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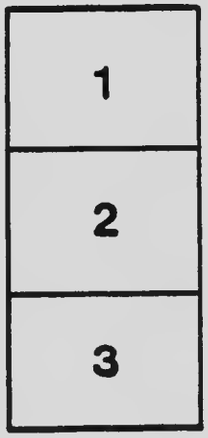

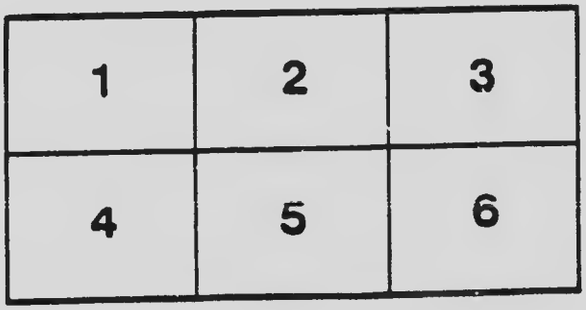

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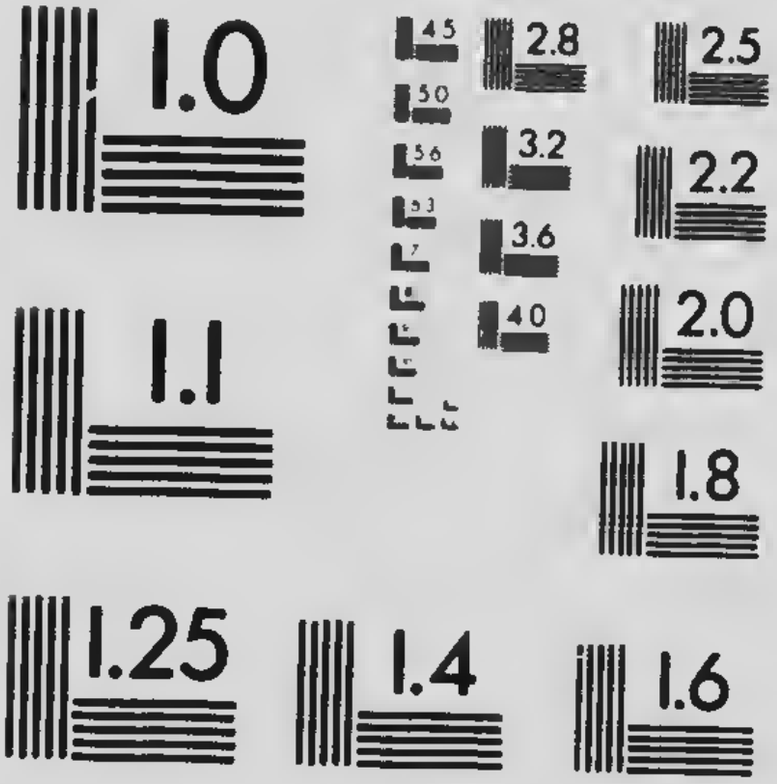

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(Released for October 6th, A. M.)

THE CANADIAN JUVENILE DELINQUENT ACT.*

BY W. L. SCOTT, OTTAWA, CANADA.

It has frquently been pointed out that the juvenile court, as we now have it, cannot be said to have originated at any one place or time, still less to owe its existence to any one man. It has been the result of a slow growth or development extending back over many years and has borrowed features from many and various sources. In the history of the movement in any specific locality, however, there are usually well defined epochs marked by definite advances. One of these in Canada was the passing in 1893 by the Ontario Legislature of "The Children's Protection Act," an act borrowed in the main, I believe, from Australian legislation. Briefly, this provided for the establishment of children's aid societies and for the commitment to them by the court and the placing by them in foster homes, of neglected and delinquent children who have been taken from bad homes which the societies had found it impracticable to rehabilitate. This placing out and subsequent visiting are under strict government supervision.

