

## MID-WINTER MEETING OF THE ONTARIO SECTION

The annual mid-winter meeting of the Ontario Section of the Canadian Bar Association was held in the Great Library at Osgoode Hall, Toronto, on February 2nd, 1946. The Vice-President for Ontario, the Honourable Mr. Justice Barlow, presided. Mr. E. K. Williams, K.C., the President of the Canadian Bar Association, and Chief Justice McRuer, the Dominion Vice-President, sat with the chairman during the course of the meeting. Sessions were held throughout the day, interrupted by a luncheon in Convocation Hall at which over 400 attended.

The report of the Ontario Members of Council was delivered by Mr. Justice Wells, newly appointed to the trial division of the Supreme Court of Ontario. The report dealt with the work of the Ontario members of Council and of the special committees appointed by it during the past year. One of the committees reported upon was set up for the purpose of providing groups of Association members throughout the Province who might be consulted by ex-service members of the profession on resuming practice.

Arising out of this report, a resolution was passed looking to the creation of a sustaining membership in the Canadian Bar Association, with the object of providing a definite source of income and allowing for the proper budgeting of expenses to be submitted annually to the Executive Committee. This resolution was directed to be presented to the meeting of the Dominion Council held a few days later in Toronto.

A report of the Committee respecting changes in the election of Ontario members of Council and in the constitution of the Association was delivered by Mr. G. A. Gale, K.C. Following the report a motion was passed directing the Vice-President to appoint a committee to carry out certain recommendations made in the report with respect to the election of members of Council.

Mr. George Edmonds, K.C., reported on the work of the Committee on Wartime Legal Services. The work of this committee has not in any way decreased since the cessation of hostilities, due largely to the fact that it is now doing work for the Department of Veterans' Affairs.

A large number of members of the profession who had served in the armed forces were present at the meeting and Chief Justice McRuer introduced a resolution placing on record the Association's appreciation of the gallant service rendered to

Canada by the 732 barristers and solicitors and 187 students who had served overseas, of whom fifty had made the supreme sacrifice.

In accordance with the now well-recognized custom, Mr. J. Shirley Denison, K.C., the Treasurer of the Law Society of Upper Canada, presented the report of the Benchers of the Law Society. This report dealt with the many activities of the Benchers during the past year and the work of the special committees set up by them, such as the Committee on Legal Education, the Discipline Committee, the Committee on Unauthorized Practice, the Rules Committee and the work of the Benchers in connection with legislation.

During the afternoon sessions Mr. D. Park Jamieson, K.C., Chairman of the Committee on the Administration of Civil Justice, presented a very full and exhaustive report on the work done by that committee during the past year. A great deal of work had been accomplished by the committee in connection with the Dower Act and it was recommended that this act be repealed and replaced by an act providing that the family residence could not be mortgaged or conveyed without the consent of the wife. A draft act along these lines had been prepared and is now being taken up with the proper authorities.

The committee recommended that the Mortgagees and Purchasers Relief Act should not be further renewed, having served its purpose, and representations are to be made accordingly to the proper authorities.

The troublesome question of divorce and divorce procedure was dealt with in the report and the history of the numerous resolutions having to do with this somewhat contentious matter in the Dominion field was outlined to the meeting. It appeared that the Dominion government was not prepared to amend the divorce jurisdiction act in order to extend the grounds for divorce to desertion without cause for three years, gross cruelty, incurable insanity for five years and legal presumption of death. The work of the committee was now being directed to pressing for an amendment to the British North America Act by which the Dominion parliament would delegate to any province that so desired the right to legislate in the matter of marriage and divorce.

For some time the profession has been disturbed by the high costs in the division courts and a special sub-committee had made a study of the governing act, as a result of which they recommended the reduction of costs, payment of all division

court clerks on a salary basis and the service of documents by registered mail. Other amendments suggested were that appeals from division court could be heard in weekly court at London and Ottawa and at the supreme court sittings in any county town.

A special sub-committee had been appointed to study the exemptions provided for in the Executions Act with the object of bringing the provisions of the statute up to date. This would involve amendments to the Creditors Relief Act, the Division Courts Act and the Rules of Practice.

The report of Mr. Jamieson's committee was adopted.

Arising out of the report of the Committee on the Administration of Civil Justice, Chief Justice McRuer addressed the meeting on the condition of the non-jury lists in Toronto and in county towns, and requested the assistance of the profession and the committee. A motion was passed that in the opinion of the meeting it would be in the interests of the administration of justice that additional judges should be appointed to the Supreme Court of Ontario.

