a mistake as to its nature, he parts with it under a like mistake, he would be guilty of no offence. Where such high authorities differ, it would, perhaps, be presumptuous to offer any opinion as to the merits of the controversy; but even some of the Judges who deny the criminality of the act, nevertheless admit that it is one for which punishment ought to be provided, but they do not think that to call it larceny would be a proper and reasonable development of the law as it is, but rather in the nature of legislation.

Although in *Reg.* v. *Ashwell* the conviction was affirmed by reason of the equal division of the Court, yet it cannot, I think, be contended that that is a decision which would be binding in Canada, and we very much doubt whether a similar act could by any possible construction be held to be theft under the Criminal Code.

G. S. HOLMESTED.

THE PREROGATIVE OF MERCY AND THE SHORTIS CASE.

From the earliest period of our colonial history, and especially since the establishment of responsible government, the exercise of the prerogative of mercy has been the subject of controversy. Disputes have frequently arisen, especially in Australia, between the representatives of the Sovereign responsible for their actions to the Crown, on the one hand, and the various bodies who were their authorized advisers, responsible to the people, on the other.

Those who feel interested in the subject cannot do better than consult Todd's Parliamentary Government in the Colonies, in which will be found the principal cases in regard to which differences have arisen, as well as very full quotations from the instructions given to the Governors on the subject, and the correspondence between the Colonial and Imperial authorities relating thereto. Stated in general terms, the constitutional theory is that the Courts try the accused according to law, and acquit or convict according to the evidence. The Crown