The system thereby established, and still in force, thus combines local voluntary effort with government supervision and control. Continuity and thoroughness are in this way secured without sacrificing the advantages derivable from the work of volunteers. This system has since been copied and is now in force in all of the other Provinces of the Dominion excepting Quebec. But as crime is under our constitution within the exclusive jurisdiction of the Dominion Parliament the effect of this legislation in the case of delinquent children was very limited, being in fact confined to the relatively unimportant cases of offenses against provincial statutes. In order to remedy this defect an act was at the instance of Ontario workers passed by the Dominion Parliament in 1894. It provided for private trials of offenders under sixteen years of age and for their incarcera-

*An address before the American Prison Association, St. Paul, Minn., October 3-8, 1914.

tion, prior to sentence, separate from older prisoners charged with criminal offenses and separate from all persons undergoing sentence of imprisonment. These provisions applied to the whole of Canada. It also provided for Ontario only, that in the case of a boy under twelve, or a girl under thirteen charged with an offense, the court should give notice to the children's aid society, if there was one in the locality, and should, before dealing with the case, allow the society an opportunity to investigate, and should advise with the society and consider any report presented, and might, instead of sentencing the child, direct it to be placed in a foster home or commit it to an industrial school. This was advanced legislation for 1894. It, however, remained without extension or improvement for fourteen years. Up till the year 1906 probation, which had in the meantime come elsewhere to be looked on as the most essential feature of the juvenile court, was in Canada practically unknown, unless to the limited extent that probation (though not so named) was involved in the work of the children's aid societies under the provincial and Dominion legislation just referred to. In 1906 the Children's Aid Society of Ottawa appointed two lady probation officers, one English speaking and the other French speaking, and inaugurated the work of probation in so far as it could be carried on without legislative authority. Experience, however, soon proved this to be very unsatisfactory and it was decided to endeavor to secure appropriate Dominion legislation.

Before attempting a draft of the proposed measure, copies were obtained of most of the juvenile court acts at the time in force in the several States, and of the "Children's Act" then before the British House of Commons, and free use was made of these, and particularly of the Illinois and Colorado statutes. Conditions were, however, so different in Canada that slavish imitation, had it been thought desirable, would not have been practicable. Owing chiefly to the opposition of the then Minister of Justice, the bill though introduced in the session of 1907, was not adopted until a year later. The act, which is known as the Juvenile Delinquent Act, received the royal assent on the 20th July, 1908.

The chief difficulty experienced in drafting the act was, to keep it within the legislative jurisdiction of the Dominion Parliament. In Canada, as has been said, crime is within the exclusive jurisdiction of the Federal Legislature. This was an advantage inasmuch as it made possible a measure available throughout the whole Dominion. On the other hand, the regulation of the civil status of persons being, under our constitution, within the exclusive jurisdiction of the provincial legislatures, it was not possible in a Dominion act to define delinquency as a state or condition. Such a definition would at once have ousted the federal jurisdiction. Nor was it possible for a provincial legislature, which could have treated delinquency as a condition, to pass an act affecting crime or criminals. The only way, therefore, to bring the proposed act within the jurisdiction of the Dominion Parliament (the only Canadian Legislature which could deal effectively with the subject), was to treat a "delinquency" as an act and make it an offense. This was done in section 3 of the act, which reads as follows:

> 3. "The commission by a child of any of the acts enumerated in paragraph (c) of section 2 of this act, shall constitute an offense to be known as a delinquency and shall be dealt with as hereinafter provided."

It is to be regretted that delinquency could not have been defined as a state or condition, but as has been said, this was not constitutionally possible.

Another limitation was encountered by reason of the fact that the constituting of courts, whether criminal or civil, was a matter for the Provincial Legislature. The establishment of juvenile courts could not, therefore, be specifically provided for in the act.

With these introductory words of explanation it may be of interest briefly to refer to some of the chief provisions of the act.

By paragraph (c) of section 2, a "juvenile delinquent" is defined as:

> "Any child who violates any provision of the Criminal Code, chapter 146 of the Revised Statutes, 1906, or of any

> Dominion or Provincial statute, or of any by-law or ordinance of any municipality, for which violation punishment by fine or imprisonment may be awarded; or, who is liable by reason of any other act to be committed to an industrial school or juvenile reformatory under the provisions of any Dominion or Provincial statute.

The original draft of the definition enumerated in addition to the above, the following:

> "or who is incorrigible; or, who without just cause and without the consent of its parent or guardian, absents itself from its home or place of abode; or who knowingly associates with thieves, or vicious or immoral persons; or who is growing up in idleness or crime; or who knowingly frequents, visits, or enters a disorderly house within the meaning of section 228 of the Criminal Code; or who patronises or visits any bar-room or saloon where intoxicating liquor is sold, or any public billiard or pool room, or who not being in charge of any grown up person, attends any theatrical performance, or who wanders about the streets in the nighttime without being on any lawful business or occupation or who habitually wanders about any railway yard or tracks, or who enters any railway car or engine without lawful authority, or who habitually uses vile, obscene, vulgar, profane, or indecent language; or who is guilty of immoral conduct in any public place, within the meaning of section 197 of the Criminal Code, or in any school premises, or who smokes or has in its possession cigarettes, cigars or tobacco in any form."