Mr. Joseph Sedgewick, K.C., addressed the meeting with respect to certain changes in the administration of criminal justice that had been considered by the Commissioners on Uniformity of Legislation, Criminal Law Section. The Criminal Law Section is a recent addition to the Conference of Commissioners on Uniformity of Legislation. The matters dealt with in Mr. Sedgewick's report were related to procedure in criminal cases.

At the conclusion of the afternoon session the meeting adjourned until the annual dinner, which was held at the King Edward Hotel. The special guest speaker for the evening was Judge Manley O. Hudson, a judge of the Permanent Court of International Justice, who delivered an address on the work of that court and of the new International Court of Justice.

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The Report of the Ontario Section of the Canadian Bar Association Committee on the Administration of Civil Justice follows:—

Since the last mid-winter meeting of the Ontario Section of the Canadian Bar Association, your committee has suffered the loss of its secretary, Mr. E. W. Bayly, through death, and of its chairman, His Honour Judge Fuller, through resignation.

Mr. Bayly was an enthusiastic and efficient secretary. Much was accomplished by the committee during Judge Fuller's tenure of office and it will be difficult for succeeding chairmen to live up to the standard set by him. Fortunately, he is still an active member of the committee and

as co-chairman of the Dominion Committee on the Administration of Civil Justice will co-ordinate the work of this committee and of similar committees in the other provinces.

The Ontario section is being re-organized and enlarged to bring in representatives of the younger members of the profession returning to practice and representatives of the law students attending Osgoode Hall. Your committee meets on the third Thursday in each month at two o'clock in the afternoon in one of the committee rooms at Osgoode Hall and any member of the Canadian Bar Association interested in its work will be welcomed.

Your committee desires to acknowledge the co-operation and assistance received from the Attorney-General and the law officers in his department and from the various County law associations.

Progress has been made on the various matters pending at the time of the last mid-winter meeting and several new matters have come before and are under consideration by the committee.

This report will deal briefly with the matters coming before your committee during the past year.

#### THE DOWER ACT

The question of dower and the present Dower Act was further considered and referred to a sub-committee with Mr. R. M. Willes Chitty, K.C., as chairman. Your committee was agreed upon the desirability of abolishing right to dower in Ontario and of replacing the present Dower Act by a new act which, generally, would provide that the family residence could not be mortgaged or conveyed without the consent of the wife. A draft new act has been prepared and is being taken up with the appropriate authorities.

#### THE MORTGAGORS AND PURCHASERS RELIEF ACT

Your committee is of opinion that the Mortgagors and Purchasers Relief Act has served its purpose and that the protection provided thereby is no longer required.

Your committee recommends that representations be made to the appropriate authorities that the Mortgagors and Purchasers Relief Act should not be further renewed at the forthcoming session of the Ontario legislature but should be allowed to lapse.

#### EXTENSION OF GROUNDS FOR DIVORCE AND DIVORCE PROCEDURE IN ONTARIO

This matter has been before this committee, the Dominion committee, and the Canadian Bar Association for several years.

At the annual meeting of the Canadian Bar Association held in 1944 the following resolution was passed:

That it is advisable to amend the Marriage Act (Dominion) to give the courts, in addition to such grounds as already exist for granting dissolution, the following grounds:

- (a) Desertion without cause for a period of at least three years;
- (b) Gross cruelty;

- (c) Incurable unsoundness of mind existing for at least five years;
- (d) Upon legal presumption of death; and that provision be made that the legislation should be effective only in such provinces as may by legislative action adopt it.

The matter came up again at the mid-winter meeting of the Council held in Ottawa in February, 1945, and the following report was made by the Committee on the Administration of Civil Justice:

This matter has been before the Canadian Bar Association, in one form or another, for many years. Last year at a well attended meeting, at which members were present representing all of the provinces, and after a very full discussion, a resolution was unanimously passed requesting an extension of the grounds for divorce as set out in the resolution. The resolution was subsequently passed by the Annual Meeting and presented to the Minister of Justice as an expression of the views of this Association. The Minister has advised that he is personally opposed to any extension of the grounds for divorce and it would appear that he does not propose to take any action on the recommendation of the committee.

The view of the Minister has been submitted to the various Provincial Sections. Disappointment has been expressed by certain of the Provinces, and there is a strong opinion that as the resolution of this committee reflects the will of the public in the majority of the Provinces the matter should not be allowed to drop.

In view of the position taken by the Minister, the following resolution has been passed by the Committee:

Resolved that the Government be requested to obtain an amendment to the British North America Act to give to the Dominion Parliament the power to delegate to any province at the request of such province the right to legislate on the matter of marriage and divorce.

This resolution was referred to the Executive Committee of the Canadian Bar Association for consideration and action.

