

JUVENILE MURDERERS

The situation which arose last November in the City of Winnipeg, when three juveniles allegedly beat to death a guard employed in the Vaughan Street Detention Home, raises legal questions of considerable interest so far as the provisions of section 9 of The Juvenile Delinquents Act are concerned. This interest is enhanced by a case which arose in the same month in the City of Montreal, where a 14 year old lad living in the Westmount district was charged with the murder of his mother. Previously, in the Province of Nova Scotia, a 15 year old youth had been sentenced on a charge of murder by Mr. Justice W. L. Hall of the Supreme Court of that Province to be hanged at Sydney on January 22nd, 1941. No punishment other than death may be imposed under Canadian law upon any person convicted of murder.

Section 2(g) of The Juvenile Delinquents Act provides that the definition of "juvenile delinquent" shall include any child who violates any provision of the Criminal Code, which would undoubtedly include the provisions of section 259 having reference to the crime of murder.

Section 4 of The Juvenile Delinquents Act provides in part as follows: "Save as provided in section 9 of this Act, the Juvenile Court shall have exclusive jurisdiction in cases of delinquency

Section 9 of The Juvenile Delinquents Act reads as follows:

9(1) When the act complained of is, under the provisions of the Criminal Code or otherwise, an indictable offence, and the accused child is apparently or actually over the age of 14 years, the Court may, in its discretion, order the child to be proceeded against by indictment in the ordinary courts in accordance with the provisions of the Criminal Code in that behalf; but such course shall in no case be followed unless the Court is of the opinion that the good of the child and the interest of the community demand it.

(2) The Court may, in its discretion, at any time before any proceeding has been initiated against the child in the ordinary criminal courts, rescind an order so made.

The three boys in the Winnipeg case were reported to be aged 14, 15 and 17, all juveniles being under 18 years of age. If one of them had happened to be 13, he could not, by any process known to the writer, have been transferred to the ordinary courts for trial, for Parliament has apparently decreed that any child under 14 who commits murder, or for that matter any other

serious crime, can be dealt with only as a "juvenile delinquent." The writer does not wish to question the wisdom of this arrangement, but merely desires to point out that such a situation appears to be in effect.

If the juvenile offender is 14 or over and the offence is indictable, which would of course be the case with the crime of murder, the Court apparently has two courses, either of which may be taken. The first appears to be that of treating the juvenile offender as a "juvenile delinquent" and dealing with him accordingly. Section 20 provides the penalties which may be imposed in such event. The alternative would be to transfer the "juvenile delinquent" under the provisions of section 9 to the ordinary courts for trial. But in considering this second possible course, the Juvenile Court Judge is placed in a strange dilemma for the latter words of section 9 (1) read as follows:—

.but such course shall in no case be followed unless the Court is of the opinion that the good of the child and the interest of the community demand it.

It is at once clear from the words quoted that two things are required:—

1. The interest of the community must demand it, *and*,
2. The good of the child must demand it.

It would probably be easy for any Juvenile Court Judge, in circumstances such as those which have arisen recently in Winnipeg, Montreal and Sydney, to satisfy his mind on the first requirement, but it might be difficult for him to conclude that the good of the child would best be served by placing him in a position where he might ultimately be sentenced to be "hanged by the neck until he is dead."

It may be argued that the Juvenile Court Judge can feel sure, when giving his decision under section 9 of the Act, that the Minister of Justice would commute any sentence of death passed on a child under 18 years of age and that no hanging would actually take place, but the fact is that when faced with the making of his decision the Juvenile Court Judge can have no such assurance. There is not, at the present time, in Canada, any law in force similar to that introduced in England in 1933 which provides that judgment of death cannot be pronounced on anyone under the age of 18 years.

In a Canadian Press despatch of March 1, 1944, it is reported that the 14 year old Montreal lad referred to was found by a

Court of King's Bench jury sitting at that city to be "unfit to stand trial" on a charge of murdering his mother. The writer, who has been acting as Juvenile Court Judge for some 7 years at Calgary and who claims no knowledge of the details of the Montreal case, cannot help wondering if the disposition which has been made in this instance was an easy way out of a difficult situation.

It appears from the provisions of section 17 of the Criminal Code that no child under 7 years of age can be guilty of any criminal offence. In addition the terms of the Juvenile Delinquents Act appear to assure that no child under the age of 14 shall be proceeded against in the ordinary courts. From the age of 14 to the day preceding his 18th birthday, a child may be proceeded against in the ordinary courts if the Juvenile Court Judge, in the exercise of his discretion, transfers the child to such courts for trial. In this latter case, the Juvenile Court Judge must, however, before transferring the child to the ordinary courts, have concluded in his own mind that the interest of the community and the welfare of the child demand such a course of action. My submission is that in the case of murder the law, as it stands, places any Juvenile Court Judge in such circumstances in an unenviable dilemma.

A. W. HOBBS.

Calgary.