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DRAMATIC MURDER MYSTERY DEEPENS

STARTLING NEW DEVELOPMENTS FORESEEN AS SECRETARY GOES ON TRIAL FOR LIFE

MURDER CHARGE

The month old mystery of the circumstances of the death of John Murray, Valterian Club secretary, whose mutilated body was discovered in his office in the premises of the Dundas St. W. headquarters of the society, on the afternoon of October 8th, 1938, deepened to-day with the discovery by P. C. Boot of the existence of an allegedly close friendship between the deceased and Martha ("Daisy") Ramsbuckle, the proprietress of the boarding house in which Daniel Donnelly, presently in custody charged with murder, lived. Donnelly, who is known to have been attentive to his landlady, is said to have been violently jealous of this relationship, and to have implored Miss Ramsbuckle repeatedly to discontinue it.

P. C. Boot, who has worked indefatigably toward a solution of the sinister and cold blooded crime, modestly deprecated his own part in the enquiries which have been going forward, and gave the entire credit for the apprehension of Donnelly, and the subsequent surprising discoveries of the tangled relations of the parties involved, to his morality squad, with whom he works in close co-operation, and who have had the entire district under surveillance since midsummer. The officer, who met the reporter in one of his notorious disguises, cautioned him strongly that his conclusions in the direction he had just indicated were as yet in the stage of pure conjecture.

While in custody Donnelly has conferred repeatedly with his attorneys, but otherwise has had few visitors. A rumour of an attempt at suicide was warmly denied by prison officials, who admitted, however, that a phial of a liquid had been taken from the prisoner some days previously, which on analysis proved to be nothing stronger than whiskey. Noting, nevertheless, that they could think of worse ways of dying, they had redoubled their precautions in keeping the accused from intercourse with unauthorized members of the public, and they believed this close guard to have been interpreted wrongly by the sensational press. Donnelly is expected to plead not guilty to the charge, and following his testimony at the enquiry last month, when he swore that he was in his room within the entire time fixed as the possible limit for the slaying, it appears as though his defence will be an alibi.

With a formidable array of counsel briefed, the tense drama of Donnelly's fight for life will be unfolded before a morbidly curious throng packing the court room at the Osgoode Hall Moot Court, on Wednesday evening, November 16. With a view to expediting the disposal of the case, the Crown and defence counsel have agreed to have this charge placed first on the list.

DR. McRAE LAUDS MOOT COURT

Of the benefit to a law student in attending and taking part in Moot trials there can be no doubt. Even for a student to attend merely as a spectator, without taking part, cannot fail to be of special value to him. The help in learning to do anything which may be obtained by observing another doing that thing, depends on how vividly one can imagine himself in the position of the doer. And when, as at a Moot trial, the doer is a fellow student, the observer's imagination is likely to function more vividly in this respect than at a regular trial.

"One learns to do by doing." This is not to say that one cannot be aided in doing by prior instruction. Instructed as to the general nature of the thing to be done, one goes about the doing of it more intelligently. Forewarned of difficulties and dangers, one may guard against them. Foresight obtained by instruction is better than hindsight gained by experience. Experience alone may be too expensive.

On the other hand, prior instruction alone, without some practice, is not always sufficient for successful doing. Prior instruction is not ordinarily complete as to all details of doing; cannot indeed be so without risk of confusion. And let the prior instruction be never so clear and complete in itself, still trial in doing is highly desirable. By actual trial one may find that he has not fully apprehended his instruction; actual trial makes for thoroughness of apprehension.

Also actual trial of doing begets confidence and enables one to do the best within his powers. Though one should be wary of ever becoming over-confident; for, as Burke has said, "early and provident fear is the mother of safety."

The Moot trial to be held this Wednesday night should prove to be of special interest and value because it is a criminal trial—wherein the procedure, devised in the interests, above all, of a fair trial, has to be more scrupulously observed than in civil trials. Attendance at it by all who can attend, cannot fail to be quite worth while.

D. A. MacRae.

PUBLIC OPINION DEEPLY STIRRED BY TRAGIC DEATH OF VALTERIAN CLUB MEMBER

FORENSIC DUEL?

Wednesday, November 16, will go down in the annals of history as the night of the trial of Daniel Donnely, for there is every indication that this trial will take its place with those of Mary Queen of the Scots, Guy Fawkes, Dr. Crippen and the trials and perils of Pauline.

C. B. de Benson, impressario extraordinary, vice-president of the Osgoode Hall Legal and Literary Society, and the man behind the scenes, in an exclusive interview with *Obiter Dicta*, said the trial was an attempt on the part of the Society to make Osgoode Hall a little less of a "place to attend lectures and get out of in a hurry." Stating that this criminal trial is something entirely new and different, and not to be confused with the Appeal Trials of the Moot court, Mr. Benson added: "There will be little substantive law—mostly facts. The trial will contain a good deal of procedure though. In fact it will be a real good show."

Although the case seems strong against the accused both from the facts, (see last issue of *Obiter Dicta*) and the personnel representing the Crown, namely Art Jessup and Don Treadgold, Court Benson was confident that the accused's array of legal talent, to wit Malcolm Robb and George Fallis would make things very interesting. The jury will be impanelled from First Year. As a final word C.B. wished it to be known that the spectacle would be open to Osgoode Hall students, their friends, sweethearts, wives, et al.

P.S. — Refreshments will be served.

The Mr. Justice Sheep mentioned in the October issue of *Obiter Dicta* as likely to preside at the trial has turned out to be A. Martin in Sheep's robing. Arthur Martin of the class of '38 refused to comment on the case itself—it being "*sub judice*." Besides "*melud*" expressed the wish of saving his best quips for the night of the trial. Commenting on the idea of a Criminal Trial, Mr. Martin said that it would be very useful, especially to first year men in learning procedure.

Art Jessup, senior Crown Counsel, was not quite so reticent about the trial itself, and stated that the murderer is undoubtedly a fiend and a menace to society. "Although," he added, "a prosecutor should not say this." "The crime," he went on, "was very dastardly, and bespeaks premeditation. On the whole it was a very bloody affair, about a pint of blood being spilt. The chief means of identifying the criminal will be by his pants. The only supporter the defense has, is the accused man's landlady, who is undoubtedly a woman of charm and comeliness." Here we could see an attempt on the part of the wily prosecutor to

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DEBTOR'S RELIEF LEGISLATION

Moratorium Acts of the Various Provinces Discussed

By W. G. C. Howland

Editor's Note: (In this, the second instalment of Mr. Howland's article, the author goes on to analyze the legislative provisions enacted by the provinces with a view to affording relief, particularly in the case of mortgagors and purchasers, by a suspension of legal remedies. The discussion of the Ontario Act and the comparison with similar legislation elsewhere should be of great value and interest. In the concluding instalment, to be printed in the following issue, the author considers the Farmers Creditors Arrangement Act.)

