CHAPTER XXVII.—JUDICIAL AND PENITENTIARY STATISTICS.*

Canadian Criminal Law and Procedure.—The system under which justice is administered in a State is never rigid. This is neither expedient nor indeed possible. The judicial system must grow and adapt itself to the requirements of the people, and the exact limits of the powers of the Dominion and provincial legislative bodies have required and will still require added definition by the courts.

The exclusive legislative authority of the Parliament of Canada extends to criminal law throughout the Dominion. This law is based on the common law of England, built up through the ages and consisting first of customs and usages and later of principles enunciated by generations of judges and introduced into Canada, as regards criminal law, by Royal Proclamation, 1763.

The judicial systems of the provinces as they exist to-day are based upon the British North America Act of 1867. Section 91 provides that "the exclusive legislative authority of the Parliament of Canada extends to...the criminal law, except the constitution of courts of criminal jurisdiction, but including the procedure in criminal matters". In each province (Sec. 92, ss. 14), the Legislature may exclusively make laws in relation to "the administration of justice in the province, including the constitution, maintenance and organization of provincial courts, both of civil and of criminal jurisdiction and including procedure in civil matters in those courts". The Parliament of Canada, may, however, (Sec. 101) establish any additional courts for the better administration of the laws of Canada.

It is frequently difficult to distinguish between "Law" and "Procedure". Procedure may be interpreted to relate simply to the organic working of the courts, but in a wider sense it may also affect the rights or alter the legal relations arising out of any given set of facts.

The mass of statutes resulting from the fact that, prior to Confederation, each province had its own criminal jurisprudence, caused great and increasing inconvenience. This led to the adoption of various consolidation Acts, the chief of which are the Criminal Law and Amendment Acts of 1869 and the Criminal Procedure Act of 1886. These Acts dealt exhaustively with procedure in respect of indictable and non-indictable offences, jurisdiction of justices of the peace, juvenile offenders, speedy trials, criminal law, schedules and forms, etc.

In the meantime various efforts had been made in England for the reduction of the criminal law of that country into the form of a code, culminating in a draft code, submitted to the Imperial House of Commons in 1880. The question then arose as to the desirability of codifying the Canadian law. Objections were raised that codification would arrest the development of the law and its gradual adaptation to the habits and wants of the community, and would substitute a fixed, inelastic system for one which possessed the power of adjustment to circumstances. But the advantages of a codification of the law of crimes were finally so manifest that

*Revised by H. M. Boyd, Acting Chief Statistician on Criminal Statistics, Dominion Bureau of Statistics. The fifty-eighth Annual Report of Statistics of Criminal and Other Offences, for the year ended Sept. 30, 1933, is obtainable on application, from the Dominion Bureau of Statistics.