1959

PROCEEDINGS

OF THE

FORTY-FIRST ANNUAL MEETING

OF THE

CONFERENCE OF COMMISSIONERS

ON

UNIFORMITY OF LEGISLATION IN CANADA

HELD AT

VICTORIA, BRITISH COLUMBIA

AUGUST 25TH TO AUGUST 29TH, 1959

MIMEOGRAPHING AND DISTRIBUTING OF REPORTS

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

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

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

To avoid confusion or uncertainty that may arise from the existence of more than one report on the same subject, all reports should be dated.

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CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA

OFFICERS OF THE CONFERENCE, 1959-60

Honorary President	E. C. Leslie, Q.C., Regina.
President	G. R. Fournier, Q.C., Quebec.
1st Vice-President	J. A. Y. MacDonald, Q.C., Halifax.
2nd Vice-President	J. F. H. Teed, Q.C., Saint John.
Treasurer	H. P. Carter, Q.C., St. John's.
Secretary	H. F. Muggah, Q.C., Halifax.

LOCAL SECRETARIES

Alberta	H. J. Wilson, Q.C., Edmonton.
British Columbia	Gerald H. Cross, Victoria.
Canada	H. A. McIntosh, Ottawa.
Manitoba	G. S. Rutherford, Q.C., Winnipeg.
New Brunswick	M. M. Hoyt, B.C.L., Fredericton.
Newfoundland	P. L. Soper, LL.B., St. John's.
Nova Scotia	H. F. Muggah, Q.C., Halifax.
Ontario	W. C. Alcombrack, Toronto.
Prince Edward Island	J. O. C. Campbell, Q.C., Charlottetown.
Quebec	Chas. Coderre, Q.C., 159 Craig St. West, Montreal.
Saskatchewan	J. H. Janzen, Q.C., Regina.

COMMISSIONERS AND REPRESENTATIVES OF THE PROVINCES AND OF THE DOMINION

Alberta:

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

J. W. RYAN, Legislative Counsel, Edmonton.

H. J. WILSON, Q.C., Deputy Attorney-General, Edmonton.

(Commissioners appointed under the authority of the Revised Statutes of Alberta, 1955, c. 350.)

British Columbia:

P. R. BRISSENDEN, Q.C., 717 Pender Street West, Vancouver.

GERALD H. CROSS, Legislative Counsel, Victoria.

G. D. KENNEDY, S.J.D., Deputy Attorney-General, Victoria.

NEIL A. MCDIARMID, Attorney General's Dept., Victoria.

(Commissioners appointed under the authority of the Revised Statutes of British Columbia, 1948, c. 350.)

Canada:

E. A. DRIEDGER, Q.C., Assistant Deputy Minister of Justice, Department of Justice, Ottawa.

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

H. A. MCINTOSH, Advisory Counsel, Department of Justice, Ottawa.

Manitoba:

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

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

G. S. RUTHERFORD, Q.C., Legislative Counsel, Winnipeg.

R. H. TALLIN, Attorney General's Dept., Winnipeg.

(Commissioners appointed under the authority of the Revised Statutes of Manitoba, 1954, c. 275.)

New Brunswick:

J. A. CREAGHAN, Q.C., 15 Archibald St., Moncton.

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

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

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

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

Newfoundland:

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

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

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

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

Nova Scotia:

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

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

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

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

Ontario:

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

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

W. B. COMMON, Q.C., Deputy Attorney-General, Toronto.

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

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

Prince Edward Island:

J. O. C. CAMPBELL, Q.C., 294 Richmond St., Charlottetown.
F. A. LARGE, Q.C., Royal Bank Chambers, Charlottetown.
J. P. NICHOLSON, Crown Prosecuter, 90 Great George St., Charlottetown.
D. O. STEWART, Q.C., Summerside.
(Commissioners appointed under the authority of the Revised Statutes of Prince Edward Island, 1951, c. 168.)

Quebec:

EMILE COLAS, 276 St. James St. W., Montreal.
G. R. FOURNIER, Q.C., 65 St. Anne St., Quebec.
THOMAS R. KER, Q.C., 360 St. James St. W., Montreal.
HON. ANTOINE RIVARD, Q.C., Attoreny General, Quebec.

Saskatchewan:

W. G. DOHERTY, Attorney General's Dept., Regina.
J. H. JANZEN, Q.C., Legislative Counsel, Regina.
E. C. LESLIE, Q.C., 2236 Albert St., Regina.
R. S. MELDRUM, Q.C., Deputy Attorney-General, Regina.
B. L. STRAYER, Attorney General's Dept., Regina

MEMBERS EX OFFICIO OF THE CONFERENCE

Attorney-General of Alberta: Hon. E. C. Manning.
Attorney-General of British Columbia: Hon. Robert W. Bonner, Q.C.
Attorney-General of Canada: Hon. E. D. Fulton, Q.C.
Attorney-General of Manitoba: Hon. S. R. LYON.
Attorney-General of New Brunswick: Hon. R. G. L. FAIRWEATHER.
Attorney-General of Newfoundland: Hon. L. R. Curtis, Q.C.
Attorney-General of Nova Scotia: Hon. R. A. Donahoe, Q.C.
Attorney-General of Ontario: Hon. A. Kelso Roberts, Q.C.
Attorney-General of Prince Edward Island: Hon. R. R. Bell, Q.C.
Attorney-General of Quebec: Hon. Antoine Rivard, Q.C.
Attorney-General of Saskatchewan: Hon. Robert A. Walker, Q.C.

PRESIDENTS OF THE CONFERENCE

Sir James Aikins, K.C., Winnipeg	1918–1923
Mariner G. Teed, K.C., Saint John	1923–1924
Isaac Pitblado, K.C., Winnipeg	1925–1930
John D. Falconbridge, K.C., Toronto	1930–1934
Douglas J. Thom, K.C., Regina	1935–1937
I. A. Humphries, K.C., Toronto	1937–1938
R. Murray Fisher, K.C., Winnipeg	1938–1941
F. H. Barlow, K.C., Toronto	1941–1943
Peter J. Hughes, K.C., Fredericton	1943–1944
W. P. Fillmore, K.C., Winnipeg	1944–1946
W. P. J. O'Meara, K.C., Ottawa	1946–1948
J. Pitcairn Hogg, K.C., Victoria	1948–1949
Hon. Antoine Rivard, K.C., Quebec	1949–1950
Horce A. Porter, K.C., Saint John	1950–1951
C. R. Magone, Q.C., Toronto	1951–1952
G. S. Rutherford, Q.C., Winnipeg	1952–1953
L. R. MacTavish, Q.C., Toronto	1953–1955
H. J. Wilson, Q.C., Edmonton	1955–1957
H. E. Read, Q.C., Halifax	1957–1958
E. C. Leslie, Q.C., Regina	1958–1959
G. R. Fournier, Q.C., Quebec	1959–

HISTORICAL NOTE

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

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

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

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

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

1933. August 24-26, 28, 29, Ottawa.
1934. August 30, 31, September 1-4, Montreal
1935. August 22-24, 26, 27, Winnipeg.
1936. August 13-15, 17, 18, Halifax.
1937. August 12-14, 16, 17, Toronto.
1938. August 11-13, 15, 16, Vancouver.
1939. August 10-12, 14, 15, Quebec.
1941. September 5, 6, 8-10, Toronto.
1942. August 18-22, Windsor.
1943. August 19-21, 23, 24, Winnipeg.
1944. August 24-26, 28, 29, Niagara Falls.
1945. August 23-25, 27, 28, Montreal.
1946. August 22-24, 26, 27, Winnipeg.
1947. August 28-30, September 1, 2, Ottawa.
1948. August 24-28, Montreal.
1949. August 23-27, Calgary.
1950. September 12-16, Washington, D.C.
1951. September 4-8, Toronto.
1952. August 26-30, Victoria.
1953. September 1-5, Quebec.
1954. August 24-28, Winnipeg.
1955. August 23–27, Ottawa.
1956. August 28–Sept. 1, Montreal.
1957. August 27-31, Calgary.
1958. September 2-6, Niagara Falls.
1959. August 25-29, Victoria.

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.

Since 1935 the Government of Canada has sent representatives to the meetings of the Conference and although the Province of Quebec was represented at the organization meeting in 1918, representation from that province was spasmodic until 1942. Since

then representatives from the Bar of Quebec have attended each year, with the addition in some years 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.

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	'29, '58*		'29, '51*, '57*	1952‡	1950‡	1931
2								
3	Bills of Sale	1928	1929		'29, '57*	——$	1955‡	1930
4	Bulk Sales	1920	1922	1921	'21, '51*	1927	1955‡	——$
5								
6	Conditional Sales	1922		1922		1927	1955‡	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	'52, '58*	1953	1952	1958‡	1954*	1952
15	Judicial Notice of Statutes and							
16	Proof of State Documents	1930		1932	1933	1931		
17	Officers, Affidavits before	1953	1958	——$	1957		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	1958†	1957*				
25	Interpretation	1938	1958*		'39‡, '57*		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	Pension Trusts and Plans							
36	Perpetuities	1954		1957	1959	1955	1955	1959
37	Appointment of beneficiaries	1957		1957	1959			
38	Proceedings Against the Crown	1950	1959‡		1951	1952†		1951$
39	Reciprocal Enforcement of Judgments	1924	'25, '58*	'25, '59*	1950	1925		
40	Reciprocal Enforcement of Maintenance							
41	Orders	1946	'47, '58*	'46, '58*‡	1946	1951‡	1951‡	1949
42	Regulations	1943	1957‡	1958*	1945‡			
43	Sale of Goods		1898°	1897°	1896°	1919°	1899°	1910°
44	Service of Process by Mail	1945	——$	1945	——$			
45	Survivorship	1939	1948	'39, '58*‡	1942	1940	1951	1941
46	Testators Family Maintenance	1945	1947‡		1946	1959		——$
47	Trustee Investments	1957		1959				1957†
48	Vital Statistics	1949	1959‡		1951‡			1952‡
49	Warehousemen's Lien	1921	1922	1922	1923	1923		1951
50	Warehouse Receipts	1945	1949	1945‡	1946‡	1947		1951
51	Wills	1929			1936	1959		
52	*Conflict of Laws*	1953			1955		1955	

* Adopted as revised.

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

¶ Provisions similar in effect are in force

MODEL STATUTES

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

Line	ADOPTED							REMARKS
	Ont.	P.E.I	Que.	Sask.	Can.	N.W.T.	Yukon	
1	1931	1931	....	1929	....	1948	1954‡	Am. '31; Rev. '50 & '55; Am. '57
2	....	1947	....	1929	....	1948‡	1954‡	Am. '31 & '32; Rev. '55
3	....	1933	....	....	....	1948¶	1956	Am. '21, '25, '39 & '49; Rev. '50
4								
5	..	1934	. .	....	....	1948‡	1954‡	Am. '27, '29, '30, '33, '34 & '42; Rev. '47 & '55
6								
7	...	1938*	....	1944*	....	1950*‡	1955‡	Rev. '35 & '53
8	1932	1949	....	1932	....	....	....	....
9	....	1948	....	....	....	1949*‡	1954	Rev. '48; Am. '49
10	....	....	....	1928	....	1954	1954	.....
11	..	....	....	....	....	1948*‡	1955‡	Am. '42, '44 & '45; Rev '45; Am. '51, '53 & '57
12								
13	'52, '54*	....	....	1947	1943	1948	1955	Am. '51; Rev. '53
14								
15	....	1939	....	....	.	1948	1955	Rev. '31
16	1954	....	....	....	..	....	1955	....
17	1945	1947	....	1945	1942$	1948	1955	....
18	1946	1946	....	1946	. .	1948	1955	....
19	1924	1933	....	1925		....	. ..	Stat. Cond. 17 not adopted
20	.	..	....	1934		....	...	.....
21	1949	1949	....	....		1956	1956	....
22								
23	. .	.. .	....	.. .	...	....	....	Rev. '58
24	. .	1939	....	1943	....	1948*‡	1954*	Am. '39; Rev. '41; Am. '48; Rev. '53
25								
26		1944‡	....	1928	....	1949‡	1954‡	Am. '26, '50, '55 & '58
27	.	1939	....	....	....	1949‡	1954‡	Recomm. withdrawn '54
28	1921	1920	——$	1920	....	1949‡	1954†	.....
29	1924	1933	....	1924	....	....	....	....
30		1939‡	....	1932	....	1948†	1954*	Am. '32, '43 & '44
31	.. .	....	....	....	...	1952†	1954†	....
32	1920°	1920°	....	1898°	....	1948°	1954°	....
33	. ..	. ..	....	1941†	. ..	....	....	Am. '46
34								
35	1954	...	....	.	....	..	....	Am. '55
36	....		...	.. .	....	. ..	....	....
37	1952‡	....	....	1952‡	....	.. .	....	....
38	1929	...	....	1924	....	1955	1956	Am. '25; Rev. '56, Am. '57; Rev. '58
39								
40	'48†, '59*‡	1951‡	1952$	1946$	. .	1951†	1955‡	Rev. '56; Rev. '58
41	1944‡	....	...	....	1950$	....	....	. ...
42	1920°	1919°	....	1896°	....	1948°	1954°	....
43	. .	....	....	——$	....	.	....	....
44	1940	1940	....	1942	...	...	....	Am '49, '56 & '57
45	....	...	....	....	....	..	....	Am. '57
46	..	....	....	....	....	....	....	.....
47	1948$	1950‡	....	1950$	....	1952	1954‡	Am. '50
48	1924	1938	....	1922	....	1948	1954	.....
49	1946‡	.. .	....	....	....	....	...	.....
50	....	....	....	1931	....	1952	1954‡	Am. '53; Rev. '57
51	1954	....	....	...	. .	....	....	....
52								

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

MINUTES OF THE OPENING PLENARY SESSION

(TUESDAY, AUGUST 25TH, 1959)

10 a.m.–10.45 a.m.

Opening

The Conference assembled in the Parliament Buildings, at Victoria, at 10 a.m.

The President of the Conference, Mr. E. C. Leslie, acted as chairman of the session.

Following the introduction of members, the Attorney General of British Columbia, the Honourable Robert W. Bonner, Q.C., at the invitation of the President, spoke briefly to the meeting, welcomed the members to British Columbia, and outlined the plans of the British Columbia Government and Commissioners for the entertainment of members of the Conference while in Victoria. The Honourable Mr. Bonner expressed regret that other matters prevented his remaining at the meeting and he then withdrew.

Presidential Address

The President then outlined the proposed work of the meeting as set out in the Agenda (Appendix A, page 47), and continued with the following remarks:

"I should first like to extend a very cordial welcome to the members of the Conference at this our 41st annual conference and to express the hope that we will have a successful and fruitful meeting.

"I should like particularly to extend a welcome to the new members of the Conference of whom this year there are a considerable number. I can assure you that those of us who have been members of the Conference for a number of years welcome the addition of new blood and we look forward to the new members making a valuable contribution to our work.

"I think that members of the Conference have reason to be proud of the past record of accomplishment of the Conference. One has only to look at the printed proceedings and see the number of model Acts that have been drawn up, the number that have been adopted by the various Provinces, and the other matters to which the Conference has from time to time devoted its attention to realize that a great deal of useful work has been accomplished by the Conference over the years. The members of the

Conference, however, should not on that account assume an attitude of complacency. We must always be vigilant and alert to improve the work of the Conference in any way that we can and certainly we should not rest on the achievements of the past.

"If I might be allowed to make a suggestion, which, I think, might improve the work of the Conference, it would be that we ought to concentrate more each year upon a few subjects rather than to spread ourselves too thin by attempting to deal with too many matters in one year. I sometimes have a feeling that in the past we have possibly attempted to do too much and the result has been that there have been delays in bringing any subject matter to fruition. My suggestion is that the Conference should seriously consider limiting the work to be undertaken at any one conference meeting with a view to clearing the agenda for that year and then going on to new fields.

"I note that our British Columbia hosts, living up in this respect to their past reputation, have arranged a very large number of social activities, which I am sure we will all greatly enjoy. However, I would ask you to bear in mind that our first duty is to advance the work of the Conference, and while it is quite unnecessary, I ask for your co-operation in that task."

Minutes of Last Meeting

The following resolution was adopted:

RESOLVED that the Minutes of the 1958 annual meeting as printed in the 1958 Proceedings be taken as read and adopted.

Treasurer's Report

The Treasurer, Mr. Fournier, presented his report (Appendix B, page 49). Messrs. Brissenden and Ryan 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 51).

Mr. Driedger then advised the meeting that he had prepared a consolidation of all model Acts that had been recommended by the Conference and suggested that consideration be given, at a later meeting, to the advisability of publishing such a consolidation.

Nominating Committee

The President next named a nominating committee, consisting of Messrs. MacTavish (*Chairman*), Rutherford, Wilson, Read and Colas, to make recommendations respecting officers of the Conference for 1959-1960 and to report thereon at the closing plenary session.

Resolutions Committee

The following were named to constitute a Resolutions Committee: Messrs. Deacon (*Chairman*), MacDonald and Strayer.

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 namee appear on the mailing list of the Conference, and that he makarrangements to have the 1959 Proceedings printed as an addendum to the Year Book of the Canadian Bar Association.

Next Meeting

The following resolution was adopted:

RESOLVED that the next meeting of the Conference be held at Quebec during the five days, exclusive of Sunday, immediately preceding the 1960 meeting of the Canadian Bar Association.

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. P. R. BRISSENDEN and G. H. CROSS.

Canada:

Messrs. E. A. DRIEDGER and H. A. MCINTOSH.

Manitoba:

Messrs. I. J. R. DEACON, G. S. RUTHERFORD and R. H. TALLIN.

New Brunswick:

Messrs. J. A. CREAGHAN, M. M. HOYT and J. F. H. TEED.

Newfoundland:

Mr. P. L. SOPER.

Nova Scotia:

Messrs. H. F. MUGGAH and H. E. READ.

Ontario:

The Honourable Mr. Justice F. H. BARLOW and Messrs. W. C. ALCOMBRACK and L. R. MACTAVISH.

Quebec:

Messrs. CHARLES CODERRE, EMILE COLAS, G. R. FOURNIER and T. R. KER.

Saskatchewan:

Messrs. W. G. DOHERTY, J. H. JANZEN, E. C. LESLIE and B. L. STRAYER.

FIRST DAY

(TUESDAY, AUGUST 25TH, 1959)

First Session

10.45 a.m.–12 noon.

The first meeting of the Section was convened immediately after the close of the opening plenary session. The President, Mr. Leslie, acted as chairman of the session.

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

Pursuant to the resolution passed at the 1955 meeting (1955 Proceedings, page 18) Mr. Alcombrack presented a report on Amendments to Uniform Acts (Appendix D, page 53).

Following discussion of the report, the following resolutions were 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.

AND IT IS FURTHER RESOLVED that the report be referred to the Alberta Commissioners for study and for a report at the next meeting of the Conference on the advisability of adopting and recommending for enactment any of the amendments referred to in Mr. Alcombrack's report.

Judicial Decisions affecting Uniform Acts

Dean Read presented his annual report on Judicial Decisions affecting Uniform Acts (Appendix E, page 58).

After consideration and discussion of the report, the following resolutions were adopted:

RESOLVED that the report of Dean Read on Judicial Decisions affecting Uniform Acts be received with thanks.

AND IT IS FURTHER RESOLVED that Dean Read be requested to submit a further report at the next meeting of the Conference on the advisability or necessity of amendments to uniform Acts

in the light of the decisions referred to in his report and in the light of amendments to uniform Acts that were made by provincial legislatures.

Second Session

2 p.m.–5 p.m.

Evidence, Uniform Rules of

Mr. Soper reported orally that the Newfoundland Commissioners were quite willing to study this subject as requested by the President but, because of a special session of the Legislature, they had been unable to do so in time to submit a report at this meeting of the Conference. It was agreed that the Newfoundland Commissioners should be asked to continue their study of the advisability of the Conference recommending an Act containing Uniform Rules of Evidence and to report at the next meeting of the Conference.

Expropriation

Mr. Driedger reported orally that officers of the Government of Canada are continuing their study and work on an Expropriation Act, but that the matter had not yet reached the stage at which he could make a formal written report. Following discussions from which it appeared that the subject was being studied in the Provinces of Alberta and Ontario as well, the following resolution was passed:

RESOLVED that the subject of a Uniform Expropriation Act be placed on the agenda for next year's meeting of the Conference and that the representatives of the Dominion and of the Provinces of Alberta and Ontario be requested to submit reports at that meeting on developments in their respective jurisdictions.

Eye Banks—Cornea Transplants Act

Mr. MacTavish presented the report of the Ontario Commissioners and on the motion of Mr. Teed, seconded by Mr. Soper, it was resolved that the report be received and the Conference proceed with consideration of the draft Act attached to the report. After consideration and discussion of the report, the following resolution was adopted:

RESOLVED that the draft Act, as set out in the Ontario report, be referred back to the Ontario Commissioners 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 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 30th day of November, 1959, they be recommended for enactment in that form.

NOTE:—Copies of the revised draft Act were distributed in accordance with the above resolution. Disapprovals by two or more jurisdictions were not received by the Secretary by November 30, 1959. The draft Act as adopted and recommended for enactment is set out in Appendix F, page 76.

Companies

The Secretary read a letter from Mr. R. J. Cudney, Q.C., Deputy Provincial Secretary of Ontario, upon the activities of the Federal-Provincial Committee on Uniformity of Company Law. The letter contained, among other things, a request that the Conference assist that Committee in the drafting of a uniform Act for Letters Patent Jurisdictions and one for Memorandum and Articles Jurisdictions. Mr. Ryan, who had worked on the drafts both as a member of the Federal-Provincial Committee and as a member of a committee of the Conference, reported on the meetings that had been held and the work that had been done during the past year on the preparation of draft Acts. Some discussion then took place about the method by which the Conference should assist the Federal-Provincial Committee in the drafting of the proposed Acts, and it was agreed that the committees that had been appointed at the 1958 meeting should meet and report to the Conference at a later session with recommendations for dealing with the subject.

Foreign Torts

Dean Read submitted a report on Foreign Torts (Appendix G, page 79) and a discussion of the report was commenced.

SECOND DAY

(WEDNESDAY, AUGUST 26TH, 1959)

Third Session

9.30 a.m.–12 noon.

Mr. T. R. Ker of Montreal joined the Conference at this session and was warmly welcomed. Mr. Leslie advised the meeting

that he had had a message from Mr. Walter S. Owen, Q.C., President of the Canadian Bar Association, expressing regret that it was impossible for him to attend the meeting and conveying to the members of the Conference a welcome to British Columbia and his best wishes for a successful meeting.

Permanent Staff

Mr. Rutherford reported orally that in accordance with the request of the Conference at last year's meeting (1958 Proceedings, page 27) he had written the Commissioners of each jurisdiction asking their views about an approach by the Conference to some Foundation or Organization with a request for financial assistance to aid the Conference in the provision of a permanent staff. The majority of the members of the Conference, who replied, indicated to Mr. Rutherford that they did not favour such a course of action. It was agreed, accordingly, that the subject should be dropped from the Agenda.

Vital Statistics

Mr. Rutherford reported that amendments to the Uniform Act in reference to the definitions of birth and stillbirth that had been proposed by the Vital Statistics Council of Canada had been enacted by the legislatures of, at least, three provinces. He recommended that in view of this no further action be taken by the Conference. On motion this recommendation was adopted.

Mechanics' Lien

Mr. Janzen, on behalf of the Saskatchewan Commissioners, submitted a report (Appendix H, page 89). Following discussion of the report the following resolution was adopted:

RESOLVED that the Saskatchewan Commissioners be asked to continue their study of this subject and to submit a report thereon at the 1960 meeting of the Conference and that the British Columbia Commissioners be requested to submit a report also on the situation in their Province.

Foreign Torts (concluded)

Following additional discussion on this subject the following resolution was adopted:

RESOLVED that the recommendation that the study of this subject be continued that was contained in Dean Read's report be adopted and that the special committee be instructed to pre-

pare and submit to the next meeting of the Conference a draft Uniform Act designed to provide new rules governing conflict of laws in relation to foreign torts.

Domicil

Mr. Cross submitted the report of the British Columbia Commissioners (Appendix I, page 91). Following considerable discussion, the following resolution was adopted:

RESOLVED that the subject be referred back to the British Columbia Commissioners with a request that they prepare and submit a draft model Act at the next meeting of the Conference.

Legitimation

Mr. Kennedy submitted the report of the British Columbia Commissioners (Appendix J, page 93).

Consideration and discussion of this report was commenced.

Fourth Session

2 p.m.–5 p.m.

Bills of Sale and Conditional Sales

Dean Bowker submitted the report of the Alberta Commissioners (Appendix K, page 105).

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

RESOLVED that the draft amendments to the Bills of Sale Act and the Conditional Sales Act, as set out in the Alberta report, be referred back to the Alberta Commissioners to incorporate in them the changes agreed upon at this meeting; that copies of the draft amendments as so revised 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 amendments as so revised are not disapproved by two or more jurisdictions by notice to the Secretary of the Conference on or before the 30th day of November, 1959, they be recommended for enactment in that form.