Turning now from the Debt Adjustment Acts of Manitoba, Saskatchewan and Alberta let us see what course debt postponement legislation has taken in other provinces. Quebec, Ontario and British Columbia are the only other provinces in which moratorium Acts are to be found. The measures which they have enacted differ in two important respects from those which we have just been discussing. In the first place the emphasis is more on relief to debtors in general than to farmers in particular, and secondly, no need has been seen for the establishment of special administrative tribunals, the machinery of the Courts being to all intents and purposes quite satisfactory.

In principle the moratorium legislation of Quebec, Ontario and British Columbia is really very similar to that of the prairie provinces. It is in their organization and practice that the difference in their problems is reflected, and that such a difference does exist is not surprising for in the last analysis such Acts are but "a statutory reaction to a prevailing social condition."

It is to the assistance of certain m rtgagors and purchasers that the moratorium legislation of Quebec, Ontario and British Columbia is directed. An examination of the measures which have been taken in each of these provinces really resolves itself into a consideration of the policy which their respective legislatures have adopted in regard to "principal" and "interest." The basic principle behind this moratorium legislation is well expressed by Middleton J.A. in the recent case of *Re Waterman et al*, where he says in speaking of the Ontario Act:— "It authorizes a suspension or delay of legal remedies against debtors owing to a period of financial distress. It does not in any way contemplate the relief of the mortgagor from his obligation. It is not bankruptcy legislation. Its hope and purpose is to give the debtor a chance to pay. Its object is to secure the debtor against foreclosure or sale and the incurring of unnecessary costs, and to allow the payment of the mortgage debt, not when it is due according to the contract, but in an extended time."

So far as Quebec is concerned the procedure which must be taken in order to secure a delay for the repayment of *capital* is in many respects rather unique. Where a creditor in that province wishes to enter action for the purpose of recovering the capital of a hypothecary debt or the price of an immoveable which has been sold he must first give the debtor thirty days' notice of his intention to do so. Formerly, if the debtor then wished to obtain a delay he had to take public court proceedings, but

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THINGS TO COME

One of the "things to come" has now become a thing of the past. I refer to our first luncheon. It was very gratifying to your executive to find such excellent support from the student body and I can assure you that this evidence of co-operation will not be missed by the powers who control the destinies of Convocation Hall. We offer our wholehearted thanks for turning out in such large numbers.

You will not have had this copy of *Obiter Dicta* in your possession for more than a few hours before you will realize that we are going to stage an interesting experiment. I refer of course to the Criminal Moot Court. This will be held on Wednesday, Nov. 16, in the large room on the third floor, where our luncheon was held. I would like to urge that all students attend if at all possible. You are also invited to bring "that certain party," and, as was announced at the luncheon, your executive has spent a considerable amount of money in providing for refreshments for that occasion. This was done in the hope and expectation that a great many students would come and also bring a friend. Your executive is going to try and provide refreshments at all the large evening functions which are held here during this

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SPEEDY JUSTICE BY ARBITRATION

An Alternative Method to Courts of Law Is Suggested for Settlement of Disputes

By John M. Sutherland

Editor's Note: (It has been found necessary, in reprinting the following article, to delete parts of it and to omit all footnotes. This has inevitably detracted from the excellence of the article and hence we hasten to offer our sincere apologies to the author. What remains is nevertheless of real value in bringing clearly to light a technique for the settlement of disputes outside the Courts of Law).

The three chief catagories to which the process of arbitration has been adapted with varying depths of success are firstly, international disputes, secondly, differences between capital and labour, and thirdly personal and commercial disputes between individuals. The technique of arbitration with which this essay purports to deal is that applied to the last mentioned class of cases, the personal and commercial disputes between individuals. Since the word "arbitration" is usually used without the addition of descriptive adjectives to indicate the connection in which it is being used, it is to be assumed that where used in this essay, it is meant to apply to this one class of cases unless otherwise specifically stated.

Arbitration is not a new process. There are references to it in the year book and it was apparently quite common by the reign of Elizabeth under the name of arbitrament. It is only in comparatively recent years, however, that it has been looked upon with any large degree of favour by either litigants or the Courts of Law. Lord Hailsham remarks on this in his foreword to a recently published book on the subject in these words:

"One of the most remarkable developments in modern commercial life has been the increased resort to arbitration as a method of settling business disputes. Not less remarkable has been the change in the attitude of the Courts of Law to the system of arbitration. From being regarded with jealousy and aversion, arbitration is now recognized and encouraged as a most valuable assistance to the Courts in the provision of speedy justice."

The old Common Law arbitrament was, at best, a most unsatisfactory procedure, requiring a measure of good faith not often found between litigants before a successful conclusion could be reached. One great drawback was that until the award of the arbitrator or arbitrators was actually made the Courts would not enforce the agreement between the parties to settle the matter by arbitration. This meant that, at any time during the proceedings, if a party felt that the decision would be against him, he could withdraw the matter from the arbitrators and the other party would have no recourse on the basis of their agremeent to arbitrate. A second fault in the old law on the subject was that the award, when made, was not a judgment and could not be enforced as such. All the party receiving the benefit of the award got, if the other party was not satisfied and refused to abide by it, was a right to institute an action upon the basis of such award, instead of upon the original dispute between them. This put the wronged party little

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TORONTO, TUESDAY, NOVEMBER 15, 1938

WHAT? MORE EXAMINATIONS?

Our initial reaction to the recent legislation of the Legal Education Committee providing for an oral examination of students on work done in law offices was that such legislation was ill-conceived, illogical, and entirely without merit. More mature consideration on this subject has qualified this judgment, but not to a very marked extent.

According to a form letter sent to all students, the purpose of the new regulations is to determine, by questioning each student, "the progress he has made in acquiring a useful practical knowledge of legal work of the kind in which he has had experience." Failure to pass such an examination, it is said, will not prevent a student from attending lectures in a higher year, but will prolong the period of service, and may delay a call to the bar. From the terms of this letter and the rules, it is perfectly clear that an examination in the strict sense is contemplated, to be attended with the usual sanctions.

