pleadings, he has no guarantee that they will proceed accordingly. Once again the matter of knowledge becomes important: the principal's must equal that of the contractor, if he is competently to determine when the undertaking is in fact being carried out in the proper and most desirable manner. The possession and application of such knowledge, it is submitted, elevates the principal to a position where he is affecting, if not in fact directing, the actual mode of work; thereby is erased the sole distinguishing factor essential to the principal-independent contractor relationship.

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REFORM OF THE STATUTE OF FRAUDS IN ENGLAND.

Last June seventh the Law Reform (Enforcement of Contracts) Act, 1954, came into force in England and Wales; and in the following month judgment was delivered[1] in what may prove to be the last of a countless number of cases in which the Statute of Frauds has been pleaded as a defence.

The legislation, which amended section 4 of the Statute of Frauds[2] and repealed section 4 of the Sale of Goods Act,[3] has met with almost universal approval—most people considering it long overdue. It has been suggested that no one is sorry to see the end of the Statute of Frauds except perhaps a few law teachers, who have lost a perennially fertile field for lecture and examination! The Act, in the form of a private bill, gave effect to the First Report of the Law Reform Committee[4] presented to Parliament in April, 1953. This committee in effect agreed substantially with the recommendations of the Law Revision Committee[5] with regard to these matters, and endorsed the reasoning of that earlier group.

The Act repealed the whole of section 4 of the Statute of Frauds except the clause relating to guarantees ("any special promise to answer for the debt, default or miscarriage of another person"). The clause relating to land and interests therein had been repealed before and replaced by section 40 of the Law of Property Act, 1925.

The Law Revision Committee, after careful consideration, had recommended the reform

1. **Craxfords (Ramsgate) Ltd. v. Williams and Steer Manufacturing Co., Ltd.**, [1954], 1 W.L.R. 1130.
2. In New Brunswick, the corresponding sections to those repealed are subsections (a), (c) and (e) of section 1, Chapter 218, R.S.N.B., 1952.
3. In New Brunswick, section 5, Chapter 199, R.S.N.B., 1952.
4. Law Reform Committee, First Report, 1953, Cmd. 8809.
5. Law Revision Committee, Sixth Interim Report, 1937, Cmd. 5449.

> on the grounds that [the sections] had outlived the conditions which generated and, in some degree, justified them; that they operated in an illogical and often one-sided and haphazard fashion over a field arbitrarily chosen; and that on the whole they promote rather than restrain dishonesty.[6]

The Statute of Frauds had been passed mainly to prevent perjury in times when parties to an action could not themselves give evidence. There is no need to discuss in detail the evils of the Statute, nor the reasons given for the recommendations. They have been the object of considerable comment; and the reasons will be found in the report of the Law Revision Committee.[7] The same reasoning is applicable to Canada.

The earlier committee—the Law Revision Committee—had, in its recommendations, included the repeal of the clause referring to guarantees. A majority, however, had expressed the view that contracts of guarantee should be void unless in writing. The Law Reform Committee in its report took the middle course and suggested that the law in this respect should remain unchanged. As a result, the legislation did not repeal that clause and contracts of guarantee remain unenforceable unless evidenced by writing[8]. There is still considerable difference of opinion on this point, and there are indications that the committee members were not unanimous in wishing that the clause remain untouched. Dr. Goodhart, a member of both committees, has intimated[9] that it was feared that insistence on inclusion of guarantees in the repeal might well have lost the whole measure. The matter was, then, dropped for the time being in order that the other reforms might be effected. Although this difference of opinion exists with respect to guarantees, as opposed to the apparent unanimity with regard to the other proposals, it seems relatively safe to say that the weight of opinion still favours repeal of this last vestige of the Statute.

The reasons given by the committee for retaining the requirement of writing in guarantees are weak. They point out the distinction that guarantees are a type of contract which most people know quite definitely must be in writing, but fail to deal adequately with the hazy dichotomy between guarantees and indemnities. Surely there is no real difference in principle between these two contracts, and it seems evident that it arose as a result of an ingenious judicial play on words directed at circumventing the Statute of Frauds and thereby alleviating the injustices assumed to be caused by it. It is submitted that the reasons for repealing the other clauses apply with equal force to contracts of guar-

6. Law Reform Committee Report, **op. cit.**, p. 3, para. "2".
7. Reprinted in (1937), 15 C.B.R. 585.
8. The fact that the Statute of Frauds did not operate to avoid a contract (i.e. affected procedural rather than substantive rights) is illustrated by **Craxfords** case (above). In that case pleadings were filed months before the new Act came into force, and the Statute of Frauds was pleaded as a defence. Pilcher, J., noted that the new Act referred to all contracts, whether made before or after it, and ruled out the Statute of Frauds as a defence. Inherent in the judgment was the conclusion that the Statute of Frauds affected only procedural rights, for otherwise no rights would have existed upon which an adjudication could be made.
9. Dr. Goodhart, (1954), 70 Law Quarterly Review 441; see also Mr. Gunfield, (1954), 17 Modern Law Review 451.

antee, and it is unfortunate that the rather artificial distinction between guarantee and indemnity has been retained.

