

SCOTTISH LAW COMMISSION

(SCOT. LAW COM. No. 17)

FIFTH
ANNUAL REPORT
1969-70

*Presented to Parliament
by the Secretary of State for Scotland and the Lord Advocate
under section 3(3) of the Law Commissions Act 1965*

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The Scottish Law Commission was set up by section 2 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law of Scotland. The Commissioners are:

The Hon. Lord Kilbrandon, LL.D., *Chairman*

Professor A. E. Anton, M.A., LL.B.

Professor J. M. Halliday, M.A., LL.B.

Mr. A. M. Johnston, Q.C., B.A., LL.B.

Professor T. B. Smith, Q.C., D.C.L., LL.D.

The Secretary of the Commission is Mr. A. G. Brand, M.B.E., M.A., LL.B. Its offices are at the Old College, University of Edinburgh, South Bridge, Edinburgh EH8 9BD.

Scottish Law Commission
Report for the year ended 15th June 1970

TO: THE RIGHT HONOURABLE GORDON CAMPBELL, M.C., M.P.,
Her Majesty's Secretary of State for Scotland, and

THE RIGHT HONOURABLE NORMAN R. WYLIE, V.R.D., Q.C., M.P.,
Her Majesty's Advocate.

In accordance with the provisions of section 3(3) as read with section 6(2) of the Law Commissions Act 1965, we have the honour to submit this the fifth Annual Report of the Scottish Law Commission.

C. J. D. SHAW,
Chairman.

28th October 1970.

THE COMMISSION

1. The Scottish Law Commission was set up by section 2 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law of Scotland. The Commissioners are:

The Hon. Lord Kilbrandon, LL.D.,	<i>Chairman</i> (Full-time)
Professor A. E. Anton, M.A., LL.B.,	(Part-time)
Professor J. M. Halliday, M.A., LL.B.,	(Part-time)
Mr. A. M. Johnston, Q.C., B.A., LL.B.,	(Full-time)
Professor T. B. Smith, Q.C., D.C.L., LL.D.,	(Part-time)

The Secretary of the Commission is Mr. A. G. Brand, M.B.E., M.A., LL.B.

STAFF

2. Our general legal staff now consists of our Secretary and five other qualified lawyers. Our draftsmen are Sir John Gibson, C.B., Q.C., on a full-time basis, and Mr. Gavin Douglas, Advocate, on a part-time basis. Our non-legal staff of seven remains unchanged.

3. The advantages of a small well-knit staff are undoubted, not only from the point of view of economy but also from that of efficiency. It does mean, however, that work which would otherwise be put in hand at once has to wait until a qualified person is available to take charge. Nor can full-time 'productivity' of Commission work be expected of part-time Commissioners. But it is not only staff problems which slow things down. All our work has to take place, as we point out later, in the light of the informed comments and advice we receive from those to whom our drafts and memoranda are submitted. These have to be studied and reported on by busy practitioners. This is a time consuming process but the value of our work is in a real sense dependent on the care and skill shown by our professional brethren outside the Commission.

PREMISES

4. Our offices are still in the Old College of the University of Edinburgh. It is not only for the comfortable and elegant surroundings in which we work that we are grateful to the University. It is also an inestimable benefit that we are within arms' reach of two important libraries, the Law Library and that of the Centre of European Governmental Studies. The staffs of these institutions are always most helpful to us.

PROPOSALS

5. Although proposals for reform of the law have not come to us in great numbers during this year, all have been considered in accordance with our statutory duty, and we have received several which have involved us in further enquiries and consultation. As we have pointed out before, the fact that no immediate amendment of the law follows a proposal does not mean that it has been disregarded. Paragraph 31 (a) to (d) under the heading of *Anomalies and Defects* refers, for example to proposals received by us. The topics raised are all

of importance, though we may not be in a position to give immediate attention to them in isolation, and that is why we welcome proposals and would be glad to see more of them.

FIRST PROGRAMME

EVIDENCE

6. Many comments have been received on our Memorandum No. 8, published on 5th July 1968, which contained eight Chapters of our proposed Code of Evidence, with an introduction setting out some of the problems of codification of the law. We shall shortly have to decide the form which future work on this subject should take. At present the possibilities seem to be to continue to prepare a draft Evidence Code, or to issue further Memoranda on particular aspects of the law of Evidence with a view either to 'piecemeal' amending legislation or ultimately, when our work on the subject has been completed, to one comprehensive amending statute in the traditional form.

