

CLAIMS SHERIFFS SHOULD BE ABOLISHED OR DUTIES AUGMENTED

SERVICE COMMISSION IN LENGTHY REPORT FAVOR COMBINING TWO OFFICES

Duties of High Constables and Sheriffs Such As Warrant Amalgamation—Other Recommendations Look to Betterment of Prison Systems in Province.

In the opinion of the Ontario Public Service Commission, the office of county sheriff in the province is but a remnant of a day that has gone and an order that has passed away.

The report of the commission, which is composed of W. D. Gregory, Dr. Horace L. Brittain, Norman Sommerville, Albert Hellyer and E. A. Pocock, the last named of London, has just been presented to Attorney-General Raney by Mr. Gregory.

For some time past the commission has been holding sittings in a large number of the county offices in Ontario and in their journeyings have discovered what would seem to be a curious condition of affairs, in matters that pertain to the office of county sheriff.

Claims Change Needed.

All of the members of the commission agreed that a change was needed, but differed as to the recommendations concerning precisely how and where the changes were needed, and how they should be applied. W. D. Gregory, Horace L. Brittain and E. A. Pocock give the majority report. Norman Sommerville and Albert Hellyer dissented over the matter of whether it were best to merge the offices of sheriff and high constable, with that of sheriff, concurring with the remainder of the report.

As revealed, sheriffs in many counties today have ridiculous duties to perform, such as menial service to a judge, yet must maintain an austere air of dignity which acting in other official capacities.

The report urges a central prison for men sentenced to death for capital offenses, abolition of duties of an unnecessary nature of the sheriff and provision of new duties for the same office in order that a sheriff may more readily earn a livelihood, that would be worthy of the office, yet would by the abrogation of other du-

ties lessen the burden of provincial grants.

The report as submitted reads in part as follows:

"The office of sheriff is one of the oldest known to English law. Originally the sheriff was the reeve, or in other words the high magistrate of the shire. He was the executive officer of the crown, and to him the royal writs were addressed. He could rouse the countryside to arrest a felon. He collected and accounted for the money due from the county to the crown. Sometimes he paid a fixed sum for the privilege of collecting the taxes in his county.

"Under the institution of Frank Pledge—the earliest English police system on record—the county was divided into 'tithings' or groups of ten family heads, who were mutually responsible for each other's good behavior and bound to assist in producing any one of their number who transgressed before the officers of justice.

"Ten 'tithings' formed a 'hundred', and when the sheriff held his 'tourn' or court throughout the county twice yearly he inquired of the heads of 'hundreds' and 'tithings' as to what offenses had been committed since his last visit. Most offenses were punished by fines, and the levying of fines was the general business of the sheriff's court.

"With the Norman conquest a change came over the sheriff's court and the sheriff or 'vice-comes' as he was then called, became in effect a producer and collector of revenue for the king, by whom he was appointed. In Saxon times the sheriff had probably been elected by the freeholders, but the Norman sheriff or vice-comes was appointed by the crown and had to show some substantial evidence of his zeal for the crown. Hence he usually endeavored to collect as many fines as possible.

Abused Sheriff's Job.

"This made the sheriff's office unpopular with the public, and when the office was misused for the perversion of justice, the ill-will in which it was held was greatly increased. The Norman sheriff was not particular as to details in case of legal transgressions, but simply fined the whole township or borough and left the community to settle who was to pay.

"At the sheriff's court the freemen of the community acted as judges, under the supervision of the sheriff. It is not surprising that local prejudice or feeling should sometimes influence their decisions, or that the sheriff himself should sometimes descend to pervert the functions of justice by selecting a particular panel of judges. Mistake of the sheriff's office in his judicial function is the theme of many popular ballads of the middle ages.

"The sheriff's court is continued in the Channel Islands to the present day. The sheriff (or bailiff, as he is there called) presides over the court, the judges being farmers and tradesmen, who sit on the bench arrayed in gorgeous robes. The old complaint of partiality on the part of the judges is still heard there.

Court Jurisdiction Wanes.

"There is a steady decline to be found in the influence and jurisdiction of the sheriff's courts from the date of the Magna Charta, which provided that justice should be sold, denied or delayed to no one. This provision tended to put the king's court on a higher plane than the court of the sheriff, and there was also a uniformity of decision governing the judgments of the king's courts, while different sheriffs would give varying decisions on similar matters.

