

# DIVORCE SYSTEM WARMLY DEBATED IN LEGISLATURE

W. E. N. Sinclair's Bill to  
Tighten Residence Quali-  
fication Is Held Up

## CHANGES ARE SUGGESTED

Divorces in Ontario engaged the Provincial Legislature yesterday afternoon, when a bill from W. E. N. Sinclair, K.C., produced varied expressions of legal opinion, and finally a statement from Attorney-General Price on the Government's policy.

Colonel Price asked Mr. Sinclair to interrupt progress of the bill until reports on the situation were received from the judiciary. He denied that any official similar to the King's Proctor in England would be appointed, but said the Attorney-General's Department would continue to act on collusion complaints received from the trial judge; he opposed establishment of a special divorce court, and was convinced that the bench, now brought up to strength, soon would dispose of the accumulation of cases.

Mr. Sinclair acceded to the Attorney-General's request that the bill, then before the House for second reading, stand over pending further developments. The measure, Mr. Sinclair explained, was intended to correct a situation whereby divorce plaintiffs, eager to avoid publicity and obtain quick action, transferred their cases from cities to rural courts. This, he said, cost counties money and gave them a bad name.

### Lawyers in Debate.

Other contributors to the debate, all lawyers, were: E. Fred Singer (Toronto-St. Andrew), who drew applause from all sides of the House with his statement that the present divorce system already had shown too many defects for its continuance; Argue Martin (Hamilton West), who questioned Mr. Sinclair's fundamental arguments for the bill; A. E. Honeywell (Ottawa South), who saw sound basis in English law for the Ontario Statute, and W. A. Baird (Toronto-High Park), who declared flatly that facilities for divorce should be restricted rather than enlarged.

Before the divorce debate, legal experts of the Legislature discussed Mr. Sinclair's amendment to the Registry Act, concerned with registration of mortgages.

### In Strange Courts.

In moving the second reading of his bill to amend the Judicature Act, Mr. Sinclair remarked that a practice has grown up permitting these actions to be taken from place to place so that trials do not take place where the claimants reside as in other actions. Mr. Sinclair ascribed this to a desire to avoid publicity and to expedite actions rising in municipal centres where judicial calendars are crowded. In the counties, he explained, "there is an opportunity to slide in an action or two along with the matters arising in the county."

Citing a recent calendar of a dozen divorces at Whitby, he stated that only one or two were of local origin. "This," Mr. Sinclair pointed out, "from a viewpoint of public morals was not good for the County of Ontario." The Liberal member stated that solicitors had been delayed and expenses increased in the county. Again mentioning the bad publicity which resulted, he added, "I will assure the House that they were not 'homebrew' cases at all."

A change might be needed in the amendment in consideration of women who had moved from their legal domicile in their husband's residence to a point at some distance, Mr. Sinclair said.

In support of his denunciation of the present divorce system, Mr. Singer criticized the law permitting a single cause for divorce, the present system of alimony allowances, and the judicial procedure. These attacks were prefaced by a tribute to the Province's general social legislation. Citing the Liquor Control Act and the health acts as examples, the member for St. Andrew's said: "They are successful because they are in accord with public opinion and modern social legislation."

The field of social legislation of the matrimonial type, he charged, had been neglected. "I think we ought to endeavor, in regard to divorce legislation, to synchronize the law with modern conditions." Naming the recent Dominion act as the only forward step since Confederation, Mr. Singer said that this was a step backward in that it made the English law of 1870 applicable in 1930.

### Favors Enlargement.

"I say that the law today is almost scandalous," the member for St. Andrew's declared. Criticizing the provision of a single statutory reason for divorce, he argued that the beating and maiming of a woman, perhaps for life, should be of equal importance. "Where there are cases of desertion and cruelty for many years there should be some form of divorce," Mr. Singer contended, and asked why a woman whose husband had been convicted of a major crime and sentenced to a long term should be required to remain married. Extension of the grounds for divorce was not within the power of the Provincial House, he admitted, but he suggested that a future resolution might be sent to Ottawa.

Referring for a moment to Mr. Sinclair's amendment, Mr. Singer described it as unnecessary, arguing that an improvement in the legislation would halt collusion and perjury.