OBLIGATIONS

7. In July 1969 we submitted to Ministers jointly with the Law Commission our First Report¹ on Exemption Clauses in Contracts, which dealt also with suggested amendments to the Sale of Goods Act 1893. During the year under review the Working Party set up jointly by the Law Commission and ourselves has completed its work on Exemption Clauses in Contracts for Services. The two Commissions are now preparing a joint paper on that subject which will be circulated for comment on and criticism of the proposals it contains.

8. Along with the Law Commission we are proceeding with our work on codification of the law of contract. This work is organised by being handed over to a small joint team, who have the services of a consultant; the team lays its proposals before the Advisory Panel set up by the two Commissions in 1967². Preliminary drafts have been completed dealing with the formation of contracts and third party rights. These will be discussed at a meeting of the Advisory Panel to take place at All Souls College, Oxford, in September. In addition, the Advisory Panel will be considering draft Rules on Gratuitous Obligations which we have suggested. These draft Rules may be considered as part of the larger field of obligations, and are especially relevant to Scotland.

PRESCRIPTION AND LIMITATION OF ACTIONS

9. Our Report is in final draft, and will be submitted in the summer of this year.³ This has been a protracted operation; we had hoped that it would have been possible to publish our conclusions in less than five years. There are several reasons why we were disappointed. First, the importance of the topics dealt with, which affect intimately the law of heritable property, the practice of conveyancing, and ordinary mercantile transactions, made elaborate consultations both necessary and prolonged. Secondly, the chaotic state of the present law, especially the statute law, will be acknowledged by all practitioners; we may have under-

¹ Published by HMSO, 18th September 1969 (Scot. Law Com. No. 12, Law Com. No. 24).

² The names of members of the Advisory Panel are listed in Appendix 1.

³ Report submitted to Ministers on 7th August 1970 and published by HMSO on 27th November 1970 (Scot. Law Com. No. 15).

estimated it when we began our work. Thirdly, at a late stage we were required to reconsider our draft in the light of the situation in *Lucy v. W. T. Henley's Telegraph Works Co. Ltd* [1970] 1QB 393. It is in some ways fortunate that that problem arose before we had finally settled our Report.

10. The Report will be submitted, in order to avoid further delay, without the appendage of a draft Bill, such as we were able to provide for our Report¹ on the Companies (Floating Charges) (Scotland) Act 1961. We shall, however, make arrangements for a Commission draftsman to be available for this purpose if required, even though this should mean asking him to postpone other work on which he may be engaged.² We mention this, as an illustration of the fact that our comparatively modest resources do from time to time involve a reappraisal of priorities—one topic accelerates at the expense of others deemed less urgent.

11. The Committee of Experts set up by the Council of Europe to study the subject of time-limits has not yet completed its work. We refer to this again in paragraph 39.

INTERPRETATION OF STATUTES

12. The Joint Report³ of the two Law Commissions has been the subject of discussions and consultations during the year. On the special topic of Treaties in relation to Interpretation of Statutes, the Law Commission have set up a Working Party; one of our Commissioners is a member.

SECOND PROGRAMME

INSOLVENCY, BANKRUPTCY AND LIQUIDATION

13. This subject is being studied in detail by a small Working Party which includes representatives of legal, accountancy, banking and commercial interests. It is hoped that the Working Party will complete its work by late 1970, after which it is our intention to produce a Memorandum to be circulated widely for comment and criticism. This branch of the law, like Prescription, forms a substantial part of day-to-day legal procedure, both in chambers and in Court, yet it is rooted deep in the past. Again the provisions of 17th century statutes have to be related to modern business practice, and their usefulness assessed accordingly. The current statutory procedures for bankruptcy are more than half-a-century old: these for liquidation were settled nearly a quarter-of-a-century ago. The task of the Working Party can be seen to be a heavy one.

SUCCESSION

14. Work is proceeding on the study of proposals which have been submitted to us relating to the Succession (Scotland) Act 1964. These proposals are concerned mainly with technical problems arising out of the working of this Act. We are fortunate in having secured the services of Professor Meston of Aberdeen University as a consultant on this subject. We shall prepare a Memorandum for circulation as soon as possible.

¹ Cmnd. 4336.

² A Bill is now being drafted.

³ Published by HMSO, 1969 (Scot. Law Com. No. 11; Law Com. No. 21).

