1960

PROCEEDINGS

OF THE

FORTY-SECOND ANNUAL MEETING

OF THE

CONFERENCE OF COMMISSIONERS

ON

UNIFORMITY OF LEGISLATION IN CANADA

HELD AT

QUEBEC, QUEBEC

AUGUST 30TH TO SEPTEMBER 3RD, 1960

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

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President.....J. A. Y. MacDonald, Q.C., Halifax.

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

Ontario.....W. C. Alcombrack, Q.C., Toronto.

Prince Edward Island.....G. R. Foster, Q.C., Charlottetown.

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

Saskatchewan.....J. H. Janzen, Q.C., Regina.

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

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

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

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

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

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E. P. HARTT, 320 Bay St., Toronto.

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

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

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E. SOMERLED TRAINOR, Charlottetown.
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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. Louis J. Robicheaud.
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Attorney-General of Quebec: Hon. Georges-Emile Lapalme, 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
Horace E. Read, Q.C., Halifax	1957–1958
E. C. Leslie, Q.C., Regina	1958–1959
G. R. Fournier, Q.C., Quebec	1959–1960
J. A. Y. MacDonald, Q.C., Halifax	1960–

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.
1960. August 30–September 3, Quebec.

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, rep-

resentation 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	Cornea Transplant	1959	1960‡	..	..	——$	1960	1960
10	Corporation Securities Registration	1931	. . .	...	....	....	....	1933
11	Defamation	1944	1947	——$	1946	1952‡	....	1960$†
12	Devolution of Real Property	1927	1928	....	....	1934†	....	....
13	Evidence	1941	....	....	1960†	....	....	....
14								
15	Foreign Affidavits	1938	'52, '58*	1953	1952	1958‡	1954*	1952
16	Judicial Notice of Statutes and							
17	Proof of State Documents	1930	....	1932	1933	1931	....	....
18	Officers, Affidavits before	1953	1958	——$	1957	....	1954	....
19	Photographic Records	1944	1947	1945	1945	1946	1949	1945
20	*Russell* v *Russell*	1945	1947	1947	1946	....	....	1946
21	Fire Insurance Policy	1924	1926	1925$	1925	1931	1954‡	1930
22	Foreign Judgments	1933	....	....	....	1950‡	....	....
23	Frustrated Contracts	1948	1949	...	1949	1949	1956	....
24	Highway Traffic and Vehicles—							
25	Rules of the Road	1955	1958†	1957†	1960‡	. . .	....	....
26	Interpretation	1938	1958*	....	'39‡, '57*	...	1951‡	....
27								
28	Intestate Succession	1925	1928¶	1925	1927‡	1926	1951	....
29	Landlord and Tenant	1937	....	....	....	1938	....	....
30	Legitimation	1920	'28,'60*	'22,'60	1920	1920	——$	——$
31	Life Insurance	1923	1924	1923$	1924	1924	1931	1925
32	Limitation of Actions	1931	1935	....	'32,'46‡	....	....	....
33	Married Women's Property	1943	....	....	1945	1951$	....	....
34	Partnership	....	1899°	1894°	1897°	1921°	1892°	1911°
35	Partnerships Registration	1938	....	....	....	——$	. . .	....
36	Pension Trusts and Plans							
37	Perpetuities	1954	. . .	1957	1959	1955	1955	1959
38	Appointment of beneficiaries	1957	1958	1957	1959	....	1958	1960
39	Presumption of Death	1960	.	....	....	..	.	....
40	Proceedings Against the Crown	1950	1959‡	....	1951	1952†	....	1951$
41	Reciprocal Enforcement of Judgments	1924	'25, '58*	'25, '59*	1950	1925	....	....
42	Reciprocal Enforcement of Maintenance							
43	Orders	1946	'47, '58*	'46, '58*‡	1946	1951‡	1951‡	1949
44	Regulations	1943	1957‡	1958*	1945‡	....	...	....
45	Sale of Goods	....	1898°	1897°	1896°	1919°	1899°	1910°
46	Service of Process by Mail	1945	——$	1945	——$	....	....	....
47	Survivorship	1939	1948	'39, '58*‡	1942	1940	1951	1941
48	Testators Family Maintenance	1945	1947‡	....	1946	1959	...	——$
49	Trustee Investments	1957	....	1959	. . .	. . .	....	1957†
50	Vital Statistics	1949	1959‡	....	1951‡	.	....	1952‡
51	Warehousemen's Lien	1921	1922	1922	1923	1923	....	1951
52	Warehouse Receipts	1945	1949	1945‡	1946‡	1947	....	1951
53	Wills	1929	1960‡	1960‡	1936	1959‡	....	....
54	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								
3	....	1947	....	1929	....	1948‡	1954‡	Am. '31 & '32; Rev. '55; Am. '59
4	....	1933	....	....	....	1948¶	1956	Am '21, '25, '39 & '49; Rev. '50
5								
6	.	1934	....	....	....	1948‡	1954‡	Am. '27, '29, '30, '33, '34 & '42; Rev. '47 & '55; Am. '59
7								
8	...	1938*	....	1944*	....	1950*‡	1955‡	Rev. '35 & '53
9	——$	1960	...	...	....	.. .	.. .	....
10	1932	1949	....	1932	....	....	....	.....
11	....	1948	....	....	....	1949*‡	1954	Rev. '48; Am. '49
12	....	....	....	1928	....	1954	1954	.....
13	1960†	....	....	...	....	1948*‡	1955‡	Am. '42, '44 & '45; Rev. '45; Am. '51, '53 & '57
14								
15	'52, '54*	...	....	1947	1943	1948	1955	Am. '51; Rev. '53
16								
17	....	1939	....	....	....	1948	1955	Rev. '31
18	1954	....	....	...	....	....	1955	....
19	1945	1947	....	1945	1942$	1948	1955	....
20	1946	1946	....	1946	....	1948	1955	....
21	1924	1933	....	1925	....	...	....	Stat. Cond. 17 not adopted
22	....	...	....	1934	....	. ..	...	....
23	1949	1949	....	....	....	1956	1956	....
24								
25	. ..	.	.. .	....	....	....	...,	Rev. '58
26	.	1939	.. .	1943	....	1948*‡	1954*	Am. '39; Rev. '41; Am. '48; Rev. '53
27								
28	.	1941‡	....	1928	....	1949‡	1954‡	Am. '26, '50, '55; Rev. '58
29	...	1939	....	...	....	1949‡	1954‡	Recomm. withdrawn '54
30	1921	1920	——$	1920	....	1949‡	1954†	Rev. '59
31	1924	1933	....	1924	....	....	....	.....
32	...	1939‡	....	1932	....	1948†	1954*	Am. '32, '43 & '44
33	...	....	....	....	....	1952†	1954†	....
34	1920°	1920°	....	1898°	....	1948°	1954°	....
35	....	....	....	1941†	...	....	..	Am. '46
36								
37	1954	...	....	...	....	....	..	Am. '55
38	1954$	....	....	1960	....	....	...	....
39	..	..	....	. .	....	....	....	....
40	1952‡	.. .	..	. .	1952‡	...	. ..	....
41	1929	..	....	1924	....	1955	1956	Am. '25; Rev. '56, Am. '57; Rev. '58
42								
43	'48‡, '59*‡	1951‡	1952$	1946$	....	1951†	1955‡	Rev. '56; Rev. '58
44	19441	....	....	....	1950$	....	....	.....
45	1920°	1919°	....	1896°	....	1948°	1954°	.....
46	....		....	——$	....	....	....	.....
47	1940	1940	....	1942	....	....	....	Am. '49, '56 & '57; Rev. '60
48	....	. .	....	....	....	....	....	Am. '57
49	. .		.. .	. ..	....	....	....	....
50	1948$	1950‡	.. .	1950$	....	1952	1954‡	Am. '50 & '60
51	1924	1938	....	1922	....	1948	1954	....
52	1946‡	....	....	...	....	....	...	....
53	.	....	....	1931	....	1952	1954‡	Am. '53; Rev. '57
54	1954	....	....	....	....	. ..	.	... .

x As part of Commissioners for taking Affidavits Act.
† In part.
With slight modification
¶ Adopted and later repealed.

MINUTES OF THE OPENING PLENARY SESSION

(TUESDAY, AUGUST 30TH, 1960)

10 a.m.–11.20 a.m.

Opening

The forty-second annual meeting of the Conference opened in the Court House, at Quebec, at 10 a.m.

The President of the Conference, Mr. G. R. Fournier, Q.C., acted as chairman of the session.

Following the introduction of members, Mr. Fournier addressed the following remarks to the meeting:

"Nous sommes honorés par la présence du Procureur Général de la province de Québec, l'Honorable Georges-Emile Lapalme, et de son prédécesseur, l'Honorable Antoine Rivard, ancien président de la Conférence.

"Nous avons également l'honneur de compter parmi nos invités Me Charles-Edouard Cantin, Assistant Procureur Général, et le Bâtonnier de Québec, Me Louis-Philippe Pigeon.

"C'est la cinquième fois depuis sa fondation que la Conférence des Commissaires pour l'Uniformisation des Lois au Canada tient ses réunions dans la ville de Québec.

"May I extend to you, gentlemen, the heartiest welcome to Quebec City. I especially wish to tell the new members how proud we are to have them with us, moreover since their first participation in the Conference takes place in this old city where the rule of Law was first applied in Canada. It was then "la Coutume de Paris". Two hundred years later in September last, it was also here that the core of Canadians first heard of the English Laws.

"Il y a longtemps que nous avons cessé de lutter pour la préséance d'un système sur l'autre. Certes, jusqu'à un certain point, il s'est produit un phénomène naturel d'osmose entre nos deux cultures légales mais aujourd'hui ni l'un ni l'autre de nous tenterait d'imposer sa conception du Droit.

"Non seulement avons-nous appris à nous respecter réciproquement mais l'intérêt commun et les liens d'amitié ont fait que nous nous soyons unis pour bâtir l'un des plus puissants et plus riches pays du monde.

"L'Association du Barreau Canadien et la Conférence ont fait plus que nous ne pourrions jamais l'apprécier pour reserrer ces

liens. C'est à autour de ces tables que nous comprenons vraiment jusqu'a quel point nous sommes bien disposés à l'égard l'un de l'autre.

"For better justice, we are seeking better laws. In civil matters, our roads are somewhat different but lead to the same port.

"Mr. Attorney-General you are meeting this morning dedicated men gathering from all over the country in order to draft better laws which may be accepted by many Provinces if not all.

"Il arrive très souvent que le Département de la Justice et les Départements des Procureurs Généraux des diverses provinces requièrent la Conférence de rédiger des projets de loi qui serviront de base à leur législation.

"Les membres de la Conférence pour la province de Québec y sont délégués par le Conseil général de leur Barreau à qui ils font rapport des travaux mis à l'étude. Le Conseil général nomme alors un comité chargé d'étudier ce rapport et de lui faire ses recommandations. Plus tard, s'il le juge à propos, le Conseil vous recommandera à son tour, Monsieur le Procureur Général, l'adoption du projet de loi.

"C'est ainsi qu'à sa dernière réunion à Montréal, le Conseil du Barreau a recommandé aux autorités provinciales de sanctionner, non seulement dans son principe mais dans le procédure, une loi suggérée par la Conférence aux fins de permettre de transplanter la cornée de personnes décédées sur des personnes vivantes atteintes de cécité.

"A la page 90 des Procédures de la Conférence de 1958, vous y trouverez, Monsieur le Procureur Général, un projet de loi uniforme pour assurer l'exécution des jugements dans une autre province avec un minimum de formalités. A sa dernière réunion, le Conseil général du Barreau recommandait également aux autorités provinciales d'en arriver à une entente, avec les autres provinces, sur cette question.

"Je n'ai voulu citer que ces deux cas à titre d'exemple parce que ce sont les plus récents mais il y en a bien d'autres.

"Je sais, Monsieur le Procureur Général, que vous apporterez aux travaux de la Conférence une attention particulière.

"I am sure, gentlemen, that our work, as usual, will be fruitful.

"I now have the honour to request the Honourable Georges-Emile Lapalme to address this gathering."

At the conclusion of these remarks by the President, the Honourable Georges-Emile Lapalme, Q.C., Attorney General of

the Province of Quebec, Mr. Louis-Philippe Pigeon, Q.C., Bâtonnier of the Quebec Bar, Mr. Charles-Edouard Cantin, Q.C., Deputy Attorney General, Quebec, and Mr. Yves Leduc, Q.C., Assistant Deputy Attorney General, Montreal, in turn addressed the meeting briefly. In addition to extending a cordial welcome to Quebec City and to the Province they assured the Conference of the continued interest in the Province and among the members of the Bar in the activities of the Conference and expressed the hope that this year's meeting would be pleasant and fruitful.

Minutes of Last Meeting

The following resolution was adopted:

RESOLVED that the Minutes of the 1959 annual meeting as printed in the 1959 Proceedings be taken as read and adopted.

Presidential Address

The President then outlined the proposed work of the meeting, as set out in the Agenda (Appendix A, page 48), mentioned some of the arrangements that had been made for the entertainment of the members of the Conference and their wives, and continued with the following remarks:

"A few minutes ago I recalled to the Attorney General that the Bar of the Province of Quebec had recommended for adoption the Cornea Transplant Act which you will find at page 77 of the 1959 Proceedings. It has also recommended the Reciprocal Enforcement of Judgments Act and, last year, it had recommended for appropriate legislation the Uniform Rules of the Road.

"I wanted to stress these recommendations to the Attorney General and it was my way to tell him how proud I am of the achievements of the Conference.

"In his opening address in Victoria my illustrious predecessor, Mr. Leslie, suggested 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 must say that I entirely concur with those remarks, especially concerning the Civil Section. If you look at the Agenda, you will find 24 items; they all deserve our best attention but one must realize that it is impossible to study them thoroughly so as to bring them to the most satisfying conclusion.

"It seems to me that, at each Conference, we could choose one or two matters to which we could give more time and attention in order to bring them to a faster and better conclusion.

"During the course of the preliminary discussions on the other subject-matters, we could agree to choose, again, one or two reports to receive this special attention for the following year.

"A redraft of the Constitution of the Conference appears to have been considered at the 1944 Meeting and the Secretary informed me that he has been unable to find out if this draft was adopted or was even discussed at later meetings.

"May I be permitted to suggest that a Committee be appointed to study the Constitution and suggest the appropriate amendments if any are to be done. At least, we could find out if the 1944 draft was ever adopted.

"During the course of the year, your President was invited to attend the opening meeting of the National Conference of Commissioners on Uniform State Laws. This invitation stated that all expenses were paid but transportation. Although it was not possible for me to attend, it was essential politeness to reciprocate by extending a similar invitation to the President of the National Conference, which I did.

"Should he have given us the pleasure of accepting, I was ready to pay whatever it would have cost, but I sincerely think that the President of the Conference should be authorized to extend such invitation, each year, to the President of the American Conference, the expenses excepting those for transportation, to be paid by the Conference.

"In order to meet our obligations without deficit, I believe that we should request the Provinces to increase their annual contributions to $500.00. I do not know for how long the contribution of the Provinces has been $200.00. The budget is so limited that we cannot really do anything without facing a deficit.

"For your consideration also, may I take the liberty to suggest that the stationery be changed from year to year in the same pattern as is followed by the Canadian Bar and other offsprings of the Canadian Bar, such as the Conference of Governing Bodies, so that the names of the executive members of the Conference appear on the stationery.

"It would be necessary that a standing resolution be passed to empower the executive members to sign a Banking Resolution to empower the Treasurer to receive the moneys and to pay bills; also, to appoint another member of the executive to sign the cheques should the Treasurer become unable to fulfil his functions.

"Gentlemen, I wish that your stay in Quebec will be a merry

one for you and your wives without forgetting that our first duty is to work."

Treasurer's Report

The Treasurer, Mr. Carter, presented his report (Appendix B, page 50). Messrs. Soper and Cross 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 52).

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.

Publication of Proceedings

The following resolution was adopted:

RESOLVED that the Secretary prepare a report of the meeting in the usual style, have the report printed and send copies thereof to the members of the Conference and those others whose names appear on the mailing list of the Conference, and that he make arrangements to have the 1960 Proceedings printed as an addendum to the Year Book of the Canadian Bar Association.

Resolutions Committee

The following were named to constitute a Resolutions Committee: Messrs. Bowker (Chairman), Alcombrack and Hoyt.

Nominating Committee

The President named a nominating committee, consisting of Messrs. Leslie (Chairman), MacTavish, Rutherford, Driedger and Colas, to make recommendations respecting officers of the Conference for 1960-1961 and to report thereon at the closing plenary session.

Constitution

Following discussion on the suggestion for review and necessary amendment of the Constitution, it was resolved that the President appoint a committee of five to study the Constitution of the Conference and to make a report at the next meeting with

the draft of a new Constitution if the committee considered it advisable.

In accordance with this resolution, the Chairman designated Messrs. MacTavish (Chairman), Wilson, Leslie, Rutherford and Colas to be members of this committee.

Signing Officers

The following resolution respecting the signing of documents relating to banking was passed:

RESOLVED that the Treasurer from time to time be authorized to attend to the banking of the Conference, to sign cheques and other banking documents, and that, in the event of a vacancy in the office of Treasurer or of the incapacity of the Treasurer, the Secretary be authorized to perform these functions, and, in the event of a vacancy in the office of Secretary or of his incapacity, the Executive be empowered to appoint another person to act.

Next Meeting

Mr. E. C. Leslie, on behalf of the Saskatchewan Commissioners, extended an invitation to the Conference to meet at Regina in 1961, having in mind the circumstance that the meeting of the Canadian Bar Association would likely be held in Winnipeg. After some discussion, the following resolution was adopted:

RESOLVED that the next meeting of the Conference be held at Regina from Monday to Friday, inclusive, of the week preceding the 1961 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, J. J. SAUCIER and W. E. WOOD.

British Columbia:

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

Canada:

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

Manitoba:

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

New Brunswick:

Messrs. D. J. FRIEL, M. M. HOYT and J. F. H. TEED.

Newfoundland:

Messrs. P. L. SOPER and H. G. PUDDESTER.

Nova Scotia:

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

Ontario:

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

Quebec:

Messrs. 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 30TH, 1960)

First Session

11.30 a.m.–12 noon.

The first meeting of the Section was convened immediately after the close of the opening plenary session. The President of the Conference, Mr. Fournier, made it known that he had requested Mr. Teed to act with him as joint chairman and it was understood that either Mr. Fournier or Mr. Teed would be presiding at meetings of the Section.

Hours of Sittings

It was agreed that this Section of the Conference should sit daily from 9.30 a.m. to 12 noon and from 2 p.m. to 5 p.m.

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 54). At the beginning of the submission by Mr. Alcombrack, it was agreed that the report should not be discussed in detail during its presentation but should be referred to a committee for study and report at a later meeting.

Survivorship

The matter of a revision of the Uniform Act having been referred to the Ontario Commissioners at the 1960 meeting and the revised draft Act distributed by them having been disapproved by two jurisdictions before November 30, 1960, it was agreed that the subject be now referred to a special committee, made up of Commissioners from Alberta, British Columbia, Manitoba, and Ontario, for examination of the draft so distributed by the Ontario Commissioners and for a report at a later session.

Federal-Provincial Committee on Uniformity of Company Law

Mr. Rutherford reported orally that progress is being made by the Committee of the Conference that is working in co-operation with the principal Committee and it is expected that there will be another meeting later in the year. It was agreed that the Conference should continue to co-operate with the Federal-Provincial Committee in preparing drafts of uniform Acts.

Printing of Uniform Acts

Mr. Cross reported that he had received from Mr. Driedger the consolidation of uniform Acts recommended by the Conference, had edited them, and would be in a position to distribute mimeographed copies among the members.

Second Session

2 p.m.–5 p.m.

Printing of Uniform Acts—(continued)

Following some discussion on Mr. Cross' report, the following resolution was adopted:

RESOLVED that the Uniform Law Section of the Conference recommend to the Plenary Session of the Conference when it resumes

(a) that the Conference instruct the Secretary:

(i) to obtain estimates of the cost of printing a consolidation of uniform Acts;

(ii) to write to the appropriate officers of the provinces and the Dominion and to attempt to learn whether or not the provincial and Federal governments are prepared to contribute to the cost of printing a consolidation in the event that the cost is likely to exceed the available funds of the Conference; and

(iii) to report at next year's meeting on the result of his inquiries, and,

(b) if it appears that the funds of the Conference are adequate to defray the cost of printing, or that those funds with additional grants from the governments of the provinces and of the Dominion are sufficient for that purpose, the Executive be authorized to arrange for a printing of the model Acts as consolidated by Mr. Driedger and edited by Mr. Cross.

Legislative Assembly Act

Mr. Wood presented the report of the Alberta Commissioners (Appendix E, page 59) and it was agreed that the report should be received.

Expropriation

On behalf of the Ontario Commissioners, Mr. Alcombrack presented a report (Appendix F, page 60) and on behalf of the Alberta

Commissioners Mr. Wood presented a report (Appendix G, page 61) on this subject.

Following discussion of these reports, it was resolved that the matter of a uniform Expropriation Act be no longer continued on the agenda.

Evidence, Uniform Rules of

Mr. Soper reported orally that the Newfoundland Commissioners had been continuing their study on this subject but were unable to present a formal report at this time. They expected, however, that they would be able to make a report at the next meeting. It was then agreed that the subject remain on the agenda and that the Newfoundland Commissioners be requested to continue their study and to make a report at next year's meeting.

The Secretary then read a letter from Mr. J. A. Tuck, Q.C., General Counsel, The Canadian Life Insurance Officers Association, Toronto, suggesting that the Conference review and revise Section 62, subsection (1), of the Uniform Evidence Act, dealing with certificates of presumption of death of members of the armed forces. After consideration of Mr. Tuck's submission, it was resolved that the Secretary be instructed to write Mr. Tuck, advising him that the Conference does not consider it advisable to take the action suggested by him.

Mechanics' Lien

In accordance with the resolution passed at the 1959 meeting (1959 Proceedings, page 23), Mr. Cross, on behalf of the British Columbia Commissioners, submitted a report on this subject (Appendix H, page 62) and Mr. Janzen, on behalf of the Saskatchewan Commissioners, submitted a report (Appendix I, page 64).

After discussion it was resolved that the Conference adopt the recommendation of the Saskatchewan Commissioners that the subject be not continued on the agenda.

Highway Traffic and Vehicles (Rules of the Road)

Mr. Hoyt reported orally on correspondence that he had conducted with officials of the Dominion Government and others respecting the possible conflict between the provisions of the Uniform Rules of the Road, as recommended by the Conference, and provisions of the Explosives Act of Canada and regulations made under it. It was agreed after discussion that no action was required by the Conference on the subject.

Bills of Sale and Conditional Sales

This subject having been included in the agenda, the Secretary reported that the reason for so including it was to bring to the attention of the Conference and to explain a slight verbal difference between the draft Act distributed by the Alberta Commissioners following the 1959 Proceedings and the draft that was printed in the 1959 Proceedings. After distribution by the Alberta Commissioners of the draft Act, Mr. Ryan, on their behalf, suggested some slight drafting changes, which the Alberta and Saskatchewan Commissioners felt would improve the form of the Act. As no change in substance appeared to result from these changes, they were made in the copy of the Act that was printed in the 1959 Proceedings at page 105.

Vital Statistics

Mr. Rutherford submitted the report of the Manitoba Commissioners on this subject that had been distributed among members of the Conference. He suggested some changes in the redrafting of Section 21 of the Uniform Act to permit notations of changes of name that had occurred before the initial passing of the Uniform Act. After discussion the following resolution was adopted:

RESOLVED that the draft of amendments to the Uniform Vital Statistics Act recommended by the Manitoba Commissioners be referred back to them for incorporation in it of 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, 1960, the draft 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, 1960. The draft amendments as adopted and recommended for enactment are set out in Appendix J, page 65).

Innkeepers

On behalf of the Nova Scotia Commissioners, Mr. Muggah reported orally that they had not been able to prepare a revision of the draft Act on this subject but had continued to work on it and suggested that they would be able to make a formal report

at the next meeting. It was agreed that the subject should be placed on the agenda for consideration at the 1961 meeting.

Amendments to Uniform Acts, 1959

In accordance with the resolution passed at the 1959 meeting (1959 Proceedings, page 20) Mr. Bowker submitted the report of the Alberta Commissioners (Appendix K, page 67). It was agreed that consideration of this report be deferred to a later date.

Fatal Accidents Act

Mr. Teed submitted the report of the New Brunswick Commissioners on this subject. This report, with the suggested model Act, but omitting the legislation of other jurisdictions, appears as Appendix L, page 77. The report was received and consideration of it was deferred.