Some of these were redundant, being already forbidden by Dominion statutes, and others are now forbidden in some Provinces. I would, nevertheless, have preferred that the definition should have remained as drawn. The alteration was, however, made at the instance of friends of the measure in Parliament in order to forestall possible opposition, there being a feeling against the creation of new offenses. The age limit was placed at sixteen in the case of both boys and girls.

By section 4 the Juvenile Court is given exclusive jurisdiction, unless when the court itself makes an order remitting the child to the adult court (section 7). No matter how serious the offense, it cannot, in the absence of such an order, be tried by a jury or at a Court of Assize or other adult criminal court, but must in all cases be dealt with summarily in the Juvenile Court.

Section 10 provides for private trials which must be held in some place other than an ordinary court room. Subsection 3 of this section reads:

> "No report of the trial or other disposition of a charge against a child, in which the name of the child or of its parent or guardian is disclosed, shall, without the special leave of the judge, be published in any newspaper or other publication."

Section 11 forbids the holding of a child in confinement in any jail or other place in which adults may be imprisoned, and provides that any officer or person violating this provision shall be liable on summary conviction before a juvenile court or a justice, to a fine not exceeding one hundred dollars, or to imprisonment not exceeding thirty days, or to both fine and imprisonment. In order to ensure as far as possible simplicity of proceedings, the following section was inserted:

> "14. On the trial of a child, the proceedings may, in the discretion of the judge, be as informal as the circumstances wil permit, consistently with a due regard for a proper administration of justice."

Section 16 defines the powers of the court in dealing with juvenile delinquents. The first subsection reads as follows:

> "16. In the case of a child proved to be a juvenile delinquent, the court may adjourn the hearing from time to time for any definite or indefinite period; and may impose a fine not exceeding ten dollars, or may commit the child to the care or custody of a probation officer or of any other suitable person, or may allow the child to remain in its home, subject to the visitation of a pro-

bation officer, such child to report to the court or to the probation officer as often as may be required; or may cause the child to be placed in a suitable family home as a foster home, subject to the friendly supervision of a probation officer and the further order of the court; or may commit the child to the charge of any children's aid society, duly organized under an act of the legislature of the Province and approved by the Lieuten * Governor in council, or, in any municipality in whic re is no children's aid society, to the charge of the Superintendent of Neglected and Dependent Children for the Province, if one there be, duly appointed under the authority of any such act, or may commit the child—if a boy—to an industrial school for boys, or—if a girl—to an industrial school or refuge for girls, duly approved by the Lieutenant Governor in council."

As will be seen, the judge is given the widest discretion in dealing with the case. By the second subsection he is given power to make an order upon the parent or the municipality to contribute to the support of the child such sum as he may determine. Whatever action is taken, by the third subsection the child remains a ward of the court until discharged or until the age of twenty-one, and the court may at any time during the period of wardship cause the child to be returned to the court for further or other proceedings. No new charge is necessary. By subsection 4, upon such return, the court may deal with the case on the report of the probation officer or other officer who has been in charge of the child, without the necessity of hearing any further or other evidence. Once a child has been taken in hand by the Juvenile Court, therefore, the court is in a position to continue to afford help even after the child passes the age of sixteen and may, after the first action, deal with him on the report of whoever has been in charge of him, without the necessity of any new charge or of any evidence other than that report.

The fifth and last subsection of section 16 provides that the action taken shall in every case be that which in the opinion of

the court is for the child's own good and the best interests of the community.

Section 18 provides that where a child has been guilty of an offense for the commission of which a fine, damages or costs might in the case of an adult be imposed, these may be imposed on the parent or guardian unless the court is satisfied that the parent or guardian has not conduced to the commission of the offense by neglecting to exercise due care of the child or otherwise. The parent or guardian may also be authorized to give security for the good behavior of the child.

Section 19 provides that no Protestant child shall be committed to a Roman Catholic children's aid society or placed in a Roman Catholic family as its foster home, and conversely that no Roman Catholic child shall be committed to a Protestant children's aid society or placed in a Protestant family as its foster home. These provisions do not, however, prevent the placing of a child in a temporary home or shelter in a place where there is but one children's aid society. By a subsequent amendment these provisions are extended so as to prohibit the placing of Jewish children in non-Jewish homes or their commitment to societies of other denominations, but only in cases where there is a Jewish children's aid society or where Jewish foster parents are available.