We have very definite objections to examinations in general, and at Osgoode Hall in particular. At the law school, examinations have served no useful function. What ordinarily happens is this: A large number of students may fail in one, two, or three specific papers during the year, having written papers in the winter and fall. These persons are then called upon to undergo the torture of studying throughout the summer months and of writing supplemental examinations. Very, very few are the persons who fail in the supplementary examinations. The result is, all the students have had the terrifying experience of writing, not one, but two, (and for some, three) sets of final examinations. And who has gained thereby? Certainly not the law student (not to speak of his out of pocket expense). Physically, quite the contrary is the case; and mentally, the result will not be to sharpen his mental faculties. Ordinarily he will have memorized most of the work. Nor has he added to his fund of knowledge, for we contend unconditionally, that no one remembers for longer than a semester the details of what he has learned during a previous semester. Nor has the legal profession gained, for substantially all those who are examined are eventually admitted to its ranks in any event; and as to the few who mechanically fall by the way because of the examination obstacle, a far simpler and more effective method of regulating the flow into the profession could be devised. Examinations, therefore, in general, are useless.

In the proposed oral examinations, the case is even worse. The very nature of an examination is to investigate what the student should know and does not know. Here, however, there seems to be contemplated that a student will be asked what he knows and will be questioned merely to confirm the truth of his answer. Obviously all students should be successful. If, for example, we were to answer that we spent all our time delivering pleadings, we would probably be able to answer a further question as to how to draw an affidavit of service!

Ordinarily, where the powers that govern students' affairs decree that there shall be examinations, they provide, at the same time, that there shall be proper facilities to hand so that students may acquire the knowledge on which the examination is to be held. They provide a school, lecture rooms, competent lecturers. In the present case, what is to become of the many students who, (through no fault of their own, and oftentimes because there are not enough offices to go round) have been unable to procure law offices? What about those in offices which do not provide sufficient work of value? The onus is on the Legal Education Committee to provide competent offices and to supervize the instruction therein to see that it is adequate.

But it may be said that these regulations, though speaking in terms of "examination" are in substance intended to be an *inspection* of conditions in respect of office training. Such an interpretation certainly cannot have been intended; nor is it even a possible construction. Witness, for example, the express terms of subsec. 4 of sec. 132A:

"A student-at-law shall not be deemed to have entered upon the second year of service under articles unless and until he has satisfied the requirements of the Legal Education Committee in respect of the examination prescribed to be taken at or before the end of the first year of his service."

In any event, if that were to be the proper interpretation, the Legal Education Committee might then not be unwilling to cancel the regulations and replace them with new regulations conveying the proper message.

The unfortunate aspect of the situation is, even if the regulations were to provide for an inspection of conditions, which is certainly a desirable object, they have gone about attaining this object in an unsatisfactotry manner. For many years now, students at Osgoode Hall, officially (through their representatives) and unofficially, have clamoured for reform. Students' reports have become almost an annual feature of the Law School, and these reports have mentioned specific evils and suggested specific remedies. For a long period of time, the Legal Education Committee did nothing. Then, out of a clear sky, has come the decision: more examinations, as though that were the sovereign remedy for our ills. Good legislation, we venture to suggest, is that which comes from below, not that which is imposed from above. Self-imposed regulations would bear far better fruit. The chief mistake of the Legal Education Committee is, apparently, that it has not sought the co-operation of the student body; nor has it, to judge from its resolutions, seriously considered the students' representations.

Finally, what to do about it? We suggest that immediate steps be taken to ascertain the opinion of the student body on this issue; that representations be made to the Legal Education Committee on behalf of the students that these recent resolutions are unsatisfactory in character, and a resolution of the Legal and Literary Society deprecating the regulations would be in order. But, on the other hand, the Legal Education Committee should be offered the co-operation of the student body, through its representatives, in working out a scheme, either in the nature of investigations or otherwise, for alleviating any of the evils presently obtaining in respect of student education; and a student's committee on education should be set up to interpret the views of the student body to the Legal Education Committee.

DEBATING AT OSGOODE HALL

Making Friends and Influencing People by Public Speaking

By Mervin Mirsky.

From the point of view of student endeavour, Osgoode Hall has not offered a degree of physical violence that is ever necessary for a tort, in making its niche on fame's fortress. North American educational institutions have often received more popularity by reason of their physical rather than of their mental endeavours, but those who deride such efforts by this fact cannot deny that any team effort that unites the school in an enthusiastic body behind it, is justifiable. School spirit belongs better to colleges and high schools, but even in a post-graduate school such as Osgoode Hall, it can do much to take the "compulsory" out of attendance.

For unknown reasons, social activities have not acomplished their task of familiarizing the students with each other. For more obvious reasons athletics have been limited to serving legal documents—and I don't refer to substitutional service. But now a field of joint endeavour has presented itself that can give us practically everything that has been found wanting. Combined student effort, opportunity for meeting fellow students, effort for your "school," but most of all, experience is what is indispensable to our chosen profession. For most students it is probably a last opportunity to obtain those two elements of public speaking of which it is almost entirely constituted: experience and confidence.

In the class debates the participant finds a patient, appreciative audience on whom he is much wiser to make his oratorical blunders than on the court and client. From the constructive criticism of those appointed to judge the debates, he can learn of many of his petty faults. With the emphasis placed on style and delivery, and the subjects chosen and distributed so as to reduce preparation to a minimum, there is no serious taxing of the students' time. Actually, the current type of topic that is debated serves to keep the participant and audience posted on more than is on the weekly lists.

The inter-class debates bring on a more keen sense of rivalry and the consequent display of spirit. The air is filled with castigations, and mud is thrown with reckless abandon; but the winners, who represent the school champions, can properly enjoy a feeling of accomplishment. Osgoode Hall is pregnant with talent, and as it represents a province that bred the quintuplets, there is no telling what she might deliver.

The inter-university debates serve as a reward and an opportunity for those who have shown themselves capable in the class debates. The choice of debaters is entirely divorced from patronage and based in an almost mechanical manner, on ability. Those who are privileged to debate at distant universities can never replace the pleasure of the dining, wining, and experience they obtain on their trip. With no intention of creating a prospectus, Hamilton, London, Kingston, and Montreal, offer a variety of pleasures that would appeal to the most discriminating taste. The hospitality that these Universities show to visiting debaters even outshadows that accorded to the late Jean Harlow by the City of Toronto.