SECOND DAY

(WEDNESDAY, AUGUST 31ST, 1960)

Third Session

9.30 a.m.–12 noon.

Fatal Accidents Act—(continued)

Before detailed consideration of the report of the New Brunswick Commissioners was commenced, it was agreed that the subject should be referred to the Manitoba Commissioners for a report at the 1961 meeting. The report of the draft Act was then examined clause by clause.

Fourth Session

2 p.m.–5 p.m.

Wills Act (Conflict of Laws)

Dean Read having joined the meeting now submitted his report (Appendix M, page 90). Following discussion it was resolved that the report be adopted.

Foreign Judgments

Pursuant to an undertaking given by him at the 1959 meeting (1959 Proceedings, page 30) Dean Read submitted a report on this subject (Appendix N, page 91). The following resolution was then adopted:

RESOLVED that the Nova Scotia Commissioners be asked to undertake a study of a revision of the Uniform Foreign Judgments Act of 1933 and in doing so to co-operate with the National Conference on Uniform State Laws of the United States and to examine any draft Act prepared by that body and by the International Law Association and to submit a report at the next meeting.

Foreign Torts

Dean Read reported orally that in accordance with the resolution passed at the 1959 meeting (1959 Proceedings, page 23) he had continued his examination of this subject. He reviewed briefly the activities and studies that were being carried on elsewhere, particularly in the United States, and suggested that the Conference await the results of the study of the American Law Institute before taking further action. It was agreed that the subject be referred to a special committee, consisting of Dean Read and any others whom he associates with him, and that the Committee be requested to submit a report at the next meeting of the Conference.

Judicial Decisions affecting Uniform Acts

Dean Read presented his annual report on Judicial Decisions affecting Uniform Acts (Appendix O, page 94). After consideration and discussion, it was resolved that the report be received and that the Conference express its thanks to Dean Read for his work in this area.

In view of the decision in the case of *In Re Benton's Will*, (1959) 29 W.W.R. 657, some discussion arose as to the desirability of restoring the Uniform Interpretation Section to all uniform Acts recommended by the Conference which it had been decided should be omitted (1959 Proceedings, page 27). It was ultimately agreed that the position taken in 1959 should not be reversed.

Domicile

In accordance with the resolution passed at the 1959 meeting (1959 Proceedings, page 24), Mr. Cross submitted the report of the British Columbia Commissioners (Appendix P, page 104) and consideration of the report was commenced.

THIRD DAY

(THURSDAY, SEPTEMBER 1ST, 1960)

Fifth Session

9.30 a.m.–12 noon.

Fatal Accidents Act—(continued)

Detailed consideration of the report and draft Act on this subject was resumed and occupied the whole session.

Sixth Session

2 p.m.–5.15 p.m.

Fatal Accidents Act—(concluded)

Upon conclusion of the discussions on this subject, the following resolution was adopted:

RESOLVED that the Fatal Accidents Act be referred to the Manitoba Commissioners for study, for redrafting in the light of the discussions and decisions at this meeting, and for a report at next year's meeting with a revised draft Act.

Domicile—(concluded)

The consideration of this report was concluded and the following resolution adopted:

RESOLVED that the British Columbia Commissioners be requested to redraft the proposed model Act, that the redraft be published in the 1960 Proceedings, and that the subject be reconsidered at next year's meeting.

NOTE:—The redraft of the Act, prepared by the British Columbia Commissioners, is printed as Appendix Q, page 108).

Survivorship—(concluded)

Mr. L. R. MacTavish reported for the special committee that had been appointed at the first session to study this subject, whereupon the following resolution was adopted:

RESOLVED that the draft Act respecting Survivorship be referred 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, 1960, 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, 1960. The draft Act as adopted and recommended for enactment is set out in Appendix R, page 109.

Presumption of Death

In accordance with the resolution of the 1959 meeting (1959 Proceedings, page 26), Mr. Cross submitted the report of the British Columbia Commissioners (Appendix S, page 111). The report having been considered and discussed the following resolution was adopted:

RESOLVED that the draft Act as set out in the report of the British Columbia Commissioners be referred back to them 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, 1960, 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, 1960. The draft Act as adopted and recommended for enactment is set out in Appendix T, page 115.

Variation of Trusts

Mr. Brissenden, pursuant to the understanding reached at the 1959 meeting (1959 Proceedings, page 29), submitted the report of the British Columbia Commissioners on this subject (Appendix U, page 116). After consideration of the report and discussion, the following resolution was adopted:

RESOLVED that the matter of a draft Act relating to Variation of Trusts be referred back to the British Columbia Commissioners for further study and report at next year's meeting with a draft Act if they consider it advisable.

FOURTH DAY

(FRIDAY, SEPTEMBER 2ND, 1960)

Seventh Session

9.30 a.m.–12 noon.

Highway Traffic and Vehicles (Responsibility for Accidents)

After an oral report by the Nova Scotia Commissioners it was agreed that this subject be deferred until next year and that a report be submitted then by the Nova Scotia Commissioners.

Reciprocal Enforcement of Maintenance Orders

Mr. Teed reported orally that the New Brunswick Commissioners were continuing their study of suggestions for amendment to this Act to which reference was made at page 29 of the 1959 Proceedings. It was agreed that the New Brunswick Commissioners should carry on with their study with a view to submitting a report at the 1961 meeting of the Conference.

Bulk Sales

Dean Bowker submitted the report of the Alberta Commissioners on this subject (Appendix V, page 120), and consideration of the report was commenced.

Eighth Session

2 p.m.–4 p.m.

Bulk Sales—(concluded)

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

RESOLVED that the draft Act as set out in the report of the Alberta Commissioners be referred back to them 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, 1960, it be recommended for enactment in that form.

NOTE:—A redraft of the Act not having been distributed before November 30, 1960, it is not included in the Proceedings.

FIFTH DAY

(SATURDAY, SEPTEMBER 3RD, 1960)

Ninth Session

9 a.m.–10.20 a.m.

Amendments to Uniform Acts, 1959—(concluded)

Consideration of the report of the Alberta Commissioners was continued. After some discussion the following resolutions were adopted:

RESOLVED that the Alberta Commissioners be requested to make a study of the matter of a Uniform Survival of Actions Act and submit a report at the 1961 meeting with a draft Act if they considered it advisable.

RESOLVED that there be referred to the Saskatchewan Commissioners for study and report at the next meeting the matter of amendment to the Devolution of Estates Act in the light of the references to that Act contained in the report of the Alberta Commissioners.

Wills

The amendments made in British Columbia to the Uniform Wills Act, referred to in Mr. Alcombrack's report of Amendments to Uniform Acts, were next considered and after discussion it was agreed that the Nova Scotia Commissioners should study the subject and make a report at the next meeting.

Change of Name

It was suggested by the British Columbia Commissioners that the Conference consider the preparation of a uniform Act on this subject and the following resolution was adopted:

RESOLVED that the British Columbia Commissioners be requested to make an examination of the desirability of the Conference undertaking the preparation of a uniform Act and that they report at the next meeting of the Conference with a draft Act if they considered it advisable.

Treaties and Conventions—Provincial Implementation

Mr. Colas inquired as to whether or not there was a uniform method whereby the provinces could give effect to matters agreed upon by the Government of Canada in treaties and conventions relating to subjects falling within provincial legislative com-

petence. It was agreed, after some discussion, that Mr. Colas be requested to examine the matter and make a report at the next meeting of the Conference.

Membership of Conference

The president, Mr. Fournier, referred to correspondence that he had had during the past year on suggestions for enlarging the membership of the Conference to include, particularly, representatives of faculties of law schools in addition to Commissioners appointed by governments. He felt that some consideration should be given to this suggestion which, he indicated, might require an amendment to the Constitution of the Conference. Considerable discussion ensued and, ultimately, it was suggested and agreed that the matter was one that should properly be considered by the special committee appointed to consider and to report on a revision of the Constitution.

MINUTES OF THE CRIMINAL LAW SECTION

The following members attended:

GILBERT D. KENNEDY, S.J.D., Deputy 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, and

PATRICK HARTT, of Toronto, 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;

G. R. FOSTER, Q.C., of Charlottetown, representing Prince Edward Island;

Me YVES LEDUC, C.R., Assistant Deputy Attorney General (Montreal), representing Quebec;

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

J. C. MARTIN, Q.C., of that Department, and

T. D. MACDONALD, Q.C., of that Department, representing the Department of Justice of Canada;

Me ANTOINE RIVARD, C.R., of Quebec City, attended at the invitation of the Attorney General of Quebec;

Mr. E. A. DRIEDGER, Q.C., Deputy Attorney General of Canada, attended the Session on criminal sexual psychopaths.

Chairman—R. S. MELDRUM, Q.C.

Secretary—D. H. W. HENRY, Q.C.

The Section confirmed the appointment as Secretary ad hoc of D. H. W. Henry, Q.C.

The Criminal Law Section was presented with an agenda con-

sisting of some forty working papers that had been prepared by Mr. J. C. Martin, Q.C., most of which were considered and recommendations made. Notwithstanding an appropriate adjustment in the working hours of the Section, it was impossible to complete all of the working papers on the agenda and those matters set out in paragraph 40 hereunder were accordingly deferred until the next meeting. The matters discussed and their disposition are as follows:

1. *Forcible Entry*

The Commissioners recommend that section 73 of the Criminal Code, which defines the offence of forcible entry, be amended to include therein any case where property is entered for the purpose of taking possession of real or personal property.

2. *Trespassing at Night*

The Commissioners considered a proposal that section 162 of the Criminal Code, which prohibits trespassing at night near a dwelling house, be extended to include motels and hotels. The Commissioners recommend that no action be taken as hotels and motels appear to fall within the present provision.

3. *Test for Intoxication*

The Commissioners considered the following proposals concerning tests for intoxication relating to offences under sections 222 and 223 of the Criminal Code:

(*a*) that chemical tests to measure the alcoholic content of the blood be admissible in evidence; that a test which shows the driver was operating a vehicle while under the influence of alcohol be considered prima facie evidence of either a condition of impairment or intoxication; and that such test showing a concentration of over .05% be considered "impairment" and over .1% be considered "intoxication";

(*b*) that section 224(4) be amended by deleting therefrom the prohibition against disclosure in criminal proceedings of the fact that a sample of bodily substance was not taken;

(*c*) that a test be made compulsory for a driver accused of operating a vehicle while under the influence of alcohol.

The Commissioners had considered this general question in 1955, 1957 and 1958 and were then of the view that the time had not yet arrived for the enactment of a standard test for intoxication.

Their views having remained unchanged, the Commissioners recommend no action.

4. *Driving While Disqualified*

The Commissioners considered a proposal that section 225(3) of the Criminal Code be amended to provide that the offence of driving while disqualified be subject to prosecution upon indictment as well as upon summary conviction, and that where the accused is convicted upon indictment, the penalty be two years imprisonment. The Commissioners reaffirmed their recommendation made in 1958 that section 225(3) be amended to make this offence punishable on indictment as well as on summary conviction.

5. *Recording Addresses of Counsel*

The Commissioners recommend that section 588(2) of the Criminal Code, which requires a transcript of the addresses of counsel to be furnished to the court of appeal, be amended to require such transcript to be furnished only where the trial was before a jury; and that a corresponding amendment be made to section 555.

6. *Summary Conviction Appeals*

(a) The Commissioners recommend that section 721(2) of the Criminal Code, which provides for determination of the place of hearing of a summary conviction appeal in Alberta and Saskatchewan, be amended to include British Columbia, and that section 721(1) be repealed.

(b) Consideration was given to a proposal to amend section 723 of the Criminal Code, which provides for the setting down by the court or a judge of a summary conviction appeal, to remove the present requirement that the setting down of the appeal be considered judicially. The Commissioners recommend no action.

7. *Juvenile Delinquents Act*

(a) The Commissioners recommend that the provisions of section 33 of the Juvenile Delinquents Act, which defines the liability of adults and parents who contribute to juvenile delinquency, be made applicable throughout Canada without proclamation; this to be accomplished by amending section 41 of the Act.

(b) The Commissioners recommend that there be referred to the Minister of Justice in connection with the general revision of

the Juvenile Delinquents Act that the Commissioners have previously recommended, the question whether section 9 of the Juvenile Delinquents Act should be repealed, which at present permits a juvenile over 14 years of age to be proceeded against in the ordinary courts.

8. *Identification of Criminals Act*

The Commissioners considered several proposals concerning the Identification of Criminals Act and recommend

(*a*) that authority be provided, by an amendment to the Act or by Order in Council, for the taking of palm prints and foot prints;

(*b*) that no action be taken with respect to a proposal for the fingerprinting of prostitutes;

(*c*) that no action be taken with respect to a proposal that fingerprinting be authorized for all offences (i.e., including summary conviction offences);

(*d*) that no action be taken with respect to a proposal that fingerprinting be authorized only after conviction of an offence.

9. *Securities Frauds—Jury Trials*

The Commissioners considered a proposal to amend the Criminal Code to provide that prosecutions for securities frauds should proceed before a single judge instead of before a jury. The Commissioners recommend no action.

10. *Notice of Previous Convictions*

Consideration was given to the question whether a further notice of previous conviction should be given under section 572 or 712 of the Criminal Code in case of an appeal, and whether any amendment is required. The Commissioners recommend no action.

11. *Canada Evidence Act*

The Commissioners recommend that section 4(1) of the Canada Evidence Act be amended to provide that the spouse of an accused person is a competent but not compellable witness for the prosecution or defence.

12. *Obscenity—in rem Proceedings*

Consideration was given to the following suggestion that section 150A be amended to provide

(*a*) that a warrant under subsection (1) be in general terms to enable publications to be seized wherever found;

(*b*) that the judge be required to issue a summons to each of the occupiers of premises where publications have been seized;

(*c*) that "court" should include the municipal court of the City of Montreal.

The Commissioners recommend no action.

13. *Trial de novo—Witnesses*

The Commissioners recommend that the Criminal Code be amended to provide for procuring the attendance of witnesses at a trial de novo.

14. *Notice of Appeal*

(a) Consideration was given to a proposal to amend the Criminal Code to provide that, for purposes of service of notice of appeal, Saturday be a non-juridical day. The Commissioners recommend no action.

(b) The Commissioners recommend that section 734 of the Criminal Code be amended to allow fifteen clear days for filing notice of appeal by way of stated case.

15. *Forged Cheque or Security (Section 312, Criminal Code)*

Consideration was given to a proposal to amend section 312 of the Criminal Code (which makes it an offence to have in possession certain materials for forgery without lawful excuse, the proof of which lies on the accused) to extend it to having in possession any forged cheque or security. The Commissioners recommend no action.

16. *Kickbacks to Employers*

Consideration was given to a complaint that an employer had forced Italian workers to "kick back" a sum weekly in return for continued employment. The Commissioners consider that, until the courts decide otherwise, the case should be regarded as adequately covered by section 291 of the Criminal Code (extortion) and recommend no action.

17. *Bail on Committal for Trial*

In view of doubts expressed as to the power of a magistrate to grant bail after committing an accused for trial, the Commissioners recommend that section 463(1)(a) of the Criminal Code

be amended to make it clear that he may do so, this to be accomplished by deleting the words "as defined by section 466".

18. *Bench Warrant*

Consideration was given to a proposal that section 507 or Form 15 of the Criminal Code be amended to require that a bench warrant be signed by the judge. The Commissioners consider that the present arrangement is satisfactory and recommend no action.

19. *Sentence—Time Awaiting Appeal*

The Commissioners recommend that section 624 of the Criminal Code be amended to provide that the court of appeal may direct that all or any part of the time during which the convicted person is confined pending determination of an appeal shall not count as part of the term of imprisonment under the sentence.

20. *Minimum Penalties*

The Commissioners, after considering a resolution of the Canadian Bar Association that the Criminal Code be amended by deleting all provisions therein prescribing a minimum penalty for a first offence, recommend that the minimum penalties in sections 223 (impaired driving), 298 (theft from mail), and 661 (criminal sexual psychopaths) be repealed.

21. *Terms of Recognizance (Section 637, Criminal Code)*

The Commissioners reaffirmed their earlier recommendation 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.

22. *Prerogative Writs*

The Commissioners recommend

(a) that section 681 of the Criminal Code, which defines the powers of the court in proceedings under the prerogative writs, be amended to make it applicable to summary conviction offences and to proceedings instituted by the Crown as well as by the accused;

(b) that section 683 of the Criminal Code be amended to empower the court, on certiorari, to review unlawful sentences as well as sentences in excess of the maximum.

23. *Instructions to Jury*

Consideration was given to a proposal that before every trial

under Part XVII the trial judge should explain to the jury the respective functions of judge and jury, the presumption of innocence, the doctrine of reasonable doubt, the difference between and rules relating to direct and circumstantial evidence, the weighing of evidence and the applicable statute law. The Commissioners agreed in principle but recommend no amendment to the Criminal Code in this respect.

24. *Death of Juror*

Consideration was given to a proposal to amend section 553(2) of the Criminal Code to provide that where a juror dies or is discharged the consent of the prosecutor and accused is not necessary for the jury to continue. The Commissioners recommend no action.

25. *Juvenile Delinquents—Transfer to Adult Court*

The Commissioners reaffirmed their recommendation of 1952 that the Juvenile Delinquents Act be amended to allow a transfer to be made in summary conviction matters from the juvenile court to the adult court in the case of offenders between the ages of 16 and 18 years inclusive.

26. *Bail*

Consideration was given to two submissions concerning bail:

(a) A proposal was made that there should be a requirement that property mortgaged as security for the attendance of the accused be free of encumbrances. After reviewing the practice in the various provinces, the Commissioners recommend that this be accomplished by rules of court under section 424 of the Criminal Code.

(b) A proposal was made that bondsmen should guarantee not only the attendance but also good behaviour of the accused. The Commissioners consider this already provided for in Form 28, paragraph (f), of the Criminal Code.

27. *Costs*

Consideration was given to a proposal that where the Attorney General does not see fit to intervene in proceedings upon indictment under Part XVI, the proceedings be conducted at the cost of the complainant. The Commissioners recommend no action.

28. *Dangerous Driving*

A submission to the effect that the offence of dangerous driving

be restored was not further dealt with as the matter was fully considered and a recommendation made at the 1959 meeting.

29. *Theft of Bicycles*

Consideration was given to a proposal that it be made a criminal offence to deface the serial number on a bicycle. The Commissioners recommend no action.

30. *Enforcing Forfeiture of Bail*

The Commissioners considered the question whether the procedure under sections 677 to 679 of the Criminal Code, which contemplates seizure under a writ of *fieri facias* requires any amendment in the case of a province where this writ is not available in civil cases. The Commissioners find that no problem exists and make no recommendation.

31. *Compensation (Sections 628 and 629, Criminal Code)*

Preliminary consideration was given to a proposal that an order of compensation, in case of default, be enforced by imprisonment of the defaulter, and that the order be also enforceable in an appropriate court where the debtor resides, in case he changes his residence before he has complied. In view of legislation pending in the United Kingdom, the Commissioners deferred final consideration of this matter until the next meeting to enable the United Kingdom legislation to be studied.

32. *Expert Witnesses*

The Commissioners recommend that section 7 of the Canada Evidence Act, which limits a party's expert witnesses to five unless leave of the court is obtained before any experts are examined, be amended to permit such leave to be applied for and given at any time.

33. *Murder*

Consideration was given to a suggestion that section 499 of the Criminal Code, which provides that no other charge may be included in an indictment for murder, be amended to permit the inclusion of a charge of causing death by criminal negligence (section 192). The Commissioners recommend no action.

34. *Public Mischief*

Preliminary consideration was given to a proposal that there be included in the offence of public mischief (section 120) certain false acts such as faked suicides. The Commissioners agree in

principle but require further investigation and an appropriate report at the next meeting, setting out in greater detail the proposals made, together with the pros and cons.

35. *Appeals from Magistrates*

Consideration was given to a proposal that, in prosecutions under Part XVI before a magistrate, provision be made for a trial de novo as in summary conviction proceedings. The Commissioners recommend no action.

36. *Bill of Rights*

Consideration was given to the effect of the Canadian Bill of Rights on the enforcement of the criminal law. The Commissioners recommend that a study be made by the Minister of Justice of the Criminal Code and the Juvenile Delinquents Act with a view to reconciling apparent conflicts in those statutes with the Canadian Bill of Rights, of which examples are sections 427 and 428 of the Criminal Code and section 12 of the Juvenile Delinquents Act, which are not exhaustive.

37. *Firearms*

The Commissioners had referred to them the preliminary report of an interdepartmental committee on a proposed revision of sections 82 to 98 of the Criminal Code relating to firearms. The Commissioners made a number of detailed comments which will be referred back to the Committee for its guidance, with the request that a draft revision be prepared by the Committee and submitted to the Commissioners at the next meeting. The Commissioners recommend that in the meantime, the following amendments be made immediately:

(a) that an offence under section 84 (carrying a concealed weapon) be made punishable on indictment or summary conviction;

(b) that section 98 (definition of "firearm") be extended to include starting pistols, air pistols and tranquilizer guns and that the expression "restricted weapons" be substituted for firearms; and

(c) that the age mentioned in section 88 be raised to 18.

38. *Criminal Sexual Psychopaths*

The Commissioners considered the Report of the Royal Commission on the Criminal Law relating to Criminal Sexual Psychopaths and made a number of comments in detail thereon, which will be referred to the Minister of Justice for his guidance.

39. *Lotteries*

The Commissioners considered a draft revision of the lotteries provisions prepared in the Department of Justice and made a number of comments in detail thereon for the guidance of the Department of Justice.

40. The Commissioners were unable to consider the following items on the agenda, due to lack of time, and deferred them until the next meeting:

Item	Working Paper No.
Probation without conviction.....	16
Suspended sentence and probation....	25 and 23
Offences by Diplomatic Staff abroad....	34
Corrupt practices—sections 100 to 106..	36
False advertisements...	39
False prospectus...	40

Representation on Section

The Section was gratified to receive for the first time a representative of the Attorney General of Quebec, who submitted a working paper to the Section relating to several matters.

Mr. Patrick Hartt attended pursuant to the recommendation of the Section at the 1959 meeting that the appointment of defence counsel by the provinces as members of the Section would be welcome. The appointment in this case was made by Ontario.

Officers of Section

The Criminal Law Section appointed G. R. Foster, Q.C., Chairman and T. D. MacDonald, Q.C., Secretary of the Section for 1960-61.

MINUTES OF THE CLOSING PLENARY SESSION

(SATURDAY, SEPTEMBER 3RD, 1960)

10.30 a.m.–11.30 a.m.

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

Report of Criminal Law Section (Appendix W, page 141)

Mr. Meldrum, Chairman of the Criminal Law Section, reported orally on the work of the Section. He stated that the governments of all provinces and of the Dominion were represented and that the Section had considered some forty matters and had made various recommendations which will appear more fully in the minutes of that Section. The Section had chosen as Chairman for the year 1960-61 Mr. G. R. Foster, Q.C., of Charlottetown, and had named as Secretary the representative of the Department of Justice.

Appreciations

Dean Bowker, Chairman of the Resolutions Committee, moved the following resolutions, which were duly seconded and unanimously adopted:

RESOLVED that the Conference express its sincere appreciation to:

(*a*) The Honourable Georges-Emile Lapalme, Attorney General of Quebec, and Madame Lapalme, for the reception and dinner at the Chateau Frontenac on Tuesday evening;

(*b*) Rene Fournier, President of the Conference, and Madame Fournier, for the reception at their home on Wednesday evening;

(*c*) Louis-Philippe Pigeon, Bâtonnier of the Quebec Bar, and Madame Pigeon, for the reception and dinner at the Quebec Garrison Club on Thursday evening;

(*d*) Monsignor Vachon, Rector of Laval University, for the interesting tour of the new campus and the reception at the old campus on Friday afternoon, and to Monsignor Garneau, Moderator of Laval University, for his informed and interesting commentary on the tour of the new campus;

(*e*) The Bar of the Province of Quebec and its delegates to the Conference for the reception and buffet luncheon at the Chateau Frontenac at noon on Saturday;

(*f*) Madame Colas for the coffee party given by her for wives of members of the Conference at the Chateau Frontenac on Tuesday;

(*g*) Mrs. Barlow for the coffee party given by her for wives of members of the Conference at the Chateau Frontenac on Wednesday;

(*h*) The Attorney General for the Province of Quebec for the use of the Court House;

(*i*) The Bar of Quebec City for the use of its library;

(*j*) The newspapers Le Soleil, L'Action Catholique, L'Evenement, La Presse, and the Chronicle-Telegraph, for their interest in and good coverage of the work of the Conference;

(*k*) Deputy Attorney General, Charles E. Cantin, and to the Assistant Deputy Attorney General, Yves Leduc, for their kind co-operation in the work of the Conference;

(*l*) The Quebec Commissioners for their excellent arrangements for the meeting and their gracious hospitality throughout; and for the fine program of sight-seeing for the wives to Ste. Anne de Beaupré on Tuesday, the City of Quebec on Wednesday, and the Isle of Orleans on Thursday; and generally for the fine contribution that they have made this year to the work of the Conference.