By section 21, no child under twelve years of age shall be committed to an industrial school unless and until probation has been tried and has failed.

Section 22 provides that no juvenile delinquent shall under any circumstances be sentenced to or incarcerated in any penitentiary or county jail, police station or any other place in which adults are or may be imprisoned.

Section 23 provides for juvenile court committees. Where there is a children's aid society the committee of the society, or a subcommittee thereof, shall be the juvenile court committee. Where there are Protestant, Roman Catholic, or Jewish children's aid societies, they shall deal respectively with the children of their respective denominations. Where there is no children's aid society, the court shall appoint Protestant, Roman

Catholic, and Jewish committees, each composed of three or more persons. The persons so appointed may in their discretion sit as one joint committee. It is the duty of the juvenile court committee (Sec. 24) to meet as often as may be necessary and consult with the probation officers with regard to cases coming before the court, to offer, through the probation officers and otherwise, advice to the court as to the best mode of dealing with such cases, and generally, to facilitate by every means in its power the reformation of juvenile delinquents. Probation officers are moreover (Sec. 28) required, as far as practicable, to discuss each case and the recommendation proposed to be made with the juvenile court committee before reporting to the court, and to convey to the court, the recommendation of the committee. These provisions aim at utilizing voluntary workers. The committe must often be of great assistance to the court, although it is of course the judge who must finally determine the action to be taken. Moreover, the committee affords a means of raising or maintaining the standard of the work, both of the judge, and particularly, of the probation officers. In the juvenile court everything depends on personal effort, fresh with each new case as with the first. Neither the judge nor the probation officer must ever be allowed to get into a rut. If the work of the court comes to be a matter of routine, it might almost as well be discontinued. The committee can do much towards keeping the work up to a high standard.

The contributory delinquency section is 29, which reads as follows

> "Any person who knowingly or wilfully encourages, aids, causes, abets, or connives at the commission by a child of a delinquency, or who knowingly or wilfully does any act producing, promoting or contributing to a child's being or becoming a juvenile delinquent, whether or not such person is the parent or guardian of the child, or who being the parent or guardian of the child and being able to do so, wilfully neglects to do that which would directly tend to prevent a child's being or becoming a juvenile delinquent, or to remove the conditions which

> render a child a juvenile delinquent, shall be liable on summary conviction before a juvenile court of a justice, to a fine not exceeding five hundred dollars, or to imprisonment for a period not exceeding one year, or to both fine and imprisonment."

It will be seen that the enactment extends to three classes: Any person who—

(a) Knowingly or wilfully encourages, aids, causes, abets or connives at the commission of a delinquency.

(b) Knowingly or wilfully does any act producing, promoting, or contributing to a child's being or becoming a juvenile delinquent.

(c) Being the parent or guardian of the child and being able to do so, wilfully neglects to do that which would directly tend to prevent a child's being or becoming a juvenile delinquent or to remove the conditions which render a child a juvenile delinquent.

It is thought that this is as wide a provision against an adult contributary delinquency as can very well be framed.

Prosecutions against adults for offenses in respect to children, may be brought in the juvenile court (See. 30).

The following section which is to be found in most juvenile court acts, is useful as an indication of the spirit in which the act is to be construed:

> "31. This act shall be liberally construed to the end that its purpose may be carried out, to wit: That the care and custody and discipline of a juvenile delinquent shall approximate as nearly as may be that which should be given by its parents, and that as far as practicable every juvenile delinquent shall be treated, not as a criminal, but as a misdirected and misguided child, and one needing aid, encouragement, help and assistance."

Section 32 provides that nothing in the act shall be construed as repealing or overriding any provision of any provincial statute, and that when a juvenile delinquent who has not been guilty of what in an adult would be an indictable offense comes within

the provisions of a provincial statute, he may be dealt with either under the Provincial Act or under this act, as may be deemed to be in the best interests of such child. This makes it possible in a proper case to deal with a delinquent child under the Provincial Children's Protection Act.

By section 33 on the putting in force of the act in any place every provision of the criminal code or of any other federal act inconsistent with its provisions shall stand repealed as regards such place.

