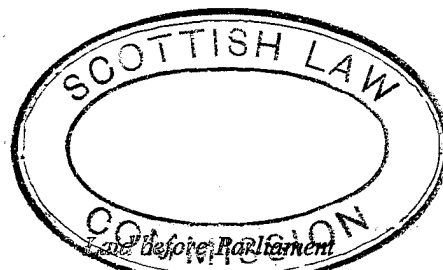




SCOTTISH LAW COMMISSION

(SCOT. LAW COM. No. 7)

SECOND
ANNUAL REPORT
1966-67



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

EDINBURGH
HER MAJESTY'S STATIONERY OFFICE
TWO SHILLINGS NET

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1967

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.

Mr. G. D. Fairbairn, S.S.C.

Professor J. M. Halliday, M.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 8.

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THIS REPORT is the seventh Scottish Law Commission publication to be presented to, or laid before, Parliament by the Secretary of State and the Lord Advocate. For ease of reference, such publications will bear an identifying number. This Report is therefore numbered SCOT. LAW COM. NO. 7 and future publications will be numbered accordingly. The Scottish Law Commission's previous publications, in the order in which they appeared, are—

	<i>Date of publication</i>
1. First Programme of the Scottish Law Commission	28th October 1965
2. First Programme of Consolidation and Statute Law Revision	7th July 1966
3. First Annual Report 1965-66	20th July 1966
4. Proposal for Reform of the Law of Evidence Relating to Corroboration	20th April 1967
5. Reform of the Law Relating to Legitimation <i>per subsequens matrimonium</i>	20th April 1967
6. Divorce— <i>The Grounds Considered</i>	12th May 1967

Scottish Law Commission

Report for year ended 15th June 1967

TO: THE RIGHT HONOURABLE WILLIAM ROSS, M.B.E., M.P.,
Her Majesty's Secretary of State for Scotland, and

THE RIGHT HONOURABLE GORDON STOTT, QUEEN'S COUNSEL,
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 second Annual Report of the Scottish Law Commission.

C. J. D. SHAW,
Chairman.

4th July 1967.

THE COMMISSION

1. The Commission was set up on 16th June 1965, with a full-time Chairman, The Hon. Lord Kilbrandon, LL.D., and three part-time Commissioners, Mr. G. D. Fairbairn, S.S.C., Professor J. M. Halliday, M.A., LL.B., and Professor T. B. Smith, Q.C., M.A., D.C.L., LL.D., F.B.A. On 11th April 1966, Professor A. E. Anton, M.A., LL.B., was appointed as fourth part-time Commissioner.

PREMISES

2. We have now completed our first eighteen months in our permanent accommodation at the Old College in the University of Edinburgh. The close ties which we have established with the University continue and we record our appreciation of the co-operation we have had from the University, particularly as regards our use of the University Law Library.

STAFF

3. Our complement of legal staff has been increased this year by one lawyer and it now consists of our Secretary, Assistant Secretary and three others. The position with regard to Parliamentary Draftsmen has not changed since our last Report. We still do not have a draftsman to prepare Bills for submission with our recommendations for reform of the law, and we emphasise again that we consider this to be a serious handicap to the effectiveness of our work. As will be seen later in the Report (paragraph 18) the draftsmen who have been able to work on Scottish Consolidation Bills have made considerable progress, but here again the amount of highly desirable consolidation work on Scottish legislation is limited by the small number of draftsmen who can be allotted to this task by the Lord Advocate's Department. It must also be remembered that much of the Scottish draftsmen's time is taken up with working in conjunction with Parliamentary Counsel to the Treasury on consolidation of enactments applying throughout Great Britain or the United Kingdom.

MEETINGS

4. Our aim of meeting in full session at fortnightly intervals has been maintained throughout the period of this Report. We have also on occasions held special meetings to discuss particular subjects.