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. Soper reported that he and Mr. Cross 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. Leslie, Chairman of the Nominating Committee named at the opening plenary session, submitted the following nominations for the officers of the Conference for the year 1960-1961:

Honorary President.....G. R. FOURNIER, Q.C., Quebec
President.....J. A. Y. MACDONALD, Q.C., Halifax
1st Vice-President..... J. F. H. TEED, Q.C., Saint John
2nd Vice-President... .E. A. DRIEDGER, Q.C., Ottawa
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.

Mr. Justice Barlow, on behalf of the members of the Conference, expressed their thanks and appreciation to the retiring President, Mr. Fournier, for the excellence of the arrangements that had been made for the holding of the Conference, for the hospitality extended to the members and their wives, and for all that the representatives of the Province of Quebec had done to make the meeting successful and enjoyable.

Mr. Fournier, in acknowledging these remarks, suggested that an expression of appreciation might be due as well to the press of the City of Quebec, which had provided unusually good coverage of the activities of the Conference.

Printing of Consolidation of Uniform Acts

The recommendations of the Uniform Law Section on this subject were considered and it was resolved that they should be adopted and acted upon.

Government Contributions

Following suggestions that the Conference should seek increased contributions from provincial and Federal governments the following resolution was adopted:

RESOLVED that the Executive appoint a special committee to study the need of the Conference for additional revenue and the advisability of requesting the governments of the provinces and of the Dominion to increase their contributions and that the Committee make its recommendations to the 1961 meeting.

Close of Meeting

Before withdrawing from the chair, the retiring President, Mr. Fournier, spoke his pride and pleasure in having held the office for the past year, expressed his thanks to the members of the Conference for their co-operation in all respects, voiced the hope that the Government of his own Province would continue to co-operate in the work of the Conference and made the sugges-

tion that members of the Conference in preparing drafts of uniform Acts might usefully refer to the Civil Code for assistance, both in matters of substance and of form.

In appreciation of Mr. Teed's assistance and co-operation in acting as joint chairman of the Uniform Law Section, the President presented him with a copy of the Civil Code. He then turned the meeting over to his successor, Mr. MacDonald.

Mr. MacDonald, upon taking the chair, addressed the members briefly, in English and in French, thanked them for the honour they had conferred upon him by electing him to office and undertook to use his best efforts to maintain the high standard that had been set by his predecessors.

At 11.30 a.m. the meeting adjourned.

APPENDIX A

(*See page 18*)

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—Reports of Mr. Alcombrack and Alberta Commissioners (see 1955 Proceedings, page 18; 1959 Proceedings, page 20).
2. Bills of Sale and Conditional Sales—Report of Mr. Ryan.
3. Bulk Sales—Report of Alberta Commissioners (see 1959 Proceedings, page 25).
4. Domicile—Report of British Columbia Commissioners (see 1959 Proceedings, page 24).
5. Evidence, Uniform Rules of—Report of Newfoundland Commissioners (see 1959 Proceedings, page 21).
6. Expropriation—Reports of Alberta and Ontario Commissioners (see 1959 Proceedings, page 21).
7. Fatal Accidents Act—Report of New Brunswick Commissioners (see 1959 Proceedings, page 29).
8. Federal-Provincial Committee on Uniformity of Company Law—Progress Report—G. S. Rutherford.
9. Foreign Judgments—Report of Dr. Read (see 1959 Proceedings, page 30).
10. Foreign Torts—Report of Special Committee (see 1959 Proceedings, page 23).

11. Highway Traffic and Vehicles (Responsibility for Accidents) —Report of Nova Scotia Commissioners (see 1959 Proceedings, page 28).
12. Highway Traffic and Vehicles (Rules of the Road)—Report of New Brunswick Commissioners (see 1959 Proceedings, page 30).
13. Innkeepers—Report of Nova Scotia Commissioners (see 1959 Proceedings, page 25).
14. Judicial Decisions affecting Uniform Acts—Reports of Dr. Read (see 1951 Proceedings, page 21; 1959 Proceedings, page 20).
15. Legislative Assembly—Report of Alberta Commissioners (see 1959 Proceedings, page 29).
16. Mechanics' Lien—Report of British Columbia and Saskatchewan Commissioners (see 1959 Proceedings, page 23).
17. Presumption of Death—Report of British Columbia Commissioners (see 1959 Proceedings, page 26).
18. Printing of Uniform Acts—Report of British Columbia Commissioners (see 1959 Proceedings, page 26).
19. Reciprocal Enforcement of Maintenance Orders—Report of Mr. Teed (see 1959 Proceedings, page 29).
20. Survivorship—Report of Ontario Commissioners (1959 Proceedings, page 27).
21. Variation of Trusts—Report of British Columbia Commissioners (see 1959 Proceedings, page 29).
22. Vital Statistics—Report of Manitoba Commissioners.
23. Wills—Report of Dr. Read (see 1959 Proceedings, page 29).
24. 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 20)

TREASURER'S REPORT

FOR YEAR 1959-1960

Balance on hand—October 13th, 1959 (on deposit in The Royal Bank of Canada, Main Branch, Water Street, St. John's, Newfoundland)		$5,677.25
RECEIPTS		
Province of Newfoundland	$ 200.00	
Province of Manitoba	200.00	
Province of British Columbia	200 00	
Province of Saskatchewan	200.00	
Province of Alberta	200.00	
Province of Quebec	200.00	
Province of New Brunswick	200.00	
Dominion of Canada	200.00	
Province of Nova Scotia	200.00	
Province of Ontario	200.00	
Province of Prince Edward Island	100.00	
Bar of the Province of Quebec	100.00	
		2,200.00
Bank Interest—Oct. 13, 1959		61.40
Bank Interest—April 30, 1960		50.94
Rebate of Sales Tax		146.93
DISBURSEMENTS		
Wm. McNab & Son re: printing envelopes		$ 30.30
Clerical Assistance, Honorariums		125.00
National Printers Ltd. re:		
Printing Proceedings 41st Annual Meeting	$1,325.00	
Envelopes	2.75	
Typing & checking envelopes	8.00	
	$1,335.75	

Sales Tax	146.93	
Mailing & Express Charges	19.99	
		1,502.67
CASH IN BANK		6,478.55
	$8,136 52	$8,136.52

HARRY P. CARTER, Treasurer

Audited and found correct,

(signed) P. LLOYD SOPER
GERALD H. CROSS

APPENDIX C

(*See page 20*)

SECRETARY'S REPORT
1960

Proceedings

In accordance with the resolution passed at the 1959 meeting of the Conference (1959 Proceedings, page 18), 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.

While preparing the Proceedings for printing, I attempted to bring the Table of Model Acts up to date and to correct any inaccuracies in it. In order to do this I corresponded with Mr. Driedger to obtain from him any information about the time of recommendation by the Conference of uniform Acts and amendments to or revisions of uniform Acts that he may have gathered in the course of preparing the consolidation of uniform Acts. In addition, I wrote to each local secretary to inquire about legislative action in his jurisdiction on uniform Acts. The result, I hope, is that the table appearing in the 1959 Proceedings is more accurate and comprehensive than earlier tables.

Occasionally, members of the Conference have advised me of the adoption of uniform Acts or parts of Acts in their jurisdictions and on some occasions they have reported to Mr. Alcombrack who has included in his annual report references to legislative action on statutes recommended by the Conference. He is not at all certain that these reports are complete and I would recommend that some procedure be adopted to ensure that the Table of Model Acts is accurate and up to date. This might be done by means of an annual report by each local secretary to the Secretary of the Conference, setting out legislative action in his province on recommendations of the Conference. The same thing could be accomplished by broadening the terms of the resolution passed in 1955 pursuant to which Mr. Alcombrack has been reporting

on amendments not recommended by the Conference that were made to uniform Acts.

Sales Tax

An application was made for the refund of sales tax, totalling $146.93, paid on the printing of the 1959 Proceedings, and in due course the refund was received.

Constitution

During the year it was suggested that the Constitution of the Conference be examined and, if necessary, revised. It appears that the only Constitution that was actually adopted by the Conference was a so-called "Temporary Constitution" adopted at the first meeting in September of 1918. Some consideration was, apparently, given to a revision of the Constitution at the 1943 meeting and a draft Constitution appears in the appendix to the 1944 Proceedings. So far as I can determine, the draft was not adopted. I have had mimeographed and can distribute at this meeting copies of the temporary Constitution of 1918 and the draft Constitution of 1944. I would recommend that the Conference consider the advisability of re-examining the Constitution and, if it is thought advisable, that a special committee be appointed to study the subject and to prepare a revision of the Constitution if the committee considers it warranted.

Stationery

Some time ago it was suggested that the Conference stationery be printed in French as well as in English. At that time I discussed the suggestion with some members who seemed to favour its adoption. However, it was not necessary before this to have a reprinting of stationery, and letterheads in bilingual form were not procured. The stock is getting low now and the same suggestion has again been made. A new stock of stationery will have to be obtained within the next year and it seems that the views of the Conference on this suggestion should be obtained before the new stock is ordered.

It has also been suggested that the letterhead bear the names of the officers of the Conference. This would mean, of course, a reprinting of letterheads annually, but would not involve any great expense. Perhaps the views of the Conference on this suggestion could be obtained also.

HENRY F. MUGGAH,
Secretary.

APPENDIX D

(*See page 23*)

AMENDMENTS TO UNIFORM ACTS
1960

REPORT OF W. C. ALCOMBRACK

BILLS OF SALE

Alberta amended its Act, which is the Uniform Act of 1928. Sections 8, 9 and 10 of the Alberta Act, which are similar to sections 5, 6 and 7 of the 1955 revised Uniform Act, were repealed and the following substituted therefor:

8. Where a bill of sale is given,
   (*a*) to secure to the grantee repayment of advances to be made by him under an agreement therefor; or
   (*b*) to secure the grantee against loss or damage by reason of,
      (i) the endorsement of a bill of exchange or promissory note,
      (ii) any other liability incurred by the grantee for the grantor, or
      (iii) any liability to be incurred under an agreement by the grantee for the grantor,

   the bill of sale shall set forth clearly by recital or otherwise,
   (*c*) the terms or substance of the agreement entered into between the parties in respect of the advances;
   (*d*) the substance of or a copy of the bill of exchange or promissory note endorsed and of the endorsement;
   (*e*) the nature and extent of such other liability incurred by the grantee for the grantor; or
   (*f*) the terms or substance of the agreement in respect of the liability to be incurred by the grantee for the grantor.

9. Where a bill of sale is presented for registration it shall be accompanied by an affidavit of the grantee, or one of several grantees, or his or their agent, stating that the bill of sale was executed in good faith and not for the mere purpose of protecting the chattels therein mentioned against the creditors of the grantor, nor for the purpose

of preventing the creditors from recovering any claims that they have against the grantor.

The new section 8 is section 5 of the revised Uniform Act with some modification. The new section 9 permits the use of one form of affidavit for all bills of sale instead of the three different forms required under the Uniform Act.

CORNEA TRANSPLANT

Alberta, Nova Scotia and Ontario enacted the Uniform Act.

Ontario added a new provision to meet an objection by a religious denomination (Christian Scientists) as follows:

6.–(2) An authority shall not be given under section 4 if the person empowered to give the authority has reason to believe that the deceased person would, if living, have objected thereto.

Alberta added a provision similar to subsection 2 of section 6 of the Ontario Act.

DEFAMATION

Nova Scotia enacted a new Defamation Act that contains substantially all the provisions of the Uniform Act plus some of the provisions of the most recent English and Ontario legislation. All the provisions of the Uniform Act were incorporated, except section 3, as to presumption of damages where defamation is proved. Sections 4, 5, 6 and 12 of the English Defamation Act were incorporated dealing with unintentional defamation, justification, fair comment and evidence of other damages recovered by the plaintiff for defamation in respect of publication to the same effect. Also, subsection 1 of section 2 and subsection 1 of section 3 of the Ontario Act were incorporated dealing with the extension of the meaning of "word" to include a picture, gesture, etc., and with fair and accurate reports of proceedings of public meetings.

DEVOLUTION OF REAL PROPERTY

Saskatchewan amended section 15 of its Act, which was previously amended to empower personal representatives to lease or otherwise dispose of real property for a term longer than one year. The 1960 amendment was to clearly authorize the granting of the usual so-called petroleum lease which is not for a "term" but "for so long as the minerals are produced".

EVIDENCE

Manitoba and Ontario adopted section 62 of the Uniform Act dealing with military records (1957 Proceedings, page 23).

INTERPRETATION

Manitoba amended its Act, which is the revised Uniform Act, by adding the following provision:

6.–(4) Where, under a provision of an Act, the Act or any part thereof is to come into force on a day fixed by proclamation, that provision unless it is otherwise expressly provided, shall be conclusively deemed to come into force on the day on which the royal assent is given to the Act.

INTESTATE SUCCESSION

Saskatchewan amended its Act, which is the Uniform Act of 1928, as follows:

Section 2 was amended by adding the following:

3. "net value" means the value of the estate wherever situated, both within and outside Saskatchewan, after payment of the charges thereon and the debts, funeral expenses, expenses of administration and succession duty.

Section 4 was repealed and the following substituted therefor:

4.–(1) If an intestate dies leaving a widow and issue, his estate, where the net value thereof does not exceed $10,000, shall go to his widow.

(2) Where the net value exceeds $10,000, the widow shall be entitled to $10,000 and shall have a charge upon the estate for that sum, with legal interest from the date of the death of the intestate.

(3) Of the residue of the estate, after payment of the said sum of $10,000 and interest,

(*a*) where the intestate dies leaving a widow and one child, one-half shall go to the widow;

(*b*) where the intestate dies leaving a widow and children, one-third shall go to the widow.

(4) If a child has died leaving issue and such issue is alive at the date of the intestate's death, the widow shall take the same share of the estate as if the child had been living at that date.

LEGITIMACY

The Uniform Act, as revised by the Conference in 1959, was adopted by Alberta.

PENSION TRUSTS AND PLANS—APPOINTMENT OF BENEFICIARIES

Nova Scotia enacted the uniform provisions as recommended by the Conference.

RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS

Alberta amended its Act, which is the revised Uniform Act, as follows:

"dependant" was redefined to relate to the law of the "state" where an order is made rather than to the "place".

"maintenance order" was redefined to remove the express exception relating to affiliation orders and to refer specifically to "alimony, former wife, reputed wife and child".

> "maintenance order" means an order for the periodical payment of money as alimony or as maintenance for a wife or former wife or reputed wife or a child or any other dependant of the person against whom the order was made.

A new subsection was added to section 6 as follows:

> (6*a*) Where the court has declined to confirm an order or a part thereof, or has varied or rescinded an order, the person in whose favour the order was made and the Attorney-General have a like right of appeal.

REGULATIONS

Manitoba amended its Act, which is the Uniform Act with slight modification, to require that every regulation must, at the next session of the Legislature after it is made, be laid before the Assembly and referred to the Standing Committee on Statutory Regulations and Orders. The Rules of the Assembly have been amended to provide for such a standing committee and it is intended that this committee will review all regulations that have been made. This is a step towards maintaining some greater measure of control over delegated legislation.

RULES OF THE ROAD

The uniform provisions as set out in the 1958 Proceedings were adopted by Manitoba with certain amendments.

VITAL STATISTICS

Saskatchewan adopted the definitions of birth and stillbirth as recommended by the Vital Statistics Council of Canada.

WILLS

Alberta adopted the revised Uniform Act with some modification.

Subsection 1 of section 20 was revised in the following form:

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

(*a*) by re-execution thereof with the required formalities, if any; or

(*b*) by a codicil that has been made in accordance with the provisions of this Act that shows an intention to give effect to the will or part that was revoked.

Subsections 2 and 3 of section 21 were revised in the following form:

21.–(2) Except when a contrary intention appears by the will, where a testator at the time of his death has a right or chose in action or equitable estate or interest that was created by,

(*a*) a contract entered into after the making of the will and respecting real or personal property that was comprised in a devise or bequest;

(*b*) a conveyance made after the making of the will and relating to real or personal property that was comprised in a devise or bequest; or

(*c*) any other act done after the making of the will and relating to real or personal property that was comprised in a devise or bequest,

the devisee or donee of that real or personal property takes the right or chose in action or equitable estate or interest of the testator.

NOTE:—At the time the report of the British Columbia commissioners was received, my report on amendments to Uniform Acts, not recommended by the Conference, had been completed and mimeographed. Because of the length and detail of the British Columbia report, Mr. Cross was good enough to provide copies of his report, a copy of which is attached hereto.

APPENDIX E

(*See page 24*)

MODEL LEGISLATIVE ASSEMBLY ACT

REPORT OF THE ALBERTA COMMISSIONERS

At the 1959 meeting of the Conference, it was agreed at Mr. Ryan's request that this matter should stand over to the 1960 meeting for a further report by the Alberta Commissioners.

Some further study was done by Mr. Ryan before his departure for Trinidad and, in view of his familiarity with the work, it is thought advisable to postpone further action until his return.

All of which is respectfully submitted.

H. J. WILSON,
W. F. BOWKER,
W. E. WOOD,
Alberta Commissioners.

APPENDIX F

(*See page 24*)

EXPROPRIATION

REPORT OF THE ONTARIO COMMISSIONERS

At the 1959 meeting of the Conference, it was resolved that the subject of a Uniform Expropriation Act be placed on the agenda for the 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.

Since the 1959 meeting of the Conference, the matter of expropriation and uniformity of procedures for determining compensation have been further studied by the Attorney-General's Advisory Committee on the Administration of Justice. A draft Act was prepared and circulated by the Advisory Committee to interested parties in Ontario. Meetings were held at which these interested parties expressed their views.

Further study of the draft by the Attorney-General's Advisory Committee resulted in the Attorney-General introducing a Bill entitled "An Act to make Uniform the Procedures for Determining Compensation for the Expropriation or Injurious Affection of Lands by Public Authorities" at the 1960 session of the Ontario Legislature. This Bill was introduced and given first reading on the express understanding that the Bill would not be passed at the 1960 session but would be available in statute form for study by interested parties.

A Select Committee of the Ontario Legislature was appointed to enquire into and review the Acts of the Legislature dealing with expropriation of land with a view to recommending improvement in this legislation and for these purposes to consider the Bill submitted to the House by the Attorney General. This Committee will report its recommendations to the Legislature at the 1961 session.

W. C. ALCOMBRACK,
for the Ontario Commissioners.

APPENDIX G

(*See page 25*)

EXPROPRIATION

REPORT OF THE ALBERTA COMMISSIONERS

At the 1959 meeting it was 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.

Since that time a draft of a general Expropriation Procedure Act that had been previously prepared by the Legislative Counsel for discussion purposes has been revised to incorporate suggested improvements. Copies of the revised draft have been provided to the committee on Legislation of the Alberta Law Society for its consideration. In addition, arrangements are being made to hold meetings of various interested parties for the purpose of discussing this Draft Act and the principles of expropriation generally.

In view of the fact that the study of the subject in Alberta has not yet been crystallized we can not give a more complete report at this time but it is hoped a more extensive report can be given next year.

All of which is respectfully submitted.

H. J. WILSON,
W. F. BOWKER,
W. E. WOOD,
Alberta Commissioners.

APPENDIX H

(*See page 25*)

MECHANICS' LIEN ACT

REPORT OF THE BRITISH COLUMBIA COMMISSIONERS

At the last annual meeting of the B.C. Section of the Canadian Bar Association held in May of this year a resolution was considered and passed recommending the repeal of the Mechanics' Lien Act with the rider that those provisions dealing with the rights and privileges of workmen (as against those of subcontractors and materialmen) and the provisions of the British Columbia Act with regard to the lien of a garageman be retained. Many arguments were advanced for and against this resolution during the discussion of it by the pertinent committee of the B.C. Section and during the annual meeting. The most explicit objection to the retention of the statute was perhaps contained in a letter, dated October 23, 1959, from Mr. L. T. Gray to the Legislative Counsel an excerpt from which is as follows:—

> I feel that it must be borne in mind that since the Mechanics' Lien Act was first passed by the Legislature many decades ago a great change in our social structure and our economy has taken place. Whereas at one time the only person who built a home or in fact owned his own home was the wealthy person, nowadays the average home builder is of what used to be termed the "working class" who must borrow from Mortgage Companies or others to finance the building of his home and who in the vast majority of cases, in addition to the borrowed money, puts all his resources into his home which is his largest single asset and as far as the country is concerned is an asset of great social, political and economic importance. The rights of home owners must be protected and where their rights come into conflict with those of building material suppliers those of the home owner should prevail.
>
> It has always seemed to me to be anomolous that a supplier of building materials should have a right to a lien in a case where he supplies materials to a building project when, if he had supplied the same material under the same circumstances to a retail building material outlet, he would be entitled to no lien. In the case of supplying material to a distributor he would make the normal checks on the credit and ability of the customer and would extend credit on the basis of his investigations, whereas in supplying building materials to builders, in the past at least, suppliers have tended to supply materials to anybody who may wish them without any enquiry whatsoever in most instances, relying upon the fact that if the person to whom the material was supplied did not pay then the homeowner would pay. For a number of years the material suppliers in British Columbia have grown fat on these guaranteed accounts. The result has been that many "fly-by-night"

contractors and sub-contractors have been, in effect, financed by this extension of credit of the suppliers with the result that legitimate business men have been competing against unqualified, subsidized contractors and sub-contractors. In my humble opinion, it's in the best interests of the building trades and the suppliers themselves to operate their businesses in a proper, normal, businesslike manner and I can see no justification for building suppliers or for that matter anyone in the building industry having any special preference.

This brings me to my opinion which I have held for a number of years and as time goes by I have become more and more convinced that I am right and that is that there is not now and has not been for many years a need for a Mechanics' Lien Act at all. Many jurisdictions operate quite satisfactorily without the so-called benefit of a Mechanics' Lien Act. The abolition of the Mechanics' Lien Act would tend to place the building industry on the same basis as any other industry. A man would be extended credit to the extent that he deserved it and a legitimate bona fide contractor of substance whose word could be relied upon would be given credit by the suppliers whereas disreputable types would not, and therefore the wrong type of contractor would do a minimum of harm and no doubt would to a great extent be driven out of business, all of which would materially benefit the general public. The only compromise I would make would be this, that as a matter of political expediency the workman should be entitled to a lien in the same way as he is now and I doubt if anyone would seriously raise objections to that and also the present trust provisions contained in section 3 of the Mechanics' Lien Act should be retained although those particular provisions should be amended somewhat.

By way of comment, many objections to the suggestion that the Act be repealed were received by the Civil Justice Committee of the B.C. Section of the Canadian Bar Association from materialmen and their representatives, resulting undoubtedly from the fact that they occupy a privileged position under the British Columbia statute as it now stands. One of the stronger bases for the decision to suggest repealing was that because of this preferential position an extra burden is placed on others coming within the scope of the statute.

Respectfully submitted,

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

APPENDIX I

(*See page 25*)

UNIFORM MECHANICS' LIEN ACT

REPORT OF THE SASKATCHEWAN COMMISSIONERS

At the 1959 meeting, following a discussion of the report submitted by the Saskatchewan Commissioners with respect to the above-mentioned subject, the following resolution was adopted (1959 Proceedings, page 23):

"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".

In the said report it was stated that the Attorney General of Saskatchewan had appointed a Law Reform Committee and that that committee was considering the preparation of a draft Mechanics' Lien Act that it could recommend for adoption by the Legislature. In view of these developments the Saskatchewan Commissioners considered that it was inadvisable to proceed with the preparation of a draft Act for submission to the Conference at that time and therefore recommended that the further consideration of a model uniform Mechanics' Lien Act be deferred for at least one year. We have recently been informed that the Law Reform Committee has come to the conclusion that before a satisfactory Mechanics' Lien Act can be drafted information and representations should be requested from the legal profession and other interested persons. Since the Law Reform Committee as constituted cannot do this, the committee has recommended to the Attorney General that a special committee with particular knowledge of these problems should be appointed to receive such information and representations. We have been further informed that while the Government of Saskatchewan may consider establishing such a special committee there is no likelihood of any steps being taken in this respect this year.

