

MEMBERS OF SUPREME COURT DO NOT WANT MORE JUDGES

Correspondence Between Sir James Whitney and Judges Shows That the Bench Was Unanimously Opposed to the Appointment of Three Judges on the Ground That Work Was Decreasing.

Sir James Whitney may have been quite right when he appointed three additional judges to the supreme court of judicature last year, but it has developed that he did so against the wishes of the judges who were then and had been for years at Osgoode Hall.

Under the Judicature Act, which was passed by the legislature on March 22, last year, three judges for the high court bench—Mr. Justice Lennox, Mr. Justice Leitch and Mr. Justice Meredith—were appointed. When an amendment calling for the repeal of the act was introduced by Mr. Rowell, leader of the opposition, was voted down, Sir James Whitney said that "a unanimous request was made by the high court judges for an increase of their members." He said that nothing to the contrary had been received by the government since then or since Oct. 23, 1909.

Letters Brought Down.

N. W. Rowell last year asked an order of the house for the return of all correspondence between Sir James Whitney and members of the bench of the supreme court of judicature touching upon the appointment of three more judges. The return has just come down, and in it are a number of interesting letters which were exchanged between the premier and the judges, showing that Sir James did not coincide with the views of the members of the bench in regard to the matter.

On October 23, 1909, a letter was sent to Hon. J. J. Foy, attorney-general, by the late Sir Chas. Mowbray, who was then president of the supreme court of judicature, transmitting the following resolutions, which were unanimously adopted:

1. That it is the opinion of the judges that in the public interest and for the due and proper despatch of business, there is urgent need of an increase in the number of judges of the supreme court of judicature.

2. That the judges recommend that provision be made for the appointment of three additional judges.

3. That the president communicate these resolutions to the attorney-general of Ontario.

The letter added that it had been apparent for some time that the work of the court could not efficiently, satisfactorily and speedily be disposed of without additional judges.

Following out the request of the late Sir Charles Mowbray a bill was drafted and submitted to Sir Allan Aylesworth with the request that the new judges, two or three in number, be looked after in the estimates of 1910. Sir Allan wrote to Mr. Foy, saying: "The fact that you have introduced legislation on the subject indicates, of course, that you concur in the views expressed by the chief justice, and in these circumstances it seems a bold thing for anyone to differ, yet I must admit that I hesitate, and cannot rid myself of the feeling that the present staff of superior court judges in the province ought to be equal to the amount of work there is at the present time."

Sir Allan said that he had thought the recent increase in the jurisdiction of the county courts would have relieved the work of the high court judges. He promised the bill careful consideration, however. Nothing more was done until last year, when Sir James Whitney introduced his bill to the legislature, aiming at an increase of the judges.

Changed Opinions.

Sir Charles Mowbray wrote to Hon. J. J. Foy, in reply to a letter for information, stating that the judges had changed their former opinion, or in other words, they did not think the amount of work necessitated an increase of judges. "Great changes in conditions have occurred since the recommendation of Oct. 25," he said.

Not Needed.

On March 23, the day after the legislation was passed, seven judges—Byrd, Maclean, Magee, Britton, Latchford, Sutherland and Kelly—sent a resolution to Sir James Whitney, stating that there was no need for additional judges. Two days later Sir Glenholme Falconbridge, Sir William Mulock, and Mr. Justice Teetzel and Mr. Justice Riddell, who had not attended the meeting of the other seven judges, sent their concurrence in the premier's letter to the judges.

Mr. Justice Middleton followed up with his approval of the memorandum a day later. At a full meeting of the judges on March 30 a resolution was drawn up and sent to Sir James Whitney expressing the view that the conditions of the administration no longer required additional judges.

In reply to this resolution, Sir James sent a letter to each of the judges. The wording of the letters were the same, except for an additional paragraph in the one to Sir Glenholme Falconbridge, which said: "I may say that I was more or less surprised, having regard to your statement to me a few weeks ago, that you desired the appointment of additional judges."

Why They Changed Minds.

In a letter of March 27 Mr. Justice Middleton sent a letter to the premier explaining why the judges had changed their minds since October, 1909. He said that the decrease of work did not necessitate an increase in judges, or words to that effect. In 1909 a number of cases heard was 1142 and in 1911 the number was 686, showing that the then number of supreme court judges were being relieved of considerable work by the enlarged jurisdiction of the county court judges.

Sir Justice Britton, Mr. Justice Sutherland, Sir John Boyd and Mr. Justice Riddell all communicated with the premier and explained why they had

changed their view on the subject. Sir James in replying to the receipt of the resolution said that he had received "without any covering letter a memorandum signed by yourself." "Altho there was nothing of importance from whom it came, I think it is my duty to notify you as one of the signatories that I received it."

Mr. Justice Britton replied that he was not aware of how the memorandum was sent, but "I hasten to assure you that not the slightest discourtesy was intended, and to express my regret that the memorandum was sent without a covering letter."

Serious Results.

Mr. Justice Sutherland said by letter to the premier that since his appointment the matter of appointing more judges had been the subject of considerable discussion among the judges, "and I have gradually formed the opinion that most of them have meantime changed their view about the matter, and were also apprehensive that if the second part of the Law Reform Act were proclaimed and put in force, it would lead to serious results prejudicial to the interests of the public and the administration of justice. I also understood in a general way that the views of the judges had been communicated to members of the government prior to the discussion in the house."