PROPOSALS

5. During the period covered by this Report we have received proposals as follows—

Proposals Received

<i>Source</i>	<i>Number</i>
General Public	13
Legal Faculties and Societies	5
The Judiciary	37
Other lawyers	13
Other Organisations	10
Government Departments	1
Members of the Commission and Staff	2
	<hr/>
	81

Those proposals have been dealt with as follows—

To be examined under our First Programme	16
To be examined under future Programmes	31
Referred to, or deferred pending reports of other bodies concerned with law reform	3
Deferred for later consideration	5
Awaiting further information	9
Considered to require no action on the part of the Commission	15
Under consideration	2

6. We have received considerably fewer proposals than we did during our first year, when the number received was 193, but this is only to be expected, as the spate of proposals which reached us in response to our original request for them has died down and has been replaced by a smaller but more regular flow. We must express our thanks in particular to the Law Society of Scotland and the Scottish Law Agents Society for the proposals they have sent to us, and to the Editor of the Scots Law Times Reports who has drawn our attention to points arising in current cases. We should also like to thank the individual lawyers and laymen, and professional bodies such as the Council of Scottish Chambers of Commerce, the Federation of Scottish Junior Chambers of Commerce, the Institute of Bankers in Scotland, the Committee of Scottish Bank General Managers and the Institute of Chartered Accountants of Scotland who have taken the trouble to bring various matters to our notice.

7. Our list of proposals in paragraph 5 above does not include matters of which mention is made by the Committee on Conveyancing Legislation and Practice under the Chairmanship of Professor Halliday, as being suitable for reference to the Commission. We await with interest the reaction of the Government to the Committee's recommendations.

8. We appreciate that the busy practitioner has little time to write to us in detail on anomalies or defects in the law which come to his attention, and also that he may be deterred from doing so because the point he has in mind is not included in our Programmes. As we are a continuing body, our intention is to build up a "store" of such points, even though they cannot all be dealt with or thoroughly examined at once. We shall thus establish a comprehensive record of criticisms, which will tend to show which of the branches of the law are in most urgent need of examination. We wish, therefore, to take this opportunity to renew our invitation to all to send us such complaints, criticisms or proposals for law reform as may seem to require consideration. We cannot promise immediate action, but we do promise that anything sent to us will be considered and will not be forgotten.

FIRST PROGRAMME

9. Work has progressed steadily on the five branches of law contained in our First Programme. We report on each of these branches in the following paragraphs.

EVIDENCE

10. Our examination of the law of evidence has proceeded throughout the year. In April 1967 we published our proposals for reform of the law relating to corroboration. We are continuing our general review of the law of evidence; it is our intention to lay before the profession, and others interested, the results of our work, in order that they may be discussed, amended and generally approved. Our thanks are due to Sheriff N. M. L. Walker, C.B.E., and Mr. A. B. Wilkinson, Advocate, who have acted as our consultants on various aspects of the subject.

OBLIGATIONS

11. The examination of such a large branch of the law is a very long-term project; it will be some time before we are in a position to publish the results of the work that is being done. We have divided the subject generally into three main parts—(a) contracts and other voluntary obligations, (b) restitution, and (c) delict. We are concentrating at the moment on the first and second of these. The Law Commission are concerned with codifying the English law of contract, and we have been working with them with a view to exploring the possibility of a unified code, or perhaps two harmonised codes. We have also to keep in mind foreign, and, in particular, European systems of law; this has become important since the recent application by the United Kingdom to join the European Economic Community, because of the special contribution which Scottish law can make at this juncture. Jointly with the Law Commission we have set up an Advisory Panel, whose names are listed in Appendix 1, to advise on particular problems arising in the law of contract.

12. On 21st and 22nd April members of the Advisory Panel met, at All Souls College, Oxford, those from the two Commissions who are working on this branch of law, and a most useful discussion took place. It is hoped to arrange similar meetings in the future, so that the Commission will be able to obtain the advice, criticism and comment of these distinguished lawyers, to whom we must express our thanks for giving their services in this way. There will, of course, be wider consultation when we are in a position to publish draft papers for comment and criticism. This will necessarily be a lengthy and important process, since the subject matter of the criticism will be something different in form and substance from the law as we know it now. Codification as we see it is not simply a gathering together of the existing law in one statute. It involves starting afresh and rewriting the law in a new form. The task of doing this even in relation to a single system of law is not easy. Nevertheless, progress is being made.