"In Canada the sheriff never exercised judicial functions. The early history of the office here is rather vague. The second ordinance of General Murray, then governor of Quebec, dated September 17, 1764, provided for the early selection of 'six good and sufficient men to serve as bailiffs and sub-bailiffs for each parish, out of which number the governor is to nominate and appoint the persons who are to act as bailiffs and sub-bailiffs in each parish.' This system of selection followed the English method of selecting sheriffs, and it would seem that the duties ordinarily performed by the sheriff were to be carried out by the bailiffs and the officers of the militia.

Gets Writs Direction.

"No mention is made of sheriffs until the ordinance of February 23, 1777, which provides that writs of execution shall be directed to the sheriff of the district and provides for the manner in which execution is to be levied. In 1780 appeared the first regulation for the fixing of the sheriff's fees. By an ordinance of 1788, establishing trials by jury, the sheriff was required to make out lists of the jurors. The first sheriffs were probably appointed by Governor Sir Guy Carleton, afterwards Lord Dorchester, soon after the Quebec Act was passed in 1774.

"In 1788, the governor general created a number of judicial districts in Canada, each one of which had a sheriff. Upper Canada which was created in 1791, was composed of four of these districts. As new districts were formed, sheriffs were appointed for them. These were the first sheriffs in what is now Ontario. The duties of the sheriff at common law were the same as those of the English sheriff, except that our sheriff exercised no judicial functions. The sheriff was appointed by the lieutenant-governor.

"In 1792 the sheriff in every district was given power to nominate

and appoint a jailer and keeper of the court house.

Set Aside \$15,000.

"By statute passed in 1806, \$15,000 was set aside annually for the payment of salaries to the sheriffs. In 1821 it was provided that none but sheriffs and persons employed by them should be entitled to compensation for serving any process directed to the sheriff of a district.

"By a statute passed in 1822, sheriffs were prohibited from trading as shopkeepers or merchants. They were directed to attend the judge on his circuit. This statute also provided that a sheriff lying in jail three months was to forfeit his office.

In 1833 it was provided that no person should be appointed sheriff unless he had real estate in the province worth \$3,750 above incumbrances, and had filed his own affidavit to that effect. This is one of various statutes dealing with sheriffs and their deputies that were passed from time to time.

Received Office Revenue.

"Up to 1822, the sheriffs received all the revenues of their office, which in some instances were large. The fees of the sheriff of Ontario to York, for instance, prior to the division of that office in 1827, amounted to nearly \$10,000 a year. In 1822, however, the legislature, under the influence of the Patron movement of those days, enacted a measure which provided that a percentage of the net receipts of certain provincial officials, over and above a certain sum, should go to the province. The act provided that each sheriff might retain for his own use the net fees received by him up to \$3,000 per annum, but that out of his net fees above that amount the following percentages should be paid to the provincial treasurer:

Over \$3,000 and up to \$3,500, 10%
Over \$3,500 and up to \$4,000, 20%
Over \$4,000 and up to \$4,500, 30%
Over \$4,500 and up to \$5,000, 40%
Over \$5,000 and up to \$5,500, 50%

"In 1824 the Legislature went still further in appropriating a portion of the sheriff's fees. The act of 1822 was amended and the following percentages were substituted for those above mentioned:

Over \$2,000 and up to \$2,500, 10%
Over \$2,500 and up to \$3,000, 20%
Over \$3,000 and up to \$3,500, 30%
Over \$3,500 and up to \$4,000, 40%
Over \$4,000 and up to \$4,500, 50%

May Retain Receipts.

"In 1828 the Legislature sharply reversed its action. The act of 1824, so far as it affected sheriffs, was repealed, and from that day to the present time every sheriff, with the exceptions hereafter mentioned, has been permitted to retain the entire receipts of his office.

"The exceptions referred to were the result of a measure passed by the Legislature in 1812, which provided that every sheriff might retain his net fees up to \$5,000, but of the net receipts over that amount, 90% should go to the provincial government. This statute, so far as its practical operation extends, affects only the sheriff of Toronto and the sheriff of the county of York. For the years 1813-14-15 small contributions were made by the sheriff of the county of Carleton.

"During the period that the Legislature had been cutting down sheriffs' incomes at the time it had been providing for increases for some of the sheriffs whose incomes were small.

"In 1822 a statute was passed which provided that the government might direct that any sheriff whose income from fees and emoluments for the year 1821, after deducting disbursements, did not exceed \$500, should be paid an additional \$400, and that where the income did not exceed \$800 the sheriff should be paid an additional \$200.

Increase Wasn't High.