In its report, The Law Reform Committee mentioned that enquiries were made into the position in the other common law countries and it was found that no attempt has been made to change the law with respect to the matters under discussion. The committee did not feel this to be of any weight in deciding on the desirability of the proposed legislation. On the contrary, the belief was stated that the other common law countries might well be prepared to follow the lead of England in the matter.

It is to be hoped that New Brunswick, and indeed all the Canadian legislatures, take this suggestion; and I would urge that in doing so they adopt the 1937 committee's recommendations: i.e., extinguish the necessity for writing in contracts of guarantee, as well as in the other classes, save of course those relating to land.

A more general need, emphasized by this particular activity in legal reform, is some permanent machinery for ensuring that reforms are effected. In the debate on the Law Reform Bill in the House of Commons, Mr. G. R. Mitchison commented on the fact that it was a private member's bill and pointed out that, since there is no great public pressure brought to bear on such matters, the government neglects them.

> The machinery for putting into effect recommendations for law reform is lamentably lacking . . . There ought to be careful consideration of the means by which we can get this kind of thing put through less accidentally and more quickly.[10]

Thus the inadequate provision for implementation of committee recommendations is deplored in England. But in New Brunswick there is not even a committee to which references may be made to consider "proper changes of a non-controversial and non-party character recommending themselves to the legal profession as a whole and in the interests of those who have to make use of the law . . . in the ordinary course of their lives and business."[11] True, there is a periodic revision of the Statute law, and the Barristers' Society often makes recommendations for desirable reforms. Something more is needed, however, to keep the law abreast of modern conditions. How often is a judge heard to make a decision which even he himself believes contrary to justice? It is for the judge to determine and apply the law; for the legislature to change it if need be. It would be of great benefit if the legislature's function of keeping the law up to date were bolstered by the introduction of a whereby this duty could be discharged without impinging too greatly on the members' already overcrowded schedule. Judges should not be forced to achieve justice by resorting to artificial and far-fetched distinctions. They themselves are the first to deplore "judge-made-law" of that kind.

10. Mr. G. R. Mitchison, M.P., **Parliamentary Debates (Hansard)**, 12 February 1954, Vol. 523, p. 1573.
11. **Ibid.**

What is needed is a permanent and effective system whereby the law may be kept under constant review; a body to study aspects of the law and make recommendations when changes are considered necessary; and most important of all, a system which will ensure prompt and effective machinery for translating such recommendations into law.

New Brunswick has in the past shown a commendable willingness to implement reforms in the law when such are brought to attention. An example is the manner in which the legislature became the first in Canada to adopt the new Wills Act proposed by the Conference of Commissioners on Uniformity of Legislation in Canada. It is to be hoped that this progressive spirit will continue and that the legislature in future will take advantage of the work of such bodies as the Law Reform Committee. In particular, it should repeal s. 1 (a), (b), (c), (e) and s. 2 of the Statute of Frauds and s. 5 of the Sale of Goods Act.

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IVEAGH V. INLAND REVENUE COMMISSIONERS *

Conflict of Laws — Voluntary Settlement of Intagible Movables — Proper Law of the Settlement — Imputed Intention of the Parties — Relevant Considerations

By a voluntary settlement dated July 1, 1907, when the territory of the Republic of Ireland formed part of the United Kingdom, certain shares, bearer bonds and other securities were settled on E.G. for life with a power of appointment in favour of his wife and children. The settlement contained a very wide investment clause, including expressly investment in land in England, but there was no express power to invest in freehold land in Ireland. The settlement was drafted and prepared by solicitors in England and at all material times the shares and other indicia of title were kept in a bank in England, although there was power under the settlement to keep the securities in Ireland. At the date of the settlement the domicile of all the parties to it was Ireland. It was executed in England. The tenant for life had married in 1903, and by appointments made in 1946 and 1948 he surrendered his life interest in part of the settled property in favour of his daughters. On a question as to whether estate duty was exigible on £75,000 ordinary shares in an English company, Arthur Guinness, Son & Co. Ltd., registered on the register kept in Dublin by the company and locally situate there,[1] on the death of the tenant for life in 1949, it was held,

* [1954] Ch. 364.

1. Shares in a company are situate at the place where they can be transferred, which is normally the registered office. See **Dicey's Conflict of Laws**, 6th Ed., 1949, p. 306. **Land, Trusts in the Conflict of Laws**, 1940, holds the view that "for purposes of determining the law governing trusts of intangible personal property the element of location of the trust property should be used in the sense of the place where the securities are physicaily kept." (p. 21). He states that this is the view the American courts have taken. (p. 88). Cf. **Treasurer of Ontario v. Blonde et al.** [1946] 4 D.L.R. 785; [1947] A.C. 24 (J.C.P.C.) Falconbridge, **Conflict of Law**, 2nd. Ed., 1954, at p. 500 says in reference to the **situs** of shares: ". . . it is not certain to what extent the tests adopted for the purposes of taxation are identical with the tests that should be adopted for the purpose of the conflict of laws . . ."