This distinction has not been maintained in British Columbia. In *Short* v. *Federation Brand Salmon Canning Co.*,[7] the Full Court, Irving, J., dissenting, decided that the words of the rule "refusal of a motion or application" did not apply to the dismissal of an action at the trial. The matter has been more recently before the Court of Appeal in that Province in *Sale* v. *East Kootenay Power Co.*[8] and were it not that the practice established by the *Short* case had been in force and followed for over thirty years, the members of the Court would probably have given a decision in line with the English cases. Hence in that Province, the time for entering an appeal, in the event of the dismissal of the plaintiff's claim, runs not from the date of the pronouncing of such dismissal but from the date of the perfecting of the judgment.

[7] (1899), 7 B.C.R. 35.
[8] (1931), 43 B.C.R. 336.

REVIEWS AND NOTICES.

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LAW AS THE JURISTS SEE IT.

The New Jurisprudence. By Edward Jenks, D.C.L. (Oxon.) London: John Murray, 1933. Price 9s. net.

Modern Theories of Law. Toronto: Oxford University Press, 1933. Price $2.50.

These two books by their subject-matter lend themselves to associated treatment at the hand of the reviewer. Dr. Jenks examines modern tendencies in jurisprudence, and theories of law are nowise alien to the field of jurisprudence.

The volume that comes to us from the Oxford University Press contains the text of ten public lectures delivered last year at the London School of Economics and Political Science by men eminent in the respective spheres of law and political science, namely, A. L. Goodhart, A. Meyendorff, Morris Ginsberg, Harold Laski, Ivor Jennings, Sir Maurice Amos, H. Lauterpacht, B. A. Wortley, William A. Robson and C. A. W. Manning. There is no attempt to arrange the essays in a logical order, but there is an advantage in that fact, as the editor, Mr. Ivor Jennings, points out, because each one is independent of the others and the reader may take them up distributively for the purpose of some special enquiry or in any way which appears convenient to him.

Dr. Goodhart starts the series with "Some American Interpretations of Law" and he tells us in detail of the influences leading the Americans in their definitions of law to place the emphasis almost invariably on the Judge and the judicial process. Speaking more generally he says: "In America the

common law had to be adapted and fitted to new conditions, and this was a work which only the Judges could do. The legislative function of the courts was, therefore, marked to an unusual degree." Proceeding, then to discuss Professor Gray's definition of law as that which "is composed of the rules which the Courts . . . . lay down for the determination of legal rights and duties," and the deduction therefrom that a statute is not law until it has been interpreted by the Courts, Dr. Goodhart pertinently asks: "If the statute declares that only a written will is valid, by what process of misinterpretation can the Courts hold that an oral will is binding? If Gray is correct, then his definition destroys all law, for if the Judges are not bound by a prior statute, neither can they be bound by a prior precedent." . . . . In the third lecture of the series Professor Ginsberg examines Stammler's philosophical analysis of law, and informs us that the crucial part of Stammler's theory is found in his discussion of the idea of Justice, and that his principles both of morality and law are really expansions of this idea. Professor Ginsberg reaches the conclusion that Stammler's theory of law "leaves actual law and actual morals at the mercy of empiricism and the blind forces of tradition." . . . . Professor Laski's lecture is an excellent critique of Duguit's theory of the State, and amongst other things he shows us that the French jurist does not, as he himself fondly believes he does, exorcise the evil genius of "Sovereignty" from the conception of the State he would have us adopt. . . . . Canadian readers will be interested in the appreciation by Sir Maurice Amos of Dean Roscoe Pound's contributions to modern legal theory. Quoting Judge Holmes's *mot* that "Pound is an uniquity," Sir Maurice declares that while the time is not yet ripe to assign to the learned Dean his exact place in the history of Anglo-American legal thought, yet it must undoubtedly prove to be a conspicuous one.

We regret that space does not permit of reference to the remaining lectures contained in the volume, but they all contribute to the fine quality of a most timely publication. The price is a modest one for a book of its class.

* * Dr. Jenks's book is also a timely one, dealing as it does with the new modes of legal thought that are pervading the English-speaking world at the present time. The author points out that there has been much troubling of the waters since Sir Frederick Pollock published his *First Book of Jurisprudence* in 1896, with the result that there has been increased interest manifested by laymen in the less technical side of the law. He observes: "When one remembers the attitude towards 'outsiders' maintained by the professional authorities so late as the end of the last century, one is delighted to find the most eminent judicial persons of to-day publicly advocating the study of the elements of the law as part of a humane education." To promote and facilitate that study is the object of his newest book. He is of opinion that the Western World is now turning from a long period of specialisation in legal theory towards a more necessary process of synthesis.

