1957

PROCEEDINGS

OF THE

THIRTY-NINTH ANNUAL MEETING

OF THE

CONFERENCE OF COMMISSIONERS

ON

UNIFORMITY OF LEGISLATION IN CANADA

HELD AT

CALGARY, ALBERTA

AUGUST 27TH TO AUGUST 31ST, 1957

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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

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

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

Attorney-General of Canada: Hon. E. D. Fulton, Q.C.

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

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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, Québec.
1954. August 24-28, Winnipeg.
1955. August 23–27, Ottawa.
1956. August 28–Sept. 1, Montreal.
1957. August 27-31, Calgary.

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 14 and 15.

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 –								
3 –	Bills of Sale	1928	1929	....	1929	....	....	1930
4 –	Bulk Sales	1920	1922	1921	'21, '51*	1927	....	——$
5 –								
6 –	Conditional Sales	1922	....	1922	....	1927	....	1930
7 –								
8 –	Contributory Negligence	1924	1937*	1925	....	1925	1951*	'26, '54*
9 –	Corporation Securities Registration	1931	....	....	....	....	....	1933
10 –	Defamation	1944	1947	....	1946	1952‡	....	....
11 –	Devolution of Real Property	1927	1928	....	....	1934†	....	....
12 –	Evidence	1941	....	....	....	....	....	....
13 –								
14 –	Foreign Affidavits	1938	1952	1953	1952	1950x	1954*	1952
15 –	Judicial Notice of Statutes and							
16 –	Proof of State Documents	1930	....	1932	1933	1931	....	....
17 –	Officers, Affidavits before	1953	....	....	....	....	1954	....
18 –	Photographic Records	1944	1947	1945	1945	1946	1949	1945
19 –	*Russell* v. *Russell*	1945	1947	1947	1946	....	....	1946
20 –	Fire Insurance Policy	1924	1926	1925	1925	1931	1954‡	1930
21 –	Foreign Judgments	1933	....	....	....	1950‡	....	....
22 –	Frustrated Contracts	1948	1949	....	1949	1949	1956	....
23 –	Highway Traffic and Vehicles—							
24 –	Rules of the Road	1955	....	....	....	....	....	....
25 –	Interpretation	1938	....	....	1939‡	....	1951‡	....
26 –								
27 –	Intestate Succession	1925	1928	1925	1927‡	1926	1951	....
28 –	Landlord and Tenant	1937	....	....	....	1938	....	....
29 –	Legitimation	1920	1928	1922	1920	1920	——$	——$
30 –	Life Insurance	1923	1924	1923	1924	1924	1931	1925
31 –	Limitation of Actions	1931	1935	....	32, '46‡	....	....	....
32 –	Married Women's Property	1943	....	....	1945	1951$	....	....
33 –	Partnership	....	1899°	1894°	1897°	1921°	1892°	1911°
34 –	Partnerships Registration	1938	....	....	....	....	....	....
35 –	Perpetuities and Accumulations							
36 –	re Pension Trusts	1954	....	....	....	....	....	....
37 –	Proceedings Against the Crown	1950	....	....	1951	1952†	....	1951$
38 –	Reciprocal Enforcement of Judgments	1924	1925	1925	1950	1925	....	....
39 –	Reciprocal Enforcement of Maintenance							
40 –	Orders	1946	1947	1946	1946	1951‡	1951‡	1949
41 –	Regulations	1943	....	....	1945‡	....	....	....
42 –	Sale of Goods	....	1898°	1897°	1896°	1919°	....	1910°
43 –	Service of Process by Mail	1945	——$	1945	——$	....	....	....
44 –	Survivorship	1939	1948	1939	1942	1940	1951	1941
45 –	Testators Family Maintenance	1945	1947‡	....	1946	....	....	....
46 –	Vital Statistics	1949	....	....	1951‡	....	....	1952‡
47 –	Warehousemen's Lien	1921	1922	1922	1923	1923	....	1951
48 –	Warehouse Receipts	1945	1949	1945‡	1946‡	1947	....	1951
49 –	Wills	1929	....	....	1936	1952‡	....	....
50 –	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.

	Adopted							Remarks
Line	Ont.	P.E.I.	Que.	Sask.	Can.	N.W.T.	Yukon	
1 –	1931	1931	....	1929	....	1948	1954‡	Am. '31; Rev. '50 & '55; Am. '57
2 –								
3 –	....	1947	....	1929	....	1948‡	1954‡	Am. '31 & '32; Rev. '55
4 –	....	1933	....	....	....	1948	....	Am. '21, '25, '39 & '49; Rev. '50
5 –								
6 –	....	1934	....	....	....	1948‡	1954‡	Am. '27, '29, '30, '33, '34 & '42; Rev. '47 & '55
7 –								
8 –	....	1938*	....	1944*	....	1950*‡	1955‡	Rev. '35 & '53
9 –	1932	1949	....	1932	....	....	....	....
10 –	....	1948	....	....	....	1949*‡	1954	Rev. '48; Am. '49
11 –	....	....	....	1928	....	....	1954	....
12 –	....	....	....	....	....	1948*‡	1955‡	Am. '42, '44 & '45; Rev. '45; Am. '51, '53 & '57
13 –								
14 –	'52, '54*	....	....	1947	1943	1948	1955	Am. '51; Rev. '53
15 –								
16 –	....	1939	....	....	....	1948	1955	Rev. '31
17 –	1954	....	....	....	....	....	1955	....
18 –	1945	1947	....	1945	1942$	1948	1955	....
19 –	1946	1946	....	1946	....	1948	1955	....
20 –	1924	1933	....	1925	....	....	....	Stat. Cond. 17 not adopted
21 –	....	....	....	1934	....	....	....	....
22 –	1949	1949	....	....	....	....	....	....
23 –								
24 –	....	....	....	....	...	...	....	....
25 –	....	1939	....	1943	....	1948*‡	1954*	Am. '39; Rev. '41; Am. '48; Rev. '53
26 –								
27 –	....	1944‡	....	1928	....	1949‡	1954‡	Am. '26, '50 & '55
28 –	....	1939	....	....	....	1949‡	1954‡	Recomm. withdrawn '54
29 –	1921	1920	——$	1920	....	1949‡	1954†	....
30 –	1924	1938	....	1924	....	....	....	....
31 –	....	1939‡	....	1932	....	1948†	1954*	Am. '32, '48 & '44
32 –	....	....	....	....	....	1952†	1954†	....
33 –	1920°	1920°	....	1898°	....	1948°	1954°	....
34 –	....	....	....	1941†	....	....	....	Am. '46
35 –								
36 –	1954	....	....	....	....	....	....	Am. '55
37 –	1952‡	....	....	1952‡	....	....	....	....
38 –	1929	....	....	1924	....	....	....	Am. '25; Rev. '56
39 –								
40	1948‡	1951‡	1952$	1946$	....	1951†	1955‡	Rev. '56
41 –	1944‡	....	....	....	1950$	....	....	....
42 –	1920°	1919°	....	1896°	....	1948°	1954°	....
43 –	....	....	....	——$	....	....	....	....
44 –	1940	1940	....	1942	....	....	....	Am. '49; Am. '56; Am. '57
45 –	....	....	....	....	....	....	....	Am. '57
46 –	1948$	1950‡	....	1950$	....	1952	1954‡	Am. '50
47 –	1924	1938	....	1922	....	1948	1954	....
48 –	1946‡	....	....	....	....	....	....	....
49 –	....	....	....	1931	....	1952	1954‡	Am. '53
50 –	1954	....	....	....	....	....	....	....

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

MINUTES OF THE OPENING PLENARY SESSION

(TUESDAY, AUGUST 27TH, 1957)

10 a.m.–11.30 a.m.

Opening

The Conference assembled in the Court House, at Calgary.

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 40).

Mr. E. C. Leslie, President of the Canadian Bar Association and a Commissioner for the Province of Saskatchewan, addressed the meeting briefly in his capacity as President of the Bar Association. He spoke of the high regard of the Association for the Conference and assured the members of the Association's continued interest and support. On behalf of the Bar Association, he conveyed to the Conference the hope of the Association that the meetings would be pleasant and productive.

President's Address

The President, on behalf of the Government of Alberta and of the Alberta Commissioners, welcomed the members of the Conference to the Province and outlined some of the plans that were made by the local Bar for the entertainment of members. He reviewed, briefly, the work of the Conference in the past and stated that he had no detailed or formal report to make about activities of the past year. In dealing with the work of the Conference generally, however, he stated that he would like to repeat the suggestion that he had made at the 1956 meeting—that matters of importance or matters involving substantial questions of principle should be considered by the Conference in Plenary Session rather than by a Section. He referred, specifically, to a suggestion of the Law Society of Alberta that the Conference undertake a study of the Land Titles Act and, if feasible, prepare a draft Uniform Act. This type of suggestion, he felt, fell within the class that should first be considered by the Conference as a whole. Similarly, where substantial matters of principle arose in either the Uniform Law Section or the Criminal Law Section, the questions should, he felt, be referred for determination to the Plenary Session.

Minutes of Last Meeting

The following resolution was adopted:

RESOLVED that the minutes of the 1956 annual meeting as printed in the 1956 Proceedings be taken as read and adopted.

Treasurer's Report

The Treasurer, Mr. DesBrisay, presented his report (Appendix B, page 42). Messrs. Rutherford and Alcombrack 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 44).

Nominating Committee

The President named a committee, consisting of Messrs. MacTavish (*Chairman*), Fisher, Driedger, Fournier and Hickman, to make recommendations respecting officers of the Conference for 1957-1958 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 1957 Proceedings printed as an addendum to the Year Book of the Canadian Bar Association.

Law Reform

Dean Bowker, Chairman of the Special Committee on Law Reform constituted at the 1956 meeting (*see* 1956 Proceedings, page 16), reported on the activities of the Special Committee in the past year. Representatives of each jurisdiction then summarized the work in the field of law reform that was being carried on in their respective jurisdictions. After some discussion, it was decided to refer the report of the Special Committee to the Uniform Law Section of the Conference for consideration and for a

report at the closing plenary session. It was agreed, also, that representatives of the several jurisdictions, who had made reports respecting law reform in their jurisdictions, be asked to submit written summaries of their reports to Dean Bowker for the information of his Committee.

New Business

Land Titles Act

The suggestion of the Alberta Law Society, that the Conference undertake the preparation of a model Land Titles Act that had been referred to by the President in his opening remarks, was next considered. A number of members having spoken on the subject, it was agreed that the suggestion be referred to the Uniform Law Section for further consideration and for recommendations at the closing plenary session.

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. G. H. CROSS, A. C. DESBRISAY, G. P. HOGG and G. D. KENNEDY

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. M. M. HOYT, R. D. MITTON 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, THE HONOURABLE A. KELSO ROBERTS and MESSRS. W. C. ALCOMBRACK and L. R. MACTAVISH.

Quebec:

MESSRS. EMILE COLAS and G. R. FOURNIER.

Saskatchewan:

MESSRS. J. H. JANZEN, E. C. LESLIE and H. WADGE.

FIRST DAY

(TUESDAY, AUGUST 27TH, 1957)

First Session

11.30 a.m.–12 noon.

The first meeting of the Section was convened immediately after the close of the opening plenary session. Dr. H. E. Read, 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.

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 D, page 46).

After discussion, the following resolution was adopted:

RESOLVED that Mr. Alcombrack's report on Amendments to Uniform Acts be received and that the thanks of the Conference be extended to him for his work.

Survivorship

After discussion of the suggestion for amendment of this Act that had been made by Mr. Rutherford, the following resolution was adopted:

RESOLVED that the Conference recommend to the provinces that have enacted the Uniform Survivorship Act that their Acts be amended by inserting, in subsection (2) of section 1, a reference to the section of the Insurance Act or the Accident and Sickness Insurance Act, as the case may be, that deals with the presumption of the order of deaths.

Second Session

2 p.m.–5 p.m.

Judicial Decisions affecting Uniform Acts

Dean Read presented his report on Judicial Decisions affecting Uniform Acts (Appendix E, page 49).

Following consideration and discussion of the report, the following resolution was adopted:

RESOLVED that the report of Dean Read on Judicial Decisions affecting Uniform Acts be received with thanks and that the Conference record its opinion that no amendments to uniform Acts are required by reason of the cases referred to in the report.

Bills of Sale Act

Conditional Sales Act

Mr. Ryan presented the report of the Alberta Commissioners (Appendix F, page 58) arising out of cases referred to in Dean Read's report at the 1956 meeting on Judicial Decisions affecting Uniform Acts. Mr. Soper, also, submitted a memorandum (Appendix G, page 70) dealing with difficulties that have been experienced in Newfoundland under the Conditional Sales Act and submitting suggestions for amendment that had been made by solicitors in that Province.

After considerable discussion, the following resolution was adopted:

RESOLVED that the question of amendments to the Bills of Sale Act and the Conditional Sales Act be referred to the Alberta Commissioners,

(*a*) to consider particularly the advisability of repealing subsection (2) of section 4 of the Bills of Sale Act and of shortening the period for registration of instruments under the Bills of Sale Act and the Conditional Sales Act;

(*b*) to make a study of the provisions of all provincial Acts dealing with the same subject matter as subsection (2) of section 4 of the Bills of Sale Act and dealing with registration periods;

(*c*) to obtain the views of members of the Bars of all provinces about the need for or desirability of the repeal of subsection (2) of section 4 of the Bills of Sale Act and of shortening the period for registration under both Acts;

(*d*) to consider the need for clarification and amendment of section 9 of the Bills of Sale Act and of section 6 and related sections of the Conditional Sales Act;

(*e*) to consider, in consultation with the Quebec representatives, the matters referred to in Mr. Soper's memorandum; and

(*f*) to submit to the next meeting of the Conference a report containing their recommendations respecting amendment of both Acts, with a draft amending Act or Acts.

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 had its most recent meeting in November, 1956, at Toronto. It was most gratifying to have the Province of Quebec represented for the first time since this Committee began functioning some three years ago.

Agreement was reached on a wide variety of points, with respect to which those present considered that uniformity was both desirable and feasible. It has, of course, been appreciated throughout these deliberations that two separate drafts would be required—one applicable to the provinces in which incorporation is effected by the issue of letters patent and another for the provinces who proceed by way of the filing of Memoranda and Articles of Agreement.

The representatives of Manitoba and Ontario, with those of the federal jurisdiction, were designated as a subcommittee to prepare a draft uniform statute for the letters patent jurisdictions, embodying the various recommendations of the plenary committee. This first draft has now been completed and will be printed for distribution to the members of this Conference, to the bar associations of the provinces concerned, to the several associations of accountants and to boards of trade or such other groups or individuals as may be interested, from all of whom comments will be invited.

A draft with respect to the incorporation by Memoranda and Articles of Agreement is in course of preparation by the Alberta representatives on the plenary committee, its objective being to adapt the various features of proposed uniformity to that system. This draft, however, has not yet been completed.

The subcommittee which prepared the draft Act for letters patent jurisdictions will welcome comments by the Conference of Commissioners on Uniformity of Legislation in Canada. For this purpose we suggest that, if it be the will of the Conference, the commissioners from Manitoba and Ontario, together with the federal representatives on this Conference, be designated to prepare a report on the draft for submission to the next meeting of this Conference in 1958. The designation of these three jurisdictions is suggested in order that close co-operation with the draftsmen may be facilitated.

(sgd.) W. P. J. O'MEARA.

After discussion of this report, the following resolution was adopted:

RESOLVED that Mr. O'Meara's report be adopted and that the Commissioners for Manitoba and Ontario and the Federal Representatives constitute a committee to study the draft Uniform Companies Act that has been prepared by the Federal-Provincial Committee on Uniformity of Company Law and submit a report on the draft at the next meeting of the Conference.

Testator's Family Maintenance

Mr. MacTavish presented the report of the Ontario Commissioners (Appendix H, page 72).

As recommended in their report, a Special Committee, consisting of Messrs. MacTavish and Rutherford, was named to review the problems referred to in the report and to report back at a later session of this meeting.

Evidence

In accordance with the resolution passed at the 1956 meeting (1956 Proceedings, page 24), Mr. Driedger presented a report on amendments to the Evidence Act (Appendix I, page 74).

After consideration of the report, the following resolution was adopted:

RESOLVED that the Conference approve the revision of section 62 of the Uniform Evidence Act recommended in Mr. Driedger's report and recommend it for enactment.

Innkeepers

The report of the Nova Scotia Commissioners (Appendix J, page 77) was presented by Mr. Muggah, and consideration of the draft Act was commenced.

SECOND DAY

(WEDNESDAY, AUGUST 28TH, 1957)

Third Session

9.30 a.m.–12 noon.

Innkeepers—(concluded)

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

RESOLVED that the Innkeepers Act be referred back to the Nova Scotia Commissioners for further study and for report at the next meeting with a revised draft Act incorporating the changes agreed upon at this meeting and such other changes and additions as they consider desirable.

Trustee Investments

Mr. DesBrisay reported that the British Columbia Commissioners would be prepared shortly to distribute a draft Act respecting trustee investments, containing matters agreed upon at the 1956 meeting. The following resolution was then adopted:

RESOLVED that the draft Act respecting trustee investments, as revised by the British Columbia Commissioners incorporating the changes made at the 1956 meeting of the Conference, be sent to each local secretary for distribution by him to the members of the Conference in his jurisdiction, and, 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, 1957, it be recommended for enactment in that form.

NOTE:—Copies of the revised draft were distributed in accordance with the above resolution. Disapprovals by two or more jurisdictions were not received by the Secretary by November 30, 1957. The draft as adopted and recommended for enactment is set out in Appendix K, page 82.

Highway Traffic and Vehicles (Rules of the Road)

In accordance with a resolution passed at the 1956 meeting of the Conference (1956 Proceedings, page 23), Mr. Driedger presented a report (Appendix L, page 87) summarizing the comments on the draft Rules of the Road that had come to his attention.

Consideration of the report and of other suggestions that had been made respecting rules of the road was commenced. Participating in the discussion and consideration were the Honourable A. Kelso Roberts, Attorney General of Ontario and Mr. A. G. MacNab, Registrar of Motor Vehicles of Ontario, in addition to members of the Conference.

Fourth Session

3 p.m.–5 p.m.

Highway Traffic and Vehicles (Rules of the Road)—(concluded)

After further discussion, the following resolution was adopted:

RESOLVED that the Uniform Highway Traffic and Vehicles (Rules of the Road) Act be referred to the Ontario Commissioners for review in the light particularly of the discussions of this meeting and for report at the next meeting with their recommendations respecting amendments.

THIRD DAY

(THURSDAY, AUGUST 29TH, 1957)

Fifth Session

9.30 a.m.–12 noon.

Legislative Assembly

Mr. Ryan presented the report of the Alberta Commissioners (Appendix M, page 90). After discussion, the following resolution was adopted:

RESOLVED that the report of the Alberta Commissioners be adopted and that the subject be referred back to them to proceed in accordance with rule 4 of the Rules relating to the Organization and Procedure of the Uniform Law Section (1954 Proceedings, Appendix I, page 102, at page 107).

Bulk Sales

Mr. Ryan distributed and presented the report of the Alberta Commissioners (Appendix N, page 97) made pursuant to a resolution passed at the 1956 meeting (1956 Proceedings, page 22).

After some discussion, it was decided to defer consideration of the report until the 1958 meeting to enable the members of the Conference to study the report more fully.

Reciprocal Enforcement of Judgments

Mr. Soper submitted a memorandum (Appendix O, page 111) respecting points in the Uniform Reciprocal Enforcement of Judgments Act which, he suggested, might be clarified. After some discussion on the Act, the following resolutions were adopted:

1. RESOLVED that Mr. Soper's memorandum respecting the Uniform Reciprocal Enforcement of Judgments Act be received.

2. BE IT FURTHER RESOLVED that the Uniform Reciprocal Enforcement of Judgments Act be amended by substituting another expression for the word "jurisdiction" where it occurs

in a number of places in the Act, so that the word will be used in one sense only throughout the Act; that Mr. Kennedy be asked to make the necessary changes to this end; and that the Act, as so changed by him, be printed in the Proceedings.

Devolution of Real Property.

Mr. Leslie presented the report of the Saskatchewan Commissioners (Appendix P, page 113).

After discussion of the report, it was resolved that the report be adopted.

Wills

Dean Read presented the report of the Special Committee (Appendix Q, page 116) and consideration of the report was commenced.

Sixth Session

2 p.m.–5 p.m.

Wills—(continued)

Consideration of the report of the Special Committee was continued during the greater part of this session. A special committee, consisting of Messrs. Teed, Driedger and Kennedy, was constituted to consider a number of points arising during the discussion and to report back on the following day.

Foreign Torts

Dean Read presented the report of the Special Committee on this subject (Appendix R, page 122).

After consideration of the report, the following resolution was adopted:

RESOLVED that the report of the Special Committee, as presented by Dean Read, be adopted; that the Conference confer its thanks to him for his work in preparing a comprehensive appraisal of the situation as appears in the report, and request that the Special Committee continue its study of the subject and report back to the Conference at its next meeting with its recommendations for legislation.

Organization and Procedure of Uniform Law Section

Some discussion was had about the Rules of Procedure of the Uniform Law Section as adopted at the 1954 meeting of the Con-

ference (see 1954 Proceedings, pages 102 to 110). It was felt that a stock of copies of these rules should be available and the Secretary was instructed to have a supply printed and made available to members of the Conference and other interested persons.

FOURTH DAY

(FRIDAY, AUGUST 30TH, 1957)

Seventh Session

9.30 a.m.–12 noon.

Wills—(concluded)

The Special Committee appointed at the Sixth Session reported on its deliberations and the matter of amendments to the Act was further considered. Dean Read, on behalf of the Special Committee, expressed the thanks of that Committee to Mr. Kennedy for his comprehensive examination of, and comments on, the draft Act. The following resolution was then adopted:

RESOLVED that the Conference record its appreciation of the work of Dean Read and the other members of the Special Committee in connection with the Wills Act;

AND IT IS FURTHER RESOLVED that the draft of a revised Uniform Wills Act, Part I, as set out at pages 102 to 112, inclusive, of the 1956 Proceedings, be referred back to Dean Read, as chairman of the special Committee, to incorporate in it the changes agreed upon at this meeting; that copies of the draft as so revised be sent to each of the local secretaries for distribution by them to members of the Conference in their several 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 30th day of November, 1957, it be recommended for enactment in that form.

NOTE:—Copies of the revised draft were distributed in accordance with the above resolution. Disapprovals by two or more jurisdictions were not received by the Secretary by November 30, 1957. The draft as adopted and recommended for enactment is set out in Appendix S, page 134.

Appointment of Beneficiaries under Uninsured Pension Plans

Mr. Rutherford presented a report on this subject (Appendix T, page 145) and after discussion the following resolution was adopted:

RESOLVED that the draft Act respecting the Appointment of Beneficiaries under Uninsured Pension Plans, attached to Mr. Rutherford's report, be referred back to him to incorporate in it the changes made at this meeting; that the draft as so revised be sent to each of the local secretaries for distribution by them to the Commissioners 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 30th day of November, 1957, it be recommended for enactment in that form.

NOTE:—Copies of the revised draft were distributed in accordance with the above resolution. Disapprovals by two or more jurisdictions were not received by the Secretary by November 30, 1957. The draft as adopted and recommended for enactment is set out in Appendix U, page 150.

Highway Traffic and Vehicles (Responsibility for Accidents)

After some discussion of this subject, it was agreed to defer consideration of it until the 1958 meeting of the Conference.

Interpretation

Mr. Driedger advised the meeting that a revision of the Interpretation Act of Canada is being studied and suggested that the Conference defer consideration of an amendment to the Uniform Act that was referred to a special committee in 1955 (1955 Proceedings, page 18; 1956 Proceedings, page 18). It was agreed that the item be dropped from the Agenda and be brought forward again if a new Dominion Interpretation Act is enacted.

Partnership

Following discussion on suggestions for changes in existing Partnership Acts, the following resolution was adopted:

RESOLVED that the question of the desirability of the Conference considering changes to Partnership Acts be referred to the New Brunswick Commissioners for study and report at the next meeting of the Conference with a draft Act if, in their opinion, changes are desirable.

Testator's Family Maintenance—(concluded)

Mr. MacTavish presented the report of the Special Committee that had been named at the Second Session. The report having been considered, the following resolution was adopted:

RESOLVED that the report of the Special Committee (Appendix V, page 152), respecting the Testator's Family Maintenance Act, be adopted.

Land Titles

The suggestion that the Conference undertake the preparation of a Uniform Land Titles Act was considered and it was agreed to recommend to the Plenary Session that the suggestion be not followed.

Eighth Session

2 p.m.–5 p.m.

Law Reform

In accordance with the decision of the Plenary Session (page 17), the report of the Special Committee was considered and it was decided to recommend that the Conference in plenary session adopt the report with slight amendments.

Domicile

This subject having been added to the Agenda at the request of the Alberta Commissioners, Mr. Bowker presented a report of those Commissioners (Appendix W, page 153).

After discussion, the following resolution was adopted:

RESOLVED that the matter of a Uniform Law of Domicile be referred to the British Columbia Commissioners for consideration and study in consultation with the Commissioners of Nova Scotia and Alberta, and for report at the next meeting with a draft Uniform Act if they consider it desirable.

New Business

Mechanics' Lien Act

Following a suggestion that the Conference re-examine the matter of a Uniform Mechanics' Lien Act, it was agreed that the New Brunswick Commissioners be requested to make a study of the work already done by the Conference on the subject, to obtain the views of the Commissioners and the Bars of all the provinces with the object of determining whether or not there is a reasonable prospect of achieving uniformity in Mechanics' Lien Acts of the provinces, and to report at the next meeting of the Conference.

MINUTES OF THE CRIMINAL LAW SECTION

The following members attended:

GILBERT D. KENNEDY, Deputy Attorney General, and GILBERT P. HOGG, Assistant 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.

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

W. B. COMMON, Q.C., Deputy Attorney General, representing Ontario.

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

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

H. P. CARTER, Q.C., Director of Public Prosecutions, Department of the Attorney General, representing Newfoundland.

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

THE HONOURABLE A. KELSO ROBERTS, Q.C., Attorney General of Ontario was a welcome visitor to the Section at several of its sessions.

MR. G. R. FOURNIER, Q.C., attended the Conference as a representative of Quebec. He did not personally attend the sessions of the Criminal Law Section but bore instructions, which he communicated to the Secretary, concerning items of its agenda.

Chairman—H. P. CARTER, Q.C.

Secretary —A. J. MACLEOD, Q.C.

The Criminal Law Section considered a wide variety of topics relating to the criminal law. Except in a few of the more important instances, what follows omits reference to matters in regard to which change was not recommended. With that qualification, the following is a report of the conclusions reached by the Section. References, except where otherwise stated, are to sections of the Criminal Code.

Delivery of Firearms to Minors

The Commissioners approved a recommendation of the Chief Constables Association of Ontario (approved also by the R.C.M.P.) that the age limit under section 88 be raised from fourteen to sixteen years.

There arose incidentally a suggestion that the Code should make provision for the disposal of firearms entered as exhibits at trial. This developed into a recommendation that such a provision should be made general so as to include articles other than firearms.

Machine-gun Parts

The R.C.M.P. have suggested that provision be made in section 90 to prevent the sale of automatic firearms of the machine-gun or sub-machine-gun types to persons in Canada, other than the armed forces and police, and to prevent the holding by collectors or others of such weapons unless they have been rendered incapable of use. It was said that as matters stand an importer of parts may sell the assembled weapons to anyone who may have a permit to purchase. The Commissioners supported this recommendation, with the proviso that it should be made clear that it did not apply to automatic rifles and shotguns.

Permits

The Commissioners endorsed a recommendation by the R.C.M.P. that subsection (4) of section 93 be amended so as to give the Commissioner of that Force a discretion as to the issue of a certificate of registration of a firearm. It was pointed out that in some instances he may have information that is not available to the local issuer of permits.

Obscene Literature and Crime Comics

The Section considered several points arising out of section 150, with results as follows:

1. "Tie-in sales" from wholesalers to news dealers did not appear to be a problem except in British Columbia and Quebec.
2. Subsection (4) should be considered with reference to the question of public good. It should be left to the judge to decide whether there is any evidence that the public good is served by the matter in question, and then to the jury

to say whether or not the publication goes beyond what serves the public good.

3. The members approved a suggestion that the definition of "crime comics" be amended to include publications that unduly emphasize horror.
4. They approved suggestions to provide for proceedings *in rem*, similar to those contained in the Obscene Publications Act, 1857 (U.K.), but with the qualification that the consent of the Attorney General should not be required.
5. They considered at some length the judgment of the Ontario Court of Appeal in *R.* v. *American News Company* (1957) O.R. 145, O.W.N. 120, and decided, in view of that judgment, that section 150 should not be amended to include a definition of "obscenity".

Juvenile and Family Courts

The Section considered a suggestion that the Code be amended so as to give to Juvenile and Family Courts jurisdiction to hear charges under section 157 (corruption of children), section 186 (non-support) and section 231 (assault between spouses and between parents and their children under sixteen). It was decided to defer for one year further consideration of this matter.

Vagrancy—Sexual Offenders Loitering Near Schools, etc.

It is recommended that clause (*e*) of subsection (1) of section 164 be amended to apply to persons who have been convicted under section 158 (indecent acts).

Pin-ball Machines

The Section discussed the decision of the Supreme Court of Canada in *Isseman* v. *R.* (1956) S.C.R. 798, the effect of which is that pin-ball machines that were held to be legal under the old Code are now held to be illegal. The representative from Ontario was of opinion that the section should be restored to its former state. All of the others considered that the section should remain as it is, in view of previous unsuccessful attempts to deal with the slot-machine problem by provincial statute.

Transmission of Betting Information by Radio

The members approved in principle a suggestion that section

177 be amended to include radio as a prohibited means of communicating betting information.

Criminal Negligence in Operation of Motor Vehicles

At its meeting in 1956 the Section instructed the Secretary to draft amendments that would restore to the Code the offence of reckless driving as it existed in subsection (6) of the former section 285, with provision for an alternative verdict as in subsection (3) of the former section 951. Drafts were submitted in compliance with this direction and proved to be the most contentious of the subjects considered. The result of the discussion was that the representatives of British Columbia, Alberta and Quebec opposed the restoration of the offence. Those of Saskatchewan, Manitoba, Ontario, New Brunswick and Newfoundland favoured it. The representative from Nova Scotia expressed himself as having no decided opinion but as being prepared to support the suggested changes.

Failing to Remain at the Scene of an Accident

The Section considered the case of *R.* v. *Dodd* (1957) O.R. 5, in which the Ontario Court of Appeal held that subsection (1) of section 48 of the Ontario Highway Traffic Act was superseded by subsection (2) of section 221 of the Criminal Code. It was said that the section of the Provincial Act covered certain cases not covered by the Code, e.g. collision with a parked car not at the time in charge of a person. The Section recommended that the Code be amended to cover such cases.