It is therefore recommended that this subject be dropped from the agenda for the time being with the understanding that the Saskatchewan Commissioners will make a further report when they consider that circumstances are such that it would be advisable to prepare a draft model Act for submission to the Conference.

J. H. JANZEN,
for the Saskatchewan Commissioners.

APPENDIX J

(See page 26)

UNIFORM VITAL STATISTICS ACT

REPORT OF THE MANITOBA COMMISSIONERS

At its 1960 meeting, the Conference of Commissioners on Uniformity of Legislation in Canada adopted conditionally an amendment to section 21 of The Uniform Vital Statistics Act. Subsection (1) of that section was repealed and the following subsections substituted therefor:

Notation of change of name.

21.–(1) Where the name of a person is changed in (*name of province*) under the law of the Province as it existed before (*date of coming into force of Change of Name Act or legislation establishing a statutory procedure for change of name*) or under The (Change of Name) Act, (*insert name of relevant provincial Act*) or is changed in another province or territory of Canada or in a foreign state by or under a statute of that province or territory or that foreign state, the Director, on production to him of proof of the change and evidence satisfactory to him as to the identity of the person,

(a) if the birth or marriage of the person is registered in the province, shall cause a notation of the change to be made on the registration thereof; and

(b) if the change was made under (The Change of Name Act) and the person was born or married in Canada but outside the province, shall transmit to the officer in charge of the registration of births and marriages in the province or territory of Canada in which the person was born or married a copy of the proof of the change of name produced to the Director; and

(c) if the change was made under (The Change of Name Act) and the person was born or married outside Canada, shall, if requested by the person whose name has been changed, transmit to the officer in charge of the registration of births and marriages in the foreign state in which the person was born or married, a copy of the proof of the change of name produced to the Director.

Meaning of "foreign state."

(1A) In subsection (1) the expression "foreign state" includes any country in the British Commonwealth other than

Canada and, in the case of the United States, means a state or territory of that country.

If disapprovals by two or more provinces are not received by the Secretary of the Conference by 30th November, 1960, the above draft will be deemed to have been adopted and recommended for enactment.

Dated at Winnipeg this 5th day of October, 1960.

I. J. R. DEACON,
G. S. RUTHERFORD,
R. H. TALLIN,
Manitoba Commissioners.

APPENDIX K

(*See page 27*)

AMENDMENTS TO UNIFORM ACTS

REPORT OF THE ALBERTA COMMISSIONERS

At the 1959 meeting, Mr. Alcombrack's report on amendments to Uniform Acts was received. The Conference then referred the report 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 (1959 Proceedings, page 20).

CONTRIBUTORY NEGLIGENCE

Mr. Alcombrack's report notes that British Columbia amended its Act (1959, c. 18), and states that the amendment was the result of *Cairney* v. *McQueen* (*1956*) *S.C.R. 555*. We shall discuss that case and then the amendment. Cairney was an action under The Families' Compensation Act (R.S.B.C. 1948, c. 116), which is the same as the typical Fatal Accidents Act. The wrongdoer and his victim both died in the accident and it was uncertain which died first. The plaintiff was a dependant of the victim and the defendant was the wrongdoer's administratrix. Throughout the case, the Courts assumed that the wrongdoer survived his victim for the plaintiff could not prove otherwise. On this assumption the plaintiff clearly had a vested cause of action against the wrongdoer under The Families' Compensation Act. The defendant contended that this cause of action abated with the wrongdoer's death by virtue of the maxim *actio personalis moritur cum persona.*

The plaintiff had two replies:

(1) The Families' Compensation Act says he may bring action against "the *person* who would have been liable if death (i.e. of the victim) had not ensued". The Act does not define "person" but The Interpretation Act (like the Uniform Interpretation Act) defines it to include a personal representative. The Court should apply this definition.

(2) British Columbia has legislation that abolishes the *actio personalis* rule and preserves tort actions by and against

> a personal representative. A dependant suing under The Families' Compensation Act can invoke this legislation just as the victim could have done. In B.C. this enactment is section 71 of The Administration of Estates Act (R.S.B.C. 1948, c. 6). In the other provinces the legislation is found in Trustee Acts or Survival of Actions Acts.

One or other of these two arguments had been accepted in the provincial courts but three of five judges in the Supreme Court rejected them both. Hence the action fails. Parenthetically, it seems to have been agreed that, had the victim died after the wrongdoer then the plaintiff here would have an original action against the wrongdoer's personal representative for it is the victim's death that creates the cause of action in his dependant and at that point of time the victim would have had an action against the personal representative under section 71 and therefore his dependant has an action by virtue of The Families' Compensation Act. The decision deals only with the situation where the wrongdoer survived the victim and later died.

A subsidiary point in the case was whether the plaintiff, assuming he had a cause of action, was bound by the limitation period in The Administration of Estates Act (six months from the wrongdoer's death) or by the period in The Families' Compensation Act (12 months from the victim's death). The majority did not have to deal with this point. Smith JA in the Court of Appeal held the former applied while the two dissenters in the Supreme Court held the latter applied.

We note here that British Columbia in re-enacting its Families' Compensation Act (1958, c. 16) put in a specific provision that clearly abrogates the rule in *Cairney* and that Saskatchewan (1959, c. 8) and Alberta (1960, c. 31) have amended their Fatal Accidents Acts by adopting the new B.C. provisions. All of these recent enactments provide as well for the case where there is no personal representative by permitting the Court to appoint one.

Turning now to British Columbia's amendment to its Contributory Negligence Act, it provides:

(1) Where a person dies who because of The Contributory Negligence Act would have been liable for damages, then any action that because of The Contributory Negligence Act could have been brought against him may be brought or continued against his personal representative.

(2) Where there is no personal representative the Court may

appoint one for all purposes of the action and to act as defendant.

(3) The limitation period is six months from the wrongdoer's death where there is a personal representative and ten months where the Court appoints one.

We are not clear why this provision was put in The Contributory Negligence Act. One would think (unless there is B.C. authority to the contrary) that the general survival legislation (section 71 of The Administration of Estates Act) would be the place for such a provision so it would apply to all cases and not merely to those where a defendant is liable because of The Contributory Negligence Act. We think this provision would not affect the decision in *Cairney* for in that case contributory negligence was not in question (though as noted above, special provision has been put in The Families' Compensation Act to change the law in actions under that Act). As presently advised we do not recommend an amendment to the Uniform Contributory Act along the lines of B.C.'s amendment. Our reason is that legislation of this type should be in the legislation on survival of actions.

We note here that there is no Uniform Fatal Accidents Act and no Uniform Survival of Actions legislation. We recommend that the Conference study these subjects with a view to preparing a Uniform Act in each.

First, in connection with The Fatal Accidents Act, we note that all the common law provinces have such an Act based on The English Act of 1846. However, a cursory examination shows that there are substantial differences among the provincial statutes. For example, in one or another a brother and sister, an illegitimate child, a person to whom the deceased is in *loco parentis*, are included. Winfield once commented that a drawback of the English Act was the niggardly restriction of the remedy to a small circle of near relations (14 Can. Bar Rev. 639). It would be worthwhile for the Conference to study the present Acts and determine whether they are now broad enough. We think too, that these Acts should make it clear as British Columbia's, Saskatchewan's and Alberta's now do that the rule in *Cairney* does not apply. Doubtless there are other differences that it would be profitable to examine. The importance of these Acts would seem to make uniformity desirable.

Second, in connection with survival of actions, we think uniformity is desirable for much the same reasons. So far as we know the earliest Canadian legislation designed to abrogate the

actio personalis rule is a provision in Ontario's Trustee Act of 1886 (49 Vict. Cap. 16, Sec. 23 now R.S.O. 1950, c. 400, s. 37). The Ontario provision deals with actions for wrongs to person or property and preserves the action in favour of the estate of a deceased person and against the estate of a deceased wrongdoer. This legislation has been adopted (with variations) in The Trustee Acts of the following provinces:

Saskatchewan (R.S.S. 1953, c. 123, ss. 52, 53)
Alberta (R.S.A. 1955, c. 346, ss. 32, 33)
Newfoundland (R.S. Nfld. 1952, c. 166, s. 22) (confined to actions relating to property)

We point out that Ontario in 1951 and Alberta in 1960 amended their provisions to enable the Court to appoint a personal representative of a wrongdoer where there was none.

In 1934 England passed a Law Reform (Miscellaneous Provisions) Act (Cap. 41) that abrogated the *actio personalis* rule.

The following provinces now have "Survival of Actions" Acts based on the English:

Nova Scotia (R.S.N.S. 1954, c. 282)
Prince Edward Island (1955, c. 17)
New Brunswick (R.S.N.B. 1952, c. 223)

Manitoba's legislation is found in its Trustee Act (R.S.M. 1954, c. 273, s. 49) but in point of form is not based on Ontario's, nor is it taken from England's.

The B.C. provision already referred to is closer to the Trustee Acts than to the English legislation but is distinct from either in form.

Although all of this legislation has the same purpose we note differences. In some provinces claims for loss of expectation of life are excluded. In one Act or another there are exceptions in the case of one or more of the following: defamation, seduction, enticement of a wife, adultery, malicious prosecution and false imprisonment. Moreover, the limitation periods are not uniform. Sometimes the period in the survival legislation and the period in The Fatal Accidents Act may be hard to reconcile (as *Cairney* shows) and there may be difficulty in reconciling the special period with the general limitations Act (*Airey* v. *Airey* (*1958*) *2 All E.R. 571* is a good example).

Since it was the *Cairney* case that started the sequence of events that have led to this report we have considered the question whether *Cairney* is binding in the other provinces. We have not

made a detailed examination of all the statutes and even if we had would probably say that *Cairney* may apply. We are aware that in *Wood* v. *Thompson 23 W.W.R. 14*, Campbell J. succeeded in distinguishing *Cairney* on the ground of differences between the Manitoba and B.C. statutes. The fact is that *Cairney* raises doubts on a point that most people thought was settled. For this reason alone these statutes deserve study by the Conference.

A last point we wish to mention is this. We have referred to recent legislation in British Columbia, Ontario, Saskatchewan and Alberta that permits the Court to appoint a representative of a wrongdoer where there is none. If a Uniform Survival of Actions Act is drafted careful attention should be given to the wording to ensure that a representative so appointed has power to defend and to counterclaim, for example in an action brought against the representative arising out of a motor collision. The reason we raise this is that the Rules of Court of various provinces enable the Court to appoint a representative for purposes of a proposed action. In Alberta it has been held that these provisions do not permit the person so appointed to defend or to counterclaim. The judgment does express the opinion that Ontario's 1951 legislation is sufficient for those purposes (*Parish* v. *Papp 23 W.W.R. 690 (1957); see also Laskin in 17 Can. Bar Rev. 677*).

To sum up we recommend that the Conference study the Fatal Accidents Acts and the survival legislation with a view not only to abrogation of the rule of *Cairney* but with a view to attaining uniformity in the fields covered by these two types of statute.

Turning now to Prince Edward Island's amendment to The Contributory Negligence Act it provides two things:

(1) The Act shall apply whether or not the defendant pleads contributory negligence.

(2) In motor vehicle cases where there is a counterclaim, separate judgments are to be given for each party against the other instead of one net judgment.

We have considered whether these effect any change in the present law and if so whether they are desirable.

As to (1), at common law a defendant had to plead contributory negligence. However, it is arguable that the effect of the statute is to require the Court to apply it whether pleaded or not. In *Campbell* v. *Dickison 41 M.P.R. 79 (1958) (N.B.)* the Court said: "This section was I think intended to apply to all cases where negligence on the part of both parties has been estab-

lished, regardless of whether or not contributory negligence is specifically pleaded".

However, this was really a dictum because the defendant had alleged that the accident was solely due to the plaintiff's negligence and the Court held that this plea raised the defence of contributory negligence and accordingly the Court was entitled to determine the respective degrees of fault.

We think that in spite of the above dictum the better opinion is that contributory negligence should be pleaded under the Uniform Act. Then as to the desirability of the amendment we see arguments on each side:

For:

> The amendment is good because it enables the Court to apply the Act to the facts as they have emerged in the evidence and to give a defendant the benefit of the Act even though his counsel has not seen fit to raise the defence, or even has not thought of it.

Contra:

> The amendment is bad because parties should be left to frame their own cases. The Court should not do it for them. Our adversary system should not be whittled away.

We are so impressed with the force of each of these arguments that we would like the opinion of the Conference as to which should prevail.

As for the second part of Prince Edward Island's amendment we have not been able to discover the reason and accordingly cannot recommend it. Indeed it might permit this situation: the plaintiff secures a judgment for $2,000 and the defendant one for $600. The plaintiff issues execution but the defendant is judgment proof. The defendant issues execution and succeeds in realizing $600.

DEVOLUTION OF REAL PROPERTY

The Uniform Act provides:

"14. The personal representative may from time to time, subject to the provisions of any will affecting the property

(a) lease the real property or any part thereof for any term not exceeding one year,

(b) lease the property or any part thereof, with the approval of the court, for a longer term."

Saskatchewan has the Uniform Act (with variations that are irrelevant). In re *Heier 7 W.W.R. 385 (1952-3)* the personal representative applied to the Court for approval of an oil lease. The Court of Appeal ruled that it could not give approval under this section because an oil lease is not a lease. Hence the amendment to (a) and (b) which now say that the personal representative may "lease or otherwise dispose of real property".

With the policy of these amendments we agree. A personal representative should have the statutory power to give a mineral lease as well as an ordinary lease.

As to the wording of the Act we think the Conference should consider whether Saskatchewan's wording should be used or whether on the other hand the Act should define lease to include mineral lease (as Alberta did in The Land Titles Clarification Act, 1956, which the Supreme Court in *Hayes* v. *Mayhood 1959 S.C.R. 572* held applicable to The Devolution of Real Property Act).

It is true that only three provinces have the Uniform Act and that the problem has been solved in two of them. However, this is not a reason for declining to make a desirable amendment.

RULES OF THE ROAD

The Alberta amendments are a variation from the Uniform Rules. We do not think it would be wise to recommend changes in the Uniform Rules at this stage. It would be better to wait two or three years and then review all amendments that have been made to the uniform provisions.

INTERPRETATION

Alberta's amendment provides that where any statute or regulation authorizes or requires service by mail then service is effected by properly addressing, prepaying and posting a letter containing the document, and there is a rebuttable presumption that service is effected at the time of arrival in the ordinary course of mail.

A provision similar to this but not extending to regulations has been in effect since 1928. We think it a good provision. However, the Conference revised its Act in 1953 and must have been aware of Alberta's provision. The revised Act does not include it so we are reluctant to urge it now.

INTESTATE SUCCESSION

The British Columbia amendment described in the report provides that an illegitimate child is deemed to be the legitimate child of its mother and replaces the two old complicated sections on the subject of inheritance by and from an illegitimate child.

We think there is no need to amend the Uniform Act for it was revised in 1958 to incorporate the changes that British Columbia has now made. (1958 Proceedings, pp. 75-80). The only difference is that the new Uniform Act uses the phrase "an illegitimate child shall be treated as if he were" while the British Columbia Act says "an illegitimate child shall be deemed to be". We incline toward the British Columbia wording but it is perhaps a case of *de minimis*.

PROCEEDINGS AGAINST THE CROWN
RECIPROCAL ENFORCEMENT OF JUDGMENTS
TESTATORS' FAMILY MAINTENANCE

On these three statutes the report merely notes enactment by a province.

RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS

In adopting the revised Uniform Act, Ontario added a new provision to make it clear that proceedings under the Act shall not be vitiated because of a difference in terminology in the order sought to be registered or confirmed from the terminology used in Ontario. Apparently this will facilitate arrangements with the American States.

The section seems sound. We do not know if the problem at which it is aimed is a general one and whether the point is important enough to justify an amendment.

WILLS

Ontario's provision against lapse in gifts to children differs from the uniform provision but the report sets out the 1929 uniform section, not the 1957 section.

In large measure the effect of them seems to be the same. The only important differences we see are

(1) the Uniform Act, like the old one, applies to class gifts while Ontario's does not,

(2) the Uniform Act includes children, etc., who have died before the will (as did Ontario's old act) while Ontario's does not.

We agree that the Uniform Act may bring about an undesirable result where there is a class gift to children and the fact is that one child was dead at the time the will was made. We do not think a share should be preserved for his next of kin. However, we think these problems were thrashed out during the several years the Act was under study and are under the impression that the Conference was content with this provision because the testator could make clear in his will a contrary intention if he wished.

For this reason we do not recommend substitution of the Ontario provision.

VITAL STATISTICS

The Nova Scotia amendments have to do with the definitions of "birth" and "stillbirth".

In 1958 the Vital Statistics Council approved of new definitions and recommended them to the Conference. The Conference referred the recommendation to the Manitoba Commissioners (1958 Proceedings, p. 27) who reported in 1959 that the new definitions had been enacted by the legislatures of at least three provinces and recommended "that in view of this no further action be taken by the Conference".

This was agreed to.

Nova Scotia's amendment adopts the definitions recommended by the Vital Statistics Council and the three prairie provinces have also done so. We would have thought that this might have been a good reason to consider revision of the uniform definitions but in view of last year's decision we are at a loss as to what to recommend. The new definition of "birth" is more detailed than the uniform one. The new definition of "stillbirth" is more detailed and in addition fixes a minimum period of "X" weeks. Saskatchewan, Manitoba and Nova Scotia have 20, while Alberta has 24, with an alternate of 758 grams. The Uniform Act has 28.

The Ontario amendment requires certain persons with knowl-

edge of the birth to report it on request where the parents have failed to report it. (The Uniform Act has a similar provision.)

Prince Edward Island's amendments:

(1) exempt persons from reporting where the birth is in a hospital,

(2) require the Court to forward divorce decrees to the Vital Statistics Officer (Alberta also requires this),

(3) authorize Vital Statistics Officers to take affidavits (Alberta has this too).

If the Act is to be re-examined at all then all these amendments should be studied but as indicated above we are not sure the Conference will wish to do anything.

All of which is respectfully submitted.

H. J. WILSON,
W. F. BOWKER,
W. E. WOOD,
Alberta Commissioners.

APPENDIX L

(*See page 27*)

FATAL ACCIDENTS ACT

REPORT OF THE NEW BRUNSWICK COMMISSIONERS

At the 1959 session of the Conference, Mr. J. F. H. Teed stated that there was a feeling in New Brunswick that the Conference should make a study of the legislation on this subject.

It was then agreed that the New Brunswick Commissioners should study the subject and submit a report at the 1960 meeting.

The matter has been studied and this report prepared.

Your Commissioners are of the opinion that the common law respecting the rights and liabilities of parties arising from death should be briefly considered. Such consideration will assist in a fuller understanding of the reasons for the enactment of the Fatal Accidents Act in the Common Law Provinces of Canada and an apparent duplication and perhaps some inconsistencies in some Provinces between their Fatal Accidents Act and their Survivorship of Actions Act. The provisions of the Civil Code of Quebec, in so far as they relate to a right of action arising out of death of a party, have also been examined. In arriving at the conclusion embodied in this report, the New Brunswick Commissioners have been assisted substantially by consideration of the provisions of such Code.

Their recommendations include one to rectify the situation which arose out of a judicial interpretation of certain provisions in the Fatal Accidents Act of England in a judgment delivered in England in 1865. Such provisions in equivalent language have been included in the Fatal Accidents Act, enacted in each of the Common Law Provinces.

The provisions of the present Quebec Civil Code were found to be most helpful in drafting a section dealing with this situation. They recommend for the consideration of the Conference the draft Model Act attached as Appendix "A".

It is regretted there has been some delay in the completion of this report. Owing to other engagements of the New Brunswick Commissioners, it was found impossible to have its preparation completed and the report distributed at an earlier date.

The Commissioners beg to advise that a draft of the Model Fatal Accidents Act attached and recommended for consideration

was submitted to the meeting of the Council of the New Brunswick Barristers' Society held in February last. All its provisions, with the exception of the then wording of one section, met with the unanimous approval of the members of the Council present. The section to which objection was taken by some (not all) of those present has since been modified.

The principles embodied in this draft Model Act were also discussed at the mid-winter meeting of the New Brunswick Section of the Canadian Bar Association also held in February last. A resolution was passed by that body approving of these principles and recommending the enactment of legislation to give effect to them.

Within the last year, there have been an unusually large number of fatal accidents actions judicially dealt with in New Brunswick, and the provisions of the present New Brunswick Statute have been judicially criticized.

After a careful examination of the Fatal Accidents Act as amended and in force in England and in each of the Common Law Provinces of Canada, and the provisions of the Quebec Civil Code, we have regretfully come to the conclusion that New Brunswick has lagged behind all other Provinces in bringing its legislation on this subject up to date and in providing its residents and others with the rights available to the residents of other Provinces.

While the Fatal Accidents Act in force in each of the Common Law Provinces has been examined, no examination has been made into the legislative history of each such Act, except the Act in force in the Province of New Brunswick.

As none of the Fatal Accidents Acts are lengthy, and the situation in New Brunswick is very bad, it is the hope of the New Brunswick Commissioners that their report may be considered at an early stage during the 1960 Session of the Conference.

While the Fatal Accidents Act in each of the Common Law Provinces is relatively short, the wording of their corresponding provisions and their arrangement in the various statutes varies considerably.

The four Provinces whose Statutes have the most similarity are Manitoba, Ontario, Prince Edward Island and Saskatchewan. Even these vary in wording, etc., in a number of respects.

In the draft model Act, the New Brunswick Commissioners have not made reference to the differences in the wording of the various Provincial enactments.

In this draft, they have used language which appeared to be appropriate to give legal effect to the principles upon which these Acts and relevant Articles of the Quebec Civil Code are based, with such changes as are considered desirable. They have left to the Commissioners of each of the Provinces the consideration as to how far the effect of the language of the proposed Model Act differs (if at all) from the effect of the corresponding language of the Act in force in such Province.

It is considered that these are more proper subjects to be raised for discussion when the Report is being studied than subjects to be mentioned and discussed in advance in this report.

It is hoped that the following comments will be found helpful in coming to a proper understanding of the intended effect of the Statute and some of the injustices apparently existing under at least some of the Acts now in force, which in the opinion of representatives of the legal profession and of at least some members of the Bench of the Province of New Brunswick should be remedied.

The Commissioners make the following comments with respect to the recommended Model Act,—

Sec. 1. A Definition Section. The form of the Model Act requires a definition section. The definition of "child" and "parent" in the Model Act are more extensive than such definition in many of the Acts now in force, but are no more extensive than such definitions in some of them. In addition "judge" is defined as including "jury" where trial is by jury.

Sec. 2. Subsection (1) of Sec. 2 is basically the same as a corresponding provision in England and in each of the Common Law Provinces.

Subsection (2) embodies an idea new to the Common Law Provinces, but recognized to some extent in Quebec.

Reasons for Enactment of Subsection "2"

Shortly after the enactment of the first Fatal Accidents Act in England (1846) it was judicially stated and has since been repeatedly judicially affirmed, that the cause of action given by Sec. 1 of such statute (the equivalent of Sec. 2, subsection 1 of the Model Act) was a totally new one, new in its species, new in its qualities and new in the principles on which it was based.

A recent case in which this principle was re-affirmed was the Privy Council decision in

B.C. Electric Railway v. Gentile L.R. 1914, A.C. 1034; 18

D.L.R. 264. However, the law of England and of the Common Law Provinces of Canada now appears to be firmly established that, notwithstanding that the statutory cause of action given by the Fatal Accidents Act was of a new character, that if a person was injured by the fault of another and was not killed at the time, but died later as a result, and if such person, after the accident and before his death, either released or made a settlement with the party at fault, such release or such settlement operated to bar the bringing of an action under the Fatal Accidents Act for the benefit of his dependants.

The history of the development of the law on the subject is of considerable significance.

The Fatal Accidents Act of England was enacted in 1846.

The early jurisprudence under that Statute was to the effect that the cause of action which arose under it was *not* the cause of action which the deceased would have, had he survived, which the Statute continued after his death. It was a new cause of action based on different principles than was the cause of action of the injured person, if he survived, and the basis for determining the amount of compensation recoverable was entirely different.

This principle was so stated by Judges of high repute shortly after 1846.

Blake v. Midland Railway Co. (1852) 18 Q.B. 109 per Coleridge C.J. delivering the judgment of the Court at the end of page 109 and continuing on page 110.

Pym v. Great Northern Ry. Co. (1863) 4 D & S 396, See judgment of Earle C.J. delivering the judgment of the Court at the bottom of page 406.