Starting out with the declaration that "Law may be defined, provisionally, as the force or tendency, which makes for righteousness" [which, we may remark, is a collocation of words strangely reminiscent of Matthew Arnold in his spiritual odyssey] Dr. Jenks cautions us that in his definition "Law" is used in its generic sense and is not to be taken as solely denoting the law of the lawyer, but must be understood as inclusive

of physical laws, psychical laws and laws theological and moral as well. To conduct his readers over the wide expanse covered by the discrete uses of the English word "Law" hardly serves the author's purpose to bring legal theory and its problems plainly within the understanding of laymen, and he evidently realises this when he says that his "provisional" definition is on doubtful ground when it qualifies the "force" or "tendency" as one making for righteousness. We quote: "Evidently, in order to justify this qualification, we must accept the view that the universe not merely exists, but displays in its working a harmony or order which we can fairly reconcile with ethical ideals." To speak of the universe in teleological terms, to ascribe to it an ethical purpose, is to adventure a noble idea in this incredulous age when even the attempt to revive the medieval doctrine that human law is a system of minor ethics meets with scornful disapproval on the part of many. But putting aside this purely adventitious feature, Dr. Jenks's book is one that deserves the highest commendation. Its analysis of the theories and opinion of modern jurists is lucid and authentic, and the synthesis he arrives at from his comparative study of continental and Anglo-American theories of legal science will prove of the greatest value to any student who approaches it.

It is fair to mention that those who are disposed to look for some discussion of the principles of Soviet law in the book should read the author's preface. There he states that his examination of the recent trial of the foreign engineers at Moscow convinces him that the "peculiarities of Soviet Justice are not novelties at all." To him they are mere revivals of certain ignoble features of medieval practice. We quote: "A conspicuous example is the obsession of the old Romano-Canon law that the main object of every criminal prosecution, both in the preliminary and trial stages, is to extract a confession from the accused person, and then, if possible, to use it to convict his fellow-accused. This obsession led to the use of the torture chamber and such doubtful processes as 'confrontation' and 'reconstruction of the crime', which are still too common in comparatively enlightened systems."

CHARLES MORSE.

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LEGAL INSTITUTIONS IN MODERN FRANCE.

La Vie Juridique des Peuples: Bibliothèque de droit contemporain. Sous la direction de H. Levy-Ullmann et B. Mirkine-Guetzévitch. III. France (Paris, Librairie Delagrave) 1933. viii + 488 pp.

The latest volume of this series, which is being produced under the capable editorship of the Director and the Secretary of the *Institut de Droit Comparé de l'Université de Paris,* has as its aim the presentation, within the limits of less than five hundred pages, of the principal political and legal institutions of the French nation as these present themselves in this first third of the twentieth century.

The names of the editors are, for students of comparative law, sufficient guarantee in themselves of the accuracy of this book: but a glance at the title page assures us that here indeed is the voice of authority, here indeed are 'illustres savants, tous spécialisés et maitres dans la matière traiteé par eux;' it is rich fare when one finds, in one small volume, the names of Henri Berthélemy, Joseph-Barthélemy, Capitant, and Escarra (to take only those names which the reviewer finds most familiar).

The Canadian lawyer, from a common law province, and even, to some extent, the practitioner in the province of Quebec, looks upon French law as something rigidly bound within the fetters of the Napoleonic Code. A study of this book will go far to dispel that illusion. Much has happened in a century and a quarter. France remains a *pays de droit écrit*—but it owes a great debt to the enlightened initiative of its judges and the free scientific enquiry of its legal authors and commentators. If France retains her *jus scriptum* it is because of an inherent need that her people feel for it, a need that the editors admirably express in their preface:

"The Frenchman is imbued with the conviction that for the guarantees of individual liberty and the equality of all men before the law a definite text of the laws is indispensable. It is only in the measure in which it has felt by instinct and apprehended by reason that flexibility was desirable in the interests of liberty and equality that the legal conscience of the French people has admitted that evolution should take its course by the traditional methods of its ancient law: and within these boundaries, restricted yet wide enough, the judges and the commentators have been able to show that they have lost nothing of the imaginative force of their forerunners, the great jurisconsults of the *droit coutumier*."