Order Prohibiting Driving

At its meeting in 1956 the Section approved a suggestion that subsection (1) of section 225 be amended to include the offence of failing to remain at the scene of an accident among those for which an order prohibiting driving might be made. The members approved a draft of subsection (1) of section 225 embodying this change.

Driving While Disqualified

The members recommended that section 225 be amended to provide that a certificate of the Registrar is *prima facie* evidence of disqualification without proof of his signature.

Threats and False Messages

The members approved a suggestion that sections 315 and 316 be amended to make it an offence to send threats and false messages by telephone.

Trading Stamps

The Section discussed the provisions of the Code relating to trading stamps and decided that if, as a matter of policy, they should be prohibited, as to which the Commissioners expressed no opinion, the present legislation is inadequate. The word "place" should be replaced by a requirement that the stamp show the name and address of the merchant who issues it.

Transportation of Cattle

The Commissioners recommend that section 389 be amended to refer also to the transportation of cattle in trucks.

Offences on Aircraft

At its meeting in 1956 the Canadian Bar Association passed a resolution recommending to the Attorney General of Canada "that appropriate legislation be considered to confer upon Can adian courts jurisdiction over offences committed on aircraft in flight outside the territory of Canada". The Section considered and supported this resolution.

Preliminary Hearing

There was discussion of section 455 with regard to the admission in evidence of statements or confessions made by the accused. While the Commissioners made no recommendation for change in the section, they reaffirmed their opinion previously expressed, that there should be a provision that the report of a preliminary hearing should not disclose an admission, statement or confession made by the accused, nor should it contain any reference to the fact that the accused had made an admission, statement or confession.

Absolute Jurisdiction of Magistrates

The members approved a suggestion that subsection (1) of section 469 be amended to permit a magistrate to transform into a preliminary hearing any proceeding under Part XVI. As the

section stands this is possible only where the accused has elected to be tried under the Part; it cannot be done where the magistrate has absolute jurisdiction under section 467.

It was pointed out also that section 481, which provides for the continuance of proceedings where the magistrate becomes ill or is for any reason unable to continue, does not include cases over which he has absolute jurisdiction under section 467. The Commissioners recommended amendment in this respect.

Reduction of Imprisonment on Part Payment of Penalty

It was suggested that section 625 be amended to make it clear that a convicted person is entitled to a *pro rata* reduction of imprisonment imposed in default of payment, if he makes part payment before he is committed to jail.

Habitual Criminals

At its meeting in 1956 the Section instructed the Secretary to draft suggestions for amendment. This had been done and discussions of the drafts resulted in the following recommendations:

1. The reference to age (eighteen years) should be eliminated and replaced by a record of six previous convictions instead of three as at present.
2. Proof of Identity. A record of finger prints, certified by the Commissioner of the R.C.M.P. or his Deputy as being that of an individual having certain convictions against him, should be made admissible without proof of signature. This should be supplemented by expert testimony that the finger prints in the record are the same as those of the accused.
3. In section 660 (2) (*b*) substitute "previously found to be an habitual criminal" for "previously sentenced to preventive detention", this for the reason that under the present wording a man may be found to be an habitual criminal without being sentenced to preventive detention, with the result that if he is again charged as an habitual criminal, it is necessary that the whole process of proof be repeated.
4. Substitute "paragraph (*a*)" for "paragraph (*b*)" in section 662 (3). This corrects a misprint.
5. Set out the powers of the Court on appeal under section 667.

Notice of Appeal in Summary Conviction Matters

The Section recommended that clause (*b*) of section 720 be amended to provide that notice of appeal may be given by the Attorney General "or by counsel instructed by him for the purpose", as may be done under section 584. This would require amendment of clause (*d*) of subsection (1) of section 724 to provide exemption from the requirement that security for costs be furnished.

The Canada Evidence Act—Section 4

Subsection (2) of this section, as re-enacted by section 749 of the Criminal Code, provides that the wife or husband of a person accused of certain enumerated offences is a competent and compellable witness for the prosecution. Attempts to commit these offences are not included except as to section 138 (sexual intercourse with females under fourteen or between fourteen and sixteen) and section 147 (bestiality). It is recommended that the section be amended to include incest and also to include attempts to commit any of the offences enumerated.

Officers of Section

Mr. W. B. Common, Q.C., was appointed Chairman of the Criminal Law Section for 1957-58 and Mr. A. J. MacLeod, Q.C., was appointed Secretary.

MINUTES OF THE CLOSING PLENARY SESSION

(SATURDAY, AUGUST 31ST, 1957)

9 a.m.–10 a.m.

Plenary Session resumed with the President, Mr. H. J. Wilson, in the chair.

Law Reform

The report of the Special Committee, as amended by the Civil Law Section (Appendix X, page 176), was submitted by Dean Bowker on behalf of that Section and it was agreed that it be adopted by the Conference.

Report of Criminal Law Section

Mr. Carter, Chairman of the Criminal Law Section, presented his report on the work of the Section (Appendix Y, page 178).

Next Meeting

The following resolution was adopted:

RESOLVED that the next meeting of the Conference be held at Niagara Falls during the five days, exclusive of Sunday, immediately preceding the 1958 meeting of the Canadian Bar Association.

Report of Auditors

Mr. Rutherford reported that he and Mr. Alcombrack had examined the books of the Treasurer and the Treasurer's report, and had found them to be correct and had so certified.

Report of Nominating Committee

Mr. MacTavish, Chairman of the Nominating Committee named at the opening plenary session, submitted the following nominations for the officers of the Conference for the year 1957-1958:

Honorary President.......H. J. Wilson, Q.C., Edmonton
President................H. E. Read, O.B.E., Q.C., Halifax
1st Vice-President.........J. A. Y. MacDonald, Q.C., Halifax
2nd Vice-President........E. C. Leslie, Q.C., Regina
Treasurer................G. R. Fournier, Q.C., Quebec
Secretary................H. F. Muggah, Q.C., Halifax

The report was adopted and those named were declared elected.

Appreciations

The following resolution was moved by Mr. Fisher, seconded by Mr. Justice Barlow, and unanimously adopted:

RESOLVED that this Conference express its sincere appreciation:

(*a*) to Mr. H. J. Wilson, Dean Read, and Mr. H. P. Carter for their courteous and efficient conduct of the respective sessions of this Conference;

(*b*) to Mr. Leslie, President of The Canadian Bar Association, who, despite the responsibilities of his office, has regularly attended the sessions of the Conference;

(*c*) to The Honourable A. Kelso Roberts, Attorney General of Ontario, and to Mr. MacNab for their assistance and encouragement;

(*d*) to The Honourable E. C. Manning, Premier and Attorney General of the Province of Alberta, for the use of the conference rooms and to the Court House staff for their services;

(*e*) to the Alberta Law Society for its hospitality and assistance;

(*f*) to the members of the Calgary Bar, as represented by Messrs. Bredin, Sinclair, Egbert and Harradence, for the most enjoyable cocktail hours;

(*g*) to the following ladies and gentlemen of Calgary for opening their homes and extending gracious hospitality at dinner and affording us the opportunity of meeting some of their friends on Wednesday evening, namely:

Mr. O. H. E. Might, Q.C., and Mrs. Might;
Mr. G. H. Allen, Q.C., and Mrs. Allen;
Mr. W. B. Cromarty, Q.C., and Mrs. Cromarty;
Mr. and Mrs. George L. Crawford;
Mr. and Mrs. Neil V. German;
Mr. William Howard, Q.C., and Mrs. Howard;
Mr. H. J. MacDonald, M.L.A., and Mrs. MacDonald;
Mr. and Mrs. C. D. Williams;
Mr. K. S. Dixon, Q.C., and Mrs. Dixon;

(*h*) to The Honourable Mr. Justice Porter and Mrs. Porter and to Mr. and Mrs. H. J. Wilson for the wonderful reception and dinner on Friday evening, which was thoroughly enjoyed by everyone; and

(*i*) to the wives of the members of this Conference, who, by their attendance here, have added much to our enjoyment.

AND BE IT FURTHED RESOLVED that the Secretary of the Conference be directed to send a copy of this resolution to the interested parties.

Mr. Justice Barlow brought to the attention of the meeting the possibility that Mr. Fisher, after thirty years as a member of the Conference, might be retiring as a Commissioner for the Province of Manitoba following this meeting and would not be attending meetings in future. In his remarks, Mr. Justice Barlow expressed the appreciation of the Conference for Mr. Fisher's outstanding work as an Officer and as a Commissioner during his years as a member, and, on behalf of the members, conveyed to Mr. Fisher their regrets on his impending retirement and their good wishes for his continued health and happiness. Other members having joined in the sentiments expressed by Mr. Justice Barlow, Mr. Fisher spoke briefly.

Close of Meeting

The President, Mr. Wilson, then thanked the members for their assistance and attention to the work of the Conference during his term of office and turned the meeting over to Dean Read.

Dean Read then took the chair and expressed his appreciation of the honour conferred upon him by the members of the Conference in electing him to be its President, assuring them of his confidence for the continued success of the Conference.

At 9.45 a.m. the meeting adjourned.

APPENDIX A

(*See page 16*)

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. Report of Special Committee on Law Reform.
7. Appointment of Nominating Committee.
8. Publication of Proceedings.
9. Next Meeting.

PART II

UNIFORM LAW SECTION

1. Appointment of Beneficiaries under Uninsured Pension Plans—Report of Manitoba Commissioners (see 1956 Proceedings, page 25).
2. Bills of Sale and Conditional Sales—Report of Alberta Commissioners (see 1956 Proceedings, page 18).
3. Bills of Sale—at the suggestion of Mr. Rutherford.
4. Bulk Sales—Report of Alberta Commissioners (see 1956 Proceedings, page 22).
5. Conditional Sales—at the suggestion of Mr. Soper.
6. Devolution of Real Property—Report of Saskatchewan Commissioners (see 1956 Proceedings, page 19).
7. Evidence—Report of Mr. Driedger (see 1956 Proceedings, page 24).
8. Federal-Provincial Committee on Uniformity of Company Law—Progress Report by Mr. O'Meara.
9. Foreign Torts—Report of Special Committee (see 1956 Proceedings, page 20).

10. Highway Traffic and Vehicles (Responsibility for Accidents) —Report of Nova Scotia Commissioners (see 1956 Proceedings, page 22).
11. Highway Traffic and Vehicles (Rules of the Road)—Report of Mr. Driedger (see 1956 Proceedings, page 23).
12. Innkeepers—Report of Nova Scotia Commissioners (see 1956 Proceedings, page 20).
13. Interpretation—Report of Special Committee (see 1956 Proceedings, page 18).
14. Legislative Assembly—Report of Alberta Commissioners (see 1956 Proceedings, pages 21 and 22).
15. Legitimation—Report of Alberta Commissioners (see 1956 Proceedings, page 27).
16. Partnership Act—at the suggestion of Mr. Wilson.
17. Reciprocal Enforcement of Judgments—at the suggestion of Mr. Rutherford and of Mr. Soper.
18. Survivorship—at the suggestion of Mr. Rutherford.
19. Testators' Family Maintenance—Report of Ontario Commissioners (see 1956 Proceedings, page 21).
20. Trustee Investments—Report of British Columbia Commissioners (see 1956 Proceedings, page 27).
21. 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. Suggestions for amendment of the Canada Evidence Act and the Juvenile Delinquents Act will also be discussed.

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 17*)

TREASURER'S REPORT

1956—1957

Balance on hand August 15th, 1956 (on deposit in Imperial Bank of Canada, Pender and Howe Sts. Branch, Vancouver)		$ 4,132.38	

Receipts

Contributions from Governments of:			
Manitoba	$ 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		
		$ 2,100.00	
Bank Interest—Oct. 24/56	$ 43.30		
Bank Interest—Apr. 24/57	53.45		
		96.75	
Rebate of Sales Tax		311.00	

Disbursements

Petty cash			$ 25.00
Clerical Assistance, Honorariums			200.00
Janitor for Conference			20.00
Wm. McNab & Son—re printing of Agenda for Conference			17.60

National Printers Limited—			
Printing Proceedings of the 38th Annual Meeting 1956..	$ 1,485.00		
Manilla envelopes..........	3.00		
Typing and checking envelopes....................	10.00		
	1,498.00		
Sales Tax.................	149.80		
Mailing....................	15.48		
Express Charges...........	5.67		
			1,668.95
CASH IN BANK...........			4,708.58
		$ 6,640.13	$6,640.13

A. C. DESBRISAY,
Treasurer.

Audited and found correct,

G. S. RUTHERFORD,
W. C. ALCOMBRACK,
Auditors.

APPENDIX C

(*See page 17*)

SECRETARY'S REPORT 1957

Proceedings

The Proceedings of the 1957 meeting were prepared, printed and distributed in accordance with the resolution passed at that meeting (1956 Proceedings, page 15). The Proceedings were also as usual published as part of the Year Book of the Canadian Bar Association.

In accordance with the report of the special committee respecting the publication of the Proceedings of the Conference (1956 Proceedings, page 138), copies of the 1956 Proceedings were not sent to members of the Council of the Canadian Bar Association since they receive a copy of the Proceedings in any event as an addendum to the Year Book of the Association. The result is that a substantially larger number of copies of the 1956 Proceedings are available for general distribution.

Secretarial Assistance

The cost of secretarial assistance during the past year was $50.00, as shown in the Treasurer's report. An additional sum of $50.00 was also paid for assistance in the printing, proofreading, and arrangement of the Proceedings. This was done in accordance with a decision of the Conference at the 1956 meeting (1956 Proceedings, page 33).

Sales Tax

An application for remission of sales tax, amounting to $149.80, paid in respect of the printing of the 1956 Proceedings was successful and the refund has been turned over to the Treasurer.

Table of Model Acts

Over twenty model Acts have been adopted as Ordinances of the Yukon Territory and a list of them has been included in the table appearing in the 1956 Proceedings.

Assignment of Book Debts Act

During the year, Mr. G. S. Rutherford, Q.C., called attention to a typographical error in subsection (5) of section 10 of the Uniform Assignment of Book Debts Act, as that subsection appears on page 125 of the Proceedings. In line 2 of that subsection, there appears the expression "the debt cause". In all the printings of the Act, excepting the last one, the expression used was "the debt or cause". Since the error is so obviously a typographical one, Mr. Rutherford and I felt that it was scarcely necessary to suggest a formal amendment to the Conference. The alternative was to draw the error to the attention of the Conference in the Secretary's report as is now being done and to have attention drawn to that notice by a reference in the Table of Uniform Acts.

HENRY F. MUGGAH,
Secretary.

APPENDIX D

(*See page 20*)

AMENDMENTS TO UNIFORM ACTS 1957

REPORT OF W. C. ALCOMBRACK

Assignment of Book Debts

Manitoba enacted the revised Uniform Act with the addition of certain provisions of a local nature. The only actual change from the Uniform Act was made in clause (*b*) of subsection (3) of section 7 and in section 9 where the expression "head (or registered) office" was made to read "head office or registered office".

Saskatchewan amended its Act which was the original Uniform Act and not the revised Act to provide for central registration in Regina. The references in the Act to uniformity were deleted as the Act is no longer uniform with the original or the revised Uniform Act.

Bills of Sale

Manitoba enacted the revised Uniform Act with the addition of certain provisions of a local nature. The definition of motor vehicle was set out in full rather than enacting it by reference to the Highway Traffic Act. As Manitoba does not have a Conditional Sales Act, the definition of sale was changed to include a detailed description of conditional sale contracts.

Saskatchewan repealed its Act which was the original Uniform Act and not the revised Act and enacted a new Act to provide for central registration in Regina. The new Act is not a Uniform Act although many provisions are similar to the revised Uniform Act.

Contributory Negligence

Saskatchewan amended its Act by adding the following sections:

9*a*. A tort feasor may recover contribution or indemnity from any other tort feasor who is, or would if sued have been, liable in respect of the damage to any person suffering damage as a result of a tort by settling with the person suffering such damage, and thereafter commencing or continuing action against such other tort feasor, and in such event the tort feasor who settled the damage shall

satisfy the court that the amount of the settlement was reasonable, and if the court finds that the amount of the settlement was excessive it may fix the amount at which the claim should have been settled.

9*b*. Where an action is commenced against a tort feasor or where a tort feasor settles with a person who has suffered damage as a result of a tort, within the period of limitation prescribed for the commencement of actions by any relevant statute, no proceedings for contribution or indemnity against another tort feasor shall be defeated by the operation of any statute limiting the time for the commencement of action against such tort feasor provided:

(*a*) such proceedings are commenced within one year of the date of the judgment in the action or the settlement, as the case may be; and

(*b*) there has been compliance with any statute requiring notice of claim against such tort feasor.

These sections are similar to sections 3 and 9 of The Negligence Act of Ontario.

Highway Traffic and Vehicles (Rules of the Road)

British Columbia adopted the Uniform Rules of the Road with certain changes, additions and omissions. For example, the British Columbia Act provides for a right turn during the exhibition of a red light, a provision which is not included in the Uniform Act. Certain portions of the Uniform Act dealing with street cars and motormen were omitted as they are not applicable in British Columbia. Certain other minor changes were made so as not to effect too great a change in some of the traffic regulations in force in British Columbia.

Attached to this report as an appendix is a comparison between the Uniform Rules of the Road as recommended by the Conference and as adopted in British Columbia, prepared by Mr. Gerald H. Cross, Legislative Counsel for British Columbia

Interpretation

Manitoba adopted the Uniform Act with the addition of certain provisions of a local nature. Subsection (2) of section 24 of the Uniform Act which was designed to continue references to new enactments of other jurisdictions was not included.

Partnership and Partnerships Registration

Saskatchewan amended its Partnership Act which is substantially the same as the Imperial Act to provide for central registration of partnerships and dissolutions of partnerships.

Perpetuities and Accumulations—re Pension Trusts

Saskatchewan inserted in its Queen's Bench Act the uniform section as it appears on page 17 of the 1955 Proceedings.

Reciprocal Enforcement of Judgments

Saskatchewan amended its Act which is the original Act and not the revised Act to make it apply to judgments obtained in a police magistrate's court in the Northwest Territories or the Yukon Territory if reciprocal arrangements are in force.

Reciprocal Enforcement of Maintenance Orders

Saskatchewan amended its Act by adding provisions dealing with the conversion of sums expressed in foreign currency to correspond with the revised Uniform Act.

Regulations

Alberta adopted the Uniform Act with slight modification.

Survivorship

Alberta, Manitoba and Ontario amended their respective Survivorship Acts by making reference to the newly enacted Accident and Insurance part of their respective Insurance Acts. The Insurance provision provides that "where a contract provides for the payment of moneys upon the death by accident of the person insured and the person insured and a beneficiary perish in the same disaster, it shall be *prima facie* presumed that the beneficiary died first". This rule constitutes an exception to the general rule of the Survivorship Act which is that where two or more persons die at the same time or in circumstances rendering it uncertain which of them survived the other or others, the younger shall be deemed to have survived the older.

Saskatchewan similarly amended its Commorientes Act.

Vital Statistics

Manitoba amended its Vital Statistics Act which is the Uniform Act with slight modification by restoring the uniform time limit of one year for registration of births, marriages and deaths.

W. C. ALCOMBRACK.

APPENDIX E

(*See page 20*)

JUDICIAL DECISIONS AFFECTING UNIFORM ACTS 1956

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 1956 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 1956 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

CONDITIONAL SALES

British Columbia Section 12

In *Frank Vernon Motors Ltd.* v. *Smith,* (1956) 3 D.L.R. (2d) 637, 18 W.W.R. 173, the plaintiff brought an action to recover the deficiency on the resale of an automobile that had been sold to the defendant and after seizure for non-payment of instalments had been sold under the provisions of the Conditional Sales Act, R.S.B.C. 1948, c. 64. The defendant contested liability solely on the ground that he had not received notice as required by section 12 of the Act, which provides that if the value of goods exceeds $30 and if the seller intends to look to the buyer for any deficiency on resale the seller must give notice to the buyer as required by subsection (4), paragraph (*c*) of which reads: "A demand that the amount as stated in the notice shall be paid on or before a day mentioned, not less than five days from delivery of the notice if it is personally delivered, or not less than seven days from mailing of the notice if sent by mail". Subsection (5) of section 12 states that "The notice may be given by personal delivery to the buyer or by mailing it by prepaid registered mail

addressed to the buyer at his last-known address". It was proved that the plaintiff had sent the notice correctly completed, by prepaid registered mail, and correctly addressed to the defendant, but that the letter was returned uncalled for. Counsel for the defendant argued that for notice to be validly given within the meaning of subsection (5) it must be received by the buyer. Mr. Justice Clyne, in the Supreme Court, held that the effect of reading paragraph (*c*) of subsection (4) together with subsection (5) is that notice is given when it is mailed by prepaid registered mail correctly addressed to the buyer at his last known address. The risk of actual delivery is thus borne by the buyer.

CONTRIBUTORY NEGLIGENCE

New Brunswick Section 2

Under subsection (1) of section 52 of the New Brunswick Motor Vehicle Act a gratuitous passenger has no cause of action against the owner or driver for injury, death or loss in case of an accident, unless the accident was caused by the gross negligence of the owner or driver. Section 2 of the Contributory Negligence Act, R.S.N.B. 1952, c. 36, reads:

> 2. Where no cause of action exists against the owner or driver of a motor vehicle by reason of subsection (1) of section 52 of *The Motor Vehicle Act*, as enacted by section 11 of Chapter 22 of 15 George VI, (1951), no damages or 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.

In *Farquarson and Haggerty* v. *Parker and Saint John Milling Co. Ltd.*, (1956) 4 D.L.R. (2d) 588, the Appeal Division of the Supreme Court of New Brunswick held that the effect of section 2 of the Contributory Evidence Act is that where a gratuitous passenger has no cause of action against his driver by virtue of subsection (1) of section 52 of the Motor Vehicle Act because of absence of gross negligence, the passenger is identified with his driver's negligence in an action by the passenger against the driver of another motor vehicle involved in the same accident. In the instant case, the defendant in his pleadings raised the issue of whether the plaintiff was a guest passenger of the vehicle in which he was riding when it collided with that of the defendant, but he failed to adduce evidence to establish the fact. Chief Justice McNair for the Court said at 4 D.L.R. (2d) 596:

> Section 2 of the Contributory Negligence Act was enacted to provide in accident cases involving a motor vehicle a measure of relief to persons guilty of negligence from the common law liability resting on them. In order to have the benefit of the section as affording such relief from a claim of a guest passenger in the car of another a defendant must, I feel, raise the issue and establish it at the trial.

The plaintiff was allowed damages to the full extent of his loss.

Nova Scotia Section 6

Section 6 of the Nova Scotia Contributory Negligence Act reads:

> 6. Where the damages are occasioned by the fault of more than one party, the court has power to direct that the plaintiff shall bear some portion of the costs if the circumstances render this just. (R.S.N.S. 1954, c. 51, s. 6.)

In *Mossman* v. *Gidney,* (1956) 38 M.P.R. 206, Mr. Justice Vincent McDonald said that he had observed the following pattern for awarding costs in the decisions of the courts of Manitoba and Ontario where provisions almost identical with section 6 of the Nova Scotia Contributory Negligence Act have been contained in similar statutes for many years:

1. Where there are no special circumstances, the party succeeding to any degree is prima facie entitled to his full costs.
2. Where there is a counter-claim and fault on both sides there should be judgment for the plaintiff in the appropriate amount of damages and for costs of the action and likewise for the defendant in respect of the counter-claim.
3. The discretion as to costs still remains but is now to be exercised against the plaintiff, and is, of course, to be exercised judicially.
4. The plaintiff may now be required to bear some portion of the costs "if the circumstances render this just"; presumably this applies where there is a counter-claim. These circumstances do not include the relative degree of negligence nor the amount of damages suffered by the parties.
5. The circumstances which will justify the exercise of a judge's discretion to deprive a successful party of costs must be found in conduct connected with the litigation as exemplified in the cases constituting good cause for depriving successful parties of costs.

FRUSTRATED CONTRACTS

Manitoba Section 3

In *Kiernicki* v. *Jaworski,* (1956) 3 D.L.R. (2d) 241, the facts were that a written contract for the sale of a hotel under which time was of the essence prescribed as a condition that the purchaser should be granted the necessary hotel and beer vendor's licences by the Government, "it being understood that the aforesaid licence conditions shall be cleared not later than June 10, 1955, and thereafter the offer shall no longer be conditional". The Government licensing authority was unable to deal with the application before June 10, but scheduled a hearing for July 7. The purchaser then asked for a return of the deposit paid by him on the contract. (The licencing authority refused the licence at the hearing on July 7.) In an action by the purchaser for the return of the deposit, a majority of the Manitoba Court of Appeal held that the non-fulfilment of the condition was not the plaintiff's fault and that he was entitled to recover the deposit despite the absence of any express provision in the contract for its return since the contract had been discharged by "frustration" within the meaning of that term as used in subsection (1) of section 3 of the Frustrated Contracts Act. Time being of the essence of the contract, failure to secure the licences that were express conditions before June 10, 1955, amounted to frustration. Coyne J.A. said at 3 D.L.R. (2d), pp. 258-9:

> Manitoba, in 1949, enacted, c. 21, "An Act respecting Certain Contracts that have become Impossible of Performance or have been Otherwise Frustrated". It may be cited as the Frustrated Contracts Act. In England in 1943, a somewhat similar Act had been passed under the title the Law Reform (Frustrated Contracts) Act, 6-7 Geo. VI, c. 40, "An Act to amend the law relating to the frustration of contracts". The Manitoba Act, now R.S.M. 1954, c. 93, provides in s. 2 (*c*) and s. 4 (1):
>
> 2. (*c*) "Discharged" means relieved from further performance of the contract.
>
> . . . . .
>
> 4. (1) The sums paid or payable to party in pursuance of a contract before the parties were discharged,
>
> (*a*) in the case of sums paid, are recoverable from him as money received by him for the use of the party by whom the sums were paid; and
>
> (*b*) in the case of sums payable, cease to be payable.
>
> Section 3 (1) reads: "This Act applies to any contract governed by the law of Manitoba . . . that . . . has become impossible of performance or been otherwise frustrated and the parties to which for that reason have been discharged."

See also s. 4 (6).

As has been held, "frustrate" and its derivations are not words of art. The Standard Dictionary gives to the verb "to frustrate" the meaning "to bring to naught; defeat; to render null and void; make invalid, as a deed or conveyance". The Shorter Oxford English Dictionary and Webster are similar. . . .

In the *Fibrosa* case all the Lords made speeches and agreed that the implied condition is equivalent to an express term and that the legal results are the same.

They also held that if and when a condition, to which a contract is subject, becomes impossible of fulfilment, the contract is frustrated and comes to an end at that moment; that this happens automatically, irrespective of whether or not the parties know of the happening of the frustrating event at the time or what their intentions, opinions or desires are then or later; and that when a purchase contract comes to such an end, any part of the purchase-price which has been paid, becomes, as a matter of law, unless specifically negatived in the contract, money had and received by the payee to the use of the payer and is immediately and automatically recoverable by the payer from the payee. That is also law in Manitoba under the Frustrated Contracts Act, R.S.M. 1954, c. 93.

RECIPROCAL ENFORCEMENT OF JUDGMENTS

Alberta Section 4

In *Cavanagh* v. *Lisogar*, (1956) 19 W.W.R. 230, where the judgment debtor sought to have the registration of an Ontario judgment set aside, part of the judgment was for costs. It was held that the debt or obligation embodied in a foreign judgment may be either exclusively or in part in costs, and the test for registration in either situation is whether the judgment was final. It is final if it is not subject to modification by the foreign court which rendered it.

SALE OF GOODS

Manitoba Section 16

Section 16 of the Manitoba Sale of Goods Act, R.S.M. 1954, c. 233, reads as follows:

16. 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 is the manufacturer or not), there is an implied condition that the goods shall be reasonably fit for the purpose: Provided that in the case of a contract for the sale of a specified article

under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose.

In *Johnson* v. *Lambert,* (1956) 17 W.W.R. (N.S.) 545, a second-hand tractor was sold to be used in carrying out a contract for bush work which the seller had arranged for the buyer with a third party named Proposky. The tractor was found to be not capable of doing that type of work. In an action by the buyer for return of the purchase price and damages the Manitoba Court of Appeal reversed the trial judge who had dismissed the action on the ground that the evidence established that the tractor was in good condition having regard to its age and the use which had been made of it. Mr. Justice Schultz for the Court said:

> The defendant gave assurances to both the plaintiff and Proposky that the tractor would be able to do the work in the bush required under the contract. The defendant admitted that the plaintiff relied on his experience, skill and judgment, and he admitted he was in the business of selling tractors. The question that arises is whether or not the proviso: "Provided that in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose," takes this particular sale out of the statute. Holding, as I do, that there was a collateral agreement between the parties clearly proving that the tractor was purchased on the definite understanding, which was a part of the agreement, that the tractor would be capable of doing the work required under the Proposky contract, I do not think it is necessary for the plaintiff to rely on The Sale of Goods Act. However, I am of the opinion that under the circumstances of this particular case, where the plaintiff admittedly relied on the experience and judgment of the defendant and where he bought the tractor for the purpose of performing a specific contract, and where the purchase-price was in effect to be paid out of the profits of such contract arranged for the plaintiff by the defendant, the proviso would not apply. It is obvious the plaintiff was not considering the purchase of a particular make or type of tractor; he knew nothing about tractors; he was relying on the defendant to sell him a tractor for "a particular purpose". The vitally important factor in this case is the point that the tractor must be capable of performing the work required under the Proposky contract and under the weather, terrain and repair conditions necessitated by that contract. It is not a sufficient defence for the defendant to say the tractor was suitable in a general way for bush work or, with all respect, for the trial judge to find it was in fit condition "having regard to the age and use which had been made of it", or, as stated elsewhere in his judgment, "its condition must be related to the price asked and paid". The Proposky contract had to be performed during the winter work season; time was the important factor to Proposky, so important that he offered a bonus if the work could be completed within the work season. As far as the plaintiff was concerned a tractor which was not capable of doing the work required under these circumstances—circumstances well known to the defendant—was of no use to him. The finding of the learned trial judge adds

words of qualification to the clear and unmistakable language of the section quoted, supra, from The Sale of Goods Act, and for that matter to the collateral agreement between the parties. The section of The Sale of Goods Act makes it clear that the goods sold must be "reasonably fit for the purpose". There are no words of qualification that can be added such as "having regard to the age and use which had been made of it" or "having regard to 'the price asked and paid'."