However, in 1868 it was held that a settlement made by an injured person before his death of any claim he had by reason of the accident would bar any action under Lord Campbell's Act for the benefit of his dependants. See Read v. Great Eastern Ry. Co. (1868) L.R. 32 B 555.

One of the Judges who sat on that case was Blackburn, J. (afterward Lord Blackburn). This principle so upheld by him and his associate Judge has been accepted and acted upon in England ever since. See

Seaward v. Veracruz L.R. 10 A.C. 59 per Lord Shelborne at p. 67 and Lord Blackburn at p. 70.

When, at a later date, Fatal Accidents Acts were enacted in the Common Law Provinces of Canada, all Canadian Judges

accepted the English jurisprudence on this point, although at least some of them were of the opinion that the case of Read v. Great Eastern Ry. Co. L.R. 3 Q.B. 555 was wrongly decided.

In Erdman v. Town of Walkerton, 1898, 20 O.A.R. 440, Burton J.A. says at pp. 455-56,

> "There was, I think, at first a general impression on the passage of Lord Campbell's Act, and before a judicial interpretation had been passed upon it, that it was intended to assimilate the law of England to that of Scotland and if that had been held to be the effect of the statute there would have been no doubt that evidence given in the first suit would have been receivable in the second; but it was manifest on a close reading of the Act, and was so held very shortly after its passage, that it did not keep alive or transfer to the representative of the deceased the right of action, but gave to a named person a totally new right of action for the benefit of persons who had themselves sustained injury by the death of the deceased. It was not the injury to the deceased which gave the right of action, it was the actual injury to the persons on whose behalf the action was brought resulting from the death of the deceased.
>
> There seemed to be a good deal of difficulty at first in placing a construction upon the statute, a complaint being made that it did not very clearly define on what principle the action it gives was to be maintainable, nor on what principle the damages were to be assessed and as expressed by one learned Judge, 'the only way to ascertain what it did mean was to show what it did not mean'.
>
> It was, however, held in the earliest decisions that it was a distinctly new cause of action for injuries done to the family by the death.
>
> Nevertheless it was subsequently held in Read v. Great Eastern R.W. Co. L.R. 3 Q.B. 555, that the cause of action was so far the same that if the person injured by the wrongful act or neglect had accepted satisfaction in his lifetime an action under Lord Campbell's Act was not afterwards maintainable.
>
> The decision in that case, if I may be allowed to say of a jurist of the eminence of Lord Blackburn, savours to my mind more of legislation than interpretation. He says, taking the plea to be true, that the party injured could not maintain an action in respect thereof, as he had already received satis-

faction, in other words he read the statute as if it had said 'if the deceased could at the time of his death have maintained an action' but that is not what the statute says. It says 'whenever the death of a person is caused by a wrongful act and the act is such as would, if death had not ensued, have entitled the party injured to maintain an action, then the person causing the injury shall be liable to an action for damages notwithstanding the death of the party injured'."

It has since been held in a number of cases, that if an injured person made a settlement with the party at fault and then died, his dependents (who would have been entitled to claim compensation under the Fatal Accidents Act, *if* the injured man *had not* released or compromised his claim) would have the status to maintain an action to have such release or compromise set aside on the ground of fraud, etc., and if that was done, an action under the Fatal Accidents Act could be maintained. See

B.C. Electric Ry. Co. v. Gentile, 18 D.L.R. 269 (Privy Council).

B.C. Electric Ry. Co. v. Turner 18 D.L.R. 430 (Supreme Court of Canada).

There are also cases in which the injured party himself (if he lives sufficiently long) has brought an action to set aside the release or compromise, on the ground of fraud or undue influence or *unconscionable* bargaining and succeeded.

Fleury v. Homocraft Dairy Co-Operative & Davis 1959 1 D.L.R. (2nd) 161.

Article 1056 (b) of the Civil Code of Quebec, inter alia, provides that in case of a recourse in damages for bodily injuries, a release or settlement, etc., obtained within 15 days after the date of the offence, from the person injured, cannot be set up against him, if he suffers injuries thereby.

As the Fatal Accidents Act is intended to enact provisions only with respect to a situation arising out of death, subsection (2) of section 2 as drafted provides that no settlement or release, etc. obtained from the injured person within 6 months from the date of the wrongful act, shall be a bar to an action under the Fatal Accidents Act. The prima facie severity of this proviso is mitigated by the recommended section 5, which provides that if there has been a settlement, etc., the amount paid etc., *may* be taken into consideration in assessing compensation under the Fatal Accidents Act.

Subsection (3) of section 2 is recommended in order to elimi-

nate uncertainties as to the situation which might arise owing to the death of the wrongdoer before the death of the injured person.

Sec. 3. Sets out the basis on which compensation is to be awarded and also provides for the awarding of an amount to cover funeral expenses. This is essentially the same as the existing provisions in most of the statutes in the Common Law Provinces. Your Commissioners make no comments.

Sec. 4. This states matters not to be taken into account in assessing compensation. This section embodies a principle which is recognized and stated in most statutes. Such principle has been somewhat extended in its application, but not unreasonably so. The language used is not identical with that of any other statute.

Sec. 5. This is new and is a follow up to subsection (2) of section 2. The combined effect intended is that, while a release given by the deceased, etc., within 6 months of the accident shall *not* be a bar to an action under the Act, the amount paid under any settlement, etc., *may* be *taken* into *consideration* in assessing compensation.

See Judgments of Supreme Court of Canada in B.C. Elec. Ry. v. Turner 49 S.C.R. 470, 18 D.L.R. 430.

Sec. 6 (1). Provides that only one action shall be brought. A similar provision is in all statutes.

Sec. 6 (2) (a). This subsection is new. It is intended to eliminate the necessity of giving notice of action, etc., and to ensure that no right of action given by the Fatal Accidents Act shall be lost by reason of failure to comply with the provisions of some other statute with respect to the giving of notice of action, etc.

Sec. 6 (2) (b). Limitation Period. In every Canadian Statute the time limited for the bringing of an action under the Fatal Accidents Act is one year from the date of death. In England the limitation period is 3 years.

It was the unanimous opinion of the members of the two groups of New Brunswick Barristers who considered this point in February last that the proper period for the bringing of an action should be two years, and that one year was not long enough. The cause of action arises only on the death. At that time, in most instances the dependants are in a state of mental shock, on numerous occasions the dependants are all small children.

Most of the cases will arise out of automobile accidents.

In the case of a fatal accident, there may not be any person competent to give notice of action, etc., such as is required by many special Acts. It was considered that the rights of the de-

pendants (most of whom in many cases would be children) should not be lost because of the failure of someone else to give a notice, or by the omission of such person to comply with the provisions of some particular legislation with respect to the giving of a notice, etc., within some specified time.

Sec. 7. By this section a right of action is given to dependants if there is no personal representative or if he fails to act. Similar provisions are found in other statutes considered (there were none in New Brunswick). It gives a right to bring an action if there is no executor or administrator, or if he refuses to bring an action. The latter may well happen because *he* would be *personally* liable for costs if the action failed, and might take no personal benefit if the action succeeded.

Sec. 8. Provides for the Defendant paying money into Court without being required to specify shares. Similar provisions appeared in all statutes examined.

Sec. 9. Provides for the giving of particulars of persons for whose benefit the action is brought and eliminates the result of failure of the Plaintiff to give such particulars. The last clause is considered essential because in one action in New Brunswick it was held that the omission of an attorney to deliver such particulars *with* the Statement of Claim was fatal to the maintenance of the action and that the effect of such omission could not be corrected by delivering the particulars at a later time. It was the opinion of the two New Brunswick groups that such a situation was an injustice which should not be allowed to continue. The proposed amendment provides that the omission to give particulars shall not be a ground for the dismissal of the action.

Sec. 10. Distribution of moneys recovered. The principle in this provision is found in some provision in all the statutes examined. The language has been altered so as to deal with the amount awarded as funeral expenses if recovered. The section also provides for the apportionment if one is not made at the trial, and gives discretion with respect to the distribution of benefits awarded to infants.

Sec. 11. Relates to the Crown. This section is based on section 5 of the English Act of 1954, but in view of the Crown having different rights in Canada, it is stipulated the Crown is bound in every right. It is considered only right that if some person is killed in New Brunswick by a truck owned by the Crown in right of Nova Scotia, and an action is brought in New Brunswick, the liability of the Crown in right of Nova Scotia should be the same

as the liability of the Crown in right of New Brunswick would have been had the truck been owned by the Crown in right of New Brunswick.

Submitted with this Report as appendices are statutes examined and considered, arranged in the following sequence,—

Quebec Civil Code, Articles 1053, 1054, 1055, 1056, 1056 (a), 1056 (b), as Appendix "B".

Fatal Accidents Act of England (1846) and amending and subsequent statutes enacted on the subject, as copied from text books, as Appendix "C".

Fatal Accidents Act of 9 Common Law Provinces of Canada arranged alphabetically, namely,—

Alberta	Appendix "D"
British Columbia	" "E"
Manitoba	" "F"
New Brunswick	" "G"
Newfoundland	" "H"
Nova Scotia	" "I"
Ontario	" "J"
Prince Edward Island	" "K"
Saskatchewan	" "L"

Respectfully submitted,

J. F. H. TEED,
M. M. HOYT,
New Brunswick Commissioners.

Appendix "A"

"MODEL ACT"

FATAL ACCIDENTS ACT

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

1. In this Act, unless the context otherwise requires,

(*a*) "child" includes son, daughter, grandson, granddaughter, step-son, step-daughter, an adopted child, a person to whom the deceased stood in loco parentis, and, in case of the deceased being its mother or reputed father, an illegitimate child;

(*b*) "parent" includes father, mother, grandfather, grandmother, step-father, step-mother, a person who adopted the deceased, a person who stood in loco parentis to the deceased, and the mother of an illegitimate child;

(*c*) "judge" includes jury in all cases tried by a jury.

2.—(1) Whensoever the death of a person has been caused by wrongful act, neglect, or default, and the act, neglect or default was such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under circumstances amounting in law to culpable homicide.

(2) Subject to the provisions of subsection (3), the liability to an action for damages under this section shall arise upon the death of the person referred to in subsection (1). Such liability shall then arise notwithstanding that such person has in his lifetime, and within 6 months from the date of the wrongful act, neglect or default, released or settled any claim for damages he had or might have had against any person who was or would have been liable to him for damages, if death had not ensued, or has brought an action or recovered judgment for such damages.

(3) If at the time of the death of the person referred to in subsection (1) the person who was, or would have been liable to him for damages, if death had not ensued, is himself dead, the liability arising under this Act shall for the purposes of this Act

be deemed to have been subsisting against him before his death. Provided always that the period within which an action shall be brought with respect to the liability of such deceased person shall be the period specified in clause (*b*) of subsection (2) of Section 6.

3.—(1) Every such action shall be for the benefit of the wife, husband, parent, and child, or any of them, of the person whose death was so caused and, except as hereinafter provided, shall be brought by and in the name of the executor or administrator of the deceased. In every such action the judge may award such damages, by way of fair compensation, as are proportioned to the pecuniary loss resulting from such death, to the persons respectively for whose benefit the action is brought.

(2) Where an action has been brought under this Act, there may be included in the damages awarded an amount sufficient to cover the reasonable funeral expenses of the person deceased.

4. In assessing damages in any action brought under this Act, there shall not be taken into account,

(*a*) any sum paid or payable on the death of the deceased under any contract of Assurance or Insurance, whether made before or after the passing of this Act,

(*b*) any premium or premiums which would have been payable under any such contract subsequent to the date of his death if he had survived,

(*c*) any benefit or right to benefits, resulting from the death of the deceased, under any Workman's Compensation Act or Family Allowance, Widow's Allowance or Children's Allowance Acts or any legislation of similar import or effect wherever and whenever enacted, or

(*d*) any pension, annuity or other periodical allowance accruing payable by reason of the death of the deceased.

5. If the deceased person has in his lifetime released or settled any claim for damages he had or might have had against any person who by law was liable for the wrongful act, neglect or default which ultimately caused death, or has recovered judgment for such damages, the amount of any payment made to, and the value of any benefit received by, such deceased person as consideration or part of the consideration for such release or settlement of such claim, and any amount recovered or otherwise received upon any such judgment, may be taken into consideration in assessing compensation payable under this Act.

6.—(1) Only one action shall lie for and in respect of a cause of action arising under the provisions of this Act.

(2) Notwithstanding the provisions of any other enactment of the Legislature (whether public, or private, general or special) or of any contract,

(*a*) it shall not be necessary that any notice of claim or intended claim, or notice of action or intended action or any other notice, or any other document, be given or served, as provided in any such other enactment, or in any such contract, or at all, before bringing an action, the bringing of which is authorized by this Act;

(*b*) an action, the bringing of which is authorized by this Act, may be brought within 2 years after the death of the deceased person, and no such action shall be brought except within such period of 2 years.

7.—(1) If there be no executor or administrator of the person deceased, or if there being such executor or administrator, no action has been brought within 6 months after the death of such deceased person, by and in the name of the executor or administrator, an action may be brought by and in the name or names of all or any of the persons (if more than one) for whose benefit the action would have been brought if it had been brought by and in the name of the executor or administrator under the provisions of Section 3.

(2) Every action so brought shall be for the benefit of the same person or persons as if it were brought in the name of the executor or administrator.

(3) If an action has been commenced by or in the name of the executor or administrator, but has not been proceeded with to trial within six months after the same has been so commenced, then the

in such action and all subsequent proceedings therein may on application be amended by substituting as plaintiff all or any of the persons for whose benefit the action was or should have been commenced.

8. If a defendant in any action desires to pay money into Court in satisfaction, the defendant may pay the money into Court in one sum as compensation to all persons entitled to recover damages in the action, without specifying the shares into which, or the parties among whom, it is to be divided under the provisions of this Act. If the sum is not accepted and an issue is

taken by the Plaintiff as to its sufficiency, and the Judge finds the same to be sufficient, the defendant shall be entitled to a verdict on that issue.

9.—(1) In every such action the Statement of Claim shall contain or the Plaintiff shall deliver therewith, full particulars of the names, addresses and occupations of the person or persons for whose benefit such action is brought, and the manner in which the pecuniary loss to such person or persons is alleged to have arisen.

(2) The failure or omission of the Plaintiff to include in his Statement of Claim, or to deliver therewith, full particulars of the names, addresses and occupations of the person or persons for whose benefit the action is brought, as required by subsection (1), shall not be a ground of defence, to such action, or a ground for its dismissal. In the event of any such failure or omission, the Plaintiff may on application be ordered to give such particulars or so much thereof as he is able to give. His failure to comply with such order may render him liable to an attachment, but shall not be a ground for the dismissal of such action.

10.—(1) The amount recovered in such action, after deducting the costs and expenses incurred in respect thereof, not recovered from the defendant, shall be divided amongst the several parties for whose benefit the action was brought, in such shares or amounts as the Judge by his judgment shall find and direct, or if there be no such finding or direction, as may be subsequently determined. For the purpose of such division any amount awarded as funeral expenses shall be deemed to be awarded to the party who paid the same, or if not paid, who is liable for such payment.

(2) Where the compensation has not been otherwise apportioned, a Judge in Chambers may apportion it among the persons entitled.

(3) The Judge may in his discretion postpone the distribution of any money to which infants are entitled, and may direct payment from the undivided fund.

11. This Act shall be binding upon the Crown in every right.

APPENDIX M

(*See page 27*)

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

REPORT OF HORACE E. READ

At the 1959 meeting of the Conference after discussion of the Report submitted there on the subject under this title, it was 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". (See 1959 Proceedings, p. 29 and pp. 132-136.)

In the course of further consideration of the matter, a communication has been received from Mr. J. M. Cartwright Sharp of the Lord Chancellor's Office in London who is Secretary of the Private International Law Committee. He states that the United Kingdom will take part in the discussions at The Hague International Law Conference in early October of this year on the preparation of a multilateral convention concerning the formal validity of wills. He states also that, in order to meet the views of foreign countries expressed at that Conference, the government of the United Kingdom, on the advice of the Private International Law Committee, may wish to modify some of the positions taken in their last report in order to ensure that the law on this subject is as broadly uniform over as wide an area as possible.

As a result of the foregoing, preparation of a draft of any proposed amendments to the present Canadian Uniform Act has been deferred pending study of any action that may be taken in the United Kingdom as a result of The Hague Conference. Accordingly, it is recommended that the resolution passed at the 1959 meeting be renewed.

APPENDIX N

(*See page 27*)

FOREIGN JUDGMENTS ACT
1960

(*See 1959 Proceedings, p. 30.*)

The Uniform Foreign Judgments Act, which was adopted by this Conference in 1933, has been enacted by only two provinces, Saskatchewan in 1934 and, with slight modification, New Brunswick in 1950. As was pointed out in the course of discussion at the 1959 meeting: (a) the National Conference of Commissioners on Uniform State Laws in the United States is preparing a Uniform Foreign Money-Judgments Recognition Act, and (b) a draft Model Bilateral Convention and Model Act Respecting the Recognition of Foreign (Money) Judgments are being considered at the conference of the International Law Association at Hamburg, Germany, on August 8, 1960.

The first draft of an Act on this subject was submitted to the special committee on Uniform Recognition of Foreign Judgments of the National Conference in May, 1960. Final drafts of a Convention and Act (attached hereto) have been completed for presentation at Hamburg, but may be amended there.

Both of these projects are being studied by the undersigned and additional developments will be reported and commented upon orally at the meeting at Quebec. Meanwhile, it is suggested that consideration ought to be given to approaching the National Conference concerning the desirability of entering upon a joint study of the subject with its committee while they are still in the early stages of their work.

HORACE E. READ

MODEL BILATERAL CONVENTION

The High Contracting Parties, desiring to provide for the recognition and enforcement of judgments in civil and commercial matters, have agreed to adopt the provisions of the Model Foreign (Money) Judgments Act annexed and to make available a prompt and effective procedure to enforce a judgment to which the Act applies.

MODEL ACT RESPECTING THE RECOGNITION OF FOREIGN (MONEY) JUDGMENTS

1. This Act may be cited as *The Foreign (Money) Judgments Act.*

2. This Act applies to the recognition of judgments in civil and commercial matters.

3. In this Act,

(*a*) "foreign judgment" means a final judgment, decree or order or part thereof, made by a court of a foreign state whereby a definite sum of money is made payable, but does not include a sum made payable in respect of a tax or penalty;

(*b*) "final judgment" means one that is capable of being enforced in the state of the original court although there may still be open an appeal or other method of attack in that state;

(*c*) "original court" means the court by which the foreign judgment was given;

(*d*) "forum" means the court in which it is sought to enforce the foreign judgment;

(*e*) "judgment debtor" means the party against whom the foreign judgment was given.

4. A foreign judgment is recognized by the forum as conclusive and is enforceable between the parties and may be relied upon as a defence or counterclaim except where,

(*a*) the original court lacked jurisdiction under Section 5; or

(*b*) the foreign judgment was given by default and the forum is satisfied that the judgment debtor, being the defendant, did not have notice of the proceedings in the original court in sufficient time to enable him to defend and did not appear; or

(*c*) the original court denied natural justice; or

(*d*) the foreign judgment is based upon a cause of action which is contrary to a strong public policy of the forum; or

(*e*) the foreign judgment is based upon a cause of action which has formed the subject of another judgment between the same parties recognized as res judicata under the law of the forum; or

(*f*) the foreign judgment has been found by the forum to have been obtained by fraud.

5. For the purposes of this Act, the original court has jurisdiction when,

(*a*) the judgment debtor has voluntarily appeared in the proceeding for the purpose of contesting the merits and not solely for contesting the jurisdiction of the original court nor solely for protecting property from seizure or of obtaining the release of property seized; or

(*b*) the judgment debtor has submitted to the jurisdiction of the original court by an express agreement; or

(*c*) the judgment debtor at the time of the institution of the proceeding ordinarily resides in the state of the original court; or

(*d*) the judgment debtor instituted the proceeding as plaintiff or counterclaimed in the state of the original court; or

(*e*) the judgment debtor, being a corporate body, was incorporated in the state of the original court, or at the time of the institution of the proceeding there has its principal place of business in that state; or

(*f*) the judgment debtor, at the time of the institution of the proceeding, has either a commercial establishment or a branch office in the state of the original court and the proceeding is based upon a cause of action arising out of the business carried on there; or

(*g*) in an action based on contract the parties to the contract ordinarily reside in different states, the parties have not agreed upon a court, and the place where the contract is to be performed is wholly or partly in the state of the original court; or

(*h*) in an action in tort (delict or quasi-delict) either the place where the defendant did the act which caused the injury, or the place where the last event necessary to make the defendant liable for the alleged tort (delict or quasi-delict) occurred, is in the state of the original court.

6. The bases for jurisdiction recognized in section 5 are not exclusive and the forum may accept additional bases.

7. The forum may on terms that it thinks just adjourn the hearing concerning the recognition of a foreign judgment when an appeal or other method of attack has been taken in the state of the original court, and may adjourn the hearing to allow the judgment debtor a reasonable opportunity for taking such action.

APPENDIX O

(*See page 28*)

JUDICIAL DECISIONS AFFECTING UNIFORM ACTS 1959

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 1959 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 1959 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

ASSIGNMENT OF BOOK DEBTS

Ontario Section 1(d)

In *Lee* v. *Darling Company of Canada, Ltd. et al* (1959) 19 D.L.R. (2d) 268, the plaintiff was assignee of Swain, a tobacco farmer, of all moneys receivable from the sale of his crops to the Imperial Tobacco Company. The defendant was a creditor who received a judgment against Swain and executed it after the assignment was made to the plaintiff. Both parties claimed the fund from the Company which interpleaded.

Clause (d) of Section 1 of the Act reads:

> (d) "book debts" means all such accounts and debts whether existing or future as in the ordinary course of business would be entered in books, whether actually entered or not, and includes any part or class thereof.

Mr. Justice Hughes in the High Court held that the assignment to the plaintiff was an assignment of a "bank debt" as defined above in the Act, and was void as against creditors of Swain for failure to register it as prescribed by Section 3. The point of interest is the holding that farming is a business in the

ordinary course of which books would be kept. The Judge said at 19 D.L.R. (2d) p. 272:

> I think it would be idle to contend that the present-day tobacco farmer would not, in the ordinary course of business, keep books and I do not think it would be seriously contended that farming was not a business. As long ago as 1865, when the commercial methods of the day permitted nicer distinctions between types of occupation than we can now employ, Willes J. said in *Harris* v. *Amery* (1865), 35 L.J.C.P. 89 at p. 92: "It has never been doubted that farming was a business, though it could not properly be called a trade, since the latter has the technical meaning of buying and selling."

CONDITIONAL SALES

New Brunswick Section 14(3)

A difference of judicial opinion occurred in the Appeal Division of the Supreme Court of New Brunswick concerning the meaning of "guarantor" in subsection (3) of Section 14 of the Conditional Sales Act, R.S.N.B. 1952, c. 34, in *Taylor* v. *Traders Finance Corporation Ltd.* (1959) 20 D.L.R. (2d) 447.

The defendant purchased a motor car from a dealer under a conditional sale contract and the dealer later assigned the contract to the plaintiff, a finance company. The assignment contained the following clause: "Undersigned (assignor) guarantees full performance of all covenants and agreements of the Purchaser . . . and in the event of repossession and sale agrees that undersigned shall be jointly and severally liable to the Purchaser for any deficiency . . . " On default by the defendant, the plaintiff repossessed the car, sold it and recovered judgment for the deficiency. Meanwhile the sellor-assignor had become bankrupt and no notice was given to the seller or his trustee that the plaintiff intended to look to the defendant for the deficiency. In holding that the trustee in bankruptcy was liable, Chief Justice McNair held that the seller was not a guarantor within the meaning of subsection (3) of Section 14, while Mr. Justice Bridges held that he was, but that under the circumstances the trustee in bankruptcy had waived the notice required to be given by that provision. Chief Justice McNair said (p. 448):

> The . . . ground taken by the appellant depends upon the interpretation of the word "guarantor" as used in s. 14(3) of the *Conditional Sales Act*, R.S.N.B. 1952, c. 34, which reads: "Where the goods [after possession is retaken] are not redeemed within the period of twenty days and the seller intends to look to the buyer or guarantor of the buyer for any deficiency on a resale, the seller may sell the goods by

public auction at any time after the expiration of that period after notice in writing of the intention to sell has been given to the buyer and to the guarantor.

