rules set out supra define who is an "heir" or "issue" in such a devise. There is an existing body of rules designating who is entitled to succeed to an interest. There is, therefore, no reason for defining "issue" or "heirs" in section 32.

(3) *When time of death is relevant.* A devise in estate tail lapses if the first devisee predeceases the grantor. Death of a person to whom the estate is limited before the death of the named devisee does not cause lapse. Illustrations:

(i) devise by T to A and the heirs of his body. A survives T. A has three sons, X, Y and Z. X predeceases A. X has a son S. S represents X and succeeds before Y and Z.

(ii) devise to X and his heirs. X has three daughters C, D and E. C has two sons S_1, S_2. D has two daughters D_1, D_2. E has one daughter D_1 and a younger son S_1. C, D, E die. Then X dies. Descent is as follows:



S_1 of C represents C and receives ⅓ of the estate. D_1, D_2 share estate of D and share ⅓ of the estate. S_1 of E takes share of E over his elder sister D_1.

Comment. These examples are used by Blackstone and show that time of death is immaterial in determining issue. The rules suggest that the issue must be found in one line and until that line is exhausted one need not consider the other lines of descent.

Another consequence of this method of determining the issue is that it is unnecessary to use the phrase "and any such issue are living at the death of the testator". Those members of the relevant line of descent who predecease the testator or an ancestor in that line of descent do not enjoy that interest, but their death does not prevent their descendants from standing in their place and continuing the line of descent in that branch of the family tree.

The net result is that all that it is strictly necessary to say in Section 32 is that the devise does not lapse and that it descends to the issue.

B. *"Where Devisee Dies in the Lifetime of the Testator."*

Section 32 deals with two cases: (1) Where a person dies in the lifetime of the testator, and (2) Where he dies in a common disaster with the testator.

APPENDIX N

(*See page 25*)

SURVIVORSHIP ACT

At the 1954 meeting of the Conference of Commissioners on Uniformity of Legislation in Canada the following resolution was passed:

RESOLVED that, if two or more jurisdictions do not disapprove of the amendments by notice to the Secretary of the Conference on or before the 30th day of November, 1954, the following amendments be made to the Uniform Survivorship Act as set out at page 43 of the 1949 Proceedings:

1. Subsection 1 of section 2 is amended by striking out the figures and word "(2) and (3)" in the fourth line and substituting therefor the figures and word "(2), (3) and (4)".
2. Section 2 is further amended by adding thereto the following subsection:

   (4) Where a testator and a sole or sole surviving executor under the testator's will die at the same time or in circumstances rendering it uncertain which of them survived the other, and the will contains provisions with respect to personal representatives in case the executor had not survived the testator, then, for the purposes of probate, the testator shall be presumed to have survived the executor.

During the consideration of the recommended subsection (4) at the 1954 meeting, a member of the Conference raised a question as to whether the proposed subsection (4) covered all the circumstances that might arise with regard to the manner of appointing substitute personal representatives by a provision in a will. After the Conference, the Alberta and Manitoba Commissioners reviewed the proposed subsection in the light of the point raised at the meeting and as a result of an exchange of views thereon agreed that the amendment should be delayed for further study. Thereupon Manitoba and Alberta disapproved of the amendment in accordance with the terms of the resolution of the 1954 meeting. The Alberta Commissioners were unable to give a report at the 1955 meeting.

In the view of both the Manitoba and Alberta Commissioners

the proposed subsection (4) of section 2 of the uniform Survivorship Act as submitted by the Alberta Commissioners to the 1954 Conference failed to provide for the case where a testator by his will provided for a substitute personal representative should the testator and executor die at the same time, and where in fact the testator and executor die in circumstances rendering it uncertain which of them survived the other, with no indication that they died at the same time. In such circumstances the subsection would appear to have no application since the will did not provide for a substitute executor "in case the executor had not survived the testator". It would seem that literally the only case with which the proposed subsection dealt was where the will provided for a substitute executor in case the executor had not survived the testator and where after such a provision was placed in the will the testator and executor die at the same time or in circumstances rendering it uncertain which of them survived the other. While it is true that in most cases the provisions of the will would have application and there would be no need to resort to the proposed subsection (4) of section 2 of The Survivorship Act, nevertheless, there was always the possibility of a testator failing to use the appropriate provision with the result that neither the will nor subsection (4) would coincide with the circumstances.