DILIGENCE

15. Our other commitments have until recently prevented us from providing the staff to proceed with the study of this subject, but we are now in a position to work on it. The McKechnie Committee reported so long ago as 1958, and up to now only a few of its recommendations have been implemented. To implement a few more of them would not, in our present view, be a proper treatment of the problem. We have not as yet discussed the matter deeply, but we are forming the view that this is a topic upon which a radical reappraisal is called for. Three factors influence us. First, we receive a fair number of complaints about the law as it stands. Second, the present law was conceived in times when social conditions, mercantile practices and means of communication were utterly different from what they now are. Third, one is here concerned for the most part with a purely adjective law, that is, the best means by which a Court's decision (upon whatever principles of law it may have proceeded) may be made effective. This is a problem common to all legal systems, and it is likely that there are lessons to be learned by us from the practice of other countries, especially perhaps those which have some geographical resemblance to our own. These are very general considerations, and of course we are very far from having come to any conclusion on them. But we think it may be profitable to disclose, at this early stage, the lines upon which our research is to be directed.

RECIPROCAL ENFORCEMENT OF JUDGMENTS

16. On 1st December 1969 we published Memorandum No. 12 on the Judgments Extension Acts. Comment on and criticism of our provisional proposals were invited, and we have received a large number of observations. These will now be studied in consultation with the Law Commission and the Director of Law Reform in Northern Ireland.

DAMAGES ARISING FROM PERSONAL INJURIES AND DEATH

17. We have now considered the comments received on the proposals contained in our Memorandum No. 5 entitled 'Damages for Injuries Causing Death'. The main question raised in the Memorandum was whether we should recommend immediate legislation to reverse the decision in *Darling v. Gray and Sons* 1892 19R (H.L.) 31 so as to allow an executor to sue for damages concurrently with surviving relatives. We had drawn attention in the Memorandum to a number of questions closely related to this one, and we accepted the view of many of those who commented on the Memorandum that legislation dealing only with the point in *Darling v. Gray* would be unsatisfactory. Consequently we have decided not to recommend immediate legislation but to produce a further Memorandum containing our tentative proposals for dealing with the *Darling v. Gray* situation and the questions related thereto.

PRESUMPTION OF DEATH

18. We have received a substantial response to our invitation for comments on our Memorandum No. 11 entitled 'Presumptions of Survivorship and Death' which was published on 8th September 1969. We are studying the observations made and hope to be able to report in 1971.

LEGAL CAPACITY OF MINORS AND PUPILS

19. The Working Party which was set up in the autumn of 1969 is proceeding

with the examination of this subject. It is hoped that it will complete its work by the end of this year, and that shortly thereafter we shall issue a Memorandum containing our tentative proposals.

CRIMINAL PROCEDURE

20. A Departmental Committee to examine Scottish criminal procedure has now been set up under the Chairmanship of Lord Thomson. The setting up of such a Committee was proposed in our Second Programme of Reform. One of our number, Mr. A. M. Johnston, Q.C., is a member of the Committee. We understand that preliminary work is also being done to ascertain how far the existing statutes dealing with criminal procedure could be consolidated, or consolidated with amendments. This work is being done by officials of the Scottish Office and the Crown Office, as part of our proposal for the reform of criminal procedure.

FAMILY LAW

21. Work has been proceeding along with the Law Commission on the reformation of common jurisdictional rules for divorce in courts in the United Kingdom. The two Commissions prepared separate papers with common recommendations for consideration within their respective jurisdictions.¹

22. Following the Government's announcement of its intention to ratify the Hague Convention on the Recognition of Divorces and Legal Separations, we have been working, in conjunction with the Law Commission, on the changes in our own law which will be necessary to give effect to the provisions of the Convention.

23. In our last Annual Report we referred to our work on the law relating to matrimonial property. We continued this work during the year under review with particular reference to the situation on dissolution of marriage which might arise if, as seemed possible, changes were made in the grounds of divorce in Scots Law. The existing law relating to matrimonial property seems to be working satisfactorily in Scotland within the present divorce framework and we do not intend to make any proposals for its reform until we know whether or not that framework is to be changed. The Divorce (Scotland) Bill, introduced by Mr. Donald Dewar, failed to receive a second reading in the House of Commons. With the approval of Ministers, we gave extensive drafting assistance to Mr. Dewar; the Bill followed very closely the recommendations made by us in our published paper 'Divorce—the Grounds Considered'.² The situation accordingly now is that when on 1st January 1971 the Divorce Reform Act 1969 comes into effect, there will be a deep and radical cleavage between the divorce laws of the two countries. If the experience of the years before 1938 is to be relied on, the legal consequences of this will be deplorable. It is not likely that the social consequences will be any happier.

¹ Law Commission Working Paper No. 28 issued in April 1970; Scottish Law Commission Memorandum No. 13 issued in August 1970.

² Cmnd. 3256.