13. We should also mention the joint Working Party which was set up in June 1966 by the two Law Commissions to examine the subject of exemption by contract from common law and statutory liabilities. This Working Party, the members of which are noted in Appendix 1, has been engaged so far on the problems of exemption clauses in connection with contracts for the sale of goods and will proceed in due course to deal with other matters such as clauses limiting or avoiding liability in service contracts. The Working Party has met in London on eight occasions.

PRESCRIPTION AND LIMITATION OF ACTIONS

14. Our work on Prescription and Limitation of Actions is taking rather longer than we had anticipated, but we have now completed our examination of the relevant law, and the work of formulating our recommendations for its reform in the light of comparative legal material which we have gathered is well advanced. It is proposed shortly to issue a Memorandum embodying our preliminary recommendations for comment and criticism.

JUDICIAL PRECEDENT

15. As stated in our First Annual Report, we suggested that the law and practice relating to House of Lords' decisions as precedents in appeals to that House should be clarified.

16. We began by suggesting draft legislation to declare that the House of Lords was not, in giving a decision in any appeal from the Court of Session, bound by a decision of the House in any previous appeal. On consideration of certain constitutional difficulties which might arise in connection with such a Bill, we arranged for consultation on the matter with the House officials. We understand that our views were brought to the notice of the Lord Chancellor and the Lords of Appeal in Ordinary. On 26th July 1966 the Lord Chancellor made his announcement that their Lordships recognised that "too rigid adherence to precedent may lead to injustice in a particular case and also unduly restrict the proper development of the law". Their Lordships proposed, therefore, "to modify their present practice and, while treating former decisions of this House as normally binding, to depart from a previous decision when it appears right to do so".¹ We have, for the moment, deferred further consideration of the doctrine of judicial precedent in relation to the Court of Session and the lower courts. The subject may, however, require reappraisal in the light of the adaptation of judicial techniques to deal with a codified form of law.

INTERPRETATION OF STATUTES

17. Interpretation of Statutes was one of the subjects discussed at the meeting of the two Law Commissions mentioned later in this Report (paragraph 38). A Memorandum is in course of preparation jointly by the two Commissions and will be issued for comment and criticism in due course. Our Chairman has been appointed a member of the Statute Law Committee, and also of a sub-committee of that Committee which is "to consider what improvements should be made in the form and arrangement of the Statute Book, for example—

- (a) by the official publication of a loose-leaf edition of 'Statutes Revised', or
- (b) by the publication of an official edition, loose-leaf or otherwise, of Acts arranged by subjects."

FIRST PROGRAMME OF CONSOLIDATION AND STATUTE LAW REVISION

18. There follows a report of the present position in relation to consolidation Bills, several of which were in course of preparation before our First Programme of Consolidation and Statute Law Revision was published in February 1966.

¹H. L. Debs. 26th July 1966 Col. 677.

(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) *Housing (Scotland)*—The consolidation of the enactments relating to the general housing law received the Royal Assent on 21st December 1966 (Housing (Scotland) Act 1966 (c. 49)). It is proposed to introduce a Bill to consolidate the enactments relating to the financial aspects of housing law later in the present Session of Parliament. It is intended to incorporate in this Bill, *inter alia*, the provisions of the Housing (Financial Provisions, etc.) (Scotland) Act 1967 (c. 20), which received the Royal Assent on 10th May 1967.
- (2) *Legal Aid (Scotland)*—A Bill to consolidate the enactments relating to legal aid has been introduced into Parliament and has passed the Joint Committee on Consolidation Bills. It is hoped that the Bill will complete its progress through Parliament and receive the Royal Assent later this Session.
- (3) *Police (Scotland)*—A Bill to consolidate certain enactments relating to police has been introduced into Parliament and is awaiting consideration by the Joint Committee on Consolidation Bills. It is hoped that this Bill also will complete its progress through Parliament and receive the Royal Assent later this Session.
- (4) *Court of Session*—Work is continuing on a Bill designed to consolidate and amend certain enactments relating to the Court of Session. The present intention is that the Bill should be submitted to an expert body for consideration before it is introduced into Parliament, and for this reason it is impossible as yet to say when the Bill is likely to be introduced.
- (5) *Rents (Scotland)*—Drafting has commenced on a Bill to consolidate the Rent Acts in their application to Scotland. It is hoped that it will be possible to introduce this Bill next Session.
- (6) *Roads and Bridges (Scotland)*—Preparatory work on a Bill to consolidate and amend the law relating to roads and bridges is continuing and it is hoped that it will be possible to start the drafting later this year. As this is a very large and complicated project the Bill is unlikely to be ready for introduction into Parliament in the near future.
- (7) *New Towns (Scotland)*—A Bill to consolidate the enactments relating to new towns with corrections and improvements under the Consolidation of Enactments (Procedure) Act 1949 is now ready for introduction.
- (8) *Lands Clauses (Scotland)*—Preparatory work has been started on a Bill to consolidate the Lands Clauses Acts in relation to Scotland and to repeal certain provisions in related enactments which have ceased to have any effect.