This year some of the leading American Law Schools, such as Yale, Harvard, Columbia, Michigan, and Rochester, have been contacted with regard to mutual visiting debates, although it is too early at this time to announce any concrete result. The situation is optimistic, and should such debates take place, the cultural contact with such illustrious law schools could not help but be of mutual advantage.

The whole point is that if Johns Hopkins can be famous for psychiatry, Notre Dame for its football, and the City College of New York for its basketball, the student line of endeavour at which Osgoode Hall should be famous is its debating. We've got the proper habitat, the proper outlook, and the proper appreciation of its necessity in making us more adept at what we intend to pursue.

The literal translation of *res ipsa loquitur* is "the thing *speaks* for itself. It is a legal expression that has been confined to legal situations. How apt will it be when applied to us, if and when we don the gown?

The new dance which is currently popular in the western hemisphere, known as the "Lambeth Walk," and which originated in England, has also taken the European continent by storm, according to a news item in the New York Times; particularly, in Germany, where, according to The Times, it was at first danced surreptitiously, for fear of incurring the displeasure of Der Fuhrer. Recently, however, according to this report, Herr Hitler has declared the dance to be a true expression of Aryan culture, with the result that it has now become almost a national dance in Germany.

CRIMINAL LAW IN THE SOVIET UNION

A Comparative Analysis of a Foreign Criminal Code

By Irving Himel

Editor's Note: (This is the second and concluding instalment of this article, the first instalment of which appeared in the October issue of "Obiter Dicta." The author, having discussed the procedural aspects of the Soviet code, now goes on to consider the substantive law.

The criminal Code of the Russian Socialist Federated Soviet Republics (R.S.R.S.R.), which is fairly representative of the criminal law in force throughout the U.S.S.R. is divided into two sections — (1) a general section, which deals with the measures of social defence (in our code punishment) to be applied to different criminal offenders and (2) a special section which describes what acts are considered socially dangerous in the U.S.S.R. (i.e., criminal).

Crimes in the code are divided into two main categories: (a) Crimes which are directed against the foundations of the Soviet regime established by the authority of the workers' and peasants' and are consequently recognized as the most dangerous, (b) all other crimes." From the viewpoint of Soviet criminal law "the crimes against the state" are the most dangerous to society and the most serious. The enemy of the Soviet state is considered much more dangerous than the murderer, the property offender, or the sexual offender.

Crimes against the state may take the form of acts of a counter-revolutinary nature, that is, acts which "are directed towards the overthrow, undermining or weakening of the authority of the workers' and Peasants' Soviets, or the Workers' and Peasants' Government (whether of the U.S.S.R. or of a constituent or autonomous republic) elected by them in accordance with the Constitution of the U.S.S.R. or of the constituent republics, or towards the undermining or weakening of the external security of the U.S.S.R. or the fundamental economic political and national conquests of the proletarian revolution."

A person found guilty of committing a counter-revolutionary crime is liable "to the supreme measure of social defence, death by shooting; or a sentence declaring that the accused is an enemy of the toilers, confiscating his property, depriving him of the citizenship of the constituent republics and consequently of citizenship of the U.S.S.R.; and banishing him for life from the territory of the U.S.S.R. If, however, there are extenuating circumstances, the sentences may be reduced to deprivation of liberty for not less than three years, with confiscation of the property of the convicted person in whole or part."

Crimes against the state may also take the form of acts against the administration which are dangerous to the U.S.S.R. "An act shall be considered a crime against the administration, if, while not directly aiming at the overthrow of the Soviet authority or of the workers' and Peasants' Government, it nevertheless leads to a disturbance of the regular activities of the organs of administration or of the national economy and is accomplished by opposition to the organs of authority and obstruction of their activities, disobedience to the laws and other activities causing a weakening of the power and authority of the Government."

Crimes against the state administration are considered specially dangerous if, while committed without counter-revolutionary intent they nevertheless shake the foundations of the state administration and the economic strength of the U.S.S.R. or the constituent republics." Crimes against the administration that are not so dangerous are subject to a much lighter measure of social defence than those that

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nearer his objective than he had been previous to the arbitration proceedings.

In the reign of Charles II a remedy was found for these disadvantages. The Court had always had jurisdiction to make an order referring a matter before it to arbitration with the consent of the parties. At this time it was held that a revocation of such consent or a refusal to live up to the award was contempt of court, punishable by an attachment order. In the reign of William III this principle was given statutory recognition in cases where the reference was made under agreement to arbitrate only, without an order of the Court, provided such agreement gave either party the power to make the agreement a rule of Court and such power had been exercised. The Common Law Procedure Act of 1854 went even further and stated that all agreements to arbitrate could be made rules of Court unless the contrary intention appeared therein. For over two centuries the attachment order remained the sole means of enforcing an agreement to arbitrate or an award arising therefrom. It still remains as one means though in practice is obsolete.

The Arbitration Acts of 1889-1934 have made the enforcement of arbitration agreements and awards much more simple and speedy. They have provided that any proceedings brought in contravention of an agreement to arbitrate may be stayed until the arbitration proceedings are finished; that all written agreements to arbitrate shall automatically be deemed to be rules of Court; and that any award arising from proceedings under a written agreement to arbitrate shall have the same force and effect as a judgment, even to being enforceable by execution and to bearing interest from the date of such award. Under these Acts the arbitrators may make their award in the form of a stated case for the opinion of the Court.

With this brief historical survey of our subject behind us the next problems are: "What is arbitration?" "How does a reference to arbitration arise?"

Definitions of large branches of the Law are generally extremely difficult to draft, so that all cases falling within that class also fall within the definition and so that cases outside the class so defined, will not, under certain circumstances, come within the definition. That of Laidlaw & Young in their book on Engineering Law however, seems to satisfy the requirements of a sound definition.

"Arbitration is the hearing and determination of a cause between parties in controversy by a person or persons chosen by the parties, or appointed by statutory authority, instead of by a judicial tribunal provided by law."

Halsbury gives no definition of arbitration, while Hogg after criticizing definitions from Comyns' Digest and Bacon's Abridgment gives his approval with reservations to that of Romilly, M.R., in Collins vs Collins (1858) 26 Beav. 306 at 312. He then goes on to set down a series of propositions, all of which must be true before a reference to arbitration can arise without attempting to solidify these propositions into a definition. These prerequisites to a reference to arbitration are as follows: Firstly, there must be a dispute or matter in controversy; secondly, the dispute must be one capable of being referred to arbitration; thirdly, the reference must be a reference for a binding judicial determination; fourthly, the reference must be for the decision of some person or body of persons other than a Court of competent jurisdiction.