NOTE:—Copies of the revised draft amendments were distributed in accordance with the above resolution. Disapprovals by two or more jurisdictions were not received by the Secretary by November 30, 1959. The drafts as adopted and recommended for enactment are set out in Appendix L, page 110.

Bulk Sales

Dean Bowker, on behalf of the Alberta Commissioners, reported orally that they had made a further study of this subject but had no formal report to make. It was agreed that the subject remain on the agenda for report by the Alberta Commissioners at the next meeting, in the light particularly of the new Act in Ontario and the experience under that Act.

Legitimation Act (continued)

Consideration of the report on this subject was continued until the conclusion of the session.

THIRD DAY

(THURSDAY, AUGUST 27TH, 1959)

Fifth Session

9.30 a.m.–12 noon

Innkeepers

The final report of the Nova Scotia Commissioners not having been distributed in accordance with the resolution passed at last year's meeting, it was agreed that a report and revised draft Act should be distributed this fall in substitution for the report and draft Act referred to in the 1958 resolution.

NOTE:—Copies of the revised draft Act were not distributed before November 30, 1959, but the Nova Scotia Commissioners have advised the Secretary that they expect to make distribution well before the 1960 meeting of the Conference.

Legitimation (continued)

After some further consideration of this subject, the Commissioners of British Columbia were requested to redraft certain provisions and to submit them at a later session.

Companies (concluded)

Mr. MacTavish, in accordance with the decision reached on Tuesday afternoon, reported that the Committee had met and that the members were of the opinion:

1. that it is feasible for at least a majority of the two subcommittees to meet in Ottawa for five days during the first week of November to do the job assigned to the Con-

ference by the Federal-Provincial Committee on Uniformity of Company Law; and

2. that those members of the committees, who are attending the Canadian Bar Convention in Vancouver, will meet with Robert J. Cudney, Q.C., Chairman of the Federal-Provincial Committee on Uniformity of Company Law to insure that this program will meet the situation.

Following discussion it was resolved that the Conference adopt the report of the Committee and approve the course suggested by it.

It was further agreed that Mr. J. W. Ryan be substituted for Mr. MacTavish as the convener of the committees and that as convener he be authorized to make appointments of substitutes to the committees or to request the appropriate authorities to do so.

Presumption of Death

Mr. Cross submitted the report of the British Columbia Commissioners on this subject (Appendix M, page 114).

After discussion the following resolution was adopted:

RESOLVED that the matter of a uniform Act dealing with Presumption of Death be referred back to the British Columbia Commissioners for further study in the light, particularly, of any recommendations that may be made by the Association of Superintendents of Insurance at the meeting this year and for a report at next year's meeting with a draft Act.

Survivorship

Mr. MacTavish submitted the report of the Ontario Commissioners (Appendix N, page 116) and consideration of the report was commenced.

Sixth Session

2.25 p.m.–5 p.m.

Printing of Uniform Acts

Mr. Driedger elaborated on the statement that he had made earlier to the effect that he and members of his staff had prepared consolidations of all uniform Acts recommended by the Conference and advised that he had now received and had available for distribution mimeographed copies of those consolidations. He pointed out that he felt that the mimeographed consolida-

tions required further checking to assure their accuracy and that in his opinion it would be desirable to have some additional editorial work done on them to bring them into closer conformity with present drafting techniques. Following some discussion the following resolution was adopted:

RESOLVED that the draft consolidations of Acts recommended by the Conference that had been prepared by Mr. Driedger or under his direction be referred to the Commissioners of British Columbia for review and revision of form and style with a view to preparing them for printing in one volume for distribution by the Conference.

IT WAS FURTHER RESOLVED that the Conference express its gratitude to Mr. Driedger and to the members of his staff who assisted in the preparation of the consolidations, particularly Miss J. E. Rowe and Mrs. A. P. Stanton for their work in preparing the consolidations for the use of the Conference.

Survivorship (concluded)

Discussion of this report was resumed. The need or desirability of a uniform construction or interpretation section was very fully considered and the following resolution was adopted:

RESOLVED that the uniform interpretation or construction section be struck from the revised Uniform Survivorship Act; that the section be struck from all existing uniform Acts; and that the section not form part of future uniform Acts.

Following further discussion of the draft report, the following resolution was adopted:

RESOLVED that the draft Act, as set out in the Ontario report, be referred back to the Ontario Commissioners 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 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 30th day of November, 1959, it be recommended for enactment in that form.

NOTE:—Copies of the revised draft were distributed in accordance with the above resolution. Two jurisdictions having given notice of disapproval to the Secretary of the Conference before the 30th day of November, the draft, which is set out in Appendix O, page 121, is to be taken as not having the recommendation of the Conference.

Highway Traffic and Vehicles (Responsibility for Accidents)

The report of the Nova Scotia Commissioners was submitted by Mr. Muggah and consideration of it was commenced.

FOURTH DAY

(FRIDAY, AUGUST 28TH, 1959)

Seventh Session

9.30 a.m.–12.15 p.m.

Highway Traffic and Vehicles (Responsibility for Accidents)—(concluded)

Consideration of this report was continued and the following resolution was adopted:

RESOLVED that the draft Highway Traffic and Vehicles (Responsibility for Accidents) Act be referred back to the Nova Scotia Commissioners for revision in accordance with the changes agreed upon 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, 1959, it be recommended for enactment in that form.

NOTE:—The draft revised Act was not distributed before the 30th of November, 1959, but appears as Appendix P, page 123.

Legitimation—(concluded)

Following further discussion of this subject, the following resolution was adopted:

RESOLVED that the draft Legitimacy Act be referred back to the British Columbia Commissioners for a revision in accordance with the changes agreed upon 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, 1959, 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, 1959. The draft as adopted and recommended for enactment is set out in Appendix Q, page 129.

Wills Act

Dean Read submitted a report on the Conflict of Laws Governing Wills (Appendix R, page 132).

After some discussion the following resolution was adopted:

RESOLVED that the subject be referred back to Dean Read for further study and for a report with a draft Act, if he considers it advisable, at the next meeting of the Conference.

Legislative Assembly

Mr. Ryan reported orally on behalf of the Alberta Commissioners that some further study had been given to this subject and he requested that the matter stand over for a further report by the Alberta Commissioners at the next meeting. It was agreed that the matter should so stand.

New Business

Trusts

Mr. Brissenden reported that members of the Bar in this Province (British Columbia) were considering the necessity or advisability of legislation relating to the variation of trusts.

After discussion it was agreed that the British Columbia Commissioners be requested to make a study of the subject and to report at the next meeting of the Conference on the desirability or necessity of legislation.

Fatal Accidents Act

Mr. Teed stated that there was a feeling in New Brunswick that the Conference should make some study of legislation on this subject. It was agreed that the New Brunswick Commissioners be asked to study the subject and submit a report at the next meeting.

Reciprocal Enforcement of Maintenance Orders

Mr. Teed suggested that the Conference should study some provisions of this Act in the light, particularly, of the case of Summers v. Summers, referred to in Dean Read's report on

Judicial Decisions affecting Uniform Acts. He agreed to look into the matter more thoroughly and to submit a report at the next meeting of the Conference.

Foreign Judgments Act

Dr. Read suggested that the Conference review and, if desirable, revise this Act in the light, particularly, of the recent studies by the National Conference of Commissioners on Uniform State Laws in the United States and a proposed International Convention. He undertook to make a further study on the subject and to report more fully at the next meeting on the desirability of such a review and revision.

Highway Traffic and Vehicles (Rules of the Road)

It was brought to the attention of the meeting that officers concerned with the administration of the Explosives Act had raised a question about the possibility of conflict between provisions of the Rules of the Road and certain regulations under that Act. It was agreed that the correspondence on the subject should be referred to the New Brunswick Commissioners for examination and for a report at the next meeting.

Having no further business the session adjourned after several members, on behalf of the Section as a whole, had commended the President for the expeditious and courteous manner in which he had conducted all sessions.

MINUTES OF THE CRIMINAL LAW SECTION

The following members attended:

GILBERT D. KENNEDY, S.J.D., Deputy Attorney General, and N. A. MCDIARMID, of the Department of the Attorney General, representing British Columbia;

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

R. S. MELDRUM, 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;

D. H. W. HENRY, Q.C., Acting Director, Criminal Law Section, Department of Justice, and

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

G. R. FOURNIER, Q.C., attended the Conference as a representative of Quebec and also delivered to the meeting comments from the Department of the Attorney General upon matters included in the Agenda;

THE HONOURABLE R. A. WALKER, Q.C., Attorney General of Saskatchewan, attended one of the sessions of the Section.

Chairman—GILBERT D. KENNEDY, S.J.D.

Secretary—D. H. W. HENRY, Q.C.

In the absence of the Chairman, Gilbert D. Kennedy, who was required to attend several sessions of the Uniform Law Section, W. B. Common, Q.C., presided as Acting Chairman at a number of sessions of the Criminal Law Section. The Section confirmed the appointment as Secretary ad hoc of D. H. W. Henry,

Q.C., in the absence of A. J. MacLeod, Q.C., who was appointed Secretary at the 1958 meeting.

The Criminal Law Section considered numerous matters that were raised in some thirty working papers that had been prepared by J. C. Martin, Q.C., and approximately ten additional subjects that were placed on the Agenda by members at the first session. The matters discussed and their disposition are as follows:

1. *Criminal Liability of Canadian Officials Serving out of Canada*

Consideration was given to the question whether there should be, in Canada, legislation similar in character to section 31 of the Criminal Justice Act, 1948 (U.K.) which provides that a Crown servant, who in the course of his employment commits in a foreign country an offence which if committed in England would be punishable in indictment, shall be guilty of an offence and dealt with as if it had been committed in England.

The Commissioners tentatively recommended in principle the adoption of legislation in accordance with the scheme of the United Kingdom legislation except that

(a) a person ought not to be placed in double jeopardy by being subject to prosecution in Canada after having been prosecuted in the foreign country for the same offence,

(b) the provision ought not to be confined to acts in the course of employment.

The Commissioners, however, considered that before making a final recommendation they ought to receive instruction with respect to the scope of the principle of diplomatic immunity in relation to the problem sought to be cured.

2. *Certificates as Evidence*

Consideration was given to a proposal to provide for uniform notice to the accused in any case where provision is made in a Dominion Statute that a certificate shall be prima facie evidence of the facts stated therein. The Commissioners recommend that no action be taken.

3. *Attempted Suicide—section 213 C.C.*

Consideration was given to a proposal to amend section 213 of the Criminal Code to make the offence of attempted suicide punishable on indictment in order to justify arrest of the offender

without warrant. The Commissioners recommend that the section be amended to make the offence punishable either on indictment or summary conviction, the penalty not to exceed two years' imprisonment, and the offence to be within the absolute jurisdiction of a magistrate.

4. *Order Prohibiting Driving—section 225 C.C.*

The Commissioners considered a suggestion that section 225 of the Criminal Code be amended to provide for the suspension of an order prohibiting driving under that section pending an appeal against conviction, and decided to recommend no action.

5. *Dangerous Driving*

The Commissioners recommend that there be inserted in the Criminal Code a provision that where a person is charged upon indictment with an offence under sections 192, 193 or 221(1) (criminal negligence) or section 207 (motor manslaughter) arising out of the operation of a motor vehicle and the court or jury is satisfied that the accused is not guilty of the offence charged but is guilty of conduct in the operation of a motor vehicle deserving punishment, it may find him not guilty of the offence charged but guilty of the offence of dangerous driving; the penalty for dangerous driving to be imprisonment for two years.

6. *Theft of Television Signals*

Consideration was given to a proposal that section 273 of the Criminal Code, which includes in the offence of theft the fraudulent use of electricity, gas, telephone or telegraph lines, be amended to include in such offence the fraudulent reception of television signals from community television antenna installations. The Commissioners recommended no action.

7. *False Pretences—Worthless Cheques*

The Commissioners recommend that for the purposes of sections 304 and 307 of the Criminal Code (false pretences and fraudulently obtaining food and lodging) there be a provision defining "cheque" as including an unconditional order to pay on demand (omitting any reference to a fixed or determinable future time) and defining "bank" as including any financial institution on which a cheque is drawn.

8. *Displacement of Boundary Marks*

Consideration was given to a difficulty thought to arise under section 384 of the Criminal Code, which makes it an offence to alter or remove a boundary mark, having regard to the necessity of the removal and referencing of such marks during highway construction. The Commissioners, observing that section 371 provides an appropriate exception to the offence, recommend in addition that section 384(2) be amended to permit a land surveyor to remove a boundary mark if he properly references it.

9. *Jurisdiction re Criminal Negligence Causing Death*

The Commissioners recommend that the Criminal Code be amended to permit a person charged with criminal negligence causing death under section 192 to be tried under Part XVI and that accordingly the reference to this offence in section 413(2) be deleted.

10. *Consent of Attorney-General—secs. 421(3) and 421A*

Consideration was given to the necessity for consent of the Attorney-General under section 421(3), which permits a person in custody to plead guilty to charges outstanding in another province, and section 421A, which permits such a person to plead guilty to charges outstanding in the same province, in each case with the consent of the Attorney General. The Commissioners recommend

(a) that the consent of the Attorney General be retained under section 421(3),

(b) that such consent may be dispensed with under section 421A, and

(c) that the definition of "Attorney General" in section 2(2) of the Criminal Code be amended to include the Deputy Attorney General, but if this is not acceptable, that it be provided that the consent under section 421(3) may be given by the Deputy Attorney General.

(Further consideration was given to section 421(3) at a later session—see item 30 infra.)

11. *Recognizance of Bail—sec. 451(a)*

Consideration was given to a proposal that section 451(a) of the Criminal Code be amended to include an additional term in bail for a person accused of an indictable offence who has a previous record of such offences, requiring sureties to guarantee

that the accused will not commit an indictable offence while awaiting trial. The Commissioners recommend that no action be taken.

12. *Quashing Committal for Trial*

Consideration was given to a proposal to implement a resolution of the Canadian Bar Association that provision should be made to enable a person, who has been committed for trial and who has been released on bail, to apply to the Superior Court for an order setting aside the committal order. The Commissioners recommend that no action be taken.

13. *Notice of Previous Conviction*

Consideration was given to the question whether the Criminal Code should be amended to provide that notice of previous convictions required by sections 572 and 712 ought to be required before the hearing of an appeal, as well as before the trial. The Commissioners referred this question to their next meeting, pending the decision of the Supreme Court of Canada in *R.* v. *Dennis* and *R.* v. *Bamsey*.

14. *Witness Fees and Allowances*

The Commissioners recommend that section 744 of the Criminal Code, which specifies the fees and allowances that may be paid to and taken by witnesses and others in summary conviction proceedings, be amended to provide that a witness may be paid and may receive an additional allowance not exceeding his actual travelling and living expenses but that such allowance shall not be included in costs that are awarded to a party under section 716.

15. *Waiver of Jurisdiction under Sec. 697*

The Commissioners reconsidered their recommendation of 1958 to the effect that section 697(5) of the Criminal Code (which requires a summary conviction court that waives jurisdiction to name the court in favour of which jurisdiction is waived) be amended to permit the court waiving jurisdiction to specify the place of the court to which jurisdiction is waived rather than to name the judicial officer, whose identity may not be known, and that subsections (4) and (5), which authorize such waiver, be combined. Upon consideration in the light of further reported developments, the Commissioners again recommend accordingly.

16. *Witnesses Signing Depositions*

The Commissioners having considered a proposal that section 708(3) of the Criminal Code be amended to provide that witnesses in summary conviction proceedings need not sign their depositions, recommend that no action be taken.

17. *Summary Conviction Appeals*

(a) Consideration was given to a proposal that section 722 of the Criminal Code be amended to provide that the registrar or clerk of the court shall set down a summary conviction appeal instead of the appeal court as at present required, and a proposal of the Canadian Bar Association that section 733 be amended to require the clerk of the appeal court to mail to the appellant and respondent notice that the appeal has been set down and stating also the time when it is to be heard. The Commissioners recommend that no action be taken with respect to either proposal.

(b) Consideration was given to three points relating to summary conviction appeals by way of trial *de novo*, concerning which there is a conflict of judicial opinion:

(i) necessity of setting out grounds of appeal with particularity in the notice of appeal;

(ii) whether a further plea is necessary on a trial *de novo*; and

(iii) whether there is a right of appeal after a plea of guilty.

The Commissioners decided that further consideration of these issues should await the decision of the Supreme Court of Canada in *R.* v. *Dennis*, *R.* v. *Tennen* and *R.* v. *Thring*.

(c) The Commissioners recommend that section 723, which requires the appellant to comply with section 722 (filing and service of notice of appeal) before the appeal is set down, be amended to require the appellant also to comply with section 724 (which requires him to remain in custody, enter into a recognizance or file security for costs) before the appeal may be set down.

(d) The Commissioners recommend that section 743 be amended to give the appeal court in a summary conviction appeal all the powers of the court of appeal mentioned in sections 581 to 595 inclusive, *mutatis mutandis*.

18. *Husband or Wife as Witness*

(a) The Commissioners recommend that section 4(2) of the Canada Evidence Act as enacted by section 749 of the Criminal

Code, which provides that the wife or husband of a person charged with certain offences is a competent and compellable witness for the prosecution, be extended to include such attempts to commit those offences as are not already specified.

(b) A suggestion that section 4(1) of the Canada Evidence Act, which provides that every person charged with an offence and, with exceptions, the wife or husband of the accused "is a competent witness for the defence", be amended by deleting the words "for the defence" was referred to the next meeting of the Commissioners in order that a working paper may be prepared and members may undertake further research.

19. *Records of Young Offenders*

Consideration was given to a proposal that provision be made to enable the record of convictions of young offenders to be expunged after a period of five years. The Commissioners considered the practical difficulties of such a course are too great to permit its acceptance but referred to the next meeting of the Commissioners and for individual study in the interim, the whole problem arising from the sentencing of juveniles, including the recommendations of the Fauteux Committee concerning probation without conviction.

20. *Deportation Proceedings*

Consideration was given to a request that, in order to assist the Minister and officials in determining whether deportation proceedings should be instituted under the Immigration Act, the Judge and Crown Attorney make an appropriate recommendation in each case where a person subject to deportation is prosecuted. The Commissioners stated that all available factual information will be furnished to the Department by the Attorney General on request but that it is inappropriate that there be any recommendation by the judiciary or the prosecutor, the matter being one for the exercise of the discretion of the Minister and officials under the Immigration Act.

21. *Withdrawal of Information*

The Commissioners recommend that provision be made in the Criminal Code that the prosecutor may, with the consent of the court, withdraw the information in proceedings under Parts XVI and XXIV.

22. *Release of Exhibits*

The Commissioners recommend that section 514(1) of the Criminal Code, which provides that a judge of the courts therein mentioned may order the release of exhibits for test or examination, be extended to permit this to be done by "a judge of a superior court of criminal jurisdiction or a court of criminal jurisdiction" in order clearly to include a magistrate.

23. *Bribery and Corruption*

The Commissioners recommend that sections 99-104 of the Criminal Code, which prohibit bribing of judicial and public officers, breach of trust by public officers and municipal corruption, be revised and simplified; that the provisions be extended to officers of all provincial boards and commissions; that the discrepancies in penalties as between greater and lesser officials be eliminated; and that a draft of the revision be prepared for study at the next meeting.

24. *Pinball Machines*

The Commissioners again considered the effect of the decision of the Supreme Court of Canada in *Isseman* v. *The Queen* (1956) S.C.R. 798, which held, as a result of the revision of the Criminal Code (section 170) that certain pinball machines previously held to be lawful are now within the prohibition of the Code, and recommend that no action be taken to alter the present state of the law.

25. *Habeas Corpus*

The Commissioners having considered the recent jurisprudence in the United Kingdom and Canada concerning the supposed right in habeas corpus applications to go from judge to judge, and the right of appeal in habeas corpus matters, recommend that sections 690 and 691 of the Criminal Code be amended in accordance with the recommendations of the Criminal Code Revision Commissioners as follows:

> "690. (1) Where proceedings have been taken in respect of any person by way of *habeas corpus* arising out of a criminal matter, no further proceedings by way of *habeas corpus* arising out of that matter shall be taken in respect of that person before that judge or any other judge.
>
> (2) Nothing is this section limits or affects any provision of the *Supreme Court Act* that relates to writs of *habeas corpus* arising out of criminal matters.

"691. (1) An appeal lies to the court of appeal from a decision granting or refusing the relief sought in proceedings by way of *habeas corpus*, mandamus, certiorari, or prohibition.

(2) The provisions of Part XVIII apply, *mutatis mutandis*, to appeals under this section.

(3) Notwithstanding anything in Part XVIII or in rules of court, the appeal of an appellant who has filed notice of appeal shall be heard within seven days after the filing of proof of service of the notice of appeal upon the respondent and, where a notice of appeal is filed when the court of appeal is not sitting, a special sittings of the court of appeal shall be convened for the purpose of hearing the appeal."

26. *Reports of Confessions*

The Commissioners recommend that section 455(2) of the Criminal Code, which prohibits the publication of a report that an admission or confession was introduced in evidence at a preliminary inquiry unless the accused has been discharged or the trial has ended, be amended to provide that no report of such an admission or confession shall be published or reference made thereto unless the admission or confession has been received in evidence at the trial.

27. *Service of Process on Corporation*

The Commissioners recommend that there be a general provision in the Criminal Code providing for service of process, including notice of appeal, on a corporation in the same manner as is provided for service of a summons under section 441.

28. *McRuer Report on Insanity*

The Commissioners considered a number of points arising from this Report and recommended as follows:

(1) They agree with the majority of the Commissioners that acceptance of the so-called New Hampshire rule would not make for better administration of justice in Canada.

(2) They agree that irresistable impulse should not be a defence in criminal cases.

(3) They agree that the word "an" in section 16(2) should be changed to "the". They agree also that mental deficiency should not be included.

(4) They agree that section 16(3) should not be changed.

(5) They agreed that the doctrine of diminished responsibility

should not be introduced. The opinion was expressed that if juries could consider that, then the defence of insanity might as well be taken out of the Code, and further that slight provocation might be applied as diminishing responsibility.

(6) They recommended no action upon a recommendation of the Commission that Code section 524 be amended to provide that a magistrate, when holding a preliminary hearing, may hear and determine whether the accused is unfit on account of insanity to stand his trial.

(7) They agreed that the recommendation that section 592 (1)(d) be amended to provide that when an appeal to the Court of Appeal is successful on the defence of insanity, the court should enter an acquittal on account of insanity, specifically that the words "may find accused not guilty on account of insanity" be substituted for the words "may quash the sentence".

(8) They expressed no views and made no recommendation upon the recommendation of the Commission that a statutory provision should require the Minister of Justice to appoint a board of three psychiatrists to examine a person condemned where a question of mentality arises. It was considered that this is a matter of clemency.

29. *Nuisances and Annoyances*

The Commissioners recommend that provision be made in the Criminal Code to protect individuals from nuisance and annoyance as follows:

(a) by amending section 165 (common nuisance) to provide that a person commits an offence who makes persistent indecent, threatening or nuisance telephone calls to another;

(b) by extending section 315, which makes it an offence, with intent to injure or alarm a person, to send a false message, to include the intent to alarm such a person, and also to include in the offence the sending to a person of goods and services with intent to injure, alarm or annoy that person.

30. *Pleas of Guilty by Juveniles under Sec. 421(3)*

Further consideration was given to the particular problems concerning a juvenile who, pursuant to section 421(3) of the Criminal Code, pleads guilty in the province in which he is in

custody to charges outstanding in another province. The Commissioners make the following recommendations:

(a) Section 421(3) should be amended to make it applicable to offences under all federal statutes so as to include the Juvenile Delinquents Act, and to make it clear that the section applies where the person who wishes to plead guilty is in custody pursuant to sentence;

(b) Provision should be made that where the person is in custody in the "receiving" province by reason of his conviction of an offence as an adult and he desires to plead guilty to a delinquency under the Juvenile Delinquents Act in the "sending" province, the charge shall be disposed of in the receiving province as a charge of an offence under the Criminal Code corresponding to the offence that constituted the delinquency; but this should not extend to offences against provincial or municipal laws constituting the delinquency; and

(c) It should be made clear that an appeal by the Attorney General from sentence under section 421(3) is the right of the Attorney General of the "receiving" province.

31. *Transfer of Juveniles between Institutions*

The Commissioners recommend that the Prisons and Reformatories Act be amended to provide that notwithstanding section 26 of the Juvenile Delinquents Act, an inmate may be transferred from an industrial school to another provincial institution for causes other than security or incorrigibility.

32. *Canada Evidence Act*

The Commissioners recommend that section 29(3) of the Canada Evidence Act, which provides that where a cheque has been drawn on a bank an affidavit of the manager or accountant that the person has no account is prima facie evidence of that fact, be extended to include such an affidavit, setting out the state of the person's account.

33. *Remand for Mental Examination*

The Commissioners considered section 451(c) of the Criminal Code, which empowers the magistrate holding a preliminary enquiry to remand the accused for mental examination for a period not exceeding thirty days, and recommend that this provision be extended to all indictable offences upon any appearance of the

accused before any court and that the maximum period of remand be increased to sixty days; a majority of the Commissioners recommend that the proposed provision be made applicable also to summary conviction offences.