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

- (1) The following consolidating Acts have been passed—
 - (i) Air Corporations Act 1967 (c. 33),
 - (ii) Development of Inventions Act 1967 (c. 32),
 - (iii) Forestry Act 1967 (c. 10),
 - (iv) Plant Health Act 1967 (c. 8),
 - (v) Industrial Injuries and Diseases (Old Cases) Act 1967 (c. 34).
- (2) The following consolidating Bills have now been prepared—
 - (i) Advertisements (Hire-Purchase) Bill,
 - (ii) Road Traffic Regulation Bill,
 - (iii) Sea Fish (Conservation) Bill,
 - (iv) Sea Fisheries (Shellfish) Bill.

19. In the Sea Fisheries (Shellfish) Bill there have been incorporated amendments to give effect to certain recommendations which the Law Commissions made in a Joint Report to the Lord Chancellor, the Secretary of State for Scotland and the Lord Advocate (Cmnd. 3267). Some of these amendments were outside the scope of the terms of the Consolidation of Enactments (Procedure) Act 1949, but they appeared to the Law Commissions to be desirable and unlikely to be controversial. The Bill was prepared and presented in the hope that the amendments proposed would be acceptable to Parliament and that little time would be needed for their discussion. If our hope is realised, this may prove to be a useful precedent for future consolidation Bills which include desirable and uncontroversial amendments recommended by one or both of the Law Commissions.

20. An attempt was made to consolidate the Income Tax Acts by stages. A Capital Allowances Bill was introduced and considered on 25th January 1967 by the Joint Committee on Consolidation Bills. It was decided, however, that satisfactory consolidation in this sphere was impossible without amending legislation, and the Bill did not proceed. We are informed that the necessary amendments have been included in the Finance Bill and that, if these are passed, the Capital Allowances Bill will be introduced again early next Session.

21. After examination of the enactments relating to moneylenders and pawnbrokers, it was found that consolidation of these enactments was unlikely to be possible or desirable without amending legislation.

22. A Firearms Bill is in draft and work has been begun on consolidation of enactments relating to road traffic which are not covered by the Road Traffic Regulation Bill. The latter Bill consolidated only a part of the whole body of statute law on that subject.

23. It is hoped to introduce Bills next session to deal with consolidation of the Monopolies and Mergers Acts 1948 and 1965, the House of Commons Members' Fund Acts 1939 to 1962 and the Export Guarantees Acts 1949 to 1967.

24. Work has also been started on the enactments relating to Estate Duty, but it will be some time before a Bill to consolidate these will be ready for introduction, and, as soon as resources permit, a start will be made on the consolidation of the Stamp Acts.

25. Lack of skilled man-power has made it impossible to make much progress with the important task of statute law revision, but, as we said in our First Programme of Consolidation and Statute Law Revision, we are associating ourselves with the Law Commission in the task of examining the Statute Book from the beginning and preparing Statute Law Revision Bills to repeal obsolete enactments.

ADVICE, ETC.