A reference to arbitration may arise under the law as it now stands in three ways; firstly, under certain statutes: secondly, under an order of the Court; and thirdly, by the consent of the parties out of Court under a submission or agreement to arbitrate, either as a contract in itself, or as a clause forming part of a general contract. A large majority of the cases settled by arbitration arise in the last mentioned manner and so we again narrow our discussion to include only those cases arising by this particular means.

The essence of references out of Court, as distinguished from the other two types, is the consent of the parties. Every such reference must arise out of a submission which is an agreement between two parties between whom some difference has arisen or may arise to appoint some person or persons to adjudicate such difference and to be bound by the result of such adjudication. A distinction should here be drawn between references to arbitration and references for valuation. In the case of a reference for valuation, the valuer is intended to make his valuation by means of his own skill, knowledge and experience, without taking evidence or hearing argument.

If a reference is made to a person to state what is the value of a stack of hay or the plant of a brewery, and he has only to use his eyes so to speak, to ascertain the value, that may not be an arbitration, but if the matter referred to be one upon which a judi-

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as the Act at present stands the debtor may within the thirty day period furnish the Prothonotary with receipts showing that only the current year's taxes and two years of arrears are unpaid, together with an affidavit stating that he has paid the insurance premiums and the current interest (which is reckoned for the purposes of the Act at five per cent) and that he is unable to pay the capital. The Prothonotary on receipt of the documents endorses on them the date of their receipt and this endorsement has the effect of granting the debtor a delay until May 1st, 1938 so far as the payment of capital is concerned. The creditor is then entitled to petition the Superior Court of the District where the immoveable is situated, and if he is able to disprove the debtor's claims the Court will order the judgment to be withdrawn.

There is also a quasi-moratorium in Quebec so far as interest is concerned. When the rate of interest stipulated in a deed of hypothec or of sale with or without the right of redemption, or in any subsequent deed, exceeds five per cent per annum a creditor cannot claim the difference between the five per cent rate and the rate stipulated until May 1st, 1938. If, however, the debtor has been given notice by the creditor of the latter's intention to bring an action for the recovery of capital and he has not taken steps to obtain a delay, or if a judgment granting a delay has been withdrawn then the creditor is entitled to take proceedings to recover the rate of interest as stipulated. Of course he may sue at any time to collect overdue interest if the stipulated rate is five per cent or less.

The governing Act in Ontario is divided into three parts, the first of which provides for relief in regard to principal, the second deals with the kind of relief which may be granted to mortgagors and purchasers so far as arrears of interest and taxes are concerned, and the third part contains certain general provisions relating to the Act as a whole. The procedure which has been set up in this province is rather more intricate than that in force in Quebec. A creditor who is desirous of taking or continuing proceedings of a certain character where only the principal or an instalment of principal is in default and all rent, taxes, interest, insurance premiums and other disbursements are paid, must do more than just give notice of his intention to proceed. In such cases he must apply for and obtain leave of a judge and it is important to note that in the counties of York and Carleton a "judge" is defined as meaning the Master, whereas in all the other counties of Ontario, it means the Local Judge of the Supreme Court.

Under Part 2 of the Act which deals with arrears of interest, taxes and other disbursements the onus is shifted and instead of the mortgagee or vendor having to apply for leave to commence proceedings the onus is on the mortgagor or purchaser to apply for relief. If he desires to do so he must satisfy certain requirements, firstly, as to the date of the mortgage or agreement, and secondly as to residence.

The mortgage or agreement for sale in question must have been made prior to March 4th, 1932.

However an application is also allowed where a renewal agreement has been entered into after that date which provides for a higher rate of interest or is for a period of less than three years. These restrictions as to dates, we might add, apply equally to Part 1 of the Act.

In order to comply with residential requirements the mortgagor or purchaser must reside on the premises covered by the mortgage or agreement and the premises must be of a certain specified character.

If the mortgagor or purchaser does not make an application with-

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CRIMINAL LAW IN THE SOVIET UNION

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are specially dangerous.

Officials, because of the large number of state and public institutions and enterprises in Soviet Russia, figure prominently in the life of the people, especially the economic development of the country. To regulate their conduct the Code provides for a series of offences known as "crimes committed by officials in their official capacity."

Any official (i.e. any person occupying a permanent or temporary post in any state institution or enterprise, or in any organization or association entrusted by law with definite duties, rights or powers for the execution of any economic, administrative, trade-union or other public task who is found guilty of abusing his official authority or exceeding his official authority, or failing to use his authority when he ought to have used it, or who has taken a negligent attitude towards his official duties, or who has brought discredit on official authority is criminally liable for his act or omission.

"The passing by a judge of an unjust sentence, decision or order from mercenary or other personal motive entails—deprivation of liberty for a period not less than two years." "The illegal arrest of any person or the taking of any person illegally to a place of detention entails—deprivation of liberty for a period not exceeding one year." The acceptance or giving of a bribe, provocation or bribery is criminally punishable.

"Any extraction of evidence under compulsion, by the application of illegal measures by a person conducting an inquiry, or the confinement of any person under guard as a preventive measure from personal or mercenary motives, entail deprivation of liberty for a period not exceeding five years."

The importance of regulated economic activity to the Soviet state gives rise to a group of offences entitled "economic crimes." "Maladministration by any person in control of any state or public institution or enterprise, or by his authorized representative, if due to a negligent or dishonest attitude towards the work entrusted to him, and if it results in waste or in irreparable damage to the property of the institution or enterprise entails — deprivation of liberty for a period not exceeding two years or forced labour for a period not exceeding two years." The delivery by any industrial or commercial enterprise, systematically or on a large scale of goods of bad quality or any failure to conform to compulsory standards is criminally punishable.

The relations between employer whether state, public or private, and labor, are also regulated by the code. Any infringement by an employer—whether a private person or a person in a similar capacity in a state or public institution or enterprise—of any law governing the use of labour, of any law on the protection of labor or on social insurance entails criminal penalties.

"Any infringement by an employer of any regulation regarding the protection of labour, safety devices, or industrial sanitation or hygiene which has been passed by a local authority," or any infringement by an employer of any collective agreement concluded with a trade union, or of any tariff agreement, or of any agreement reached by any conciliation board, if it is established in the course of judicial or conciliation proceedings that the infringement was due to bad faith results in criminal liability. "Any obstruction of the lawful activities of any factory or works committee, local committee or trade union, or of an authorized representative of any of them, entails deprivation of liberty or forced labour for a period not exceeding one year or a fine not exceeding 1,000 roubles."

