

Mr. JAENICKE: That is all they have to find.

Mr. ILSLEY: That is what I say, and that is plenty.

Mr. JAENICKE: I would suggest, as I did before, that there should be evidence of his mental attitude toward our accepted standards of morality.

Mr. ILSLEY: Too indefinite; too vague.

Mr. DIEFENBAKER: I want to refer to subsection 4 of section 575C. We are setting up machinery to punish—

Mr. ILSLEY: Would my hon. friend just defer his remarks for a moment, until I clean up these other questions?

Mr. DIEFENBAKER: I thought the minister was going to answer all the questions at once.

Mr. ILSLEY: Perhaps that is what I should do, but I will try to answer them as we go along. The hon. member for Spadina raised the point that this prejudices the fair trial of the accused, because the indictment will have on its face the charge that the offender is a habitual criminal in addition to the charge concerning the offence for which he is being tried. I was not aware of the practice to which the hon. gentleman refers; that is, of handing the jury the indictment. I should have thought the accused would be arraigned on the offence for which he was being tried and, after that matter was settled, without any knowledge on the part of the jury of the other charge, that then and only then would he be charged with the other charge, and it would be dealt with. This is the language used in the English statute. I will read it, so that there will be no doubt. This is the prevention of crime act, 1908, and section 10(3) is in these words:

In any indictment under this section it shall be sufficient, after charging the crime, to state that the offender is a habitual criminal.

(4) In the proceedings on the indictment the offender shall in the first instance be arraigned on so much only of the indictment as charges the crime, and if on arraignment he pleads guilty or is found guilty by the jury, the jury shall, unless he pleads guilty to being a habitual criminal, be charged to inquire whether he is a habitual criminal, and in that case it shall not be necessary to swear the jury again:

I think we have followed that language here.

Mr. CROLL: But I think the deputy minister will tell the minister that the procedure followed in this province is that the indictment must go with the jury into the jury room. That is the common practice, so that it be-

comes a serious matter. You might let the section stand to look it up and see what may be the answer.

Mr. DIEFENBAKER: As a matter of fact, if the indictment were handed to the jury with the record of three convictions on it and the accused had not testified, the conviction would be quashed because evidence of bad character would have been before the jury, which would be fatal.

Mr. CROLL: But that is what this provides.

Mr. DIEFENBAKER: I do not say I disagree with my hon. friend, but I do not think any judge would allow an indictment to go to the jury upon which appeared the record of previous convictions.

Mr. LESAGE: No crown prosecutor would do it, anyway.

Mr. DIEFENBAKER: It is only a matter of procedure in any event, and I submit that it would be a simple matter of directing the attention of the courts to the fact that such a course should not be followed; and it is not being ratified by the passing of this bill in its present form because it is only a matter of procedure. Today there are cases where the penalty is larger because of a previous conviction. In certain types of obtaining under false pretences the penalty provided is larger on a second offence. So this is what is done. That is inserted in the indictment and not read at the time of the arraignment of the prisoner. Then, when the jury retires, invariably the judge directs the attention of the crown prosecutor to the fact that the indictment contains the record of a previous conviction, and that portion of the indictment is deleted and the indictment, with only the charge in it, is handed to the jury.

Mr. ILSLEY: I am pleased to have that information. Another hon. member has brought to my attention the provisions of section 851 of our criminal code. It is a long section, but perhaps I had better read it, because it is a precedent for this type of section:

In any indictment for an indictable offence, committed after a previous conviction or convictions for any indictable offence or offences, or for any offence or offences, for which a greater punishment may be inflicted by reason of such previous conviction, it shall be sufficient, after charging the subsequent offence, to state that the offender was at a certain time and place, or at certain times and places, convicted of an indictable offence or offences, or of an offence or offences, as the case may be, and to state the substance and effect only, omitting the formal part of the indictment and conviction, or of the summary conviction, as the case may be, for the previous offence or offences, without otherwise describing the previous offence or offences.