26. On 19th December 1966 you invited us under section 3(1)(e) of the Law Commissions Act 1965 to review, in relation to Scotland, the ground covered by the Law Commission in their Report to the Lord Chancellor entitled "Reform of the Grounds of Divorce—The Field of Choice" (Cmnd. 3123). That Report was concerned to advise the Lord Chancellor upon the proposals for divorce law reform put forward by a group appointed by the Archbishop of Canterbury, and contained in the report named "Putting Asunder". We submitted to you in April 1967 the Commission's Report on this subject entitled "Divorce—The Grounds Considered"; this was published in May 1967 (Cmnd. 3256).

27. In January 1967, the President of the Board of Trade asked the Commission to advise as to amendments which might be made to the Companies (Floating Charges) (Scotland) Act 1961 to meet criticisms of some of its provisions and difficulties which have arisen in connection with its administration. We have set up a Working Party which includes representatives of the legal, accountancy and banking professions under the chairmanship of Professor Halliday to consider this question in detail and to report to us. A list of the members of the Working Party appears in Appendix 1.

28. At the request of the Winn Committee on Personal Injuries Litigation we provided them in December 1966 with a Memorandum on the jurisdiction of the Sheriff Court in actions for damages in respect of personal injuries.

29. On 11th August 1966, the President of the Board of Trade asked the Law Commission and ourselves to advise on certain recommendations of the Molony Committee on Consumer Protection. We referred this for investigation to the joint Working Party set up by the two Law Commissions to examine the subject of exemption by contract from common law and statutory liabilities.¹

30. Our Chairman has recently been appointed Chairman of the Committee set up to "inquire into the requirements (both fundamental and formal) for the constitution of marriage in Scotland, and their relationship with those of other countries, and to recommend what changes, if any, are required to bring them up to date". We understand that the intention is that this Committee should work in close association with us and will look to us for advice on the marriage law of this and other countries.

¹See paragraph 13.

31. We were consulted by the Law Commission in relation to their Report on Restrictions upon Publicity in Domestic Proceedings (Cmnd. 3149). Their recommendations would have the effect of extending slightly the restrictions on the publication in Scotland as well as in England, of reports of certain proceedings in the English Courts, and we saw no reason to object to the Law Commission's proposals so far as they apply to Scotland.

32. We considered certain proposals of the Law Commission relating to the abolition of certain obsolete statutory criminal offences, and, in so far as some of these were offences under Scots law as well as English law, we joined with the Law Commission in recommending their abolition. The Criminal Law Bill includes provisions giving effect to these recommendations.

33. We have been consulted by several Departments in connection with the application to Scotland of provisions in various Bills in Parliament. The question whether or not all or some of the provisions of a particular Bill should apply to Scotland is a common one.

34. We have also been asked to advise on a number of international conventions on various legal matters. Some of these are mentioned in paragraphs 43 and 44 of the Report.

ANOMALIES AND DEFECTS

35. As part of our duty under section 3(1)(e) of the Law Commissions Act 1965 we advise on anomalies or defects in the law which appear to us to call for urgent attention and to be capable of being remedied by comparatively short amending provisions. We have continued our consideration of a number of these which came to our notice in our first year¹ and have also considered others suggested to us since then. We give the following examples—

- (a) Whether notice of applications for planning permission should be given to members of the community who might consider themselves entitled to make observations upon them. We have circulated a Memorandum for comment and criticism of our preliminary views as to whether notice of application for planning permission should be given to interested parties. The demand for copies of this Memorandum indicates that it has aroused particular interest.
- (b) Whether clauses in moneylending agreements prorogating the jurisdiction of a particular court should be void, as is the present position with regard to such clauses in sales, credit sales and hire-purchase agreements. We have recommended that such clauses in moneylending agreements should be void.
- (c) Whether the scope of a decree under the Presumption of Life Limitation (Scotland) Act 1891 should be widened to have the effect, in particular, of establishing the death of the individual concerned for the purposes of a claim for widow's benefit under the National Insurance Acts. We understand from the Ministry of Social Security that there are few cases in which a claim for widow's benefit depends entirely upon whether or not the husband's death can be presumed after seven years' absence. The Ministry

¹See paragraph 36 of our First Annual Report.

have examined various proposals for legislation to remove the anomalies which can arise in these few cases but have been unable to find one without unacceptable side-effects either on Scots law generally or within the National Insurance Scheme. The problem is still being considered and the Ministry are now looking at the possibility of a partial solution, perhaps by some amendment of their regulations.