So as to keep Chuch and State separate, certain activities of the Church are criminally restricted. The code, however, does provide "that any interference with the celebration of religious rites in so far as such rite does not disturb public order and is not accompanied

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THINGS TO COME

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term and next, such as inter-university debates, the parliament, and so on; but it will not feel justified in doing so, unless there will be large audiences to show that this expense is justified and appreciated.

In the last issue of *Obiter Dicta* I mentioned that the Debates Committee had written to some of the leading law schools in the United States to invite them to debate with us. We have carried on a great deal of correspondence and I am sure that we shall be debating with at least three of them, and possibly with five or six. Also, exchange debates will be held with Laval University along the same general scheme as those of last year.

To invite debating teams from these large and famous colleges would be most foolish if we did not expect to have the debates well supported by the members of the student body. It would not leave a very good impression in the minds of those men who represented the other schools; and such a fiasco as the turn-out for the Laval debate of last year must be avoided. The providing of light refreshments on these special occasions and an invitation to students to bring a friend with them is an attempt to provide a stimulus. Students seem most anxious to participate in debates, but do not seem to care whether they hear others debate or not. We are trying our best to find a solution to this problem. Won't you help us?

At the general meeting there was considerable discussion as to the feasibility of the students competing among themselves in various sports. In this connection, your executive wishes to announce that a ping pong table will definitely be placed in the old students' library on the third floor. Only one table and the necessary equipment for it are being purchased at this time; but if the game becomes popular, and if the equipment is treated properly, more tables will be installed. Also, your executive has applied to the officer commanding Military District No. Two for the use of the Armouries on one evening each week, and if we are successful in obtaining it, we shall try to arrange a baseball league.

In conclusion, may I urge your attendance at the Moot Court. Remember, it's free and I'm sure you will enjoy it. **"Hud" Stewart.**

SPEEDY JUSTICE BY ARBITRATION

(Continued from Page 3)

cial decision must be exercised, on which parties are heard and witnesses examined, it is clearly an arbitration.

The object of valuation is to prevent controversy, while arbitration is a reference for the judicial determination of a dispute or disputes which then exist or may arise between the parties.

A valuation thus contravenes two of the essentials for a reference to arbitration in that there is no dispute between the parties and there is no judicial function in the valuer.

Another circumstance in which the necessity for a dispute plays an important part is where debtor and creditor have an agreement to arbitrate and the amount outstanding between them is admitted. In such cases legal proceedings commenced by the creditor cannot be stayed on the debtor's submission that the matter should be arbitrated, while proceedings by the debtor under the arbitration agreement can be defeated by the creditor.

Proposition number two in our essentials of a reference to arbitration brings us to the question of what matters are a proper subject of arbitration proceedings under a submission or agreement to arbitrate. The general rule appears to be that parties may arbitrate any dispute where their civil rights are in question, unless public policy necessitates that the matter be settled by the Court of competent jurisdiction, or unless there is an express statutory ruling that such dispute shall not be subject to arbitration. The editors of Halsbury prefer to state the proper subjects for settlement by arbitration as being any dispute which the parties thereto might settle between themselves without recourse to a Court of Law. Thus the parties to a matrimonial cause might arbitrate the terms upon which they should separate, but not the validity or dissolution of the marital bond itself. Also, a submission to arbitrate on an ultra vires contract of a corporation is unenforceable as is an award arising therefrom, though this particular point is of little effect in Ontario, since the Bonanza Creek Gold Mining Company case has practically destroyed the doctrine of ultra vires as applied to Ontario incorporated companies. Since gaming contracts are contrary to public policy, it follows that a submission of such a contract to arbitration could be defeated on the same grounds. Two more obvious truisims along the same line are that an award causing a party to do an illegal act cannot stand, and that a submission under which the arbitrator must order the party losing the reference to perform an illegal act is also unenforceable.

The point of public policy upon which most unenforceable submissions are so declared is that they oust the jurisdiction of the competent Court.

There are, however, two types of clauses which get around this difficulty for all practical purposes and yet have not been held contrary to public policy. The first of these is a clause which makes an award at arbitration a condition precedent to the bringing of an action over any dispute which may arise. The Courts have held the parties competent to agree to conditions precedent to a cause of action arising. Since the Court has no jurisiction until a cause of action arises, and since no cause of action arises until an award has been made, the Court has no jurisdiction until after the award, and the clauses providing for a reference to arbitration and making an award in such reference a condition precedent to an action do not oust the jurisdiction of the Court. The second type of clause by which the bogey of ouster of jurisdiction may be defeated is that upheld in case of Atlantic Shipping Co. vs Dreyfus. In this case a charter-party contained a clause agreeing to arbitrate differences arising thereunder and also provided that any claim must be made and the claimant's arbitrator appointed within a limited time or else the claim should be deemed to be waived and wholly debarred. This clause was held to be a condition precedent to a cause of action arising and so was not an ouster of the jurisdiction of the Court. The fact that a time limit was set for the performance of the condition did not affect the competence of the parties to incorporate such condition into their agreement.

The third proposition essential to a reference to arbitration, namely that it must be a reference for a judicial decision, is sufficiently dealt with in the distinction between references to arbitration and for valuation. With regard to the fourth proposition, that the reference must be heard by a body other than a Court of competent jurisdiction, it is sufficient to say that, since arbitration has historically been an alternative to litigation, this is an axiomatic statement which needs no enlargement or explanation.

Having discovered more or less approximately what a reference to arbitration is, how one may arise, and the proper questions to be decided by it, the next group of problems to be examined with regard to references by consent out of Court are, what parties are competent to refer their disputes to arbitration, who may act as arbitrators, and the powers, duties, and liabilities of arbitrators.

Since an arbitration agreement is a contract the general law of contracts is applicable. Any person competent to contract is competent to submit disputes to arbitration and conversely, anyone who has not the capacity to contract is not competent to make a submission. Thus a married woman may make a submission which, with any award arising therefrom is binding upon her separate property.

A bankrupt may apparently make a submission just as he may make any other kind of agreement, according to the case re Milnes and Robertson.

A different opinion is expressed by Hogg who states that a submission made as a term of a contract may only be enforced by or against the trustee in bankruptcy when he has accepted that contract, and, in the case of a submission being a separate contract in itself, only where the Court exercising bankruptcy jurisdiction orders the reference.