In this book the reader is able to measure for himself the place left by the French legislator for the inventive genius of the jurists, and it will, perhaps, surprise him to see how generally the pressure of social and economic forces has impelled the French Courts to decisions similar, in all essential respects, to our own. In this connection the articles on criminal law, on contract, on delictual responsibility, and on commercial law are of particular interest and importance.

A word as to the sponsors of this series appears to be timely. The Faculty of Law of the University of Paris is, of all institutions of higher learning, the one with the greatest enrolment of students. Its Dean, M. Henri Berthélemy, mentioned, in his Annual Report for 1932, that the total number of students had been raised for the academic year 1930-31 to the figure of 10,178, of whom 8,871 were men and 1,307 women students. Comparative legal studies have, for more than a half-century, held an honoured place; the Faculty consolidated those studies by the creation of the Institute of Comparative Law of which the object is to study foreign legal systems in all their aspects (public law, private law, sociology) and to bring to foreign jurists a knowledge of the legal life of France. How successful that Institute has been and, may it be said, how much it owes to the devoted labours of Professor Levy-Ullmann, is well known to English-speaking lawyers. The works of this great institute, and of its English associate, the Society of Comparative Legislation, deserve the widest measure of publicity and support.

F. C. Auld.

University of Toronto.

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The Administration of Justice.*

The Administration of Justice, being Volume 167 of the Annals of the American Academy of Political and Social Science, is a collection of nineteen essays by judges, practising lawyers, and law teachers upon legal machinery.

* *The Administration of Justice.* Edited by Raymond Moley, Ph.D., and Schuyler C. Wallace, Ph.D. The American Academy of Political and Social Science. $2.50 in cloth, $2.00 in paper.

The first group deals with four specific problems of court administration, the grouping of courts, the assignment of judicial business, the expense of litigation and the keeping of records. The Chief Justice of the Cleveland Court of Common Pleas contributes a concise and graphic account of the operation of the speedy trial machinery which he himself initiated and still controls. "An inch of judge," to adapt a quotation from one of the essays, "is worth more than a yard of justice." Although euphony alone does not, as some political scientists think, justify the introduction of high-pressure "business methods" into the "business of government," a watchful executive eye is the only remedy for lagging dockets—as "The Executive Judge" and "The Cleveland Court of Common Pleas" abundantly shew. What would Canadian counsel think of the Cleveland Moloch, the Assignment Commissioner, with his control room and his blackboard?

Three of the essays are concerned with problems which the Canadian provinces, free from the dead hand of an antiquated constitution, have long ago solved for themselves: one criticises at length the inability of a trial judge to comment on the evidence, the unconstitutionality of the declaratory judgment and the excessive technicality of proceedings in error: two, one of them more suited to the politician's tub than to this learned volume, state the arguments for and against judicial rule making. No Canadian, however, can afford to shut his eyes to the situation portrayed in "Costs, Fees and Expenses in Litigation;" how many poor men can afford to litigate an admittedly just demand, should individuals be forced to play rich uncle to the community at large in obtaining judicial decision upon disputed points of law,—these are searching questions.

The two least successful contributions are listed under the heading of "Scientific." One contains a great deal of "old stuff," and abounds in pseudo-scientific jargon, "philosophico-legal dogmas," "functional surveys," "cultural osmosis"—you know the rest: the other is guilty of trying to illustrate the obvious in an attempt to answer the question "Are judges human?" by raking together a mass of statistical information and classifying it under sixteen heads.

It is interesting to note that while the Yale Law School—and it is not alone—is using the "social science method" to pour "Business Units I (Losses), Business Units II (Management), Business Units III (Finance) and Business Units IV (Reorganization)," into a "selected student body" (The Yale Law School, p. 167) "the present day client wants to know how to dodge the shoals and pitfalls the law thrusts in his way and to accomplish his purposes—lawfully if possible" (What every Present Day Lawyer Should Know, p. 174). A good example of the contrasts which abound, and should abound, in this ably edited volume.