FIRST PROGRAMME OF CONSOLIDATION AND STATUTE LAW REVISION

CONSOLIDATION

24. The following is the present position with regard to the work on consolidation of Statutes under our First Programme of Consolidation and Statute Law Revision.

(a) *Consolidation of enactments applying to Scotland only, and consolidation separately for Scotland of enactments which apply to other parts of the United Kingdom as well as to Scotland.*

- (1) *Rents (Scotland)*—A Consolidation Bill is now ready for introduction.
- (2) *Roads and Bridges (Scotland)*—Preliminary work on the statutes relating to Roads and Bridges has been completed. Drafting of a Consolidation Bill is now in progress but this will take a long time.
- (3) *Lands Clauses (Scotland)*—The problem with these enactments is that they are now so out of date that consolidation of them may serve little useful purpose. We are considering whether to proceed with consolidation or to propose amendments to bring the existing enactments up to date.
- (4) *Town and Country Planning (Scotland)*—Work on the preparation of a Bill is fairly well advanced.

(b) *Consolidation of enactments applying to other parts of the United Kingdom as well as to Scotland.*

- (1) During this year the following Acts were passed:
Income and Corporation Taxes Act 1970
Sea Fish Industry Act 1970
Taxes Management Act 1970
- (2) Bills on the following subjects are ready for introduction:
Vehicles (Excise)
- (3) Work is still proceeding on the following:
Local Employment
Oil in Navigable Waters
Friendly Societies
Road Traffic
Estate Duty
Hydrocarbon Oils
Poisons
Coinage
National Savings Bank

STATUTE LAW REVISION

25. We have received a number of proposals relating to enactments which appear to require examination.

26. Work is continuing on the task of examining and categorising the Scots statutes, but the indications are that this area of the statute book, since it was

fairly recently—in 1964—surveyed with that end in view, will not yield many candidates for repeal notwithstanding that the ambit of Statute Law Revision has been widened to allow the repeal of enactments which are no longer of practical utility. Certain Scots Statutes are coming under separate examination in connection with the work being undertaken in the fields of Prescription, Minors and Pupils and Bankruptcy; for that reason they have been excluded from scrutiny under the Statute Law Revision procedure.

27. In connection with the new edition of the Statutes in Force, (see paragraph 42), assistance has been given to the Secretary of the Editorial Board in the production of a digest of the pre-Act of Union Scots Statutes. The digest has been drafted and is now going through the processes of revisal and adjustment to fit into the form of the new layout.

28. We are collaborating with the Law Commission in the preparation of a further Statute Law (Repeals) Bill which it is hoped will be introduced in this session of Parliament.

29. We continued to work with the Law Commission in respect of our small Scottish interest in the Wild Creatures and Forest Laws Bill.¹

ADVICE, ETC.

30. We have continued to give advice to Government Departments and others as required by section 3(1)(e) of the Law Commissions Act 1965. Among other matters on which we have been consulted are the following:

- (a) Our Report giving advice on what amendments might be made to the Companies (Floating Charges) (Scotland) Act 1961 was submitted to the President of the Board of Trade in February, 1970. The Report² was published on 22nd April 1970 by H.M. Stationery Office.
- (b) We were invited to advise on the question of existing remedies for the judicial control of administrative acts and omissions, and we have set up a small Consultative Committee to assist us in this matter. Some preliminary work is being done before the Committee meets and Professor Bradley of Edinburgh University has undertaken some research on the subject on our behalf.
- (c) At the request of the Scottish Office, we are examining questions relating to Dean of Guild Courts and Building Authorities which were raised by the Law Society of Scotland and the Society of Town Clerks of Scotland.
- (d) We have given advice to the Law Commission on a point of Scots Law in connection with proof of foreign marriages. This related to the procedure in Scotland referred to in paragraph 918 of the Report of the Royal Commission on Marriage and Divorce (1956—Cmnd. 9678).
- (e) The Consultative Group on tax law set up jointly by the Law Commissions continues its work under the Chairmanship of Professor Halliday, and we understand that the group will shortly be in a position to submit a report.

¹ Presented to Parliament in a Report in August 1970 (Cmnd. 4433).

² Cmnd. 4336.

- (f) We advised on a point in connection with the effect on Scottish maintenance agreements of provisions in the Matrimonial Proceedings and Property Bill.
- (g) We gave our advice on several points arising in connection with the Conveyancing and Feudal Reform (Scotland) Bill.
- (h) We took part in discussions with the Law Commission and the Government Departments concerned in connection with questions as to disqualification under the Road Traffic Acts, which were raised in the cases of *R. v. Shirley* [1969] 3 All ER 678 and *MacLeod v. Levitt* 1969 SLT 286.
- (i) We were consulted in connection with the Misuse of Drugs Bill which lapsed on the dissolution of Parliament.

