

was concerned the law could not be made too severe in dealing with cases of people putting themselves in possession of death-dealing weapons and going out to commit a robbery in the course of which, for whatever reason, an innocent victim is killed as a result of the use of one of these weapons. That should be the law; under those circumstances the killing is murder, and the defence should not be entitled to raise the question of intent. In other words, they should not be able to plead that there was no intent to kill the deceased, but that in the excitement of trying to get away, or because of resistance offered by the victim, a gun was in some fashion discharged. I say that a person who engages in the business of defying the law should not be able to submit to a jury, through the medium of the judge, the question of his motive and his intent when he went out to do that job. The purpose of this amendment is to ensure that the question of intent—by which I mean intent to inflict grievous bodily harm—is not raised by an accused person under the circumstances I have described. I am emphatically in favour of the amendment.

Hon. Mr. DAVIES: May I ask the honourable senator what meaning is attached to "the flight of the offender"—that is as regards the length of it. How long is a "flight"? Is it assumed to be a block, two blocks, or a mile?

Hon. Mr. HAYDEN: If a man is carrying a revolver in escaping from the scene of a hold-up, and is chased by the victim, who is shot, the flight referred to would be in the course of escape from possible capture.

Hon. Mr. DAVIES: But is not the expression rather ambiguous? A man might be captured a mile away. All sorts of things might have happened in the meantime.

Hon. Mr. HAYDEN: But death has resulted. He shot a person.

Hon. Mr. DAVIES: But he is flying from the scene of the shooting, and the paragraph provides that if during the flight he is found with a weapon, he is guilty.

Hon. Mr. HAYDEN: No, no. There are two conditions: first, that he uses or has on his person a weapon, at a time when he is committing or attempting to commit one of these offences, or at the time of the flight from the commission or the attempted commission; and second, that in the course of the commission of the offence or of the attempt to commit it, or in the effort to escape from the consequence of it, death resulted to some

person from the use of that weapon. It does not matter where that death resulted. If the man shoots a police officer, of course it is held to be murder; but here the application of this principle is, I take it, to the case of the victim, who is at the scene of the hold-up; there is some scuffle, and the criminal's concern then becomes that of getting away, rather than of going through with the commission of the offence.

Hon. Mr. DAVIES: That is, while the man is being chased by an officer of the law or somebody else?

Hon. Mr. HAYDEN: No, If during the period that he is being chased by an officer of the law he shoots the officer, there can be no question but that the act is murder.

Hon. Mr. DAVIES: Yes, but he might be flying from the scene of the incident ten, fifteen or twenty minutes afterwards. It is possible, though not probable, that he might not have had a revolver when the incident occurred, it might have been in somebody else's pocket—but that when they caught up to him ten or fifteen blocks away the revolver had somehow found its way into his pocket.

Hon. Mr. HAYDEN: No. The wording is:

—if he uses or has upon his person any weapon during or at the time of the commission or attempted commission by him of any of the offences in this section mentioned or the flight of the offender upon the commission . . .

That is to say, an offence has been committed or attempted to be committed by one or more persons, and then there is an escape, and they all rush in various directions. As the result of the use of a gun, which the evidence establishes was in the possession of one of these persons at the time the hold-up was staged, the victim is dead. In these circumstances they are all guilty of murder. This provision, if it becomes law, is intended to plug a loophole, so that hereafter an accused person in such circumstances as have been described cannot insist that the jury be instructed that he did not intend to inflict any injury.

Hon. Mr. DAVIES: I predict that a great many arguments will arise in law courts over the definition of a flight.

Hon. Mr. ROEBUCK: There is a distinction between a flight and a hot flight, but no such distinction is shown in this bill. A flight might extend over a period of several years.