34. *Re-election by Accused*

Consideration was given to a proposal that section 474 of the Criminal Code be amended to provide that an accused who has elected to be tried by a judge without a jury may re-elect to be tried by a magistrate. The Commissioners recommend that no action be taken.

35. *Causing a Disturbance*

The Commissioners considered a suggestion that section 160 (a) of the Criminal Code, which provides that a person who, not being in a dwelling house, causes a disturbance in or near a public place is guilty of an offence, be amended to provide that this offence may be committed by a person in a dwelling house, by deleting the words "not being in a dwelling house". The Commissioners recommend that no action be taken.

36. *Recognizances to Keep the Peace*

The Commissioners considered a suggestion made previously that section 637 of the Criminal Code be amended to provide that a recognizance to keep the peace under that section be subject to the same terms as a recognizance under section 638 in the case of suspended sentence. The Commissioners decided to defer final consideration of this suggestion pending the report of the Correctional Planning Committee of the Department of Justice.

37. *Instalment Fines*

The Commissioners considered the recent amendments to the Criminal Code relating to the allowing of time for the payment of fines (sections 622 and 694) and make the following recommendations:

(a) that section 622(5), which provides that in indictable cases the court shall not at the time sentence is imposed direct that the fine be paid forthwith unless satisfied that the accused can pay, be repealed and a provision substituted therefor requiring the accused to show cause why he should be given time for payment;

(b) that section 622(6), which requires the court, where it

allows time for payment, to allow not less than fourteen clear days, be amended by deleting this requirement;

(c) that section 622(8), which requires the court that refuses to allow time for payment of a fine to state the reasons for immediate committal in the warrant of committal, be repealed;

(d) that section 622(10), which provides that before committing a person who appears to be between 16-21 years of age in default in payment of a fine the court shall obtain and consider a report concerning his conduct and means to pay, be reconsidered and clarified; and

(e) that corresponding amendments be made in section 694 in summary conviction matters.

38. *Criminal Sexual Psychopaths*

The Commissioners, being requested to consider the report of the Royal Commission on the Criminal Law relating to Criminal Sexual Psychopaths, deferred consideration thereof until the next meeting.

39. *Recording of Evidence*

The Commissioners recommend a provision applicable to all proceedings under the Criminal Code authorizing the use of a sound recording apparatus where such has been authorized by provincial legislation in civil cases, as is now provided by section 555 in connection with the trial of an indictable offence.

Representation on Section

After some discussion, the members agreed that the Provincial Attorneys General should be informed that the appointment of first class defence counsel by the provinces as members of the Section would be welcomed.

Officers of Section

The Criminal Law Section appointed R. S. Meldrum, Q.C., to be its Chairman for 1959-60, and decided that the Secretary is to be the officer named as representative of the Department of Justice for that year.

MINUTES OF THE CLOSING PLENARY SESSION

(FRIDAY, AUGUST 28TH, 1959)

3 p.m.–4 p.m.

The plenary session resumed with the President, Mr. Leslie, in the chair.

Report of Criminal Law Section

Mr. Kennedy, Chairman of the Criminal Law Section, presented his report on the work of the Section (Appendix S, page 137).

Appreciations

The following resolution was moved by Mr. Deacon, seconded by Mr. MacDonald, and unanimously adopted:

RESOLVED that this Conference express its sincere appreciation:

(*a*) to Dr. and Mrs. G. D. Kennedy for the luncheon given at their home on Tuesday for the wives of the Commissioners;

(*b*) to the Attorney General and the Government of the Province of British Columbia for the reception and dinner given for the Commissioners and their wives at the Empress Hotel on Tuesday;

(*c*) to our hosts for the luncheon given on Thursday for the Commissioners and their wives at the Olde English Inn;

(*d*) to the Victoria Bar Association and to Mr. and Mrs. E. E. Pearlman for the cocktail party given at their home for the Commissioners and their wives on Wednesday evening;

(*e*) to the members of the Victoria Bar who severally entertained the Commissioners and their wives at dinner on Friday evening;

(*f*) to the British Columbia Commissioners for their excellent arrangements for the meeting, for the very fine social programme arranged by them, and for their many kindnesses;

(*g*) to Rear Admiral Rayner and to the Attorney General of British Columbia for their kindness in arranging for the trip on H.M.C.S. New Glasgow;

(*h*) to the wives of the members of the Victoria Bar who so kindly drove the wives of the Commissioners around Victoria;

(*i*) to Mrs. Barlow and to Mrs. Cross for the coffee party given for the wives of the Commissioners.

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

Report of Auditors

Mr. Brissenden reported that he and Mr. Ryan 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 1959-1960:

Honorary President	E. C. LESLIE, Q.C., Regina
President	G. R. FOURNIER, Q.C., Quebec
1st Vice-President	J. A. Y. MACDONALD, Q.C., Halifax
2nd Vice-President	J. F. H. TEED, Q.C., Saint John
Treasurer	H. P. CARTER, Q.C., St. John's
Secretary	H. F. MUGGAH, Q.C., Halifax

The report of the Committee was adopted and those nominated were declared elected.

Close of Meeting

The retiring President, Mr. Leslie, withdrew from the chair and turned the meeting over to his successor, Mr. Fournier.

Mr. Fournier, upon taking the chair, addressed the members briefly and expressed his gratitude and that of the Bar of the Province of Quebec for the honor conferred by the Conference on him and his Bar by electing him to the Office of President. He referred to a recent meeting of the Quebec Bar at which he had submitted a report as Bâtonnier. When reporting in that capacity he had referred to the work of the Conference and reported at considerable length on its activities, and had assured his confreres that from his observations of the activities of the Conference he was satisfied that it was, in no way, encroaching upon or

interfering with the system of law in effect in the Province of Quebec. He was happy to observe that there was always earnest co-operation between the representatives of Quebec and the representatives of the other provinces at meetings of the Conference.

Concluding his remarks, Mr. Fournier promised the members a very warm welcome at Quebec City on the occasion of the 1960 meeting and assured them that he would use his best efforts to continue and promote the work of the Conference.

At 4 p.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. Appointment of Nominating Committee.
7. Publication of Proceedings.
8. Next Meeting.

PART II

UNIFORM LAW SECTION

1. Amendments to Uniform Acts—Report of Mr. Alcombrack (see 1955 Proceedings, page 18).
2. Bills of Sale and Conditional Sales—Report of Alberta Commissioners (see 1958 Proceedings, page 19).
3. Bulk Sales—Report of Alberta Commissioners (see 1958 Proceedings, page 20).
4. Domicile—Report of British Columbia Commissioners (see 1958 Proceedings, page 26).
5. Evidence, Uniform Rules of
6. Expropriation—Report of Mr. Driedger (see 1958 Proceedings, page 28).
7. Eye Banks—Report of Ontario Commissioners (see 1958 Proceedings, page 28).
8. Federal-Provincial Committee on Uniformity of Company Law—Report of Special Committees (see 1958 Proceedings, page 25).
9. Foreign Torts—Report of Dr. Read (see 1958 Proceedings, page 26).

10. Highway Traffic and Vehicles (Responsibility for Accidents) —Report of Nova Scotia Commissioners (see 1958 Proceedings, page 27).
11. Innkeepers—Report of Nova Scotia Commissioners (see 1958 Proceedings, page 26).
12. Judicial Decisions affecting Uniform Acts—Report of Dr. Read (see 1951 Proceedings, page 21).
13. Legislative Assembly—Report of Alberta Commissioners (see 1958 Proceedings, pages 19 and 27).
14. Legitimation—Reports of Alberta and British Columbia Commissioners (see 1958 Proceedings, page 23).
15. Mechanics' Liens—Report of Saskatchewan Commissioners (see 1958 Proceedings, page 26).
16. Permanent Staff—Report of Mr. Rutherford (see 1958 Proceedings, page 27).
17. Presumption of Death—Report of British Columbia Commissioners (see 1958 Proceedings, page 27).
18. Printing of Uniform Acts—Report of Mr. MacTavish and Mr. Muggah (see 1958 Proceedings, page 27).
19. Survivorship—Report of Ontario Commissioners (see 1958 Proceedings, page 22).
20. Vital Statistics—Report of Manitoba Commissioners (see 1958 Proceedings, page 27).
21. Wills—Report of Dr. Read.
22. New Business.

PART III

CRIMINAL LAW SECTION

The Criminal Law Section will discuss proposals that, since the last meeting, have been received in the Department of Justice for amendment of the Criminal Code. Working papers have been distributed.

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

FOR YEAR 1958-1959

Balance on hand—September 9th 1958 (on deposit in The Royal Bank of Canada, 65 St. Anne St., Quebec City, Que.)		$ 5,067.16
RECEIPTS		
Quebec Bar	$ 50.00	
Government of Quebec	200.00	
Government of Prince Edward Island	100.00	
Government of New Brunswick	200.00	
Government of Alberta	200.00	
Government of Manitoba	200.00	
Government of Newfoundland	200.00	
Government of British Columbia	200.00	
Government of Saskatchewan	200.00	
Government of Canada	200.00	
Government of Nova Scotia	200.00	
Government of Ontario	200.00	
		2,150.00
Bank interest—Oct. 30th 1958		66.16
Bank interest—Apr. 23rd 1959		68.61
Rebate of Sales Tax		143.08
DISBURSEMENTS		
Wm. McNab & Son re: printing of 1000 Conference letterheads		$ 13.20
Clerical assistance, Honorariums		125.00
Petty Cash Fund, Secretary of Conference		50.00
National Printers Ltd. re: Printing Proceedings 40th Annual Meeting 1958	$1,420.00	

Envelopes.....	2.75	
Typing & checking envelopes .	8.00	
	$1,430.75	
Sales tax	143.08	
Postage.....	19.23	
Express charges..	2.30	
		1,595.36
McNab & Son re: printing of Agenda for Conference (1959)		18.29
CASH IN BANK.		5,693.16
	$ 7,495.01	$7,495.01

Audited and found correct,

(signed) P. R. BRISSENDEN
J. W. RYAN

APPENDIX C

(*See page 17*)

SECRETARY'S REPORT
1959

Proceedings

In accordance with the resolution passed at the 1958 meeting of the Conference (1958 Proceedings, page 17), the Proceedings of that meeting were prepared, printed and distributed among the members of the Conference and others whose names appear on the Conference mailing list. Arrangements were made with the Secretary of the Canadian Bar Association for the supplying to him, at the expense of the Association, of a sufficient number of copies to permit the inclusion of the Proceedings in the copies of the Year Book of the Canadian Bar Association that are distributed among the Council.

Three hundred and fifty copies of the 1957 Proceedings were printed. This left on hand, after distribution, a greater quantity than my experience indicated would be needed to fill requests for copies. Accordingly, I reduced the order for the 1958 Proceedings to 300 copies and now have, approximately, 45 copies on hand.

As agreed at the 1958 meeting, the Proceedings covering that meeting contained, at page 9, a list of all Presidents of the Conference.

Early in the year, Dr. Kennedy, Deputy Attorney General of British Columbia, suggested that the Table of Model Statutes be reviewed and brought up to date. This would require, first, some examination of the records of the Conference to make certain that the entries in the column headed "Remarks" correctly record the action of the Conference on model statutes; and, second, examination of provincial statutes and possible variations of the material contained in the other columns of the table relating to adoption of model statutes by provincial legislatures. The first part of the work could be done by any person with the use only of annual Proceedings of the Conference; possibly the Commissioners of some province would be prepared to undertake this or may be in a position to have someone do it under their direction. It seems to me that the most convenient and least onerous method of doing the second part of the review would be to have one of the Commissioners from each province prepare a summary

of legislative action on model statutes in his province and submit that either to the Secretary or to a special committee of the Conference. I agree with Dr. Kennedy's suggestion and would recommend that the Table of Model Statutes be reviewed and, if necessary, revised before the 1959 Proceedings are printed.

Sales Tax

An application was made for the refund of sales tax, totalling $143.08, paid on the printing of the 1958 Proceedings, and in due course the refund was received.

Other Organizations

During the year I had correspondence with Mr. J. F. Caldwell, Q.C., formerly Parliamentary Counsel for Northern Ireland, who is now Chief Legal Draftsman for the Government of Jamaica, about the organization, maintenance and activities of the Conference. He felt that a similar organization might serve a valuable purpose in the Federation of the British West Indies and had interested members of the Government there and hopes that an organization modelled somewhat on our Conference may be established in The West Indies. In the correspondence he mentioned that he had been in touch with Mr. MacTavish some years ago and had obtained from him some of the Proceedings of the Conference, about which he says—"Your uniform precedents obtained from Mr. MacTavish were most useful to us in Northern Ireland".

I continue to receive material and to keep in touch with the Secretary-General of the International Institute for the Unification of Private Law. An outline of the organization and activities of the Conference and a summary of its 1957 activities have been published in the Proceedings of that Institute. In the absence of instructions from the Conference I did not feel that I should accept the invitation of the Institute to participate in this year's meeting which is being held in Rome from October 11th to 15th.

HENRY F. MUGGAH,
Secretary.

APPENDIX D

(*See page 20*)

AMENDMENTS TO UNIFORM ACTS
1959

REPORT OF W. C. ALCOMBRACK

Contributory Negligence

British Columbia added a new section to its Act as follows:

> 8.—(1) Where a person dies who, because of this Act, would have been liable for any damages or costs had be continued to live, any action or third-party proceedings that, because of this Act, could have been brought or maintained against the person who has died may be brought and maintained or, if pending, may be continued against the executor or administrator of the deceased person, and the damages and costs recovered are payable out of the estate of the deceased person in like order of administration as the simple contract debts of the deceased person.
>
> (2) If there is no executor or administrator of the deceased person appointed in the Province within three months after his death, the Court or a Judge may, on the application of any party intending to bring or continue an action or third-party proceedings under this section, and on such notice to such other parties, either specially or generally by public advertisement, as the Court or Judge may direct, appoint a representative of the estate of the deceased person for all purposes of the intended or pending action or proceedings and to act as defendant therein; and the action or proceedings brought or continued against the representative so appointed and all proceedings therein shall bind the estate of the deceased person in all respects as if a duly constituted executor or administrator of the deceased person were a party to the action.
>
> (3) No action or third-party proceedings shall be brought against a representative of the estate of the deceased person appointed under subsection (2) after the expiration of ten months from the death of the deceased person, and no action or proceedings shall be brought against the executor or administrator of the deceased person under subsection (1) after the expiration of six months from the death of the deceased person.

The new provision was added as a result of the decision in *Cairney* v. *MacQueen* (1956) S.C.R. 555.

Prince Edward Island amended its Act which is the Uniform Act as revised by the Conference in 1935 to provide:

> (*a*) that the Act shall apply whether or not contributory negligence is pleaded in the defence or reply to the counterclaim;

(*b*) that in actions arising out of the operation of motor vehicles, where this Act is invoked and a counterclaim allowed, judgment shall not be given for the balance found to be due between the parties, but that separate judgments shall be given for each party against the other, to the extent that any party is successful, so that the plaintiff shall have judgment on the claim for a specified amount and the defendant shall have judgment on the counterclaim for a specified amount, or as the case may be. (3rd & 4th Parties *mutatis mutandis*). Costs shall be in the same proportion as the damages unless the Court otherwise orders.

Devolution of Real Property

Saskatchewan amended its Act by adding after "lease" in section 15 "or otherwise dispose of". The amendment was considered necessary in order to permit personal representatives to deal with oil and gas rights by means of instruments usually referred to as leases but which according to recent decisions of the courts are not actually leases.

Highway Traffic and Vehicles (Rules of the Road)

Alberta amended the uniform traffic signal rules,

(*a*) to permit a right turn on a red light if the intersection is posted to permit a right turn; and

(*b*) to provide for school-zone and pedestrian-crossing flashing amber lights.

Alberta also adopted rules of the road provisions respecting the following matters:

1. Driving right of centre.
2. Rules for following vehicles.
3. Duty of driver at scene of accident.
4. Littering highway.
5. Travelling at too slow a speed.

Interpretation

Alberta amended its Act which is the Uniform Act as revised by the Conference in 1953 by adding the following section:

18*a*. Where an Act passed after the first day of July, 1928, or an enactment passed after the fourteenth day of April, 1958, authorizes or requires any document to be served by mail, whether the expression "serve", or the expression "give" or "send" or any other expression, is used, then, unless the contrary intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the document and, unless the contrary is proved, to be effected at the time at which the letter would have been delivered in the ordinary course of mail.

The principle of this provision had been in the Alberta Act since 1928. It was not in the Uniform Act and at the last session of the Alberta Legislature it was re-enacted and extended to apply to regulations as well as statutes.

Intestate Succession

British Columbia amended the uniform intestate succession provisions of its Administration Act by striking out sections 123 and 124 which were the same as sections 16 and 17 of the Uniform Act and substituting the following:

> 123. For the purposes of this Act, an illegitimate child shall be deemed to be the legitimate child of his mother.

Sections 16 and 17 of the Uniform Act are as follows:

> 16. Illegitimate children and their issue shall inherit from the mother as if the children were legitimate, and shall inherit through the mother, if dead, any real or personal property which they would have taken if the children had been legitimate.
>
> 17. If an intestate, being an illegitimate child, dies leaving no widow or issue, his estate shall go to his mother, if living, but if the mother is dead his estate shall go to the other children of the same mother in equal shares, and if any child is dead the children of the deceased child shall take the share their parent would have taken if living:
>
> Provided that where the only persons entitled are children of deceased children of the mother, they shall take per capita.

Proceedings Against the Crown

Alberta adopted the Uniform Act with slight modifications.

Reciprocal Enforcement of Judgments

British Columbia adopted the revised Uniform Act.

Reciprocal Enforcement of Maintenance Orders

Ontario repealed its present Act, which was the Uniform Act of 1946 with slight modification, and enacted the revised Uniform Act with slight modification. The modification consisted of minor editorial changes and an addition of a new provision which appears as section 12 of the Ontario Act.

> 12. Where a maintenance order sought to be registered in a court in Ontario or a provisional order sought to be confirmed by a court in Ontario under this Act or any accompanying document uses terminology different from the terminology used in Ontario, the difference shall not vitiate any proceedings under this Act.

The purpose of the new section is to facilitate arrangements with American States.

Testator's Family Maintenance

New Brunswick enacted the Uniform Act.

Vital Statistics

Alberta adopted the Uniform Act of 1949 as amended in 1950 with slight modifications to suit local conditions.

Nova Scotia amended its Act to substitute the following definitions in the form recommended by the Vital Statistics Council of Canada:

(*a*) "birth" means the complete expulsion or extraction from its mother, irrespective of the duration of pregnancy, of a product of conception in which, after such expulsion or extraction, there is breathing, beating of the heart, pulsation of the umbilical cord, or unmistakable movement of voluntary muscle, whether or not the umbilical cord has been cut or the placenta is attached.

(*u*) "stillbirth" means the complete expulsion or extraction from its mother after at least twenty weeks' pregnancy, of a product of conception in which, after such expulsion or extraction, there is no breathing, beating of the heart, pulsation of the umbilical cord, or unmistakable movement of voluntary muscle.

Ontario amended its Act, which is similar in effect to the Uniform Act, in order to clarify the birth registration procedure in cases in which the parents fail to supply the statement of birth by adding the following section:

7*a*.—(1) If the statement respecting the birth of a child is not completed, certified and delivered or mailed in the manner and within the time provided in section 6,

(*a*) the occupier of the premises in which the child was born, if he has knowledge of the birth; or

(*b*) a nurse present at the birth,

shall, upon being required so to do by the Registrar-General, complete, certify and deliver or mail the statement to the division registrar of the registration division within which the child was born.

(2) Every person who has knowledge of the birth and who neglects to complete, certify and deliver or mail the statement respecting the birth of a child upon being required so to do under subsection 1 is guilty of a violation of this Act.

Prince Edward Island amended its Act,

(*a*) to exempt persons from the necessity of reporting a birth where the birth is in a hospital;

(*b*) to require divorce decrees to be forwarded by the Supreme Court officer to the vital statistics officer;

(*c*) to provide for vital statistics officers taking affidavits.

Wills

New Brunswick enacted the Uniform Act with slight modification.

Ontario does not have the Uniform Wills Act but section 36 of the Ontario Act is comparable to section 30 of the Uniform Act. After a great deal of study, Ontario did not adopt the uniform section but enacted the following section 36 which is somewhat different in form and substance to the uniform section:

> 36. Unless a contrary intention appears by the will, where a devise or bequest is made to a child, grandchild, brother or sister of the testator who dies before the testator and leaves issue surviving 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.

Section 30 of the Uniform Wills Act is as follows:

> 30 Where any person being a child or other issue of the testator to whom, either as an individual or as a member of a class, any real or personal property is devised, or bequeathed for any estate or interest not determinable at or before the death of that person, dies in the lifetime of the testator leaving issue, and any of the issue of that person are living at the time of the death of the testator, the devise or bequest shall not lapse, but shall, unless a contrary intention appears by the will, take effect as if it had been made directly to the persons amongst whom and in the shares in which that person's estate would have been divisible if he had died intestate and without debts immediately after the death of the testator.

W. C. ALCOMBRACK.

APPENDIX E

(*See page 20*)

JUDICIAL DECISIONS AFFECTING UNIFORM ACTS 1958

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 1958 applying Uniform Acts have not been included since they involved essentially questions of fact and no significant question of interpretation. It is hoped that Commissioners will draw attention to omission of relevant decisions reported in their respective Provinces during 1958 and will draw attention to 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 AND SALE OF GOODS

British Columbia Conditional Sales Act, Section 3(5), and Sale of Goods Act, Sections 32(2) and 60

In *Traders Finance Corporation Limited* v. *Dawson Implements Limited* (1958) 26 W.W.R. 561, a motor vehicle was sold in Alberta by Kallal Motors to Nick Pankratow under a conditional sales agreement which provided that the property in the vehicle would remain in the vendor until payment of the purchase price in full. The vendor assigned all of its interest to the plaintiff. All provisions of Alberta law governing registration of conditional sale agreements covering motor vehicles were duly complied with. The purchaser, Pankratow, soon moved the vehicle into British Columbia where he sold it to the defendant. The plaintiff's action in the Supreme Court of British Columbia for conversion was dismissed. In the course of his reasons for judgment, Mr. Justice Whittaker said at 26 W.W.R. pp. 562 to 566:

The defendant, in course of its business, resold the vehicle to someone else whose name does not appear.

Plaintiff had no notice of the removal of the vehicle into this province, nor, until presumably much later, of the sale to defendant. Probably because the vehicle could not be located, this action for conversion was brought. There is no evidence that at any time plaintiff registered a copy of the conditional-sale agreement in this province pursuant to sec. 3(5) of the British Columbia Conditional Sales Act, RSBC, 1948, ch. 64.

A further admitted fact is that at the time of the sale to defendant the vehicle carried Alberta licence plates . . . The title reserved to the plaintiff in Alberta will be recognized as valid in British Columbia unless the defendant acquired a valid title in accordance with the law of this province.

The policy of the common law expressed in the maxim "nemo dat quod non habet" no doubt prevails in British Columbia except to the extent that it has been modified by statute. The statutory modification which seems to me to have application to the case at bar is the Sale of Goods Act, RSBC, 1948, ch. 294, sec. 32(2):

> "Where a person having bought or agreed to buy certain goods obtains, with the consent of the seller, possession of the goods . . . the delivery or transfer by that person . . . of the goods . . . under any sale . . . to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods . . . with the consent of the owner."

Sec. 60 of said Act provides that a sale of goods by a mercantile agent who is in possession of the goods with the consent of the owner shall, subject to the provisions of the Act, be as valid as if he were expressly authorized by the owner to make the same.

Some provinces, of which Manitoba is one, have expressly excepted conditional-sale agreements from the operation of provisions which correspond to the above sec. 32(2). British Columbia has not done so. Sec. 8(2) of the Sale of Goods Act says that a contract of sale may be absolute or conditional, and sec. 8(3) provides that:

> " . . . where the transfer of property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled the contract is called an 'agreement to sell'."

In *Lee* v. *Butler* [1893] 2 Q.B. 318, 62 L.J.Q.B. 591, the English Court of Appeal held that a hire-purchase agreement covering furniture was an agreement to buy within the meaning of sec. 9 of the Factors Act, 1889, which is identical with sec. 32(2) of our Sale of Goods Act, and that an innocent purchaser of the furniture was protected. This decision was followed in *Horton* v. *Gibbins* (1897) 13 T.L.R. 408. I am satisfied that the conditional-sale agreement here in question comes within said sec. 32(2).

Sec. 3(5) of the Conditional Sales Act provides:

> "If the goods, having been delivered at a place outside the province,

are subsequently removed into the province by the buyer, an original of the writing or a true copy thereof shall be filed in the registration district to which the goods are removed within twenty days after such removal has come to the knowledge of the seller."

Assuming that this subsection applies to agreements made outside the province (which I do not decide), it does not assist the plaintiff. The removal of the motor vehicle to this province must have come to the plaintiff's attention at some time, otherwise this action would not have been brought. There is no evidence that the agreement was registered within 20 days thereafter or at all.