Where the tractor was purchased with a particular contract in mind, and where the defendant well knew in selling this particular tractor it would be required to perform this work contract, the price or age of the tractor is not the point in issue; the only point in issue is whether the tractor was "reasonably fit for the purpose". The actual fact is that it never performed a single day's or an hour's work under the contract. With respect to the opinion of the learned trial judge I do not think his finding in regard to the condition of the tractor defeats the claim of the plaintiff. It is my opinion that the defendant must be held liable to carry out his undertaking expressed in the collateral agreement with the plaintiff and clearly implied under sec. 16 (*a*) of The Sale of Goods Act.

Ontario Sections 1 and 28

In *Marshall and Van Allen* v. *Crown Assets Disposal Corporation*, (1956) 5 D.L.R. (2d) 572, the Ontario Court of Appeal was concerned with the meaning of "delivery" as used in the following provisions of the Sale of Goods Act:

By s. 1 (1) (*d*) of the Act, " 'delivery' means voluntary transfer of possession from one person to another", and s. 28 (3) provides that: "Where the goods at the time of sale are in the possession of a third person, there is no delivery by the seller to the buyer unless and until such third person acknowledges to the buyer that he holds the goods in his behalf; provided that nothing in this section shall affect the operation of the issue or transfer of any document of title to goods."

Goods that were subject of an agreement of sale by the respondent (buyer) to the appellant (seller) were at the time of making the agreement in possession of a third person as custodian for the seller. The seller gave a delivery order for the goods to the buyer addressed to the third person who refused to accept or recognize it. The Court held that to be within the meaning of "delivery" there must either be an actual transfer of physical possession of the goods or a constructive delivery, and that the latter does not occur until the third person accepts or recognizes the order, since a delivery order does not as such operate to make the third person a bailee or agent of the buyer. Until there is either actual transfer of possession or an acceptance or recognition of the order by the third person, he continues to have possession as bailee of the seller.

SURVIVORSHIP

Ontario Act Section 1

Subsection (1) of section 1 of The Survivorship Act, R.S.O. 1950, c. 382, reads:

> 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.

In what appears to be a leading case in Canada, the Ontario Court of Appeal in *Adare* v. *Fairplay,* (1956) 2 D.L.R. (2d) 67, upheld Mr. Justice Barlow, who at the trial had held that where a husband and wife had died in a common disaster, the onus was on the person alleging that the husband, who was the younger, had died before the wife, but onus of removing "uncertainty" so as to take the case out of the Act could be satisfied by a preponderance of evidence as in civil cases, it being therefore unnecessary to prove the fact beyond a reasonable doubt.

In the absence of Ontario precedent, Mr. Justice Roach relied upon the judicial opinions expressed in the House of Lords in *Hickman* v. *Peacey,* [1945] A.C. 304, when considering the effect of the use of "uncertain" in the comparable English legislation. He said:

> It must be concluded that the totality of judicial opinion expressed by their Lordships supports the view that the instant case being a civil case, the standard of proof in civil cases and not that in criminal cases applies.
>
> In *Smith* v. *Smith & Smedman,* [1952] 3 D.L.R. 449 at p. 462, 2 S.C.R. 312 at p. 331, Rand J. says, dealing with the standard of proof: "There is not, in civil cases, as in criminal prosecutions, a precise formula of such a standard; proof 'beyond a reasonable doubt', itself, in fact, an admonition and warning of the serious nature of the proceeding which society is undertaking, has no prescribed civil counterpart." And Cartwright J. at p. 463 D.L.R., p. 331 S.C.R., says: "It is usual to say that civil cases may be proved by a preponderance of evidence or that a finding in such cases may be made upon the basis of a preponderance of probability and I do not propose to attempt a more precise statement of the rule."

TESTATORS FAMILY MAINTENANCE

Although only Alberta and Manitoba have enacted the Uniform Testators Family Maintenance Act as such, there are sub-

stantially similar Acts now in force in British Columbia, Nova Scotia, Ontario and Saskatchewan. The law reports for 1956 contain their quota of cases adding to the accumulation of judicial experience in applying this type of legislation. In the case of *In re Smith Estate; Wetzel* v. *National Trust Company,* (1956) 18 W.W.R. 556, 4 D.L.R. (2d) 171, the Saskatchewan Court of Appeal, Mr. Justice Cullitone for the majority, held that the Act creates no vested right for any dependant. He said:

> It was argued that the reasoning of O'Halloran, J.A., in *Barker* v. *Westminster Trust Co.* [1941] 3 W.W.R. 473, 614, 57 B.C.R. 21, should be accepted. This was a case under the Testator's Family Maintenance Act, R.S.B.C. 1936, ch. 285. In considering the right of a dependant under that Act, O'Halloran, J.A., at p. 476, said:
>
> "We are concerned with an equitable right vested by statute."
>
> While the right conferred on a dependant under the British Columbia legislation may be so construed, with respect, such is not the case under the Saskatchewan Act. The Saskatchewan Act creates no vested right for any dependant; it merely gives to a dependant the right to apply for maintenance where reasonable provision for such maintenance has not been made. The judgments in *Barker* v. *Westminster Trust Co., supra,* were carefully considered and analyzed by Shaunessy, C.C.J., in *In Re Kerby Estate,* [1949] O.W.N. 187. With deference I agree with his reasoning.

Other cases of particular interest are the following in which the courts have determined whether testators have made adequate provision in their wills and whether particular persons qualified as dependants: *Re Reinsch Estate; Reinsch* v. *Crown Trust Co.,* (1956) 19 W.W.R. 63 (Manitoba); *Re Finnimore Estate,* (1956) 17 W.W.R. 668, 1 D.L.R. (2d) 775 (Saskatchewan); and *Re Urquhart,* (1956) 20 W.W.R. 177, 5 D.L.R. (2d) 235 (British Columbia).

APPENDIX F

(*See page 21*)

BILLS OF SALE ACT
CONDITIONAL SALES ACT

At the 1956 meeting, the following resolution was passed in connection with the report on judicial decisions affecting Uniform Acts:

> "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".

The report deals with three cases.

Bills of Sale Act

Rennies Car Sales & Hicks v. *Union Acceptance Corp.* (1955) 4 D.L.R. 822 (Alta. A.C.)

In 1953 a car was mortgaged in Ontario. The mortgage was not validly registered there. The mortgagor took the car to Alberta and sold it to the first plaintiff who resold it to the second plaintiff in 1954. The mortgagee later learned of the removal of the car to Alberta and registered his mortgage in Alberta. Alberta's section 3 is essentially the same as Uniform 4 (1) and (2) and section 13 the same as Uniform 12, though the wording is not identical. The buyers' main argument was based on Uniform 4 (2) and secondly on the fact that the mortgage was not validly registered in Ontario. *Held* section 4(2) does not apply to section 12, but only to section 4. Since the mortgagee complied with section 12 his mortgage is good.

Conditional Sales Act

Klimove v. *G.M.A.C.* (1955) 2 D.L.R. 215 (Alta. A.C.)

G.M.A.C. sold a car to Danchuk under a Conditional Sale Agreement. The Alberta equivalent of Uniform section 3 requires registration in case of a motor vehicle in the central registry within twenty-one days.

Danchuk sold immediately to Klimove before G.M.A.C. registered the agreement, but G.M.A.C. did register it within the twenty-one days. *Held,* since G.M.A.C. complied with the Act it is protected against the subsequent purchaser.

McAloney v. *McInnis & G.M.A.C.* 2 D.L.R. (2d) 666 (N.S.).

G.M.A.C. in British Columbia sold a car under a conditional sale agreement to one Anderson. The agreement was not registered in British Columbia within the statutory thirty days. Anderson brought the car to Nova Scotia and there sold to McInnis who sold to plaintiff. Later G.M.A.C. learned what had happened and registered the agreement in Nova Scotia under a section which is not as detailed in setting out the vendor's rights as Uniform section 6, but which simply provides for the case where the chattel is outside the province when the agreement is made, and requires registration within twenty days from the time of bringing into the province.

Doull J. *held* that registration in Nova Scotia within the statutory period preserved the original vendor's rights against the innocent purchaser. Failure to register in British Columbia in the first instance is irrelevant.

We shall now state the questions that arise directly or by analogy.

Uniform Bills of Sale Act

Who prevails as between mortgagee and subsequent purchaser in good faith in the following cases:

(a) *Where the mortgagor sells before the mortgage is registered, but where the mortgagee subsequently registers under section 4 within the statutory period?*

The subsequent purchaser prevails. This is so because of section 4(2). Were that subsection omitted it seems clear that the mortgage would be good. Section 4(2) was in the 1928 Uniform Act, and has been in Alberta's Act since the N.W.T. ordinance of 1895. It is anomalous. Section 4(1) gives the mortgagee thirty days to register, but section 4(2) takes away this protection. If the mortgagor sells one day after execution then registration by the mortgagee two days after execution avails him nothing. In *Rennie* the court agreed that section 4(2) has the effect we attribute to it, though section 4(2) was held not to apply to that case which was governed, by section 12. When the Uniform Act was adopted in 1928, Dean Falconbridge's report for the Ontario Commissioners said:

> It will be observed that whereas in Ontario the Bills of Sale and Chattel Mortgage Act adopts the principle that the bill of sale takes effect from the day of its execution, provided it is registered within the short period allowed by the Act, the proposed uniform Bills of Sale Act

adopts the principle that in certain circumstances the bill of sale takes effect only from the time of its registration, provided it is registered within the period of time prescribed by the Act, this period of time being, however, considerably longer than that allowed by the Ontario Act.

In our opinion the conference might seriously consider the deletion of section 4(2). It has generally been the policy of these Acts to preserve the mortgagee's common law rights at least until the end of the registration period. If repeal is considered unfair to subsequent purchasers then the registration period could be shortened.

(b) *Where the mortgagor sells during the statutory period as in (a), but where the mortgagee does not register within that period?*

It is obvious that the subsequent purchaser prevails here, for he prevailed even under (a), where the mortgage was registered. If section 4(2) were removed, we think he would still prevail for he is by definition a subsequent purchaser and section 4(1) says the mortgage is void against him unless registered. It is true that in some cases "subsequent purchaser" has been construed to mean one who buys *after* the period of registration and does not include one who buys before; in other words that the mortgagee is absolutely protected during the statutory period whether he registers or not. (*Reick* v. *Neeb* 1948, 3 D.L.R. 711 (Ont. A.C.).) Such cases do not apply under the Uniform Act because of the definition of "subsequent purchaser".

(c) *Where the mortgage is made in one district and subsequently moved to a second district and a mortgagor sells there within the statutory period and where the mortgagee subsequently registers in the second district within the statutory period, under Uniform section 11?*

None of the 1955 cases deals with this point. However, on the wording of section 11 the mortgagee is protected. Section 11 is analogous to section 12 and the decisions are clear on section 12. True the buyer has no way of protecting himself. He usually buys before the mortgagee knows of the removal and thus before the mortgage could possibly be registered in the second district. We see no reason for amending the Act. It would be possible to make registration depend on time of removal, rather than on notice of removal (as Ontario does), but this would be unfair to the mortgagee; of course, a central registry obviates the whole problem.

Quaere—What is the result where the mortgage was not regis-

tered under section 4 in the first district? Is this fatal to the mortgagee even though he complies with section 11? This requires a reading of sections 4 and 11 together. Probably failure to register under section 4 is fatal to the mortgagee though we have no firm opinion.

(d) *Where the facts are the same as in (c) save that the mortgagee does not register in the second district within the statutory period under section 11?*

On the wording of section 11 it seems that the mortgagee is not protected unless he registers in the district to which the goods are moved within the prescribed time. There are, however, cases dealing with a section providing as follows: in the event of removal, the mortgage shall be filed in the second district within one month of removal; otherwise the mortgage shall be void as against subsequent purchasers. (e.g. Ontario and Old N.W.T.). The cases construing sections so worded have held that the mortgagee's rights cannot be adversely affected during the month, and he is protected even though he fails to re-register. In other words a subsequent purchaser is one who buys after the month and not one who buys during the month (*Hulbert* v. *Peterson* 36 S.C.R 324 (N.W.T.).) This reasoning cannot apply to section 11, for subsequent purchaser is defined to include everyone who buys after the mortgage is given. The clear inference is that the mortgagee loses his rights if he fails to register under section 11.

(e) *Where the mortgagor moves the mortgaged goods from province A to province B and sells in province B before the mortgage is registered there, but where the mortgagee does subsequently register in province B within the statutory period under province B's section 12?*

Section 12 seems clearly to permit the mortgagee to assert his mortgage against the subsequent purchaser in province B. *Rennie* so holds and it seems clearly correct. It specifically holds that section 4(2) has no application to section 12. It is quite true that the subsequent purchaser has no way of protecting himself where he buys before registration in province B, but we see no reason why the loss should fall on the mortgagee. If thirty days seems too long the period could be shortened, but it would not be fair to make the time for registering run from the date of removal instead of from notice of removal.

(f) *Where the facts are the same as in (e), but where the mortgagee does not register in province B within its statutory period under section 12?*

In this case the subsequent purchaser prevails. In *Rennie* the court said, "the mortgagee . . . *having registered its mortgage within the time set out in section 12* is entitled to the priority of his mortgage even against those who acquired title before the mortgage was registered". The inference is that the mortgagee preserves his rights by registering in province B and that he loses them if he fails to register. The purchaser who buys before the time for registration has expired is a subsequent purchaser within the definition and so within the protection of the Act.

(g) *Where the facts are the same as in (e), but where it appears that province A has a section like the Uniform section 4 requiring registration within a specific period, but where the mortgagee failed to register there. Is this fatal to the mortgagee's rights in province B even though he has registered his mortgage pursuant to province B's section 12, i.e., which law governs?*

Rennie deals with this question and holds that want of registration in province A is immaterial. The mortgagee prevails against the purchaser in province B if he complies with province B's section 12 even though he did not comply with the law of province A. This seems sound, though there has been a difference of opinion in connection with the analogous situation under The Conditional Sales Act, discussed below.

Uniform Conditional Sales Act

Who prevails as between the vendor under a conditional sales agreement and a subsequent purchaser in good faith in the following cases:

(a) *Where the buyer resells to a purchaser in good faith before the conditional sale agreement is registered, but where the agreement is subsequently registered pursuant to Uniform sections 3 and 4 (1) and (2)?*

In this case the original vendor prevails. The Alberta provision considered in the *Klimove* case is essentially the same as the provision in the Uniform Act. The court there held that the vendor who registers within the statutory period prevails over the buyer who bought before registration. The buyer searched and of course found nothing. *Klimove* seems perfectly sound. True the result is hard on the subsequent purchaser, but at least he can wait till after the statutory period has expired and then search and if nothing is filed he is protected. If the thirty days period provided in section 4(2) seems too long it can be shortened.

(b) *Where the buyer resells during the statutory period as in (a) but where the original vendor does not register within the statutory period?*

In this case the buyer is protected. Under the Uniform Act he is included in the definition of "subsequent purchaser". Mention might be made of *I.A.C.* v. *Munro,* (1950, 1 D.L.R. 817, aff'd 1950, 3 D.L.R. 80 (Ont. C.A.)). There the innocent purchaser bought two days after the conditional sale agreement was made. It was not registered in the proper district within ten days as required. Ontario's main provision is similar to Uniform sections 3 and 4, but the Act does not define "subsequent purchaser". It was held that subsequent purchaser means what it does in the Uniform Act. The innocent buyer who bought within the ten days prevails. It is hard to tell from the judgment what the court would have done had the vendor registered after the resale, but within the ten days. From the Act, it seems the vendor would thereby preserve his rights, though the court does seem to think it is harsh to hold against a purchaser where a search will disclose nothing.

(c) *Where the conditional sale is made in one district, but where the buyer resells in a second district before the time for registration in the second district under section 4(5) has expired, but where the original vendor subsequently registers in the second district pursuant to section 4(5)?*

The wording of section 4(5) is particularly clear—the agreement "ceases to be valid" as against a subsequent purchaser if it is not registered within the required period. The obvious inference is that it is valid if registered.

Quaere—What is the result where the conditional sale agreement was not registered within the statutory period in the first district? Is this fatal to the original vendor even though he registers in the second district under section 4(5)? The position is similar to that under The Bills of Sale Act. Looking at the basic sections (sections 3 and 4) they seem to make the agreement void if not registered in the first instance, so that registration in the district to which the goods are moved would have no curative effect.

(d) *Where the facts are the same as in (c), but where the original vendor does not register in the second district pursuant to section 4(5)?*

It seems clear that the vendor loses his rights by failing to register. True, *Hulbert* v. *Peterson* in dealing with the analogous

section in The Bills of Sale Ordinance said that a buyer who buys during the period is not a subsequent purchaser at all, but this cannot apply here in view of the definition of "subsequent purchaser".

(e) *Where the conditional sale agreement was executed in province A and the buyer moves the goods to province B and resells them before the original vendor registers his agreement in province B but where the original vendor subsequently so registers pursuant to section 6?*

The Act appears to preserve the vendor's rights and the *McAloney* case so holds. We think the provision is fair as it stands, though once again the innocent purchaser suffers; he nearly always buys before the vendor knows of the removal to province B and cannot protect himself.

(f) *Where the facts are the same as in (e), but where the original vendor does not register in province B pursuant to section 6?*

Here the vendor loses his rights. The *McAloney* case says: "The provision of (The Nova Scotia Act) having been complied with, the vendor or his assigns . . . are entitled to enforce their rights". The inference is that non-compliance would change the result.

(g) *Where the facts are the same as in (e), but where it appears that province A has an Act invalidating a conditional sale agreement as against subsequent purchasers unless the Act is complied with, and it appears in proceedings in province B that the Act of province A was not complied with. Is this fatal to the original vendor's rights in province B even though he registers his agreement pursuant to province B's section 6?*

In both the *Rennie* and *McAloney* cases the mortgage and conditional sale agreement were made under the law of province A and the car brought into province B and resold there. The original mortgagee and vendor complied with province B's law after learning of the removal, but had never registered the mortgage and conditional sale agreement pursuant to A's law in the first instance. In both cases the court held that non-compliance with A's law could not avail the innocent purchaser in B. The law of B applies and the original vendor complied with that law. A case to the contrary is *Hannah* v. *Pearlman,* 1954, 1 D.L.R. 282. There the car was sold under conditional sale agreement in Manitoba. Manitoba law requires the vendor's name to be on the article. It was not. The buyer took the car to British Columbia and sold it there. When the original vendor learned of the

removal he registered the agreement in accordance with B.C.'s provision for registration where goods are brought into the province. He then seized the car in B.C. Wilson J. held that if B.C.'s law alone governed, the vendor would win; but that a British Columbia court must refer to the Manitoba law, and under that law the vendor lost his right to assert ownership against the innocent purchaser. Hence the seizure was invalid. J. S. Ziegel criticizes the judgment while Professor Kennedy upholds it (32 Can. Bar Rev. 900, 1174). The former says that the question is one of property, not contract and that therefore the law of the situs (British Columbia) applies and under that law the original vendor prevails because he registered the agreement there. Besides the Manitoba Act should not be deemed to apply to extra-provincial transactions. It is hard to summarize Professor Kennedy's views in a few words but he would give to Manitoba law a greater effect than would Mr. Ziegel. The vendor's disability created by Manitoba law by failing to affix the name should extend to British Columbia.

Without attempting to judge between the two views, it can be said that the current of Canadian cases including *Rennie* and *McAloney* support Mr. Ziegel's view, as he pointed out in commenting on *Rennie* (34 Can. Bar Rev. 423).

Recommendation

We recommend: That the Conference consider the advisability of repealing section 4(2) of The Uniform Bills of Sale Act. It is inconsistent with the other provisions of the same Act (viz., those dealing with removal from one district to another and with removal into the province) and also with the provisions of the Conditional Sales Act. We consider that the Acts are in *pari materia* and see no basis for making the main provision of The Bills of Sale Act more favourable to the subsequent purchaser than are all the other provisions of both Acts. It is true that both Acts fail to give the purchaser absolute protection, but this could only be done at the expense of the mortgagee or original vendor who is innocent throughout.

The Acts could be amended to shorten the time for registration in all cases though in the case of removal from district to district or province to province this would help the purchaser but little, for he normally buys before the mortgagee or original vendor knows of the sale. We do not recommend that time for registration run from removal rather than from notice of removal.

The one way to protect the innocent purchaser without unfairness to the mortgagee or original vendor would be to enact a statute providing for the registration of title to cars and similar chattels. This is, however, outside our terms of reference.

H. J. WILSON, Q.C.,
W. F. BOWKER, Q.C.,
J. W. RYAN,
Alberta Commissioners.

SCHEDULE I

UNIFORM BILLS OF SALE ACT

Sec. 2.

(*m*) "subsequent purchaser or mortgagee" means a person to whom chattels are conveyed or mortgaged,

(i) after the making of the sale or mortgage mentioned in section 4, or

(ii) after the making of the mortgage mentioned in section 10, 11, or 12.

Sec. 4.

(1) Unless it is evidenced by a bill of sale registered under this Act, a sale or mortgage that is not accompanied by an immediate delivery and an actual and continued change of possession of the chattels sold or mortgaged is void as against a creditor and as against a subsequent purchaser or mortgagee who claims from or under the grantor in good faith, for valuable consideration, and without notice, and whose conveyance or mortgage has been registered or is valid without registration.

(2) The sale or mortgage as against a creditor and such a subsequent purchaser or mortgagee takes effect only from the time of its registration.

Sec. 8.

(1) (Specifies time for registering).

Sec. 11.

Where a registered bill of sale evidences a mortgage of chattels and chattels mortgaged thereby are permanently removed into a registration district other than that in which they were situated at the time of its execution, the bill of sale, in respect of the chattels so removed, ceases to be valid as against a creditor and as against a subsequent purchaser or mortgagee claiming from or under the grantor in good faith for valuable consideration without notice whose conveyance or mortgage has been registered or is valid without registration, unless the bill of sale, within thirty days after the grantee has received notice of the place to which the chattels have been removed, is registered in the office of the proper officer of the registration district into which the chattels have been re-

moved by registering therein a copy of the bill of sale and of the documents accompanying or relating to it or filed on the registration or renewal thereof, certified as copies by the proper officer in whose office the bill of sale was registered or was last renewed.

Sec. 12.

(1) Where chattels that are the subject of a mortgage that was executed when they were situated outside the Province are brought into the Province, the grantee is not entitled to set up any right of property or right of possession in or to the chattels so brought in as against a creditor or a subsequent purchaser or mortgagee claiming from or under the grantor in good faith for valuable consideration without notice unless the bill of sale, within thirty days after the grantee has received notice of the place to which the chattels have been brought, is registered in the office of the proper officer of the registration district into which the chattels have been brought by registering therein a copy of the bill of sale and of the documents accompanying or relating to it, verified as copies by the affidavit of a person who has compared them with the originals.

(2) Where the subject of the bill of sale is a motor vehicle the copies of the bill and other documents shall be registered in the office of the.............in (name of capital city).

SCHEDULE II

UNIFORM CONDITIONAL SALES ACT

Sec. 2.

(*m*) "subsequent purchaser" means a person who acquires an interest in goods after the making of a conditional sale thereof.

Sec. 3.

Where possession of goods has been delivered to a buyer under a conditional sale, unless the conditional sale is evidenced and is registered in accordance with, and within the times limited in, section 4, every provision contained therein whereby the property in the goods remains in the seller is void as against a creditor, and as against a subsequent purchaser or mortgagee claiming from or under the buyer in good faith, for a valuable consideration, and without notice; and the buyer shall, notwithstanding such a provision, be deemed as against the seller to be the owner of the goods.

Sec. 4.

(1) A conditional sale of goods shall be evidenced by a writing, executed by the buyer or his agent prior to, or at the time of, or within ten days after, delivery of the goods, giving a description of the goods by which they may readily and easily be known and distinguished, and stating the amount of the purchase price remaining unpaid and the terms and conditions of payment thereof or the terms and conditions of the hiring, as the case may be.

(2) The writing or a copy thereof shall be registered, within thirty days from the date of its execution, in the registration district in which the buyer resided at the time of the making of the conditional sale, or, where his residence is outside the province, in the registration district in which the goods are delivered.

(5) Where the buyer permanently removes any of the goods into a registration district other than that in which they were situated, at the time of the execution of the writing, the conditional sale, in respect of the goods so removed, ceases to be valid as against a creditor, and as against a subsequent purchaser or mortgagee claiming from or under the buyer in good faith, for valuable consideration, and without notice, whose conveyance or mortgage has been registered or is valid without registration, unless the writing, within thirty days after the seller has received notice of the place to which the goods have been removed, is registered in the office of the proper officer of the registration district into which the goods have been removed by registering therein a copy of the writing and of the documents accompanying it or relating to it or filed on the registration or renewal thereof, certified as copies by the proper officer in whose office the writing was registered or was last renewed.

Sec. 6.

(1) Where goods are brought into the province and are subject to an agreement made or executed outside the province that provides that the right of property therein or the right of possession thereof, in whole or in part, remains in the seller notwithstanding that the actual possession of the goods passes to the buyer, then unless,

(*a*) the agreement contains such a description of the goods that they may readily and easily be known and distinguished; and

(*b*) a copy of the agreement is registered, within thirty days after the seller has received notice of the place to which the goods have been brought, in the registration district into which the goods are brought,

the seller is not entitled to set up any right of property in or right of possession of the goods as against a creditor or as against a subsequent purchaser claiming from or under the buyer in good faith for valuable consideration without notice and the buyer shall notwithstanding such agreement be deemed as against any such seller to be the owner of the goods.

(2) Where the subject of the agreement is a motor vehicle, a copy of the agreement shall be registered in the office of the...... .... in (name of capital city).

Sec. 7.

Where a contract has been made outside the province with reference to goods not then in the province, by which, under the law governing the contract, the seller has, upon default in payment of the price or the insolvency of the buyer, a right of revendication, or a preference for the price of the goods sold, or a right to a dis-

solution of the sale and to resume possession of the goods notwithstanding the possession of the buyer, and the goods are brought into the province, the seller, except in the case of an agreement that complies with section 6 and is registered as thereby required, is not entitled to set up the right of revendication, the preference for the price, or the right to a dissolution of the sale and to resume possession of the goods, as against a creditor or as against a subsequent purchaser claiming from or under the buyer in good faith for valuable consideration without notice and the buyer shall notwithstanding such contract be deemed as against any such seller to be the owner of the goods.

APPENDIX G

(*See page 21*)

THE CONDITIONAL SALES ACT

Clause 12(3) of the Uniform Conditional Sales Act which was adopted in 1955 reads:

> (3) Where the goods are not redeemed within the period of twenty days and the seller intends to look to the buyer or guarantor of the buyer for any deficiency on a resale, the seller may sell the goods by public auction at any time after the expiration of that period and after notice in writing of the intention to sell has been given to the buyer and to the guarantor.

Prior to 1955, Newfoundland had no Conditional Sales Act, but in 1955 the uniform draft which had been prepared was passed by the House of Assembly in the form in which it then was. Section 12(3) in the Newfoundland Act is the same as Clause 12(3) of the Uniform Act which the Conference has approved.

We have received two suggestions from solicitors who represent conditional sale vendors and I should like to place those suggestions before the Conference for consideration.

The first suggestion is that the seller should be allowed to sell goods by private sale as well as by public auction, even though he intends to look to the buyer or the guarantor of the buyer for any deficiency on a resale. Some sellers in Newfoundland have found that when they sell repossessed goods at public auctions they realize much less than the actual re-sale value of the goods. The simple explanation is that people at auctions are looking for bargains. The result then is that the original buyer has to pay a greater deficiency than he might otherwise have had to pay. The sellers who have made representations to us contend that the buyers would be better off if the sellers had more freedom in selling repossessed goods because they feel that they could watch the markets and set a more realistic price for the goods.

The second suggestion, which stems from the experiences I have referred to, is that where repossessed goods are being sold at public auction the seller should be allowed to bid if he has given notice of his intention to all concerned. Dealers submit that by this means they might be able to prevent the sale of items at sacrifice prices.

A minor question has arisen where the seller assigns his interest in goods which are the subject of a conditional sale. The Act does not specifically provide for the registration of such an assignment. An assignee of a seller may register a renewal statement. It seems to me that there might be provision for registration of a notice of assignment so that the register would be complete.

Similarly, a purchaser may, with the consent of the seller, assign his interest in goods which he has bought under a conditional sale. It seems that it should be possible to provide for registration of such an assignment.

Dated at St. John's the 19th day of August, 1957,

P. LLOYD SOPER,
for the Newfoundland Commissioners.

APPENDIX H

(*See page 23*)

UNIFORM TESTATOR'S FAMILY MAINTENANCE ACT

REPORT OF THE ONTARIO COMMISSIONERS

In 1945 the Conference adopted the Uniform Testator's Family Maintenance Act and recommended it for enactment (1945 Proceedings, page 112). The purpose of this Act is to enable a dependant of a deceased person who has been cut off or inadequately provided for by the deceased's will to apply to the court for an order for his or her proper maintenance and support out of the estate of the deceased. Putting it the other way round, the purpose of the Act is to circumvent testators disposing of their estates in disregard of their moral obligation to provide adequately for their dependants. In some jurisdictions the comparable statute is known as The Dependant's Relief Act.

In the following year, 1946, Manitoba enacted the Uniform Act and in 1947 Alberta adopted it with modifications. As the Alberta Act does not appear to contain provisions corresponding to the provisions now in question, there is no need here to refer further to it.

Dr. Horace Read's report on Judicial Decisions affecting Uniform Acts (1955 Proceedings, page 98) drew the attention of the Conference to the case of *Pope* v. *Stevens* (1955) 14 W.W.R. 71, decided by the Court of Appeal of Manitoba. In this case two of the three appeal judges found difficulty in interpreting section 21(1) of the Uniform Act (section 22(1) of the Manitoba Act). In fact, this provision is referred to by Montague J.A., at page 84, as "this badly worded section". After quoting extracts from the reasons for judgment of the learned judge, Dr. Read made the terse comment: "Draftsmen, take note".

As a result of Dr. Read's report, the Uniform Act was referred to the Manitoba Commissioners for study and report at the 1956 meeting as to whether or not changes would be advisable in the light of *Pope* v. *Stevens* (1955 Proceedings, page 23).

In accordance with the terms of reference, the Manitoba Commissioners presented their report at last year's meeting (1956 Proceedings, page 71).

The Manitoba Commissioners concluded, after study of the matter, that the controversial provision ought to be redrafted

in an endeavour to remove the difficulties experienced in *Pope* v. *Stevens*. They also found that it would be desirable, in order to prevent further doubts, to amend section 6. Their specific proposals were set out in a schedule to their report.

The Conference expressed agreement with the views of the Manitoba Commissioners as to the need for amending section 6 and redrafting section 21(1), but, as time did not permit a detailed consideration of the proposals set out in the schedule to the Manitoba report and having regard to the complexity of the matter and the advisability of taking every possible precaution to avoid further criticism, judicial or otherwise, the schedule was referred to the Ontario Commissioners for further study and report to the 1957 meeting.