Last in order, but maybe first in merit, comes an elaborate canvassing of the compensation plan for personal injuries suffered in automobile accidents. "At the heart of the compensation theory is the idea that all accident victims should receive payment regardless of fault or contributory negligence" (p. 207). Accident cases are to be taken from the Courts whose dockets they crowd, whose jurisprudence they complicate, and to be handed over to a commission: "it would be necessary to shew only that a motor vehicle was involved in the accident, without finding a causal connection between negligence and the in-

jury" (p. 212). Oddly enough, the usual unholy alliances have been formed to howl the plan down.

A stimulating collection—but why should it be printed in two columns like a Bible? Perhaps at this date it is too much to ask that Volume 168 be made to look a little more secular.

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NOTICES BY THE EDITOR.

International Adjudications Ancient and Modern: History and Documents together with Mediatorial Reports, Advisory Opinions and Decisions of Domestic Commissions on International Claims. Edited by John Bassett Moore. Vols. V. and VI. New York: Oxford University Press. Price $2.50 each.

These two volumes continue a series of publications begun some time ago by the Carnegie Endowment for International Peace (Division of International Law). Volume V deals, first, with the proceedings before the Mixed Commission, appointed under Article XXI of the Treaty between Spain and the United States of October 27, 1795, on the claims of citizens of the United States against Spain on account of the taking of their vessels and cargoes; secondly, with the proceedings before the Claims Commission appointed under the Convention between the United States and France of April 30, 1803, in respect of indemnity claimed as due to citizens of the United States for supplies, embargoes and Maritime capture prior to September 30, 1800; thirdly, with proceedings on individual claims for indemnity payable by France to the United States on account of commercial spoliations committed during the Napoleonic Wars, before the Domestic Commission appointed under the Act of Congress of July 13, 1832.

Volume VI of the series will prove of special interest to Canadians because it is wholly concerned with the arbitration concerning the title to islands in Passamaquoddy Bay and the Bay of Fundy conducted before a Mixed Commission under Article IV of the Treaty between Great Britain and the United States of December 24, 1814. The task confronting the editor, Dr. John Bassett Moore, in giving orderly arrangement to the arguments of the agents of the respective parties to the arbitration was a substantial one, and success in that behalf could only be attained by one of his special knowledge and great experience in such matters. In every way the book is a notable contribution to the literature surrounding boundary disputes between nations.

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Plebiscites Since the World War—With a Collection of Official Documents. By Sarah Wambaugh, Volumes I and II, Washington: Carnegie Endowment for International Peace. 1933. Price $5.00.

This work is announced to be a continuation of Miss Wambaugh's valuable monograph on plebiscites which was published by the Carnegie Endowment for International Peace in 1920. Since then the author has made an exhaustive study of the actual working of the plebiscites held in pursuance of the treaties drawn up at the Peace Conference, and the result of this study is

embodied in the present work. The printing and binding of the volume is well up to the standard of the Carnegie publications, and its maps, bibliography and index are of a character that greatly enhances its value as a reference book.

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The National Recovery Act: An Analysis. By Benjamin S. Kirsh, New York: Central Book Company, 1933. Price $2.50.

The author explains that his book, dealing as it does with the industrial control provisions of the National Recovery Act, supplements his earlier and more comprehensive work on Trade Associations published in 1928. The purpose of the present volume is to outline the economic and legal essentials for those who are interested in the operation of the drastic provisions of the N. R. A. Speaking of the character of the Act he regards it as a venture in the direction of bold experimentation with views expressed in the dissenting opinion of Mr. Justice Brandeis in the *Oklahoma Ice Case*, 285 U.S. 262. "It comes," he says, "as a direct response to insistent demands from all sections of enlightened American opinion for an orderly planning of industrial enterprise after an era of chaotic and unco-ordinated business rivalry." It involves "a distinct revision of the traditional view of free private enterprise and competition developed by the Supreme Court of the United States in interpreting the Constitution and the federal anti-trust laws." Whether its operation, limited as it is to two years, will usher in a collective trend in the American economic system depends upon the experience of business, labour and the public in the course of its administration. Chapter II contains a very complete and lucid explanation of the provisions of the Act, and alone affords a justification for offering the book to a world suffering from a spate of less authentic literature. It is obvious to us all that the success of so revolutionary an experiment in a professedly democratic State demands wisdom as well as courage in working it out, and the author very pointedly observes that "the historian, writing retrospectively two years from now, will be a wiser man than the prophet who hazards a prediction to-day."