While conditional-sale agreements may have extra-territorial effect in determining the ownership of goods as between the parties, and even as against third parties in the jurisdiction to which the goods have been removed in the absence of a local law protecting such third parties, there is, nevertheless, ample authority that conditional sale statutes are not to be given extra-territorial effect so far as notice by registration is concerned.

I hold that the law of British Columbia governs the sale from Pankratow to the defendant; that the defendant received the vehicle "in good faith and without notice of any lien or other right of the original seller"; and that the defendant, by virtue of said sec. 32(2) acquired a valid title and so could not be guilty of conversion when it resold the vehicle. The action is dismissed with costs.

A serious question may arise as to whether the framers of our Conditional Sales Act may have overlooked sec. 32(2) of the Sale of Goods Act. The former Act does not say that filing shall be deemed notice to innocent third parties. There is clear authority that conditional-sale statutes do not enlarge the rights of conditional vendors. Their purpose is to protect innocent third parties against the vendor's common-law right of seizure by providing in effect that the vendor may not exercise such right unless he registers. Registration gives third persons dealing with the conditional buyer an opportunity to discover a lien which might otherwise remain secret. *Liquid Carbonic Co. Ltd.* v. *Rountree* (1923) 54 O.L.R. 75, at 78; *Hannah* v. *Pearlman* [1954] 1 D.L.R. 282, at 286, 1954 Can. Abr. 102; *Commercial Finance Corpn.* v. *Stratford* (1920) 47 O.L.R. 392, at 396, 18 O.W.N. 156; and *Commercial Credit Co.* v. *Fulton Bros.* [1923] A.C. 798, 93 L.J.P.C. 12, which affirmed (1922) 55 N.S.R. 208, 65 D.L.R. 699, where this question is specifically dealt with by Mellish, J. at 719-722.

If the Act does not enlarge the rights of the conditional vendor as against innocent third persons, it may be arguable that it should not be so construed as to cut down rights already conferred on such persons by sec. 32(2).

I have not checked the legislation in the other provinces, but I understand that in addition to Manitoba, Alberta and Ontario have excepted conditional sales, if duly registered, from agreements covered by provisions in those provinces corresponding to sec. 32(2).

[This case should be compared with the cases noted in 1956 Proceedings, pp. 48-50, where the conditional sale agreement was

registered after a sale by the conditional purchaser to a bona fide purchaser but before the time limit for registration had expired, and the vendor prevailed.]

New Brunswick Section 14 (4)

In *McCutcheon* v. *J. Clark and Sons* (1957) 16 D.L.R. (2d) 237, the plaintiff had recovered a deficiency judgment after repossession and sale of a truck originally sold by the plaintiff to the defendant under a conditional sale contract. The defendant appealed on the ground that the notice of intention to sell sent by the plaintiff to the defendant failed to comply with Section 14 of the Conditional Sale Act, R.S.N.B. 1952, c. 34. Subsection (4) of Section 14 reads:

> (4) The notice shall contain,
>
> (a) a brief description of the goods;
>
> (b) an itemized statement of the amount then due on the contract price and the actual costs and expenses of taking and keeping possession up to the time of the notice;
>
> (c) a demand that the amount as stated in the notice be paid on or before a day mentioned, not being less than five days after the delivery of the notice if it is personally delivered, and not being less than seven days after the mailing of the notice if it is sent by mail; and
>
> (d) a statement that unless the amount as stated in the notice is paid within the time mentioned the goods will be sold at public auction at a time and place specified therein, and that the seller intends to look to the buyer or guarantor of the buyer for any deficiency on the resale.

In the Appeal Division, the appeal was allowed. Mr. Justice Bridges said at 16 D.L.R., pp. 239 to 240:

> The point, which arises in this case, does not appear to have been determined in any reported case . . . It is my opinion that strict compliance with these provisions is required of a vendor before a deficiency can be recovered after repossession and sale. Clause (c) of s-s. (4) definitely requires a specified day to be set out in the notice on or before which the amount owing is required to be paid. This, the notice in the case at bar failed to do as it merely stated "unless the amount of $2,960.25 is paid within seven days of this notice the said truck will be sold in accordance with the Conditional Sales Act". There was not therefore in my opinion a proper compliance with the requirements of cl.(c). The notice should have stated that unless the amount was paid on or before a definite named date the truck would be sold. A purchaser receiving a notice, such as was forwarded, might well believe the time set out in the notice ran from when he received the notice instead of from the date of mailing. With a definite day specified in the notice a purchaser receiving same would have no doubt as to the time within which payment should be made.

> It is further my opinion that as the notice was forwarded by mail on April 10, 1956, the truck could not, in compliance with the requirements of s. 14, have been sold until April 19, 1956 at the earliest. The weight of authority is that when an enactment requires something to be done in not less than a certain number of days from an event, it should be interpreted as meaning clear days . . .
>
> Since the notice was mailed on April 10, 1956 and as the words "not being less than seven days" are to be interpreted as meaning clear days the notice should have contained a demand for payment on or before April 18, 1956 or some subsequent date. The sale would therefore have to be held on some date at least one day subsequent to the last day for payment. It could not, to comply with the enactment, be held as it was on April 18, 1956.

CONTRIBUTORY NEGLIGENCE

British Columbia Sections 5 and 6

In *Bisset and Pollock* v. *Fudge and Canadian Freightways, Ltd.* (1958) 12 D.L.R. (2d) 776, it was proved that the injury to the plaintiff, Miss Pollock, suffered while a passenger in an automobile being driven by the plaintiff Bisset, was caused by the negligence of both the plaintiff Bisset and the defendant Fudge who was driving another automobile. The degree of fault of Fudge was found by the jury to be 75 per cent and that of Bisset to be 25 per cent. No issue was raised in the pleadings as to whether Miss Pollock was a gratuitous passenger, nor was any issue raised in them as to whether Bisset was guilty of gross negligence, and no finding of fact was made on either point.

Mr. Justice Manson in the Supreme Court of British Columbia refused to infer that Miss Pollock was a gratuitous passenger and that Bisset was not guilty of gross negligence so as to relieve Bisset from liability to her by virtue of Section 73 of the Motor Vehicle Act and bring the case within Section 6 of the British Columbia Contributory Negligence Act, R.S.B.C. 1948, c. 68 which corresponds to Section 4 of of the Uniform Act as approved in 1953. Mr. Justice Manson relied upon the decision of Chief Justice McNair in the New Brunswick Appeal Division in *Farquharson* v. *Parker* (1956) 4 D.L.R. (2d) 588, (commented on in 1957 Proceedings p. 50), where he said at p. 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.

Mr. Justice Manson accordingly applied Section 5 of the British Columbia Act (corresponding to subsection (2) of Section 3 of the Uniform Act, 1953), with the following result:

> It follows from the foregoing that the plaintiff Pollock, she having made no claim against Bisset is entitled to judgment only against the defendants for the damages, general and special, which she sustained and costs, but as between Bisset and the defendants they are liable to make contribution to and indemnify each other in the degree in which they respectively have been found at fault.
>
> The plaintiff Miss Pollock will have judgment accordingly and the plaintiff Bisset will have judgment against the defendants for 75% of the damage sustained by him, general and special, and the defendants will have judgment against Bisset for 25% of the damages claimed by them in their counterclaim and 25% of Miss Pollock's Judgment.

New Brunswick Section 1 (1)

In *Campbell* v. *Dickison* (1957) 41 M.P.R. 72, the defendant alleged that the accident out of which the action arose was entirely caused by the negligence of the plaintiff but did not plead contributory negligence. The plaintiff was found to be forty per cent at fault and the defendant sixty per cent, and the liability was apportioned accordingly. In answer to the plaintiff's argument that the contributory negligence could be relied upon only if specifically pleaded, Mr. Justice Bridges, in the Appeal Division, said at 41 M.P.R. p. 79:

> The rule that contributory negligence should be pleaded arose before apportionment of liability was provided by statute. In *Foster et al* v. *Morton* (1956), 4 D.L.R. (2d) 269, the Supreme Court of Nova Scotia en banc on an appeal allowed an amendment, setting up such a plea.
>
> Section 1 (1) of our Contributory Negligence Act reads:
>
> > Where, by the fault of two or more persons, damage or loss is caused to one or more of them the liability to make good the damage or loss shall be in proportion to the degree in which each person was at fault, provided that if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally.
>
> This section was, I think, intended to apply to all cases, where negligence on the part of both parties has been established, regardless of whether or not contributory negligence is specifically pleaded. In any event, where, as in this case, a defendant alleges that the accident was wholly due to the negligence of the plaintiff, a trial judge, if satisfied there was negligence on the part of both parties, should, in my opinion, determine the respective degrees of fault and direct judgment accordingly. I can see no need of amendment to permit this being done.

DEVOLUTION OF REAL PROPERTY

Saskatchewan Section 15

In *Re Thomas*, (1958) 12 D.L.R. (2d) 135, the Saskatchewan Court of Appeal held that a "Petroleum and Natural Gas Lease" of the usual type is not a lease but is a profit a prendre. An application for an order under subsection (2) of Section 15 of the Devolution of Real Property Act, R.S.S. 1953, c. 118, approving such a "lease" made on behalf of infants who had a contingent interest under a will in the real estate was therefore dismissed. The court said at 12 D.L.R. (2d) p. 138:

> In *Re Heier*, this Court, by a majority opinion, held that the instrument was not a lease within s.15 of the Devolution of Real Property Act, and that judgment was followed in *Re Douglas*. In *Re Sykes*, the Court was required to make a specific finding as to the nature of the document and found that the lease was a contract for the sale of property. This judgment was appealed and is reported *sub nom. Berkheiser* v. *Berkheiser & Glaister*. The Supreme Court reversed the judgment of this Court. Mr. Justice Rand, after carefully reviewing the terms of the instruments, in delivering the judgment of himself and Cartwright, J. at pp. 725-6 D.L.R., p. 392 S.C.R., gave the following interpretation: "The word 'grant', then, not being significant of title and the word 'lease' not carrying with it the possession with which it is ordinarily associated, we look to the detailed description of the acts authorized for the true intendment of the instrument and doing that here I interpret it as either à profit a prendre or an irrevocable licence to search for and to win the substances named."
>
> Mr. Justice Kellock, in delivering the judgment of himself, Locke and Nolan JJ. at p. 732 D.L.R., p. 339 S.C.R., stated: "In my opinion, the instrument is to be construed as a grant of a profit à prendre for an uncertain term which might be brought to an end upon the happening of any of the various contingencies for which it provides."

[Re Heier [1953] 1 D.L.R. 792, was noted in 1954 Proceedings p. 132. The Berkheiser case is reported in (1957) 7 D.L.R. (2d) 721, [1957] S.C.R. 387.].

The Court of Appeal went on to hold that the "lease", being a conveyance of a profit a prendre, is a "disposition" within the meaning of the Infants Act, R.S.S. 1953, c. 306 as re-enacted by 1954, c. 78, s. 3(2).

INTESTATE SUCCESSION

Saskatchewan Section 17

In *Re Carlson* (1958) 11 D.L.R. (2d) 484, a decision of the Saskatchewan Court of Appeal, it was held that Section 17 of the

Intestate Succession Act, R.S.S. 1953, c. 119, does not clearly change the common law where the contest is between paternal uncles and aunts who claim through a legitimate line of succession and maternal uncles and aunts where the common ancestor with the intestate, here the maternal grandmother, was illegitimate. Consequently, the paternal uncles and aunts took the entire estate.

Mr. Justice Gordon, at 11 D.L.R. (2d) p. 488, broke Section 17 into clauses as follows for the purpose of considering them more clearly:

> 17. Illegitimate children and their issue shall inherit from the mother as if the children were legitimate
>
> "and shall inherit through the mother, if dead, any real or personal property which they would have taken if the children had been legitimate."

He then continued:

> Section 17 is the only one that can help the respondents (the maternal uncles and aunts). The first clause has no application because in this case we are not dealing with the estate of the mother. The second clause is more difficult, but in my view the respondents are asking us to read into the clause something which is not there. They wish us to read the clause as follows: "and shall inherit through the mother, if dead, whether legitimate or not any real or personal property which they would have taken if the children had been legitimate."
>
> Under s. 7 of the Intestate Succession Act, if Anna Sophia, the illegitimate mother had survived the intestate, she would have taken the whole estate, the father being dead, and in such case the entire estate would have gone to the maternal side to the exclusion of the aunt and uncle. If it had been the intention of the Legislature to protect the claims of collaterals where the illegitimacy was not in the testator but in some of his ancestors, I think that it would have to be clearly stated. All are agreed that under common law an illegitimate cannot inherit from ascendants or collaterals nor can ascendants or collaterals inherit from him; his only heirs are those of his body.

RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS

Ontario Section 2(1)

In *Summers* v. *Summers* (1958) 13 D.L.R. (2d) 454, Mr. Justice Treleaven in Chambers in the High Court of Ontario upheld registration of a maintenance order that had been issued in the High Court of Justice in England in a case where at the time the action was begun there was no jurisdiction in personam

over the defendant. The English order was made as part of divorce proceeding taken by a wife against her husband under The Matrimonial Causes Act 1950 (Imp.) c. 25. The applicable provisions were:

> 18. (1) Without prejudice to any jurisdiction exercisable by the court apart from this section, the court shall by virtue of this section have jurisdiction to entertain proceedings by a wife in any of the following cases, notwithstanding that the husband is not domiciled in England, that is to say:—
>
> (a) in the case of any proceedings under this Act other than proceedings for presumption of death and dissolution of marriage, if the wife has been deserted by her husband, or the husband has been deported from the United Kingdom under any law for the time being in force relating to the deportation of aliens, and the husband was immediately before the desertion or deportation domiciled in England;
>
> (b) in the case of proceedings for divorce or nullity of marriage, if the wife is resident in England and has been ordinarily resident there for a period of three years immediately preceding the commencement of the proceedings, and the husband is not domiciled in any other part of the United Kingdom or in the Channel Islands or the Isle of Man.
>
> 19. (3) On any decree for divorce or nullity of marriage, the court may, if it thinks fit, by order direct the husband to pay to the wife, during their joint lives, such monthly or weekly sum for the maintenance and support of the wife as the court may think reasonable, and any such order may either be in addition to or be instead of an order made under the last foregoing subsection.
>
> 26. (1) In any proceedings for divorce or nullity of marriage or judicial separation, the court may from time to time, either before or by or after the final decree, make such provision as appears just with respect to the custody, maintenance and education of the children the marriage of whose parents is the subject of the proceedings, or, if it thinks fit, direct proper proceedings to be taken for placing the children under the protection of the court.

Mr. Justice Treleaven held that the order was not a judgment *in personam*, but was ancillary to the divorce decree, and since there was divorce jurisdiction over the husband in England under subsection (1) of Section 18 of the Act, there was also jurisdiction to issue the ancillary order. He said at 13 D.L.R. (2d.) p. 457:

> The right to the respondent's divorce comes squarely within s. 19(1) (a) and/or (b). The relief claimed for alimony and/or maintenance of the children being ancillary, the Court has jurisdiction.

Mr. Justice Treleaven relied upon *Phillips* v. *Batho* [1913] 3 K.B. 25, a judgment by Mr. Justice Scrutton (afterward Scrutton, L.J.).

The facts in *Phillips* v. *Batho* were these: The plaintiff, who was domiciled in British India, presented a petition in the courts of that country for a divorce by reason of his wife's adultery with the present defendant, who was joined as co-respondent. Before the suit was commenced the defendant left India, and, although he was served with process by registered post in England, he did not appear. The plaintiff obtained a decree of divorce, and an award of damages against the defendant as co-respondent. The plaintiff now sued the defendant, who was resident in England, to recover the amount of damages awarded in the Indian divorce suit. Mr. Justice Scrutton held that, regardless of whether the domicile and residence of the co-respondent is elsewhere at the time of bringing a divorce suit in a foreign law district, the court of that district has jurisdiction to entertain an action brought by the petitioning husband against him for damages; provided (a) that the foreign law district has divorce jurisdiction, and (b) that the foreign law district and the district where the money judgment is presented for recognition have the same political sovereign.

A portion of Mr. Justice Scrutton's language in holding the defendant liable must be read to appreciate fully his mental process:

> I have now to consider the effect of such a judgment pronounced in respect of adultery in India against a co-respondent who was not in India at the time of the issue of the petition, when sued on in the United Kingdom, where he is domiciled, both India and the United Kingdom being under the same sovereign . . .
>
> The Sovereign assigns to the Courts in the various parts of his dominions the duty of dealing with the validity and dissolution of marriages of persons domiciled within their jurisdiction. As incidental and accessory to decisions on such status the Sovereign gives to his Court the power of inflicting damages and costs on persons who infringe the status of marriage and cause dissolutions of marriage to be granted . . .
>
> Judgments as to status in matters within the jurisdiction of the Court are in rem and bind all the world. Marriage and the dissolution of marriage are matters of status, and the judgments of the Indian Court in this matter are in rem and bind the world:
>
> Bater v. Bater, [1906] p. 209. Ancillary and accessory to the judgment as to status is the power to give damages against the person causing the marriage to be dissolved. The power is recognized both by the English Courts and the Indian Courts. The English Courts will recognize and enforce the judgments as to status of the Indian Courts in matters within their jurisdiction, and I think they will also recognize and enforce the ancillary orders as to damages, such as they themselves make in similar cases.

While there may be some doubt concerning whether both Ontario and the United Kingdom are now under the same sov-

ereign, there is no doubt that in *Phillips* v. *Batho* Mr. Justice Scrutton discovered a new type of judgment, a hybrid obtained by crossing a divorce action with an *in personam* action, with the dominant jurisdictional characteristic derived from the former, so that jurisdiction over the marriage status suffices for a judgment with *in personam* effect. In other words the ancillary maintenance order mule has the *in rem* bite of the maternal mare and the *in personam* kick of the paternal donkey. This is the first reported case in Canada in which the rule in *Phillips* v. *Batho* has been recognized, and its utility as a means of realizing the aim of maintenance orders against deserting husbands and fathers is obvious.

[Mr. Justice Treleaven distinguished *Re Kenny* [1951] 2 D.L.R. 98 (commented on in 1951 Proceedings p. 62), where the order which was refused registration in Ontario had been issued under the British Columbia Deserted Wives' and Children's Maintenance Act and there was no basis of jurisdiction in personam in the conflicts of laws sense in British Columbia when the action was commenced there].

Even more interesting than the adoption of the rule in *Phillips* v. *Batho* in the instant case is the silent application in Ontario by Mr. Justice Treleaven of *Travers* v. *Holley,* [1953] p. 246; [1953] 2 All E.R. 794, in which the English Court of Appeal held that if a wife obtains a divorce in a foreign country, and the foreign court exercises jurisdiction on a basis substantially similar to that on which the High Court of England exercises it under Section 18 of the Matrimonial Causes Act, 1950 (quoted supra), the divorce is entitled to recognition in England, although the husband was not domiciled in the foreign country when the divorce action was commenced.

Nowhere in Mr. Justice Treleaven's reasons for judgment is there a mention of *Travers* v. *Holley* or of the problem necessarily raised by the instant case of international recognition of the statutory divorce jurisdiction exercised by the English court upon which the ancillary maintenance order depended for validity. The Judge seems to have assumed that the judicial jurisdiction of England was entitled to recognition simply because the English court had correctly exercised a local divorce jurisdiction or competence conferred upon it by an English statute. Here was a case where the husband was not domiciled in England when the divorce action was commenced there against him; and all previous Canadian cases have held that a foreign divorce decree will be recog-

nized as being granted with jurisdiction only if the husband was domiciled at the time when the action was commenced in the country whose court granted the decree (except when a case falls within *Armitage* v. *Attorney-General* [1906] P. 135). The jurisdiction of the English court was thus clearly not entitled to recognition in Ontario unless the Ontario court was prepared to adopt the rule of *Travers* v. *Holley* as part of the law of that province. There is also no doubt that the instant case falls squarely within the rule of *Travers* v. *Holley*.

> (a) The wife obtained a divorce in England, a foreign country;
>
> (b) the husband was not domiciled in England when the divorce action was commenced;
>
> (c) the foreign court exercised jurisdiction on a basis substantially similar to that on which the High Court of Ontario exercises jurisdiction under the Canadian Divorce Jurisdiction Act, 1930, which reads:
>
> > A married woman who either before or after the passing of this Act has been deserted by and has been living separate and apart from her husband for a period of two years and upwards and is still living separate and apart from her husband, may, in any one of those provinces of Canada in which there is a court having jurisdiction to grant a divorce *a vinculo matrimonii*, commence in the court of such province having such jurisdiction proceedings for divorce *a vinculo matrimonii* praying that her marriage may be dissolved on any grounds that may entitle her to such divorce provided that immediately prior to such desertion the husband of such married woman was domiciled in the province in which such proceedings are commenced.

From the point of view of jurisdiction in the conflicts of laws sense, this case has some extraordinary features. First, jurisdiction to issue a maintenance order ancillary to a divorce decree was made to depend not upon *in personam* jurisdiction over the defendant but upon jurisdiction to grant the divorce, that is upon jurisdiction to destroy the marriage status. To this extent *Summers* v. *Summers* is a leading case in Canada. Second, the decision that the divorce jurisdiction existed upon which the validity of the ancillary order depended can on the facts of the case be justified only on the basis of *Travers* v. *Holley*. Third, *Summers* v. *Summers* is thus a leading case supporting the rule of *Travers* v. *Holley* in Canada, but the authority in this regard of *Summers* v. *Summers* as a precedent is weakened because (a) the case was decided on an originating motion in chambers, and (b) neither counsel nor court mentioned this problem of jurisdiction in the conflict of laws sense or, apparently, even recognized that the problem existed in this case.

[See Gilbert D. Kennedy, "Reciprocity" in the Recognition of

Foreign Judgments, the Implications of *Travers* v. *Holley*, (1954) 32 Can. Bar Review 359.]

WILLS

Manitoba Section 6(2)

Subsection (2) of Section 6 of the Manitoba Wills Act, R.S.M. 1954, c. 293 reads:

> (2) A holograph will, wholly in the handwriting of the testator and signed by him, may be made without any further formality or any requirement as to the presence of an attestation or signature by any witness.

In *Bennett et. al.* v. *Toronto General Trust Corp. et. al.*, (1958) 14 D.L.R. (2d) 1, a testatrix who had previously made a formal will, wrote a signed letter to her solicitor in which she gave instructions for a new will. In the course of the letter she stated it was "to let you know how I would like my will to be made out" and that "I will call on you." Subsequently she mentioned a slightly different disposition to her solicitor and was unable to make up her mind as to an executor.

The Supreme Court of Canada affirmed the decision of a majority of the Manitoba Court of Appeal (a) that the letter satisfied the requirements of subsection (2) of Section 6 as to the form of a holograph will; but (b) that the letter did *not* comply with the rule that a holograph paper is testamentary only when it contains "*a deliberate or fixed and final expression of intention* as to the disposal of property upon death."

In the course of his dissenting opinion in the Court of Appeal (Re *Gray, Bennett et. al.* v. *Gray and Toronto General Trusts Corp.* (1957) 9 D.L.R. (2d) 371), Mr. Justice Tritschler restated the principles by which to determine whether a writing has the testamentary character necessary for a valid holograph will. The other judges did not question his restatement of principles, but disagreed with his interpretation of the effect of the letter and surrounding circumstances. At 9 D.L.R. (2d) pp. 381-382 he said:

> The fact that a document purports to be instructions for a more formal document is not of itself sufficient to prevent its being admitted to probate.
>
> A document which is in terms an instruction for a more formal document may be admitted to probate if it is clear that it contains a record of the deliberate and final expression of the testator's wishes with regard to his property.

It is not necessary that the testator should intend to perform or be aware that he has performed a testamentary act.

The testator must have a testamentary intention in the sense that he must have intended to give a deliberate and final expression as to what should be done with his property upon his death.

If he has that "testamentary intention" he may do a "testamentary act" without being aware that he has done so.

If a long time elapses following the writing of an informal document, and if, during that time, the testator had opportunities of obtaining the formal document of which he did not avail himself, that is evidence from which it may, *not must*, be concluded that the informal document did not contain a record of the deliberate and final expression of the testator's wishes with regard to his property.

Evidence that early death or "act of God" or any such matter prevented the completion of a formal document may assist in coming to a conclusion whether or not the informal document had testamentary character; but such events do not make an instrument testamentary which had no testamentary character independently of it and the absence of such events following the completion of an informal document does not take away testamentary character if it was present.

Manitoba Sections 6(2), 7(1) and (3).

In *Equitable Trust Company* v. *Doull et. al.* (1958) 25 W.W.R. 464, in the Manitoba Queen's Bench, Mr. Justice Monnin held that the correct interpretation compelled him to apply subsections (1) and (3) of Section 7 of the Wills Act to a holograph will, but considered such an application to be inconsistent with the nature of such a will and criticized the Act for lack of clarity in this respect. The testator had made a formal will and later wrote and signed a testamentary document making bequests, some of which differed from those in the formal will. Subsequently the testator made several alterations in the wording of this holograph codicil so as to change the amounts of some of the bequests, but failed at that time to place his signature on the document. The question to be decided was whether the alterations in the codicil were effective.