"Apparently no sheriff's income was so low as to permit him to qualify for assistance under this act, for no payments appear to have been made under it.

In 1902 the legislature enacted that where a sheriff received less than \$1,000 a year net, the government should grant a sum sufficient to bring it up to this figure. In 1909 the minimum was increased by the legislature to \$1,200. In 1912 it was increased to \$1,500 and it was later provided that the legislation regarding increases which hitherto had not applied to the provincial judicial districts should thereafter apply to them.

Grant Further Increase.

In 1918 a further increase was made and the minimum income of a sheriff was fixed at \$1,800. From 1903 to the end of 1920 the following amounts have been paid annually by the provincial government to the sheriffs under these acts:

Year Amount paid
1903 \$ 1,319.45
1904 2,824.10
1905 2,353.69
1906 2,866.01
1907 2,553.67
1908 2,364.47
1909 4,774.32
1910 4,548.85
1911 5,593.12
1912 8,620.66
1913 8,177.75
1914 6,730.52
1915 7,114.19
1916 9,352.97
1917 12,914.13
1918 16,487.26
1919 10,410.19
1920 19,437.49
The total amount paid in years 1903-20 was \$119,923.76.

It will be noted that during the past three years the total amount paid out by the government to supplement sheriffs' salaries reached \$36,134.99 or an average of \$12,045.00 per annum. Since the payments began some sheriffs have been on the list continuously; others near the border line were sometimes on the list and sometimes not. In all more than three-fifths of the sheriffs have shared at one time or another in the government grant.

Consider Income Boost.

An application from the sheriffs for a further increase of the minimum income of a sheriff from \$1,800 to \$2,400, was made to the govern-

SCHEDULE SHOWING Sheriffs of the Province of Ontario With Date of Appointment and Age.

Name	Address	Date of Appointment	Age	County or District
C. M. Macraeth	Sault Ste. Marie	May 29, 1920	41	Algoma
J. W. Westbrook	Brantford	Dec. 8, 1914	41	Brant
D. M. Jernyn	Walkerton	Nov. 26, 1910	65	Bruce
H. Richardson	Ottawa	Sept. 23, 1907	65	Carleton
H. Endicott	Orangeville	Aug. 12, 1913	51	Dufferin
W. H. Elliott	St. Thomas	June 25, 1918	78	Elgin
C. N. Anderson	Sandwich	March 20, 1917	63	Essex
T. H. Dawson	Kingston	Feb. 28, 1897	79	Frontenac
J. S. Wilson	Owen Sound	Feb. 18, 1913	54	Grey
M. P. McConnell	Canby	July 25, 1907	71	Haldimand
S. Webster	Milton	Aug. 5, 1903	79	Halton
M. B. Morrison	Belleville	April 24, 1908	72	Hastings
R. G. Reynolds	Goderich	March 18, 1902	79	Huron
J. W. Humble	Kenora	March 4, 1907	80	Kenora
J. R. Genmill	Chatham	May 25, 1918	62	Lambton
A. J. Johnston	Perth	April 13, 1910	77	Lanark
D. G. MacMartin	Brookville	April 13, 1911	66	Leeds & Grenville
J. D. Hawley	Napawan	May 22, 1895	89	Lennox & Addington
H. O. Loughlin	St. Catharines	July 2, 1915	65	Lincoln
H. H. Peil	Gore Bay	May 27, 1907	61	Manitowish
A. A. Graham	London	Jan. 9, 1922	47	Middlesex
D. H. MacLaren	Barrie	Dec. 12, 1921	58	Muskoka
G. O. Caldwell	Haliburton	July 5, 1921	53	Nipissing
W. Tisdale	Simcoe	May 9, 1913	67	Norfolk
D. J. Nesbitt	Woodstock	July 25, 1912	69	Norfolk & Durham
W. F. Paxton	Whitby	July 25, 1887	64	Ontario
Wm. McNeish	Woodstock	Jan. 10, 1912	84	Oxford
D. S. Allan	Warry Sound	May 12, 1921	52	Peel
N. Henderson	Brampton	Dec. 12, 1910	70	Perth
T. Maswood	Stratford	April, 1907	70	Peterborough
J. A. Hall	Pembroke	Nov. 1873	84	Peterborough
A. Hager	L'Orignal	April, 1887	85	Prince Edward
J. A. Barker	Pictou	Jan. 9, 1917	65	Rainy River
A. A. Baker	Pembroke	June 1, 1909	65	Renfrew
A. Norris	Barrie	May 12, 1909	65	Simcoe
D. H. MacLaren	Barrie	March 14, 1917	58	St. Michael's & D. Q.
W. R. Mack	Sudbury	Sept. 1, 1904	61	Thunder Bay
Geo. Caldwell	Haliburton	May, 1913	53	Victoria & Hal.
A. W. Thompson	Fort Arthur	July 26, 1914	70	Waterloo
A. E. Trueman	London	1912	70	Welland
H. G. Laekner	Kitchener	Jan. 4, 1889	84	Welland
Jas. Smith	Welland	March, 1901	78	Wellington
J. A. Hall	Hamilton	Feb. 8, 1899	81	Wentworth
J. T. Middleton	Hamilton	Sept. 8, 1913	68	York
A. McGowan	Toronto	April 15, 1887	79	Toronto
F. Mowat	Toronto			