In my opinion the word "guarantor" as used in the section means one who contracts with the original seller to guarantee performance by the buyer of his obligations under the conditional sale agreement. I feel it was not the intention of the enacting body to include as a guarantor a person, in the case at bar the seller himself, who in a subsequent, independent transaction to which the buyer is not a party undertakes to underwrite in favour of an assignee of the conditional sale agreement performance by the buyer of his obligations thereunder. On this interpretation there was no guarantor within the meaning of the section to whom notice by the plaintiff of its intention to sell was required to be given.

The pertinent part of Mr. Justice Bridges' reasons for judgment is (pp. 455-456):

The contention of the defendant is that Campbell Motors, under the wording of the assignment became a guarantor of the defendant and that, as notice of the intention to sell had not been given to the Trustee in Bankruptcy of Campbell Motors, the plaintiff was not entitled to recover the deficiency from the defendant as s. 14(3) expressly requires such notice to be given to both buyer and guarantor.

This ground of appeal has caused me some concern. I have carefully considered whether the word "and" between the word "buyer" and the words "to the guarantor" in the last line of s. 14(3) should not be interpreted as "or", as there is no reason why, if a seller only intends to look to the buyer for a deficiency, notice should be given to a guarantor. On the other hand, if the intention is to look only to a guarantor for a deficiency, I can see why both should receive notice as the guarantor on payment of the deficiency would be entitled to recover from the buyer. In my opinion, it is impossible to interpret "and" as meaning "or" where it appears in the last line of s. 14(3).

On an assignment of a debt the assignee becomes the creditor of the debtor. I can see no objection to an assignor giving as part of the consideration for the assignment a guarantee that the debtor will perform the covenants required of him under the contract. I also can see no reason why the guarantee should not be incorporated in the assignment. In such case, as in that at bar, the necessary primary and secondary liabilities are created.

While the Legislature, in enacting s. 14(3), may have had only in mind a party who has guaranteed to the seller the performance of the contract by the buyer, it is my opinion that the words "guarantor of the buyer" and "guarantor" in each section must be interpreted as including an assignor who has guaranteed the assignee the performance by the buyer of his covenants under the contract. There is no provision for notice to be given to a seller who has assigned his interest in the contract. If, however, he has guaranteed to the assignee performance by the buyer and the assignee intends to hold him liable on his guarantee it seems only proper that he should be given the notice required by the section.

DEVOLUTION OF REAL PROPERTY

Alberta Section 14(1) (b)

In *Hayes* v. *Mayhood* (1959) 18 D.L.R. (2d) 497, the Supreme Court of Canada held that as a result of enactment of Section 2 of the Alberta Land Titles Act Clarification Act, 1956 Alta., c. 26, a petroleum and natural gas "lease" providing for drilling and for payment of royalties on production of oil and gas is now a lease within the meaning of the Land Titles Act, R.S.A. 1955, c. 170. The correct interpretation of the word "lease" in Section 14 of the Devolution of Real Property Act, R.S.A. 1955, c. 83, therefore includes within its meaning a petroleum and natural gas lease.

Mr. Justice Martland had this to say (18 D.L.R. (2d) pp. 503-504):

> Reference was made to the decision of this Court in *Berkheiser* v. *Berkheiser & Glaister*, 7 D.L.R. (2d) 721, [1957] S.C.R. 387, in which consideration was given to the legal nature of the interest created by a petroleum and natural gas lease similar to the one in question here. In that case Rand and Cartwright JJ. held that the interest created was either a *profit à prendre* or an irrevocable licence to search for and win the substances named. Kellock, Locke and Nolan JJ. held that it was 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 the instrument provided. That was an appeal from the Court of Appeal in Saskatchewan [[1955] 5 D.L.R. 183]. That Court had previously held, in *Re Heier*, [1953] 1 D.L.R. 792, that a "lease" of petroleum and natural gas rights was not a lease within the meaning of s. 15(1) of the *Devolution of Real Property Act* of Saskatchewan, which is in similar terms to s. 14(1) of the Alberta Act.
>
> The position in Alberta is, I think, different, however, in view of the enactment of the *Land Titles Act Clarification Act*, 1956 (Alta.), c. 26, s. 2 of which provides as follows: "It is hereby declared that the term "lease" as used in *The Land Titles Act* and any Act for which *The Land Titles Act* was substituted includes, and shall be deemed to have included, an agreement whereby an owner of any estate or interest in any minerals within, upon or under any land for which a certificate of title has been granted under *The Land Titles Act* or any Act for which *The Land Titles Act* was substituted, demises or grants or purports to demise or grant to another person a right to take or remove any such minerals for a term certain or for a term certain coupled with a right thereafter to remove any such minerals so long as the same are being produced from the land within, upon or under which such minerals are situate." In view of this provision, it is clear that the agreement in question here is a lease within the meaning of the *Land Titles Act*, as it is a document of the kind defined in this section and relates to lands for which a certificate of title has been granted under the *Land Titles Act*.
>
> The word "lease" is not defined in the *Devolution of Real Property*

> *Act*, but I think that when the word is used in s. 14 of that Act it must have been intended to include in its application leases of real property under the *Land Titles Act*. If the meaning of the word, as used in s. 14 of the *Devolution of Real Property Act*, is ambiguous, then I think that the two statutes are *in pari materi*, both having provisions relating to real property in the Province of Alberta. That being so, it is proper to look at the subsequent legislation to see what is the proper construction to put upon the earlier statute: *Cape Brandy Syndicate* v. *Inland Revenue Com'rs*, [1921] 2 K.B. 403, cited with approval by Lord Buckmaster in *Ormond Investment Co.* v. *Betts*, [1928] A.C. 143 at p. 156.

[See 1954 Proceedings, p. 132, and 1959 Proceedings, p. 64.]

RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS

Manitoba Section 2(e).

In Manitoba the definition of "maintenance order" is the one contained in the Uniform Reciprocal Enforcement of Maintenance Orders Act prior to the 1956 revision: "An order, other than order of affiliation, for the periodical payment of sums of money towards the maintenance of the wife or other dependants of the person against whom the order is made"—R.S.M. 1954, c. 151, s. 2(e). This definition has been interpreted by Chief Justice Williams not to include an alimony decree granted ancillary to a divorce decree, in *Re Flemming and Flemming* (1959) 19 D.L.R. (2d) 417. In this case the applicant was a woman who divorced her husband in Alberta and sought registration under the Manitoba Act of a decree nisi in which it was "ordered and adjudged" that she was "entitled to alimony and maintenance" for herself and child—in monthly instalments. (She also filed a copy of a later decree absolute.)

It will be recalled that Chief Justice Williams held in 1957 in *Re Paslowski* v. *Paslowski* (1957) 22 W.W.R. 586, (1958) 11 D.L.R. (2d) 180, that the definition of "judgment" contained in the Uniform Reciprocal Enforcement of Judgments Act prior to the 1956 revision did not include within its meaning a maintenance order issued incidental to a decree of judicial separation. (See 1958 Proceedings, p. 48.) In the recent *Flemming* case he said (pp. 424-425):

> In my opinion these two Acts are mutually exclusive. I hold that the "order" sought to be registered on this application is not a "maintenance order" within the meaning of the Manitoba "*Orders Act*".
>
> In *Re Paslowski* v. *Paslowski* I held for reasons there given that the definition of "judgment" in the Manitoba "*Judgments Act*" was

confined to judgments for the payment of money only and that it excluded judgments which in addition gave other relief. In my opinion the definition of "order" in the Manitoba "*Orders Act*" is subject to the same interpretation and the definition excludes "orders" which give other relief. Indeed the "order" in question is, as will appear, not an "order" but a "judgment".

I am confirmed in the view I had already formed by a statement made in the Report of the Manitoba Commissioners made to the Commissioners on Uniformity in 1951 (34 Can. Bar Ass'n Y.B. (1951) proceedings of conference pp. 52 *et seq.*). They said:

"There are two types of maintenance orders received from other jurisdictions:

(1) An order under subsection (1) of section 3 of the Act, which order is not a provisional order, but one made pursuant to a statute of the foreign jurisdiction corresponding to the Manitoba Wives' and Children's Maintenance Act.

(2) An order under subsection (1) of section 6 of the Act, which order has been made in the foreign jurisdiction under the statute of that jurisdiction corresponding to The Maintenance Orders (Facilities for Enforcement) Act, 1946, of Manitoba and which is provisional only and of no effect until confirmed by a court in Manitoba."

The Manitoba "*Judgments Act*" refers to "judgment and orders" The order in question in the instant case is an order varying a decree *nisi* by "striking out" the paragraph which dealt with alimony and maintenance and substituting other provisions for alimony and maintenance is part of the decree *nisi*, that is part of a judgment.

It will be observed that while the Chief Justice referred in the *Paslowski Case* to the amended definition of "judgment" in the 1956 revision of the Uniform "Judgments" Act, in partial support of his decision, (See 22 W.W.R. p. 586 as quoted in 1958 Proceedings at p. 49.), he made no reference in the *Flemming case* to the amended definition in the 1956 revision of the Uniform "Maintenance Orders" Act. That definition reads: " 'maintenance order' means an order for the periodical payment of money as alimony or as maintenance for a wife or former wife or reputed wife or a child or any other dependant of the person against whom the order was made." But even if he had considered this revised definition, he would, on the ground on which he rested his decision, have reached the same result. The unqualified word "alimony" is susceptible to being interpreted as being restricted in meaning to alimony ordered in an action in which alimony is the only relief sought, and not to include alimony ordered incidental or ancillary to a decree of divorce or judicial separation.

It will be recalled that in Ontario in *Summers* v. *Summers* (1958) 13 D.L.R. (2d) 454, (See 1959 Proceedings, p. 65), Mr. Justice Treleaven appears to have taken for granted that a main-

tenance order issued as part of a divorce proceeding in England was within the meaning of the definition of "maintenance order" in the Ontario "Maintenance Orders" Act which is in identical terms with that contained in the corresponding Manitoba Act. (See R.S.O. 1950, c. 334, s. 1(d).)

In view of the present state of uncertainty, it is suggested that consideration should be given to making the definition of "maintenance order" in the latest version of the Uniform Reciprocal Enforcement of Maintenance Orders Act (See 1958 Proceedings, p. 97) explicit with reference to alimony and maintenance orders rendered incidental or ancillary to divorce and judicial separation decrees.

WILLS

Alberta Sections 2(d) and 5(b)

Section 2 of the Alberta Wills Act, R.S.A. 1955, c. 369, reads in part: "2. In this Act, (d) '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."

In *Re Benton's Will* (1959) 29 W.W.R. 657, 20 D.L.R. (2d) 737, a testator, who had previously made a formal will leaving bequests to his sister, loaned her some money and took a promissory note as security. Subsequently, he addressed to his lawyer two letters written wholly in his handwriting and signed by him. The first letter read: "In case of death, demise, or cease to exist this contract or mtg or note shall be included in any amount of my donation to my sister Mrs. Haser Gargus, Neosho, Mo., U.S.A. in my will held by you as administrator of my estate." The relevant part of the second letter read: "Mrs. Gargus to get *free* of what I gave her last spring *and* also the *amt* declared in old will if enough money." Several months after writing these letters, the testator executed a formal codicil to his earlier formal will in which he made some changes and confirmed it in all other respects.

In the Alberta Court of Appeal, Mr. Justice MacDonald for the majority held that (a) the letters satisfied the requirements of clause (b) of Section 5 of the Act as to the form of a holograph will, and also (b) manifested "a deliberate or fixed and final expression of intention as to the disposal of property upon death" which was held to be necessary by the Supreme Court of Canada

in *Bennett et. al.* v. *Toronto General Trust Corp. et. al.* (1958) 14 D.L.R. (2d) 1. (See 1959 Proceedings, p. 70.)

The Judge then said (29 W.W.R., p. 663):

> There is a troublesome point, however, as to what effect should be given to such letters in view of the formal codicil . . . If the said letters are valid testamentary documents, I think that they would be deemed to be included in his will by virtue of the statutory definition of the word "will" in the Act (supra).
>
> Once such testamentary documents became a part of his will they would continue to be effective until revoked.
>
> I can find nothing in the formal codicil of December 4, 1956, revoking the testamentary effect of the letters of May 16, 1956 and June 3, 1956.
>
> It follows then, in my opinion, that the original will plus the letters of May 16, 1956, June 3, 1956, and the formal codicil of December 4, 1956, were properly included in the grant of letters probate.
>
> I agree with Egbert, J. in *In re Cottrell Estate* (1951) 2 WWR (NS) 247, at 250, where he states:
>
> ". . . in my opinion, a holograph codicil, properly drawn as such, would be sufficient to alter an attested will. . . ."

Mr. Justice Porter dissented (p. 664) on the ground that:

> Neither the documents in question in this matter nor the extrinsic evidence will support unequivocally an inference that the holographic papers here involved were meant by the testator to be testamentary.

Manitoba Section 6(2)

In *Re Bentons Will,* considered above, the Court of Appeal citing *In re Cottrell Estate,* held that a holograph will can be a valid codicil to a formal will. In *Re Violet Bennie Estate* (1957) 22 W.W.R. 118, (commented upon in 1958 Proceedings, pp. 53 to 55 with reference to the 1957 Revised Uniform Wills Act), it was held by Mr. Justice Taylor that in Saskatchewan a holograph will cannot validly so operate.

Now Judge Lindal of the Manitoba Surrogate Court has rendered a decision definitely holding that in this province the Alberta interpretation is correct. In *Re Chapman Estate* (1959) 28 W.W.R. 145, the Judge reviewed the history of legislation on holograph wills and relevant judicial interpretations previously made in Manitoba and Alberta, and said (28 W.W.R., p. 147):

> As the decision in *Re Bennie Estate, supra,* is at variance with decisions on the same question in the other two provinces and elsewhere where holograph wills are valid a very important point arises in regard to the interpretation which courts should give to statutes or sections of statutes introduced into provinces for the first time but which had previously been valid in other provinces and had received judicial interpretations there. If the interpretation given in provinces where an

enactment is new is at variance with the interpretations already given in other provinces that would to a large extent defeat the laudable effort to bring about uniformity in the laws of the provinces.

This possibility, it seems to me, should have been drawn to the attention of Taylor, J. and he should in particular have been referred to sec. 37 of the Saskatchewan and Manitoba Acts which reads as follows:

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

In view of that section and the desirability of reasonable uniformity it is submitted with due deference that Taylor, J. should have given careful consideration to the interpretation and construction previously given to legislation on holograph wills. That is the course I propose to take on this application, and *Re Bennie Estate* will not be left out of my deliberations.

Judge Lindal after extended consideration decided that his decision in *In re Richardson's Estate* [1949] 1 W.W.R. 1075, that a holograph document may be a valid codicil to an attested will was correct.

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

Section 7 was liberally interpreted by Judge Hogarth of the Surrogate Court in *Re Wagner Estate* (1959) 29 W.W.R. 34. An attesting witness wrote the will and the testator placed his signature on the first line after the words "This is the last Will and Testament of me". Then followed a page of disposing clauses. The two attesting witnesses signed at the foot of the page but the testator did not. The document was placed in an envelope and the attesting witness who had written the will wrote upon the envelope "Last Will and Testament". In the presence of both witnesses the testator then added his signature thereon.

In holding that the signature on the envelope satisfied Sections 6(1) and 7, the Judge observed that the English Wills Act contains identical provisions, and that in a case with indistinguishable facts it had been held there that the signature on the envelope was intended to be a signature to the will and validated the will: *In re Mann Estate* [1942] p. 136, [1942] 2 All E.R. 193. After reciting the circumstances which led him to decide that the signature on the envelope was put there by the testator intentionally as his signature to his will, Judge Hogarth concluded (29 W.W.R., pp. 40-41):

(4) As a further reason I cannot do better than quote from the judgment of Langton, J. in the *Mann* case at p. 89:

". . . , if an unattached paper is to be admitted at all, there is

much to be said in favour of an envelope, which may reasonably be held to have a far closer relationship to a document which it encloses than a second and wholly disconnected piece of paper. Envelopes are, by their nature, designed to have what may be described as a dependent and secondary existence, rather than an independent and primary life of their own."

In reaching the conclusion I have, I feel I should make it perfectly clear that the provisions of secs. 6 and 7 of *The Wills Act*, as to execution and placing of signature, should not be so freely relaxed as to open the door and admit all wills to probate where the signature of the testator appears on a separate paper to that containing the dispository clauses. To do so would be preparing the way for fraudulent acts of unscrupulous people.

In accepting the signature on a separate sheet of paper to be the signature to the will, the surrounding circumstances should, as in the case now before me, show such an intention on the part of the testator as to preclude all possibility of fraud.

The facts and circumstances surrounding the preparation and execution of the documents before me, which so clearly express the intention of the deceased, in my opinion, preclude all possibility of fraud. I am impelled, therefore, to place a liberal consideration on sec. 7(1) and (2) (b) of *The Wills Act* and accept the written paper as the will of the deceased and the signature on the envelope as being the signature to his will, and find that both taken together constitute the last will and testament of the deceased.

Saskatchewan Sections 6(3) and 7(1).

The judgment of Mr. Justice Thomson in *Boyko* v. *Jendzyjamsky* (1958) 14 D.L.R. (2d) 584, 24 W.W.R. 608 (See 1959 Proceedings, p. 73) was affirmed by the Saskatchewan Court of Appeal which adopted the reasons for judgment of the trial judge as its own: (1959), 27 W.W.R. 144, 16 D.L.R. (2d) 584.

APPENDIX P

(*See page 28*)

DOMICILE

REPORT OF THE BRITISH COLUMBIA COMMISSIONERS

As the result of consideration by the Conference of the report made by the Alberta Commissioners in 1957 (see 1957 Proceedings at pages 153 to 175 inclusive) and the report of the British Columbia Commissioners in 1959, it was resolved at the 1959 meeting that the British Columbia Commissioners should prepare and submit a draft model Act. The draft is appended to this report, and is referred to herein as the "draft Act". It is modelled on the suggested "Code of the Law of Domicile" contained in Appendix A of the First Report of the Private International Law Committee presented to the Parliament of the United Kingdom in February, 1954, and referred to herein as the "Code".

Section 1

Section 1 of the draft Act has no counterpart in the Code.

Section 2

Section 2 of the draft Act includes paragraph (4) of Article 4 of the Code and as well contains a definition of "Court". The words "court of competent jurisdiction" used in Articles 4 and 5 of the Code may be found to be inadequate in the context. If so, a particular court or particular courts may be specified in the definition section. If not, "Court" may still be defined as "any court of competent jurisdiction". The definition of "infant" is taken from Article 4 of the Code. A definition of "mentally incompetent person" is also included. This is the nomenclature used in the New Brunswick and Prince Edward Island statutes; the definition will vary depending upon terminology used in other statutes of each jurisdiction.

Section 3

Section 3 of the draft Act includes paragraphs (1) and (5) of Article 1 of the Code. The Code does not provide for the revival of the domicile of origin when the conditions necessary for the attainment of a domicile of choice cease to exist, but instead provides, in paragraph (5) of Article 1, that the domicile of choice subsists until another is acquired. That change from the present

rule was endorsed by the Conference at the 1959 meeting. Accordingly, there appears to be no purpose in retaining the distinction between a domicile of origin and a domicile of choice—a person simply has a domicile, whether it be that conferred on him at birth or a subsequent one arising as the result of the operation of the remainder of the Act. Paragraphs (2), (3) and (4) of Article 1 of the Code have therefore been omitted. Subsection (4) of section 3 of the draft Act is included in accordance with the instruction of the Conference arising from Dr. Read's suggestion that the present rule concerning the law by which domicile is to be determined be retained and expressed.

Section 4

Section 4 of the draft Act has been drafted to include the substance of Article 2 of the Code. Rule 2 of the Code has been omitted and the words "principal home" used in subsection (1) of the draft Act instead of "home". These changes are based on the reasoning that a person who has but one home has a "principal home" and that, by using those words in subsection (1), the necessity for Rule 2 of the Code is obviated.

Instead of the words "the domicile of a person shall be . . " as used in paragraph (1) of the Code, the draft Act is worded " . . a person acquires a domicile . . ". The intention in this section is to set forth the general rule by which to decide, not only what the domicile of a person is (which may be in a place where he neither has a home nor intends to reside at all), but, more exactly, what conditions must exist in order that he might obtain a domicile to replace that which he already has. Having acquired a domicile under this section, the provisions of section 3 of the draft Act take care directly of what a person's domicile is at any one time.

The words "state and in a subdivision thereof" are used in the draft Act in place of "country", for consistency with the phraseology used in the uniform Reciporcal Enforcement of Judgments Act and Reciprocal Enforcement of Maintenance Orders Act, and by way of adaptation to a federation.

The word "indefinitely" is used in place of the word "permanently", because it will have more accurate application to more people. An actual intention to remain anywhere "permanently" is uncommon.

In clause (a) of subsection (2) of the draft Act, the words "principal home" have again been used, and in consequence Rule 2 as shown in Article 2 of the Code is omitted.

The presumption set forth in Rule 3 of that Article of the

Code is widened to some extent in clause (b) of subsection (2) of the draft Act. Presumably it would not be inconsistent with the policy of a legislature that would approve of Rule 3 of the Code to make a similar provision for the person who is absent from his family only for reasons of health, or because he is imprisoned, or for any other reason except where a contrary intention appears. Therefore, the presumption being rebuttable by showing a different intention, the draft Act provision creates a presumption to be applied in every case of absence from family, and by the use of the word "spouse", to be applied to wives as well as to husbands.

Subsection (3) of this section of the draft Act is the same as paragraph (3) of Article 2 of the Code, except that members of the civil service are not mentioned.

This section of the draft Act will, if the Act is adopted as drafted, be applicable to married women. Article 3 of the Code is not included. This follows the instructions of the Conference given at the 1959 meeting, and will have the effect in some cases of conferring on a married woman a domicile different from that of her husband. However, it should be noted that, because of clause (b) of subsection (2) of this section of the draft Act, a presumption arises in favour of unity of domicile.

Section 5

Our suggestion is that Article 4 of the Code be replaced by this section, and, complementary to the deletion of Article 3, that married women be expressly mentioned to show that the intention is to alter the common law rule. With regard to the domicile of an infant, in most cases the application of section 4 of the draft Act will end in the result that would be obtained by giving effect to Article 4 of the Code. In difficult cases it is submitted that the Court should be enabled to make its decision in the light of each circumstance involved without being required to come to what may be an unreasonable determination because of the rules set forth in Article 4 of the Code, and that, again, the application of the proposed section 4 will result in a decision as beneficial, or more so, than could be arrived at by further restriction in dealing with this subject.

Section 6

This section is paralleled by Article 5 of the Code.

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

APPENDIX

DOMICILE ACT

Title.

1. This Act may be cited as the *Domicile Act*.

Interpretation.

2. In this Act, unless the context otherwise requires,

(*a*) "court" means .....;

(*b*) "infant" means a person who has not attained the age of twenty-one years and who has not married;

(*c*) "mentally incompetent person" means .....

Domicile.

3.—(1) Every person has a domicile.

(2) No person shall have more than one domicile at the same time.

(3) The domicile of a person continues until he acquires another domicile.

(4) The domicile of a person shall be determined under the law of the forum.

4.—(1) Subject to section 5, a person acquires a domicile in the state and in the subdivision thereof in which he has his principal home and in which he intends to reside indefinitely.

(2) Unless a contrary intention appears,

(*a*) a person shall be presumed to intend to reside indefinitely in the state and subdivision thereof wherein his principal home is situate; and

(*b*) a person shall be presumed to have his principal home in the state and subdivision thereof wherein the principal home of his spouse and children (if any) is situate.

(3) Subsection (2) does not apply to a person entitled to diplomatic immunity or in the military, naval or air force of any country or in the service of an international organization.

5.—(1) A mentally incompetent person retains, during incompetency, the domicile which he had immediately before he became a mentally incompetent person.

Mentally incompetent persons.

(2) The person or authority in charge of a mentally incompetent person may change the domicile of the mentally incompetent person with the approval of a court in the state and subdivision thereof in which the mentally incompetent person is domiciled.

APPENDIX Q

(*See page 29*)

DRAFT MODEL DOMICILE ACT

1. This Act may be cited as the *Domicile Act.*

retation. **2.** In this Act, unless the context otherwise requires, "mentally incompetent person" means.. ....

ile. **3.**—(1) Every person has a domicile.

(2) No person has more than one domicile at the same time.

(3) The domicile of a person shall be determined under the law of the province.

(4) The domicile of a person continues until he acquires another domicile.

4.—(1) Subject to section 5, a person acquires and has a domicile in the state and in the subdivision thereof in which he has his principal home and in which he intends to reside indefinitely.