Additionally, subsection (3) of section 2 of The Survivorship Act when dealing with the provisions in a will respecting surviving beneficiaries sets out three possible provisions that might be contained in a will while the proposed subsection (4) contained only one of such provisions. The omission in subsection (4) of two of the possible provisions contained in subsection (3) might have a restrictive effect on the interpretation of subsection (4) and it would seem better that the subsection should follow more closely the outline of subsection (3). However, for grammatical reasons it was felt that subsection (4) should not follow the identical form of subsection (3).

Therefore, the Alberta Commissioners submit the following recommendations for consideration of the Conference:

1. That the uniform Survivorship Act be amended

(*a*) by striking out the figures and word "(2) and (3)" in subsection (1) of section 2; and

(*b*) by substituting the figures and word "(2), (3) and (4)" therefor.

2. By adding the following new subsection after subsection (3) of section 2 of the said Act:

(4) Where a will contains a provision for a substitute personal representative in case of the occurrence of any of the following circumstances, namely, that an executor named in the will

(*a*) does not survive the testator,

(*b*) dies at the same time as the testator, or

(*c*) dies in circumstances rendering it uncertain which of them survived the other,

if the testator and any executor named in the will die at the same time or in circumstances rendering it uncertain which of them survived the other or if the named executor does not survive the testator, then, for the purposes of probate, the case for which the will provides shall be deemed to have occurred.

Respectfully submitted,

H. J. WILSON,
W. F. BOWKER,
J. W. RYAN,
Alberta Commissioners.

SUPPLEMENTARY

At the 1955 meeting of the Conference the Alberta Commissioners received a copy of a report prepared by the subcommittee of the Ontario section of the Administration of Civil Justice re Survivorship Act which has been forwarded by J. S. Marshall, Q.C., Chairman of the Ontario section on the Administration of Civil Justice, to Mr. L. R. MacTavish, Q.C., as President of the Conference of Commissioners on Uniformity of Legislation in Canada and as one of the Ontario Commissioners.

The Alberta Commissioners were asked to submit an opinion on the report, which is attached hereto as an Appendix, for the next meeting of the Conference.

We have considered the differences in principle between the Uniform American Act and the Uniform Canadian Act. The first important difference arises in the case where a husband is intestate or has made a simple will leaving everything to his wife.

Under the Canadian Act one must look at the age of each spouse. If the wife is younger she is deemed to have survived and the husband's property goes to her. Assuming she has no will the property which she got from her husband will go to her next-of-kin. The American view is that it is more just that the property should go to his family. To this end, section 1 provides that he is deemed to have survived her. It will be noted that this is analogous to the provision in the Uniform Insurance Act where the insured is deemed to have survived the beneficiary. In principle we agree with the opinion of the Ontario section on the Administration of Civil Justice that the American provision is certainly fairer in many cases.

As the Conference has had no opportunity as yet of studying the attached report of the Ontario subcommittee we are not prepared at this time to make any recommendation thereto with regard to the United States uniform provisions and think it sufficient at this time to make the report available to the Conference, together with our view of the relative fairness of the two uniform statutes.

All of which is respectfully submitted.

APPENDIX

Report of Sub-Committee of the Ontario Section of the Administration of Civil Justice Re Survivorship Act

The Survivorship Act, R.S.O. 1950, Chapter 382, was originally passed as *The Commorientes Act* in 1940, and amended in 1950, and Schedule "A" hereto annexed is a copy of the Act.

The Survivorship Act was passed in the year 1940 in Ontario after the Commissioners of Uniformity of Legislation in Canada had considered the same at their meetings in 1937, 1938 and 1939, and had adopted a draft Act, and it has now been adopted in all of the common law Provinces in Canada. The uniform Canadian Act resulted from the decision of *In re Warwicker* in 1936, O.R. page 379, and follow the line of English cases, the chief of which is *Wing* v. *Angrave*—1860 8 H.L.C., 183, where the Court refused to speculate as to which of two persons survived in a common disaster, as it was practically impossible to prove which had died first, there being no presumption of survivorship or of simultaneous death. Unquestionably the Uniform Survivorship Act served a very useful purpose.