- (d) Whether the law within the United Kingdom establishing jurisdiction in divorce proceedings by the domicile of the husband at the date of commencement of proceedings requires alteration.
- (e) Whether English probates and letters of administration which have been resealed in Scotland could be used as links in title to Scottish heritage. We produced a Memorandum on this point which we sent for comment to the Law Society of Scotland and the Faculty of Advocates. At the same time we invited these bodies to draw our attention to any other points connected with the Succession (Scotland) Act 1964 which appeared to require examination. We have received a number of proposals in this connection which are under consideration with a view to recommending legislation amending that Act.
- (f) Whether it should be possible for English probates and letters of administration to be sent for resealing by post from England direct to the Commissary Clerk in Edinburgh; and whether the need for resealing of English probates and letters of administration in Scotland and of Scottish confirmations in England should be abolished. We are at present having discussions on this matter with the Law Commission and with the Court officials concerned.
- (g) The transmissibility of a right of action for personal injury in the event of the death of the injured person, with related questions and with special reference to the right of the deceased's relatives to sue in respect of his or her death (*Darling v. Gray and Sons* (1892) 19 R (H. L.) 31).
- (h) Whether the law on restrictions on the creation of liferents should be clarified by amendments of section 48 of the Entail Amendment Act 1848 and section 9 of the Trusts (Scotland) Act 1921 which would have the effect, *inter alia*, of removing differences between liferents of heritable and moveable property respectively. On this subject we prepared a Memorandum which has been circulated to legal bodies and others for comment and criticism.
- (i) Whether an accused person should be able to recover expenses from the prosecution in cases where he has been acquitted or the charge against him has been dropped. On this matter we have consulted various legal bodies and other organisations by means of a questionnaire. We have received most helpful replies which are now under consideration.
- (j) Whether the law should be changed so that an illegitimate child becomes legitimated by the subsequent marriage of its parents, in cases where the parents were not free to marry at the date of the child's conception or birth. In April 1967 we submitted to you our Report recommending that this change in the law should be made (Cmnd. 3223).

- (k) Whether accused persons and their legal advisers are given fair notice, before trial, of the case they will have to meet, for example, by making Crown precognitions available to them. We have had an opportunity to express our views on this to the Scottish Law Officers, and it is hoped that alterations in practice which we have suggested may be achieved by administrative arrangements to be promulgated in the near future.
- (l) Whether confirmation fees should be reduced. We have received representations that these fees are generally too high, and that considerable hardship is being caused in a number of cases by the additional fees which now have to be paid in respect of heritable property included in confirmations under the Succession (Scotland) Act 1964. Several factors are involved in this problem but we are continuing to press for its early solution.

36. Of the other questions mentioned in paragraph 36 of our First Annual Report, we decided to make no recommendations relating to private prosecutions. Our examination of the matters mentioned in sub-paragraphs (c), (d), (g) and (h) of that paragraph has not yet been completed.

COMPUTERS

37. We have continued to follow developments in computer technology which may have a bearing on the use of computers by lawyers. We have had valuable discussions and exchanges of information with the Law Commission, the Universities of Aberdeen, Edinburgh, Glasgow and Nottingham, the Heriot-Watt University and the Scottish Office Computer Service. Representatives of some of these attended when Professor Arthur R. Miller of the University of Michigan Law School visited us in May 1967 to discuss such matters as protection of privacy, copyright and information retrieval in relation to computers and questions of liability arising from use of them.

CONSULTATION

THE LAW COMMISSION

38. Close co-operation is maintained with the Law Commission and, as provided in section 3(4) of the Law Commissions Act 1965, we are in constant consultation with them on matters of common concern to the two Commissions. In addition to meetings between individual Commissioners and members of the legal staffs, the two Commissions held their second joint meeting in London on 23rd and 24th February 1967, when the work of each Commission was reviewed and discussed. We have considered various papers produced by the Law Commission and questions raised by them. Some of these are mentioned elsewhere in this Report and others include such matters as the need, if any, for amendment of the law relating to civil liability for animals, registration of wills, powers of attorney, codification of the law of landlord and tenant and civil liability of vendors and lessors for defective premises.