In the execution of this assignment the Ontario Commissioners have given long and careful consideration to the problems in hand, but instead of resolving them, other problems—problems of principle and policy—have arisen which they have been unable to dispose of and which cannot be discussed conveniently in this report.

It is therefore recommended that the whole matter be referred as early as may be in the Calgary meeting to a small committee (composed, it is suggested, of a Commissioner from Manitoba and a Commissioner from Ontario) with power to review the problems raised by *Pope* v. *Stevens* and with the duty of reporting later in the same meeting.

L. R. MacTavish,
for the Ontario Commissioners.

APPENDIX I

(*See page 23*)

UNIFORM EVIDENCE ACT

REPORT OF FEDERAL REPRESENTATIVES

During consideration of the draft Wills Act at the 1956 meeting of the Conference, 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 discussion, the Conference resolved that the undersigned 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.

The draft Uniform Evidence Act adopted by the Conference is set out in Appendix J to the Report of the Proceedings of the Conference held at Toronto in 1944. Section 62 deals with military records, and it is suggested that the proposed amendment be inserted as subsection (2) of section 62. The following amendment is submitted for the consideration of the Conference:

> (2) The production of a certificate purporting to be signed by the officer in charge of records of the naval, military or air forces of Her Majesty raised by Canada, stating that the person named in the certificate was a member of any of those forces and was serving on active service during the period between the dates set forth therein, is *prima facie* proof for any purpose to which the authority of the Legislature of .... extends that the person so named was on active service during that period, and also of the office, authority and signature of the person signing the certificate, without any proof of his appointment, authority or signature.

It is suggested that the present section 62 be further amended so as to bring it into line with the provisions of the National Defence Act, which was enacted by Parliament after the Uniform Evidence Act was adopted. Section 41 of the National Defence Act, R.S.C. 1952, c. 184, reads as follows:

> 41. Where an officer or man disappears under circumstances that, in the opinion of the Minister or such other auth-

orities as he may designate, raise beyond reasonable doubt a presumption that he is dead, the Minister or any such other authority may issue a certificate declaring that such officer or man is deemed to be dead and stating the date upon which his death is presumed to have occurred, and such officer or man shall thenceforth, for the purposes of this Act and the regulations and in relation to his status and service in the Canadian Forces, be deemed to have died on that date.

Regulations respecting the issue of certificates have been made for each of the three services in the following terms:

26.20—CERTIFICATES OF DEATH OR PRESUMPTION OF DEATH

(1) When an officer or airman dies, the issuance of a death certificate by civil authorities is governed by the civil law.

(2) A certificate of death may be issued by air force authorities when an officer or airman:

(*a*) dies and no death certificate may be issued by civil authorities; or

(*b*) is killed in action; or

(*c*) is missing;

if in the opinion of the Chief of the Air Staff, or any other officer designated by the Minister, there is conclusive proof that the officer or airman is dead.

(3) When no conclusive proof that a missing officer or airman is dead has been produced at the end of six months, the Chief of the Air Staff, or any other officer designated by the Minister, shall make further inquiries of:

(*a*) the next of kin;

(*b*) the station or unit of the missing officer or airman; and

(*c*) any other likely source.

(4) A certificate of presumption of death may be issued by air force authorities when:

(*a*) inquiries made under (3) of this article fail to produce information indicating that the missing officer or airman may still be alive; and

(*b*) in the opinion of the Chief of the Air Staff, or any other officer designated by the Minister, the circumstances surrounding the disappearance of the missing officer or airman raise beyond reasonable doubt the presumption that he is dead.

(5) In a certificate of presumption of death the issuing authority shall:

(*a*) declare that the missing officer or airman is deemed to be dead; and

(*b*) state the date on which his death is presumed to have occurred.

It is suggested that the certificate issued under section 41 of the National Defence Act be sufficient to establish a presumption of death for provincial purposes. Accordingly, it is proposed that the following provision be substituted for the present section 62 of the draft Evidence Act:

> 62. (1) The production of a certificate purporting to be signed by an authority authorized in that behalf by the National Defence Act or by regulations made thereunder, stating that the person named in the certificate died, or was deemed to have died, on a date set forth therein, is *prima facie* proof for any purpose to which the authority of the Legislature of ....extends, that the person so named died on that date, and also of the office, authority and signature of the person signing the certificate, without any proof of his appointment, authority or signature.

I wish to acknowledge my gratitude to Brigadier W. J. Lawson, Judge Advocate General, Ottawa, for his assistance in preparing the foregoing amendments, and I am authorized to state that the amendments proposed herein are considered by him to be adequate for the purposes intended.

E. A. DRIEDGER.

APPENDIX J

(*See page 23*)

UNIFORM INNKEEPERS' ACT

REPORT OF NOVA SCOTIA COMMISSIONERS

At the 1955 meeting of the Conference a draft Uniform Innkeepers' Act was considered and was referred back to the Nova Scotia Commissioners for further study, for the incorporation of changes made at that meeting and for a report at the next meeting with a revised draft Act (1955 Proceedings, p. 22). At the 1956 meeting the Act was again discussed and referred to the Nova Scotia Commissioners and Mr. Teed of New Brunswick for report at the 1957 meeting.

It is the understanding of the Nova Scotia Commissioners that the following changes in the draft Act considered at the 1955 meeting were agreed upon at that meeting:

1. The definition of "innkeeper" should be enlarged to include persons who, by the common law, were considered to be innkeepers, as defined in the Ontario Act, as well as persons keeping cabins, motels and similar establishments.

2. The term "lien", as used in section 3, was to be replaced by the expression "a right to detain", or words to the like effect.

3. The right of a lodging house keeper to detain and sell property of a lodger that presently exists under some Acts was to be retained as well as the right of an innkeeper to detain and sell the property of a hotel guest.

4. Sections 5 and 6 of the Act, considered at the 1955 meeting, were to be redrafted so that the burden of proof in actions for loss of or damage to a guest's property should remain where it now rests under statutes relating to an innkeeper's liability.

5. The innkeeper's responsibility with respect to a guest's automobile was to be based upon the ordinary law of bailment and not upon the law relating to his responsibility for goods brought into the inn.

6. Some slight changes in form and wording were also to be made.

Your Committee has considered the Report of the Law Reform Committee on "Innkeepers' Liability for Property of Travellers, Guests and Residents" that was presented to the Parliament of the United Kingdom in May, 1954, and the Hotel Proprietors (Liabilities and Rights) Act, 1956, that was designed to give effect, with some modifications, to the recommendations contained in that report. We have examined, also, a draft uniform statute respecting the liability of innkeepers that was prepared some years ago by the International Institute for the Unification of Private Law, an agency of the League of Nations. The 1956 Act of the United Kingdom and the draft uniform statute of the International Institute do not differ substantially in their treatment of an innkeeper's liability, nor do they differ greatly in principle from existing Canadian Acts which are based upon the English Innkeepers' Liability Act, 1863.

In the attached draft Act, your Committee has attempted to incorporate the matters agreed upon at the 1955 meeting and some of the provisions of the 1956 English Act that appeared to the Committee to be valuable. The draft Act is intended to,

(*a*) include in the definition of "innkeeper" persons who are innkeepers at common law and persons who operate motels, cabins, and similar establishments;

(*b*) preserve the right of an innkeeper and a lodging house keeper to detain and sell the property of a guest or lodger whose account has been unpaid, but to limit that right to property brought to the inn or house and to exempt vehicles from detention;

(*c*) limit the liability of an innkeeper for loss of or damage to property of a guest by or for whom sleeping accommodation has been engaged;

(*d*) relieve the innkeeper from liability, as an innkeeper, for loss of or damage to a vehicle of a guest;

(*e*) preserve the existing prima facie liability of an innkeeper for loss of or damage to the property of a guest but, in view of the altered value of the dollar, to increase the limit of that liability to $100 in respect of one article and $500 in the aggregate;

(*f*) preserve the innkeeper's defences based upon fault of the guest, his servant or companion or upon Act of God or the Queen's enemies;

(g) retain the provision that the limits upon the innkeeper's liability apply only where notice of the provisions is given to guests by being posted in the inn and in guest rooms.

The Nova Scotia Commissioners regret that they have been unable to confer with Mr. Teed in the preparation of this report, but hope that, even without the great benefit of his counsel, the report will advance consideration of its subject matter.

Respectfully submitted,

H. E. READ,
J. A. Y. MACDONALD,
H. F. MUGGAH.

AN ACT RELATING TO INNKEEPERS

BE IT ENACTED by the Governor and Assembly as follows:

1. This Act may be cited as the Innkeepers Act.

2. In this Act,

(a) "inn" means a place of which an innkeeper is the keeper;

(b) "innkeeper" means a person who is by law responsible for the goods and property of his guests and includes a keeper of a hotel, motel, cabin or other place or house who holds out that to the extent of his available accommodation he will provide lodging and food to any person who presents himself as a guest, who appears able and willing to pay a reasonable sum for the services and facilities offered, and who is in a fit state to be received;

(c) "vehicle" includes a motor vehicle, as defined in the Act, a horse and carriage, and chattels used in connection with a vehicle.

3. An innkeeper or a lodging house keeper has a right to detain goods and property, other than a vehicle, brought to the inn or house by a guest or lodger for his charges for food, accommodation or services furnished to the guest or lodger or on his account.

4.—(1) Where an innkeeper's or lodging house keeper's charges for food, accommodation or services remain unpaid for

one month, the innkeeper or lodging house keeper, in addition to all other remedies provided by law, may sell by public auction any goods or property of a guest that he has detained pursuant to section 3.

(2) Before making a sale under this section, the innkeeper or lodging house keeper shall give not less than one week's notice of the intended sale by advertisement in a newspaper published or circulating in the place where the inn or lodging house is kept.

(3) The advertisement shall state the name of the guest, the amount of his indebtedness, the time and place of sale, a description of the goods and property to be sold, and the name of the auctioneer.

(4) The innkeeper or lodging house keeper may apply the proceeds of the sale in payment of the amount due him and the costs of the advertising and sale, and shall pay over the surplus, if any, to the person entitled to it on his application.

5.—(1) Subject to the other provisions of this section, an innkeeper is not liable for loss of or damage to goods and property of a guest, except where sleeping accommodation in the inn has been engaged by or for the guest.

(2) The liability of an innkeeper for loss of or damage to the goods and property of a guest is limited to $100 in respect of any one article and $500 in the aggregate, except where the guest establishes that,

(*a*) the goods or property was lost or damaged through wilful act, default or neglect of the innkeeper or his servant; or

(*b*) the goods or property was deposited by or on behalf of the guest expressly for safe custody with the innkeepr or a servant of his authorized or appearing to be authorized for the purpose, and, if so required by the innkeepr or that servant, in a container fastened or sealed by the depositor; or

(*c*) the goods or property was offered to the innkeeper or a servant of his for deposit for safe custody and the innkeeper or his servant refused to receive it, or, through the default of the innkeeper or his servant, was unable to receive it.

(3) An innkeeper is not liable for loss of or damage to goods or property of a guest if the innkeeper establishes that the loss or damage was due to,

(*a*) the failure of the guest or his servant or a person accompanying the guest to take the ordinary care which might be expected from a reasonable prudent man in the circumstances; or

(*b*) act of God or the Queen's enemies.

(4) Without prejudice to any other liability or right of his with respect thereto, an innkeeper is not, as an innkeeper, liable to a guest for loss of or damage to a vehicle, or property left therein.

6. An innkeeper is not entitled to the benefit of section 5 unless at the time the goods or property in question was brought to the inn a copy of section 5, printed in plain type, was conspicuously displayed in all bedrooms ordinarily used by guests and in a place where it could conveniently be read by his guests at or near the reception office or desk or, where there is no reception office or desk, at or near the main entrance to the inn.

APPENDIX K

(*See page 24*)

DRAFT ACT RESPECTING TRUSTEE INVESTMENTS AS REVISED BY THE BRITISH COLUMBIA COMMISSIONERS INCORPORATING THE CHANGES MADE AT THE 1956 CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA

AN ACT TO AMEND THE "TRUSTEE ACT"

Sections.............of the "Trustee Act" are repealed and the following substituted therefor:

Interpretation "securities"

1. In this Act and in any order made hereunder,

(*a*) "securities" includes stock, debentures, bonds, shares, and guaranteed trust or investment certificates.

Investments:

2. A trustee may invest any trust money in his hands, if the investment is in all other respects reasonable and proper, in any of the following classes of securities:

Government issues

(*a*) Securities of the Government of Canada, the government of any province of Canada, any municipal corporation in any province of Canada, the Government of the United Kingdom or the Government of the United States of America.

Government guarantees

(*b*) Securities, the payment of the principal and interest of which is guaranteed by the Government of Canada, the government of any province of Canada, any municipal corporation in any province of Canada, the Government of the United Kingdom or the Government of the United States of America.

Payable out of taxes

(*c*) Securities issued for school, hospital, irrigation, drainage or other like purposes that are secured by or payable out of rates or taxes levied under the law of any province of Canada on property in such province.

Secured by Government payments

(*d*) Bonds, debentures or other evidences of indebtedness of a corporation that are secured by the assignment to a trustee of payments that the Government of Canada or the government of any province of Canada has agreed to make, if such payments are sufficient to meet the interest on all such bonds, debentures or other evidences of indebtedness outstanding as it falls due and also to meet

the principal amount of all such bonds, debentures or other evidence of indebtedness upon maturity.

(*e*) Bonds, debentures or other evidences of indebtedness of a corporation incorporated under the laws of Canada or any province of Canada,

Bonds of certain Canadian corporations

(1) that are fully secured by a mortgage, charge or hypothec to a trustee upon any, or upon any combination of the following assets:

(i) real estate,

(ii) the plant or equipment of a corporation that is used in the transaction of its business, or

(iii) bonds, debentures or other evidence of indebtedness or shares of a class or classes authorized by this section; and

(2) that has earned and paid,

(i) a dividend in each of the five years immediately preceding the date of investment at least equal to the specified annual rate upon all of its preferred shares, or

(ii) a dividend in each year of a period of five years ended less than one year before the date of investment upon its common shares of at least 4 per cent of the average value at which the shares were carried in the capital stock account of the Corporation during the year in which the dividend was paid.

(*f*) Guaranteed trust or investment certificates of a trust company that is incorporated under the laws of Canada or of a province of Canada and that is approved by the Lieutenant-Governor in Council.

Guaranteed trust certificates

(*g*) Bonds, debentures or other evidences of indebtedness of a loan corporation or like corporation that at the time of investment,

Loan corporation bonds

(i) has power to lend money upon mortgages, charges or hypothecs of real estate,

(ii) has a paid-up non-returnable capital stock of not less than $500,000,

(iii) has a reserve fund amounting to not less than 25 per cent of its paid-up capital,

and the stock of which has a market value that is not less than 7 per cent in excess of the par value thereof.

Preferred shares

(*h*) Preferred shares of any corporation incorporated under the laws of Canada or of a province of Canada that has paid,

(i) a dividend in each of the five years immediately preceding the date of investment at least equal to the specified annual rate upon all of its preferred shares, or

(ii) a dividend in each year of a period of five years ended less than one year before the date of investment upon its common shares of at least 4 per cent of the average value at which the shares were carried in the capital stock account of the corporation during the year in which the dividend was paid.

Mortgages

(*i*) First mortgages, charges or hypothecs upon real estate in Canada, but only if the loan does not exceed 60 per cent of the value of the property at the time of the loan as established by a valuator whom the trustee believes on reasonable grounds to be competent and independent.

(*j*) Securities issued or guaranteed by the International Bank for Reconstruction and Development established by the Agreement for an International Bank for Reconstruction and Development, approved by The Bretton Woods Agreements Act, 1945 (Canada), but only if the bonds, debentures or other securities are payable in the currency of Canada, the United Kingdom, any member of the British Commonwealth or the United States of America.

3.—(1) In determining market values a trustee may rely upon published market quotations.

(2) No corporation that is a trustee shall invest trust money in its own securities.

(3) In the case of an investment under clause (*e*) of section 2, the inclusion, as additional security under the mortgages, charges or hypothecs, of any other assets not of a class authorized by this Act as investments does not render the bonds, debentures or other evidences of indebtedness ineligible as an investment.

(4) No investment may be made under clause (*e*), (*g*) or (*h*) of section 2 that would at the time of making the investment cause the aggregate market value of the investments made under those clauses to exceed 35 per cent of the market value at that time of the whole trust estate.

(5) For the purposes of subsection (4), investments made by the testator or settlor and retained by the trustee under the authority of the trust instrument and that come within any of the classes authorized by clause (*e*), (*g*) or (*h*) of section 2 are deemed to have been made by the trustee.

(6) No sale or other liquidation of any investment made under clause (*e*), (*g*) or (*h*) of section 2 is required solely because of any change in the ratio between the market value of such investments and the market value of the whole trust estate.

(7) In case of investment under clause (*h*) of section 2, not more than 30 per cent of the total issue of shares of any corporation may be purchased for any trust.

(8) No investment may be made under clause (*h*) of section 2 unless the shares are listed at the time of investment on a recognized stock exchange.

4. In addition to the investments authorized by section 2 or by the trust instrument (except where that instrument expressly prohibits such investment), a trustee may invest funds in such other securities as the court or a judge upon application in any particular case approves as fit and proper, but nothing in this section relieves the trustee of his duty to take reasonable and proper care with respect to the investments so authorized.

Bank and other depositary

5.—(1) A trustee may, pending the investment of any trust money, deposit it during such time as is reasonable in the circumstances in any bank or in any trust company, loan corporation or other corporation empowered to accept moneys for deposit and that has been approved for such purpose by the Lieutenant-Governor in Council.

Deposits

(2) Where a trustee deposits trust moneys under subsection (1), he shall open and keep a separate account in his name in the bank or other depositary for each trust for which moneys so deposited are held.

Investments to be in trustee's name

6. Except in the case of a security that cannot be registered, a trustee who invests in securities shall require the securities to be registered in his name as the trustee for the particular trust for which the securities are held, and the securities may be transferred only on the books of the corporation in his name as trustee for such trust estate.

Instrument creating the trust

7.—(1) The powers conferred by this Act relating to trustee investments are in addition to the powers conferred by the instrument, if any, creating the trust.

(2) Nothing in this Act relating to trustee investments authorizes a trustee to do anything that he is in express terms forbidden to do or to omit to do anything that he is in express terms directed to do by the instrument creating the trust.

Variation of trustee

8.—(1) A trustee in his discretion may,

(*a*) call in any trust funds invested in securities other than those authorized by this Act and invest the same in securities authorized by this Act; and

(*b*) vary any investments authorized by this Act.

(2) No trustee is liable for any breach of trust by reason only of his continuing to hold an investment that since the acquisition thereof by the trustee has ceased to be one authorized by the instrument of trust or by this Act.

(3) Where a trustee has improperly advanced trust money on a mortgage that would at the time of the investment have been a proper investment in all respects for a less sum than was actually advanced, the security shall be deemed to be an authorized investment for such less sum and the trustee is only liable to make good the amount advanced in excess thereof with interest.

9.—(1) Where a trustee holds securities of a corporation in which he has properly invested money under this Act, he may concur in any compromise, scheme or arrangement,

(*a*) for the reconstruction of the corporation or for the winding-up or sale or distribution of its assets;

(*b*) for the sale of all or any part of the property and undertaking of the corporation to another corporation;

(*c*) for the amalgamation of the corporation with another corporation;

(*d*) for the release, modification or variation of any rights, privileges or liabilities attached to the securities or any of them,

in like manner as if he were entitled to the securities beneficially, and may, if the securities are in all other respects reasonable and proper investments, accept any securities of any denomination or description of the reconstructed or purchasing or new corporation in lieu of or in exchange for all or any of the original securities.

(2) A trustee is not responsible for any loss occasioned by any act or thing done in good faith under subsection (1), and he may, if the securities accepted thereunder are in all other respects reasonable and proper investments, retain them for any period for which he could have properly retained the original securities.

APPENDIX L

(*See page 24*)

HIGHWAY TRAFFIC AND VEHICLES ACT (RULES OF THE ROAD)

REPORT OF FEDERAL REPRESENTATIVES

At the 1956 Conference it was resolved that the Uniform Highway Traffic and Vehicles (Rules of the Road) Act be referred to the undersigned for consideration of the suggestions for amendments to it that have been made since its adoption, and for report at the next meeting, with a draft amending Act if considered feasible.

Comments have been received from the Royal Canadian Mounted Police and the Canadian Highway Safety Conference. Most of the comments involve policy questions upon which there may or may not be agreement. Consequently, no amendments are proposed, but it is suggested that, following discussion, the matter be referred to the Commissioners for one or more of the provinces for the drafting of such amendments as the Conference considers desirable.

The following is a summary of the comments received, listed in the order of the section numbers of the draft as printed in the 1955 Proceedings.

Section 1 (*ab*)—The R.C.M.P. suggest that this definition of "traffic officer" would require a special appointment of a traffic officer; but if it were defined to include the peace officer, then all members of all police forces would be considered traffic officers.

In the printed draft there is a note at the end of section 1 stating that the definitions should be examined in each jurisdiction to ascertain whether other legislation on which they may be dependent is required or is adequate.

Section 3—The C.H.S.C. felt that the emphasis might be placed earlier in the section that drivers of emergency vehicles are to drive with due regard for safety, which appears in subsection (3) of this section.

If the whole rule as set out in subsection (3) is to be retained, it is suggested that it would not be feasible to incorporate it in the opening words of subsection (1). It is recommended that the section be left as it is.

Section 6(2)—The C.H.S.C. expressed the view that there is a degree of ambiguity in interpreting subclause (ii) of clause (*a*) of subsection (2) of section 6 and section 35. They state that the properly stationed vehicle wishing to turn left should not necessarily have to yield to oncoming vehicles that might be almost a block away at the time when the signal turned green.

It is to be noted that the requirement in section 6 relates to vehicles and pedestrians within the intersection, and section 35 relates to vehicles approaching the intersection. It is suggested that there is no conflict between the two provisions.

Section 6(15)—The R.C.M.P. states that this provision would not cover what are known as "scramble lights" which apparently are used in Saskatoon and Edmonton.

Section 10(1)(c)—The R.C.M.P. suggests that every person involved in an accident should be required to give his name and address automatically, rather than wait for a request for the information. They point out the possibility of an injured person failing to request the information, and the possibility that the responsible party will go unidentified.

Section 11(1)—The R.C.M.P. suggest the deletion of the reference to "the nearest detachment of the Royal Canadian Mounted Police" in both clauses (*a*) and (*b*) on the ground that in many cases accidents would be reported to the R.C.M.P. rather than to the appropriate city police forces.

Both the R.C.M.P. and the C.H.S.C. recommend that the report should not be made compulsory unless the damage amounts to $100 or more.

Section 13(1)—The R.C.M.P. state that they are doubtful whether this section is a practical one; they feel that police traffic departments in large municipalities would be inundated with reports that would be of no value; they suggest that the intent of the section is sound but that the wording requires further study.

Section 17(2)—The R.C.M.P. suggest that left-hand turns into private driveways should not be allowed.

Section 18—There would appear to be a conflict between clause (*h*) of section 18 and clause (*b*) of section 21.

Section 40(1)—The R.C.M.P. suggest that this provision is too loosely worded.

Section 44(4)—The R.C.M.P. suggest that this provision applies only where bicycles, etc., are physically attached to a street-

car or vehicle and does not include the dangerous practice of "holding on".

Section 53—The R.C.M.P. recommend that all school buses be painted yellow in addition to any other special markings. They also suggest that a provision should be added to prohibit drivers from passing a stopped school bus that is loading or unloading children.

Section 54—The R.C.M.P. comment that subsection (1) appears to authorize parking on the travelled portion of a highway where there are no other facilities for parking.

The necessary prohibition would appear to be contained in subsection (2).

Section 56—The C.H.S.C. suggests that the distance in clause (*d*) of subsection (1) be reduced to ten feet, thereby leaving an opening of twenty feet.

Section 59—The R.C.M.P. suggest that no driver should be permitted to back a vehicle more than one hundred feet.

Section 62—The C.H.S.C. suggests that the sounding of the horn is not considered necessary or of particular safety value in the circumstances described in this section.

Suggested additions—The R.C.M.P. suggest three additional provisions as follows:

1. A provision that vehicles should be required to reduce their speed at night.
2. A provision requiring the driver to dim or deflect the beam of his headlights when approaching another vehicle.
3. A provision prohibiting passing or attempting to pass on hills, curves or bridges.

E. A. DRIEDGER.

APPENDIX M

(*See page 25*)

MODEL LEGISLATIVE ASSEMBLIES ACT

REPORT OF ALBERTA COMMISSIONERS

At the 1956 meeting, the Conference adopted the following resolution (*see* 1956 Proceedings at p. 22):

> 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.

In pursuance of that resolution, the President of the Conference wrote to the Attorney-General of each Province except Alberta. It was unnecessary to consult the Government of Alberta by letter as it was the Alberta Government that asked that the matter be referred to the Conference and the Attorney General of Alberta still desires that a model Bill be prepared for eventual adoption in that Province, if such a Bill when prepared receives the approval of the Government and Assembly of Alberta.

Five jurisdictions replied. Three replies were favourable; one reply was not and one while not being favourable evinced interest in the matter. No reply has been received so far from four Provinces.

In view of the three favourable replies and the position of the Government of Alberta, it is thought that rule 4 of the Procedure of the Conference should be invoked. The application of that Rule was anticipated in the 1956 Resolution of the Conference when the matter was conditionally referred to the Alberta Commissioners "for study and report at the next meeting of the Conference".

As we were not in a position to know, until quite recently, whether the necessary favourable replies would be forthcoming, we have been unable to give the matter the careful study required for a report under rule 4 of the Procedure, and would therefore recommend that the Conference, if it so desires, permit the matter to stand referred to the Alberta Commissioners for study and report under the said rule 4.

All of which is respectfully submitted,

H. J. WILSON, Q.C.,
W. F. BOWKER, Q.C.,
J. W. RYAN,
Alberta Commissioners.

For the information of the Conference copies of the correspondence with the Provincial Attorneys General is attached hereto:

(Similar letters were sent to B.C., Sask., Man., Que., N.B., P.E.I., N.S., and Nfld.)

Edmonton, Alberta,
May 1st, 1957.

Dear Sir:

Re—Legislative Assembly Acts

At the Thirty-eighth Annual Meeting of the Conference of Commissioners on Uniformity of Legislation in Canada, 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".

On June 11th, 1956, the Attorney General of Alberta wrote you concerning his intention of referring the matter of preparing a model Legislative Assembly Act to the Conference of Commissioners on Uniformity of Legislation in Canada.

It is now desired to advise that the matter has been referred to the Conference and to determine whether you consider that it would be advantageous to have a model uniform draft Act on the subject prepared, and whether, if such a draft Act were prepared by the Conference, it is likely that a Bill would be introduced by the Government of Ontario, subject of course to approval of the draft model Act by Ontario when it had been prepared.

Unless the Conference obtains favourable replies in this regard from four provinces, the Conference under its present rules of procedure would not be likely to start work on a model Uniform Act.

May I therefore be advised of the position of Ontario in the matter of the Conference preparing a model draft Legislative Assembly Act.

Yours very truly,

H. J. WILSON,
President,
Conference of Commissioners
on Uniformity of Legislation
in Canada

The Honourable A. K. Roberts, Q.C.,
Attorney General of Ontario,
Parliament Building, West Wing,
Toronto, Ontario.

ONTARIO

May 6th, 1957.
Ackn'd. May 10/57 H.S.

Dear Mr. Wilson:

I am writing to you in your capacity as President of the Conference of Commissioners on Uniformity of Legislation in Canada

and in reply to your letter of May 1st. The purpose of your letter is to inquire whether, in the event of the Conference preparing a model Legislative Assembly Act, it is likely that such an Act would be adopted in Ontario.

As a Civil Servant of many years standing, you will be quite familiar with the difficulties of giving you any commitment or even any expression of opinion in anticipation of the preparation of a model Act upon which the Conference might feel that it could place any great reliance.

The Legislative Assembly Act, it seems to me, stands in a rather special position, and having regard to the fact that the Ontario Act appears to be working well (for in my years in the House I have heard no complaint of a serious nature with regard to either its form or its contents) I would not regard it as likely that our government would anticipate replacing the Act for the sake of uniformity. It seems to me that there is an advantage in uniformity in the field of commercial Acts, whereas any advantages which might be suggested as flowing from a uniform Legislative Assembly Act would in the eyes of many members be questionable.

If I may make a further observation, I would say that the likelihood of a model Act being passed if it differed substantially from our present Act would be much less than if the proposed Act approximated our present one and after all, if there would be great similarity between the present Act and the proposed one, the advantage of passing a model Act would be minimized.

I would respectfully suggest to the Conference that, in my view, there are a number of Acts on the Statute Books of Ontario and no doubt of the other provinces that would offer greater advantages to all concerned by a process of uniform enactment that is the case with The Legislative Assembly Act.

Yours very sincerely,

KELSO ROBERTS,
Attorney-General.

H. J. Wilson, Esq., Q.C.,
Deputy Attorney General,
Legislative Buildings,
Edmonton, Alberta.

MANITOBA

May 7, 1957.

H. J. Wilson, Esq., Q.C.,
President,
Conference of Commissioners
on Uniformity of Legislation,
Legislative Buildings,
Edmonton, Alberta.

Dear Mr. Wilson:

Re: Legislative Assembly Acts

In reply to your letter of May 1st, please be advised that Manitoba is definitely interested in a uniform Legislative Assembly Act. When the draft is completed and made available, it will be presented to our Government for approval.

Yours very truly,

M. N. HRYHORCZUK,
Attorney-General.

PRINCE EDWARD ISLAND

May 9, 1957.

H. J. Wilson, Esq., Q.C.,
Deputy Attorney-General,
Edmonton, Alberta.

Dear Sir:

Re: Legislative Assembly Acts

I acknowledge receipt of your letter of May 1st inquiring about the possibility of Prince Edward Island enacting a model Legislative Assembly Act if the said Act met with the approval of the Province.

I am prepared to suggest that a model Uniform draft Act be prepared and I will undertake to have it introduced by the Government of the Province if the draft model Act is approved by the Province.

Yours very truly,

A. W. MATHESON,
Attorney-General.

SASKATCHEWAN

Regina, Sask.,
May 16, 1957.

Mr. H. J. Wilson,
Deputy Attorney-General,
Legislative Building,
Edmonton, Alberta.

Dear Sir:

Saskatchewan is interested in having a Uniform Legislative Assembly Act drawn up.

Saskatchewan will be glad to consider implementing those sections of the Uniform Act which correspond in principle to the provisions of our Act. We would, of course, provide special sections for special situations existing in this Province.

Yours truly,

R. A. WALKER,
Attorney-General.

BRITISH COLUMBIA

Victoria, B.C.,
May 28th, 1957.