In the case of submissions by infants, there is considerable confusion as to whether the submission is void or voidable, and also whether, if voidable only, it must be affirmed within a reasonable time after majority to be enforceable, or disaffirmed within a like time to be avoided. Halsbury expresses the opinion no submission could be enforced upon the infant during infancy, and that a submission made during infancy is voidable on reaching majority.

Where a submission is made by an agent, the rules of general agency law are applicable to bind both principal and agent, or either of them according to the facts and circumstances of each particular case. Where one partner seeks to bind the partnership by an agreement to arbitrate his ability so to do depends upon whether references to arbitration are usual to the carrying on of the partnership business, or, if they are not, whether the other partners had authorized or ratified the agreement.

A corporation being a person in the eyes of the law may bind itself by an agreement to arbitrate in the same fashion as it may bind itself by any other contract.

The general rule with regard to

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PUBLIC OPINION DEEPLY STIRRED

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win over the star witness of the other side. "Public opinion is aroused, and the Crown will spare no expense of the people's money, nor any effort upon the part of my assistants, to win this case."

As for aspiration upon any higher office, Mr. Jessup said that he would profit by Thomas Dewey's recent experence and content himself with the position of Crown Prosecutor.

The picture painted by Malcolm Robb showed the accused up in a far different light. Said the illustrious defence lawyer, "This poor man Donnelly has been in jail months awaiting trial for a crime he did not commit. The evidence is such that a reasonable man wouldn't 'shoo a cat out of the room on.' I am confident once this case is placed before the judgment of twelve citizens of this country, Daniel Donnelly will be freed and will again be able to hold his head high among his fellow citizens."

Mr. Robb felt that the cross-examination of Bloomfield, the janitor, "who is as scurrilous a crook as I have ever come across in my many years as a criminal lawyer," would constitute the high point in the trial. "I have devoted night and day to this case, and I shall not rest until the accused man has his liberty." Mr. Robb, even after coaxing upon the part of this reporter would not go so far, however, as to promise that he would become a hermit if he lost the case.

Don Treadgold was of the opinion that the Crown's case was very ably stated by his senior Mr. Jessup. "The murder," said Mr. Treadgold, "was obviously premeditated and cold-blooded. It is a symbol of what can happen in some of our more rapid political societies." Turning to the practical value of the trial, D.T. believed that it would afford many Osgoodites their first opportunity of seeing a criminal trial from beginning to end.

Modest George Fallis when approached last week by the press for a statement about the big trial, said that he would forward an extemporaneous one the next day, after he had some time to think the whole matter over carefully. To date we have received no such statement, but we have seen George carrying about some very large books such as "Famous Sayings of Famous Men," "Quotable Quotes from the Classics," "Words of Wisdom from 1398 to 1938," and "The Interviewees' Guide, Handbook and Almanac, with a Special Foreword by Douglas Corrigan." We don't know whether he is storing up all this knowledge for his extemporaneous press statement or for the big trial itself. In either event our friend will bear some watching Wednesday night.

CRIMINAL LAW IN THE SOVIET UNION

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by any attempt to encroach on the rights of any citizens, entails—forced labour for a period not exceeding six months."

Roughly speaking, the Soviet criminal code makes provision for the protection of the life, liberty, person and property in much the same way as the Canadian criminal code. Where the Soviet code differs appreciably from our own, is in the penalty to be applied to the offender—the offences against the state are considered much more serious and harmful than those against the individual. Thus, to cite an extreme case, if the offence involves the theft of goods in transit or rail, or collective and co-operative property (treated as state property) the offender may be liable to death by shooting. If it involves the stealing of the property of another person, the maximum penalty is deprivation of liberty for a period not exceeding one year.

Whereas, under Canadian criminal law, the penalty for murder is death, under Russian criminal law, the maximum measure of social defence is ten years; for manslaughter, under our law the offender may be sentenced to life imprisonment, under Soviet law, the sentence may not exceed five years' deprivation of liberty.

Up to June 27, 1936, abortion with the consent of the woman was

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SPEEDY JUSTICE BY ARBITRATION

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who may be appointed arbitrators is that any person is elligible, without reference to any special qualifications he may or may not have to adjudicate the cause being referred. A person who is known to be prejudiced or interested should not, however, be appointed. Where no procedure for the appointment of an arbitrator or arbitrators is set out in the agreement to arbitrate, the statutes governing references out of Court applicable in the particular jurisdiction should be followed. If a procedure is set up in the agreement, it should be the one used, as the statutes in this regard are merely to fill in possible omissions in the agreement between the parties.

Once appointed, the arbitrator, or board of arbitrators, as the case may be, is empowered to make an award on the dispute or disputes referred to them. The acts governing references out of Court in various jurisdictions set out certain ancillary powers which may be broadened or limited by the agreement to arbitrate. If any powers are set out in the submission, those are what must govern the conduct of the arbitrators. Any act done by them outside such powers is of no force or effect, and may be a ground for setting aside their award. The usual powers granted by statute to be used where none are expressed in the agreement are:

1. To examine the parties and witnesses under oath.
2. To enlarge the time for making the award.
3. To make orders regarding payment of costs and security therefor.
4. To make the award in whole or in part in the form of a stated case for the opinion of the Court.
5. To correct clerical errors and mistakes made by slip or omission in the award.

It is also worthy of note that all formalities required by the agreement to arbitrate must be strictly followed or the award may be set aside. The arbitrators have only got power to settle the disputes actually referred to them. When the agreement states that they shall have power to arbitrate all disputes between the parties, this means all disputes which had arisen at the date of their appointment. It is important to note that an arbitrator may not delegate his powers to anyone, even a fellow arbitrator on the same board. The decision of an arbitrator must be personal and not arrived at by collaboration with anyone, though he may obtain legal assistance in the actual framing of the award. While discussing statutory provisions to be used where the agreement fails to give the necessary information, it may be worthy of note that where no provisions are made for arbitrators' fees by the parties in their agreement, such fees are limited by schedules included in the statutes applicable in the particular jurisdiction.

No claim against an arbitrator personally based on negligence or want of proper care in conducting the award can be successful, and while there is dicta to support the view that he would be liable for a claim based on fraud or corruption, no such claim has been successfully prosecuted. However, where an award has been set aside or an arbitrator removed for misconduct, any fees paid over to him may be recovered. This seems to be based on a total failure of consideration in the contract between an arbitrator and the parties to the reference.