(2) Unless a contrary intention appears,

(*a*) a person shall be presumed to intend to reside indefinitely in the state and subdivision where his principal home is situate, and

(*b*) a person shall be presumed to have his principal home in the state and subdivision where the principal home of his spouse and children (if any) is situate.

(3) Subsection (2) does not apply to a person entitled to diplomatic immunity or in the military, naval or air force of any country or in the service of an international organization.

ly etent **5.** The person or authority in charge of a mentally incompetent person may change the domicile of the mentally incompetent person with the approval of a court of competent jurisdiction in the state and subdivision thereof in which the mentally incompetent person is resident.

APPENDIX R

(See pages 29, 30)

SURVIVORSHIP

REPORT OF THE SPECIAL COMMITTEE

At the meeting in Victoria last year, the Ontario Commissioners presented a report on Survivorship and attached a draft revised Uniform Act.

After consideration of this draft, the usual adoption resolution was passed.

The Uniform Act as adopted at that meeting (1959 Proceedings, page 122) was distributed the following month and it soon became apparent that a number of the provinces had objections to it. It was therefore disapproved and stood over for further consideration at this year's meeting in Quebec.

At that meeting, the Uniform Act as adopted last year and the several criticisms of it were referred to a Committee (Mr. MacTavish, Chairman, and Messrs. Kennedy, Rutherford and Wood) to consider and to report thereon to that meeting.

The Committee made its report and its recommendations were adopted by the Conference. The usual adoption resolution was then passed.

The Uniform Act attached hereto is in the form adopted by the Conference and is recommended to the provinces for enactment unless it is disapproved by two or more jurisdictions by notice to the Secretary before November 30, 1960.

L. R. MACTAVISH.

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

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.

Substitute gifts

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

(*a*) dies before 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 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 statute or instrument provides is deemed to have occurred.

Substitute executors

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

(*a*) dies before 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 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.

Exception

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*).

APPENDIX S

(*See page 30*)

PRESUMPTION OF DEATH ACT

REPORT OF THE BRITISH COLUMBIA COMMISSIONERS

The advisability of drafting and adopting a draft uniform Act on this subject was considered at last year's meeting. Such an Act, if adopted, would be designed to replace provisions presently found in various statutes in most provinces and thus to effect intra-provincial as well as inter-provincial uniformity. If that were not the design it seems agreed that there would be little benefit in adopting a model statute.

The uniform life insurance part of the Insurance Act includes a provision dealing with presumption of death and presumably this would be one of the provisions which would be replaced in part by a uniform statute. In the Ontario Act the provision referred to is section 182 and reads as follows:—

> 182.—(1) Where the insurer admits the validity of the contract but does not admit the sufficiency of the proof furnished by the claimant of the maturity of the contract, or of the age of the person whose life is insured, or of the right of the claimant to receive payment of the insurance money, and where there is no other question in issue, except a question under subsection 2, the insurer or the claimant may, before or after action brought, upon at least thirty days notice apply to the court for a declaration as to the sufficiency of the proof furnished, and the court may direct what further proof shall be furnished, or in special circumstances, may dispense with further proof.
>
> (2) Where the claimant alleges that the person whose life is insured is presumed to be dead by reason of his not having been heard of for seven years, and where there is no other question in issue except a question under subsection 1, the insurer or the claimant may, before or after action brought, upon at least thirty days notice, apply to the court for a declaration as to the presumption of death.
>
> (3) If the court finds that the proof of the maturity of the contract or of the age of the person whose life is insured or of the right of the claimant to receive payment is sufficient, or that a presumption of death has been established, or makes an order directing what further proof shall be furnished or in special circumstances dispensing with further proof, the finding or order of the court shall, subject to appeal, be conclusive and binding upon the applicant and all parties notified of the application and the court may make such order as to the payment of the insurance money and as to the costs as to it may seem just.
>
> (4) The payment by the insurer in accordance with the order shall discharge it from liability in respect of such payment.

(5) If the court does not find that the proof of the maturity of the contract, of the age of the person whose life is insured, or of the right of the claimant to receive payment is sufficient, or that the presumption of death is established, the court may order that the question or questions in issue be decided in an action brought or to be brought, or may make such other order as to it seems just as to further proof to be furnished by the claimant, as to publication of advertisements, as to further inquiry, and as to costs, or otherwise.

(6) Unless otherwise ordered by the court, the application shall operate as a stay of any pending action with respect to the insurance money.

In British Columbia this section (numbered 128) was, upon the adoption of a Presumption of Death Act, changed to read as follows:

128.—(1) Where the insurer admits the validity of the contract but does not admit the sufficiency of the proof furnished by the claimant of the maturity of the contract, or of the age of the person whose life is insured, or of the right of the claimant to receive payment of the insurance-money, and where there is no other question in issue except a question under section 4 of the Survivorship and Presumption of Death Act, the insurer or the claimant may, before or after action brought, upon at least thirty days' notice, apply to the Court for a declaration as to the sufficiency of the proof furnished, and the Court may direct what further proof shall be furnished, or, in special circumstances, may dispense with further proof.

(2) Repealed, 1958, c. 22, s. 5.

(3) If the Court finds that the proof of the maturity of the contract or of the age of the person whose life is insured or of the right of the claimant to receive payment is sufficient, or makes an order directing what further proof shall be furnished or in special circumstances dispensing with further proof or makes an order under the Survivorship and Presumption of Death Act, the finding or order of the Court shall, subject to appeal, be conclusive and binding upon the applicant and all parties notified of the application, and the Court may make such order as to the payment of the insurance-money and as to the costs as to it may seem just.

(4) The payment by the insurer in accordance with the order shall discharge it from liability in respect of such payment.

(5) If the Court does not find that the proof of the maturity of the contract, of the age of the person whose life is insured, or of the right of the claimant to receive payment is sufficient, or if no order has been made under the Survivorship and Presumption of Death Act, the Court may order that the question or questions in issue be decided in an action brought or to be brought, or may make such other order as to it seems just as to further proof to be furnished by the claimant, as to publication of advertisements, as to further inquiry, and as to costs, or otherwise.

(6) Unless otherwise ordered by the Court, the application shall operate as a stay of any pending action with respect to the insurance-money.

and a similar amendment is suggested to the Conference along with the model Uniform Presumption of Death Act as contained in the Appendix to this report.

The Conference, at the 1959 meeting, 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 its 1959 meeting and for a report to the 1960 meeting of the Conference with the draft Act (See 1959 Proceedings at page 26).

The Association of Superintendents of Insurance did not make any recommendation with regard to this particular subject, partly it is understood, because further study is being given to the suggested new life insurance part in view of the fact that some provinces did not adopt it this year. However, our understanding is, from conversations with persons representing the insurers, that in principle there is no objection to having the subject of presumption of death dealt with in a statute other than the Insurance Act. However, it was pointed out to us that the suggested model Act differs from the present provisions of the Insurance Act in two respects and this difference is a matter of concern to the insurers—

(1) The model Act makes no mention of a seven-year period but rather leaves it to the court to decide upon the particular circumstances of each case where there has been sufficient total absence to warrant the making of an order.

(2) There is no provision in the model Act that notice of an application for an order be given to insurers. The British Columbia Commissioners suggest that the provision in an alternative section (subsection (2)) for a presumption of death arising from seven years' absence is unnecessary where a general provision for presuming death from one or more of a number of circumstances exists.

In British Columbia the matter of notice to insurers has been discussed with members of the Law Society and they have been requested to serve notice of an application under the Act on everyone who might be concerned. After experience has been gained, the rules of court may include a specific direction on the subject. In the meantime the experiment in this area of legislation is being given a trial. It will be noticed that the draft model Act has a section specifically referring to the Rules of Court and that section is included, inter alia, for that purpose.

In considering this matter reference should also be made to the report of the British Columbia Commissioners to the 1959 meeting.

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

APPENDIX

PRESUMPTION OF DEATH ACT

Title

1. This Act may be cited as the *Presumption of Death Act.*

Interpretation

2. In this Act, unless the context otherwise requires, "Court" means the. ....Court or a Judge thereof.

Presumption of death order

3.—(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.

Certified copy of order sufficient as evidence.

4. 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.

Rules of Court.

5. Subject to the provisions of this Act, the practice and procedure on all applications shall be governed by the Rules of Court.

APPENDIX T

(*See page 30*)

PRESUMPTION OF DEATH ACT

1. This Act may be cited as the *Presumption of Death Act.* Title

2. In this Act, unless the context otherwise requires, "court" means the.....Court or a Judge thereof. Interpretation

3.—(1) Upon application to be heard after such notice as the court deems proper, the court, if satisfied that, Presumption of death order

(*a*) a person has been absent and not heard of or from by the applicant, or to the knowledge of the applicant by any other person, since a day named; and

(*b*) the applicant has no reason to believe that the person is living; and

(*c*) reasonable grounds exist for supposing that the person is dead,

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 the date after which the person is presumed not to be living.

4. An order, or a certified copy thereof, declaring that a person is presumed dead for all purposes or for the purposes specified in the order is proof of death in all matters requiring proof of death. Certified copy of order sufficient as evidence.

APPENDIX U

(*See page 30*)

VARIATION OF TRUSTS

REPORT OF THE BRITISH COLUMBIA COMMISSIONERS

At the annual meeting last year, the British Columbia Commissioners were requested to study and at the next meeting of the Conference report on the desirability or necessity of legislation regarding variation of trusts.

In 1954 the House of Lords in *Chapman* v. *Chapman* (1954) A.C. 429 gave hearty approval to the dictum of Farwell, J., in *In Re Walker (1901) 1 Ch. 879.* "I decline", said Farwell, J., "to accept any suggestion that the court has an inherent jurisdiction to alter a man's will because it thinks it beneficial. It seems to me that is quite impossible." The House of Lords, however, noted four exceptions to this rule:

(a) The jurisdiction of the court to change the nature of an infant's property from real to personal estate and vice versa:

(b) The power of the court to allow trustees to settle property or to enter into some business transaction which was not authorized by the settlement:

(c) The power of the court to allow maintenance out of income which the settlor or testator had directed to be accumulated:

(d) The power of the court to approve "a compromise" on behalf of infants and possible after-born beneficiaries.

It was the last category with which the House of Lords was concerned. This category was confined by the majority of the House to cases where there was a real dispute as to rights and was held not to include those cases where the court's approval was sought to a bargain between the beneficiaries to re-arrange the beneficial interests under the trust instrument and to bind infants and unborn persons to the bargain by the order of the court.

The House of Lords' decision thus closed the door on schemes which have the merit of good business sense but not the element of a legal dispute.

Following the sixth report of the Law Reform Committee, the *Variation of Trusts Act 1958* was passed in England. This Act adopted many of the suggestions contained in the report. It should be noted that the Act does not empower the court to

vary trusts but only to sanction proposed variations on behalf of certain specified classes of beneficiaries and it would appear, therefore, that it is powerless to approve an arrangement, no matter how beneficial it may be for all the other parties, that does not have the approval of all the beneficiaries sui juris, as it has no authority to vary or to revoke trusts against the wishes of a beneficiary.

In England, prior to the passing of the *Variation of Trusts Act*, certain statutory powers were given the courts, notably section 57 of the *Trustee Act 1925*, which applies to personalty settlements, and section 64 of the *Settled Land Act 1925*, which is confined to settlements of land. The powers under section 57 of the *Trustee Act* were restricted and were limited to the management or administration of trust property. Section 64 of the *Settled Land Act*, however, was wider and permitted a variation of trusts when it could be shown to be a transaction affecting settled land which would be for the benefit of the settled land. It was thought, however, until it was finally settled by the Chapman case, that, apart from the statutory powers mentioned, the court had an inherent jurisdiction to sanction on behalf of infants and unascertained and unborn persons compromises which could be shown to be for the benefit of those classes of persons and which had the approval of all the beneficiaries which were sui juris.

The decision in the Chapman case was in England called "the case which clipped the wings of the Chancery Division" by settling once and for all that there was no such inherent jurisdiction, thus leaving few opportunities for the rearrangement of trusts, particularly those relating to personalty.

The English Act is very short and applies to all settlements made before or after the Act and whether made inter vivos or by will. The principal provisions are contained in section 1, as follows:—

> "Where property, whether real or personal, is held on trusts arising, whether before or after the passing of this Act, under any will, settlement or other disposition, the Court may if it thinks fit by order approve on behalf of
>
> (a) any person having . . . an interest, whether vested or contingent, under the trusts who by reason of infancy or other incapacity is incapable of assenting, or
>
> (b) any person (whether ascertained or not) who may become entitled . . . to an interest under the trusts as being at a future date or on the happening of a future event a

person of any specified description or a member of any specified class of persons . . . or

(c) any person unborn, or

(d) any person in respect of a discretionary interest of his under protective trusts where the interest of the principal beneficiary has not failed or determined

any arrangement . . . varying or revoking all or any of the trusts, or enlarging the powers of the trustees of managing or administering any of the property subject to the trusts. Provided that except by virtue of paragraph (d) of this subsection the court shall not approve an arrangement on behalf of any person unless the carrying out thereof would be for the benefit of that person."

This Act supplements the jurisdiction of the court and does not affect the existing statutory powers given it by those sections of the Acts quoted earlier in this report or by any other Act. The need for this Act has been evidenced in the last two years by the many cases that have come before the courts. A review of these cases shows that the Act is used chiefly for the following purposes:

(1) Widening of investment powers:

(2) Getting rid of discretionary trusts or excluding certain beneficiaries with their consent or deleting provisions for accumulations to avoid future claims for estate tax or for income tax.

The cases have also gone far in establishing the practice to be followed in the form of and material in support of applications and the orders made upon such applications.

In British Columbia the court's power to vary trusts is very limited, considerably more so than was the case in England prior to the enactment of the *Variation of Trusts Act* there. The three instances where British Columbia courts can vary trusts are to be found in

(a) the power ancillary to a matrimonial cause to vary ante and post nuptial settlements, *Supreme Court Act,* R.S.B.C. 1948, Chapter 73, section 14.

(b) the *Trustee Act,* R.S.B.C. 1948, chapter 16, which permits a trustee to apply income for the maintenance and education of an infant. This power is confined to cases where there is a direction in the trust to accumulate income. (*Re* Cox (1954) 12 W.W.R. p. 94). Section 17 of the same Act provides that where the income from an infant's trust property is not sufficient for his maintenance or education,

the court has power to order that the trust property be sold and the moneys in whole or in part used for the maintenance and education of the infant.

(c) the *Settled Estates Act*, R.S.B.C. 1948, chapter 300, which in summary permits a tenant for life to lease settled estates with the approval of the court. There is no wide power to be found in this Act similar to that found in section 64 of the English *Settled Land Act 1925*.

If the Chapman case is followed by the courts of British Columbia, then the power of the courts in this province is limited to an even greater extent than was thought to be so prior to this decision.

Your Committee has not examined exhaustively the statutes of all of the other provinces, but it is believed that, with the exception of Ontario which in 1959 passed a *Variation of Trusts Act* almost identical with that passed a year earlier in England, a similar situation will be found to prevail in those provinces, namely that the courts have a very limited power to vary any trust even though it may be shown beyond question that it is for the benefit of the beneficiaries.

Your Committee is convinced that variation of trusts legislation is desirable in those provinces where the jurisdiction to vary trusts is limited even to the extent that existed in England prior to the passing of the *Variation of Trusts Act* there, to achieve—

(a) wider investment powers:

(b) arrangements which will preserve the interests of beneficiaries involving the elimination of discretionary trusts, and provisions for accumulations which may save estate duty and income tax.

Your Committee also recommends the adoption of the Ontario Act, with such amendments as may be required in the Rules of Court in each province in order to provide for the application of the Act. By the adoption of the Ontario Act with few or minor amendments, the advantages of all the English and Ontario decisions will follow.

Respectfully submitted,

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

APPENDIX V

(*See page 31*)

THE BULK SALES ACT

REPORT OF THE ALBERTA COMMISSIONERS

The Uniform Bulk Sales Act was adopted in 1920. In 1950, a revised Act was adopted (1950 Proceedings, Appendix O, page 90). In 1951, it was referred to a joint Ontario and Canada Committee for re-drafting with the object of securing uniformity of expression in this Act and the commercial paper Acts. In 1953, the Committee reported that there appeared to be a need for change in some of the principles contained in the Act (1953 Proceedings, page 21). The Conference resolved that the draft prepared by the Committee be referred to the Manitoba Commissioners for a complete study of the principles contained therein in collaboration with the Commercial law section of the Canadian Bar Association (1953 Proceedings, page 22). The report of the Manitoba Commissioners in 1954 shows that they made a thorough study and received suggestions from Mr. Catzman (1954 Proceedings, page 80). They submitted a new draft (page 84). It was referred to the British Columbia Commissioners particularly on the question whether creditors should be confined to trade creditors (1954 Proceedings, page 21). In 1955, British Columbia reported that creditors should include all creditors and that with minor modification the 1950 Act should be confirmed (1955 Proceedings, page 107). The Conference then referred the subject to Manitoba and British Columbia for further study, report and a new draft Act (1955 Proceedings, page 23). These provinces gave a verbal report the next year and the matter was referred to Alberta for study, report and a draft Act (1956 Proceedings, page 22).

In 1957, Alberta presented its report (1957 Proceedings, page 97) and a draft Act very similar to the Manitoba draft of 1954 (1957 Proceedings, page 101). As the documents were circulated late, it was decided to defer consideration of the report until 1958 to enable the members of the Conference to study the report more fully (1957 Proceedings, page 25). In reporting back next year (1958 Proceedings, page 68), Alberta referred to the subject of avoiding resort to trustees where there are few creditors (a matter raised in discussion in 1957). The Conference took notice of the study of the Act that was under way in Ontario and the subject was referred back to Alberta for recommendation in the light of

Ontario's proposed Act (1958 Proceedings page 21). In 1959, Alberta suggested the desirability of further study in view of the passage of an Act in Ontario in 1959 and it was agreed to put the matter forward to 1960 (1959 Proceedings, page 25).

During the year we have studied the Ontario Act and the 1960 amendment thereto, and also Mr. Catzman's articles in the Canadian Bar Journal (Vol. 1, No. 2, p. 38 (1958); Vol. 3, No. 1, p. 28 (1960)). In the result we are of the opinion that in general, where the Ontario Act differs from the Uniform Act (either of 1950 or 1954), the Ontario Act is preferable. The attached draft is accordingly based on it. At the appropriate places we point out the differences and the reasons for our preference.

All of which is respectfully submitted,

H. J. WILSON,
W. F. BOWKER,
W. E. WOOD,
Alberta Commissioners.

SCHEDULE

THE BULK SALES ACT

AN ACT RESPECTING BULK SALES

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

Short title

1. This Act may be cited as "The Bulk Sales Act".

NOTE:—Uniform section 1—All section references are to the 1957 Uniform Draft (1957 Proceedings, p. 101) or to the 1959 Ontario Act (1959, chapter 9) as amended in 1960.

Interpretation

2. In this Act,

"buyer"

(*a*) "buyer" means a person who acquires stock under a sale in bulk;

NOTE:—Ont. 1 (*a*) reads: "buyer" means a person who acquires stock in bulk;"

Uniform 2 (*b*) reads: "buyer" means a person who acquires stock in bulk or an interest therein under a sale in bulk;".

The purchase of an interest is omitted because of the change in the definition of "sale in bulk" which results in the exclusion from the scope of the Act of the sale of an interest in a business: See 2 (*g*) of this Draft. See the notes at the end of this section for the reasons for the other changes.

court"

(*b*) "court" means the (county or district) court of the (county or district) in which the seller's stock or a substantial part thereof is located or the seller's business or trade or a substantial part thereof is carried on at the time of the sale in bulk;

NOTE:—Ontario 1 (*b*). The Uniform Act does not define "court" except in substantive provisions in which the word appears.

creditor"

(*c*) "creditor" means any creditor, including an unsecured trade creditor and a secured trade creditor;

NOTE:—Ontario 1 (*c*). Uniform 2 (*c*) reads:

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

We do not think that a surety should be treated as a creditor. The definition of "creditor" to include all creditors is part of the scheme of the Ontario Act under which all share in the distribution. See section 14 of this Draft.

(*d*) "judge" means a judge of the court; 'judge"

NOTE:—Ontario 1 (*d*). The Uniform Act does not define judge.

(*e*) "proceeds of the sale" includes the purchase price and "proceeds of the sale" any security therefor or for any part thereof, and any other consideration payable to the seller or passing from the buyer to the seller on a sale in bulk, and the moneys realized by a trustee under a security or by the sale or other disposition of any property coming into his hands as the consideration or part of the consideration for the sale, less the proper and reasonable costs of the seller's solicitor for completing the sale;

NOTE:—Ontario 1 (*e*). Uniform Act section 2 (*d*) reads:

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

The inclusion in the definition of the reference to the costs of the seller's solicitor is made to protect them because under the Bankruptcy Act it is the trustees' solicitor and not the seller's solicitor who has priority.

(*f*) "sale", whether used alone or in the expression "sale in "sale" bulk", includes a transfer, conveyance, barter or exchange and an agreement to sell, transfer, convey, barter or exchange, but does not include a pledge, charge or mortgage;

NOTE:—Ontario 1 (*f*) with reference to "an agreement, etc." added. Uniform 2 (*e*) reads:

"(*e*) "sale", whether used alone or in the expression "sale in bulk", includes a transfer, conveyance, barter, or exchange, and an agreement to sell, transfer, convey, barter or exchange, but does not include a pledge, charge or mortgage *unless it affects substantially the entire stock of the seller;*"

We agree with the omission by Ontario of the italicized words because pledges, charges and mortgages are not truly sales in bulk and other legislation covers them.

(*g*) "sale in bulk" means a sale of stock, or part thereof, out "sale in bulk" of the usual course of business or trade of the seller;

NOTE:—Ontario 1 (*g*) reads:

"(*g*) "sale in bulk" means a sale of stock in bulk out of the usual course of business or trade of the seller;"

Uniform section 2 (*f*) reads:

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

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

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

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

The essential feature of a sale in bulk is a sale out of the usual course of business. Uniform (ii) comes within Uniform (i) and is not necessary. We have also excluded the sale of an interest in the business (as Ontario did) as it is not truly a sale in bulk. Because of this change the reference to an interest has been removed from the definitions of "buyer" and "seller".

"secured trade creditor"

(*h*) "secured trade creditor" means a person to whom a seller is indebted, whether or not the debt is due,

(i) for stock, money or services furnished for the purpose of enabling the seller to carry on business, or

(ii) for rental of premises in or from which the seller carries on business,

and who holds security or is entitled to a preference in respect of his claim;

NOTE:—Ontario 1 (*h*). This definition is necessary because of the substantive provisions distinguishing secured from unsecured trade creditors with regard to consent to the sale and other matters. See sections 9 and 10 of this Draft. It is not found in the Uniform Act.

"sell"

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

NOTE:—Uniform 2 (*g*)—Ontario 1 (*i*). Ontario repealed this definition in 1960 but we feel it should stay unless there is some good reason for omitting it.

"seller"

(*j*) "seller" means a person who sells stock under a sale in bulk;

NOTE:—Ontario 1 (*j*) reads:

"(*j*) "seller" means a person who sells stock in bulk;"

Uniform 2 (*h*) reads:

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

Sale of "an interest" is omitted because of the change in definition of "sale in bulk" which results in the exclusion from the scope of the Act of the sale of an interest in the business.

"stock"

(*k*) "stock" means,

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

(ii) the fixtures, goods and chattels with which a person carries on a trade or business;

NOTE:—Ontario 1 (*k*) save that we have omitted their subclause (i) which is practically the same as the Uniform (i). We feel this does not add anything to the definition. Uniform 2 (*i*) reads:

"(*i*) "stock" means,

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

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

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

"unsecured" trade creditor

(*l*) "unsecured trade creditor" means a person to whom a seller is indebted for stock, money, or services, furnished for the purpose of enabling the seller to carry on a business, whether or not the debt is due, and who holds no security or who is entitled to no preference in respect of his claim.

NOTE:—Ontario 1 (*m*). It is not defined in Uniform Act—but necessary because of distinctions made in substantive provisions.

Section 2—We have not defined "affidavit" or "trustee". We agree with Ontario that these definitions are not necessary. We have also omitted a definition of "stock in bulk" and the term is not used in this Draft. Uniform section 2 (*j*) reads:

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

Ontario 1 (*l*) reads:

"(*l*) "stock in bulk" means stock or part thereof that is the subject of a sale in bulk and all other property, real or personal, that together with stock is the subject of a sale in bulk;"

This expression was very infrequently used in the Uniform and Ontario Acts and did not add any certainty or clarity to the provisions where it was used. Ontario's inclusion of other property and real property seems unsound (see also the note to section 18 of this Draft). We also felt the Ontario definition was of uncertain meaning when read with the Ontario definition of "sale in bulk" (see Note to 2 (*g*) of this Draft).