Mr. Justice Monnin referred to two Scottish cases in which similar unsigned alterations to holograph wills had been given effect where the surrounding circumstances were as in the instant case, consistent with the testator having made them with testamentary intention, and said, at 25 W.W.R. pp. 469-470:

Sec. 7(1) of The Wills Act reads as follows:

Every will shall, so far only as regards the position of the signature of the testator or the person signing for him as aforesaid, be valid if the signature is so placed at, or after, or following, or under, or beside, or opposite to, the end of the will 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.

A will is defined in sec. 2 as including:

> . . . 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.

Consequently the word "will" in the foregoing section applies to the holograph document with whlch we are dealing.

Section 7(3) reads as follows:

> The enumeration of the above circumstances shall not restrict the generality of subsection (1); but no signature under this Act shall be operative to give effect to any disposition or direction which is underneath or which follows it, nor shall *it give effect to any disposition or direction inserted after the signature was made.*

> And from this it is clear that I can give no effect to any disposition or direction inserted after the signature was made on the holograph codicil. That the alterations were made after the holograph document was signed on July 15, 1948, is, as mentioned above, not in doubt. Although I am in agreement with the Scottish cases and find them logical and the facts therein resemble those in the present case, I am bound by the wording of secs. 7(1) and (3) of our Wills Act and regretfully I cannot give any effect to the alterations or scoring indicated after the signature was made, although I fully realize this defeats the clear intentions of the testator. It is to be hoped that some modification will be made to our Wills Act with respect to making clear the law pertaining to holograph wills.

It appears from the foregoing that Mr. Justice Monnin's real complaint is that the rules governing signatures that were originally meant to apply to making formal wills prevent accomplishing the principal objective of a holograph will which is to permit informality and flexibility.

In the course of his reasons for judgment, Mr. Justice Monnin stated that he agrees with the reasons given by Simpson C.C.J. in *In re Scott Estate* [1938] 3 W.W.R. 278, for holding that Section 17 of the Wills Act, dealing with alterations, has no applicability to holograph wills. In that case Judge Simpson based his decision on the judgment of Mr. Justice Montague in *In re Eames Estate* [1934] 3 W.W.R. 364. Judge Simpson said at [1938] 3.W.W.R. p. 284:

> In *In re Eames Estate, supra,* in his learned and considered judgment the learned Judge reviews the history of the statutory provision dealing with holograph wills in Manitoba and points out that originally the section followed the provisions dealing with other wills and was entirely separated therefrom. He expresses the opinion that originally the latter clearly were not intended to apply to holograph wills and that the trans-

> position of the section has not altered this. Since the judgment was delivered there has been another revision of *The Wills Act* and the separate section dealing with holograph wills in the 1913 revision (ch. 204, sec. 10) has now been made a subsection of the general section dealing with the execution of wills (sec. 6). I am of the opinion however that the change has not altered the situation and that the rule as laid down in *In re Eames, supra,* still obtains. Following the reasoning in the said judgment in respect of the sections of the statute dealing with the voiding of bequests to witnesses I hold that secs. 16 and 17 do not apply to holograph wills.

Regardless of whether Mr. Justice Monnin was correct in agreeing with Judge Simpson that Section 17 of the Manitoba Wills Act dealing with alterations does not apply to holograph wills, there can be no doubt but what the corresponding section of the Uniform Wills Act, 1957, Section 19, applies to them. Subsection (2) of Section 19 of the 1957 Act reads:

> (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.

(Section 6 covers wills by members of military forces and mariners, and Section 7, holograph wills). This provision clearly applies to the facts in *Equitable Trust Company* v. *Doull,* and it would not be necessary to resort to the sections applied by Mr. Justice Monnin. Application of Section 19 would reach the same result.

Saskatchewan Sections 6(2) and 7(1).

In *Boyko* v. *Jendzyjowsky,* (1958) 14 D.L.R. (2d) 584, Mike Jendzyjowsky in his own handwriting prepared the following paper that he meant to be a preliminary memorandum of the terms upon which he was prepared to sell his land to Nick Oleksyn:

> Mike Yendzyjowsky
>
> Is selling to Nick Oleksyn, company farm, to be paid out by wheat
>
> S.21, T.41, R.27½ S.W.
>
> Second farm a homestead also is buying Nick Oleksyn S.16, T.41, R.27½ N.E. and has to pay in wheat, agreement for 11000 and 130 bushels clear grain, from scale, and has to haul, and sell and hand the cheques to me, and I have the right to sell all the machinery and all articles, which I have on the property, debts which I have I have to pay myself, I am giving on payments for 10 years.

> Now it is like this Nick, if I shall be healthy then you shall pay me, and in case I shall be sick, then I must go to the Hospital, if I shall be in the Hospital, then you shall pay the Hospital as much as will be owing and the rest of money which will be left, then you give to Church, in the Hills. And now like this, wife has no right to my property, nor brother, nor his children, away from my property.

Later a formal agreement of sale was drawn up and executed.

Jendzyjowsky having died, the Church claimed that as beneficiary under a holograph will constituted by the above document, it was entitled to the purchase price instalments still owing by Oleksyn. Mr. Justice Thomson in the Saskatchewan Queen's Bench, dealt with this claim as follows at 14 D.L.R. (2d) pp. 591-592:

> The plaintiffs contend that the preliminary memorandum, a copy of which is above set forth, is a good holograph will. In the absence of ambiguity, the meaning to be attached to this memorandum must be ascertained from the words actually used by the maker thereof: *Perrin* v. *Morgan* (1943) 112 L.J. Ch. 81. When the memorandum was first produced by the deceased to Mike Oleksyn, the brother of the defendant Nick Oleksyn, the name Mike Yendzyjowsky did not appear either in or on the document and there was nothing to indicate who was selling the land and it is not to be wondered that Mike Oleksyn should call that fact to the attention of the deceased, who thereupon inserted his name at the beginning of the memorandum. When that was done, the first sentence of the memorandum made sense; otherwise there was nothing to show who were the contracting parties.
>
> When the name had been inserted as above mentioned, it was clear who was the vendor and in my opinion the name was written by the deceased at the very beginning for that purpose. In that sense it cannot be said that the document was signed by the deceased at all, because the name was inserted to show who was selling the land and not to authenticate the document. Section 6(2) of the Wills Act, R.S.S. 1953, c.120, requires that a holograph will must not only be wholly in the handwriting of the deceased but must also be signed by him. In my opinion this memorandum was not signed by the deceased as and for his last will and testament, and it is not a good holograph will. In any event, s. 7(1) prescribes where the signature should appear. The provisions of that section have not been complied with in this case and even if the insertion of the name of the deceased at the beginning could be considered a signature, it is not placed in the required place or position on the document.
>
> There is another reason, however, why, in my opinion, this memorandum cannot be regarded as a good holograph will. It is a well-established principle of law that where, as in this case, there is a preliminary memorandum in writing of the terms of a proposed agreement, which is afterwards incorporated into a formal agreement or contract, duly executed and completed by the parties under seal, the rights of the parties are governed entirely by the formal document.

Subsection (3) of Section 8 of the Uniform Wills Act, 1957, expressly applies to making holograph wills and provides that a signature "does not give effect to a disposition or direction that is underneath the signature or that follows the signature . . ."

APPENDIX F

(*See page 22*)

Memorandum to all Members

EYE BANKS

It will be recalled that at the annual meeting in Victoria last month the Ontario Commissioners presented a report on Eye Banks which was followed by a clause by clause consideration of the draft Act attached to the Report. Certain amendments were made and others agreed upon but left to the writer to settle. Upon the conclusion of the consideration of the draft bill, the following resolution was adopted:

> RESOLVED that the draft Act, as set out in the Ontario report, be referred back to the Ontario Commissioners 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 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 30th day of November, 1959, it be recommended for enactment in that form.

Attached is the draft Act with the amendments made and the changes agreed upon in principle incorporated. The suggestion that sections 3 and 4 be run together with a clause construction was discarded after reflection.

L. R. MACTAVISH,
for the Ontario Commissioners.

AN ACT TO FACILITATE CORNEA TRANSPLANTS FROM THE BODIES OF DECEASED PERSONS TO LIVING PERSONS

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

Short title

1. This Act may be cited as the *Cornea Transplant Act*.

Interpretation

2. In this Act, "person lawfully in possession of the body" does not include,

(*a*) a coroner in possession of a body for the purpose of investigation; or

(*b*) an embalmer or funeral director in possession of a body for the purpose of its burial, cremation or other disposition.

Removal of eyes on deceased's request, death in hospital

3. Where a person, either in writing at any time or orally in the presence of at least two witnesses during his last illness, has requested that his eyes be used after his death for the purpose of improving or restoring the sight of a living person and he dies in a hospital, the administrative head of the hospital, or the person acting in that capacity, may authorize the removal of the eyes from the body of the deceased person by a duly qualified medical practitioner and their use for that purpose.

Idem, death outside hospital

4. Where a person, either in writing at any time or orally in the presence of at least two witnesses during his last illness, has requested that his eyes be used after his death for the purpose of improving or restoring the sight of a living person and he dies in a place other than a hospital, his spouse or, if none, any of his children of full age or, if none, either of his parents or, if none, any of his brothers or sisters or, if none, the person lawfully in possession of the body of the deceased person may authorize the removal of the eyes from the body of the deceased person by a duly qualified medical practitioner and their use for that purpose.

Removal of eyes without deceased's request

5. Where a person has not made a request under section 3 or 4 and dies either in or outside a hospital, his spouse or, if none, any of his children of full age or, if none, either of his parents or, if none, any of his brothers or sisters or, if none, the person lawfully in possession of the body of the deceased person may authorize the removal of the eyes from the body of the deceased person by a duly qualified medical practitioner and their use for the purpose of improving or restoring the sight of a living person.

Authority sufficient

6. An authority given under section 3, 4 or 5 is sufficient warrant for the removal of the eyes from the body of the deceased person by a duly qualified medical practitioner and their use for the purpose of improving or restoring the sight of a living person.

Exception

7. An authority shall not be given under section 3 or 4 if the person empowered to give the authority has reason to believe that the person who made the request subsequently withdrew it.

dem

8. An authority shall not be given under section 3, 4 or 5 if the person empowered to give the authority has reason to believe that an inquest may be required to be held on the body of the deceased.

Lawful dealings not affected

9. Nothing in this Act makes unlawful any dealing with the body of a deceased person that would be lawful if this Act had not been passed.

NOTE:—The expression "duly qualified medical practitioner" in sections 3, 4, 5 and 6 may require an appropriate alternative in some provinces.

The expression "inquest" in section 8 may require an appropriate alternative in some provinces.

APPENDIX G

(*See page 22*)

FOREIGN TORTS

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

In 1957 a preliminary report was made on this subject. (See 1957 Proceedings, pages 122-133.) The purpose of that report was to delineate the scope and various facets of the problem involved in determining whether legislation to change the common law on the subject of Foreign Torts is desirable. The defects in the common law rules of conflicts on this subject were canvassed and certain objections that had been raised against changing the common law by statute were set out. Since 1957 some further objections have been raised. It is the purpose of the present memorandum to restate these objections and to summarize the results of investigation into their validity.

All of the specific objections that have been raised arise out of the fear that courts of the Canadian provinces might be compelled to give effect to unpalatable foreign tort law if the present rule were changed and, for example, a rule such as that contained in the American Restatement of the Conflict of Laws were adopted. The first objection made was that Canadian courts might be compelled to enforce foreign tort laws which impose liability without fault in cases not recognized by the common law. A second objection is premised on the fact that most of the claims made in Canada that are founded upon foreign torts have arisen out of automobile accidents in which Canadian residents have been involved while in the United States. It is alleged that the law of the American states governing negligence is inferior to that in Canada, especially as regards contributory negligence and liability to gratuitous passengers. It has been suggested that the interests of insurance companies would be prejudiced if Canadian courts were to derive their rules of negligence from the law of the place where the injury occurred if the place of injury were one of the states of the United States.

As a basis for weighing the first objection, studies were made of the extent of liability without fault in the following foreign countries: France, Germany, South Africa, Soviet Russia and Mexico. The law of Quebec was also examined.

Liability without fault is a liability automatically imposed on a person without regard to his fault, but it is a liability from which

he can escape if he shows that the event was due to the fault of the injured person or to vis majeure.

As far as systems of law are concerned, the contemporary world is divided into four principal areas of influence: English, French, German and Soviet Russian. During the nineteenth century, France's Code and provisions on negligence were copied by twenty-five countries, including Egypt, Central Europe, South America, Portugal and Louisiana. During the twentieth century the German Code has been followed in Japan, Switzerland and Turkey. The idea that fault creates the obligation to make good a loss became the foundation of the law of negligence in the French Code of 1802, it remains so today, and has been incorporated into the codes of many other countries. Three particular articles, 1384, 1385 and 1386 of the French Code provide, however, for a liability without fault. Article 1384 makes a master liable for the torts of his servant under circumstances similar to those in which he would be liable in Canada. Article 1385 makes the owner of an animal liable for the injury it causes regardless of fault in its supervision. Article 1386 makes the owner of a building responsible for damage caused in its fall when the occurrence is due to faulty upkeep or construction. This closely approaches liability for fault alone, but this Article has always been included by authors as the third exception to the rule that in France liability is based on proof of fault alone. By interpretation of Article 1384 the French courts discovered a fourth exception. Article 1384 reads:

> A man is responsible not only for damage which he causes by his own act but also for the damage caused by the act of people for whom he ought to answer or for things which he has under his guard.

The French Court of Cassation interpreted this to mean that liability is established for any injury by an inanimate thing except when it is proved that the injury was unavoidable or was caused by concurrent fault on the part of the injured person. Since 1930 the courts appear to have been reluctant to apply Article 1384 as thus interpreted liberally. However, they have made it the basis of imposition of absolute liability for motor accidents allowing only one excuse, that of force majeure.

The German Civil Code has no provision for absolute liability. Article 831 reads as follows:

> A person who employs another to do any work is bound to compensate for damage which the other unlawfully causes to a third party in the performance of his work. The duty to compensate does not arise if the employer has exercised ordinary care in the choice of the employee, and, where he has to supply appliances or implements or to superintend

the work, has also exercised reasonable care as regards such supply or superintendence, or if the damage would have arisen, notwithstanding the exercise of such care.

The German courts appear to interpret this Article strictly in favour of the plaintiff. Prussia was the first nation to pass a Workmen's Compensation Act and Germany also has a Motor Vehicle Act which imposes liability without fault.

In Quebec there has been repugnance to any application of liability without fault both by courts and writers. The Quebec Codes have not contained an article similar to Article 1384 of the French Code, but Article 1054 raises a presumption of fault. This Article does not appear, however, to ever have been applied by the Courts. It was necessary to pass the Motor Vehicles Act to provide for a reversal of the burden of proof. Article 1055 of the Quebec Code seems to approximate Articles 1385 and 1386 of the French Code in respect of absolute liability for escaped animals and falling buildings, but Nicholls in his book, "Offences and Quasi-Offences in Quebec" argues that these sections are really based on presumption of fault, and he concludes that liability without fault does not really exist in Quebec law.

South Africa, like Quebec, has never departed from the position that fault is the foundation of liability.

It is in Soviet Russia and Mexico that there appears to be the most complete adoption of the doctrine of liability without fault. The following are the relevant provisions of the Soviet Code:

Article 403. Anyone causing damage to the person or property of another is under an obligation to repair the damage caused. He is relieved of this obligation if he proves that he was unable to prevent the damage or that he was privileged to cause the damage, or that the damage arose in consequence of the intent or gross carelessness of the injured party himself.

Article 404. Persons and enterprises, whose activity is bound up with increased danger to persons around him, such as railways, tramways, factories, dealers in inflammable materials, keepers of wild animals, persons erecting buildings and other structures, etc., are responsible for damage caused by the source of increased danger, unless they prove that the damage arose in consequence of force majeure or of intent or gross negligence of the injured party himself.

Article 411. In determining the amount of compensation for damage the court must in every case take into consideration the financial position of the injured party and of the party causing the damage.

The effect of Article 403 seems to be similar to that of the rule in *Rylands* v. *Fletcher* (1865) H.L.C. 774, as enunciated by Mr. Justice Blackburn, except that the Soviet rule applies to all damage which is caused through the instrument of a defendant.

Articles 404 and 411 suggest that the amount of a judgment is not governed so much by the actual damage caused as by the amount of risk which the defendant imposed on society and the strength of his financial position.

Article 1913 of the Mexican Code reads as follows:

> When a person makes use of mechanism, instruments, apparatus, or materials explosive either in themselves, or by the speed they develop, or by their explosive or inflammable nature, or by the energy of the electric current they conduct, or for other analogous reasons, he is obliged to answer for the damage which he causes, even if he does not act unlawfully, unless he shows that this damage was produced by the fault or inexcusable negligence of the victim.

Rabel, "*The Conflict of Laws: A Comparative Study*", concludes that "It is true that the differences between the laws of various countries are greater with respect to liability for risk than with respect to liability for intentional or negligible harm." (p. 231). This is illustrated by comparing the Soviet Code with the South African position. The former confers on a victim a claim for indemnification to an equitable extent. The latter allows a victim to claim an unlimited amount, but only upon proof of fault. The common law compromises by accepting the South African position, but introducing the rule in *Rylands* v. *Fletcher*. A further compromise, by statute, is seen in such legislation as Motor Vehicle Acts where a plaintiff is relieved from proving a defendant's negligence. These statutes are becoming common in all countries. Rabel calls this device a "qualified liability for fault" or "moderated liability for a risk", being, he says, half-way between "traditional liability for negligence and absolute liability", since a compromise creates a liability which it is difficult for the person causing an injury to escape, but is one different from absolute liability which admits of no excuse except fault of the injured person or force majeure. The results achieved in the majority of cases are practically the same. It thus appears that all systems of law, other than the Soviet and possibly the Mexican, are approaching the same general middle position.

Rabel expresses the considered opinion that "there are few, if any, foreign types of liability to be feared." (p. 274). There does not appear to be any good reason for dissenting from Rabel insofar as Canada is concerned.

As mentioned above, it has been argued that the rule in *Phillips* v. *Eyre* and *Machado* v. *Fontes* should be preserved as a protection for Canadians who become involved in motor vehicle accidents while in the United States. A comparison of the law in

the Canadian provinces with that in the American states has been made with this argument in mind. This examination reveals that the law governing liability for negligence is relatively inferior in the United States as compared to the law on that subject in Canada. The differences lie mainly in the fields of comparative negligence and of liability for injury to a gratuitous passenger.

Comparative Negligence. There is general recognition that Canada is the leader in comparative negligence legislation. (In the United States, see Gregory, "Loss Distribution by Comparative Negligence", (1936), 21 Min. L. Rev. 1 at p. 6. In England, see Williams, "Joint Torts and Contributory Negligence", (1951), p. 5.) Every common law province in Canada has a Contributory Negligence Act or its equivalent and all but Manitoba and Ontario have enacted the Uniform Act. The Acts and their interpretation vary so little from province to province that for practical purposes they are uniform, and consequently it matters little which province of Canada is the forum of litigation involving contributory negligence.

The states of the United States have not followed the leadership of the provinces of Canada. The American position on comparative negligence is that in all but four of the states the common law rule prevails that even the slightest contributory negligence is a bar to recovery. Of the four states where the common law rule has been modified by statute, only Mississippi meets the standards set by Canadian legislation. The Wisconsin statute of 1933 (1933 Wis. Sec. 331.045), states:

> Contributory negligence shall not bar recovery in any action by any person . . . to recover damages for negligence if such negligence was not as great as the negligence of the person against whom recovery is sought, but any damages allowed shall be diminished by the jury in proportion to the amount of negligence attributable to the person recovering.

This so-called "less-greater" doctrine has a definitely limited effect. Apportionment of damages occurs only if the plaintiff's negligence is less than the defendant's. If a plaintiff's negligence is as great as or greater than that of the defendant, the ordinary rules of common law contributory negligence apply and the plaintiff's claim is completely barred. Thus, should the plaintiff be forty-nine per cent negligent he can collect damages for the remaining fifty-one per cent, but should he be fifty per cent negligent he can collect nothing. A Nebraska statute, which is similar to the statute in South Dakota, provides:

> . . . In all actions brought to recover damages for injuries to a person or to his property caused by the negligence of another, the fact that the plaintiff may have been guilty of contributory negligence shall not bar recovery when the contributory negligence of the plaintiff was slight and the negligence of the defendant was gross in comparison . . .

Except for "slight-gross" negligence, both Nebraska and South Dakota have actually repudiated the doctrine of comparative negligence (Nebraska Compiled Statutes, Section 20-1151; *Stanley* v. *Chicago* (1925) 202 N.W. 864, 113 Neb. 280; *Wittstruck* v. *Lee* (1934) 252 N.W. 874, 62 S.D. 290.). The Mississippi statute does not embrace the "slight-gross" or "less-greater" doctrines. In form it is not unlike the Canadian Uniform Act. It reads:

> In all actions hereafter brought for personal injuries, or where such injuries have resulted in death, or for injury to property, the fact that the person injured, or the owner of the property, or a person having control over the property, may have been guilty of contributory negligence shall not bar recovery, but damages shall be diminished by the jury in proportion to the amount of negligence attributable to the person injured, or the owner of the property, or the person having control over the property. (Mississippi Code Annotated Sec. 511.)

Although only four states have comparative negligence statutes, the doctrine has found a limited statutory expression. For example, it is found in the Minnesota Railway Labour Act, the Federal Employers' Liability Act, and the Virginia and Georgia Acts applicable to accidents at railroad crossings.

There are no apparent indications of a change in the American situation in this respect. The comparative negligence legislation mentioned above was passed during the Nineteen-Thirties and since then no state has enacted comparative negligence legislation. According to Corpus Juris, the courts of twenty-six states have repudiated the doctrine of comparative negligence, including Illinois which at one time recognized the doctrine. (See 65 C.J.S., Negligence, Sec. 169 (1953).)

It is clear that with respect to comparative negligence, the law in the states of the United States is, as a whole, inferior to the law in the Canadian provinces.

Gratuitous Passenger Law. Gratuitous passenger legislation in Canada is almost uniform. Statutes of six of the provinces are substantially identical in making the liability of the owner or operator of a motor vehicle for injury sustained by a non-paying passenger depend upon gross negligence or wilful and wanton misconduct. These provinces are Alberta, Manitoba, New Brunswick, Newfoundland, Nova Scotia and Prince Edward Island. (See Vehicles and Highway Traffic Act, R.S.A. 1942, C. 275, S. 104;

Highway Traffic Act, R.S.M. 1954, C. 112, S. 99; Motor Vehicle Act, 1951 N.B. C. 22, S. 11; Motor Vehicle Act, R.S.N.S. 1954, C. 184, S. 203; Highway Traffic Act, 1951 R.S.P.E.I. C. 73, S.70.) The Manitoba provision is typical:

> 99. (1) No person transported by the owner or operator of a motor vehicle as his guest without payment for the transportation shall have a cause of action for damages against the owner or operator for injury, death, or loss, in case of accident, unless the accident was caused by the gross negligence or wilful and wanton misconduct of the owner or operator of the motor vehicle and unless the gross negligence or wilful and wanton misconduct contributed to the injury, death, or loss for which the action is brought.

The Saskatchewan enactment (R.S.S. 1957, C. 344, S. 151 (2)), states that there is no cause of action unless there has been "wilful and wanton misconduct". The British Columbia Act makes liability depend upon "gross negligence". (R.S.B.C. 1948, C. 27, S. 82.) In Quebec, it has been held in *Howells* v. *Wilson* (1936) 69 Que. K.B. 32 that a gratuitous passenger may recover for injury caused by the ordinary negligence of the operator of the motor vehicle in which the injured guest is a passenger. Ontario legislation relieves the owner or driver from liability for injury to a gratuitous passenger completely. Section 50 of the Highway Traffic Act, R.S.O. 1950, C. 167, S. 50 (2), reads:

> The owner or driver of a motor vehicle, other than a vehicle operated in the business of carrying passengers for compensation, shall not be liable for any loss or damage resulting from bodily injury to, or the death of any person being carried in, or upon, or entering, or getting on to, or alighting from the motor vehicle.

The courts have found some difficulty in delimiting and applying the standards "gross negligence" and "wilful and wanton misconduct". In *Studer* v. *Cowper* (1951) S.C.R. 450, the Supreme Court of Canada held that the terms "gross negligence" and "wilful and wanton misconduct" as used in the Saskatchewan Vehicles Act do not mean the same thing. Mr. Justice Kerwin said: "In connection with the Saskatchewan statute, it is sufficient to say that gross negligence may be stated to be very great negligence, and it must be left to the trial judge in each case to put the matter to a jury in that way, with such references to the evidence as may be necessary." . . . "The term 'wilful and wanton misconduct' denotes something subjective on the part of the driver, whereas gross negligence may be found entirely apart from what the driver thought or intended." (CF. The Manitoba Court of Appeal in a case decided the same year, *Marian* v. *Dennis* (1951) 1 W.W.R. (N.S.) 513.) In *Kerr* v. *Cummings* (1953) 1 S.C.R. 147,

the Supreme Court applying the gratuitous passenger provision of British Columbia, held that it is not necessary that gross negligence be proven conclusively as if there were prosecution for criminal negligence, but that very great negligence on the part of the driver must be shown. Suffice to say that for both gross negligence and wilful and wanton misconduct there must be a very high degree of fault.