As regards the actual hearing, it is customary for the arbitrators to consult the parties and meet at their convenience, though they may set such reasonable and proper times and places as they see fit. So far as is practicable and proper, the rules of procedure applicable in a Court of Law should be applied to the hearing, though it is not fatal to the proceeding if such rules are deviated from, so long as the arbitrators do not disregard their basic function of seeing substantial justice done. As to the evidence receivable and the mode of its receipt, all evidence should be taken under oath unless the agreement to arbitrate expresses a contrary intention and evidence which would be obviously inadmissible in a Court of Law should not be received when it goes to the very root of the question or questions in dispute. Any objection to be taken to evidence received by the arbitrators must be taken with promptitude or it will be deemed to have been waived.

To compel witnesses to appear before the arbitrators, the parties may issue subpoenas ad testificandum or duces tecum as a matter of course. To compel a witness who is in prison or outside the jurisdiction, a judge must order the issue of the proper writ. The evidence of the witnesses is received by means of examination, cross-examination, and re-examination as in any Court, and it may be worthy of note that any material false statement, made either knowingly or without belief in its truth, is perjury, punishable criminally as such. The arbitrators have the power to compel production of all relevant books, letters, documents and writings in the possession of any party, and to accept evidence taken by commission out of the jurisdiction, though the issue of such commission must have been authorized by a Judge of the Court of competent jurisdiction.

Since our interest in arbitration is as a means of speedy justice, the formal and legal requisites of the award need not be dealt with. The enforcement of the award does, however, have a great deal of effect on the value of arbitration in this regard. We have already dealt sufficiently with enforcement by an action on the award and by an attachment order, since these methods are, for all practical purposes, obsolete. The method in use now is to make application before a Judge of the competent Court, or the Master thereof, for an order giving the award the force and effect of a judgment of that Court. This is a summary jurisdiction of the Court, and the only objections to the award which can be raised by the losing party on such an application are as to matters apparent on the face of such award.

DEBTOR'S RELIEF LEGISLATION

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in the time prescribed by the Act, then the mortgagee or vendor is entitled to proceed to realize his security. Indeed, he may commence such proceedings at any time, though these proceedings may subsequently be stayed if the mortgagor or purchaser makes an application for relief.

The Act also gives the mortgagee or vendor an alternative method for starting his proceedings. He may serve a special notice which in effect notifies the mortgagor or purchaser of the fact that he intends to proceed to enforce his security if no application is made within ten days thereafter. Upon the making of a proper application all proceedings are stayed until the application is disposed of.

Apparently there is a certain current of opinion that the protection which Part 2 of the Act was designed to give is no longer necessary for a Bill was introduced at the last Session of the Legislative Assembly of Ontario which provided that Part 2 should only be continued in force until October 31st., 1938, although any order made prior to that date might continue in force for the full period prescribed, and might, subject to the provisions of the Act, be extended once for a further period of six months. However after due consideration the Legislature decided to extend the operation of the existing Act for another year.

The most important provision of a general character in the Ontario Act is that which forbids a sheriff to take any action under the Executions Act against the lands of a mortgagor or purchaser under a mortgage or agreement which comes within the provisions of the Act, except by leave of a judge and it has been held that the sheriff must himself decide whether or not the Act applies in any particular case.

The governing Act in British Columbia differs from that in Ontario by establishing uniform procedure for both principal and interest. It prohibits the taking of certain proceedings without the leave of a judge, and contemplates a preliminary inquiry by the Registrar of the Court to which an application for leave is to be taken, for the purpose of ascertaining all the facts surrounding the intended proceedings and making a report thereon. The inquiry is followed by an application to a judge in Chambers who considers the report and decides whether he will grant or refuse leave to proceed, or, postpone the exercise of any right or remedy, in order to assist a debtor to make payment. It should be noted that the Act does not apply to money which is payable in respect of insurance premiums or to taxes which are in arrears for one year or more. Furthermore it is only instruments made or created before April 12th, 1932, which fall within the purview of the Act.

The British Columbia Act also differs from the Ontario Act in one other respect. Whereas the latter applies to all proceedings taken in an Ontario Court regardless of whether the lands are situate outside Ontario, or, whether the agreement or mortgage was made outside Ontario, the former expressly states that it shall not apply to any instrument affecting land which is situate outside British Columbia. In passing it should also be mentioned that where an order nisi for foreclosure has been obtained in British Columbia the person who is entitled to redeem may at any time before the final order is obtained apply to the Court having jurisdiction in the cause, and it in turn may grant an extension of the period of redemption.

To attempt to evaluate the role which provincial legislation has played in alleviating the burden of private debt is not an easy task. Constitutional barriers have decreed that at best such legislation is only "palliative rather than remedial."

Though privately arranged adjustments have probably been more numerous and more important than those which have been effected through the efforts of the various Debt Adjustment Boards, yet it is generally recognized that much excellent work has been done under the various Acts, and until general conditions take a decided turn for the bettter, or some other legislation is passed to take their place there is little likelihood of their disappearance.

CRIMINAL LAW IN THE SOVIET UNION

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permitted by law if the operation was performed by a qualified medical person under hygienic conditions. Since the Decree of June 27, 1936, the situation has been reversed. Abortions are prohibited by law except in cases where pregnancy constitutes a danger to the life or threatens serious illness which may be inherited by the child.

Bodily injuries and acts dangerous to the person, sexual acts similar to our own, robbery, misappropriation, forgery, extortion, theft, wilful destruction of, or damage to property belonging to a private person, written or oral insults, defamation of character, usury, larceny by trick, etc., are all expressly forbidden by the Russian penal code.

To safeguard the public interest, persons who practice medicine must possess a diploma of medical education, the preparation; possession or sale of any poisonous substances by any unauthorized person is forbidden by law. For the sake of the social good, bigamy or polygamy, primitive blood revenge, payments for a bride, made by a bridegroom or his parents, marriage with a person who has not atained the marriageable age of 18 and other survivals of the tribal manner of life, are also forbidden by law. Included in the code are a group of offences known as "military crimes," i.e., military acts that are considered socially dangerous to the state.

Article 16 of the code places wide discretionary powers in the hands of the court, provided that, "where a socially dangerous act has not been expressly dealt with in the present code, the basis and limits of responsiblity in respect thereof shall be determined in conformity with those articles of the code which deal with the crimes most clearly resembling it."