Sir John Boyd said: "I was not present at the meeting of the judges in October, 1909, who approved of an increase on the bench. I was not aware of what they had done till quite recently, when their opinions had been read in the papers that you were under the belief that their concurrence was still given to the action of your government. I thought it necessary to Sir Glenholme Falconbridge replied in terms, with respect to the statement of the premier that Sir Glenholme had remarked that additional judges were required:

"I am in receipt of your favor of 28th instant, on my return from Barrie assizes. I do not recall any statement of mine that I desired the appointment of the additional judges, and should be glad to be reminded that no additional judges were required."

A Little Reminder.

Sir Glenholme followed up with an other letter two days later, on March 30, to this effect:

"As you have not found time to answer my letter of 28th instant, wherein I invited you to advise me, I stated that I desired the appointment of the additional judges. I now venture to recall to you the only recent occasion on which we ever exchanged a word on the subject."

"It was at a dinner at Government House on the 7th ultimo."

"I went over and sat down beside you for a few minutes."

"You said, 'Well, you're going to get my additional judges.'"

"I said, 'That's all very well to get it done, but I don't think it is wise to do it at this time.'"

"My tone and manner in saying this were such as I should think would clearly convey the impression that we were not giving me agreeable information."

"I may add that the attorney-general has for some weeks known by conversation with me what the general opinion is at Osgoode Hall on the subject."

Quite Correct.

Sir James replied April 1:

"I have received your letter of 30th March."

"You are quite correct in your assumption that I had not found time to answer your letter of the 28th ultimo."

"My recollection of what took place at Government House is not exactly the same as yours, but as far as your expressed attitude is concerned I do not see that it makes much difference. I did not say to you, 'Well, you are going to get your additional judges,' but I said, 'What about your additional judges?' or 'Do you want your additional judges?' I am not certain of my exact phraseology, but I certainly did not tell you that you were going to get the additional judges. Your reply was something like this: 'The additional judges are all right or will be all right, but we do not want your act.'"

"Your tone and manner, as far as my recollection serves me, was quite as pleasant and cheerful as it always is, as far as my knowledge goes."

Ominous Date.

To the above Sir Glenholme replied very briefly:

"I am obliged to your letter of the first instant (ominous date), and for the kindly spirit in which it is written."

Mr. Justice Riddell wrote a letter to Sir James, which said, in part: "It is no part of my duty to interfere, however indirectly, with any policy of the government, and I venture to hope that my communication in respect of direction or any want of the prime minister and as a man, I should like to add and friend, if I may."

Sir James replied that he appreciates to the full extent what Mr. Justice Riddell said, and that he certainly hoped "you will continue to add close of your letter."

Despite the fact, however, that the legislation was passed—Sir James Whitney made the appointments.

HENRY SCHAEFER DEAD.

WATERLOO, March 2.—(Can. Press.)—Henry Schaefer, manager of the Canadian Furniture Co. plant here, died yesterday.

Berlin's Customs Receipts Grow. BERLIN, Ont., March 2.—(Special.)—The customs returns for February show a gratifying increase. The figures were \$38,522.42 as compared with \$39,652.12 in the corresponding month last year.

FITTING CLIMAX TO GRAND MUSIC

"Il Trovatore" Was Crown- ing Effort of the Montreal Grand Opera Company.

"Last and best" was the verdict when the curtain fell at the close of the fourth act of "Trovatore," given by the Montreal Grand Opera Company at the Alexandra on Saturday night. Where almost all had come up to expectation, and many and much had far surpassed it, there is perhaps a certain rashness in placing the superlative upon any one night's performance, but there is no doubt that the enthusiasm of the audience while listening to the last of the series of operas presented, showed the fullest delight conceivable. Possibly the fact that impressions fade with time, may have had something to do with the judgment, or it might be that "Trovatore" was a real friend to many—older than several others in the three weeks' program—whatever the cause, the effect of the final interpretation of the great master of music, by the organization, which has certainly taken place among the first musical aggregations on the continent, was such as to leave with the audience a great artistic enjoyment, and was a fitting climax to a grand festival provided by a band of conscientious and in every instance capable musicians. The plot of the opera may be said to have at least three leading characters, four including the count. It almost seems a pity that both opera and drama only allow, as a general thing, one "leading man" and one "leading lady." In "Trovatore" Azucena the gypsy, has a part as difficult and perhaps as important as the leading role. On Saturday night Mme. Ferrabini sang the part of Leonora with the highest appreciation of its requirements, and the precision in which she sings with and to her lover, was so realistic that the audience with time, may have to the highest pitch, ending at the close in a great burst of applause, the artist appearing together in response to the outburst of Mme. Ferrabini is an artist thru and thru. Deserving of the highest praise, too, was the role of Azucena, as sung by Mme. Claessens, who with infinite art threw all the passion of the injured gypsy into voice, countenance and being, making the difficult character admirably thorough. As troubador and lover Sig. Zeni was admirable. His voice has a peculiarly youthful quality, making it reasonably and far reaching, and the tenderness of his "Madre a Dios" was soulful in the extreme. His sustaining powers, too, are exceptional, and the glorious solo note to the clash of sword falling in scabbard, gained him a magnificent outburst from his audience. Montella as the Count di Luna was all that one would wish, and Cervi, Strossio and Mme. Choseul were all just what their parts demanded. The soldiers' and avvil choruses were as usual popular and pleasing and in the prison scene especially the instruments did some striking and beautiful orchestration.

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