In 1946, the latest date for which figures were available, approximately one-half of the states of the United States had adopted gratuitous passenger statutes. Of these, Connecticut had repealed its statute, and California and South Carolina extended theirs to cover privately owned aircraft. As in Canada, the courts have had some difficulty with the terms "gross negligence" and "wilful and wanton misconduct".

From the foregoing it will be seen that as far as liability for negligence in motor vehicle accidents is concerned, the law in Canada is considerably in advance of that in the United States. What would be the practical effect, if the present conflict of laws rule in Canada were changed and, say, the prevailing rule in the United States were enacted? An illustration or two might suggest an answer.

Suppose that a resident of Manitoba injures a resident of Ohio while driving his motor vehicle in that state. The injured person sues in Manitoba. It is proved that both the plaintiff and the defendant were guilty of negligence. If the present Canadian rule is applied the damages would be apportioned according to degree of fault. If the American rule, by which liability is determined by the law of the place of injury, were applied, the defence of contributory negligence would be available to the defendant and the plaintiff would be out of court. It is thus evident that as long as the present state of the law concerning contributory negligence persists, the Canadian defendant and his insurer against public liability would have an advantage if the present Canadian rule were replaced by the American rule. On the other hand, under the present state of the Canadian law, the Ohio resident has a decided advantage. If he sues in Manitoba he can take advantage of the comparative negligence enactment, and if the Manitoba resident sues in Ohio both the Ohio resident and his insurance company can successfully use the defence of contributory negligence.

If the motorist from Manitoba had a gratuitous passenger who was injured as a result of the ordinary negligence of the driver,

application of the American conflicts rule would operate to the advantage of the passenger and the disadvantage of the owner or driver, if the accident were to occur in any of approximately half of the American states. As the law now is, the owner or driver would be protected if he were sued in any of the provinces excepting Quebec. One way of curing this situation, if the American conflicts rule were adopted, would be to redraft the gratuitous passenger provisions so as to cut-off access to the court instead of as now, relieving the defendant from liability. If the statute were to deny access to the court instead of, as now, operating to cut-off the right of action, it might be interpreted as a procedural statute and applied as part of the law of the forum, regardless of the extent of the cause of action created by the law of the place of injury.

It is submitted that the facts that have been ascertained as the results of the investigation outlined above do not support the objections that have been raised to the proposal to supplant the present conflict of laws rule governing foreign torts with the rule now in effect in the United States with or without modifications. In the first place, even assuming that the doctrine of liability without fault is an undesirable one, the number of cases in which the place of injury would be in a country which adheres to that doctrine would be few. In the second place, in cases where the place of injury was in a state of the United States the state of the law there concerning contributory negligence would bring an advantage to the resident of a Canadian province who is sued there whenever the plaintiff was guilty of any degree of contributory negligence. If the states were to enact comparative negligence statutes the result would simply be to give the plaintiff in an action where the place of injury was in a state of the United States the same relative position to the defendant as the plaintiff would have if the place of injury were in a province of Canada. In the third place, although the resident of a Canadian province would be liable in about half of the states for injury to a gratuitous passenger caused by ordinary negligence, there seems to be a trend in the states toward enacting gratuitous passenger legislation. If it were found that a sufficient number of Canadian defendants were prejudiced by a lack of gratuitous passenger legislation in the United States, the problem could be quite simply dealt with by amendments to the present Canadian statutes.

In conclusion, it is submitted that any objections that have so far been raised to the proposal to enact a new rule to replace the present conflict of laws rule governing foreign torts do not

begin to outweigh the values to be attained by replacing the present rule with one that is theoretically sound and that would probably bring about results more in accord with natural justice. (See discussion of this question in 1957 Proceedings, pp. 122-128.) It is believed that Mr. Roland Williams is correct in his submission that the proposal of the British Columbia committee to narrow the second rule of the two rules in *Machado* v. *Fontes* should not be accepted. To narrow the second rule would place too great a burden upon the plaintiff who would then have to establish a cause of action under both the law of the place where the injury occurred and the law of the forum. In other words, the present Canadian rule should be either replaced completely or left untouched.

It is recommended that work on this project be continued and that the Committee be instructed to prepare a draft Uniform Act designed to provide a new rule governing conflict of laws in torts for consideration by the Conference.

APPENDIX H

(*See page 23*)

UNIFORM MECHANICS' LIEN ACT

REPORT OF THE SASKATCHEWAN COMMISSIONERS

At the 1958 session of the Conference, the following resolution was adopted:

> RESOLVED, that the Commissioners for the Province of Saskatchewan be requested to prepare and submit, at the next meeting of the Conference, a draft Uniform Mechanics' Lien Act.

The above resolution was adopted after the Conference had considered a report from the New Brunswick Commissioners (1958 proceedings, page 157, Appendix Q) which contained a very valuable and informative history of the attempts made by the Conference to agree upon a model uniform Mechanics' Lien Act. These attempts began in 1921 and no agreement has yet been reached, notwithstanding the numerous occasions on which the Conference has attacked the problem.

Shortly after the Conference adjourned in 1958, the Attorney General of Saskatchewan appointed a Law Reform Committee, whose Chairman is Chief Justice Hall, of the Saskatchewan Court of Queen's Bench and on which the Law Society of Saskatchewan and the Saskatchewan section of the Canadian Bar Association has competent representation. The Saskatchewan Commissioners are advised that this Committee is considering the preparation of a draft Mechanics' Lien Act which it can recommend for adoption by the Legislature of Saskatchewan.

These developments have been considered by the Saskatchewan Commissioners and in view of them it was considered inadvisable to proceed with the preparation of a draft Act for submission to the Conference at this time. It would be embarrassing to the Saskatchewan Commissioners if they prepared a draft Act which differed in any material respect from that which may be drafted by the Committee specially appointed from their own Province. In such an event, which cannot be considered unlikely in view of the failure of the Conference over so many years to reach agreement, the possibility of adopting the Conference draft Act (assuming that a draft prepared by the Saskatchewan Commissioners

was adopted by the Conference with or without amendment) in Saskatchewan would be remote.

The Saskatchewan Commissioners are, therefore, of the opinion that a reasonable time should be given to the Saskatchewan Law Reform Committee to draft their proposed Act. It could then serve as a useful basis of discussion for this Conference, along with the other draft Acts that have been prepared by the Commissioners from various Provinces, full reference to which is made in the 1958 report of the New Brunswick Commissioners.

The Saskatchewan Commissioners, therefore, recommend that the further consideration of a model uniform Mechanics' Lien Act be deferred for at least a year.

Dated at Regina, Saskatchewan, this 1st day of June, A.D. 1959.

E. C. LESLIE,
for the Saskatchewan Commissioners.

APPENDIX I

(See page 24)

DOMICIL

REPORT OF THE BRITISH COLUMBIA COMMISSIONERS

We have examined the reports of the English Standing Committee on Private International Law (First Report) 1954, and of the English Royal Commission on Marriage and Divorce 1951-55, and the report of the Alberta Commissioners to the 1957 Conference (p. 153). The subject was brought to the Conference by Alberta in 1957 and referred to the Commissioners for British Columbia in consultation with the Commissioners of Nova Scotia and Alberta.

Your Commissioners have had some reservations about the necessity for codification at all. However, there are three or four changes in the existing law which your Commissioners would recommend. It therefore would seem desirable to place before the Conference a full code rather than three or four small changes in rules which are otherwise part of the common law. For this year, only, the changes are set out:—

(1) A domicil continues until a new domicil is acquired. No longer is there a reversion to a domicil of origin upon loss of a domicil of choice. Such a change is particularly useful in Canada where an immigrant abandons a domicil of choice in one province and sets out for other parts of Canada. He would no longer regain some European or Asiatic domicil of origin while in transit and until he had formed a sufficient intention to remain indefinitely in another province. The change would also avoid the present awkward situation in federations such as Canada where the immigrant may lose his domicil of choice in one province upon abandoning his home there but yet retain his domicil in Canada as a whole by reason of his continued residence and intention to reside somewhere in Canada.

(2) A married woman presently obtains her husband's domicil on marriage and nothing but dissolution frees her from dependence upon the husband for this purpose. We recommend, as does the English Royal Commission on Marriage and Divorce for purposes of matrimonial causes, that a wife who is living separate and apart from her husband should be entitled to a separate domicil. Objections may be taken to the uncertainty of just when a wife is

living separate and apart from her husband. We believe that this fact is ascertainable in the same way as the other facts that go to make up domicil—residence and intention. In our opinion a wife is living separate and apart from her husband when she does in fact so live, whether the separation be by reason of employment, health, disharmony, court order or otherwise. Our recommendation leads logically to a recommendation that a wife in all cases be treated separately from her husband for purposes of domicil. Such a recommendation would avoid the question of determining whether the wife was in fact living separate and apart from her husband, and we should prefer the full recommendation.

(3) An infant's domicil is dependent on that of his father (or mother, if illegitimate). We recommend that the principles submitted by the English Standing Committee be, in substance, adopted. These are, first, that infant dependence ceases upon marriage. Secondly, that where his parents are living apart or the marriage has been dissolved, his domicil is dependent upon the parent, if any, who has custody. In other cases the infant's domicil should be dependent upon the person or persons having lawful custody. The Standing Committee also recommends in the case of infants and lunatics that authority be vested in the court to determine and vary domicil in accordance with the best interests of the infant or lunatic.

(4) The Select Committee also recommends the adoption of two rules of presumption in determining domicil,

(a) a person is presumed to be domiciled where he has his home or principal home;

(b) a person is presumed to intend to live indefinitely where he has his home or principal home.—We approve.

The Commissioners recommend discussion of the above proposals in principle before presenting a draft code on domicil.

All of which is respectfully submitted,

GILBERT D. KENNEDY,
P. R. BRISSENDEN,
GERALD H. CROSS,
NEIL A. MCDIARMID,
British Columbia Commissioners.

APPENDIX J

(See page 24)

LEGITIMATION

REPORT OF THE BRITISH COLUMBIA COMMISSIONERS

This subject was referred at the 1958 Meeting to the British Columbia Commissioners to prepare a further draft to be considered at the 1959 meeting along with the draft presented by the Alberta Commissioners to the 1958 meeting. Attached to that draft is a report containing the history of this subject in the Conference. Shortly, the present uniform Act was adopted in 1920 and, omitting the short title section, reads as follows:—

> 2. If the parents of any child heretofore or hereafter born out of lawful wedlock have heretofore intermarried or hereafter intermarry such child shall for all purposes be deemed to be and to have been legitimate from the time of birth.
>
> 3. Nothing in this Act shall affect any right, title or interest in or to property if such right, title or interest has vested in any person
>
> (a) prior to the passing of this Act in the case of any such intermarriage which has heretofore taken place, or
>
> (b) prior to such intermarriage in the case of any such intermarriage which hereafter takes place.

The subject came back to the Conference for its present consideration in 1950 at the suggestion of Ontario. The Ontario report to the 1951 Meeting recommended certain principles to be followed in the revision of the legislation, and further it recommended for consideration the advisability of making children of void marriages legitimate. These principles and the item for consideration were approved in 1951 and are set out at page 3 of the recent Alberta report. The Manitoba Commissioners were instructed to revise the legislation. Their report and draft Act of 1954 were referred to the Alberta Commissioners to consider certain further questions.

The Alberta report in 1958 departed radically from previous approaches. An attempt was made to distinguish between status and the incidents of status and to deal with each separately and in great detail. Further, an attempt was made to deal separately with the problems of the conflict of laws. Thirdly, children of void marriages generally and of three special types of marriages which had been dealt with in some provinces separately were all dealt with in one section. These serious questions of policy were referred by the 1958 Conference to the British Columbia Commissioners

for consideration and preparation of a draft Act along the lines suggested by the British Columbia Commissioners at the 1958 Conference, such draft to be considered along with the Alberta report to the 1958 Meeting. The latter report has not yet been fully considered by the Conference.

In accordance with the Conference's instructions a draft statute has been prepared by the British Columbia Commissioners and is submitted as Appendix "A" to this report.

Before dealing with the draft statutes of Alberta and British Columbia, the British Columbia Commissioners draw attention to certain principles. At the start it should be pointed out that we have endeavoured to incorporate the principles recommended by Ontario and approved by the Conference in 1951, principles which were incorporated into the Manitoba and Alberta drafts of 1954 and 1958.

Our approach has been to provide as simple and readily understandable a statute as is possible for a subject on which both lawyer and layman seek clear rules under which results are easily determined and under which applications to Court for determination of status are as infrequent as possible. To this end we suggest that it is sufficient and in fact proper to determine status only and allow the incidents to follow under the appropriate proper law. In this connection we follow the example of the earlier legitimation statute recommended by the Conference in 1920 which simply declared that children whose parents subsequently intermarry are legitimate and left the incidents flowing from the status of legitimacy so declared to follow as a matter of course. We also looked to the adoption legislation recently enacted in the Provinces of Alberta, British Columbia and Ontario where to a large extent the same principle prevails. It is for this reason that we do not recommend the adoption by the Conference of sections similar to sections 6, 7 and 9 of the Alberta draft. Apart from problems of the conflict of laws, these sections raise questions whether by trying to spell out some of the incidents of legitimacy such as the right to inherit upon intestacy, the obligations of maintenance and the particularization of some relationships—whether because of this specification other incidents do not follow. We prefer the so far successful approach of the present statute. If the child is made legitimate it is legitimate for all purposes and it is better not to specify what some of those purposes are.

On a second major point of principle we have omitted any reference to the question of the conflict of laws. This question

arises in two ways—what persons are to be treated as legitimate under the legislation of the Province and what persons are to be treated as having been legitimated abroad and therefore legitimate within the Province. We recommend to the Conference the simplicity of the statute adopted in 1920 by the Conference and under which all persons coming under the provisions of the law of the Province adopting that uniform Act wherever born and wherever domiciled are treated as legitimate for the purposes of that province's laws. There have been some doubts expressed by some writers whether the broad effect just stated can properly be attributed to the present uniform Act and to remove those doubts a few words have been added to the main section in our proposed draft. Some members will recall the interesting decision in the City of Victoria about four years ago in connection with Vancouver Island's famous Dunsmuir family and Audain's book "From Coal Mine to Castle", where the broad effect of the uniform Act suggested above was given effect. In libel proceedings by a descendant of the original Robert Dunsmuir alleging that the book declared the descendant to be a bastard the Court ruled that the descendant was legitimate under the law of British Columbia even though under the law of England where the author had obtained his legal opinion the descendant was illegitimate because, inter alia, he was born to an adulterous union. The child was born in South America at a time when the father was domiciled in British Columbia and prior to the enactment by that province of any legitimation laws. The father was probably domiciled in one of the South American countries by the time of the subsequent marriage. So far as the British Columbia court was concerned the question of domicil was irrelevant. In British Columbia the subsequent marriage of the child's parents legitimated the child for all purposes. One of our number who is a former lecturer on the conflict of laws and one who appreciates the mental gymnastics involved in that subject wholeheartedly endorses the recommendation that the Conference avoid the whole problem by treating all persons as legitimate whose parents subsequently intermarry. In dealing with this subject the Alberta report mentions the famous Wright-Grove rule of the common law. It will be recalled that at common law there was no legitimation by subsequent marriage but under the common-law conflict rules laid down inter alia in the Wright and Grove cases a foreign legitimation was recognized in England if the father of the child was domiciled in a country having legitimation by subsequent marriage both at the time of the child's birth and at the time of the subsequent marriage. The statute in

England in 1926 removed the first portion of this conflict recognition rule and provided recognition for foreign legitimations where the father was domiciled in a country having legitimation at the time of the subsequent marriage. But in the draft uniform Act annexed, the whole question of domicil is not needed at all and has not been needed under the existing uniform Act which has been in force in many of the provinces for the last 39 years. This experience and the lack of any need for other provision so far as the decisions of the court show should be accepted.

Thirdly, on a question of principle we recommend that the Conference meet separately the status of children of void and voidable marriages and of the three special cases which the 1951 Conference recommended should be included. These special cases are marriages where the children are rendered illegitimate by the subsequent discovery that an earlier spouse believed to be dead was alive at the time of the second marriage and the second marriage took place in one of the three following situations:—

1. Where an order of presumption of death had been obtained permitting remarriage;

2. Where official notification of the death or presumed death of a member of the Canadian Forces had been received by the spouse from the Department of Defence at Ottawa; and

3. Where a person, believing that his spouse is dead, goes through a second ceremony of marriage in such circumstances as would not constitute the crime of bigamy.

Our reasons for suggesting that these special cases be dealt with individually rather than under one general all-inclusive provision is founded upon a desire to provide a simple answer without the necessity for a court declaration in as many cases as possible. In the case of voidable marriages and in two of the special situations legitimacy can be spelled out without the necessity of going to court expressly for the purposes of having status declared. In the other two a court application will normally be wise. In this respect, therefore, we have departed from the draft section 5 in the Alberta report which would have taken all cases, except the voidable ones, to court and in effect have changed the rule presently in force in three of the provinces which provide for legitimation without court order in some of the five cases dealt with here. Further discussion will be found in our comments on these sections in the accompanying draft.

COMMENTS BY SECTIONS

Section 1 is the title section and contains a departure from the title used heretofore in the present uniform Act and in the Manitoba and Alberta drafts. The change which would adopt the English terminology is recommended because the statute primarily deals with legitimacy and provides circumstances other than those existing in common law where a person is legitimate. The methods by which he is declared to be legitimate vary. Section 2 is the well-known process of legitimation by subsequent marriage. Even here, however, the child is declared to be not legitimated but legitimate. In the other sections of the Act the new status conferred is that of a legitimate child with no reference to legitimation. For this reason a change in title is recommended. It is useful to state at this point that we do not include an interpretation section brought in for the first time in the Alberta draft and explained by the Alberta Commissioners as related to terminology used in sections 6 to 9 of that draft. These sections deal with the incidents of status and as stated previously are not included in our recommendations. (An exception is section 8 of the Alberta draft which deals not with legitimacy or legitimation but certain rights flowing notwithstanding illegitimacy and which we conditionally set out as section 6.)

Section 2.

This section deals with legitimation by subsequent marriage—the subject-matter of the uniform Act which was recommended in 1920. The section follows the principles of the present uniform Act. Slight drafting changes have been made and in an attempt to avoid any conflict problems, we have added after the words "for all purposes" of the present uniform draft the words "of the law of the Province". Subsection (3) is inserted for discussion by the Conference. We do not think it is necessary but in order to avoid any doubts are glad to have it included either without comment or together with a note such as that attached to the section indicating that some Provinces may enact it if they desire. The purpose of the sub-section again is to avoid conflict problems and is simply for clarity.

We have not included a section preventing the legitimation of children of adulterous unions comparable to that in the English legislation of 1926. Further, we have not included any provision for discrimination between children of adulterous unions and children not of adulterous unions as exists in the present Ontario

legislation. In doing so we have followed the instructions of the 1951 Conference. It is interesting to note that the Bill introduced in the English House of Commons on April 8th of this year provides for the legitimation of children of adulterous unions where the parents subsequently intermarry, and therefore repeals the exception to the present English Act.

Section 3.

This section deals with children of voidable marriages. It follows English legislation of 1950, the Conference's recommendation of 1951, and is adopted from the Alberta draft of last year.

With the exception that the words "at the date of the decree" are removed from their position near the end of the section and preceding the word "continues" to an earlier place in the section, in line 2 following the word "who". The section extends to voidable marriages whether entered into before or after the birth of the child. Subsection (2) is a saving clause in respect to property already vested and follows the saving clause in section 2(2).

Section 4.

This section deals with children of marriages entered into in the three special circumstances mentioned before and which the 1951 Conference recommended should be included in revision of the uniform Act. Section 5 of the Alberta draft attempted to include them along with void marriages generally necessitating in effect, as we have pointed out, a court declaration in all of the cases. We prefer to treat these three special cases separately and the balance of the void cases in the following section. The first special case deals with persons who have obtained an order of presumption of death and who have, upon the strength of that order, remarried. Should the remarriage prove to be invalid because the first spouse was in fact alive at the date of the remarriage, section 4 provides for the legitimacy of the children. There is no necessity to go to court in connection with the legitimacy. Legitimacy follows upon proof of the earlier order presuming death and the marriage of the parents of the children. Reference is not made expressly to an order under the Marriage Act. In Newfoundland it would appear under the authority of *Re Gould,* (1958) 18 D.L.R. 2d 54 (Dunfield J.), the court has authority to make a declaration of presumption of death without any specific statutory authority. Further in British Columbia the authority for making orders of presumption of death has been removed from the Marriage Act to the new Survivorship and Presumption of Death Act. Because presumption of death Acts may permit orders generally as to

presumption of death and not for the specific purpose of remarriage, reference is not made specifically to an order made for purposes of remarriage. These are points which have arisen since the Manitoba report in 1954 and we have therefore departed somewhat from their language.

The second special case deals with a person who remarries following receipt from the appropriate Department of the Canadian Government of official notification that his former spouse, a member of the Canadian Forces, is dead or presumed to be dead. If that remarriage turns out to be invalid because the earlier spouse was in fact alive at the time of the remarriage, the children are now declared to be legitimate. Again, in this case, a court order is not needed for the purposes of ascertaining legitimacy.

The third special case is that of the person who, believing his spouse to be dead, remarries in circumstances where the crime of bigamy has not been committed. This clause follows legislation already in force in Ontario. While a court order is not expressly needed in many cases it may be thought desirable to obtain a declaration of status because of the fact that it may be necessary at some time to prove whether the remarriage was entered into in good faith and whether the crime of bigamy had not been committed. Because of the probable necessity of a court order the Conference may decide not to deal with this particular special case separately but to let it come under the next section dealing with void marriages generally. It is included here separately only for the moment because it follows an express direction of the 1951 Conference that it be included in amending legislation. The 1951 Conference did not express itself upon the question of void marriages generally other than to direct that the status of children of such marriages be examined and a recommendation made. We are prepared to recommend as were Manitoba and Alberta that children of void marriages entered into in good faith be legitimate. If the Conference accepts this recommendation contained in our next section, then clause (c) may be deleted as well as the words "or who is believed to be dead" in line 3 of that portion of section 4 (1) following clause (c).

Subsection (2) of section 4 makes this section applicable to marriages entered into both before and after the birth of the child but declares that the section does not apply to a child born after the form of marriage referred to in the section has been declared void by a court.

Subsection (3) is taken from the Manitoba draft of 1954 and is

inserted so that the Conference may deal with it. We do not recommend its inclusion. A further provision of the Manitoba draft provides not only for legitimation but also for rights of succession to property and follows the existing British Columbia and Manitoba legislation. That legislation also contains a clause that the provision as to legitimacy and as to succession are to be treated separately and independently of each other so that if one is held to be ultra vires the other can stand. The Manitoba Commissioners had some doubts about the necessity for this clause and included it only for purposes of discussion. We believe that there is no question about the Province's power to deal with the question of legitimacy and concur in the doubts expressed by Manitoba. We have therefore dealt solely with legitimacy and provided no alternative for possible constitutional invalidity.

Subsection (4) is the usual saving clause with respect to property already vested.

Section 5.

This section deals with void marriages and provides that the children of such marriages are legitimate in the circumstances set out. The principle follows recommendations contained in the Manitoba and Alberta drafts as well as the Bill introduced in the House of Commons in England earlier this year. The provision in that Bill reads as follows:—

> "LEGITIMATION OF CHILDREN OF VOID MARRIAGES"
>
> 2. Any child born to parents who have gone through a ceremony of marriage shall be deemed legitimate notwithstanding any decree of nullity subsequent to the birth or procreation of the said child provided that one or both parents were ignorant of the existence of the impediment to the marriage.

Our draft follows that submitted by Alberta last year as section 5 but subject to minor alterations. Full comment appears at pages 12 to 17 of the mimeographed Alberta report. Subsection (2) contains a principle, also in the Alberta report, that the new status apply equally to marriages contracted before or after the birth of the child but does not apply to give legitimate status to children born after the form of marriage has been declared void by a court. As an alternative, and in order to avoid fraudulent attempts to give legitimate status to persons born illegitimate by a mere sham ceremony of marriage, the Conference may wish to consider omission of the subsequent marriage principle in the section, in which case only the first two and last twenty-three words of subsection (2) should remain.

Subsection (3) provides the usual saving for property already vested.

Section 6.

This section does not provide for legitimacy or legitimation but provides for property succession rights by the spouse and issue of an illegitimate person in certain circumstances as if that person were legitimated by the subsequent marriage of his parents. The provision is copied with a very minor change from section 8 of the Alberta draft where the section was needed because the Alberta draft in its main provision for legitimation by subsequent marriage expressly declared that the child must be living at the time of the subsequent marriage if legitimation were to take place. The provision in section 6 (Alberta section 8) gives effect for property purposes to what had been excluded by Alberta's earlier provision requiring the child born out of wedlock to be living at the time of his parents' subsequent marriage. British Columbia's draft this year does not contain a limitation requiring the child legitimated to be living at the time of the subsequent marriage. If it is the wish of the Conference that such provision be inserted or if it is the feeling of the Conference that such is the interpretation to be given to the clause in any event whether inserted or not, then we would recommend the inclusion of section 6. On the other hand the section is not necessary if, notwithstanding his death before the subsequent marriage of his parents, he is legitimate under our section 2.

