

that the jury's attitude is one of disregarding the cogent parts of the crown's case; is he going to consent? Take the other side. When the defence has seen the attitude of the jury and the attitude has been one not indicating the interest in his case which the defence counsel would like to have seen, will the defence consent in writing if he sees that the jury is against him? Either way I think this section will be just one more section in the code that will not work. If we are not going to make it work I suggest that we delete the requirement that both crown and defence shall consent.

Mr. ILSLEY: I do not think highly of the plan that my hon. friend suggested of having supernumeraries because these extra jurors would be sitting there, devoting some attention to the case; but the chances are a hundred to one, perhaps one thousand to one, that they would not be called upon, and so they would not assume the responsibility they should. I think that proposal should not be favourably considered. The amendment before us is based on the rule that an accused is entitled to be tried by twelve of his peers unless he waives that right. In Alberta the number is, of course, only six. I am told that the section is similar to one in Great Britain and to one in Australia. I am sorry I cannot give any information as to the extent to which this section has been used in those countries. But the fear that my hon. friend has that it will not work because either counsel for the crown or counsel for the accused or both will have some idea of how the jury feels about the case is somewhat surprising. I never knew, or seldom knew, what a jury would do about a case until it did it. I doubt whether most counsel do. I should think that perhaps this will work all right and that we had better give it a try anyway before we take away the many centuries old historic right of man to be tried by twelve of his peers.

Mr. DIEFENBAKER: If what my hon. friend says is correct, that the accused is entitled to a trial by twelve jurors—and by the way, we changed that a few years ago—

Mr. ILSLEY: In Alberta.

Mr. DIEFENBAKER: —we still have six in Alberta; we had six in Saskatchewan—why the necessity of consent on the part of the crown? If it is looking after the interests of the accused and assuring him of a trial by twelve good men and true, why should it be necessary to have the consent of the crown before the lesser jury, or a jury of the remaining members, if illness has struck down one or

two? Why the necessity of consent by the crown? What year was an amendment similar to this adopted in Great Britain?

Mr. ILSLEY: I do not know.

Mr. DIEFENBAKER: I am quite interested in that, because I could not find that among the criminal law amendments in Great Britain. I should like to know the year that it was passed.

Mr. ILSLEY: I shall have to try to get that information. I do not know the year myself. I do not know exactly how to answer the first question except, I suppose, that the crown is entitled to have the case tried by twelve, as well as the accused. The system is the judgment of twelve jurors. I do not know that it would be altogether fitting just to make that concession to the accused without giving the same right to the crown. At any rate, that is the kind of legislation they have on it elsewhere.

Mr. DIEFENBAKER: What year was it passed in Great Britain?

Mr. ILSLEY: I shall try to get the information before we cover the remaining sections.

Mr. DIEFENBAKER: A person cannot keep up with this issue. The minister stands firmly that he is going to insist on the amendment to section 40 as it appears in the bill.

Mr. ILSLEY: Yes. I would not feel like changing it.

Mr. DIEFENBAKER: The section stands until we ascertain the year in which Great Britain passed a similar amendment.

Mr. ILSLEY: Yes.

Section stands.

Sections 41, 42 and 43 agreed to.

On section 44—Criminal sexual psychopaths.

Mr. DIEFENBAKER: This is the section dealing with sexual psychopaths. I should like to ask the minister a number of questions in connection with this matter. Why is it that, before any evidence may be submitted to the court that the accused is a sexual psychopath, the consent of the attorney general of the province to such procedure is required? I can see no reason why that consent need be given. This is an endeavour by the Department of Justice to meet a class of offence which is becoming very general. Various suggestions have been made on how to meet it. One is by lengthy imprisonment, which does not reform, and on discharge the offence is re-committed. The other is by psychopathic treatment during incarceration, resulting in a change in the