ment last year and is now before it. If it had been granted a further addition of 15,194.59 would have been made to sheriffs' incomes in 1920 and the government grant for that year would have reached \$24,432.93.

Schedule "A" to this report contains a list of the sheriffs of Ontario to date, with date of appointment and age. Schedule "B" hereto shows to what sheriffs the supplementary grants were paid and the amounts paid to the respective sheriffs in each year.

"We find that in some instances where a provincial sheriff is given to supplement the sheriff's income a deputy is employed by the sheriff and the salary paid to the deputy is charged as a disbursement of the office. This is done in some cases where the net income falls below \$1,800, and to the extent that the net income of the sheriff falls below \$1,800, the salary paid to the deputy comes out of the provincial treasury.

Should Pay Deputy.

"Where the work is so light that an income of \$1,800 is not reached, the sheriff should do the work himself and the salary of a deputy, if one is employed, should be paid by the sheriff out of his net income and should not be treated as a disbursement of his office.

"One instance where the sheriff is a practicing physician and the work is practically all done by a deputy, was brought to attention.

"In this case the deputy received a salary of \$350 per annum and the sheriff the entire net income for himself. Owing to the salary paid the deputy the net income of the sheriff fell short of \$1,800, and the amount by which it fell short was made up out of the provincial grant.

"It is clear that the office of sheriff as now constituted is a dying office. The sheriffs appear to be well paid for what they do but they have so little to do that they cannot earn a living income. Many of those who receive government grants are overpaid for the comparatively little work that they perform. No business could exist if it had to pay so many officials for such a limited amount of work.

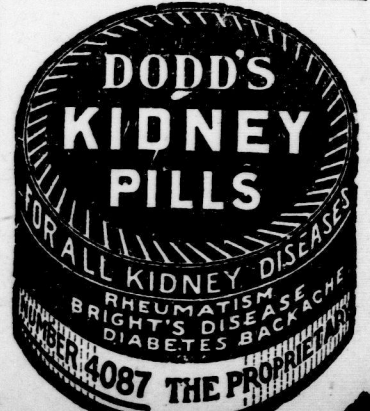
County Alone Doesn't Pay.

"It must be borne in mind that the money that is now paid by the government to bring the sheriff's salary up to \$1,800 does not come out of the county for which the sheriff is appointed, but out of the province at large so that those counties in which the income of the sheriff is not supplemented have to contribute to make up the shortage in those counties where the income falls short of \$1,800. To continue, much less increase, the special grant now given, is, in our opinion, out of the question.

"We have, therefore, to choose between two possible courses. We can abolish the office altogether or we can give to the sheriffs such additional duties as would justify the payment of a living income.

"Additional work would be given to the sheriffs if their territorial jurisdiction were increased by combining several counties under one sheriff. In the province of Quebec today there is one sheriff for sixteen counties.

"In the days when in the province of Ontario the sheriff was fully employed and could earn a good income the counties, in many instances, were larger than they are today. For instance, the territory which is now comprised in the counties of York, Ontario and Peel, all formed one county for municipal, judicial and other purposes. So did Essex and Lambton; Huron, Bruce and Perth; Middlesex and Elgin; Lincoln and Welland; Wentworth, Halton and Brant; Wellington, Waterloo and Grey; Peterboro and Victoria; Fron-



furt for any government to overcome. In our opinion the better course and the course of least resistance would be to add to the duties of the sheriff, and thus enable him to earn enough to pay his way. If we were as intelligent as we like to be thought we would in a number of instances both combine counties and add to the sheriffs' duties, and thus reduce not only the number of sheriffs, but of other county officials as well.

Mustn't Overrate Positions.