OTHER LAW REFORM ORGANISATIONS

39. Contact has also been made or maintained with various other law reform organisations including the Directorate of Law Reform in Northern Ireland, the

California Law Revision Commission, the New York Law Revision Commission and the Ontario Law Reform Commission. In November and December our Chairman attended a session of the Ontario Law Reform Commission in Toronto, and also met the Director of the New York Legislative Drafting Services. Lectures were delivered in the law schools of the Universities of Manitoba and Alberta, and Columbia University, New York. Weather conditions caused the cancellation of a meeting with the New York State Law Reform Commission at Cornell University. Great interest in the work we are doing has been expressed and we have arranged to exchange papers and publications.

SEMINARS, ETC.

40. A number of seminars and conferences have been attended either by one of our number or on the Commission's behalf by another Scottish lawyer. Apart from the meeting with the Advisory Panel on Contract (see paragraph 12) which was attended by Professor Smith, Mr. Fairbairn took part in a seminar at All Souls College, Oxford, on family law and a colloquium on damages in personal injuries cases at the University of Southampton. We are grateful to Professor J. Bennett Miller of Glasgow University who attended, on our behalf, a seminar at All Souls College on administrative law.

OTHER ORGANISATIONS

41. We have continued the arrangements for informal consultation with the Faculty of Advocates and the Law Society of Scotland which have proved most helpful to us; and we would record our appreciation of the help we have received from these and other professional bodies and individuals from whom we have invited comments and criticisms of the various Memoranda we have produced. We recognise that this involves a great deal of work by those concerned, and we assure them that we regard it as vital to our method of working that we should be able in this way to obtain expert and informed advice.

42. We have continued to enjoy much co-operation and assistance from the various Government Departments with which we are concerned.

FOREIGN LEGAL SYSTEMS AND INTERNATIONAL LAW

43. We have maintained our interest, from the comparative aspect, in foreign legal systems and have been in contact on various occasions with the representatives of other nations. Professor Anton attended in May 1967 a meeting of a Sub-Committee of the European Committee on Legal Co-operation of the Council of Europe on the subject of residence and domicile. The same Sub-Committee had, in October 1966, completed its study of time-limits, in which a member of our professional staff continued to take part. Professor Anton is also a member of the Working Party set up to advise on the draft Convention on Recognition of Foreign Divorces and Legal Separations prepared by the Special Commission of the Hague Conference on Private International Law.

44. We were requested to submit comments on two draft conventions on agency in contracts of international character produced by the International Institute for the Unification of Private Law. The Law Commission have received a similar request from the Lord Chancellor and with them we have set up a joint Working Party to consider the two drafts. The names of members of this Working Party, other than Commissioners, are noted in Appendix 1.

45. We have had on more than one occasion, during the year, to emphasise in the appropriate quarter our view that, when the United Kingdom is invited to send a delegation to international conferences of a legal character, it is in general unsatisfactory that English law only should be represented. We have some hopes that recognition is gradually being given to the fact that English law and Scots law are two separate systems, and that solutions to international legal problems which are to be embodied in conventions to apply to the United Kingdom should be acceptable to both these systems. It is also beginning to be appreciated that as Scots law has the greater affinity with most European systems, the Scottish lawyer has much to contribute to the work being done by bodies which are seeking to unify or harmonise the laws of European countries, including those of the United Kingdom.

SCRUTINY OF BILLS

46. The Law Commissions Act 1965 imposes on us the duty to seek the elimination of anomalies and the simplification and modernisation of the law. We interpret this as allowing us not only to seek cures for existing anomalies, infelicities and anachronisms, but also to try to take preventive action in relation to current legislation. In this connection we scrutinise all Bills applying to Scotland (and certain other Bills with a view to their possible application to Scotland). While it will be appreciated that examination of all such Bills in detail is beyond our resources, we have been able to secure clarification of a number of points by raising them at an early stage with the Government Departments or the draftsman concerned. We are particularly concerned with the manner in which provisions affecting Scotland are included in Bills which apply to other parts of the United Kingdom as well. We have also pressed, on occasions with success, for greater simplification and intelligibility of the language used in particular Bills.