However, it has been drawn to our attention that The Uniform Simultaneous Death Act, which is in force in some thirty-five or more States in the United States, appears to be preferable from a practical standpoint. Attached hereto as Schedule "B" is a copy of The Uniform Simultaneous Death Act. The United States Uniform Act was not passed in any State of the Union until 1941 and consequently was drawn after *The Survivorship Act* had been considered by the Commissioners of Uniformity of Legislation in Canada. We believe the United States Act would result in more equitable devolution of property than the Ontario Survivorship Act, where simultaneous deaths are deemed to have occurred in the order of seniority.

We wish to note particularly sections 1, 2 and 3 of the United States Simultaneous Death Act:

(*a*) Under section 1 when there is no evidence except that of simultaneous death, the property of each deceased person shall be disposed of as if he had survived.

(*b*) Section 2 deals with the beneficiaries of another person's disposition of property and would appear to give a fair distribution.

(*c*) Section 3 deals with joint property in the event of simultaneous death and would appear to follow the civil law in respect of distribution.

The portion dealing with tenants by the entirety is not applicable to Ontario.

We cite two actual cases:

A. A young farmer, his wife and infant son, an only child, were killed instantly when family motor car was hit by an express train. The husband left an estate between $20,000 and $25,000. The wife had no estate. The estate consisted of two hundred acres of farm land; an undivided one-third interest in livestock and implements with brothers of the deceased; a small amount of cash in the Bank. Practically all of the assets of the deceased had been given to him by his father in his lifetime, or willed to him at the father's death, which occurred shortly prior to the son's death. The livestock, implements, etc., were used by the deceased and his two brothers, who operated adjoining farms, all working together. The deceased left a simple Will leaving his entire estate to his wife, who was younger than her husband. The wife died intestate, so that the entire estate devolved under *The Devolution of Estates Act* upon the heirs of the infant son. His closest next-of-kin was his maternal grandmother, and she took the entire estate, although all of the estate had originally come from the father's side of the family.

B. Mr. McCallum was recently consulted by a merchant with an estate of about $80,000, married and no children. About fifteen years previously the merchant and his wife had each made wills leaving their entire estates to the other of them. At that time, the estate of the husband would be less than $20,000 and his wife less than $5,000. The question raised by the husband was: "What would happen in the event of the simultaneous death of himself and his wife, who was some ten years younger?" It would appear that if a simultaneous death had occurred the entire estates of the husband and wife would pass to the heirs of the wife. Fortunately, however, the wills were re-drawn in such a manner as to adequately take care of the desires of the parties.

It is our recommendation that the Committee of the Administration of Civil Justice of Ontario refer the matter to the Commissioners of Uniformity of Legislation in Canada for their sympathetic consideration and study of The Uniform Simultaneous Death Act.

All of which is respectfully submitted.

Schedule "A"

THE SURVIVORSHIP ACT

1.—(1) Where two or more persons die at the same time or in circumstances rendering it uncertain which of them survived the other or others, such deaths shall, subject to subsections 2 and 3, for all purposes affecting the title to property, be presumed to have occurred in the order of seniority and accordingly the younger shall be deemed to have survived the older. 1940, c. 4, s. 1 (1), 1950, c. 83, s. 2 (1). Order of death presumed

(2) This section shall be read and construed subject to section 183 of *The Insurance Act* and section 36 of *The Wills Act*. 1940, c. 4, s. 1 (2). Exemptions to presumption, as to Rev. Stat. cc. 183, 426;

(3) Where a testator and a person who, if he had survived the testator, would have been a beneficiary of property under the will, die at the same time or in circumstances rendering it uncertain which of them survived the other, and the will contains provisions for the disposition of the property in case that person had not survived the testator or died at the same time as the testator or in circumstances rendering it uncertain which survived the other, then for the purpose of that disposition the will shall take effect as if that person had not survived the testator or died at the same time as the testator or in circumstances rendering it uncertain which survived the other as the case may be. 1940, c. 4, s. 1 (3); 1950, c. 83, s. 2 (2). as to provisions in will

Schedule "B"

UNIFORM SIMULTANEOUS DEATH ACT

1. *No Sufficient Evidence of Survivorship*

Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in this act.

