CORRESPONDENCE

April 19,1963

To the EDITOR:

The purpose of this letter is to urge the establishment of a Law Reform Committee in Alberta. Its work would be the same as that of the Lord Chancellor's Law Reform Committee in England. It would examine the existing law in a given subject and if it were to conclude that the law should be improved by legislation would so recommend to the provincial government.

Several provinces already have such a committee. The main responsibility and initiative would be in the hands of the Attorney-General's Department and the Law Society. Members of the profession should be willing to serve on the committee. It would be advantageous as well to have the help of members of the Judiciary. The secretarial staff would have to be paid, but I am sure that members of the profession would be prepared to give some of their time to the work of the committee.

It would not have to spend its time thinking up subjects for study. They exist in abundance now. I have dealt with two of them in papers to the Law Society that later appeared in this Review. "Reform of the Law of Dower in Alberta" (Vol. I, No. 6 (1961) p. 501) and "Limitation of Actions in Tort in Alberta" (Vol. II, No. 1 (1962) p. 41).

On the subject of dower, may I illustrate the urgent need to clear up doubts in the Dower Act by referring to a recent judgment of the Alberta Appellate Division in *British American Oil Co.* v. *Kos*, 36 D.L.R. (2d) 422 (1963). The Company advanced Kos $12,000 on the security of a mortgage on his homestead. Later the company took action to foreclose. The defence was that Kos had not signed the mortgage and his wife had not signed her consent under the Dower Act. The signatures on the mortgage were in fact made by Kos' brother and *his* wife; moreover the Certificate of Acknowledgement by Wife, signed by a Commissioner for Oaths, was false. The Appellate Division held the mortgage void in toto. Since the husband did not sign the mortgage at all, the Appellate Division did not have to answer this question: is the mortgage totally void where the husband signs but the wife does not sign and acknowledge in due form? When our Dower Act said that a mortgage without proper consent of the wife is null and void, the late Mr. Justice Walsh in *Parslow* v. *Moore* [1930] 2 W.W.R. 340 emphatically rejected the mortgagor's argument that the mortgage is null and void for all purposes. His Lordship held it void merely as against the wife's interest under the Dower Act. Yet it is quite possible that the mortgage is now null and void for all purposes. The question is whether *Meduk* v. *Soja* [1958] S.C.R. 167 applies to a mortgage (which would mean the mortgage is wholly void) or whether the mortgagor by accepting the mortgage moneys is estopped from asserting that the mortgage is void as against himself. At present one cannot be sure of the answer. The Appellate Division in *Kos*

discusses the statute and *Meduk* v. *Soja*, but as I read the judgment does not indicate which answers it would give—and of course there is no reason it should have done so. Suppose the uncertainty is removed by a decision that the mortgage is void in toto? Could we be content with such a result? The irony is of course that the present act was intended to do away with the possibility that disposition without proper consent is null and void.

May I now give an illustration from the subject of my other paper—on Limitations of Actions in Tort?

There is a provision in the Public Trustee Act (sec. 22(1)) which suspends the running of time against an inmate of a mental hospital and it applies not only to the Limitations Act but to acts that create special periods. Perhaps it is not of practical importance but this hardly seems to be a reason for tucking it away in the Public Trustee Act. (In fairness it should be noted that sec. 22(2) empowers the Public Trustee to sue on behalf of the inmate, and this was doubtless the reason why the two provisions were found in the same section.) I might mention that the list of periods of limitation in the last issue of the Review omits 22(1); so does the list of statutes under the heading "Limitation" in the Index to the Revised Statutes of 1955; and so does my article.

May I give another illustration of the state of our law on this subject? We have special provisions, as do many provinces, for the running of time in favour of doctors and dentists. I discussed these in my article, but I omitted to mention that the corresponding provision in the Chiropractic Act is six months' instead of twelve. Surely it would make sense to try to get rid of the host of special provisions and to put the few that remain in one statute.

All of which is respectfully submitted in the hope that it will help to bring about the creation of a Law Reform Committee.

Yours sincerely,

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