

## THE ADMINISTRATION OF CRIMINAL JUSTICE.\*

The Committee on the Administration of Criminal Justice begs to report as follows:—

Your Committee desires to comment on the patience and loyalty of the Canadian people as displayed throughout the past year, which, so far as unemployment and financial stringency is concerned, has been perhaps the most severe in the experience of the present generation. The law abiding character of our people has been reflected in the absence of any special increase in crime.

### DEFENCE OF INSANITY.

This Committee reaffirms its recommendation of last year that Section 19 of the Criminal Code be amended by striking out the word "and" and substituting the word "or" therefor in the fifth line of such section.

### CORPORATIONS DECLINING TO PLEAD.

This Committee reaffirms its recommendation of last year that Section 782 of the Criminal Code be amended so as to make it clear that the refusal to plead (save on indictment) by a corporation appearing before a magistrate by attorney should not oust the jurisdiction of the magistrate.

### ROBBERY TO BE MORE CLEARLY DEFINED.

This Committee recommends that appropriate amendments be made to Sections 445, 446 and 448 of the Criminal Code to provide more clearly that the offence of robbery includes theft of property in cases where the accompanying violence or threats of violence to the person is exercised towards a person who may not be the actual owner of the goods stolen.

### PREVIOUS CHASTE CHARACTER IN CARNAL KNOWLEDGE SECTION.

This Committee recommends that Section 301 of the Criminal Code be amended by making present Clause 3 of that section, Clause 4 thereof, and by adding a new Clause 3 as follows:—

"(3) Proof that a girl has on previous occasions had illicit connection with the accused shall not be deemed to be evidence that she was not of previously chaste character."

\*Report of Committee on Administration of Criminal Justice of the Canadian Bar Association presented at the Eighteenth Annual Meeting held at Ottawa, August 30, 31 and September 1st 1933.

## PUNISHMENT FOR KIDNAPPING.

This Committee recommends that Section 297 of the Criminal Code be amended to provide for the punishment for kidnapping a penalty of life imprisonment with lashes.

## NOTES ON AGENDA FOR COMMITTEE ON ADMINISTRATION OF CRIMINAL JUSTICE.

## ROBBERY TO BE MORE CLEARLY DEFINED.

Suggested amendments to 445, 446 and 448.

This suggested amendment was brought to the attention of the Chairman by Deputy Attorney-General Mathers of Halifax, N.S., with a view to clarifying the law more particularly applicable to bank robberies, and the following extract from correspondence with Mr. Mathers best presents the view which favours the suggested amendment:—

“There seem to be difficulties as to whether robbery can be committed in regard to bank funds as the violence or threats of violence are not used to the owner of the funds, and there is a question as to whether the bank's employees have such a special property in the funds that the property therein can be laid in them, or whether only one or some of them, and if so which, has the special property. The definition of robbery in Section 445 of the Code may be broad enough literally to embrace robbery where the violence used for the purpose of extorting the property is used to a person who has no property, special or otherwise, in the funds, but I think that Section 445 must be read in connection with the common law. However, it seems to be quite clear that under Section 446 the violence must be used to the person who is the owner of the property. With regard to the matter of special property, this applies generally to only lessees, bailees, pawnees, carriers, and the like, and in those cases the property may be laid either in the real owners or in the persons having only such special property in them. It is stated in Russell on Crimes, 8th Edition, page 1227, that linen stolen from a washerwoman, by whom it was taken in to wash in the course of her business, may be laid as her goods, and that in the cases of that kind it was considered that the parties have possessory property, being answerable to their employers, and being capable of maintaining an appeal of robbery or larceny, and having restitution; it is also stated that an agent has sufficient special property in goods of his principal in his charge or care to support an indictment which describes them as his property, but on pages 1228-1229 it is said that where servants have in their custody the goods of their masters,

the property should be laid in the master, and that where a boy of fourteen years of age lived with his father, worked for him, assisted him in his business, and obeyed his orders, and his father supported him but paid him no wages, and he was left in charge of a stall from which some boots were stolen, it was held that the boy was not a bailee but a servant, and that the property in the boots could not be properly laid in him. Russell at page 1229 further says in effect that if a servant employed by his master to receive money for him is robbed of such money before he takes it to his master, the money may be described as the money of the servant; in that case the money was in the actual possession of the servant, but if this principle applies to bank clerks the question arises which one of them could be said to have the possession of the money that would be in the vault.

I am suggesting that it might be desirable to have this situation cleared up, and that Sections 445 and 446 of the Code be amended so as to read something like this:—

445. Robbery is theft accompanied with violence or threats of violence to any person or property, whether or not such person is the owner of the property stolen, such violence or threats being used to extort the property stolen, or to prevent or overcome resistance to its being stolen.

446. Every one is guilty of an indictable offence and liable to imprisonment for life and to be whipped, who

- (a) commits robbery, and at the time of or immediately after such robbery wounds, beats, strikes, or uses any personal violence to any person for the purpose of extorting the property stolen; or
- (b) being together with any other person or persons commits robbery, or assaults any person with intent to commit robbery; or
- (c) being armed with an offensive weapon or instrument commits robbery or assaults any person with intent to commit robbery.

Section 448 would also have to be amended by providing that every one who assaults any person with intent to commit robbery is guilty of an indictable offence and liable to three years' imprisonment and to be whipped."

#### PREVIOUS CHASTE CHARACTER IN CARNAL KNOWLEDGE SECTION.

Suggested amendment to Section 301.

This suggested amendment was brought to the attention of the Chairman by Deputy Attorney-General Blackwood of Regina who indicates that he suggested the amendment during the last session of Parliament, but it is not clear that he has suggested the amendment on different occasions to the Department of Justice.

It will be noted that Chapter 53 of 23-24 Geo. V. which governs the amendments to the Criminal Code at the last session of Parliament, does not include this proposed amendment, so in view of the

fact that it may have been considered and rejected by Parliament, the Committee should perhaps give it very special thought before including it in their Report.

The new Clause 2 proposed is precisely similar to Clause 2 in Section 211 of the Code.

#### ABOLITION OF GRAND JURY.

This question has received a good deal of attention in the Province of Ontario during the last year, and the Committee may desire to discuss it as to whether or not any recommendation should be included in their Report. The Chairman, from personal discussion with the Bench in Ontario is aware that there is a difference of opinion amongst our Judges on the subject, and also at the Bar.

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It will be noted that in the Report of last year several matters were referred to the Survey Committee and a recommendation was made that the President and Secretarial Department take the necessary steps to create an organization to make the survey provided for at the Annual Meeting of 1931. The Committee may desire to make a further or different recommendation with regard to the survey, and may feel that the provision made in 1931 to set up such a survey, has the effect in the meantime of lessening the interest and activity of the members of the Committee in the interval between the Annual Meetings.

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