H. J. Wilson, Esq., Q.C.,
President,
Conference of Commissioners on
Uniformity of Legislation,
Parliament Buildings,
Edmonton, Alta.

Dear Mr. Wilson:

Re: Legislative Assembly Acts

Thank you for your letter of May 1st.

While this Province is interested in the question of the privileges and immunities of the provincial legislatures and its members, we are, I think, in a somewhat unique position in Canada, in that we rely upon the law applicable to the House of Commons of the United Kingdom. In view of our long tradition in this field, I doubt if it would be likely that a draft uniform bill would be

introduced by the Government of the Province. However, we will retain an interest in the work of the Conference in this subject, and will examine any draft Bill prepared by the Conference.

Yours truly,

R. W. BONNER,
Attorney-General.

APPENDIX N

(*See page 25*)

THE BULK SALES ACT

REPORT OF ALBERTA COMMISSIONERS

At the 1956 Conference, it was 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 report at the next meeting with a draft Act.

The present consideration of this Uniform Act dates back to 1949 when the Conference decided that the uniform Acts dealing with commercial paper namely The Bills of Sale Act, The Conditional Sales Act, Assignment of Book Debts Act, The Bulk Sales Act should be referred to the New Brunswick commissioners for correlation and revision. In 1950 the New Brunswick commissioners brought in a report dealing with The Bulk Sales Act independently of the other commercial paper Acts (see 1950 Proceedings, Appendix N, page 87). At that time a revised Bulk Sales Act was adopted by the Conference and recommended for enactment and is the present Uniform Bulk Sales Act (see Appendix O, 1950 Proceedings, page 90).

In 1951, the Conference referred the commercial paper Acts to the New Brunswick Commissioners and to the Commissioners for Ontario and Canada respectively. The instruction of the Conference in respect of The Bulk Sales Act was that the Commissioners for Ontario and Canada in preparing the final drafts in accordance with the conclusions and decisions of the Conference (in respect of the Acts referred to these Commissioners) could make such minor changes in form in those Acts "as well as in the ....Uniform Bulk Sales Act as they consider necessary to secure a uniformity of expressions, style and arrangement in all four Acts, the final drafts of the four Acts to be completed and submitted to the Commissioners for each jurisdiction before the June 1, 1952, and to be submitted to the Conference at the next meeting".

At the 1952 Conference, the commercial paper Acts were reported back and discussed and instructions were given the Commissioners dealing with them but no special reference was made in the resolution to The Bulk Sales Act itself. At the 1953 Conference, the Ontario Commissioners reported back on the

commercial papers Act and Mr. Treadgold in reporting upon these matters commented that although The Bulk Sales Act was referred to the Ontario Commissioners and Federal Representatives only to make the language consistent with the other commercial paper Acts there appeared to be a need for change in some of the principles contained in The Bulk Sales Act. Whereupon it was resolved that the current draft of the Uniform Bulk Sales Act prepared by the Ontario Commissioners and the Federal Representatives be referred to the Manitoba Commissioners for a complete study of the principles contained therein in collaboration with the commercial law section of the Canadian Bar Association and to report thereon with the revised draft considered advisable to the next annual meeting.

In due course the Manitoba Commissioners dealt with the Uniform Bulk Sales Act prepared by the Ontario Commissioners and Federal Representatives and in the course of so doing sent out questionnaires upon which they reported to the Conference in 1954 (see 1954 Proceedings, page 80, et seq.). As a result of their study the Manitoba Commissioners brought in a draft Uniform Bulk Sales Act which will be referred to hereinafter as the Manitoba draft 1954.

As a result of the Manitoba draft 1954, the Conference resolved that Uniform Bulk Sales Act be referred to the British Columbia Commissioners for further study, particularly as to the question whether the definition of creditors could include all creditors or trade creditors only and to report at the next meeting with their recommendations and a new draft Act. At the 1955 Conference, the British Columbia Commissioners presented their report (see Appendix K, 1955 Proceedings, page 107). That report stated that it was the opinion of the British Columbia Commissioners that the definition of "creditors" should include all creditors. They further stated that the original intent and scope of the Act should not be extended and recommended accordingly that subject to certain amendments indicated in their report the form of the Act adopted by the Conference at its 1950 meeting should be confirmed.

Following upon this report and consideration by the Conference, it was resolved that the draft Uniform Bulk Sales Act be referred to the Manitoba and British Columbia Commissioners for further study and for report at the next meeting with the recommendations and the new draft Act.

In 1956, verbal reports were made by the British Columbia

Commissioners and by the Manitoba Commissioners and considerable discussion took place thereon. It was subsequently resolved that the matter of the Uniform Bulk Sales Act should be referred to the Alberta Commissioners. (The British Columbia report referred to in this report is the report and draft Act contained in the 1955 Proceedings at page 107, et seq., as Appendix K.)

The Alberta Commissioners have had the considerable advantage of the previous study, work and reports by the Ontario Commissioners, the Federal Representatives and the Manitoba and British Columbia Commissioners. The assessment of the merits of the points of view given at previous Conferences was aided by the instructions given by the Conference in 1954 when it was considering the Manitoba draft of that year. Section 6 of the Manitoba draft was removed from the revised draft Act attached hereto, pursuant to the instructions of the Conference. In addition, the definition of "trade fixtures" was removed and trade fixtures included in the definition of "stock" pursuant to the directions of the 1954 meeting. We have reverted from the definition of "stock" in the Manitoba draft to the definition in the Ontario Act, with the addition of trade fixtures.

The draft Act attached as the Schedule to this report contains after each provision a short note on the source and on any change made in the provision. These are in most instances self-explanatory. We understand that the British Columbia Commissioners generally thought that the Act should remain as it was before. The present draft does make changes. These are generally in accordance with the views of the 1954 meeting as we noted them at the time.

The principle ones are:

(1) To restrict the definition of "creditor" to "trade creditors".

(2) To put fixtures with goods, as stated above.

(3) To remove section 6 of the Manitoba draft providing notice to creditors.

(4) To restrict the status of secured creditors by putting the burden on them to file a statement and by treating them as creditors only to the extent of the difference between the value of their security and the amount of their debts where the security is less.

The general purpose of these changes is to make the Act more workable and to facilitate compliance with the Act. One of the main objects is to permit a bulk sale to be completed in circum-

stances where a secured creditor under the present Act can prevent a sale by doing nothing; even though he is really not prejudiced by the sale.

All of which is respectfully submitted.

H. J. Wilson, Q.C.,
W. F. Bowker, Q.C.,
J. W. Ryan,
Alberta Commissioners.

SCHEDULE

AN ACT RESPECTING BULK SALES

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 Bulk Sales Act".

Definitions

2. In this Act,

(*a*) "affidavit" includes a statutory declaration;

NOTE:—New. Added to conform with use of term in other uniform commercial paper Acts, e.g. Bills of Sale, etc.

(*b*) "buyer" means a person who acquires stock in bulk or an interest therein under a sale in bulk;

NOTE:—See note to clause (*a*) *supra*; substituted for term "purchaser". Man. draft, s. 2(*b*). cf. Uniformity 1950, s. 2(*c*).

(*c*) "creditor" means a person to whom a seller is indebted *for stock, money, or services, furnished for the purpose of enabling the seller to carry on a business*, and whether or not the debt is due, and includes a surety and the endorser of a promissory note or bill of exchange who has given the security or endorsement for that purpose and who would, upon payment by him of the debt, promissory note, or bill of exchange, in respect of which the suretyship was entered into or the endorsement was given, become a creditor of the seller;

NOTE:—This definition is restricted to trade creditors by the italicized words, which was recommended by the Manitoba Draft in 1954. See 1954 Proceedings, Appendix F, at page 84. cf. Uniformity 1950; Alta., s. 2(*a*); B.C., s. 2; Man., s. 2(*a*); N.B., s. 1(*a*); Nfld., s. 2(*c*); Ont., s. 1(*b*).

(*d*) "proceeds of the sale" includes the purchase price or consideration payable to the seller, or passing from the buyer to the seller, on a sale in bulk, and the moneys realized by a trustee under a security, or by the sale or other disposition of any property, coming into his hands as the consideration, or part of the consideration, for the sale;

NOTE:—Uniformity 1950; Alta., s. 2(*b*); B.C., s. 2; N.B., s. 1(*b*); Nfld., s. 2(*d*).

(*e*) "sale", whether used alone or in the expression "sale in bulk", includes a transfer, conveyance, barter, or ex-

change, and an agreement to sell, transfer, convey, barter or exchange, but does not include a pledge, charge or mortgage unless it affects substantially the entire stock of the seller;

NOTE:—Uniformity 1950, s. 2(*c*); Alta., s. 2(*d*); B.C., s. 2; Man., s. 2(*d*); N.B., s. 1(*d*); Nfld., s. 2(*e*). cf. Man. Draft 1954, s. 2(*e*): The use of the term "conveyance" has been narrowed by the exclusion of pledging, charging or mortgaging. (See Man. Report Schedule, question 1(1) at p. 80 of 1954 Proceedings).

(*f*) "sale in bulk" means a sale,

(i) out of the usual course of business or trade of the seller, of stock or part thereof, or

(ii) of substantially the entire stock of the seller, or

(iii) of an interest in the business of the seller;

NOTE:—Uniformity 1950, s. 2(*f*); Alta., s. 2(*e*); B.C., s. 2; Man., 2(*e*); N.B., s. 1(*e*); Nfld., s. 2(*f*); Sask., s. 2(3). Definition has been changed only in form.

(*g*) "sell" has a meaning similar to "sale";

NOTE:—Uniformity 1950, s. 2(*c*); Nfld., 2(*g*).

(*h*) "seller" means a person who sells stock in bulk or an interest therein *to another person by a sale in bulk, for a valuable consideration*;

NOTE:—The term "vendor" is replaced by the term "seller": the verb "sell", which is defined, replaces the words "barters or exchanges" and the words "with another person for other property, real or personal" replaced by the italicized words as in Man. Draft of 1954, s. 2(*h*). cf. Uniformity 1950, s. 2(*i*); Alta., s. 2(*j*); B.C., s. 2; Man., s. 2(*i*); N.B., s. 1(*i*); Nfld., s. 2(*h*); cf. Ont., s. 2(*f*); Sask., s. 2(5).

(*i*) "stock" means,

(i) stock of goods, wares, merchandise or chattels ordinarily the subject of trade and commerce,

(ii) the goods, wares, merchandise or chattels in which a person trades or that he produces or that are the output of a business,

and includes the *fixtures, machinery and other chattels, with which a person carries on a trade or business;*

NOTE:—This carries out the suggestion of the 1954 Conference to revert in principle to Uniformity 1950 and to include "trade fixtures" which in the Man. Draft 1954 was itself defined in the terms italicized. The words "with which a person carried on a business" have been dropped from (ii) of clause (*f*) of the 1950 Uniform Act (Similar to Ont. provision) as they occur in definition of "fixtures" as herein set out. cf. Uniformity 1950, s. 2(*f*); Alta., s. 2(*f*); B.C., s. 2; Man., s. 2(*f*); N.B., s. 1(*f*); Nfld., s. 2(*i*); Ont., s. 1(*d*); Sask., s. 2(4).

(*j*) "stock in bulk" means a stock, *or part thereof*, that is the subject of a sale in bulk;

NOTE:—"Part" replaces "portion" only. See Uniformity 1950, s. 2(*g*); Alta., s. 2(*g*); B.C., s. 2; Man., s. 2(*g*); N.B., s. 1(*g*); Nfld., s. 2(*j*).

(*k*) "trustee" means a trustee under the Bankruptcy Act (Canada) appointed for the bankruptcy district wherein the stock of the seller or a part thereof is located, or the seller's business or a part thereof is carried on, at the time of the sale in bulk thereof, or a person named as trustee by the seller or by his creditors in their written consent to a sale in bulk, or a person appointed as a trustee under subsection (2) of section 7.

NOTE:—No change. Uniformity 1950, s. 2(*h*); Alta., s. 2(*l*); B.C., s. 2; Man., s. 2(*h*); N.B., s. 1(*h*); Nfld., s. 2(*l*); Ont., s. 1(*e*).

Persons to whom this Act applies

3. This Act applies only to sales in bulk by,

(*a*) persons who, as their ostensible occupation or part thereof, buy and sell goods, wares, or merchandise, ordinarily the subject of trade and commerce;

(*b*) commission merchants;

(*c*) manufacturers; and

(*d*) proprietors of hotels, rooming houses, restaurants, motor vehicle service stations, oil or gasoline stations, or machine shops.

NOTE:—No change. Uniformity 1950, s. 3; Alta., s. 3; B.C., s. 3; Man., s. 3; N.B., s. 2; Nfld., s. 3; Sask., s. 3; N.S., s. 6.

Scope of Act

4.—(1) Nothing in this Act applies to or affects,

(*a*) a sale by an executor, administrator, receiver, assignee, or trustee for the benefit of creditors, a trustee under the Bankruptcy Act (Canada), a liquidator or official receiver, a public official acting under judicial process, or a trader or merchant selling exclusively by wholesale; or

(*b*) an assignment by a trader or merchant for the general benefit of his creditors.

NOTE:—Unchanged as to substance; Uniformity 1950, s. 4; Alta., s. 4; B.C., s. 4; Man., s. 4; N.B., s. 3; Nfld., s. 4; N.S., s. 7; Ont., s. 7; Sask., s. 4.

Sale of part only of stock

(2) Where a seller proposes to sell a part only of his stock, he may apply to a judge of the County (Division) Court for the County (District) in which that part of the stock is located for an order exempting the sale from the application of this Act; and the judge, if he is satisfied that the proposed sale,

(*a*) is not a sale of substantially the entire stock of the seller; and

(*b*) is advantageous to the seller and will not impair his ability to pay his creditors in full,

may make the order, and thereafter this Act does not apply to the sale.

NOTE:—New from Man. Draft 1954, s. 4(2): Will permit a seller to dispose of part of his stock in bulk in certain cases. Permits flexibility in, for example, the situation where a chain store company desired to dispose of one of its chain stores.

Statement of creditors

5.—(1) Except as otherwise provided in this Act, a buyer of stock in bulk, before paying to the seller any part of the purchase price or giving a promissory note or security for the purchase price or part thereof or executing a transfer, conveyance, or encumbrance of property, shall demand of and receive from the seller, and a seller of stock in bulk shall furnish to the buyer, a written statement (*in Form 1*) verified by the *affidavit* of the seller or his authorized agent or, if the seller is a corporation, by the *affidavit* of an *officer, director, manager, or authorized agent,* of the corporation.

NOTE:—Unchanged except as to italicized words from 1950: the words "its president, vice-president, secretary-treasurer or manager" replaced by last-italicized words: the defined term "affidavit" replaces "statutory declaration". See Man. Draft 1954, s. 5(1). Words in brackets originate with 1950, s. 5(3) but are here made necessary where in 1950, 5(3) the form in Sched. A was permissive in use. Uniformity 1950, s. 5(1); cf. Alta., s. 5(1); B.C., s. 5(1); Man., s. 5(1); N.B., s. 4(1); Nfld., s. 5(1); N.S., s. 1; Sask., s. 5.

Contents of statement

(2) The statement shall show the names and addresses of the creditors of the seller and the amount of the indebtedness or liability due, owing, payable, or accruing due, or to become due and payable, by the seller to each of the creditors.

NOTE:—Changed only by using defined term "seller" for vendor. See Man. Draft 1954, s. 5(4); Uniformity 1950, s. 5(2); Alta., s. 5(2); B.C., s. 5(1); Man., s. 5(2); N.B., s. 4(3); Nfld., s. 5(4); N.S., s. 1; Ont., s. 2; Sask., s. 5.

Where no creditors shown

(3) If the statement furnished to the buyer shows that the seller has no creditors, the buyer may pay the purchase price to the seller and section 11 does not apply.

NOTE:—New. Man. Draft 1954, s. 5(2) slightly altered in form. This is merely a statement of the present law; at least, as decided in Alberta in *Padden* v. *McFarland* 1930 (3) W.W.R. 632.

Affidavit of agent, etc.

(4) Where the affidavit is made by an agent of the seller or, if the seller is a corporation, by an officer, director, manager, or

authorized agent, of the corporation, the affidavit shall state that the deponent has a personal knowledge of the facts sworn to.

NOTE:—New. See Man. Draft 1954, s. 5(3).

Payment on account

(5) A buyer may, before obtaining the statement, pay to the seller on account of the purchase price a sum not exceeding 5 per cent of the purchase price or $500, whichever is the lesser amount.

NOTE:—Defined term "seller" used; payment permitted increased from $50 to lesser of 5% or $500. See Man. Draft 1954, s. 5(5); B.C. Draft, 1955 Proceedings, s. 5(4): Uniformity 1950, s. 5(4); cf. Alta., s. 5(1) (*a*); B.C., s. 5(1); Man., s. 5(4); Nfld., s. 5(5); N.B., s. 4(5); Ont., s. 2.

No preference or priority

(6) From and after the furnishing of the statement and affidavit, no preference or priority is obtainable by any creditor of the seller in respect of the stock in bulk, or the proceeds of sale thereof, by attachment, garnishment proceedings, contract or otherwise.

NOTE:—No change in substance from 1950 Uniform Bill. Uniformity 1950, s. 5(5); Alta., s. 5(4); B.C., s. 5(2); Man., s. 5(5); N.B., s. 4(6); Nfld., s. 5(6); Ont., s. 4(3); Sask., s. 30(2); N.S., s. 4.

Prerequisites of completion of sale

6.—(1) *Subject to subsections (2) to (7)*, before the completion of a sale in bulk,

(*a*) the claims of the creditors of the seller, as shown by the written statement, shall be paid in full; or

(*b*) the seller shall produce and deliver to the buyer a written waiver, in Form 2, of the provisions of this Act, other than the provisions contained in section 5, from creditors of the seller representing not less than 60 per cent in number and amount of the claims exceeding $50 as shown by the written statement; or

(*c*) the seller shall produce and deliver to the buyer the written consent thereto of creditors of the seller representing not less than 60 per cent in number and amount of the claims exceeding $50 as shown by the written statement.

NOTE:—The introductory words are new. (See Man. Rep. (1954 Proceedings, p. 81, No. 6).) Otherwise changed as to form only. Uniformity 1950, s. 6; Alta., s. 6; cf. B.C., s. 6; Man. s. 6; N.B., s. 5; Nfld., s. 7(1); Ont., s. 4(1); N.S., s. 4; Sask., s. 6(1).

Notice to creditors

(2) Before the completion of a sale in bulk, the seller shall give notice in writing by mail to each of his secured creditors, requiring *the creditor*, within twenty days of the mailing of the notice, to deposit with the seller an affidavit stating therein the full particulars of his security, the date when it was given, and the value at which he assesses it.

NOTE:—New. Man. Draft, s. 7(2). Noun replaces pronoun "him" where italicized.

Failure to value security

(3) Where a secured creditor fails, within the time fixed, to value his security and deposit an affidavit as required under subsection (2), the indebtedness owing to him for which the security was given shall not be included in reckoning the number and amount of the claims in respect of which waivers or consents are required under subsection (1).

NOTE:—New. Man. Draft, s. 7(3).

Failure to value, or excess valuation

(4) Where a secured creditor,

(*a*) fails, within the time fixed, to value his security and deposit an affidavit as required by subsection (2); or

(*b*) values his security *at or* at more than the amount of the indebtedness secured thereby,

no consent from him, in respect of the secured indebtedness, is required under clause (*c*) of subsection (1).

NOTE:—New. Man. Draft, s. 7(4): the italicized words are added to avoid an hiatus in this section.

Valuation at less than debt

(5) Where a secured creditor values his security at less than the amount of the debt secured thereby, only the difference between the value at which he assesses the security and the amount of the indebtedness secured thereby shall be included in reckoning the amount of the claims in respect of which waivers or consents are required under subsection (1).

NOTE:—New. Man. Draft, s. 7(5).

Judicial order assessing security

(6) The seller, or any other creditor who is not satisfied with the valuation placed by a secured creditor on his security, may apply to a judge of the County (Division) Court for the County (District) in which the security is located for an order assessing the value of the security; and the judge, on such evidence as to him seems sufficient, may assess the value of the security and make an order declaring that, for all purposes of this Act, the value of the security is fixed at the amount stated in the order.

NOTE:—New. Man. Draft, s. 7(6).

Time limit on application

(7) An application under subsection (6) shall be made within thirty days of the date of the mailing of the notice to which subsection (2) refers.

NOTE:—New. Man. Draft, s. 7(7).

When proceeds of sale to be paid over to trustee

7.—(1) Where a sale in bulk is completed with the written consent of the creditors of the seller under clause (*c*) of subsection (1) of section 6, the buyer shall pay, deliver, or convey, *to be dealt with as provided by section 8,* the entire proceeds of the sale to the

person named as trustee by the creditors in the written consent or, if no trustee is named therein, to the trustee named by the seller or appointed under subsection (2).

NOTE:—Re-arrangement of words "to be dealt with", etc., Man. Draft, 1954, s. 8(1). Uniformity 1950, s. 7; Alta., s. 7; B.C., s. 7; Man., s. 7; N.B., s. 6(1); Nfld., s. 8(1); N.S., s. 4; Sask., s. 6(1).

Appointment of trustee by judge

(2) Upon the application of a person interested, if the creditors of the seller in their written consent to a sale in bulk have not named a trustee and the seller has not named one, a judge of the County (Division) Court of the County (District) in which the seller's stock or a part thereof is located, or the seller's business or trade or a part thereof is carried on, at the time of the sale in bulk thereof, shall by order appoint a trustee and fix the security, if any, to be given by him.

NOTE:—New. Man. Draft, s. 8(2). This subsection provides for a situation not contemplated in existing Act; N.B., s. 6(2); Nfld., s. 8(2).

Distribution of proceeds of sale

8.—(1) Where the proceeds of the sale are paid, delivered, or conveyed, to a trustee under section 7, the trustee shall be a trustee for the general benefit of the creditors of the seller and shall distribute the proceeds of the sale among the creditors of the seller in proportion to the amounts of their claims proved as required by subsection (2), and such other creditors of the seller as file claims with the trustee *in like manner to that provided by* the Bankruptcy Act (Canada).

NOTE:—The italicized words replace "in accordance with". See B.C. Report 1956 and comment on s. 8(1). See Man. Draft, s. 9(1). Uniformity 1950, s. 8(1); Alta., s. 8(1); B.C., s. 8; Man., s. 8(1); N.B., s. 7(1); Nfld., s. 9(1); N.S., s. 4; Ont., s. 4(1).

Idem

(2) The distribution shall be made in like manner as moneys are distributed by a trustee under the Bankruptcy Act (Canada); and in making the distribution all creditors' claims shall be proved in like manner, and are subject to like contestation, and entitled to like priorities, as in the case of a distribution under that Act.

NOTE:—No change. Uniformity 1950, s. 8(2); Alta., s. 8(2); B.C., s. 8; Man., s. 8(2); N.B., s. 7(2); Nfld., s. 9(2); N.S., s. 4; Ont., s. 4(1).

Idem

(3) The creditors, *seller,* and trustee, have in all respects the same rights, liabilities, and powers, as the creditors, bankrupt, and authorized trustee, respectively, *would have therein* under the Bankruptcy Act (Canada), and the priorities of creditors shall be determined as of the date of the completion of the sale.

NOTE:—B.C. Report 1956, s. 8(3) replacing Man. Draft, s. 9(3), but "seller" replacing term "vendor". cf. Uniformity 1950, s. 8(3); Alta., s. 8(3); B.C., s. 8; Man., s. 8(3); N.B., s. 7(3); Nfld., s. 9(3).

Notice

(4) Before making the distribution, the trustee shall cause a notice thereof to be published once in the (provincial) Gazette and in at least two issues of a newspaper published in the province and having a circulation in the locality in which the stock in bulk was situated at the time of the sale, *and the trustee shall not make the distribution until at least fourteen days after the last of such publications.*

NOTE:—Uniformity 1950, s. 8(4) (*a*) unchanged; italicized words replace clause (*b*) of Uniformity 1950, s. 8(4). Man. Draft, 1954, s. 9(4). cf. Uniformity 1950, s. 8(4); Man., s. 8(4); N.B., s. 7(4); Nfld., s. 9(4).

Idem

(5) It is not necessary to publish any advertisement or notice of the distribution other than *that* required by subsection (4).

NOTE:—Italicized word replaces "as" in Uniformity 1950, s. 8(5); Man. Draft, s. 9(5); Uniformity 1950, s. 8(5); Man., s. 8(5); N.B., s. 7(5); Nfld., s. 9(5).

Fees of trustee

9.—(1) *Subject to subsection (2)*, the fees or commission of the trustee shall not exceed 3 per cent of the proceeds of the sale that come into his hands and, in the absence of an agreement by the seller to the contrary, the fees or commission, together with any disbursements made by the trustee, shall be paid by being deducted from the moneys to be received by the creditors and shall not be charged to the seller.

NOTE:—Introductory words added by Man. Draft, s. 10(1). Otherwise unchanged from Uniformity 1950. Uniformity 1950, s. 9; Alta., s. 9; B.C., s. 9; Man., s. 9; N.B., s. 8; Nfld., s. 10(1); Ont., s. 4(2); Sask., s. 30(1).

Proceeds of sale exceeding debts

(2) Where the proceeds of the sale exceed the amount required to pay in full all indebtedness to creditors that must be included in reckoning the amount of the claims in respect of which waivers or consents are required under subsection (1) of section 6, the fees or commission of the trustee and any disbursements made by him shall be paid from the excess proceeds, to the extent of that excess, and any balance remaining thereafter shall be paid as provided in subsection (1).

NOTE:—New. Added by Man. Draft, s. 10(2); Nfld., s. 10(2).

Effect of non-compliance with Act

10.—(1) *Unless this Act is complied with*, a sale in bulk shall be deemed to be fraudulent and void as against the creditors of the seller, and every payment made on account of the purchase price and every delivery of a note or other security therefor, and every transfer, conveyance, and encumbrance, of property by the buyer, shall be deemed to be fraudulent and void as between the buyer and the creditors of the seller; but if the buyer has received or taken possession of the stock in bulk, or any part thereof, he

is personally liable to account to the creditors of the seller for the value thereof including all moneys, security, or property, realized or taken by him from, out of, or on account of, the sale or other disposition by him of the stock in bulk or any part thereof.

NOTE:—Introductory words replace "in respect of which this Act has not been complied with" qualifying the words "a sale in bulk" in Uniformity 1950, s. 10(1): Man. Draft, s. 11(1). Subss. (1) & (2) of Uniformity 1950, s. 10 combined in (1) *supra*. See Man. Draft, s. 11(1). cf. Uniformity 1950, s. 10(1) & (2); Alta, s. 10(1) & (2); B.C., s. 10; Man., s. 10(1) & (2); N.B., s. 9(1) & (2); Nfld., s. 11(1); N.S., s. 3; Ont., s. 5; Sask., s. 31(1).

Estoppel

(2) In an action brought or proceeding had or taken by a creditor of the seller within the time limited by section 12 to set aside or have declared void a sale in bulk, or in the event of a seizure of the stock, or a part thereof, in the possession of the buyer under judicial process issued by or on behalf of a creditor of the seller within such period, the buyer is estopped from denying that the stock in his possession at the time of the action, proceeding or seizure is the stock purchased or received by him from the seller; but if the stock then in the possession of the buyer, or a part thereof, was in fact purchased by him subsequent to the sale in bulk from a person other than the seller of the stock in bulk and has not been paid for in full, the creditors of the buyer, to the extent of the amounts owing to them for the goods so supplied, are entitled to share with the creditors of the seller in the amount realized on the sale or other disposition of the stock in the possession of the buyer at the time of the action, proceeding, or seizure, in like manner and within the same time as if they were creditors of the seller.

NOTE:—Subss. (3) & (4) of Uniformity s. 10 combined: defined terms used, otherwise unchanged. See Man. Draft, s. 11(2). cf. Uniformity 1950, s. 10(3) & (4); Alta., s. 10(2) (*b*) to (3); B.C., s. 10; Man., s. 10(3) & (4); N.B., s. 9(3) & (4); Nfld., s. 11(2).

Burden of proof

11. In an action or proceeding *in which* a sale in bulk is attacked or comes in question, whether directly or collaterally, the burden of proof that this Act has been complied with is upon the person upholding the sale in bulk.

NOTE:—Italicized words replace "wherein": Uniformity 1950, s. 11; Alta., s. 11; B.C., s. 11; Man., s. 11; N.B., s. 10; Nfld., s. 12; Ont., s. 8; Sask., s. 32.

Limitation o action, etc.

12. No action shall be brought or proceeding had or taken to set aside or have declared void a sale in bulk for failure to

comply with this Act, unless the action is brought or proceeding had or taken within six months from the date of the completion of the sale.

NOTE:—Uniformity 1950, s. 12; Alta., s. 12; B.C., s. 12; Man., s. 12; N.B., s. 11; cf. Ont., s. 8; Sask., s. 37. (Nfld. omitted this, though they referred to it in 11(2).)

Uniform construction

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

APPENDIX O

(*See page 25*)

THE RECIPROCAL ENFORCEMENT OF JUDGMENTS ACT

I should like to draw the attention of the Conference to the following points which arise on consideration of The Reciprocal Enforcement of Judgments Act which has been adopted.

1. Will the judgment of any court, regardless of limits on its jurisdiction, be registrable in the Superior Court of the enforcing jurisdiction? e.g., If a District or County Court has jurisdiction to hear liquidated claims up to $1,000 can a judgment in that court for $250 be registered in the Supreme Court of a reciprocating jurisdiction?

Conversely, if a judgment is given in a Supreme Court for $300 can it be registered in the County Court of the reciprocating jurisdiction?

2. An order for registration may be made *ex parte* under clause 3(2). It seems that there should be some provision for notice to the judgment debtor, notwithstanding clause 3(2), (3) and clause 7. The debtor may have paid something into the original court after a certificate was issued under clause 3(3) or he may have paid the creditor direct. At the same time, clause 3(5) may not apply. In such a situation there may have been no notice given to the defendant and a judgment may be registered for an amount substantially greater than that which the debtor owed. Indeed, he may have paid off the whole debt. Of course, the judgment debtor would suffer only if there was fraud on the part of the judgment creditor, but that is not unheard of.

3. We might consider whether the judgment debtor should be required to make his payments into the court where the order is enforced for transmission through the original court to the judgment creditor. It seems desirable that the original court know what happens, because there may be further applications to enforce the judgment elsewhere.

4. Newfoundland's present Act has the following as section 7(5):

> "(5) If on an application for the registration of a judgment, it appears to the Supreme Court that the judgment is in respect of different matters and that some, but not all, of the provisions of the judgment are such that if those provisions

had been contained in separate judgments those judgments could properly have been registered, the judgment may be registered in respect of the provisions aforesaid but not in respect of any other provisions contained therein."

There appears to be no equivalent in the Uniform draft.