LIST OF PAPERS

47. In Appendix 2 we list the various papers which have been prepared by the Commission and made public in the course of the period of this Report. It does not include unpublished papers which have been submitted to Government Departments as advice under section 3(1)(e) of the Law Commissions Act 1965.

CONCLUSION

48. In our last Report we stressed the independence of the Commission, and no doubt that remains one of our most valuable attributes. But independence in this context is a somewhat negative virtue. On the positive side, we would lay

emphasis on the necessity for involving the whole legal profession and others interested in a continuous review of the law, and on the method that both Commissions have adopted to that end. Instead of presenting to the public our own concluded view of the changes in the law adjudged to be appropriate, we publish, whenever we can, our preliminary impressions in the form of Memoranda, in order that these may be debated and criticised by the professions at large. This means that every such project is subjected to the scrutiny, and may ultimately enjoy the support, of a far wider range of experts than could ever be found in the office of a law commission. "Thus", as it was put in the Journal of the Law Society of Scotland, "the publication in full of the Memoranda is an invitation to participate in the live process of law reform". That invitation we here most cordially repeat.

APPENDIX I

MEMBERSHIP OF ADVISORY PANEL AND WORKING PARTIES

Para. 11 *Advisory Panel on Contract*

The Rt. Hon. Lord Devlin, the Rt. Hon. Lord Justice Diplock, the Hon. Mr. Justice Megaw, C.B.E., T.D., the Hon. Lord Robertson, the Hon. Mr. Justice Roskill, the Hon. Mr. Justice Donaldson, Mr. P. S. Atiyah, Mr. A. R. Barrowclough, Mr. 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. H. Treitel, Mr. P. E. Webster, q.c., Professor K. W. Wedderburn, and Professor J. F. Wilson.

Para. 13 *Joint Working Party on Exemption by Contract from Common Law and Statutory Liabilities*

The Hon. Lord Kilbrandon and Mr. Andrew Martin, q.c. (Joint Chairmen).

Members, other than representatives of the Law Commission and Scottish Law Commission—

Mr. J. A. Beaton, Mr. W. E. Bennett, Mr. G. J. Borrie, Mr. M. R. E. Kerr, q.c., Mr. P. Maxwell, q.c., *Mr. S. W. T. Mitchelmore, Mr. G. R. H. Reid, Mr. R. G. Scriven, Mr. J. B. Sweetman, Mr. S. Terrell, q.c., †Mrs. L. E. Vickers, Miss G. M. E. White, Mr. W. M. H. Williams.

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

*Mr. Mitchelmore replaced Mrs. E. L. K. Sinclair as one of the Board of Trade representatives.

†Mrs. Vickers replaced Mrs. Beryl Diamond who had to resign for personal reasons.

Para. 27 *Working Party on Companies (Floating Charges) (Scotland) Act 1961*

Professor J. M. Halliday (Chairman), Mr. D. G. Antonio, Mr. W. A. Cook, Mr. A. G. M. Duncan, Mr. A. I. Mackenzie, Mr. G. R. H. Reid.

Secretary: Mr. R. Brodie, Scottish Law Commission.

Para. 44 *Joint Working Party on the two Draft Conventions on Agency in International Contracts*

Members of the Working Party other than representatives of the Law Commission and Scottish Law Commission—

Mr. R. A. MacCrimdale, q.c., Mr. J. C. McFadyean, Mr. T. N. Risk.

Secretary: Mr. E. G. Caldwell, Law Commission.

APPENDIX 2

Scottish Law Commission papers published by H.M. Stationery Office during the period of the foregoing Report

First Annual Report 1965-66.

Reform of the Law relating to Legitimation *per subsequens matrimonium* (Cmnd. 3223)

Proposal for Reform of the Law of Evidence relating to Corroboration

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).

Scottish Law Commission Memoranda circulated for comment and criticism

Memorandum 1—Probate or Letters of Administration as Links in Title to Heritable Property under the Succession (Scotland) Act 1964

Memorandum 2—Expenses in Criminal Cases

Memorandum 3—Restrictions on the Creation of Liferents

Memorandum 4—Applications for Planning Permission