"The law of alimony as it stands today is a remnant of the Middle Ages," he asserted. Mr. Singer charged that it took into account neither modern conditions nor the equality of the sexes.

Mr. Singer reserved his heaviest fire for present judicial procedure in divorce cases. After praising the personnel of the Bench, the member for St. Andrew's stated in reference to the procedure involved in divorce cases: "The Judges, I submit, have in many cases entrenched on the rights of Parliament." Mr. Singer suggested that "the courts should treat litigants for divorce exactly as they treat litigants in any other matter" and asserted that "the Judges discriminate between divorce actions and all other actions." Rules obligating the naming of a co-respondent, and the production of the officers' personal testimony that subpoenas had been served, were cited as examples. Of another regulation he said: "I think the Judges have exceeded their rights in bringing that rule into the procedure."

As a cure, Mr. Singer suggested that a committee should be appointed to consider "incongruities and anomalies" in the divorce system, citing England's recent inquiry as an example. A separate division of the Supreme Court, which would deal with divorce and allied legal matters, was also proposed, and the member for St. Andrew's pointed out that such a court could co-operate more efficiently with social agencies and relieve the heavy schedules of ordinary courts.

### Residence Rule Challenged.

Argue Martin (Conservative, Hamilton West) followed Mr. Singer with a criticism of the legal connotations of the amendment. Mr. Martin asked why the plaintiff's county should be penalized by the expense rather than the defendant's county, and claimed that the residence clause should be clarified. In some cases, he contended, transfer to other counties was justified. Mr. Martin also pointed out the absurdity of requiring a plaintiff to plead in Moosonee, when witnesses might be residents of the Border Cities.

As a solution, Mr. Martin suggested that claimants should contribute \$25 to any county in which they bring action without qualifying definitely as residents.

The advantages of uniform divorce legislation were mentioned by A. E. Honeywell (Conservative, Ottawa North) as reason for continuing to accept the English Act of 1870. "If we are going to permit each Province to have a checkerboard system of divorce, we are going to have conditions similar to those in the United States," Mr. Honeywell contended. He also pointed out that the Act of 1870 had been revised to eliminate the double standard.

W. A. Baird (Conservative, High Park) made the only answer to Mr. Singer's attack. "I look on the bill as an attempt to curtail the number of divorce applications and decrees in Ontario," Mr. Baird said. Tracing recent divorce statistics, he implied, that while "we have congratulated ourselves that divorce in Ontario was a rather uncommon thing," figures presented a disturbing picture.

The debate on the bill was concluded by the Hon. W. H. Price. The Attorney-General stated that the entire divorce question had been considered in conference with Supreme Court Judges, at the time that the Dominion Act was passed. Later, in England, the late Edward Bayly had discussed the problem with the King's Proctor.

The Attorney-General opposed active participation by his department in divorce cases. "If the court finds that there has been collusion, and that the case cannot be settled without bringing in the Attorney-General or one of his officers, then we are here, but I oppose making the Attorney-General or one of his officials an active participant in divorce cases."

Colonel Price expressed disapproval of Mr. Singer's suggestion of a separate divorce court. "I wouldn't favor a separate divorce court any more than a separate bankruptcy court," he said. Advising a general calendar for the Judiciary, he stated: "A Judge is better if he is not in a groove, but can deal with everything."

The Attorney-General, although holding that it would be regrettable if a great many divorce cases were transferred, described Mr. Sinclair's amendment as "too rigid." He advised permitting the amendment to stand until the advice of the Supreme Court Judges could be obtained.

The divorce debate followed a spirited legal controversy aroused by the

second reading of Mr. Sinclair's bill to amend the Registry Act. Merits of the long and short mortgages in relation to title deeds and quit claims were argued at length after Mr. Sinclair had advocated that mortgagees should be relieved of the expense of full registry of a mortgage. W. A. Baird and J. F. Strickland (Conservative, Peterboro' City) supported the amendment; D. Paul Munro (Liberal, Wellington South) expressed opposition, and A. E. Honeywell and Colonel Price commented on the legal question involved. The bill was referred to the Legal Bills Committee.