The matter was brought up again at the restricted Council Meeting in Montreal in August, 1945, and after discussion it was left over for further consideration by the Executive Committee.

No information has been received to date by your committee as to subsequent action by the Executive Committee. Your committee considers that this matter is one urgently requiring action and intends to press for consideration and action at the Council Meeting next week and at the annual meeting of the Association in August of this year.

In addition, representations have been received dealing with the cost of services and method of proving services under the present divorce rules and practice. It is the intention of your committee to press for some amendment and clarification of the rules and practice in this regard.

#### THE DIVISION COURTS ACT

The question of division court costs was referred to a sub-committee under the chairmanship of Mr. Arthur Kelly, K.C., and Mr. J. D. Arnup. During their study and consideration of the question, representations were

received dealing with other matters in division court practice and procedure and this sub-committee was requested to expand their inquiries and deal with the subject of division courts generally.

An interim report has now been made by this sub-committee and approved by your committee. Generally it recommends that :

- (1) division court costs should be reduced;
- (2) all division court clerks should be on a salary basis;
- (3) there should be provision for general service of documents by registered mail, at least in the first instance;
- (4) judgment summonses should be simplified and made less expensive;
- (5) the number of division courts should be reduced;
- (6) garnishees after judgment should bind moneys accruing due but not yet payable;
- (7) appeals should be permitted to be heard in weekly court at London and Ottawa and at sittings of the supreme court in county towns.

As you will appreciate, the subject is a large one and will require further consideration before actual recommendations are made to the appropriate authorities requesting action to implement the suggestions made. It is proposed to recommend immediately consideration and action on amendments which can conveniently be made without a general revision of the act and to request the Attorney-General to appoint representatives to join with a sub-committee of your committee, or to appoint a new committee, for further consideration and action upon the proposed amendments to the present act.

#### THE EXECUTION ACT

A sub-committee consisting of Mr. Alex Stark and myself was appointed early in the year to consider what, if any, amendments were required to bring the exemptions provided for, and the procedure for realizing upon, executions generally in line with present-day conditions.

It early became apparent that amendment would be required not only to the Execution Act but also to other related statutes, including the Creditors Relief Act, the Division Courts Act and the Rules of Practice, so that the terms of reference of the sub-committee have been enlarged and consideration of this matter generally is now well under way.

In discussing this matter Mr. J. R. Marshall, K.C. of Hamilton called the attention of the committee to the situation that would arise if a person against whom a judgment was filed changed his name under the provisions of The Change of Name Act, purchased and took property under his new name and then sold it while such judgment was in force in the Sheriff's Office. If the solicitor acting had no knowledge of the change of name he would, of course, only search for executions in the present name of the vendor.

To meet this situation your committee is recommending to the appropriate authorities that The Change of Name Act be amended, briefly, as follows:

Section 4—Add to this section a provision requiring the application to set forth whether or not there are any unsatisfied judgments or actions pending against any person whose name is to be changed by reason of the application and whether or not such person has any unsatisfied chattel mortgages, liens or other registered encumbrances against his personal property, and, if any, requiring the applicant to give full particulars of the same.

Section 9—Add to this section a provision requiring the clerk of the court to send to the appropriate sheriff, local registrar or clerk of the court full particulars of the order made and of the unsatisfied judgment, pending action chattel mortgage, lien or other registered encumbrance and a provision requiring such sheriff, local registrar or clerk of the court to enter and re-index such unsatisfied judgment, pending action, chattel mortgage, lien or other registered encumbrance under the name approved upon such application.

#### GENERAL MATTERS

In addition representations have recently been received by the committee respecting:

*The Partnership Registration Act*—that it be amended so that all partnership registrations be made in one office and not in either or both the Registry Office and the County Court Clerk's Office as at present.

*The Registration of Conditional Sales and Chattel Mortgages*—to provide for some central office in Ontario where all registrations have to be made and where a search can be made by wire with a reply collect (similar to the procedure under section 88 (4) of the Bank Act). The committee feels that action providing for such central registration with respect to motor vehicles, at least, is urgently required.

*Appeals where costs only are involved*—not on a matter of quantum, but where it is considered the trial judge has awarded or withheld costs on a wrong principle.

*The Ontario Succession Duty Act* in the case of "quick" successions. These and other matters are now under consideration by the committee and will be reported upon further at subsequent meetings of this body.

Your committee acknowledge the assistance given by the profession generally in calling matters thought to require consideration and action to its attention and hopes that such representations will continue and increase. Any representations may be sent to the secretary of the committee, Mr. J. D. Arnup, to whom I am personally indebted for the time he has given to the work of the committee.

(Sgd.) D. P. JAMIESON,  
Chairman.

Sarnia, February 1, 1946.

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