ANOMALIES AND DEFECTS

31. It is part of our duty under the Law Commissions Act 1965 to examine the law for anomalies or defects which appear to us to call for changes in the law. The following matters have been or are being examined—

- (a) In our last Annual Report we mentioned that it had been brought to our notice that registrars of companies whose registered offices are in England or Wales do not recognise, for the purpose of altering their registers, decrees of the Court of Session removing or appointing trustees and that we were investigating this question and that of the practice of Scottish company registrars in relation to similar decrees pronounced by English Courts. After consultation with the Law Commission, appropriate Government Departments and the Chartered Institute of Secretaries we recommended to the Board of Trade that, when next there is legislation on matters relating to companies, consideration should be given to including a provision that an order of a specified court in Scotland or in England/Wales evidenced in a specified manner should be conclusive authority in favour of any person in the other country responsible for keeping a company register to alter the register in conformity with the order. We are taking part in discussions of the matter with the Board of Trade and other Government Departments concerned, and we are also to have further consultation on it with the Law Society of Scotland.
- (b) We have received proposals for amendment of Part V of the Mental Health (Scotland) Act 1960 which deals with cases of persons found insane or mentally disordered in the course of criminal proceedings. We are in consultation with the Crown Office and the Mental Welfare Commission for Scotland about this matter, and we are pleased to note that it is also being examined by the Law Society of Scotland whom we shall also consult.
- (c) Our attention was drawn to the case of *Farrell v. Federated Employers Insurance Association Ltd.* [1970] 1 WLR 498 in which MacKenna J. criticised the state of the law in this field and, in particular, s.1 of the Third Parties (Rights Against Insurers) Act 1930. In this case a breach by the insured (an insolvent employer) of a condition of the policy requiring notice of proceedings to be given to the insurer prevented the injured third party (an employee) from recovering direct from the insurer damages in

respect of injuries sustained in the course of employment and MacKenna J. suggested that this might be put right by an amendment to the 1930 Act.

Both Law Commissions have raised the matter with the Department of Employment and Productivity who are to keep the point in mind when they are preparing regulations under the Employers Liability (Compulsory Insurance) Act 1969.

- (d) As mentioned in our last Annual Report questions concerning the law relating to the acquisition of title to moveable property arose in the course of our examination of the law of Prescription. We decided that these should be studied as a separate topic, and have continued the study during the year. Proposals which we have received falling under this head concern, for example, the possessory lien of motor repairers, and, curiously enough, the definition of 'litter' under the Local Government (Development and Finance) (Scotland) Act 1964. The subject, however, is complicated, and we cannot give it high priority.
- (e) During the year we received several comments on our preliminary paper on the Married Women's Policies of Assurance (Scotland) Act 1880, and we shall shortly circulate a Memorandum containing our tentative proposals on this subject.
- (f) We submitted to the Commission on the Constitution a paper on Legislative Procedures designed to reduce the inconvenience caused by legislation in one Act for both England and Wales on the one hand and Scotland on the other.
- (g) We considered, and intimated to the Scottish Office, our general support of proposals by the Law Society of Scotland relating to accident claims involving foreign motorists.
- (h) The questions relating to 'group insurance policies' and the Life Assurance Act 1774, to which we referred in paragraph 34(f) of our last Annual Report are still under consideration.

COMPUTERS

32. In our previous Annual Reports we have referred to our interest in applications of computers to legal work. An important development in the year under review has been the setting up of the Scottish Legal Computer Research Trust to promote research and develop the use of computers by the legal profession in Scotland. Professor Halliday is one of the Trustees and a member of our legal staff serves on the Executive Committee of the Trust.

WORKING PARTIES

33. We have referred in this Report to various Working Parties and other bodies which we have set up to assist us with our work on particular subjects. These are listed in Appendix I. To those members who have accepted our invitation to serve and who give so much of their time to the subjects concerned, we extend our warmest thanks. So much of the work we are called on to prepare is of far wider concern than of the legal profession only, that the assistance of experts from outside as well as from inside the profession greatly enhances the value of our recommendations.

CONSULTATION

THE LAW COMMISSION

34. We have maintained our close co-operation with the Law Commission and have offered observations on several of their Working Papers. In particular we have entered into consultation with legal and other bodies in Scotland about the possible effects of applying to Scotland the proposals contained in the Law Commission's Working Paper No. 23—'The Law of Landlord and Tenant. Proposals relating to Covenants Restricting Dispositions, Parting with Possession, Change of User and Alterations'. These consultations are not yet completed. In April 1970 the annual joint meeting of the Commissions was held in Edinburgh.