5. Finally, the plaintiff should show in his application to the court that the defendant is not exempt (e.g. through diplomatic immunity) from the operation of the courts.

P. LLOYD SOPER,

for the Newfoundland Commissioners.

APPENDIX P

(*See page 26*)

UNIFORM DEVOLUTION OF REAL PROPERTY ACT

REPORT OF SASKATCHEWAN COMMISSIONERS

At the 1954 meeting of the Conference, after a 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 had cases.

At the 1955 meeting of the Conference, the report of the Saskatchewan Commissioners was submitted suggesting that they defer making any recommendations 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 Dr. Read's report should be pronounced and they had had an opportunity to consider the same.

At the 1956 meeting of the Conference, the Saskatchewan Commissioners again reported that the case was under appeal to the Supreme Court of Canada but had not at that time been argued and as a result the report recommended that any recommendation be deferred until the judgment of the Supreme Court of Canada is received and considered.

The cases which had given rise to this discussion culminated in the case of *Sykes Estate*. The judgment of the Judge of first instance, Mr. Justice Graham, is reported under the style of *Re: Sykes Estate re: Thompson et al Executors and Berkheiser et al* 1956 16 W.W.R. 172. Although this case had not been decided at the time of Dr. Read's 1954 report, it affirmed the cases therein referred to. The judgment of the Court of Appeal for Saskatchewan affirming the judgment of Mr. Justice Graham is reported at page 459 of the same volume of the Western Weekly Reports. Since the report of the Saskatchewan Commissioners was given in 1956, the judgment of the Supreme Court of Canada has been given and is reported in 1957 S.C.R. page 387. The judgments in

the Saskatchewan courts had held that what is ordinarily known as a lease of minerals taken in the ordinary form in which such agreements are drawn with respect to oil and natural gas was not a lease but a sale of a portion of the land. The Saskatchewan courts had therefore held that there was an ademption of the devise to the Appellant Berkheiser contained in the Will of the Testatrix and that the oil and natural gas within, upon or under the land devised by him did not pass with the surface but fell into residue. The judgment of the Supreme Court is reported under the name of *Elven J. Berkheiser* v. *Gladys Berkheiser and Florence Glaister*. It reversed the judgments of the Saskatchewan courts and held that the instrument in question created either a profit a prendre or an irrevocable licence to search for and to win the substances named in the agreement and that therefore there had been no ademption of the devise.

In view of the judgment of the Supreme Court of Canada your Commissioners do not consider that it is necessary to suggest any amendments to the Uniform Devolution of Real Property Act. It will be noted that under the decision of the Supreme Court of Canada these documents do not affect a sale out and out of the minerals nor an Agreement for Sale, nor are they Leases in the strict sense of that word. Three of the judges of the Supreme Court held that the instrument was to be construed as a grant for a profit a prendre for an uncertain term which might be brought to an end upon the happening of any of the various contingencies for which the "Lease" provided.

It should perhaps be noted that the Province of Alberta in 1956 passed the Land Titles Act Clarification Act, S.A. 1956, Chapter 26, which was assented to on March 29th, 1956. That Act provided that the term "Lease" as used in The Land Titles Act and any Act for which The Land Titles Act was substituted includes and shall be deemed to have included an agreement whereby an owner of any estate or interest in any mineral within, upon or under any land for which a Certificate of Title has been granted under The Land Titles Act or any Act for which The Land Titles Act was substituted. Demises or grants or a proportionate demise or grant to another person the right to take or remove any such minerals for a term certain or for a term certain coupled with the right thereafter to remove any such minerals so long as the same are being produced from the land within, upon or under which such minerals are situate.

It is assumed by the Saskatchewan Commissioners that this

Act was passed in order to make it clear that these agreements were not Agreements for Sale or sales of minerals. In view of the decision of the Supreme Court of Canada your Saskatchewan Commissioners recommend that no further action be taken.

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

APPENDIX Q

(*See page 26*)

UNIFORM WILLS ACT

In the Proceedings of the 1956 meeting of this Conference the following entry appears at page 23:

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 attached to it was commenced.
>
> 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.

Copies of the revised draft were distributed in accordance with the above resolution on November 20, 1956. Gilbert D. Kennedy, S.J.D., at that time Professor of Law at the University of British Columbia, and an acknowledged expert in the law of wills, prepared a memorandum containing a number of criticisms of this revised draft. On the receipt of the memorandum the British Columbia and Manitoba Commissioners disapproved the draft to afford an opportunity for the Special Committee and the Conference to consider the criticisms. Most of the points to which Mr. Kennedy drew attention were formal and were corrected in the draft which is printed in the 1956 Proceedings, beginning on page 102. Some of his suggestions would, however, involve change in substance and therefore raised questions of policy for the Conference, and have not been given effect in the Act as printed. These suggestions appear in the following extracts from Mr. Kennedy's memorandum:

Section 6. This section is rewritten in an effort to remove the awkward phrase "while on active service". This is achieved, for members of the Canadian forces only, by substituting "while placed on active service pursuant to the National Defence Act". The old phrase remains for members of other forces. In so far as it is still considered wise to retain one or other form of the active service phrase, then the new draft of subsection (1) appears preferable to the old especially when coupled with subsection (2) which provides for a certificate. However, I do again suggest the removal of any requirement of active service before this section operates. Would it not avoid much of the difficulty that now arises from the section if membership in one of the forces during a war or police action in which his country was engaged was a sufficient test or basis for permission to make an unwitnessed will under this section? If this were done separate provision would, of course, need to be made for mariners and seamen.

In the second line of subsection (2), would it be preferable to substitute "an" for "the" in the following language: "signed by or on behalf of *an* officer having custody of the records". Further, for purposes of proof, might it be wise to add the words "purporting to be" before "signed" in the second line of the same subsection?

Section 9. It may be true that the privilege of making a soldier's will, that is a will without witnesses, should be restricted to certain circumstances, whether they be active service or membership in forces need not be here debated, and the question of who under the age of 21 may make a will in any of the appropriate forms is a different question. But in the redraft of clause (b) we have limited the privilege of making wills while under 21 to Canadian servicemen, whereas, under section 6, we refer not only to Canadian servicemen but to servicemen of other countries. This is probably an oversight.

In addition clause (b) of subsection (1) includes more members of the Canadian forces than are permitted under section 6 to make a special will. I assume that this is intended, but if so, why not delete subclause (ii)? Clause (c) of subsection (1) of section 9 allows any mariner or seaman, whether he falls within section 6 or not, to make a will at any age under 21. I merely note this distinction.

Subsection (3) of section 9. It would seem to be a lot

simpler and in conformity with the instruction of the conference if this subsection were rewritten merely to provide that persons who are authorized by subsection (1) to make a will while under the age of 21 are also authorized to revoke while under 21 any will so made, notwithstanding that at the time of revocation the person so revoking had ceased to be capable of making, under subsection (1), a testamentary disposition. The approach which I suggest would also cover a further problem or point which may not be covered under the present draft, at least in so far as clause (b) of subsection (3) is concerned. May a person who is still a person described in either clause (b) or (c) of subsection (1), yet under 21, revoke his will? We provide that he may do so if he ceases to be a person so described. Should we not also provide that he may do so while he is still a member of the groups set out, yet also under 21. Presumably he may do so in the one form permitted under section 9, subsection (1), namely making a new will. I assume that he should also be permitted to revoke by the method set out in clauses (c) and (d) of section 16. It would be difficult to amend the present clause (b) of subsection (3) of section 9 to cover this point, because the man who has not ceased to be such a person should be given the power to revoke under all methods in section 16, not just the three listed for persons who have ceased to be members of the described class.

In any event, if clauses (a) and (b) do stay, I would suggest adding the word "has" immediately before the word "made" in the first line of clause (b) in order to be consistent with clause (a). And I am not sure of the necessity in either clause (a) or (b) of the word "still" which appears in line 3 of each clause.

Section 21. Subsection (3) of this section is a rewriting of the draft proposed new subsection (5) contained on page 9 of the annotations to the previous draft. The language has been considerably simplified. I am still troubled by what happens when there is a specific bequest of the funds into which the proceeds are traced or when there is a specific bequest of property bought out of the funds into which the proceeds were traced. All that the subsection says is that "the bequest is not adeemed" by the acts mentioned. It does not say how an executor is to distribute the property, in other words, who takes what. Does the original beneficiary take the amount of proceeds out of the residue of the estate rather than out of the funds into which they are traced, thereby

cutting down what otherwise might be the amount of a specific gift of the fund to someone else? I think the policy behind the subsection is a good one, but I feel that we have not yet finally decided upon all aspects of our policy and until we do, and until we say what that policy is in the section itself, we should hesitate to leave the subsection as it is.

Section 34. There is no change in this section but it does have some objectionable features. My chief objection is that it is limited to taking by an illegitimate "child". Thus, for example, in a gift to the testator's grandchildren, the lawful children of an illegitimate child of a female testator would not be allowed to take under this section. Would something along these lines be a better substitute?

> Except when the contrary intention appears by the will, the illegitimate child of a female is to be treated as if he were legitimate, in the construction of all gifts by will.

The present drafting does not appear to cover the illustration suggested even by the use of the phrase "to her children or issue". In the draft, the issue must be issue of the mother. It is true that grandchildren are her issue, but the section only allows illegitimate children, not the illegitimate child's lawful children to take. Hence the suggestion to redraft.

Section 37. The section is new. From the point of view of drafting I wonder whether the word "made" should be replaced by the word "revived", just for the sake of consistency. From the point of view of policy, the section is important by reason of its silence on what will in practice be the most important question—is a will republished by a codicil made after the act comes into force deemed to be made at the time of republication? There are so many cases in England, on this case of republication before and after the effective dates of various statutes that it might be wise to state our policy one way or the other for the purposes of this Act.

The Special Committee has carefully considered Mr. Kennedy's suggestions and makes the following comments:

Section 6. It is a matter of policy whether or not the provisions of section 6 should extend to all persons who happen to be members of one of the forces during war or a police action, regardless of whether or not their status obligates them to serve under active service conditions. A person, whether or not within section 6, may at any time make a valid holograph will under section 7, so that where section 7 is enacted there is no need of

enacting section 6. It is believed that section 6 should be unchanged, except by giving effect to the two suggestions as to the wording of subsection (2).

Section 9. Whether the right to make a will while under the age of twenty-one years should be extended to persons other than members of the Canadian forces is a question of policy. Members of foreign armed forces were deliberately not included because there seemed to be no affirmative reason for extending the privilege to them other than to give an appearance of consistency with section 6. The question is not one of much importance, although one member of the Committee is of the opinion that the legislation should authorize the making of a will by a person under twenty-one who is a member of any armed force.

Subclause (ii) of clause (*b*) of subsection (1) is designed to cover members of the Canadian militia when placed on active service and should not be deleted.

Clause (*c*) of subsection (1) gives effect to the intention of the Commissioners.

Clause (*b*) of subsection (3) was deliberately drafted so as to require a person under twenty-one years of age in military service or serving as a mariner or seaman to exercise the degree of deliberation necessary to make a will in order to revoke one previously made. Whether this safeguard is necessary or desirable is a matter of opinion. The word "has" should be inserted before "made" in the first line of clause (*b*).

Section 21. The Committee believes that subsection (3) should remain unchanged, leaving it to the courts to determine the consequence of the bequest not being adeemed. It is impracticable to set out in detail statutory provisions that will insure that the intent of the testator is given effect in every conceivable contingency.

Section 34. This section has been in the Uniform Wills Act since its adoption by the Conference in 1929. At the 1956 meeting the question of extension of the provision to include all illegitimate children and adopted children was discussed, and was decided in the negative. The Committee was then instructed to retain the section in its present form. The Committee thinks that Mr. Kennedy is correct in his criticism of this section and suggests that it be redrafted as follows:

> In the construction of testamentary bequests, except when a contrary intention appears by the will, an illegitimate child of a female is deemed legitimate.

Section 37. The Committee agrees that the word "revived" should be substituted for "made" as the last word of the section.

The Committee desires to express its thanks to Mr. Kennedy for his assistance in bringing these points to the attention of the Conference and also for his earlier constructive criticisms of the draft Act that was considered at the 1956 meeting.

HORACE E. READ, Chairman,
on behalf of the Special Committee.

APPENDIX R

(See page 26)

FOREIGN TORTS

PRELIMINARY REPORT

The following entry appears at page 20 of the 1956 Proceedings:
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.

The purpose of this preliminary report is to delineate the scope and various facets of the project. It will be obvious that there are many factors to be considered before a decision can be made concerning what legislation is desirable, if any.

In *McLean* v. *Pettigrew* [1945] S.C.R. 62, the Supreme Court of Canada adopted for all Canadian provinces the English Conflict of Laws rules governing tort liability despite the fact that writers in legal texts and periodicals had subjected few decisions to more criticism than the one which had established these rules.

These rules took positive form in 1897 when Lord Justice Lopes in *Machado* v. *Fontes* [1897] 2 Q.B. 231, in the Court of Appeal, quoted some language uttered by Mr. Justice Willes in 1870 while delivering the judgment of the Court of Exchequer Chamber in *Phillips* v. *Eyre* (1870) L.R. 6 Q.B.1. In his opinion

in *Machado* v. *Fontes* the Lord Justice isolated that language from its original context and applied it as though it had enunciated a complete and self contained formula. The language quoted out of context was as follows: "As a general rule, 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 a 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. . . ." In *Machado* v. *Fontes* the plaintiff sued in England claiming damages for a libel alleged to have been published in Brazil. The defendant sought to amend his pleadings by stating that under the law of Brazil no civil proceedings could be brought against him for the publication there. The Court of Appeal rejected this amendment on the ground that the word "justifiable" as it was used in the language of Mr. Justice Willes quoted from *Phillips* v. *Eyre* meant "legally innocent" and since the libel in *Machado* v. *Fontes* was punishable as a crime under Brazilian law it was not innocent or justifiable by that law. It followed that the plaintiff's action was maintainable in England.

Dr. John D. Falconbridge, Q.C., has shown in his *Essays on the Conflict of Laws* (2nd. edition, page 815) that in *Machado* v. *Fontes* Lord Justice Lopes was guilty of a fundamental error in isolating the passage quoted from *Phillips* v. *Eyre* from its context in that case and treating it as a complete and self contained formula. By this example the Lord Justice has led courts, including the House of Lords, the Privy Council and the Supreme Court of Canada, in later cases frequently to commit the same error. Also in *Machado* v. *Fontes* the Lord Justice perverted Mr. Justice Willes language in *Phillips* v. *Eyre* by attributing to the word "justifiable" in his second condition a meaning which, in the light of what he said in an earlier paragraph of his judgment, he did not intend. The context shows that Mr. Justice Willes really meant that to have an actionable right in England a civil obligation must have been created by the law of the place where the allegedly wrongful act was done.

Professor Moffatt Hancock has observed that ever since its announcement the decision in *Machado* v. *Fontes* has provoked a continuous stream of criticism. After demonstrating that the decision in that case was inconsistent with the obligation theory that prevails generally in the Conflict of Laws and upon which the decision in *Phillips* v. *Eyre* was really based, he added: "It is also inconsistent with the principle that the penal and criminal

laws of one country are not enforced in another. It has been disapproved from the bench in Scotland, Australia, Saskatchewan and Quebec. To the writer it appears to be at glaring variance with the policy . . . that a plaintiff should not be given an undue advantage by a fortunate choice of forum."

In Cheshire, *Private International Law* (5th edition, 1956) at page 275 the decision in *Machado* v. *Fontes* is said to have been:

> . . . at glaring variance with the rule of natural justice that the plaintiff should not reap an extra benefit by selecting a forum where the remedy is more favourable than in the place of wrong. It replaces the word "justifiable" used in the principal case, Phillips v. Eyre, by a word even more comprehensive and more ambiguous. It unreasonably enlarges the content of the substantive right given to the plaintiff by the law of the country where the right arose. It ousts the lex loci delicti commissi from its rightful role, which is inter alia to specify the legal consequences that flow from the defendant's act. In short, it virtually submits the existence, the nature and the quantum of the obligation to the mercy of the lex fori. Thus it enables the defendant to rely upon a defence available to him by the lex fori though it is not recognized by the lex loci delicti commissi. Again, it would appear to leave the question of remoteness of damage to the lex fori, thus raising an illogical exception to the rule that obtains in contract. Its implication is that what is neither a tort nor a crime in the foreign country may be treated as a tort in England.

In conformity with the judicial habit of isolating the passage in *Phillips* v. *Eyre* from its context, the Chief Justice of the Supreme Court of Canada, in 1929, in *Canadian National SS. Co.* v. *Watson* [1939] S.C.R. 11, a case which invited a searching investigation of the principles governing tort liability in the Conflict of Laws, simply fell back without question upon a solitary quotation of that passage made in 1902 by Lord Macnaghten in the House of Lords. The result was thus predictable when in 1945 a case raising the precise point involved in *Machado* v. *Fontes* came before the Supreme Court of Canada for the first time. In *McLean* v. *Pettigrew* the Supreme Court held that the plaintiff in an action brought in Quebec could recover for injury suffered by him while a gratuitous passenger in the defendant's motor car in Ontario because (a) if the injury had occurred in Quebec the defendant would by the law of Quebec have been responsible in quasi delict and (b) the defendant's act in Ontario was not justifiable by the law of Ontario. Since the plaintiff was a gratuitous passenger, the defendant was not civilly liable to him for the injury by Ontario law, but the defendant's act was held not to be justifiable because he was, in the opinion of the Supreme Court, guilty of a penal offence in Ontario by violating an Ontario statute that prohibited

driving "without due care and attention." Singularity marked the judicial process in this case by the circumstances first, that the defendant had actually been acquitted by an Ontario magistrate of having violated this statute, and, second, that the Supreme Court was able to disregard the acquittal by following an earlier decision of its own that a civil court is not bound by the previous decision of a criminal court. The decision in *McLean* v. *Pettigrew* thus rested ultimately on a fiction, since actually by the law of Ontario, the place of wrong, the defendant was actually subject to no liability whatever. Dr. Falconbridge has commented that: "One may perhaps be permitted to express respectfully some regret that the Supreme Court of Canada did not avail itself of the opportunity to discuss the merits or demerits of the rule which it enforced and did not even disclose any awareness that its decision related to a topic upon which much has been written pro and con." In this case the Supreme Court adopted for Canada a rule that not only is theoretically indefensible but is in disharmony with the motivating policy and purpose of the segment of law known as the Conflict of Laws. One of the chief ends secured by a rational system of rules governing Conflict of Laws is that rights and duties shall not be substantially varied because of the fortuitous circumstance that action is brought in one forum rather than another.

Reference to the 1956 Proceedings at page 62 discloses that the British Columbia Committee directs its criticism and recommendation for change solely to the interpretation that the courts have given to the second of the conditions or rules enunciated in *Phillips* v. *Eyre*. It is suggested by that Committee that what is required to remedy the defect in the law is to enact legislation preserving the first rule and changing the second rule in effect to read: "The act must give rise to a civil liability under the law of the place where the act was done." This gives rise to the question whether a half-measure such as this is an adequate remedy, or whether if legislative action is to be taken it should completely repeal both of the present common law rules and try to supplant them with one that is both theoretically sound, practically workable, and conducive to just results.

It is desirable to examine both of the rules as enunciated in *Phillips* v. *Eyre* and interpreted and applied in *Machado* v. *Fontes* and subsequent cases, in the light of the basic principles and policies underlying the Conflict of Laws as a whole.

With particular reference to the first of the rules enunciated

in *Phillips* v. *Eyre,* Moffat Hancock, in *Torts in the Conflict of Laws* at pages 87 and 89, has the following to say:

> "If we consider this rule historically, in relation to the time and place of its enunciation, it does not appear so very absurd. In the 1860's, the idea of enforcing foreign law was still a novelty. Many judges, both in England and in America, seem to have thought that to give a judgment awarding damages, which was not based upon statutes or decisions of the jurisdiction in which they sat, would be a daring innovation . . . When the first rule in *Phillips* v. *Eyre* was enunciated, American courts were toying with similar theories which they did not entirely abandon for another forty years.
>
> "But in the cooperative atmosphere of modern conflict of laws, the first rule in *Phillips* v. *Eyre* is like a breath from a bygone age. As a restriction upon the normal application of choice-of-law principles and the realization of choice-of-law policies it is objectionable in its generality. Conceivably there might be cases in which an English court would not want to enforce a liability in tort created by some foreign state because that liability was utterly repugnant to English ideas of justice. But it could scarcely be contended that every tort liability unknown to English law is, from the standpoint of English law, something so immoral that it ought not to be recognized. The first rule in *Phillips* v. *Eyre* compels the court of the forum to disregard foreign laws and fundamental choice-of-law policies whether there is any special reason for doing so or not.
>
> ". . . In every case where an English court is asked to enforce the law of the place of wrong, choice-of-law policies require that it should do so. On the other hand, the cases in which the foreign law is so unfair or oppressive that choice-of-law policies are opposed to English ideas of justice will probably be very few and far between. And when a case of this type does occur, the courts could easily deal with it under their general discretionary power to reject any foreign law which clashes with the 'public policy' of the forum.
>
> "The first rule in *Phillips* v. *Eyre* was formulated at a time when the need for a rational system of conflict of laws was very dimly perceived in common-law jurisdictions and when many judges felt that there was something rather strange and perhaps a little dangerous about enforcing the law of another jurisdiction. Today that notion is obsolete. Every jurisdiction has different laws and these laws are continually changing. What difference if a court in one jurisdiction enforces the laws of another? 'We are not so provincial,' said Judge Cardozo, 'as to say that every solution of a problem is wrong because we deal with it otherwise at home' (*Loucks* v. *Standard Oil Co.*, (1918) 224 N.Y. 99, 111). . . .
>
> ". . . The first rule in *Phillips* v. *Eyre* has been transplanted to some of the federal Dominions where it is indeed an exotic plant. Between the territorial units of a federal state there should be friendship and cooperation. It seems incredible that because in 1868 the Privy Council (in *The Halley,* (1868) L.R. 2 P.C. 193) refused to enforce a particular rule of Belgian law, the courts of Canadian provinces should refuse to enforce any law of a sister province which happens to differ slightly from their own. Yet this appears to be the prevailing doctrine in Canada today. One would look far to find a more striking example of 'mechanical

jurisprudence', blind adherence to a verbal formula without any regard for policies or consequences."

Wolff, *Private International Law,* at page 493, summarizes the English (and Canadian) position concerning actions for a wrong alleged to have been committed in a law district outside of the forum:

"... The orbit within which the *lex loci delicti* is operative is very limited: it is restricted to the question, is the act that caused the damage justifiable? All other questions must be answered by the *lex fori.*"

Cheshire, at page 268, says, however, that

"... It seems almost self-evident that the lex loci delicti commissi should be decisive and that the lex fori should apply only in so far as the recognition of an obligation as nearly equivalent as possible to that created by the foreign law would infringe its own doctrine of public policy or would conflict with its law of procedure. This view finds its simplest vindication in the fact that what has happened is 'of more acute concern to the foreign community than to the community of the forum'. It was the view of the statutists and it is adopted by most legal systems at the present day. Thus another eminent American judge has said:

'The plaintiff owns something and we help him to get it. We do this unless some sound reason of public policy makes it unwise for us to lend our aid . . . If aid is to be withheld here, it must be because the cause of action in its nature offends our sense of justice or menaces the public welfare.'"

(Citing Cardozo J. in Loucks v. Standard Oil Co. of New York (1918) 224 N.Y. 99).

The doctrine favoured by Cheshire finds expression in the United States where it has generally been held that the creation and extent of tort liability is governed by the law of the place where the alleged tort was committed and the law of the forum governs only procedure. This rule is consistent with the obligation theory under which the forum endeavors to give just effect to the plaintiff's right of action and the correlative obligation upon the defendant as measured by the law of the place where the alleged injury to the plaintiff occurred.

Furthermore, the approach of courts in the United States to this subject is in harmony with the modern view of the territoriality of law. To quote Read, *Recognition and Enforcement of Foreign Judgments* (1938), at page 4:

"In the Anglo-Dominion system of common law the doctrine of territoriality of law was firmly established by the decision of the House of Lords in the case of *Castagli* v. *Castagli,* (1919) A.C. 145, and that of the Judicial Committee of the Privy Council in *Secretary of State* v. *Charlesworth Pilling & Co.,* (1901) A.C. 373. In fact the only serious departure from this doctrine has been the English rule allowing an

> action for tort based upon a foreign act non-tortious by the law of the place where the act occurred if it would have been actionable had it occurred in England. (*The Halley; Phillips* v. *Eyre; Machado* v. *Fontes.*) These tort cases cannot be regarded as other than early aberrations which have for the time being projected an exceptional rule." (Footnote here incorporated into text.)

The apparently simple rule that prevails in the United States has been formulated in the Restatement of the Conflict of Laws as follows:

> "377 The Place of Wrong.
>
> The place of wrong is in the state where the last event necessary to make an actor liable for an alleged tort takes place."
>
> "378 Law Governing Plaintiff's Injury.
>
> The law of the place of wrong determines whether a person has sustained a legal injury."

In recent years, however, difficulties have arisen in so-called multistate contact cases, particularly in defamation cases. The tort of defamation presents some peculiar problems of its own in the conflict of laws, as a result of the development of modern media of communication. Defamatory publications will now, quite often, be communicated in a large number of different law districts. If a separate tort is committed by the communication in each law district, a bewildering multiplicity of actions arising out of these publications could easily result. This complication would not arise under the present common law in Canada as developed in *Phillips* v. *Eyre* and *Machado* v. *Fontes,* for according to this law the right of action being enforced by the court is created by the law of the forum and only one cause of action could arise as a result of an allegedly tortious act, regardless of the number of law districts in which this act takes effect.

Under the prevailing rule in the United States a tort is committed by each communication of defamatory matter in each different law district. In other words, there are as many torts arising out of the original defamatory statement as there are law districts in which the defamation is communicated. To avoid an indefinite number of resulting causes of action it appears that uniform legislation is required to permit only one action to be brought for an allegedly defamatory publication, regardless of the number of law districts in which it is communicated. The National Conference of Commissioners on Uniform State Laws of the United States has attempted to deal with this question with a *Uniform Single Publication Act* approved at the 1952 Conference. It reads:

> "Section 1. No person shall have more than one cause of action for damages for libel or slander or invasion of privacy or any other tort founded upon any single publication or exhibition or utterance, such as any one edition of a newspaper or book or magazine or any one presentation to an audience or any one broadcast over radio or television or any one exhibition of a motion picture. Recovery in any action shall include all damages for any such tort suffered by the plaintiff in all jurisdictions.
>
> "Section 2. A judgment in any jurisdiction for or against the plaintiff upon the substantive merits of any action for damages founded upon a single publication or exhibition or utterance as described in Section 1 shall bar any other action for damages by the same plaintiff against the same defendant founded upon the same publication or exhibition or utterance."

For comments on this Uniform Act and a thorough discussion of the ramifications of the problems involved in dealing with this phase of the law, see Prosser, "Interstate Publication," in (1953) 51 Michigan Law Review, 959.

In Cheatham, Goodrich, Griswold and Reese, *Cases and Materials on Conflict of Laws,* (3rd. ed. 1951) beginning on page 424 the following note appears under the title "Bases of Choice of Law in Tort Actions."

> "When the contacts of a transaction alleged to be tortious are divided among several states, inevitably the question arises, What is the basis for determining the law governing the transaction? In this note, three separate approaches to the answer to the question are stated. The reader may consider whether any of these approaches is useful in determining the governing law of all elements of all torts, or in determining the governing law of some elements of some torts.
>
> "1. The territorial basis of law. Do the territorial basis of law and accompanying conceptions of territorial sovereignty point to the answer? In Voshefskey v. Hillside Coal & Iron Co., 21 N.Y. App. Div. 168, 170, 47 N.Y.S. 386 (1897), a tort case involving the question whether the law of the place of the transaction or the law of the forum should be applied, the court, quoting the axioms of Huber stated by Story, said they "seem to solve the intricacies of the subject." Consider the opinion of Holmes, J., in American Banana Co. v. United Fruit Co.
>
> "2. The basis of tort liability in non-conflict cases. Do the bases of tort liability in non-conflicts cases reveal which of the contacts is the dominant one for the purpose of choice of law? Consider the language of Holmes J., in determining whether the Federal Employers' Liability Act extended to an American stevedore injured on a German vessel in an American harbor:
>
> > 'The conduct regulated is of universal concern. The rights of a citizen within the territorial limits of the country are more extensively determined by the scope of actions for torts than even by the law of crimes. There is strong reason for giving the same protection to the person of those who work in our harbours when they are working upon a German ship that they would receive when working upon an American ship in the next dock, as is especially obvious

in the case of stevedores who may be employed in unloading vessels of half a dozen different flags in turn." Uravic, Administratrix, v. F. Jarka Co., Inc., 282 U.S. 234, 238-239 (1931).

"The bases of tort liability are not easy to state, much less to compress. It may be suggested, however, that there are four general bases or purposes in fixing or delimiting tort liability.

"a. A primary purpose is to fix the standards of conduct of a person, so he can know what he may do and what he may not do, and so that others can know what type of conduct to expect from him. This purpose of delimiting tort liability suggests that it is for the state where a person acts to determine whether his conduct and its consequences create liability.

"b. Another purpose of the law of torts is to fix the measure of protection to which each person is entitled against his fellows. This purpose suggests it is for the state where the damage is suffered to determine whether the damage was wrongfully inflicted and gave rise to a right of action in tort. The recent extension of liability without fault, with consequent emphasis on the protection of the injured party rather than on the wrongfulness of any conduct involved, may indicate this purpose is the fundamental one in a wide part of the tort field.

"c. A third purpose is to give compensation, so that the injured person will be in about as good a position financially after the injury as he was before the injury. This purpose may be thought to carry with it the conclusion that the state of the injured person's domicile is principally concerned, since if adequate compensation is not given for the injury, the burden of supporting the injured person will probably fall on that state or on his relatives in that state.

"d. A fourth purpose may be what is sometimes called "civil penology," that is, the use of the machinery of the civil side of the law to impose punishment upon the offender. One may see something of this in that part of the law of torts which deals with such actions as trespass to the person and trespass upon real property where a recovery may be had even though no actual harm is done to the plaintiff. This type of action is not typical of the current developing law of torts. But, nevertheless, those situations in which punitive damages may be added to what is determined upon as compensation to the plaintiff for a harm suffered show that the punitive element has not entirely disappeared.

"3. The just result in the particular case. Shall we refuse to lay down any rule pointing to a single contact and, instead, leave a wide area of freedom to the courts in deciding individual cases? Three degrees of freedom or flexibility suggest themselves.

"a. There may be a rule which uses alternative reference points, as, "Of the several laws the one that is most favorable to the party injured is to be applied." Lorenzen, "Tort Liability and the Conflict of Laws," 47 Law Quarterly Rev. 483, 492 (1931), quoting the Imperial Court.