2. *Beneficiaries of another person's disposition of Property*

Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived.

3. *Joint Tenants or Tenants by Entirety*

Where there is no sufficient evidence that two joint tenants or tenants by the entirety have died otherwise than simultaneously the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two joint tenants and all of them have so died the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

4. *Insurance Policies*

Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

5. *Act Not Retroactive*

This act shall not apply to the distribution of the property of a person who has died before it takes effect.

6. *Act Does Not Apply if Decedent Provides Otherwise*

This act shall not apply in the case of wills, living trusts, deeds, or contracts of insurance wherein provision has been made for distribution of property different from the provisions of this act.

7. *Uniformity of Interpretation*

This act shall be so construed and interpreted as to effectuate its general purpose to make uniform the law in those states which enact it.

8. *Short Title*

This act may be cited as the "Uniform Simultaneous Death Act".

9. *Repeal*

All laws or parts of laws inconsistent with the provisions of this act are hereby repealed.

10. *Severability*

If any of the provisions of this act or the application thereof to any persons or circumstances is held invalid such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are declared to be severable.

11. *Time of Taking Effect*

This Act shall take effect

APPENDIX O

(*See page 32*)

REPORT OF COMMITTEE RESPECTING PUBLICATION OF THE PROCEEDINGS OF THE CONFERENCE IN THE ANNUAL VOLUMES OF THE PROCEEDINGS OF THE CANADIAN BAR ASSOCIATION

To the President,
Conference of Commissioners
on Uniformity of Legislation in Canada:

Your Committee, consisting of Messrs. J. F. H. Teed, Q.C., A. C. DesBrisay, Q.C., and the undersigned, has considered the matters referred to it.

We are of the opinion that a request for an increase in the annual provincial grant made by each jurisdiction to the Conference would not be well received by the several governments.

We are, also, of opinion that the Conference already makes a substantial contribution to the cost of printing the Proceedings of the Conference in the annual volumes of the Proceedings of the Canadian Bar Association, by reason of the fact that the type for that printing, having been already set up and paid for by the Conference for the printing of its own Proceedings, is made available without charge to the Canadian Bar Association.

The Committee, therefore, recommends that the Conference do not request the several governments for an increased contribution for the purpose of paying the whole or part of the cost of publishing the Proceedings of the Conference in the annual volumes of the Proceedings of the Canadian Bar Association.

The Committee, also, suggests that in view of the fact that members of the Council of the Canadian Bar Association receive the annual printed Proceedings of that Association containing the Proceedings of the Conference, the annual Proceedings of the Conference should no longer be sent to them, thus permitting either a reduction in the number printed or a greater surplus available for distribution as required.

Yours faithfully,

G. S. RUTHERFORD,
Convener of Committee.

APPENDIX P

(*See page 32*)

CRIMINAL LAW SECTION

Report to Plenary Session

Representatives from all provinces except Newfoundland were in attendance at the meetings of the Criminal Law Section.

The Commissioners in the Criminal Law Section were largely concerned with problems arising under the new Criminal Code and the Section discussed in detail some thirty proposals that have been made for amendment of the Criminal Code including proposals to amend the Criminal Law relating to firearms, sexual offences, obscene literature, vagrancy, motor vehicle offences, procedure in Magistrates' Courts, newspaper reports of criminal proceedings, the use of recording machines in transcribing evidence, habitual criminals, appeal procedure in summary conviction cases, and rules of evidence. The Section, also, discussed some of the implications of the report of the Committee under the chairmanship of Mr. Justice Fauteux on the subject matter of remission and parole in Canada.

The Chairman of the Criminal Law Section for the ensuing year will be Mr. H. G. Puddester, Q.C., and the Secretary will be Mr. A. J. MacLeod, Q.C.

Respectfully submitted,

H. W. Hickman,
Chairman.

A. J. MacLeod,
Secretary.

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