Section 7 is the usual uniform construction section.

All of which is respectfully submitted.

GILBERT D. KENNEDY,
P. R. BRISSENDEN,
GERALD H. CROSS.

APPENDIX A

TO REPORT OF BRITISH COLUMBIA COMMISSIONERS

1. *Interpretation*

This Act may be cited as "The Legitimacy Act".

2. *Legitimation by subsequent marriage*

(1) Where, before or after the coming into force of this Act, the parents of a person inter-marry after the birth of that person, he is, except as otherwise provided in this section, legitimate from birth for all purposes of the law of the Province.

(2) Nothing in subsection (1) affects any interest in property which vests in a person before

(a) the inter-marriage of the parents, or

(b) the.....day of..... , 19. ....., (the date of the first enactment of a legitimation statute).

(3) This section applies to all persons wherever born or domiciled to whom, for any purpose, the law of (name of Province) is applicable.

(NOTE:—Subsection (3) is recommended for enactment in those provinces which prefer to have an express provision of this sort).

3. *Voidable Marriages*

(1) Where a decree of nullity is granted in respect of a voidable marriage a child who, at the date of the decree, would have been or under section 2 would have been deemed to be the legitimate child of the parties to the marriage if it had been dissolved, instead of being annulled, continues to be their legitimate child notwithstanding the annulment.

(2) Nothing in subsection (1) affects any interest in property which vests in a person before the annulment or before the enactment of this section.

4. *Void Marriages—Special Cases*

(1) Where a person,

(a) in respect of whose spouse an order of presumption of death is made under the law of the province either generally, or inter alia, in relation to remarriage, or

(b) whose spouse is a member of the Canadian Forces in respect of whom a department of the Government of Canada has given official notification that he is dead or is presumed to be dead, or

(c) believing in good faith that his spouse is dead, and in circumstances where the crime of bigamy has not been committed,

enters into a form of marriage, then if the person to whom the order of presumption of death relates, in respect of whom the official notification was given, or who is believed to be dead, as the case may be, was alive when the form of marriage was entered into, a child of the persons entering into the form of marriage is legitimate from birth for all purposes of the law of the province.

(2) This section applies whether the child of the persons entering into the form of marriage was born before or after entry into the form of marriage, but does not apply to a child born eleven months after the form of marriage has been declared by a court to be void.

(3) Subsection (1) does not apply to a person to whom clause (c) of that subsection applies unless the death of the spouse believed to be dead is registered or recorded according to the law of the place where it is believed to have occurred.

(4) Nothing in subsection (1) affects any interest in property which vests in a person before, in a case to which either clause (a) or (b) is applicable, the . . . . . day of . . . . . and in cases to which clause (c) is applicable, the date of coming into force of this section and in the case of marriages after the birth of the child, before the inter-marriage of the parents. (Adjust to suit existing legislation in some provinces.)

5. *Void Marriages—Generally*

(1) Subject to section 4, where a person is born of parents who, before or after his birth, contracted a marriage that is void, that person is legitimate from birth if

(a) the marriage was entered into before a person entitled to solemnize marriage under the law in force at the place where it was entered into and was registered and recorded in substantial compliance with that law, and

(b) at least one party to the marriage entered into the form of marriage in good faith and in ignorance that any impediment existed in fact or in law that rendered the marriage void.

(2) This section applies whether the child of the persons entering into the form of marriage was born before or after entry into the form of marriage, but does not apply to a child born

eleven months after the form of marriage has been declared by a court to be void.

(3) Nothing in subsection (1) affects any interest in property which vests in any person before the coming into force of this Act and in the case of persons born before the marriage of their parents, before the inter-marriage of the parents.

6. *Property Rights of Illegitimates*

Where an illegitimate person dies after the commencement of this Act and before the marriage of his parents, whether valid or invalid, leaving any spouse, children or remoter issue living at the date of the marriage, then if that person would, if living at the time of the marriage of his parents, have become a legitimate person, the provisions of the law applicable to the taking of interests in property by, or in succession to, the spouse, children and remoter issue of a legitimate person apply as if the deceased illegitimate person had been a legitimate person and the date of the marriage of his parents, whether valid or invalid, had been the date from which he was legitimate.

7. *Uniform Construction*

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

APPENDIX K

(See page 24)

BILLS OF SALE ACT
CONDITIONAL SALES ACT

The Conditional Sales Act was adopted in 1922 and the Bills of Sale Act in 1928. In 1955, after several years study, revised Acts were adopted. Then, in 1956, Dean Read's report on Judicial Decisions referred to three cases on one or other of the statutes. Two were cases of resale in another province and one was a case of resale before expiration of the registration period. All were referred to Alberta for study and report in 1957. When the report was made the Conference directed inquiry into a number of new matters (1957 Proceedings, page 21). The 1958 report dealt with these matters (1958 Proceedings, page 56). The subject was referred back for the purpose of making minor changes in amendments to certain sections.

We beg to report as follows on each subject:—

(1) We do not recommend the repeal of section 4(2). True, it is inconsistent with the other registration provisions which protect the vendor or grantor during the statutory period, but it has been in effect for over twenty years and has caused little litigation. The grantee can protect himself by immediate registration and in ordinary commercial transactions this is feasible and indeed is common practice as it is in the case of land mortgages.

(2) The revised draft amendments dealing with registration of instruments that include both motor-vehicles and other chattels is attached.

(3) The last point is a minor one under the Conditional Sales Act, viz. whether a vendor selling the goods with a view to claiming a deficiency judgment should be permitted to sell privately and also to bid. Section 12(3) requires sale by auction. We do not recommend any change in this section. Most provinces have this section, and the trend of the cases is to require very strict compliance. We do not think this attitude should be weakened, but if local conditions in a given province require changes, they can be made locally.

In conclusion, the main problem is that of interprovincial resales. The policy of the Acts is to protect the vendor if he re-registers after notice of removal. The cases recognize this except those from British Columbia. No amendment can solve these

problems and we think the present provisions are proper in that they protect the seller. The buyer can always make inquiries and protect himself.

W. F. BOWKER,
for Alberta Commissioners.

APPENDIX

A. *Bills of Sale Act* (Uniform)

1. Section 9 of the Act is amended by adding thereto the following subsection:

(3) The description of a motor vehicle in a bill of sale shall include the serial number of the vehicle.

2. The Act is amended by adding thereto, immediately after section 9, the following:

Registration in case of motor vehicle and other chattels.

9a. (1) Where the subject of a bill of sale is a motor vehicle and other chattels, registration of the bill of sale shall, subject to subsections (2) and (3), be effected as to the motor vehicle in the manner prescribed in section 9, and as to the other chattels in the manner prescribed in section 8.

Omission to register in respect of other chattels.

(2) Where a bill of sale to which subsection (1) applies is registered in the manner prescribed in section 9 in respect of a motor vehicle, but is not registreed in the manner prescribed in section 8 in respect of the other chattels, it shall be deemed for the purposes of this Act to be sufficiently registered in respect of the motor vehicle.

Omission to register in respect of motor vehicle.

(3) Where a bill of sale to which subsection (1) applies is registered in the manner prescribed in section 8 in respect of chattels other than the motor vehicle, but is not registered in the manner prescribed in section 9 in respect of the motor vehicle, it shall be deemed for the purposes of this Act to be sufficiently registered in respect of those other chattels.

Manner of registration.

(4) In a case to which subsection (1) applies registration may be effected by filing the original bill of sale in one of the registration districts in which it is required to be registered, and by filing in the other registration district in which it is required to be registered a duplicate original thereof or a copy thereof certified by the proper officer of the registration district in which the original bill of sale is registered.

3. Section 10 of the Act is amended by repealing subsection (5) and by substituting therefor the following:

(5) Where the subject of a bill of sale is a motor vehicle only, the renewal statement shall be registered in the office of the.....in (*name of capital city*).

(5a) Where the subject of a bill of sale is a motor vehicle and other chattels, the renewal statement shall be registered

in respect of the motor vehicle as prescribed in subsection (5), and in respect of the other chattels as prescribed in subsections (3) and (4), and subsections (2) and (3) of section 9a apply thereto, mutatis mutandis.

4. Section 12 of the Act is amended by repealing subsection (2) and by substituting therefor the following:

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

(3) Where the subject of the bill of sale is a motor vehicle and other chattels, the copies of the bill and other documents shall be registered in the manner prescribed in subsection (1) of section 9a for the registration of such bills of sale, and subsections (2) and (3) of section 9a apply thereto, mutatis mutandis.

NOTE:—The prepared amendments 2, 3 and 4 above not required in Newfoundland or Saskatchewan.

B. *Conditional Sales Act* (Uniform)

1. Section 3 of the Act is amended by adding thereto the following:

(3) The description of a motor vehicle in the writing evidencing the conditional sale shall include the serial number of the vehicle.

2. The Act is amended by adding thereto, immediately after section 5, the following:

Registration in case of motor vehicle and other chattels.

5a. (1) Where the subject of a conditional sale is a motor vehicle and other chattels, registration of the conditional sale shall, subject to subsections (2) and (3), be effected in respect of the motor vehicle in the manner prescribed in section 5, and in respect of the other chattels in the manner prescribed in section 4.

Omission to register in respect of other chattels.

(2) Where a conditional sale to which subsection (1) applies is registered in the manner prescribed in section 5 in respect of the motor vehicle, but is not registered in the manner prescribed in section 4 as to the other chattels, it shall be deemed for the purposes of this Act to be sufficiently registered in respect of the motor vehicle.

Omission to register in respect of motor vehicle

(3) Where a conditional sale to which subsection (1) applies is registered in the manner prescribed in section 4 in

respect of chattels other than the motor vehicle, but is not registered in the manner prescribed in section 5 in respect of the motor vehicle, it shall be deemed for the purposes of this Act to be sufficiently registered in respect of those other chattels.

Manner of registration

(4) In a case to which subsection (1) applies, registration may be effected by filing the original writing evidencing the conditional sale in one of the registration districts in which it is required to be registered, and by filing in the other registration district in which it is required to be registered a duplicate original thereof or a copy thereof, certified by the proper officer of the registration district in which the original writing is registered.

3. Section 6 of the Act is amended by repealing subsection (2) and by substituting therefor the following:

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

(3) Where the subject of the agreement is a motor vehicle and other chattels, the copies of the agreement shall be registered in the manner prescribed in subsection (1) of section 5a for the registration of such conditional sales, and subsections (2) and (3) of section 5a apply thereto, mutatis mutandis.

4. Section 11 of the Act is amended by repealing subsection (5) and by substituting therefor the following:

(5) Where the subject of a conditional sale is a motor vehicle only, the renewal statement shall be registered in the office of the... ... .in (*name of capital city*).

(5a) Where the subject of a conditional sale is a motor vehicle and other chattels, the renewal statement shall be registered in respect of the motor vehicle as prescribed in subsection (5) and in respect of the other chattels as prescribed in subsections (3) and (4), and subsections (2) and (3) of section 5a apply thereto, mutatis mutandis.

NOTE:—Amendments 2, 3 and 4 above not required in Newfoundland or Saskatchewan.

APPENDIX L

(*See page 24*)

Memorandum to all Members

BILLS OF SALE ACT

CONDITIONAL SALES ACT

It will be recalled that at the annual meeting in Victoria in August the Alberta Commissioners presented a report on The Bills of Sale Act and The Conditional Sales Act and submitted therewith draft amendments to both Uniform Acts. Upon the completion of a clause by clause consideration of the draft amendments, it was resolved that the draft amendments, as set out in the Alberta report, be referred back to the Alberta Commissioners to incorporate in them the changes agreed upon at this meeting; that copies of the draft amendments as so revised 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 amendments as so revised are not disapproved by two or more jurisdictions by notice to the Secretary of the Conference on or before the 30th day of November, 1959, they be recommended for enactment in that form.

Attached is a copy of the Revised Draft Amendments as submitted by the Alberta Commissioners with the changes made by the Alberta Commissioners incorporated in them.

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

REVISED DRAFT AMENDMENTS

Bills of Sales Act (Uniform)

1. Section 9 of the Act is amended by adding thereto the following subsection:

(3) The description of a motor vehicle in a bill of sale shall include the serial number of the vehicle.

2. The Act is amended by adding thereto, immediately after section 9, the following:

Registration in case of motor vehicle and other chattels

9a. (1) Where the subject of a bill of sale is a motor vehicle and other chattels, registration of the bill of sale shall, subject to subsections (2) and (3), be effected in respect of the motor vehicle in the manner prescribed in section 9, and in respect of the other chattels in the manner prescribed in section 8.

Omission to register in respect of other chattels

(2) Where a bill of sale to which subsection (1) applies is registered in the manner prescribed in section 9 in respect of a motor vehicle, but is not registered in the manner prescribed in section 8 in respect of the other chattels, it shall be deemed for the purposes of this Act to be sufficiently registered in respect of the motor vehicle.

Omission to register in respect of motor vehicle

(3) Where a bill of sale to which subsection (1) applies is registered in the manner prescribed in section 8 in respect of chattels other than the motor vehicle, but is not registered in the manner prescribed in section 9 in respect of the motor vehicle, it shall be deemed for the purposes of this Act to be sufficiently registered in respect of those other chattels.

Manner of registration

(4) In a case to which subsection (1) applies registration may be effected by filing the original bill of sale in one of the offices in which it is required to be registered and by filing in the other office in which it is required to be registered a duplicate original thereof or a copy thereof certified by the proper officer in whose office the original bill of sale is registered.

3. Section 10 of the Act is amended by repealing subsection (5) and by substituting therefor the following:

(5) Where the subject of a bill of sale is a motor vehicle only, the renewal statement shall be registered in the office of the.... .....in (*name of capital city*).

(5a) Where the subject of a bill of sale is a motor vehicle and other chattels, the renewal statement shall be registered in respect of the motor vehicle as prescribed in subsection (5),

and in respect of the other chattels as prescribed in subsections (3) and (4), and subsections (2) and (3) of section 9a apply thereto, mutatis mutandis.

4. Section 12 of the Act is amended by repealing subsection (2) and by substituting therefor the following:

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

(3) Where the subject of the bill of sale is a motor vehicle and other chattels, the copies of the bill and other documents shall be registered in the manner prescribed in subsection (1) of section 9a for the registration of such bills of sale, and subsections (2) and (3) of section 9a apply thereto, mutatis mutandis.

NOTE:—The prepared amendments 2, 3 and 4 above not required in Newfoundland or Saskatchewan.

Conditional Sales Act (Uniform)

1. Section 5 of the Act is amended by adding thereto the following:

(3) The description of a motor vehicle in the writing evidencing the conditional sale shall include the serial number of the vehicle.

2. The Act is amended by adding thereto, immediately after section 5, the following:

Registration in case of motor vehicle and other chattels

5a. (1) Where the subject of a conditional sale is a motor vehicle and other chattels, registration of the conditional sale shall, subject to subsections (2) and (3), be effected in respect of the motor vehicle in the manner prescribed in section 5, and in respect of the other chattels in the manner prescribed in section 4.

Omission to register in respect of other chattels

(2) Where a conditional sale to which subsection (1) applies is registered in the manner prescribed in section 5 in respect of the motor vehicle, but is not registered in the manner prescribed in section 4 in respect of the other chattels, it shall be deemed for the purposes of this Act to be sufficiently registered in respect of the motor vehicle.

Omission to register in respect of motor vehicle

(3) Where a conditional sale to which subsection (1) applies is registered in the manner prescribed in section 4 in respect of chattels other than the motor vehicle, but is not

registered in the manner prescribed in section 5 in respect of the motor vehicle, it shall be deemed for the purposes of this Act to be sufficiently registered in respect of those other chattels.

Manner of registration

(4) In a case to which subsection (1) applies, registration may be effected by filing the original writing evidencing the conditional sale in one of the offices in which it is required to be registered and by filing in the other office in which it is required to be registered a duplicate original thereof or a copy thereof, certified by the proper officer in whose office the original writing is registered.

3. Section 6 of the Act is amended by repealing subsection (2) and by substituting therefor the following:

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

(3) Where the subject of the agreement is a motor vehicle and other chattels, the copies of the agreement shall be registered in the manner prescribed in subsection (1) of section 5a for the registration of such conditional sales, and subsections (2) and (3) of section 5a apply thereto, mutatis mutandis.

4. Section 11 of the Act is amended by repealing subsection (5) and by substituting therefor the following:

(5) Where the subject of a conditional sale is a motor vehicle only, the renewal statement shall be registered in the office of the. . . . . .in (*name of capital city*).

(5a) Where the subject of a conditional sale is a motor vehicle and other chattels, the renewal statement shall be registered in respect of the motor vehicle as prescribed in subsection (5) and in respect of the other chattels as prescribed in subsections (3) and (4), and subsections (2) and (3) of section 5a apply thereto, mutatis mutandis.

NOTE:—Amendments 2, 3 and 4 above not required in Newfoundland or Saskatchewan.

APPENDIX M

(*See page 26*)

PRESUMPTION OF DEATH

REPORT OF THE BRITISH COLUMBIA COMMISSIONERS

The question of the drafting and adoption of a uniform Act providing for judicial declarations presuming death in cases where no direct evidence of death is available was introduced in 1958 and referred to the British Columbia Commissioners. In raising the question in 1958 it was thought that other provinces may also wish to provide a convenient code in one place for all applications for an order presuming death, and the removal of any necessity for a number of separate applications.

Such separate applications had been necessary in British Columbia and accordingly, the Survivorship and Presumption of Death Act passed in 1958 contains sections 4 and 5 which read as follows. These are proposed to the Conference as the content of the Uniform Presumption of Death Act:—

> 4.—(1) Upon application and if satisfied that:—
>
> (a) A person has been absent and not heard of or from by the petitioner, or to the knowledge of the petitioner by any other person, since a day named; and
>
> (b) The petitioner has no reason to believe that the person is living; and
>
> (c) Reasonable grounds exist for supposing that the person is dead,—
>
> the Court may make an order declaring that the person shall be presumed to be dead for all purposes, or for such purposes only as are specified in the order.
>
> (2) The order shall state the date on which the person is presumed to have died or a date after which the person is presumed not to be living.
>
> 5. An order declaring that a person shall be presumed dead for all purposes or for the purposes specified in the order is receivable as proof of death in all matters requiring such evidence.

As Mr. MacTavish has noted in his report on survivorship, it is not necessary that presumption of death be included in the same statute but it was so included in British Columbia merely as a matter of convenience to solicitors and others in finding statutory law with regard to the subject-matter of death and time of its occurrence.

As the result of the enactment of the above two sections in British Columbia section 128 of the Insurance Act which is that

section which deals with (inter alia) declarations as to the presumption of death was amended by striking out subsection (2) and inserting language in the section making the powers and duties set forth therein dependent in appropriate cases upon the order given under the Presumption of Death Act. Similarly the Marriage Act was amended by striking out the section having to do with presumption of death orders.

Now, therefore, in British Columbia an applicant may obtain one order covering presumption of death for probate, insurance, remarriage and any other purposes for which the presumption is desired and without necessarily waiting in some cases for the old statutory seven years to elapse.

Respectfully submitted,

GILBERT D. KENNEDY,
P. R. BRISSENDEN,
GERALD H. CROSS,
British Columbia Commissioners.

APPENDIX N

(*See page 26*)

SURVIVORSHIP

REPORT OF THE ONTARIO COMMISSIONERS

At last year's meeting of the Conference at Niagara Falls Dr. Kennedy submitted a report on this subject (1958 Proceedings, page 104).

After discussion it was resolved that the Ontario Commissioners should study Dr. Kennedy's report and report to the 1959 meeting of the Conference with a new draft Act if they considered it advisable so to do.

Another resolution passed at last year's meeting requires the British Columbia Commissioners to study the matter of legislation respecting presumption of death and to report to the 1959 meeting with a draft Act if they considered one advisable. This resolution is mentioned here because it may be that a kinship exists between its subject matter and the subject matter of this report.

The Ontario Commissioners see no need for the two subjects to be dealt with together. Survivorship deals with the order of deaths where two or more persons die in the circumstances set out, while the presumption of death provisions under study, such as sections 4, 5 and 6 of the *Survivorship and Presumption of Death Act* (Statutes of British Columbia, 1958, c. 57) simply provide procedures for a judicial determination of whether a person is alive or dead. At any rate, no collaboration has taken place between the British Columbia Commissioners and the Ontario Commissioners. The Ontario Commissioners have proceeded on the assumption that the two matters are better treated as separate and distinct entities and so have confined their efforts to their terms of reference.

The Conference adopted a Uniform Survivorship Act in 1939, based upon the English counterpart. At that time no legislation on the subject (then known as Commorientes) existed in any province of Canada. The Uniform Act was amended in 1949, 1956 and 1957. Every province except Quebec has adopted the Act in one form or another.

For convenience the Uniform Act, as amended to date, is here set out:

AN ACT RESPECTING SURVIVORSHIP

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

1. This Act may be cited as *The Survivorship Act.* Short title

2.—(1) Where two or more persons die at the same time or in circumstances rendering it uncertain which of them survived the other or others, such deaths shall, subject to subsections (2), (3) and (4), 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. Order of death

(2) The provisions of this section shall be read and construed subject to the provisions of sections and of *The Insurance Act* (presumption as to order of death in Life Insurance Part and in Accident and Sickness Insurance Part where person insured and beneficiary die in same disaster) and of section of *The Wills Act* (substitutional gifts). Exceptions to presumption—as to certain statutes,

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

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

(*a*) does not survive the testator,

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

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

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

3. This Act shall be so interpreted and construed as to effect Uniform interpretation

its general purpose of making uniform the law of those provinces which enact it.

Coming into force

4. This Act shall come into force on the .....day of ....., 19.....

The first point raised in Dr. Kennedy's report is that subsection 3 of section 2 deals only with the situation where the testator and a beneficiary are involved in the circumstances listed and is not operative where the persons whose order of death is important but uncertain are not testator and beneficiary but testator and a named person other than a beneficiary upon whose death in a certain order other persons are dependent for taking a benefit. It is suggested that if subsection 3 is intended to cover all possible situations that may arise in circumstances of joint disasters, then the subsection should be broadened.

The Ontario Commissioners agree with the views of Dr. Kennedy that so far as possible our uniform Acts should endeavour to cover all situations, particularly in relation to wills when draftsmen may wish to rely on the survivorship legislation rather than having to draft their own clauses in each case.

The second point made by Dr. Kennedy is that subsection 3 of section 2 should be widened still further to cover another situation in wills where it is important to determine the order of death. For example, there may be a gift to the issue of A if A dies leaving issue but if he dies without issue then a gift to B. If A and his sole issue die in the same plane crash it becomes important to determine their order of death. As the issue will be younger the general presumption will prevail and he will be presumed to have survived the older. This type of case is not within subsection 3 because the testator is not involved as one of the persons whose order of death is important. Dr. Kennedy feels that this type of case ought to come within subsection 3 and not within the general rule in subsection 1 because by having the younger survive and giving the gift to the younger, namely the issue of A, now dead, largely defeats the intention of the testator.

Dr. Kennedy's third point is a matter of language in subsection 4 of section 2. He suggests that the last thirteen words "the case for which the will provides shall be deemed to have occurred" should be struck out and the words "the provision becomes operative" substituted. This is complementary to a suggested change of "in case of" to "operative upon" in the opening words of the subsection.

Dr. Kennedy's fourth point is that as the Act is very short it should be revised *in toto* with regard being had to current drafting practices.

Although the Ontario Commissioners are loath to recommend changes in Uniform Acts that have been widely adopted, they nevertheless are of opinion that all of Dr. Kennedy's points have merit and that their sum is sufficiently great to warrant a complete revision of the Act.

The promulgation of a revised Act at this time may have the desirable result of bringing back into uniformity those provinces that have not adopted the amendments proposed by the Conference from time to time since 1939.

It is hoped that the members of the Conference will give this subject adequate attention now, so that if and when a revised Uniform Act is recommended for enactment it will have a good chance of standing unmolested for a reasonable period of time.

Attached is a draft revised Act that is recommended for consideration.

Section 3 (the standard uniform interpretation section) of the present Uniform Act has been omitted intentionally from the recommended revised Act in the hope of bringing about a discussion of the merits of such a provision.

L. R. MACTAVISH,
for the Ontario Commissioners.

AN ACT RESPECTING SURVIVORSHIP

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

Short title

1. This Act may be cited as *The Survivorship Act.*

General rule as to order of deaths

2.—(1) Where two or more persons die at the same time or in circumstances rendering it uncertain which of them survived the other or others, such deaths shall, subject to subsections (2) and (3), for all purposes affecting the title to property, be presumed to have occurred in the order of seniority, and accordingly the younger shall be deemed to have survived the older.

Rule as to wills

(2) Where a will contains a provision for the disposition of property operative upon a person named in the will

(*a*) not surviving another person,

(*b*) dying at the same time as another person, or

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

and the person named does not survive the other person or dies at the same time as the other person or in circumstances rendering it uncertain which of them survived the other, then, for the purpose of that disposition, the case for which the will provides shall be deemed to have occurred.

dem

(3) Where a will contains a provision for a substitute personal representative operative upon an executor named in the will

(*a*) not surviving the testator,

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

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

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

ertain other cts not fected

3. This Act is subject to sections and of *The Insurance Act* (presumption as to order of death in Life Insurance Part and in Accident and Sickness Insurance Part where person insured and beneficiary die in same disaster) and to section of *The Wills Act* (substitutional gifts).