The remaining three sections of the act, numbered 34, 35, and 36, relate to the putting in force of the act in any locality. The first of these provides that the act may be put in force in any province or in any portion of a province, by proclamation, after the passing of an act by the legislature of such province, providing for the establishment of juvenile courts or designating any existing courts as juvenile courts, and of detention homes for children. As has already been pointed out, under the Canadian constitution the establishment of juvenile courts and the providing of the other necessary machinery for the carrying out of the provisions of the Dominion Act, are within the jurisdiction of the provincial legislature. Hence this provision.

It was, however, realized that some of the provincial legislatures might delay a long time before passing the necessary legislation and in order, nevertheless, to secure the benefits of the act to specific cities or towns in such provinces, section 35 was inserted. It provides that notwithstanding the failure of the provincial legislature to pass the necessary legislation, the act may be proclaimed in any city, town, or other portion of a province where proper facilities for the due carrying out of the provisions of the act have been provided in such city, town or other portion of a province, by the municipal council thereof, or otherwise. In such a case, as the provincial legislature has not established a juvenile court, the Federal Government is empowered to designate as juvenile court judge some judge or magistrate having already the necessary jurisdiction in the place in question.

By order of the Governor-General in council, published in the

Canada Gazette of the 26th of September, 1908, what would be considered "proper facilities for the due carrying out of the provisions of the act" were stated to be as follows:

The Governor-General in council must be satisfied—

1. "That a proper detention home has been established and will be maintained for the temporary confinement of juvenile delinquents, or of children charged with delinquency. The institution should be conducted more like a family home than like a penal institution, and must not be under the same roof as, or in the immediate vicinity of, any police station, jail, lock-up, or other place in which adults are or may be imprisoned." (See Section 11.)

2. "That an industrial school, as defined by clause (h) of section 2 of the act, exists, to which juvenile delinquents may be committed."

3. "That there is a superior court, or county court judge or justice, having jurisdiction in the city, town, or other portion of a province in which it is sought to have the act put in force, willing to act as juvenile court judge, and that the remuneration of such juvenile court judge (if any) has been provided for without recourse to the federal authorities."

4. "That remuneration for an adequate staff of probation officers has been provided by municipal grant, public subscription or otherwise." (See Sections 25, 26, 27, and 28 of the act.)

5. "That some Society or Committee is ready and willing to act as the Juvenile Court Committee." (See Sections 23, and 24 of the act.)

It will therefore be seen that while the Juvenile Delinquents Act is on the statute book of the Dominion, it is in force nowhere unless and until put in force there by proclamation. As has been said, one reason for this was that the establishment of juvenile courts was a matter for the provinces, and that it was therefore desirable that the putting in force of the act in any province

should be preceded by appropriate provincial legislation. There was, however, a still stronger reason. In 1908, probation, the chief instrument of the modern juvenile court, was practically unknown in Canada, outside of Ottawa, where it was in voluntary operation. Had the act been put in force at once throughout the Dominion, it would therefore have necessarily remained for a long time a dead letter, at all events, over the greater portion of the country. In consequence it would have been in danger of not being taken seriously, or of being condemned as a failure without having been given a fair trial. With the provisions for the putting of it in force only where adequate facilities have been provided for its proper administration, these dangers are avoided and a fair trial of the system is ensured in every place in which the act is put in force.

It has so far been proclaimed throughout the whole of only one province, namely, Alberta. It is, however, in force in some portion of every other province excepting New Brunswick and Saskatchewan, as the following list will show:

Province of Nova Scotia, in force in Halifax.

Province of Prince Edward Island, in force in Charlottetown.

Province of Quebec, in force in Montreal.

Province of Ontario, in force in Toronto, Ottawa, Stratford and County of Perth, Berlin and County of Waterloo, and District of Temiskaming.

Province of Manitoba, in force in Winnipeg.

Province of Alberta, in force throughout whole province.

Province of British Columbia, in force in Vancouver.

This result, after six years, is perhaps somewhat disappointing. On the other hand, wherever the act is in force, its provisions are being properly carried out, and the system is proving a success. Its wider extension should therefore soon follow.

As a model of the kind of provincial legislation which the framers of the Juvenile Delinquents Act intended should precede the putting in force of the act in any province, reference should be had to the Alberta Juvenile Court Act of 1913, the more important provisions of which are as follows:

A separate juvenile court is established in every village of over 500 inhabitants and in every town and city, and these are given jurisdiction over such portions of the province in addition to the area included in the village, town or city, as the Government may from time to time designate. In this way some juvenile court will have jurisdiction in every portion of the province. These courts are presided over for the most part by commissioners specially appointed for the purpose of dealing with children. Provision is also made for the appointment of probation officers and for the establishment of detention homes.