OTHER LAW REFORM ORGANISATIONS

35. We have continued our liaison on matters of common interest with the Directorate of Law Reform in Northern Ireland and we have kept up our contacts with law reform organisations in other parts of the world. Apart from exchange of papers and publications with these organisations we have provided some of them with answers to questions about the law of Scotland and we have, of course, made considerable use of information we have received from these organisations.

THE LEGAL AND OTHER PROFESSIONS IN SCOTLAND

36. We have continued to consult with the leading organisations of the legal and other professions in Scotland on the details of our tentative proposals for changes in the law which are set out in our Memoranda which we publish from time to time. We appreciate the help which we continue to receive in this connection, and once again we express our thanks to all those who take the trouble to send us their comments and observations on the various Memoranda and on other papers which we circulate. As we point out in paragraph 3 above, we appreciate both the amount of work involved and the value of that work to the Commission.

SEMINARS, COLLOQUIA, ETC.

37. We were represented at the following:

Seminar on Classification and Law held jointly by the Society of Public Teachers of Law and the Law Commission at Birmingham University from 10th to 12th July 1969.

International Conference sponsored by the World Federation for Mental Health in Edinburgh on 3rd to 5th September 1969.

Annual Conference of the Society of Public Teachers of Law at Durham on 25th to 27th September 1969.

Annual Conference of the Institute of Population Registration at Southport on 1st and 2nd May 1970.

Seminar on Dangerous Things and Activities held at All Souls College, Oxford on 29th and 30th September 1969.

International Symposium on 'Ethics and Freedom of the Press as regards Professional Ethics' organised by the International Centre for Higher Education in Journalism at Strasbourg University on 1st to 5th June 1970.

FOREIGN LEGAL SYSTEMS AND INTERNATIONAL LAW

38. Professor Anton attended an extraordinary meeting of the Council of Europe Sub-Committee on Fundamental Legal Concepts which was held in November 1969 to consider the comments of governments on the Sub-Committee's Report on 'Domicile' and 'Residence'.

39. A member of our legal staff has continued to serve on the Council of Europe Committee of Experts on 'Time-Limits' to which we have referred in previous Annual Reports. The work of this Committee has not yet been completed and there is to be another meeting in September, 1970.

40. Professor Anton is a member of the Committee of Government Experts which has been set up by the Governing Council of the Rome Institute to re-examine Draft Conventions on Agency and Commission Contracts.

41. Professor Anton has also continued as a member of a Committee to advise on the choice of law to be applied where a foreign element is involved in civil proceedings arising out of wrongful acts and omissions.

STATUTE LAW COMMITTEE

42. Our Chairman continues to serve on the Statute Law Committee and continues as a member of the Editorial Board¹ set up by the Lord Chancellor to supervise the production of the new publication entitled 'The Statutes in Force'. The Statutes in Force are intended to supersede the third (1950) edition of the Statutes Revised. The statutes are to be arranged, and published, in groups, according to subject matter, and are designed to be kept in loose-leaf binders supplied for the purpose. Cumulative amendment supplements will be published, and Acts which suffer extensive amendment will be reprinted and issued as necessary.

SCRUTINY OF BILLS

43. Our work on the scrutiny of Bills continues so far as our resources permit.

LIST OF PAPERS

44. A list of papers which have been prepared by the Commission and made public appears in Appendix 2 of this Report.

GENERAL

45. We have now concluded the first five years of the work of the Scottish Law Commission. We think it worth while to make, in a few words, a broad generalisation on the nature and scope of that work, because it is probable that future policy may, in the nature of things, run along rather different lines.

46. It was inevitable that, when the Commission was set up with the publicity which attends such new ventures, not only lawyers but more especially laymen should have been prompt to bring to our notice the particular defects, anomalies, grievances or injustices which, it was thought, had been tolerated for too long.

¹ See Appendix 1.

Some of these complaints and proposals, especially those emanating from the legal profession or from Departments of Government, called for broad reviews of whole branches of the law. Others were more in the nature of protests against specific wrongs, some arising from past judicial decisions now considered to be erroneous, and some caused by failures in statutory procedures. But these criticisms were more of matters of detail than of systems and doctrines looked at as a whole. They were demands for specific small-scale remedial action.