"b. The determination of the governing law may be made depend-

ent on a consideration of the groupings of contacts in each case, with the power left in the court to determine which grouping of contacts is most important.

"c. The court may concern itself primarily and directly, not with the contacts of the transaction with the several states, but with the question, Shall we give relief or no relief to this plaintiff against this defendant? This approach, if adopted, might lead to an increased use of the forum law for, as Professor Lorenzen has pointed out, "Distrust of foreign law has been a characteristic of all Courts and Legislatures throughout the history of the conflict of laws." "Tort Liability and the Conflict of Laws," 47 Law Quarterly Rev. 483, 498 (1931)."

J. H. C. Morris has argued that the so called "proper law doctrine" that has been developed by the English courts to determine the essential validity and extent of obligation of an alleged contract that has connecting factors with two or more law districts, should be utilized to determine whether a defendant is liable in tort. (See Morris, *The Proper Law of Tort,* (1951) 64 Harvard Law Review 881.)

Mr. Rowland Williams of Winnipeg has written to the Chairman of your Special Committee expressing a dissent to the proposal of the British Columbia Committee. Mr. Williams says:

"I presume that the arguments advanced in support of the B.C. recommendation are roughly as follows:

"a) That it brings Rule II back into line with the trend of the early foreign tort cases (i.e. to refer tort liability exclusively to the lex loci).

"b) That this trend was and still is consistent with established conflictual principle (locus regit actum and doctrine of vested rights).

"c) That Willes, J., after a strong start in the Phillips case was unfortunately confused by the peculiar facts before him into using the misleading and imprecise expression "not justifiable" when all he really meant was "gives rise to civil liability".

"d) That the *Machado* and *Pettigrew* decisions were merely ill-considered extensions of "not justifiable" to include acts which were merely punishable.

"This I know is the usual basis for arguing that Rule II should be narrowed.

"It seems to me that this argument overlooks Rule I, the special considerations which brought it into being, and the effects it produces. The considerations underlying it were made clear in *The Halley* (1868) where the Privy Council refused to be high-pressured by considerations of principle and symmetry into exposing Englishmen to the vicissitudes of foreign tort laws. The reason was too plain: appalling things might otherwise occur! The effect was to force the plaintiff to prove a tort by English law *in addition* to whatever he might also have to establish by the lex loci.

"So long as Rule I stands I would oppose any narrowing of Rule II. To do so would in my view increase the plaintiff's burden too much. He would then have to establish a cause of action under the laws of two jurisdictions. In fact, my personal inclination (if Rule I is to remain) would be to widen Rule II to include acts which, though not giving rise to tort or criminal liability, are breaches of contract or of any law of imperfect obligation of the foreign jurisdiction, in short: acts which are "unlawful", whatever the remedy or legal result. On the other hand, if Rule II must be narrowed, then the only fair thing, in my view, is to wipe out Rule I.

"Accordingly, the real crux of the problem, as I see it, is whether Rule I is necessary today. It has of course been suggested that it never was necessary and that the defendant could be adequately protected against unpalatable foreign tort laws by the rule which prohibits application of any foreign law which is contrary to our notions of "public policy". I think this suggestion impractical. The conflictual categories of public policy are practically closed, and I doubt that they would be of any real assistance in excluding unpalatable foreign tort laws. The real fear, as I understand it, is that we might be compelled to enforce foreign tort laws which impose liability without fault in cases not recognized by the common law. This is exactly what the Privy Council had to contend with in *The Halley*. Only a comparative lawyer could tell us how serious a worry this really is, but at the minute it worries me. I would certainly feel better with an assurance that the rule of public policy would actually exclude such foreign laws. But I doubt that it would, because the common law does not adhere to the principle of no liability without fault. It seems to me that if Rule I is to be abolished, it is imperative to set up a special statutory barrier which will exclude all foreign tort laws of this nature. Personally, I think it impossible to draft such a provision. That is why I think that Rule I probably has to stay.

"I know that everybody argues that liability for a foreign tort should be disposed of by the lex loci. Symmetry and logic demand it! I don't agree. The common law of tort is in my opinion in very satisfactory shape. I don't think as much can be said for the domestic tort laws of the rest of the world. If symmetry and logic point to the lex loci, justice and equity point more strongly to the common law. While I agree that people often do business, make wills, marry, transfer assets, etc. with regard to the law of the place where they happen to be, and may often be said for this reason to rely upon that law, I do not think this logic applies to wrongdoer and wronged. Torts are not usually considered acts. Justice in tort has little to do, in my opinion, with the lex loci. It has more to do with general, even universal, notions of common sense and fairness. For this reason I think the present choice rules are right. They are a strong vote of confidence in the soundness of the common law of tort and a vote of nonconfidence in foreign tort laws, and I would strongly oppose any change in the present conflicts rules unless a comparative study shows that these assumptions are no longer valid.

"To sum up: until an expert in comparative law can satisfy me that we have nothing to fear from the tort laws of the rest of the world, I would favor retaining Rule I as a necessary protection against unpalatable foreign tort laws. And as Rule I imposes a heavy burden on plaintiffs,

I would oppose any move to increase this burden by narrowing Rule II. In fact, I would favor easing this burden by widening Rule II even further, but I do not advocate legislation as I think the Courts are free to do this by extending the meaning of "not justifiable". Most important, I think it is very short sighted to be stampeded into ill-considered reforms by rather narrow considerations of logic and symmetry. The primary consideration, in my opinion, is what will produce the best justice in a given case, and by that test I think (subject to contrary advice by a comparative lawyer) that the present rules are more satisfactory than any alternatives yet suggested."

The foregoing material in this preliminary report is designed to portray the scope and complexity of the problem of determining what, if any, departure should be made from the present common law rules governing torts in the Conflict of Laws by legislation. Obviously there must be further study and survey and a careful weighing of the relevant data and considerations before an attempt can be made to draft a proposed statute. Mr. Gilbert Kennedy has accepted an invitation to become a member of your Special Committee and other Commissioners will be asked to participate. It is recommended that the Special Committee should continue its study and report at the next meeting of the Conference.

HORACE E. READ,
Chairman for the Committee.

APPENDIX S

(*See page 27*)

REVISED WILLS ACT

At the 1957 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 30th day of November, 1957, it be recommended for enactment in that form.

The revisions decided upon at the 1957 meeting have been made in the text. The major changes are:

(1) Deletion of former subsection (3) of section 9 and substitution of a new subsection (3).

(2) Redraft of subsection (2) of section 21.

(3) Insertion of a new subsection (1) in section 22; the former section becoming subsection (2).

(4) Redraft of section 34.

(5) Redraft of section 37.

HORACE E. READ.

REVISED UNIFORM WILLS ACT

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

Short title

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.

Interpretation

PART I

GENERAL

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,

Property disposable by will

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

Estate pur autre vie

(*b*) contingent, executory or other future interest in real or personal property, whether the testator is or is not ascertained as the person or one of the persons in whom those interest 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;

Contingent interests

(*c*) rights of entry.

Rights of entry

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

Writing required

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

Signatures required on formal will execution

(*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.

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

Military forces and mariners

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 an officer purporting to have 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 purposes 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 valid 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 section 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.

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, **Infants**

(*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 purporting to be signed by or on behalf of an 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 person who has made a will under subsection (1) may, while under the age of twenty-one years, revoke the will.

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. **Will exercising power of appointment**

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

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. **Incompetency of 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 **Gift to attesting witness**

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 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 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 accord-

ance 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 afterward wholly revoked, is revived, the revival does not extend to the part that was revoked before the revocation of the whole.

Subsequent conveyance, etc.

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.

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

Will revived or re-executed by codicil

22.—(1) When a will has been revived or re-executed by a codicil, the will is deemed to have been made at the time at which it was revived or re-executed.

Will speaking from death

(2) 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,

(*a*) the 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.

Lapsed and void devises and bequests

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.

Inclusion of leaseholds in general devise

24. Except when a contrary intention appears by the will, where a testator devises,

(*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 that the testator had power to dispose of by will in the real property.

Gifts to heirs

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 Act 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 in trust or by outright gift for a charitable purpose that is linked conjunctively or disjunctively in the will with a non-charitable purpose, and the non-charitable purpose is void for uncertainty or for any other cause, the charitable trust or gift is valid and operates solely for the benefit of the charitable purpose.

(2) Where a testator leaves property in trust or by outright gift for a charitable purpose that is linked conjunctively or disjunctively in the will with a non-charitable purpose, and the non-charitable purpose is not void, the trust or gift is valid for both purposes, and, where the will has not divided the property among the charitable and non-charitable purposes, the trustee or executor shall divide the property among the charitable and non-charitable 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. In the construction of testamentary dispositions, except when a contrary intention appears by the will, an illegitimate child shall be treated as if he were the legitimate child of his mother.

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, "mortage" 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 Act 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 by the will 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 .

APPENDIX T

(*See page 27*)

PENSION PLANS—APPOINTMENT OF BENEFICIARIES

REPORT OF G. S. RUTHERFORD

This matter was referred to the Conference by the Association of Superintendents of Insurance of the Provinces of Canada. It was submitted to the president of the Conference in a letter from the secretary of that association.

It appears that a proposal was made to the association that all provinces should adopt legislation comparable to section 62 added to The Conveyancing and Law of Property Act of Ontario by chapter 12 of the Statutes of Ontario, 1954. The Superintendents Association was of opinion that such legislation would not be within the field of operations of that association, but within that of the Conference. When the matter came before the Conference at its 1956 meeting, it was referred to me for the preparation of a draft.

I have, as instructed, prepared a draft which is attached hereto as Schedule B. I have followed the Ontario provision to a large degree, but have departed from it in some ways.

I have discussed the draft with representatives of the life insurance companies, as it was those companies which took the initiative in bringing the matter forward.

At their suggestion, the draft provision is extended to "agents" of employers. This is primarily intended to cover, not any agent in the ordinary legal sense of the word, but "insurance agents" as popularly understood. The wording of the draft is not restricted to such insurance agents, but the word "participant" is defined to mean a person who "is participating in a plan" and the various plans will set forth the persons who may participate therein. I would assume that, in most cases, agents in the ordinary legal sense, who are not employees, would not be included.

At the suggestion of the life insurance companies, I have, in clause (*b*) of subsection (2), tried to make it clear that a person designated may, on the death of the participant, enforce payment of the benefit for his own use.

I have also included a statement that "unless the plan otherwise provides" designations may be made by will. The representatives of the life insurance companies would prefer to have

designation by will prohibited or, failing that, would like to have the Act provide that such designations are prohibited unless a particular plan specially provides for them. At my request, the views of these representatives have been set forth in a memorandum sent to me by one of them, which is attached hereto as Schedule A.

I do not agree with the views expressed in the memorandum. I feel that a person disposing of all his affairs by will, perhaps made on his death bed, should have the right to designate, in the will, the beneficiaries under the pension plan. With some hesitation I have, however, prefixed to subsection (5) the words "Unless the plan otherwise provides".

I have also included, as subsections (5), (6), and (7), certain provisions taken from the uniform Life Insurance Part of the several provincial Insurance Acts—in Ontario subsections (4) and (6) of section 161. I have, however, modified these provisions to a considerable extent.

The draft has been set up, in form, as an amendment of The Law of Property Act of Manitoba. Each province that adopts the provision will presumably place it in the appropriate statute.

In subsection (4) I have omitted the words "from time to time" which appear in the Ontario provision. I have done this by reason of clause (*e*) of section 18 of the uniform Interpretation Act adopted by the Conference. Any province that does not have a similar provision may wish to insert the words "from time to time" after the word "may" in the first line of subsection (4).

Dated at Winnipeg, this 3rd day of December, 1956.

G. S. RUTHERFORD,
of the Manitoba Commissioners.

SCHEDULE A

At the outset I may say that I am unquestionably influenced by our experience in regard to appointment by will of a beneficiary under the Uniform Insurance Acts in Canada. Also, I am influenced by our knowledge and experience in dealing with beneficiary designations in relation to our United States business. The comparison between our experience under the Canadian practice and that under the American practice does lead to certain conclusions. The principal one is that if we could start all over again, but with the knowledge and experience we have now had, we

would press strongly for non-recognition of designations of beneficiaries of insurance moneys by will. I realize that the practice in the United States is not directly relevant but I refer to it for the sake of comparison. With the exception of perhaps two States, appointments by will are not recognized and the result is a much smoother operation in determining title to insurance proceeds. So far as I am aware, there is not the slightest demand in the United States for recognition of designations by will.

It is interesting to observe the difference in the position in the United States and in Canada in regard to the rights of the third party beneficiary, notwithstanding that both countries started off from substantially the same common law basis. Here we have had to turn to statute to overcome the rule that two parties may not contract for the benefit of the third in such a way to give that third party enforceable rights. In the United States the result was apparently arrived at by judicial construction. There it is a matter of contract.

That brings me to the point of suggesting that what we are dealing with in the proposed uniform bill respecting appointment of beneficiaries under pension plans can quite properly be regarded as essentially a matter of contract even though a statutory provision is necessary to make the right of the beneficiary enforceable. In other words, I am suggesting that the employer and the employee should be able to agree as to the manner in which appointments may be made under the plan. In our own case, based largely upon our experience in dealing with beneficiary designations of insurance proceeds by will, we have provided only for appointments by a writing signed by the contributor and deposited with the company at its head office. We do not expressly refer to wills but believe our position to be that we do not recognize appointments by will. We believe it practical to say only how an appointment may be made and impractical to specify the manner in which an appointment may not be made.

In your last draft of the proposed bill it is suggested that unless the plan expressly prohibits appointment by will then appointment by will is permitted. This seems to me to be a somewhat unusual approach, that is, that one, but perhaps not all, methods of appointment not permitted must be expressly prohibited. My suggestion is that the provision should be that where the plan so provides, appointment may be made by will.

SCHEDULE B

AN ACT TO AMEND THE LAW OF PROPERTY ACT.

1. The Law of Property Act, being chapter 138 of the Revised Statutes, is amended by adding thereto the following section:

Definitions:

44.—(1) In this section,

"designation"

(*a*) "designation" means a written instrument to which subsection (2) refers;

"employer"

(*b*) "employer" includes the trustee under a plan;

"participant"

(*c*) "participant" means a person who is participating in a plan established by an employer and who,

(i) is or has been employed by the employer, or

(ii) is an agent or former agent of the employer;

"plan"

(*d*) "plan" means a pension, retirement, welfare, or profit-sharing fund, scheme, or arrangement, for the benefit of employees, former employees, agents, and former agents of an employer, or any of them.

Effect of designation of beneficiary under employee benefit plans

(2) Subject to subsection (5), where, in accordance with the terms of a plan, a participant, by a written instrument signed by him or on his behalf by another person in his presence and by his direction, has designated a person to receive a benefit payable under the plan in the event of the death of the participant,

(*a*) the employer is discharged on paying to the person designated the amount of the benefit; and

(*b*) subject to subsection (3), the person designated may, on the death of the participant, enforce payment of the benefit to himself for his own use.

Defences by employer

(3) Where a person designated under subsection (2) seeks to enforce payment of the benefit, the employer may set up any defence that he could have set up against the participant or his personal representative.

Revocation of designation

(4) A participant may alter or revoke a designation made under a plan; but, subject to subsection (7), any such alteration or revocation may be made only in the manner set forth in the plan.

Designations by will

(5) Unless the plan expressly otherwise provides, a participant may make a designation by will; and every designation, whether or not made by a will, shall, notwithstanding section 20 of The Wills Act (*Manitoba, or section 26 of The Wills Act, Ontario*) have effect from the time of its execution.

(6) A designation contained in an instrument purporting to be a will is not invalid by reason only of the fact that the instrument is invalid as a testamentary instrument.

Effect of invalid will

(7) Where a designation is made by will, and subsequently the will is revoked by operation of law or otherwise, the designation is thereby revoked.

Effect of revocation of will

(8) This section does not apply to a designation of a beneficiary to which The Insurance Act applies.

Application of Insurance Act

2. This Act shall come into force on the day it receives the Royal Assent.

Commencement of Act

APPENDIX U

(*See page 28*)

PENSION PLANS—APPOINTMENT OF BENEFICIARIES

At the 1957 meeting of the Conference of Commissioners on Uniformity of Legislation in Canada at Calgary, a resolution was passed to the effect that the draft submitted by me be referred back to me to incorporate in it the changes made at the meeting; and that the draft so revised be sent to each of the local secretaries for distribution by them to the Commissioners 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 30th November, 1957, it be recommended for enactment in that form.

In conformity with this resolution I have, as instructed by the Conference, revised the draft submitted to the meeting in accordance with the instructions. Attached hereto is a copy of the revised draft.

G. S. RUTHERFORD,
of the Manitoba Commissioners.

An Act to amend The Act.

1. The , being chapter of the Revised Statutes, is amended by adding thereto the following section:

Definitions:

44.—(1) In this section,

"designation"

(*a*) "designation" means a written instrument to which subsection (2) refers;

"employer"

(*b*) "employer" includes the trustee under a plan;

"participant"

(*c*) "participant" means a person who is participating in a plan established by an employer and who,

(i) is or has been employed by the employer, or

(ii) is an agent or former agent of the employer;

"plan"

(*d*) "plan" means a pension, retirement, welfare, or profit-sharing fund, scheme, or arrangement, for the benefit of employees, former employees, agents, and former agents of an employer, or any of them.

(2) Where, in accordance with the terms of a plan, a participant, by a written instrument signed by him or on his behalf by another person in his presence and by his direction, has designated a person to receive a benefit payable under the plan in the event of the death of the participant,

Effect of designation of beneficiary under employe benefit plans

(*a*) the employer is discharged on paying to the person designated the amount of the benefit; and

(*b*) subject to subsection (3), the person designated may, on the death of the participant, enforce payment of the benefit to himself for his own use.

(3) Where a person designated under subsection (2) seeks to enforce payment of the benefit, the employer may set up any defence that he could have set up against the participant or his personal representative.

Defence by employer

(4) A participant may alter or revoke a designation made under a plan; but, subject to subsection (7), any such alteration or revocation may be made only in the manner set forth in the plan.

Revocation of designation

(5) Where a designation is contained in a will, the designation shall, notwithstanding section 20 of The Wills Act (*Manitoba, or section 26 of The Wills Act, Ontario*) have effect from the time of its execution.

Designations by will

(6) A designation contained in an instrument purporting to be a will is not invalid by reason only of the fact that the instrument is invalid as a testamentary instrument; and it may be revoked or altered by any subsequent designation.

Effect of invalid will

(7) Where a designation is contained in a will, and subsequently the will is revoked by operation of law or otherwise, the designation is thereby revoked.

Effect of revocation of will

(8) This section does not apply to a designation of a beneficiary to which The Insurance Act applies.

Application of Insurance Act

2. This Act comes into force on the day it receives the Royal Assent.

Commencement of Act

APPENDIX V

(*See page 29*)

UNIFORM TESTATOR'S FAMILY MAINTENANCE ACT

Report of Special Committee

It will be recalled that at the Tuesday session of this Section the Ontario report was adopted.

The effect of this adoption was to refer the whole problem raised by Pope v. Stevens to a Special Committee composed of Messrs. Rutherford and MacTavish with instructions to report back to this meeting.

Your Special Committee has met and studied this very complex matter and because the problem is peculiar to Manitoba and because in any event uniformity on the point is not possible, the Committee has come to the opinion that the section that is causing the difficulty, namely section 21, ought to be struck out of the Uniform Act. The Committee so recommends.

The Committee also recommends that a note should be inserted in the void created by the deletion of section 21 to the effect that any Province proposing to adopt the Uniform Act should consider whether it would be necessary or desirable to include a provision to ensure that any order made under the Act is co-ordinated with any legislation respecting the rights of a spouse of a deceased person (dower and the like).

Having wrestled at length with the problem the Committee feels that this disposition of the matter will serve two purposes, (i) it will improve the Uniform Act, and (ii) it will enable Manitoba to go ahead with complete freedom to deal with its own problem brought to light by Pope v. Stevens.

It will be recalled that Manitoba last year recommended that in order to remove further doubts section 6(1) ought to be amended.

Your Committee recommends that this recommendation be given effect to by striking out section 6 of the Uniform Act and substituting therefor the corresponding section of the Alberta Act which is now section 6 of The Family Relief Act, Revised Statutes of Alberta 1955, chapter 109. This will effect no change in principle but it is hoped it will clarify the powers of the court in making orders under the Act.

Respectfully submitted,

G. S. Rutherford,
L. R. MacTavish.

APPENDIX W

(*See page 29*)

UNIFORM LAW OF THE DOMICILE

Report of Alberta Commissioners

Your Alberta Commissioners wish to bring the following matters to the attention of the Conference of Commissioners on Uniformity of Legislation in Canada.

In September, 1952, the Lord Chancellor appointed a committee in the United Kingdom to consider certain questions connected with Private International Law. In February, 1954, the committee presented to the Parliament of the United Kingdom a First Report of the Private International Law Committee, which dealt with recommended alterations in the law relating to domicile and the regulation of conflicts between that law and the law of nationality. (The First Report of that Committee is attached as a Schedule hereto.)

The committee was created as a result of the adoption (by the Conference of Private International Law held at The Hague in 1951) of a convention tending to regulate conflicts between the law of nationality and the law of domicile (see Appendix "B" of the Committee's Report).

In paragraph 11 of the First Report the committee observed as follows:

> 11. Since our terms of reference invite us to suggest what amendments are desirable in the law of domicile generally, we have thought it convenient to set out in the form of a Code our view of what that law should be. We have not, of course, attempted to attain the precision needed for Parliamentary drafting, but we think that this method has helped us to reach our conclusions and to state our recommendations clearly and exactly. This Code is set out in Appendix A of this Report. We have preserved much of the existing law of England and Scotland, including the generally accepted meaning of domicile (see Article 2 (1)), but we do, on the other hand, recommend a number of substantial changes. These changes, we think, should not be made without prior consultation with other members of the Commonwealth. Nationality legislation was required to be uniform; the law of domicile should at any rate aim at being so.

In due course the Secretary of State for Commonwealth Relations communicated with the Secretary of State for External Affairs, Canada, and in October, 1954, His Honour the Lieutenant Governor of Alberta received a despatch from the Secretary of State transmitting a copy of the First Report of the Lord Chancellor's Committee and seeking to have the matter referred to the appropriate authorities of the Alberta Government with a view to receiving their opinion as to the advisability of implementing the committee's suggestion that legislation be enacted that would make the law of domicile in force in Canada conform with the principles set out in the Code of the Law of Domicile as contained in the said First Report. It is presumed that all Provincial Governments received identical despatches from the Secretary of State.

The Alberta Government replied through the usual channels in August, 1955, giving it as their opinion that the matter of drafting appropriate legislation to implement the recommendations of the Lord Chancellor's Committee should be placed before the Conference of Commissioners on Uniformity of Legislation in Canada. It appeared advisable to the Alberta authorities that all the provinces have similar legislation in this matter and that there be a model Bill dealing with domicile in order to achieve uniformity within Canada.

It is obvious that any Convention entered into by Canada for the purpose of regulating conflicts between the law of nationality and the law of domicile would give satisfactory results only if there were uniformity in the provincial laws concerning the matters dealt with in the suggested Code.

It is understood that other provincial authorities within Canada were also of the view that the suggested Code should be considered by this Conference. For that reason and because the Alberta Government in its reply to the Secretary of State for Canada gave as its opinion that the matter should be placed before the Conference, we bring this matter to the attention of the Conference for consideration of the need and desirability of a uniform Act and for further investigation should the Conference deem investigation advisable.

Respectfully submitted,

H. J. WILSON,
W. F. BOWKER,
J. W. RYAN,
Alberta Commissioners.

SCHEDULE

FIRST REPORT OF THE PRIVATE INTERNATIONAL LAW COMMITTEE

To the Right Honourable The Lord Simonds,
Lord High Chancellor of Great Britain

MY LORD

1. We were appointed a Committee on the 18th September 1952 with the following terms of reference:—

> "To consider what alterations may be desirable in such rules of private international law as the Lord Chancellor may from time to time refer to the Committee; and to consider, on the request of the Lord Chancellor, the subjects proposed for discussion at any international conferences on private international law in which the United Kingdom may be participating, and to consult with departments interested in the proposals; to make recommendations as to the instructions to be given to the United Kingdom representatives at such conferences; and, when requested, to consider and make recommendations on the reports of such conferences and the action to be taken on them."

2. On the 19th December you asked us to consider "what amendments are desirable in the law relating to domicile, in view especially of the decisions in Winans v. Attorney General [1904] A.C. 287 and Ramsay v. Liverpool Royal Infirmary [1930] A.C. 588 and whether, in the light of any alterations which the Committee may recommend in that law, it appears desirable that Her Majesty's Government should become a party to the draft Convention to regulate conflicts between the law of the nationality and the law of the domicile." (This was one of the Conventions approved by the Conference on Private International Law held at The Hague in October 1951 under the auspices of the Dutch Government.)

3. The Convention mentioned in paragraph 2 (which is set out in Appendix B and which we consider more fully in Part II of this Report), seeks to deal with difficulties which arise in private international law from the difference of opinion in the various countries of the world as to whether domicile or nationality should determine the personal law, that is, the law which governs questions of personal status and such matters as the validity of wills of, and intestate succession to, moveable property. This country,

together with the rest of the Commonwealth and the United States, relies upon the law of the domicile, while many Continental countries look to the law of the country of nationality. One of the difficulties to which this difference of view has led arises when a judge decides that the case before him is governed by foreign law and is then required to decide whether the foreign law means the whole of that country's law (including its rules of private international law) or merely its internal law. If it means the former, the judge may find himself referred to another system of law, which may be his own law or that of a third country. This reference back is known as the doctrine of *renvoi* and has been the subject of a vast literature as well as being responsible for a number of somewhat unsatisfactory legal decisions.

4. The Convention does not attempt to unify the rules of private international law as to choice of the law of the domicile or that of the nationality—that would be too ambitious an undertaking at our present stage of development—but merely to prescribe rules which will increase the number of cases in which, despite the continuing conflict between domicile and nationality, there will be uniformity of decision in every country which becomes a party to the Convention. It does this by defining the circumstances in which the *internal* law of the domicile or, as the case may be, of the country of nationality is to apply, and thus sidetracks the difficulties posed by the doctrine of *renvoi*. For this purpose it is obvious that there must be agreement as to what is meant by "domicile", for there has hitherto been a wide divergence between the meanings attributed to that term in this country and in Continental countries. If this divergence were to remain to any substantial extent the Convention would not always work, but in some cases would have the effect of creating new and different conflicts in the choice of law. Article 5 of the Convention therefore provides a definition of domicile, which it describes as being the place where a person habitually resides. As this definition does not accord with the conception at present shared by English and Scottish law, it is evident that our first task must be to examine the law of domicile with a view to seeing whether it is possible and desirable to amend it in such a way as to enable Her Majesty's Government to become a party to the Convention. In this task we have had the advantage of an exchange of views with the subcommittee on Private International Law of the Royal Commission on Marriage and Divorce, which has been considering the law of domicile in relation to divorce jurisdiction.

I—The Law of Domicile

5. The law of domicile, both in England and Scotland, is derived from the decisions of the courts and does not to any appreciable extent depend upon statute. There are, however, two Acts which we may usefully mention at this point. The Domicile Act, 1861, empowers Her Majesty by Order in Council to give effect to any convention with a foreign state whereby no subject of either party to the convention resident in the territory of the other at his death shall be deemed to have acquired a domicile there for the purpose of succession to moveables, unless he has resided there for one year immediately preceding his death and has made a written declaration of intention to become domiciled in the country in which he is resident. No such conventions have ever been concluded and the Act is a dead letter and might well be repealed.

The Wills Act, 1861 (better known, perhaps, as Lord Kingsdown's Act), is of course in a different category, for it does not purport to lay down rules determining a person's domicile, but to deal with the circumstances in which wills of personal estate made abroad by British subjects are to be admitted to probate or confirmation in the United Kingdom. It provides that such a will, even though not formally valid according to the law of the testator's last domicile, shall be admissible to probate if made according to the forms required by the law of the place where it was made, by the law of the place where the testator was domiciled when it was made, or "by the laws then in force in that part of Her Majesty's dominions where he had his domicile of origin". Although this Act is not altogether satisfactory, we would not suggest any amendment to it, even if it were within our terms of reference to do so.

Meaning of "domicile"

6. A person's domicile may be defined as meaning the country (in the sense of a territorial unit possessing its own system of law) in which he has his home and intends to live permanently. The law regards every person as having a domicile, whether it be the "domicile of origin" which the law confers on him at his birth, or the "domicile of choice" which he may subsequently acquire. The two requisites for the acquisition of a fresh domicile are (1) residence and (2) intention to remain permanently, and both these elements must be present before a new domicile can be acquired. If a person, having acquired a domicile of choice, abandons it

without acquiring a fresh one, the law regards his domicile of origin as having revived until a fresh domicile of choice is acquired, even though he may never in fact have returned to his domicile of origin.

7. We have considered whether domicile should mean no more than habitual residence, as proposed by the draft Convention (see paragraph 4 above), so that the courts, when ascertaining a person's domicile, would no longer have to take account of his intention to reside permanently in any given place. We do not think that this is desirable and it would in our view have consequences quite unacceptable to public opinion.

For centuries, people have gone into the world from this country intending ultimately to return and without any intention of severing their connection with the British legal system and the ideas underlying it. It would not be in harmony with the temper of the British people if those who happen to be living abroad had to be told that there was no method whereby they could continue to regulate their lives according to the familiar British conceptions. It should also be remembered that a country which does not apply nationality as a yardstick in matters of private international law is bound to substitute for it a strict test involving a measure of permanence.

We have also considered whether, in order to acquire a fresh domicile, it should no longer be necessary for a person to intend to reside in a country permanently but only for an indefinite period. Most of us, however, think that this is open to the objections mentioned above. On the other hand, some members of the Committee would prefer to make it clear that a person acquires a new domicile in the country in which he voluntarily establishes his home, if he does so, not for a mere special and temporary purpose, but with a present intention of living there for an unlimited time.

Defects in the law

8. The present law suffers from two serious defects which are illustrated by the cases mentioned in the question referred to us. These are (1) the excessive importance attached to the domicile of origin and (2) the difficulties involved in proof of intention to change a domicile. The facts in Winans v. Attorney General [1904] A.C. 287 were as follows:—

> Mr. Winans was born in 1823 in the United States, where he was continuously engaged in business until 1850. Between 1850 and 1859

> he worked in Russia, where he married a British subject. In 1859 he was advised to winter in England on account of his health and in 1860 he took a lease of property at Brighton. From 1860 to 1870 his practice was to spend four months of the winter at Brighton and the remainder of the year in Russia. From 1870 to 1883 he spent more than half of each year in England, the remainder of his time being divided between Russia and Germany. In 1883 he ceased to visit Russia and for the next ten years divided his time between England, Scotland and Germany. From 1893 until his death in 1897 he lived entirely in England.