Application of Act

3.—(1) This Act applies only to sales in bulk by

(*a*) persons who, as their ostensible occupation or part thereof, buy and sell goods, wares, or merchandise;

(*b*) commission merchants;

(*c*) manufacturers; and

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

(2) Nothing in this Act applies to or affects a sale in bulk by an executor, an administrator, a committee of the estate of a mentally incompetent or incapable person, the Public Trustee as committee under The Act or *a person under* an order made under that Act, a creditor realizing upon his security, a receiver, an assignee or trustee for the benefit of creditors, a trustee under the Bankruptcy Act (Canada), a liquidator or official receiver, or a public official acting under judicial process.

NOTE:—Subsection (1) is the Uniform 3 which we prefer to the Ontario form of making the Act apply to all bulk sales except those set out in subsection (2) of this Draft. Subsection (2) is based on Ontario 2, with the italicized words added, and it replaces the Uniform 4 (1) which reads:

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

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

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

The adoption of the Ontario exclusions results in the bringing of wholesale merchants within the scope of the Act. We can see no good reason for excluding sales in bulk by wholesalers. The specific exception of assignments for the general benefit of creditors found in the Uniform Act is also omitted by Ontario. We have followed Ontario's example.

Judicial exemption

4.—(1) A seller may apply to a judge for an order exempting a sale in bulk from the application of this Act and the judge, if he is satisfied on the affidavit of the seller and any other evidence that the sale is advantageous to the seller and will not impair his ability to pay his creditors in full, may make the order, and thereafter this Act, except section 8, does not apply to the sale.

(2) The judge may require notice of the application for the order to be given to the creditors of the seller or such of them as he directs and he may in the order impose such terms and give such directions with respect to the disposition of the proceeds of the sale or otherwise as he thinks fit.

NOTE:—Ontario 3 (1) and (2). Section 4 (1) is the same as Uniform 4 (2) except that 4 (1) applies to any bulk sale whereas Uniform 4 (2) does not apply to a sale of substantially the entire stock but to part only of the stock and is directed to the sale of a branch by a chain store.

Statement of creditors

5.—(1) The buyer, before paying or delivering to the seller any part of the proceeds of the sale other than the part mentioned

in section 7, shall demand of and receive from the seller, and the seller shall deliver to the buyer, a statement verified by the affidavit of the seller (in Form 1).

NOTE:—Ontario 4 (1). Uniform 5 (1) reads:

> "5. (1) Except as otherwise provided in this Act, a buyer of stock in bulk, before paying to the seller any part of the purchase price or giving a promissory note or security for the purchase price or part thereof or executing a transfer, conveyance, or encumbrance of property, shall demand of and receive from the seller, and a seller of stock in bulk shall furnish to the buyer, a written statement (in Form 1) verified by the affidavit of the seller or his authorized agent or, if the seller is a corporation, by the affidavit of an officer, director, manager, or authorized agent, of the corporation."
>
> Affidavits are dealt with in section 16 of this draft. Our notes from the 1958 meeting indicate that the Conference agreed to revise this section along the lines set out above.

(2) The statement shall show the names and addresses of the unsecured trade creditors and the secured trade creditors of the seller and the amount of the indebtedness or liability due, owing, payable or accruing due, or to become due and payable by the seller to each of them and, with respect to the claims of the secured trade creditors, the nature of their security and whether their claims are due or, in the event of sale, become due on the date fixed for the completion of the sale.

NOTE:—Ontario 4 (2). Uniform 5 (2) reads:

> "(2) The statement shall show the names and addresses of the creditors of the seller and the amount of the indebtedness or liability due, owing, payable, or accruing due, or to become due and payable, by the seller to each of the creditors."
>
> Uniform 5 (3) is omitted because the circumstances it is intended to cover are covered by section 9 of this Draft. Uniform section 5 (3) reads:
>
> "(3) If the statement furnished to the buyer shows that the seller has no creditors, the buyer may pay the purchase price to the seller and section 11 does not apply."

No preference or priority

6. From and after the delivery of the statement mentioned in section 5, no preference or priority is obtainable by any creditor of the seller in respect of the stock, or the proceeds of the sale thereof, by attachment, garnishment proceedings, contract or otherwise.

NOTE:—Ontario 5 and Uniform 5 (6).

Part payment

7. The buyer may, before he receives the statement mentioned in section 5, pay to the seller on account of the purchase price a sum not exceeding ten per cent of the purchase price

which shall form part of the proceeds of sale and which the seller shall hold in trust,

(*a*) for the buyer until completion of the sale, or if the sale is not completed and the buyer becomes entitled to repayment of it, until it is repaid to the buyer; or

(*b*) where the sale is completed and a trustee has been appointed, for the trustee until the seller complies with clause (*b*) of section 12.

NOTE:—Ontario 6. Uniform section 5 (5) reads:

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

We have no objection to the larger payment permitted, particularly in view of the fact that the payment is held in trust.

Particulars

8. Any creditor of a seller is entitled to demand of the seller or the buyer particulars in writing of the sale in bulk in which case the seller or the buyer, as the case may be, shall forthwith deliver such particulars in writing to the creditor.

NOTE:—Ontario 8 rewritten. There is no equivalent Uniform provision. Ontario 8 reads:

"8. Any creditor of a seller is entitled to demand of the seller or the buyer, in which case the seller or the buyer, as the case may be, shall forthwith deliver to the creditor, particulars in writing of the sale in bulk."

Completion of sale

9. Where the buyer has received the statement mentioned in section 5, he may pay or deliver the proceeds of the sale to the seller and thereupon acquire the property of the seller in the stock,

(*a*) if the statement mentioned in section 5 discloses that the claims of the unsecured trade creditors of the seller do not exceed a total of $2,500 and that the claims of the secured trade creditors of the seller do not exceed a total of $2,500 and the buyer has no notice that the claims of the unsecured trade creditors of the seller exceed a total of $2,500 *or* that the claims of the secured trade creditors of the seller exceed a total of $2,500; or

(*b*) if the seller delivers a statement verified by his affidavit showing that the claims of all unsecured trade creditors and all secured trade creditors of the seller of which the buyer has notice have been paid in full; or

(*c*) if adequate provision has been made for the immediate payment in full of all claims of the unsecured trade creditors of the seller of which the buyer has notice and of all claims of secured trade creditors of the seller which

are or become due and payable upon completion of the sale of which the buyer has notice, so long as their claims are paid in full forthwith after completion of the sale, but where any such creditor has delivered a waiver (in Form 2) no provision need be made for the immediate payment of his claim.

NOTE:—Ontario 9 (1) with the word "or" substituted for "and" in clause (*a*). Uniform 6 (1) reads:

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

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

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

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

Completion of sale

10.—(1) Where the buyer has received the statement mentioned in section 5 *and if section 9 does not apply*, he may pay or deliver the proceeds of the sale to the trustee and thereupon acquire the property of the seller in the stock, if the seller delivers to the buyer,

(*a*) the consent to the sale (in Form 3) of unsecured trade creditors of the seller representing not less than sixty per cent in number and amount of the claims that exceed fifty dollars of all the unsecured trade creditors of the seller of whose claims the buyer has notice; and

(*b*) an affidavit of the seller deposing that he has delivered to all of his unsecured trade creditors and secured trade creditors personally or by registered mail addressed to them at their last known addresses at least fourteen days before the date fixed for the completion of the sale copies of the contract of the sale in bulk, *or if there is no written contract, particulars of the sale*, the statement mentioned in subsection (1) of section 5, and the statement of affairs (in Form 4), and deposing that the affairs of the seller as disclosed in the statement of affairs have not materially changed since it was made.

NOTE:—Ontario 9 (2) with the italicised words added. It should be noted

that sections 8 and 13 (1) require only particulars of the sale and not a copy of the contract. Section 10 (1) (*a*) is a variation of Uniform section 6 (1) (*c*), (see note to section 9) and relates only to unsecured trade creditors. By reason of its definition of "creditor" the uniform provision relates to all trade creditors. As the consent of secured trade creditors is not required, there are no provisions similar to Uniform 7, (2) to (7), for the valuation of security.

(2) True copies of the documents mentioned in clause (*b*) of subsection (1) shall be attached as exhibits to the affidavit mentioned therein.

NOTE:—Ontario section 9 (3) with "true copies" substituted for "duplicate originals".

Appointment of trustee

11.—(1) Where a sale in bulk is being completed under section 10, a trustee shall be appointed,

(*a*) by the seller with the consent (in Form 3) of his unsecured trade creditors representing not less than sixty per cent in number and amount of the claims that exceed $50 of the unsecured trade creditors as shown by the statement mentioned in section 5; or

(*b*) by a judge upon the application of any person interested where the unsecured trade creditors of the seller representing not less than sixty per cent in number and amount of the claims that exceed $50 as shown by the statement mentioned in section 5 have consented to the sale in bulk but have not consented to the appointment of a trustee, or where the trustee appointed under clause (*a*) is unable or unwilling to act.

NOTE:—Ontario 10 (1). Uniform section 7 (1) and (2) read:

"7. (1) Where a sale in bulk is completed with the written consent of the creditors of the seller under clause (*c*) of subsection (1) of section 6, the buyer shall pay, deliver, or convey; to be dealt with as provided by section 8, the entire proceeds of the sale to the person named as trustee by the creditors in the written consent or, if no trustee is named therein, to the trustee named by the seller or appointed under subsection (2).

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

Ontario 10 (1) is very similar to Uniform 7 (1) and (2) except that Uniform 7 (2) also refers to fixing security (See note after subsection (2)). Uniform 7 (1) does not provide a form of consent.

(2) Every trustee *appointed under clause (b) of subsection (1)* shall, *if required by the judge*, forthwith give security in cash or by bond of a guarantee company satisfactory to the judge for the due accounting for all property received by him as trustee and for the due and faithful performance of his duties, and the security shall be deposited with the clerk of the court and shall be given in favour of the creditors generally and may be enforced by any succeeding trustee or by any one of the creditors on behalf of all by direction of a judge and the amount of the security may be increased or decreased by a judge at any time.

NOTE:—Ontario 10 (2) with the italicized words added.

1. We do not think that a trustee agreed to by the creditors should have to give security. No security is required in such case under the Uniform Act;

2. We have provided for waiver of security under section 11 (1) (*b*) as the Uniform Act does in section 7 (2).

When proceeds of sale paid to trustee

12. Where a sale in bulk is *being* completed under section 10,

(*a*) the seller shall deliver to the trustee a statement verified by the affidavit of the seller showing the names and addresses of all creditors of the seller and the amount of the indebtedness or liability due, owing, payable or accruing due, or to become due and payable by the seller to each of them;

(*b*) the seller shall pay to the trustee all moneys received by him from the buyer on account of the purchase price under section 7; and

(*c*) the buyer shall pay or deliver the balance of the proceeds of the sale to the trustee.

NOTE:—Ontario 11 except the italicized word "being" is added to make the language conform to the preceding section. If the word is not added clause (*c*) is redundant because the money has presumably already been paid to complete the sale under section 10. Clause (*c*) is similar in part to Uniform 7 (1) set out above.

Filings on completion of sale

13.—(1) Within five days after the completion of a sale in bulk, the buyer shall file in the office of the clerk of the court an affidavit setting out the particulars of the sale, including the subject-matter thereof and the name and address of the trustee, if any, and exhibiting true copies of the statement mentioned in section 5, the statement, if any, mentioned in clause (*b*) of section 9, the waivers, if any, mentioned in clause (*c*) of section 9 and the consent and affidavit, if any, mentioned in section 10.

NOTE:—Ontario 12 (1) with "true copies" substituted for "duplicate originals". There is no equivalent provision in the Uniform Act. The

purpose of this subsection is to remove uncertainty as to when time starts running under the limitation section—see section 20 of this Draft.

In 1960 Ontario added a subsection (1*a*) setting out the fees to be charged by the clerk of the court in filing documents under subsection (1). We feel this is a matter that can be left to each jurisdiction.

(2) If the buyer fails to comply with subsection (1), a judge may at any time,

(*a*) upon the application of the trustee or any creditor, order the buyer to comply therewith;

(*b*) upon the application of the buyer, extend the time for compliance therewith; or

(*c*) upon the application of the buyer after the lapse of one year from the date of the completion of the sale in bulk and upon being satisfied that the claims of all unsecured trade creditors and secured trade creditors of the seller existing at the time of the completion of the sale have been paid in full and that no action or proceeding is pending to set aside the sale or to have the sale declared void and that the application is made in good faith and not for any improper purpose, make an order dispensing with compliance therewith.

NOTE:—Ontario 12 (2). There is no equivalent Uniform provision.

Distribution of proceeds of sale

14.—(1) Where the proceeds of the sale are paid or delivered to a trustee under section 12, the trustee is a trustee for the general benefit of the creditors of the seller and he shall distribute the proceeds of the sale among the creditors of the seller, and in making the distribution all creditors' claims shall be proved in like manner and are subject to like contestation before a judge and are entitled to like priorities as in the case of a distribution under the Bankruptcy Act (Canada), as amended or re-enacted from time to time, and shall be determined as of the date of the completion of the sale.

NOTE:—Ontario 13 (1). Uniform section 8 (1), (2) and (3) read:

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

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

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

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

NOTE:—Ontario 13 (2) and Uniform section 8 (4) except that the uniform provision also requires publication in one issue of the provincial Gazette. This does not appear to serve a useful purpose.

(3) Upon notice to the trustee within thirty days after the date of the filing of the documents under section 13 that a petition for a receiving order against the seller has been filed, the trustee shall not distribute the proceeds of the sale until the final disposition of the petition and, where a receiving order is made pursuant to the petition, the trustee shall pay the proceeds of the sale, after deducting therefrom his fee and disbursements, to the trustee appointed by the receiving order.

NOTE:—Ontario section 13 (3). There is no equivalent provision in Uniform Act. We think this was inserted in the Ontario Act to avoid any conflict with the Bankruptcy Act. One point that gives us some trouble is that section 14 (2) permits a distribution within fourteen days after advertising, and in theory at least distribution could be made within thirty days after filing the documents.

Ontario section 14 is omitted. This reads:

"14. Nothing in this Act affects the rights of any municipality under The Assessment Act."

We are not certain of the effect of this. In any event it is a matter that each jurisdiction can decide for itself.

15.—(1) Subject to subsection (3) the fee of the trustee shall be as follows: Fee of trustee

1. Where the proceeds of the sale do not exceed $5,000 . . . . . $250

2. Where the proceeds of the sale exceed $5,000 but do not exceed $25,000 .. .. $250
   plus three per cent of the amount by which the proceeds of the sale exceed $5,000
3. Where the proceeds of the sale exceed $25,000 but do not exceed $100,000 ... ... $850
   plus two per cent of the amount by which the proceeds of the sale exceed $25,000
4. Where the proceeds of the sale exceed $100,000.. $2,350
   plus one per cent of the amount by which the proceeds of the sale exceed $100,000.

(2) In the absence of an arrangement between the seller and the trustee to the contrary, the fee, together with any disbursements made by the trustee, shall be deducted by him from the moneys to be paid to the creditors.

NOTE:—Ontario section 15 (1) and (2). Uniform section 9 (1) reads:

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

(3) Where the proceeds of the sale exceed the amount required to pay in full all indebtedness of the seller to his creditors, the fee of the trustee together with any disbursements made by the trustee shall be deducted by him from the excess proceeds to the extent of that excess, and any sum remaining unpaid thereafter shall be paid as provided in subsection (2).

NOTE:—Ontario section 15 (3) save that the reference at the end is changed to (2) instead of (1) as this appears to be an error in the Ontario Act. Uniform section 9 (2) reads:

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

Who may take affidavits

16.—(1) Any affidavit required to be made under this Act by a seller,

(*a*) may be made by an authorized agent of the seller;

(*b*) if the seller is a partnership, shall be made severally by

all of the partners or by an authorized agent of all of the partners; or

(*c*) if the seller is a corporation, shall be made by an officer, director, manager or authorized agent of the corporation.

(2) Where the affidavit is made by an agent of the seller or, if the seller is a corporation, by an officer, director, manager or authorized agent of the corporation, the affidavit shall state that the deponent has a personal knowledge of the facts sworn to.

NOTE:—The Uniform Act, in section 5 (1), permits the taking of the affidavit by the authorized agent of the seller. An agent is not permitted under Ontario section 16 which reads:

"16. Any affidavit required to be made under this Act by a seller,

(*a*) if the seller is a partnership, shall be made severally by all of the partners, or

(*b*) if the seller is a corporation, shall be made by an officer or director of the corporation and shall state that the deponent has a personal knowledge of the facts deposed to."

We feel it is more practical to allow the use of agents and have revised the Ontario provision to refer to them. Section 16 (2) above is Uniform 5 (4).

In 1960 Ontario added a subsection (2) to its section 16 reading:

"(2) Upon the application of a seller and upon being satisfied that good and sufficient cause exists that any affidavit required to be made under this Act should be made otherwise than under subsection (1), a judge may order accordingly."

In view of the changes made above, we do not think this provision is necessary in this Draft.

Effect of non-compliance with Act

17. Unless the buyer has complied with this Act, a sale in bulk is voidable as against the creditors of the seller and if the buyer has received or taken possession of the stock he is personally liable to account to the creditors of the seller for the value thereof, including all moneys, security or property realized or taken by him from, out of, or on account of, the sale or other disposition by him of the stock.

NOTE:—Ontario 17. Uniform section 10 (1) and (2) read:

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

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

The Ontario Act does not contain a provision equivalent to Uniform 10 (2).

Who may bring action

18. An action or proceeding to set aside or have declared void a sale in bulk may be brought or taken by any creditor of the seller, and, if the seller is adjudged bankrupt, by the trustee of his estate.

NOTE:—Ontario section 18. There is no equivalent provision in the Uniform Act although it is implied in Uniform 10 (1). In 1960 Ontario added a subsection (2) reading:

"(2) No action shall be brought or proceeding taken in respect of real property included in a sale in bulk if the real property has been sold, transferred, charged or mortgaged to a bona fide purchaser, transferee, chargee or mortgagee for valuable consideration without actual notice of non-compliance with the Act by the buyer."

As we have not included real property within the scope of a sale in bulk (see note at end of section 2) this subsection does not appear to be necessary in this Draft.

Burden of proof

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

NOTE:—Ontario 19 and Uniform 11.

Limitation of action

20. No action shall be brought or proceeding taken to set aside or have declared void a sale in bulk for failure to comply with this Act unless the action is brought or the proceeding is taken either before the documents are filed under section 13 or within six months after the date on which the documents were filed under section 13.

NOTE:—Ontario 20. Uniform section 12 reads:

"12. No action shall be brought or proceeding had or taken to set aside or have declared void a sale in bulk for failure to comply with this Act, unless the action is brought or proceeding had or taken within six months from the date of the completion of the sale."

FORM 1

(Section 5 (1))

STATEMENT AS TO SELLER'S CREDITORS

Statement showing names and addresses of all unsecured trade creditors and secured trade creditors of. . . . . of the . . . . of . . . . . , in the . . of..... and the amount of the indebtedness or liability due, owing, payable or accruing due or to become due by him to each of them.

UNSECURED TRADE CREDITORS

Name of Creditor	Address	Amount

SECURED TRADE CREDITORS

Name of Creditor	Address	Amount	Nature of Security	Due or becoming due on the date fixed for the completion of the sale

I,. . . . . , of the . of . . . , in the. . . . . of . . , . . . , make oath and say:

1. That the foregoing statement is a true and correct statement

(a) of the names and addresses of all the unsecured trade creditors of the said .. .. and of the amount of the indebtedness or liability due, owing, payable or accruing due or to become due and payable by the said. . ... to each of the said unsecured trade creditors; and

(b) of the names and addresses of all the secured trade creditors of the said .. . . and of the amount of the indebtedness or liability due, owing, payable or accruing due or to become due and payable by the said ... . to each of the said secured creditors, the nature of their security, and whether they are or in the event of sale will become due and payable on the date fixed for the completion of the sale.

(and, if sworn by someone other than the seller)

2. That I am ... .
and have a personal knowledge of the facts herein deposed to.

Sworn before me, etc.

FORM 2

(*Section 9 (c)*)

WAIVER

In the matter of the sale in bulk
Between

Seller

— and —

Buyer

I, ... , of the ... . . of.. . .,
in the . . ... of. .. ... . , a secured an unsecured trade creditor of the above-named seller, hereby waive the provisions of The Bulk Sales Act, which require that adequate provision be made for the immediate payment in full of my claim forthwith after completion of the sale, and I hereby acknowledge and agree that the buyer may pay or deliver the proceeds of the sale to the seller and thereupon acquire the property of the seller in the stock without making provision for the immediate payment of my claim and that any right to recover payment of my claim may, unless otherwise agreed, be asserted against the seller only.

Dated at .. .. this .. day of .. . .., 19.....

Witness:

FORM 3

(Sections 10 (1)(a) and 11 (1)(a))

CONSENT

In the matter of the sale in bulk

Between:

Seller

— and —

Buyer

I, ... , of the . . . . . of. . . . . in the. . . . . of . . . . . , an unsecured trade creditor of the above named seller, hereby acknowledge and agree:

1. that I have received,
   (a) a copy of the statement showing the names and addresses of the unsecured trade creditors and the amount of the indebtedness or liability due, owing, payable or accruing due or to become due and payable by the seller, and showing the names and addresses of his secured trade creditors, the nature of their security and whether their claims are or, in the event of sale, become due on the date fixed for completion of the sale, and the amount of the indebtedness or liability due, or owing, payable or accruing due or to become due and payable by the seller;
   (b) a statement of the affairs of the seller; and
   (c) a copy of the contract of the sale in bulk (or particulars of the sale);
2. that I consent to the sale; and
3. that I consent to the appointment of . . . . . as trustee.

Dated at. . . . . , this day of. . . . . , 19 . .

Witness:

FORM 4

(Section 10 (1) (b))

STATEMENT OF AFFAIRS

Assets included in the Sale in Bulk

(a) Amount of the proceeds of the sale . . . . . $. . . . . .

Assets not included in the Sale in Bulk

(b) Stock-in-trade at cost price not exceeding fair value $. . . . . .

(c) Trade fixtures, fittings, utensils, etc. . . . . $. . . . . .

(d) Book debts—Good. . . . . $. . . . . .

Doubtful. . $ . . . .

Bad. . . . $. . . .

Estimated to produce. . . . . $. . . . . .

(*e*)	Bills of exchange, promissory notes, etc.	$
(*f*)	Cash in bank	$
(*g*)	Cash on hand	$
(*h*)	Livestock	$
(*i*)	Machinery, equipment and plant	$
(*j*)	Real estate	$
(*k*)	Estimated value of securities in hands of secured creditors	$
(*l*)	Furniture	$
(*m*)	Life insurance policies	$
(*n*)	Stocks and bonds	$
(*o*)	Interest in estates	$
(*p*)	Other property, viz.	$
	Total	$

Liabilities

(*q*)	Unsecured trade creditors	$
(*r*)	Secured trade creditors	$
(*s*)	Preferred creditors	$
(*t*)	All other liabilities, except contingent liabilities set out below	$
	Total	$
	Surplus or deficiency	$

Contingent Liabilities

(*u*)	Liabilities under endorsements and guarantees	$
(*v*)	All other contingent liabilities	$
	Total	$

I, ... , of the . . . . . of . . . . . , in the . . . . . of . . . . . , make oath and say that the above statement is to the best of my knowledge and belief a full, true and complete statement of the affairs of . . . . on the . . . . . day of . . . . . , 19. . . . , (which date shall not be more than 30 days before the date of the affidavit) and fully discloses all the property of the said . . . . . of every description.

SWORN before me, etc.

APPENDIX W

(*See page 44*)

CRIMINAL LAW SECTION

REPORT TO PLENARY SESSION

Submitted September 3, 1960.

Representatives of all the provinces were in attendance at the meetings of the Criminal Law Section.

The Commissioners in the Criminal Law Section considered some forty working papers concerning amendments to the Criminal Code and have made recommendations which the Secretary has been instructed to place before 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 G. R. Foster, Q.C.

The Secretary will be T. D. MacDonald, Q.C., the representative of the Department of Justice, Ottawa, appointed to attend the meetings of the Criminal Law Section.

Respectfully submitted,

ROY S. MELDRUM,
Chairman

D. H. W. HENRY,
Secretary

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