47. The problem, as it faces a law reform body, may be put in this way. The large-scale reviews called for on the one hand involve many people in lengthy research and discussion, as we have tried to point out above; the time may come when the general public begins to wonder what this new much publicised machine is up to, and why the progress it makes in important fields is so imperceptible. On the whole this criticism is not much heard, because most people realise the scale of such a task as modernising a branch of law which was, perhaps, last overhauled 100 years ago. The legal profession is naturally less impressed than perhaps is the laity with the virtues of haste in such an exercise and appreciates the factors that give rise to delay.

48. It is otherwise with small-scale remedial action. This is undertaken by the Commission with the object of preventing actual or threatened injustice to individuals, arising from defects in the law which can comparatively easily be put right. But when the necessary action is taken, criticism is sometimes raised against what is called 'piecemeal legislation'. We have, as lawyers, ourselves much sympathy with this complaint, but on the other hand we do not envy the legal adviser who has to say to his client, 'I am sorry I cannot help you; your claim is barred by the case of *A. v. B.* Most people think that case was wrongly decided, but nothing can be done about it, because lawyers don't like piecemeal legislation'. We are ourselves no admirers of the rather miserable expedient of the Law Reform (Miscellaneous Provisions) Bill, but it is from time to time adopted from sheer necessity.

49. The reason why we think it possible that the pattern of our work may be gradually changing is that, as we point out in paragraph 5 above, the number of individual proposals, and those calling for remedial action, is diminishing. We think that this was always to be expected; while we shall undoubtedly be concerned in the future to consider such proposals, it is probable that the emphasis over the next five years will be on the broader questions of reform. There are several topics of great importance to which general attention is gradually being directed. We therefore expect, in the not distant future, to be submitting to Ministers a supplementary programme for their approval.

APPENDIX 1

MEMBERSHIP OF ADVISORY PANELS, WORKING PARTIES ETC.

Para. 7 *Joint Working Party on Exemption by Contract from Common Law and Statutory Liabilities*

The Hon. Lord Kilbrandon and Mr. Andrew Martin, Q.C.¹ (Joint Chairmen).
Members, other than representatives of the Law Commission and Scottish Law Commission—

Mr. J. A. Beaton	Scottish Office
Mr. W. E. Bennett	The Confederation of British Industry
Professor G. J. Borrie	The Consumer Council
Mr. M. R. E. Kerr, Q.C.	The Bar Council
Mr. P. Maxwell, Q.C.	The Faculty of Advocates
Mr. S. W. T. Mitchelmore	Board of Trade
Mr. G. R. H. Reid	The Law Society of Scotland
Mr. R. G. Scriven	Association of British Chambers of Commerce
Mr. J. B. Sweetman	Treasury Procurement Policy Committee
Mr. S. Terrell, Q.C.	The Bar Council
Mrs. L. E. Vickers	The Consumer Council
Mr. J. H. Walford	The Law Society
Mr. M. J. Ware	Board of Trade

Secretary: Mr. R. G. Greene, Law Commission.

Para. 8 *Advisory Panel on Contract*

The Rt. Hon. Lord Devlin
The Rt. Hon. Lord Diplock
The Rt. Hon. Lord Justice Megaw, C.B.E., T.D.
The Hon. Lord Robertson
The Hon. Mr. Justice Roskill
The Hon. Mr. Justice Donaldson
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Professor G. J. Borrie
Mr. L. A. Duffield
Professor A. G. Guest
Mr. I. R. Guild, w.s.
Mr. Mark Littman, Q.C.
Mr. R. A. Lynex
Mr. R. A. MacCrimdale, Q.C.
Mr. A. J. Mackenzie Stuart, Q.C.
Dr. F. A. Mann
Professor F. J. Odgers
Dr. L. S. Sealy
Mr. Mark H. Sheldon
Mr. G. J. Treitel
Mr. P. E. Webster, Q.C.
Professor K. W. Wedderburn
Professor J. F. Wilson.

Para. 13 *Working Party on Insolvency, Bankruptcy and Liquidation*

The Hon. Lord Kilbrandon (Chairman).
Professor J. M. Halliday (Vice Chairman).

Mr. R. A. Bennett, Q.C.	The Faculty of Advocates
Mr. W. A. Cook, C.B.E.	The Law Society of Scotland
Mr. R. D. Gould	Sheriff Clerk, Edinburgh

¹ Mr. Martin retired from the Law Commission in June 1970.

Mr. R. McWhirter	Committee of Scottish Bank General Managers
Mr. C. R. Munro, C.A.	The Council of Scottish Chambers of Commerce
Mr. D. G. Slidders, C.A.	The Institute of Chartered Accountants of Scotland
Mr. G. Wallace	The Confederation of British Industry
Secretary: Mr. J. B. S. Lewis, Scottish Law Commission.	