On these facts, the question was whether Mr. Winans at the time of his death still retained his domicile of origin, or whether he had acquired a domicile of choice in England. The facts of his residence for the last 37 years of his life no doubt raised a very strong presumption in favour of an English domicile, but there was no direct evidence as to his intentions. Lord Macnaghten accordingly analysed closely the hopes, projects and mode of living of Mr. Winans and concluded that, in addition to the care of his health, he had two objects in life. The first was the construction in Baltimore of a fleet of vessels which would restore to the United States the carrying trade of the world and give her such superiority at sea that she would have nothing to fear from war with Great Britain. The second object was to develop a large property at Baltimore. The fact that Mr. Winans had lived in England for 37 years was accounted for by his failure to obtain control of the Baltimore property. In England he led a secluded life, mixed little with English people and devoted the whole of his time to the care of his health and to the advancement of his schemes. In the result Lord Macnaghten concluded that Mr. Winans had not lost his American domicile of origin. He said (at p. 298):—

> "On the whole, I am unable to come to the conclusion that Mr. Winans ever formed a fixed and settled purpose of abandoning his American domicile and settling finally in England. I think up to the very last he had an expectation or hope of returning to America and seeing his grand schemes inaugurated.

This view prevailed with the majority of the House of Lords.

In Ramsay v. Liverpool Infirmary [1930] A.C. 588, the facts were these:—

> George Bowie was born in Glasgow in 1845. He gave up his employment as a commercial traveller at the age of 37, and did no further work during his life. He moved to Liverpool in 1892 where he lived on the bounty of his brother, at first in lodgings but subsequently in his brother's house on the latter's death in 1913, and remained there until his own death in 1927.

Thus Bowie lived in England for the last 36 years of his life and during that time only twice left this country and never returned to Scotland. During his life he said he never wished to set foot in Glasgow again and had arranged for his burial in Liverpool. In spite of this, the House of Lords unanimously decided that Bowie had not acquired a domicile of choice in England and that he must accordingly be regarded as having died domiciled in Scotland.

9. These two cases show clearly how serious are the defects we have referred to in paragraph 8. Moreover, the second of them, i.e., the difficulties involved in proof of intention to change a domicile, is also important on account of its inconvenience. For instance, it is clear that it may be extremely difficult to ascertain a person's true intention about his permanent residence, where this involves, as it often does, an investigation of the state of mind of a deceased person. "The tastes, habits, conduct, actions, ambitions, health, hopes and projects of Mr. Winans deceased, were all considered as keys to his intention to make a home in England" (per Lord Atkinson in Casdagli v. Casdagli [1919] A.C. 145 at p. 178). The court has no presumption of law to guide it in weighing evidence of a man's subjective intentions, but "there is no act, no circumstance in a man's life, however trivial it may be in itself, which ought to be left out of consideration in trying the question whether there was an intention to change his domicile" (per Kindersley V.C. in Drevon v. Drevon [1864] 34 L.J. (N.S.) 129 at p. 133). The undesirable results of this are obvious. Trials are apt to be long and expensive; for since a man's state of mind must be investigated, evidence even of the smallest matters is relevant. Besides, the difficulty of reaching certainty in matters of domicile in the absence of any decision by a competent court is a serious inconvenience to numerous people when they come to make a will or in the many other circumstances in which it is necessary to know which legal system is applicable. The practitioner may find it impossible to advise his client with confidence, since he cannot prophesy what impact the facts will have upon the judge's mind. Mr. Winans' optimistic hopes of being able at some time to return to the United States impressed Lord Macnaghten, but were dismissed by Lord Lindley as of no significance.

10. We think that the defects which we have described in the English and Scottish law of domicile are hard to defend and that, notwithstanding the modern tendency of the courts to avoid the strict application of the rules laid down in Winans' and Ram-

say's cases, the law on these points is in need of amendment. If, however, the defects are cured in the manner which we recommend below, we think that the English and Scottish conception of domicile can be brought sufficiently close to the Continental conception to enable Her Majesty's Government to become a party to the convention referred to earlier in this Report, although, for the reasons given in paragraph 30, we think it will still be necessary, or at any rate desirable, that a statement on the lines suggested in that paragraph should be made in regard to the definition of domicile contained in Article 5 of the Convention.

11. Since our terms of reference invite us to suggest what amendments are desirable in the law of domicile generally, we have thought it convenient to set out in the form of a Code our view of what that law should be. We have not, of course, attempted to attain the precision needed for Parliamentary drafting, but we think that this method has helped us to reach our conclusions and to state our recommendations clearly and exactly. This Code is set out in Appendix A of this Report. We have preserved much of the existing law of England and Scotland, including the generally accepted meaning of domicile (see Article 2 (1)), but we do, on the other hand, recommend a number of substantial changes. These changes, we think, should not be made without prior consultation with other members of the Commonwealth. Nationality legislation was required to be uniform; the law of domicile should at any rate aim at being so.

12. Although we recommend that legislation should give effect to the Code, we are well aware that the facts of each case vary so widely that most problems are insoluble by legislation. Thus, in cases where it is uncertain whether a domicile of origin has been abandoned or not, it will still be a question of fact whether there exists a definite intention to return or merely a fond hope; the latter ought not to be sufficient to justify retention of the domicile of origin, but the question escapes definition and must be left to the court.

13. Again, the Code uses the term "home" rather than the ambiguous word "residence" (see Dicey's "Conflict of Laws", 6th Edn. p. 77 Note 4). What constitutes a home must depend on the facts of each case and is in the last resort determined by the intention of the party, so that a type of residence which might constitute a home in one case would not necessarily do so in another. Thus, suppose a man leaves England with the intention to live permanently in Canada, but dies on the quayside as soon

as he lands at Halifax. Whatever may be the present law, we think that he ought not to be considered to have a home in Canada at his death, but to have retained his English domicile. Suppose, however, that he takes a room in a hotel and dies there during the first night. Whether or not he had a home in Canada, ought to depend on his intention; if he intended to leave Halifax on the next day to go to Vancouver and to settle there, again he ought to be held to have retained his English domicile. If, on the other hand, his intention was to live in hotels in Halifax, it may well be that he acquired a Canadian domicile before he died. In these circumstances it is doubtful whether any definition of the term "home" would be appropriate, and the judge who hears the case cannot be relieved of the burden of decision.

Abolition of the doctrine of revival of domicile of origin

14. Article 1, coupled with Article 2 (2), of the Code seeks to cure the first of the defects mentioned in paragraph 8 above, namely, the excessive importance attached to the domicile of origin, including the doctrine that it is harder to change a domicile of origin than a domicile of choice. At present, as Lord Macnaghten pointed out in Winans' case, intention to abandon a domicile of origin "is not to be inferred from an attitude of indifference or disinclination to move". As Jenkins L.J. said in Travers v. Holley [1953] 3 W.L.R. at p. 512, "change of domicile, particularly when the change is from the domicile of origin to a domicile of choice (as distinct from a change from one domicile of choice to another) has always been regarded as a serious step which is only to be imputed to a person upon clear and unequivocal evidence". The difficulty of displacing the domicile of origin could hardly be more strikingly illustrated than by Ramsay's case.

Moreover, as was decided in Udny v. Udny [1869] L.R. 1 Sc. App. 441, if a domicile of choice is abandoned without another domicile being acquired, the domicile of origin automatically revives. We think this is undesirable. Paragraph (5) of Article 1, accordingly, abolishes the doctrine of revival by providing that "a domicile, whether of origin or of choice, shall continue until another domicile is acquired".

Proof of intention to change a domicile

15. We have described in paragraphs 8 and 9 the difficulty and inconvenience, as the law now stands, of proving an intention to change a domicile. Article 2 (2) of the Code accordingly pro-

vides the court, as well as all those who have to advise on such matters, with three presumptions which would in many cases make resort to litigation unnecessary and, where this is impossible, would at any rate facilitate proof of intention to live in a given country. We do not think that the law should attempt to go further and to lay down inflexible rules. The practical effect of our proposals is that in cases which go to trial the burden of proof would be transferred, but we do not think that it should be made too difficult to rebut the presumptions, which are as follows:—

Rule 1: Where a person has his home in a country, he shall be presumed to intend to live there permanently.

Rule 2: Where a person has more than one home, he shall be presumed to intend to live permanently in the country in which he has his principal home.

Rule 3: Where a person is stationed in a country for the principal purpose of carrying on a business, profession or occupation and his wife and children (if any) have their home in another country, he shall be presumed to intend to live permanently in the latter country.

16. Of these, Rule 1 is the most important for, had it been the law when Ramsay's and Winans' cases were decided, the decision in the former case, and probably in the latter also, would have been otherwise.

To meet the minority view referred to in paragraph 7, Rule 1 would, however, require to be on the following lines: "Where a person has his home in a country and no home in any other country, his intention to live there for an unlimited time shall be presumed, unless it is proved that he has a definite intention of ceasing to live there upon the occurrence of some specified event in the future that will happen in the normal course of things".

Rules 2 and 3 should prove useful in practice, although we appreciate that it may be difficult to decide in which of two countries a person's principal home is situated. The alternative test in such cases could be made to depend upon nationality or citizenship, but this would not cover cases of dual nationality, nor would it assist where the person concerned has his homes in England and Scotland.

The Domicile of Married Women

17. The position of married women is perhaps the most difficult in this branch of the law, for it involves consideration of questions of social policy of some importance, many of which fall within the terms of reference of the Royal Commission on

Marriage and Divorce. Before reaching a conclusion, we considered the following possible solutions:—

(i) That a married woman should be able to acquire a separate domicile in exactly the same way as an unmarried woman.

This is the solution which has been widely adopted in the United States, which has some adherents in the Commonwealth, and which is supported by those in this country who think that the law on this point should take account of the altered status of married women. It must be admitted that the solution is in conformity with modern tendencies, as evidenced, for example, by the British Nationality Act, 1948, under which a woman does not necessarily acquire her husband's nationality on marriage. It is also true that in the great majority of cases the practical results of allowing a married woman to acquire a separate domicile would not be very great, for in any event her domicile would normally be the same as her husband's by virtue of the rules which we propose in Article 2 of the Code. Nevertheless, quite apart from considerations of social policy, we think it desirable that the doctrine of the unity of domicile of husband and wife should be maintained, so as to avoid the many complications which in practice follow from the solution which we are considering. We do not think that the experience of the United States has been such as to encourage us to recommend its adoption in this country. Nor is the fact that in most European countries a married woman can acquire a separate domicile of much relevance in this connection in view of the much smaller importance which the conception of domicile has in the legal systems of those countries.

(ii) That a married woman who has been deserted by her husband should be able to acquire a separate domicile.

The difficulties experienced by a deserted wife arise, however, not so much from the conception of domicile as from the rules governing jurisdiction in matrimonial causes, which are primarily a matter for consideration by the Royal Commission on Marriage and Divorce. We think that it would be inadvisable to attempt to assist the deserted wife to obtain a divorce by adopting a solution which would have repercussions on quite distinct

matters, such as the validity of her will, the distribution of property on intestacy and so forth. A high proportion of the cases in which domicile is an issue relate to matters of this kind and, if this solution were adopted, an investigation of the parties' matrimonial affairs after death of one or both of the spouses would be involved. This would surely be both wrong in principle and most inconvenient in practice.

(iii) That a married woman should be able to acquire a separate domicile for certain limited purposes, such as the making of a will or the distribution of property on intestacy.

We thought it necessary to consider this suggestion, but we do not recommend its adoption, as it appears to us that there would be considerable difficulty in defining the limited purposes for which a married woman should be entitled to acquire a separate domicile.

(iv) That a married woman who has been deserted by her husband should be able to acquire a separate domicile for the purpose of making a will and of distribution of her property on death.

This solution is in fact a combination of (ii) and (iii) above and for the reasons given in our comments on solution (ii) we do not recommend it.

18. On balance, therefore, we do not recommend any alteration in the law relating to the domicile of married women, except in one particular. We think it is reasonable that a woman who has been separated from her husband by the order of a court of competent jurisdiction should be able to acquire a separate domicile and we so provide in the proviso to Article 3 of the Code. We think that this breach in the doctrine of the unity of domicile of husband and wife can be defended on the ground that, although the marriage has not been terminated, the relations of the spouses and their property rights have been investigated and put on a new basis by the decree of a court which has considered the whole matrimonial history. We do not feel that these considerations apply to the case of wives separated from their husbands by agreement, and we would further point out that, if a married woman were able to acquire a separate domicile in these circumstances, it might lead to possible difficulties on questions of proof and to possible abuses such as collusion, duress or tax evasion.

The Domicile of Infants

19. Article 4 of the Code deals with infants. We think that after the termination of his parents' marriage (whether by death or otherwise) an infant's domicile should normally follow that of the person in whose custody he is, although (as was decided in Re Beaumont [1893] 3 Ch. 490) a change of domicile by the person having the custody should alter the infant's domicile only if there is positive evidence that such was the intention.

20. We think it desirable that a court of competent jurisdiction (by which we mean, so far as the United Kingdom is concerned, the High Court or the Court of Session) should have power to make such orders for determining the infant's domicile as it may deem appropriate for his welfare (Article 4 (3)). We do not think that this power should be limited to cases where the parents' marriage has terminated. To do so would fetter unduly the jurisdiction over infants in need of care exercised by the Chancery Division in wardship proceedings by the Probate, Divorce and Admiralty Division in matrimonial proceedings and by the Court of Session in similar cases in Scotland.

21. There is one respect in which we think that the general rule that an infant's domicile follows that of his parents requires modification. We see no reason why a male infant who is old enough to marry, and who has in fact married, should not be able to acquire his own domicile of choice. Indeed, Scottish law already goes further than this in permitting a minor—that is, a male between the ages of 14 and 21 or a female between the ages of 12 and 21—to select his or her own domicile, but as a minor is unknown to English law, we propose that in England this power should be confined to infants who have married. A female infant will, of course, continue to acquire her husband's domicile on marriage.

The Domicile of Lunatics

22. Under the existing law there is probably no power to change a lunatic's domicile, even where it would clearly be in his interest to do so. We think that the person having charge of the lunatic should be able to do this, subject to the approval of a court of competent jurisdiction, and Article 5 of the Code so provides.

II—The Draft Convention to Regulate Conflicts between the Law of the Nationality and the Law of the Domicile

23. We have already (in paragraphs 3 and 4 above) briefly described the objects of the Convention. No one who has experienced the difficulties to which the doctrine of *renvoi* leads in practice can have any doubt of the desirability of doing whatever may be possible by international agreement to resolve these difficulties. They arise when a judge is referred, by his own rules for the choice of the law to govern the case before him, to a particular foreign system of law, say German law. But what is meant by "German law" in this context? Suppose the case of a British national, with an English domicile of origin, who dies intestate domiciled in Germany, leaving moveable property in England. There are three possible solutions:—

(1) German law may mean the *internal* law of Germany. In this case, no question of *renvoi* arises, but this simple solution of the problem is not that which has been adopted in this country.

(2) The judge may regard German law as meaning the *whole* law of Germany, including its rules of private international law, by which he is referred to English law. If the doctrine of *renvoi* in the simple form known as "partial *renvoi*" were to be applied (as happens in many Continental countries, including France and Germany) the reference would be accepted and, in the case supposed, the rights of the parties would fall to be determined by English law.

(3) The third solution, which is adopted by the English courts, is not to accept the reference to them but instead, by a process of "total *renvoi*", to refer the question back to the German courts. In such circumstances, it has been said, the English judge must endeavour to decide the case as he would do if he were sitting in Germany. This theory no doubt has the advantage that it succeeds in achieving harmony of decision between the English and the foreign courts. It does so, however, only if the same method is not adopted by the foreign court, for, if it were, it is obvious that an endless oscillation must result: with all respect to what Maugham, J. (as he then was) said in Re Askew [1930] 2 Ch. 259, the English judges and the foreign judges would then continue to bow to each other like the officers at Fontenoy. The doctrine of "total *renvoi*" is also unsatisfactory in a more practical respect for

it casts on the judge in this country the formidable burden of deciding what form of *renvoi,* partial or total, is recognized by the foreign law, if indeed either form is recognized. The difficulty of the judge's task is well shown by Re Duke of Wellington [1947] Ch. 506, where the court had to decide what attitude would be adopted by a judge sitting in Spain (a country in which the principle of *stare decisis* does not obtain), with no further guidance than could be derived from two expert witnesses who expressed flatly contradictory views. It may be thought that in such cases too high a price is paid to avoid conflicting decisions, even though the other country concerned, by its own failure to accept the doctrine, does not make decision impossible.

24. The draft Convention has as its principal aim the solution of such conflicts in cases where the choice lies between the law of the nationality and the law of the domicile. The Convention has two advantages, namely (i) that countries which become parties to it will in almost every case choose the same law, and (ii) quite apart from the adherence of other countries, it simplifies the choice of law by the courts of this country as compared with the lengthy and expensive procedure which we have just described. We therefore recommend that (subject to an appropriate statement in respect of Article 5 to which we refer in Paragraphs 30 and 31) Her Majesty's Government should become a party to the Convention.

25. The Convention is a compromise between those countries which take domicile and those which take nationality as their guide to the choice of law. In substance, the first three Articles provide that, where both the country of domicile and the country of nationality agree in applying the law of the domicile or the law of the nationality, the law to be applied by all parties to the Convention must be the internal law of the domicile or of the nationality, as the case may be; but that where the country of domicile adopts the principle of nationality and the country of nationality that of domicile, each contracting State must apply the internal law of the country of domicile. The Convention thus contains a most important concession to the countries which accept domicile as the test in these matters and, if adopted, would do away with the difficulties which arose in such cases as in Re Ross [1930] 1 Ch. 377 and in Re O'Keefe [1940] Ch. 124.

26. The first three Articles resolve the conflicts between the law of the domicile and that of the nationality in three cases. A

fourth possible case is not dealt with by the Convention. This is where the country of domicile prescribes the *lex domicilii* and the country of nationality prescribes the *lex patriae*. Thus, for instance, if an Italian dies intestate domiciled in England, the distribution of his moveables will vary with the country in which they are situated and in which the action is tried. In these cases, however, there is no *renvoi* and less difficulty is experienced in practice by the court.

27. By Article 4 no State is obliged to apply the Convention if, under its rules of private international law, the case is governed neither by the law of the domicile nor by the law of the nationality. Thus where the *lex situs* (as in Re Duke of Wellington (supra)) is the law applicable, the Convention would not apply even if the *lex situs* should happen to be identical with the law of the domicile. We think that this is correct. In such cases the court will have to solve the problem before it by the use of the total *renvoi*.

Power to exclude Convention

28. Article 6 allows a judge to exclude the Convention on grounds of *ordre public*. This conception is considerably wider than the British doctrine of public policy, and therefore Article 6 would allow a judge to apply the latter doctrine.

29. Article 7 provides that no contracting State need apply the Convention if the person in question is domiciled in, or is a citizen of, a non-contracting State. Until it is known which countries accept the Convention, we think it would be premature to reach any decision to apply the Convention in these cases.

Domicile as defined by Article 5 of the Convention

30. As has appeared from the earlier part of this Report, some amendment of our existing law of domicile is essential before this country can become a party to the Convention. If the recommendations which we have made earlier (in particular, those relating to the domicile of origin) are adopted, we think that the English and Scottish law of domicile will be sufficiently similar to continental law to enable Her Majesty's Government to accept the Convention, subject only to a statement in regard to our construction of Article 5, which might, we suggest, be on the following lines:—

> "In ratifying the present Convention Her Majesty's Government wish to state with reference to Article 5 that, while under the law of the United Kingdom habitual residence is not the absolute test of domicile,

recent legislation has brought the two conceptions sufficiently close to serve all the practical purposes of the Convention."

For the reasons given in paragraph 7 above, we do not think that this country should regard habitual residence as being equivalent to domicile, and in these circumstances we think it would be difficult to accept a definition which relies upon this conception. Article 5 is, moreover, open to other objections. It describes domicile as being the place where a person habitually resides "unless the domicile of such person depends on the domicile of another person, or on the seat of some public body". It seems clear that under such a definition there would be frequent conflicts as to the domicile of persons who are dependent under one system of law but *sui juris* under another: while the expression "the seat of some public body" refers to the *domicilium necessarium**, which is a conception unknown to our law.

31. We should perhaps point out that, if the Convention is accepted subject to the statement mentioned above, its usefulness might be prejudiced by the fact that differences in the interpretation of the term "domicile" would continue; thus in a case in which both English and French law prescribe the application of the law of the "domicile" and the *propositus* is regarded by English law as domiciled in France but French law considers him to be domiciled (habitually resident) in Italy, uniformity of result could not be achieved. We have, however, endeavoured to ensure that, if our law of domicile is altered as suggested in the first part of this Report, such cases will be just as rare as those cases, in any event unavoidable, in which the conception of habitual residence itself is differently interpreted.

32. It may be objected that, unless the parties to the Convention are agreed upon a precise definition of the law of the domicile, difficulties will be experienced as to the law to be selected in a particular case. We think that this is inevitable and that this difficulty would remain even if this country were to accept Article 5 unreservedly. We do not think, on the other hand, that any greater difficulties would be experienced in practice if this country became a party to the Convention subject to a reservation in respect of that Article, once our law of domicile has been amended in the manner which we have described above.

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*This is a doctrine familiar to Continental and Latin-American countries. One example is the provision in Article 107 of the French Code that a person appointed to an office for life is domiciled in the place in which he officiates.

33. It is our belief that the changes in the law proposed in this Report will bring our conception of domicile not only closer to the meaning of the expression "habitual residence" used in Article 5, but also nearer to the sense in which the term is understood in most foreign countries. We find a further argument for receiving this conception into our law in the fact that it resembles the sense in which the word is generally used by those of our countrymen who are not lawyers.

Summary of Recommendations

34. (1) Legislation should be passed with the following objects—

(*a*) to make the law of domicile in England and Scotland conform with the principles set out in the "Code of the Law of Domicile" (contained in Appendix A);

(*b*) to enable the courts in this country to give effect to the Draft Convention to Regulate Conflicts between the Law of the Nationality and the Law of the Domicile (set out in Appendix B) with the exception of Article 5;

(*c*) to repeal the Domicile Act, 1861.

(2) H. M. Government should ratify the Draft Convention, but should append to its ratification the statement referred to in paragraph 30 above.

H. WYNN PARRY (*Chairman*)
J. G. BEEVOR
G. C. CHESHIRE
GEOFFREY CROSS
D. W. DOBSON
W. A. H. DRUITT
G. G. FITZMAURICE
A. L. INNES
F. A. MANN
R. W. A. SPEED
R. O. WILBERFORCE
B. A. WORTLEY

J. M. CARTWRIGHT SHARP, *Secretary*
January, 1954.

APPENDIX A

CODE OF THE LAW OF DOMICILE

Article 1

(1) Every person shall have a domicile but no person shall have more than one domicile at the same time.

(2) A domicile is either a domicile of origin or a domicile of choice.

(3) A domicile of origin is the domicile assigned to every person at his birth in accordance with the provisions of Article 4 (1) of this Code.

(4) A domicile of choice is the domicile acquired through the exercise of his own will by a person who is legally capable of changing his domicile, or a domicile acquired by virtue of an order or with the approval of a court of competent jurisdiction in accordance with Article 4 (3) or Article 5 of this Code.

(5) A domicile, whether of origin or of choice, shall continue until another domicile is acquired.

Article 2

(1) Subject to the provisions of this Code, the domicile of a person shall be in the country in which he has his home and intends to live permanently.

(2) Unless a different intention appears, the following are rules for ascertaining a person's intention to live permanently in a country:—

Rule 1: Where a person has his home in a country, he shall be presumed to intend to live there permanently.

Rule 2: Where a person has more than one home, he shall be presumed to intend to live permanently in the country in which he has his principal home.

Rule 3: Where a person is stationed in a country for the principal purpose of carrying on a business, profession or occupation and his wife and children (if any) have their home in another country, he shall be presumed to intend to live permanently in the latter country.

(3) Paragraph (2) shall not apply to persons entitled to diplomatic immunity or in the military, naval, air force or civil service of any country, or in the service of an international organization.

ARTICLE 3

The domicile of a married woman shall be that of her husband:

Provided that a married woman who has been separated from her husband by the order of a court of competent jurisdiction shall be treated as a single woman.

ARTICLE 4

(1) Subject to Articles 1 and 5 of this Code, the domicile of an infant shall be—

(i) that of his father, if the infant is legitimate or legitimated, provided that, as from the termination of the marriage of his parents, an infant's domicile shall be that of the person (if any) in whom the custody of the infant is from time to time lawfully vested or, if it is vested in more than one person, that of such one of them as they may agree;

(ii) that of his mother, if the infant is illegitimate;

(iii) that of the adopter, if the infant has been lawfully adopted, so however that where an infant has been lawfully adopted jointly by two spouses he shall, for the purposes of this Code, be treated as if he were a legitimate child of the marriage.

(2) If any such person as is referred to in the proviso to paragraph 1 (i) of this Article changes his domicile, the domicile of the infant shall not thereby be changed unless that person so intends.

(3) Notwithstanding anything herein contained, a court of competent jurisdiction shall have power to make such provision for the purpose of varying an infant's domicile as it may deem appropriate to the welfare of the infant.

(4) "Infant" means a person who has not attained the age of 21 years and who has not married.

ARTICLE 5

A lunatic shall retain during lunacy the domicile which he had immediately before he became a lunatic:

Provided that the person or authority in charge of the lunatic shall have power to change the lunatic's domicile with the approval of a court of competent jurisdiction in the country in which the lunatic is domiciled.

APPENDIX B

DRAFT CONVENTION TO REGULATE CONFLICTS BETWEEN THE LAW OF THE NATIONALITY AND THE LAW OF THE DOMICILE

Article 1

When the state where the person concerned is domiciled prescribes the application of the law of his nationality, but the state of which such person is a citizen prescribes the application of the law of his domicile, each contracting state shall apply the provisions of the internal law of his domicile.

Article 2

When the state where the person concerned is domiciled and the state of which such person is a citizen each prescribe the application of the law of his domicile, each contracting state shall apply the provisions of the internal law of his domicile.

Article 3

When the state where the person concerned is domiciled and the state of which such person is a citizen each prescribe the application of his national law, each contracting state shall apply the provisions of the internal law of his nationality.

Article 4

No contracting state shall be obliged to apply the rules laid down in the preceding Articles when its rules of private international law do not prescribe the application to a given case either of the law of the domicile or of the law of the nationality.

Article 5

For the purpose of the present Convention, domicile is the place where the person habitually resides unless the domicile of such person depends on the domicile of another person or on the seat of some public body (*autorité*).

Article 6

In each of the contracting states the application of the law laid down by the present Convention may be rejected for reasons of public policy (*ordre public*).

ARTICLE 7

No contracting state shall be obliged to apply the provisions of the present Convention when the state where the person concerned is domiciled or the state of which the person is a citizen is not one of the contracting states.

ARTICLE 8

Each contracting state, when signing, ratifying or adhering to the present Convention may declare that it excludes from the application of the present Convention the conflicts of laws relating to certain subjects.

A state which uses the right given in the preceding paragraph may not claim the application of the present Convention by other contracting states so far as regards excluded subjects.

APPENDIX X

(*See page 37*)

LAW REFORM

Report of Special Committee

In 1956, the Conference considered a memorandum prepared by the Ontario Commissioners on law reform (1956 Proceedings p. 41). Following discussion, this resolution was passed:

"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 action that the Conference should undertake in the field." (1956 Proceedings p. 16).

A few days later, the Council of the Canadian Bar Association adopted a report of the Association's Legal Research Committee.

While the present committee is concerned in law reform rather than research, it is obvious that the two are very closely related. Your committee agrees with the report that the status of legal writing and research in Canada is not satisfactory. For the present, the Conference should follow the developments in the Canadian Bar Association so that the Conference may co-operate with any organization that the Canadian Bar Association sees fit to establish.

In the meantime, the Conference should bear in mind the various recent suggestions about legal reform that have been made in the Canadian Bar Review in the past three years, and which are cited in the Schedule hereto. At this stage, we do not think the time ripe to give firm answers to questions 2-5 posed by the Ontario Commissioners as to details of organization and financing of law reform committees.

Generally speaking, however, the Conference should make use of reasearch and recommendations of Bar Associations, Law Schools and any other bodies. We think that the Attorneys General should be the channel of communication between all such bodies and the Conference; and, moreover, if permanent law reform committees are to appear, that they should be under the Attorneys General, with a composition and organization generally

comparable to that of the Law Reform Committee in Great Britain.

L. R. MacTavish,
H. E. Read,
W. F. Bowker (*Chairman*).

SCHEDULE

Letters:	
Kent Power, Q.C.	32 Can. Bar Rev. 929 (1954)
L. R. MacTavish, Q.C.	32 Can. Bar Rev. 1061 (1954)
Hon. Stuart Garson, Q.C.	33 Can. Bar Rev. 129 (1954)
Dean H. E. Read, Q.C.	33 Can. Bar Rev. 248 (1954)
Megarry, Law Reform	34 Can. Bar Rev. 691 (1956)
Report of the Committee on Legal Research	34 Can. Bar Rev. 999 (1956)

APPENDIX Y

(*See page 37*)

CRIMINAL LAW SECTION

REPORT TO PLENARY SESSION

Representatives from all provinces except Quebec and Prince Edward Island were in attendance at the meetings of the Criminal Law Section.

The Commissioners in the Criminal Law Section were largely concerned with matters under the Criminal Code but also dealt with matters under the Canada Evidence Act and the Juvenile Delinquents Act. Some thirty items on our Agenda were discussed and dealt with, and included consideration of:

(*a*) dismissal of information for non-appearance of prosecutor (s. 706);
(*b*) offences committed outside province where accused in custody (s. 421(3));
(*c*) gross indecency (s. 149);
(*d*) amendment of indictment at trial (s. 510);
(*e*) pinball machines (s. 170);
(*f*) habitual criminals (s. 660);
(*g*) criminal negligence in operation of motor vehicles (ss. 221, 192 and 193);
(*h*) trading stamps (ss. 322 and 369);
(*i*) transmission of betting information by radio (s. 177);
(*j*) false messages and sending threatening letters (ss. 315 and 316);
(*k*) trials without jury under Part XVI of the Code;
(*l*) blood tests (s. 224);
(*m*) crime comics (s. 150); and
(*n*) the firearm provisions of the Code (ss. 82-98).

The Chairman of the Criminal Law Section for the ensuing year will be Mr. W. B. Common, Q.C., and the Secretary will be Mr. A. J. MacLeod, Q.C.

Respectfully submitted,

H. P. CARTER,
Chairman.
A. J. MACLEOD,
Secretary.

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