"In dealing with the office of sheriff we must not attach fictitious importance to it. We have in the past made the mistake of putting the office of sheriff here in the same class as the office of high sheriff in England, which is an entirely different office. The high sheriff in England is usually a county magistrate. His office is largely an honorary one and he receives no salary. He meets the judges in state when they come to hold the assizes. He has a large retinue of servants. At one time he had so many that a law was passed prohibiting him from having more than forty men-servants in livery at any assize. In fact the office involves an outlay rather than provides an income.

"The sheriff in Ontario, with his income of \$1,000 a year, cannot afford to keep any retinue whatever. Consequently in order to maintain the traditions of his 'historic office' he has to perform personally the exalted office and the lower ones. He takes few, if any, with him when he goes to the station to meet the assize judge. He usually appears at court dressed in special uniform and with cocked hat and sword, while behind the scenes he performs offices many of which would in England be performed by the 'men servants' in livery." No Ontario sheriff should be required to array himself in this fashion. It puts him to a large expense, and instead of adding to the dignity of the court, provokes mirth. There may be much true dignity in the court of a justice of the peace held amidst plain and simple surroundings as in the highest courts of our land.

"Mr. C. L. Dunbar, barrister, of Guelph, at our meetings at that place said:

Thinks Position Anomaly.

"I think the sheriff's office is an anomaly. It is an endeavor to put our system in this new country a combination in one office of the English system, which is totally different to the system we have here. In England the office of high sheriff is an honorary position, and the under-sheriff does the work. The sheriff in this province is nothing but a glorified bailiff with some ministerial duties that a clerk could perform; but instead of giving him that duty we are endeavoring to make him the

same as the high sheriff in England, and that is something a sheriff should not be asked to be with the salary he receives."

"We are fully in accord with Mr. Dunbar's view of the sheriff's office. We should make no attempt to put it on a similar footing in any respect with that of the high sheriff in England.

What May He Do?

"What additional work should be given to the sheriff in order that he may earn a 'living' income?"

"That is a question which has received the full consideration of the commission. Various suggestions have been made. It has been suggested that he be an assize under the Dominion Bankruptcy Act; that he be valuator under the Succession Duty Act; that he be clerk of the peace; that his office be combined wholly or partly with that of the clerk of the county court; that he be division court clerk; that he be the issuer of marriage licenses; that he collect the license fees for hunting and fishing and for automobile licenses; that he be jailer; and that he be high constable. The movement to combine the office of sheriff with another office has already begun. In a number of the judicial districts of Saskatchewan and Alberta the office has been combined with that of clerk of the district court.

The sheriff's office is almost wholly an executive office, and in our opinion the sheriff's duties should be of an executive character. The Legislature has already provided in chapter 31 of the statutes of 1914 that under certain circumstances the sheriff may hold the office of jailer. Subsection 3 of section 11 of the chapter reads as follows:

May Act As Jailer.

"The sheriff may agree with the council to act as jailer and for the remuneration to be allowed him for the performance of the duties of jailer, and in that event it shall not be necessary for the sheriff to appoint a jailer, but he shall himself be ex-officio the jailer, and shall, with such assistance as he may deem necessary, perform all the duties and be subject to all the responsibilities of the office."

"The course which the Legislature has provided may be taken in certain cases, and, in our opinion, should be taken generally throughout the province.

"In our opinion the offices of sheriff and jailer should be combined, and the sheriff should live in the residence provided by the county for the jailer. The duties of the jailer would fit in very well with the duties of the sheriff. The sheriff is now the nominal head and in many respects the actual head of the jail, so if we make him the actual head in all respects we are but extending his present duties rather than giving him

new duties in an untried field. The present jailers should not be turned adrift, but provision should be made for their retention, possibly as deputy sheriffs or chief turnkeys, according to the circumstances in each case.

Might Be Suitable.

"In some instances the jailer might be the most suitable man to appoint to the combined offices. As in nearly every county the jailer's residence is occupied by the present jailer, he should, if deprived of it, be given a compensating allowance. In some instances the sheriff might be provided with a residence until the former's residence should be available. These are matters that would have to be adjusted as circumstances might require. Attached hereto is schedule 'C' containing list of jailers and salaries paid them and staffs.

"Another office which might very well be combined with that of sheriff is that of high constable. The office of high constable in nearly all the counties of Ontario has been for years past but a nominal one. The high constable is appointed by the county council. In some counties he receives a fair salary and performs much valuable work, but in by far the larger number of the counties he does practically nothing. The salary

Turn to Page 5, Column 1.

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