Para. 19 *Working Party on the Legal Capacity of Minors and Pupils*

The Hon. Lord Kilbrandon (Chairman).
 Professor T. B. Smith, Q.C.
 Mr. Farquhar Gillanders Assistant Registrar, University of Glasgow
 Miss E. M. Houston Solicitor, Edinburgh
 Mr. K. Sweeney The Institute of Chartered Accountants of Scotland
 Professor D. M. Walker, Q.C. Faculty of Law, University of Glasgow
 Secretary: Miss P. J. McDermott, Scottish Law Commission.

Para. 30(b) *Consultative Committee on Administrative Law*

The Hon. Lord Kilbrandon (Chairman).
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 Mr. A. L. Bushnell, C.B.E. County Clerk, Perth
 Mr. J. S. Dalgetty Solicitor to the Secretary of State for Scotland
 Mr. C. E. Jauncey, Q.C. The Faculty of Advocates
 Mr. J. Mellick, O.B.E. Solicitor, Glasgow
 Professor J. Bennett Miller University of Glasgow
 Secretary: Miss P. J. McDermott, Scottish Law Commission.

Para. 30(e) *Consultative Group on Tax Law*

Professor J. M. Halliday (Chairman).
 Mr. H. M. Begg The Institute of Chartered Accountants of Scotland
 Mr. E. I. Goulding, Q.C. The Bar Council
 Mr. J. P. Lawton The Law Society
 Mr. D. A. Smith Board of Inland Revenue
 Mr. D. S. Morpeth The Institute of Chartered Accountants of England and Wales
 Secretary: Mr. B. O'Brien, Law Commission.
 Asst. Secretary: Mr. H. D. Brown, Law Commission.

Para. 42 *Statute Law Committee, The Editorial Board*

The Hon. Mr. Justice Scarman, O.B.E. (Chairman).
 The Hon. Lord Kilbrandon
 Sir Harvey Druitt, K.C.B. Treasury Solicitor
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 Sir John Gibson, C.B., Q.C. Late Legal Secretary to the Lord Advocate
 Mr. A. B. Lyons Statutory Publications Office
 Secretary: Mr. M. L. Dunlap, Law Commission.

APPENDIX 2

Scottish Law Commission—papers published by Her Majesty's Stationery Office

First Programme of Law Reform
First Programme of Consolidation and Statute Law Revision
First Annual Report 1965–66
Proposals for Reform of the Law of Evidence relating to Corroboration
Reform of the Law Relating to Legitimation *per subsequens matrimonium* (Cmnd. 3223)
Divorce—The Grounds Considered (Cmnd. 3256)
Report by the Law Commission and the Scottish Law Commission on the Consolidation of Certain Enactments relating to Shellfish Fisheries and Shellfish—Sea Fisheries (Shellfish) Bill (Cmnd. 3267)
Second Annual Report 1966–67
Second Programme of Law Reform
Third Annual Report 1967–68
Report by the Law Commission and the Scottish Law Commission on the Consolidation of the Trustee Savings Banks Acts 1954 to 1968—Trustee Savings Banks Bill (Cmnd. 4004)
Report by the Law Commission and the Scottish Law Commission on the Interpretation of Statutes
Report by the Law Commission and the Scottish Law Commission on Exemption Clauses in Contracts—First Report: Amendments to the Sale of Goods Act 1893
Fourth Annual Report 1968–69
Report on the Companies (Floating Charges) (Scotland) Act 1961

Scottish Law Commission—Memoranda circulated for comment and criticism

Memorandum No. 1—Probates or Letters of Administration as Links in Title to Heritable Property under the Succession (Scotland) Act 1964
Memorandum No. 2—Expenses in Criminal Cases
Memorandum No. 3—Restrictions on the Creation of Liferents
Memorandum No. 4—Applications for Planning Permission
Memorandum No. 5—Damages for Injuries Causing Death
*Memorandum No. 6—Interpretation of Statutes
*Memorandum No. 7—Provisional Proposals Relating to Sale of Goods
Memorandum No. 8—Draft Evidence Code—First Part
Memorandum No. 9—Prescription and Limitation of Actions
Memorandum No. 10—Examination of the Companies (Floating Charges) (Scotland) Act 1961
Memorandum No. 11—Presumptions of Survivorship and Death
Memorandum No. 12—Judgments Extension Acts
Memorandum No. 13—Jurisdiction in Divorce

* Produced jointly with the Law Commission.