APPENDIX O

(*See page 27*)

Memorandum to all Members

Survivorship

It will be recalled that at the annual meeting in Victoria last month the Ontario Commissioners presented a report on Survivorship and submitted therewith a draft of a revised Uniform Act. Upon the completion of a clause by clause consideration of the draft, the following resolution was adopted:

> RESOLVED that the draft Act, as set out in the Ontario report, be referred back to the Ontario Commissioners 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 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 30th day of November, 1959, it be recommended for enactment in that form.

Attached is a copy of the Revised Uniform Act as submitted by the Ontario Commissioners with the changes made at the meeting incorporated in it.

L. R. MACTAVISH,
for the Ontario Commissioners.

AN ACT RESPECTING SURVIVORSHIP

HER MAJESTY, by and with the advice and consent of the , enacts as follows:

Short title

1. This Act may be cited as *The Survivorship Act.*

General rule as to order of deaths

2.—(1) Where two or more persons die at the same time or in circumstances rendering it uncertain which of them survived the other or others, the deaths are, subject to subsections (2) and (3), presumed to have occurred in the order of seniority, and accordingly the younger is deemed to have survived the older.

Rule as to instruments

(2) Where an instrument contains a provision for the disposition of property operative in case a person designated in the instrument,

(*a*) does not survive another person,

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

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

and the designated person does not survive the other person or dies at the same time as the other person or in circumstances rendering it uncertain which of them survived the other, then, for the purpose of that disposition, the case for which the instrument provides is deemed to have occurred.

Rule as to substitute executors

(3) Where a will contains a provision for a substitute personal representative operative in case an executor designated in the will,

(*a*) does not survive the testator;

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

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

and the designated executor does not survive the testator or dies at the same time as the testator or in circumstances rendering it uncertain which of them survived the other, then, for the purpose of probate, the case for which the will provides is deemed to have occurred.

Certain other Acts not affected

3. This Act is subject to sections and of *The Insurance Act* (presumption as to order of death in Life Insurance Part and in Accident and Sickness Insurance Part where person insured and beneficiary die in same disaster) and to section of *The Wills Act* (substitutional gifts).

APPENDIX P

(*See page 28*)

HIGHWAY TRAFFIC AND VEHICLES

RESPONSIBILITY OF OWNER AND DRIVER

PART III

REPORT OF NOVA SCOTIA COMMISSIONERS

At the 1959 meeting of the Conference in Victoria, the following resolution was adopted:

> "RESOLVED that the draft Highway Traffic and Vehicles (Responsibility for Accidents) Act be referred back to the Nova Scotia Commissioners for revision in accordance with the changes agreed upon 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, 1959, it be recommended for enactment in that form."

Unfortunately it was not possible to complete the redraft and distribute it in time for consideration before November 30, 1959. The attached revision has been prepared, however, and is being distributed for examination by members of the Conference in the hope that a final draft Act may be settled at the 1960 meeting of the Conference.

Respectfully submitted,

H. E. READ,
J. A. Y. MACDONALD,
H. F. MUGGAH,
Nova Scotia Commissioners

HIGHWAY TRAFFIC AND VEHICLES (RESPONSIBILITY OF OWNER AND DRIVER) ACT

301.—(1) Where the driver of a motor vehicle violates a provision of this Act or the regulations relating to the operation, use or presence of a motor vehicle on a highway or in a public place the registered owner of the vehicle is presumed to be guilty of the violation and shall incur the penalties provided therefor, unless he proves that the violation was not committed by him or by a person who had possession of the vehicle with his consent, either express or implied.

(2) This Section does not relieve the driver of a motor vehicle of liability for a violation committed by him or while the vehicle was in his possession.

302.—(1) When a motor vehicle is operated in violation of a provision of this Act or the regulations relating to the operation, use or presence of a motor vehicle on a highway or in a public place by a person whose identity is unknown to the Registrar, the registered owner of the vehicle on the request of the Registrar or of a peace officer shall, within forty-eight hours of the request, supply the Registrar or the peace officer with the name and address of the person in charge of the vehicle at the time of the violation.

(2) A registered owner who knows the name and address of the person in charge of the vehicle and refuses, fails, or neglects to supply such information within forty-eight hours after being so requested is guilty of an offence and liable on summary conviction to a fine of not more than $. . ....

303.—(1) The owner, as well as the driver, of a motor vehicle is liable for injury, loss or damage sustained by any person by reason of negligence in the operation of the motor vehicle on a highway unless the motor vehicle was without the owner's consent in the possession of some person other than the owner or his chauffeur.

(2) Subject to subsection (3) a person operating a motor vehicle other than the owner thereof is presumed to have possession of the vehicle with the consent of the owner until the contrary is established.

(3) Where the person operating a motor vehicle other than the owner thereof lives with the owner as a member of his family he is presumed to have possession of the motor vehicle with the consent of the owner.

(4) In this Section "owner", as applied to a vehicle, means,

(*a*) the person who holds the legal title to the vehicle;

(*b*) a person who is a conditional vendee, a lessee or a mortgagor, and is entitled to be and is in possession of the vehicle; or

(*c*) the person in whose name the vehicle is registered.

304.—(1) Where injury, loss or damage is sustained by any person by reason of the presence of a motor vehicle on a highway the onus of proof that the injury, loss or damage did not entirely or solely arise through the negligence or improper conduct of the owner or driver of the motor vehicle is upon the owner or driver.

(2) This Section does not apply in the case of a collision between motor vehicles on a highway or to an action brought by a person who is being transported in the vehicle without payment for that transportation.

305.—(1) No action lies against the driver or owner of a motor vehicle for the death of or for injury, loss or damage sustained or incurred by a person while a passenger in the motor vehicle without payment for the transportation or by him when entering or alighting from the motor vehicle unless the death, injury, loss or damage was caused or contributed to by gross negligence or wilful and wanton misconduct on the part of the owner or driver.

(2) This Section does not relieve from liability a person transporting a passenger for hire or gain, or the owner or driver of a motor vehicle that is being demonstrated to a prospective purchaser.

306. Notwithstanding anything in this Act no motor vehicle or the owner thereof or any surety for the owner is liable for injury, loss or damage caused by the negligent operation of the motor vehicle if it is proved to the satisfaction of the court that at the time the injury, loss or damage was caused the motor vehicle was operated by or under the control or in the charge of a person who had stolen the motor vehicle, or where the motor vehicle was otherwise wrongfully in the possession of another person.

307.—(1) Where a motor vehicle that is owned by a person who is not resident in the Province is operated on a highway in the Province by the owner or by a person who has possession of

the motor vehicle with the consent of the owner or where a person who is not a resident of the Province operates a motor vehicle on a highway in the Province, the Registrar is deemed to be the agent of the owner or operator who is not so resident for the service of notice or process in an action in the Province for injury, loss or damage arising out of the presence, use or operation of the motor vehicle in the Province.

(2) Service of notice or process on the Registrar as such agent may be made by leaving a copy of it with him or at his office.

(3) Service effected in accordance with subsection (2) is sufficient service if notice of the service and a copy of the notice or process are sent forthwith by registered mail to the defendant and the defendant's return receipt is filed with the prothonotary (registrar) or clerk of the court in which the action or proceeding is brought.

(4) A judge of the court in which the action is pending may, on such terms as he considers just, order such continuance as he considers necessary to afford the defendant reasonable opportunity to defend the action.

308.—(1) Where injury, loss or damage to person or property is caused by the negligent operation on a highway of a motor vehicle that is not registered under this Act, the plaintiff in an action to recover for that injury, loss or damage may make the vehicle, by its registration number or by a description of the vehicle sufficient to enable it to be identified, the defendant in the action and may obtain a writ of attachment of the motor vehicle under Section 309.

(2) Any person claiming to be the owner or to have an interest in the motor vehicle may enter an appearance in the action and the provisions of The Judicature Act and the Rules of the Supreme Court apply to him as if he had been made a party defendant.

(3) If no person claiming to be the owner or to have an interest in the motor vehicle has entered an appearance in the action the plaintiff may at any time after the expiration of thirty days from the date on which the motor vehicle was attached, upon proving damages, obtain judgment and execution against the motor vehicle.

309.—(1) Where injury, loss or damage is incurred or sustained by a person by reason of the negligent operation of a

motor vehicle upon a highway the person incurring or sustaining the injury, loss or damage may, at or after the commencement of an action to recover damages for the injury, loss or damage, obtain from the prothonotary or clerk of the court a writ of attachment directed to the sheriff commanding him to attach, seize, take and safely keep the motor vehicle causing the injury, loss or damage to secure the amount of damages that may be recovered in the action and the costs and to return the writ forthwith to the court out of which the writ is issued.

(2) A writ of attachment shall not be obtained or issued after the expiration of thirty days from the day on which the injury, loss or damage was incurred or sustained.

(3) A person claiming to be the owner or having any interest in the motor vehicle may enter an appearance in the action and the provisions of The Judicature Act and the Rules of the Supreme Court apply to him as if he had been made a party defendant.

(4) No writ of attachment shall be issued unless the plaintiff, or someone on his behalf,

(*a*) files with the prothonotary or clerk an affidavit showing a cause of action and stating

(i) the time and place where the injury, loss or damage was incurred or sustained;

(ii) the approximate amount of the damage; and

(iii) such information as will enable the motor vehicle to be identified; and

(*b*) files with the prothonotary or clerk a good and sufficient bond in favour of the sheriff approved by the prothonotary or clerk and conditioned for the payment of all costs and expenses incurred by the sheriff in the seizing and holding of the motor vehicle if the plaintiff does not prosecute his action or if the action is decided against him.

310.—(1) Subject to subsection (2), the sheriff to whom a writ of attachment is directed shall immediately attach, seize, take and safely keep the motor vehicle to secure the amount of damages that may be recovered in the action and the costs of the action and those damages and costs constitute a lien on the motor vehicle whether or not the defendant is the owner of the motor vehicle or has any interest therein.

(2) The lien created under subsection (1) has priority over

any other lien on the vehicle except a lien for repairs to the vehicle or a prior registered lien.

311. If a motor vehicle has been seized under a writ of attachment issued under this Act

(*a*) if the defendant is the registered owner of the motor vehicle and deposits with the sheriff a certificate under the hand of the Registrar that proof of financial responsibility had been filed by the owner under this Act before the cause of action arose, or

(*b*) if proof of financial responsibility has not been filed by the owner or if the defendant is not the owner of the motor vehicle but the owner or a person on his behalf files with the sheriff a bond in favor of the plaintiff executed by two sureties satisfactory to the sheriff or by an approved surety company and conditioned for payment of all damages and costs that may be recovered against the defendant,

the sheriff having the motor vehicle in his custody shall release the motor vehicle to the owner or his agent upon payment to the sheriff of his fees and expenses in connection with the attachment.

312.—(1) Where a motor vehicle has not been released under Section 311 and judgment is recovered by the plaintiff the sheriff shall retain the vehicle under the writ of attachment for fifteen days after the date of the judgment and, if execution on that judgment is issued within fifteen days from the date of the judgment, may sell the vehicle in the manner in which other goods are sold under execution and shall apply the proceeds of the sale in the manner prescribed in this Section.

(2) The sheriff shall pay over to the plaintiff the money so recovered or a sufficient sum to discharge the amount directed to be levied, less the sheriff's fees, commission and poundage expenses.

(3) If, after satisfaction of the amount together with sheriff's fees, commission and poundage expenses, a surplus remains in the hands of the sheriff, he shall pay the surplus to the person entitled thereto.

(4) Where money is levied upon execution The Creditors Relief Act does not apply to that portion of the money that is obtained by the levying on and selling of the motor vehicle under the execution.

313. Except as in this Part expressly provided no right of any person to bring, prosecute or defend an action for damages for injury, loss or damage to person or property is affected.

APPENDIX Q

(*See page 29*)

LEGITIMACY

At the annual meeting in Victoria this year, the British Columbia commissioners presented a report on Legitimacy together with a draft uniform statute which was examined clause by clause. Some amendments were made and others agreed upon but left to the British Columbia commissioners to settle. Upon the conclusion of the consideration of the draft statute, the usual resolution was adopted referring the report back to the British Columbia commissioners to incorporate the changes agreed upon, and providing that if after circulation, the revised draft was not disapproved by two or more provinces by notice to the Secretary of the Conference on or before the 30th day of November 1959, the revised draft be recommended for enactment in that form.

Attached is the draft statute with amendments made and the changes agreed upon in principle incorporated. Subsection (2) of sections 3, 4 and 5 have been combined into a general saving section 7. A special saving clause may be necessary in one or two provinces which presently have some of the provisions of sections 3, 4 and 5.

GILBERT D. KENNEDY,
P. R. BRISSENDEN,
GERALD H. CROSS.

AN ACT RESPECTING LEGITIMACY

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 Legitimacy Act.*

Legitimation by subsequent marriage

2.—(1) Where, before or after the coming into force of this section and after the birth of a person his parents have intermarried or inter-marry, he is legitimate from birth for all purposes of the law of the Province.

(2) Nothing in subsection (1) affects an interest in property that has vested in a person before the intermarriage of the parents or the day of , 19 . (The date of the first enactment of a legitimation statute).

Voidable marriages.

3. Where before or after the coming into force of this section a decree of nullity is granted in respect of a voidable marriage a child who would have been the legitimate child of the parties to the marriage if it had been dissolved instead of being annulled continues to be legitimate notwithstanding the annulment.

Void marriages Special cases

4. Where, before or after the coming into force of this section, a person,

(*a*) in respect of whose spouse an order of presumption of death is made either generally, or inter alia, in relation to remarriage, or

(*b*) whose spouse was a member of the Canadian Forces in respect of whom official notification that he is dead or is presumed to be dead has been given under the laws of Canada,

enters into a marriage which would be valid if the spouse were in fact dead, then if the person to whom the order of presumption of death relates or in respect of whom the official notification was given was alive when the marriage was entered into, a child of the persons entering into the marriage is legitimate from birth for all purposes of the law of the province.

Void marriages —Generally

5. Subject to section 4, where, before or after the coming into force of this section, a person is born of parents who enter into a marriage that is void, the person is legitimate from birth for all the purposes of the law of the province if

(*a*) the marriage was registered or recorded in substantial compliance with the law of the place where it was entered into, and

(*b*) either of the parties reasonably believed that the marriage was valid.

Application.

6.—(1) Sections 3, 4 and 5 apply whether the child of the persons entering into the marriage was born before or after entry into the marriage, but do not apply where the child was born eleven months after the marriage has been annulled or declared to be void by a court or other competent authority under the appropriate governing law.

(2) This Act legitimates a child notwithstanding the death of the child before the inter-marriage of the parents.

Saving.

7. Nothing in sections 3, 4, 5 or 6 affects an interest in property that has vested in a person before the enactment of this Act (or the day of , 19) and, in the case of marriages after the birth of the child, before the inter-marriage of the parents.

APPENDIX R

(*See page 29*)

CONFLICT OF LAWS GOVERNING WILLS — REPORT OF THE UNITED KINGDOM PRIVATE INTERNATIONAL LAW COMMITTEE.

REPORT OF HORACE E. READ

for the Nova Scotia Commissioners.

The undersigned has been requested to comment upon the Report of The United Kingdom Parliamentary Private International Law Committee (Cmd. 491) which makes certain recommendations concerning the conflict of laws rules governing the formal validity of wills. This matter has been referred to the Conference by the Department of External Affairs of Canada.

The recommendations of the Parliamentary Committee are set out in Section 11 of the Report, clauses (a) and (b). Clause (a) reads:

> (a) Sections 1 and 2 of the Wills Act, 1861, should be replaced by legislation dealing with all wills, wherever made and whether disposing of land or other property. This legislation should apply to *all testators* alike, whether British subjects or not. A will should be held to be validly executed as regards form if it complies with the formal requirements of the internal law of any of the following:—
>
> (i) the place* where the will was made;
>
> (ii) the place* where the testator was domiciled at the time of the making of the will or of death;
>
> (iii) any country of which the testator was a national at the time of the making of the will or of death;
>
> (iv) in so far as a will disposes of land, the place* in which the land is situated.
>
> * (The word "place" is here used in the sense of a territory subject to one system of law.)

The recommendation in clause (b) is that the law of the domicile of origin should be eliminated as a permissible law to govern the formal validity of a will.

It will be observed that sub-clause (iv) of clause (a) applies the law of the place where the land is situated to a will of land, but this appears to be additional to the first three sub-clauses in so far as a will of land is concerned, because the Committee states in Section 4, clause (a) of its report that:

> The application of the *lex situs* to wills of land in England is the historical result of the common law concept of heirship, which required, as a matter of policy, that English law should govern all dispositions of English land. As a result of the property legislation of 1925, heirship has been abolished, except in the case of entailed interests and titles of honour. These are only of limited application today and thus the main historical reason for insistence on the application of English law in the case of wills of land in England has disappeared. Furthermore, as a consequence of that legislation and, particularly, of the Administration of Estates Act, 1925, the special rules about the devolution of English land on intestacy have lost almost all their historical importance, since the property of an intestate of all kinds is now made subject to a statutory trust for sale and is treated in the same way. To this extent the scission principle has been abandoned in England; but, even were the principle retained in English law as it still is in many Commonwealth countries, this would be no reason why the rules about the form of wills should not be modified in the manner proposed hereafter in paragraph 11 below.

The effect of this would be substantially to abolish the distinction between wills of movables and wills of land concerning formal validity.

In 1953 the Conference of Commissioners on Uniformity of Legislation in Canada completed a revision of Part II of the Uniform Wills Act concerning conflict of laws. This revised part has since been enacted in Ontario in 1954, and in Manitoba and New Brunswick in 1959. This revised Canadian Uniform Act anticipated the recommendations of the Parliamentary Committee in clause (a) excepting for paragraph (iii) and for the proposal to apply the rules concerning movables to land.

As the Committee indicates in its commentary, nationality is unsuitable as a connecting factor for validity of a will in a federal state such as Canada where property and civil rights are governed by the law of each province. Domicile in the province is the appropriate connecting factor. A suggestion by the Committee is that the law of the nationality might be available to citizens of the United Kingdom and Colonies or the federation in question if (a) the will is made outside the United Kingdom and Colonies or the federation in question, and (b) they are not at that time domiciled therein. This suggestion would hardly be suitable for Canadians. Suppose, for example, that a Canadian citizen makes a will while domiciled in France. He cannot make a will in "Canadian" form because there is no Wills Act of Canada, nor can parliament enact one. If his nationality is held to be British because he is a British subject, what is the "British" Wills Act, is it that of the United Kingdom?

Nationality has been held to be impractical within Canada

as a basis of jurisdiction in personam (see Gavin, Gibson & Co. Ltd. v. Gibson [1913] 3 KB 379, 388; and Dakota Lumber Co. v. Rinderknecht (1905) 6 Terr. L.R. 210). Nationality as a connecting factor for determining the formal validity of a will is equally unsuitable within Canada and with reference to Canadian citizens, for essentially similar reasons. Just as domicile in a province is the constitutionally correct basis for judicial jurisdiction in divorce so long as there is no federal divorce court, so it is that under Section 92 of the B.N.A. Act domicile in a province is and will remain the constitutionally correct connecting factor for determining the validity of wills. (See Attorney-General v. Cooke (1926) 2 D.L.R. 762 at 763-765.)

Under clause (b) of Section 11 of the Report the Committee states:

> We do not think that the law of the domicile of origin should continue to be an available choice, although wills already executed should, of course, be safeguarded by a transitional provision in any future legislation.

The Committee is, undoubtedly, correct in this respect for the reason stated by them. They state:

> If, as we recommended in our First Report (Cmd. 9068), the law of domicile in the United Kingdom is reformed so that the doctrine of the revival of the domicile of origin is abolished and no greater importance is attached to a person's domicile at birth than to any domicile he may thereafter acquire, it would seem illogical not to extend the testator's choice to include the law of any other former domicile as well, and even that of any former nationality. Since we propose that the choice of laws afforded to British testators by the Act of 1861 should be widened, it is not necessary to insist on the retention of this concept in our law, especially as it is ill understood outside common law countries and might well render the conclusion of any international agreement more difficult.

In the Domicile Bill which received third reading in the House of Lords on 24 July 1958, both the revival of domicile of origin rule and domicile of origin itself were abolished. If this Conference decides to recommend a code for Canada governing domicile, it is to be hoped that the lead of the United Kingdom in this respect will be followed. Professor J. G. Castel has recently commented:

> The domicile of origin differs from a domicile of choice mainly in that the courts have held that its character is more enduring and its hold is less easily shaken off.[1] Consequently the onus of disproving that domicile is heavier than disproving the domicile of choice.[2]
>
> This is to be regretted. Canada is a country of immigration and it would seem erroneous to entertain the view that the ties connecting a

person with his native country are particularly strong. Immigrants arriving in this country intend to sever these ties and yet they may not, for a certain time, have selected a particular place in Canada where they intend to stay *sine animo revertendi*. They may move from province to province in quest of a suitable place to live. Why force them to retain their domicile of origin during that period? Of course, this may be the reason why a Canadian domicile has been established for federal purposes although it is very limited in its effects. The emphasis on the domicile of origin does not appear in the Quebec Civil Code [3] and is not really great in practice in the other provinces. ((1959) 5 McGill L.J. at p. 181).

[1] *In re Murray Estate*, [1921] 3 W.W.R. 874; 31 Man R. 362. (K.B.)
[2] *Ibid.* and *McGuigan* v. *McGuigan*, [1954] O.R. 318; [1954] 3 D.L.R. 127, at p. 129 aff'd. [1955] O.W.N. 861; [1955] 1 D.L.R. 92.
[3] C.C. 80.

Section 35 of the Canadian Uniform Act of 1953 retains the domicile of origin of the testator as a connecting factor by which the validity of the form of a will relating to an interest in movables is determined. It is believed that this could well be eliminated without waiting for the enactment of a uniform code of the law of domicile.

In clause (c) of Section 11, the Committee states that:

> The new statute should also apply to the formal validity of the exercise by will of any power of appointment; but a power of appointment should in addition be validly exercised as to form if exercised in compliance with the internal law of the country by which the instrument conferring the power is itself governed. This amounts to a generalisation for the purpose of international law of what has hitherto been generally regarded as a rule of internal English law. Since powers of appointment and settlements of the English type are now in use throughout the common law world, it seems appropriate to extend its application.

It is believed that this objective has been accomplished in the Canadian Uniform Act. While the term "will" is used throughout Part II of the Act (conflict of laws), Section 2 of the revised Uniform Wills Act as adopted by the Conference in 1957 reads:

> 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.

The Committee states in clause (f) of Section 11 of its Report that in the case of the revocation of a will as the direct result of the testator's act, such as destruction or deletion, "the validity as to form of the purported revocation should be accepted if it complies with the requirements of any law which under our proposals could govern the formal validity of a will, had the testator chosen to make one at that moment (as opposed to any law which might govern the formal validity of the will which he

intended to revoke)." The Uniform Act does not expressly cover this situation. Section 16 provides that:

> A will or part of a will is revoked only by . . . (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.

It seems to be correct to say that "burning, tearing or otherwise destroying" is a form of revocation, and that Part II should expressly cover it. Revocation by a will or a writing declaring an intention to revoke is already covered.

It is believed that this Conference should consider giving effect to the recommendations of the Parliamentary Committee concerning:

(1) extending the connecting factors concerning an interest in movables to an interest in land;

(2) abolishing domicile of origin as a connecting factor; and

(3) including a rule expressly providing that the same connecting factors apply to revocation by every method authorized by Section 16 of the Uniform Act as apply to formal validity when a will is made.

It is observed that the Parliamentary Committee had the Uniform Wills Act, Part II, of 1953 before them, although there is no mention by them of its being the Uniform Act. As appendix B to its Report, the Committee includes the Ontario Wills Amendment Act, 1954, which is a verbatim adoption of the Uniform Act of 1953.

HORACE E. READ.

APPENDIX S

(See page 44)

CRIMINAL LAW SECTION

REPORT TO PLENARY SESSION

Submitted August 28, 1959.

Representatives of all the provinces except Prince Edward Island were in attendance at the meetings of the Criminal Law Section. In the absence of A. J. MacLeod, Q.C., the Section elected D. H. W. Henry, Q.C., Secretary.

The Commissioners in the Criminal Law Section were concerned with proposed amendments to the Criminal Code, and have made recommendations which the Secretary has been instructed to pass to the Minister of Justice.

The particular subjects discussed and the recommendations of the Criminal Law Section thereon will appear in the printed proceedings of the Conference.

The Chairman of the Criminal Law Section for the ensuing year will be R. S. Meldrum, Q.C.

The Secretary will be the representative of the Department of Justice, Ottawa, appointed to attend the meetings of the Criminal Law Section.

Respectfully submitted,

GILBERT D. KENNEDY,
Chairman
D. H. W. HENRY,
Secretary

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