Mr. STIRLING: Has the minister explained to the committee his reasons for proposing this considerable stiffening which is contained in the amendment?

Mr. ILSLEY: Oh, yes; I have been explaining it. My reason for proposing the amendment is that the means of knowledge is in the executor, not in the crown; that the mere fact of the executor filing a statement leaving out certain property does not give ground for the inference that he did so knowingly, and therefore if he is only punishable for doing so knowingly the crown must not only prove that he left it out but must prove a further fact which is very difficult to establish. It must prove some conversation, or some inspection.

Mr. STIRLING: It must prove that he did know?

Mr. ILSLEY: Yes, prove that somebody told him about it or that he saw it. He might have seen it late at night; he might have been told about it secretly, and the crown never would be able to prove that knowledge.

Mr. SLAGHT: Why should he be held liable if it cannot be established that it did come to his attention?

Mr. ILSLEY: He is the person who can do the showing. There should be the inference that if the property is left out, that would be prima facie evidence that it was left out knowingly. Then there is provision under which if it is shown that it was not known, penalty is escaped. With this stiff penalty in the statute there would be a disposition in the courts to be very fair to executors. I should think an executor's statement under oath that he did not know about it would in every case be sufficient, because executors as a class are of high integrity. I should think there would be no prosecutions except in cases where the department was completely satisfied that an executor was guilty of some rascality, that a return had been filed in which there were omissions, and in connection with which property had afterward been found. If the executor says that he did not know about the property, that might be the end of it.

Mr. HANSON (York-Sunbury): The minister indicates by his statement that there is a difference between a successor and an executor. With that we all agree. The last point made by the hon. member for Parry Sound is sound, if I may say so, because they are in a different position. Why should an executor be subject to as high a penalty as a successor? I am trying to think of an estate where an executor might be, we will say, a stranger. In good faith he gets all the information he can get, but something may not be brought to his attention—possibly a gift made some years earlier. It may have been forgotten. When the matter is stirred up and comes to the knowledge of the crown, information is demanded from him under the next succeeding section. It may then develop that he knew about it. I can see the distinction between the successor and the executor, but I do not think the executor should be subject to as stiff a penalty as a successor.

Mr. ILSLEY: In the Ontario act apparently the executor and the successor are treated alike, and there is no provision requiring proof of knowledge. Further, there is no provision such as we are putting in our measure whereby he can escape. It may be that the courts themselves will say that if there is no *mens rea* there should be no penalty; I do not know. But apparently the draftsman of the Ontario act did not feel there was anything wrong about imposing a penalty for non-disclosure.

Mr. SLAGHT: Harsh provisions are found in many of the provinces.

Mr. HANSON (York-Sunbury): That is true.

Mr. ILSLEY: Certainly a harsh provision for non-disclosure by a successor is required, because he would know what property existed. And very often he does not intend to tell.

Mr. HANSON (York-Sunbury): I shall not discuss the matter at greater length. I will say, however, that if we keep on with this kind of legislation we are going to drive people to dishonesty—people who do not want to be dishonest, but who are not going to be robbed, as they say, by taxing authorities. They are going to hide and to secrete. Some people will do that; of course all will not. But it is the tendency in connection with this kind of legislation; it will make people dishonest.

Mr. MACDONALD (Halifax): Reputable executors would not do it.

Mr. HANSON (York-Sunbury): Trust companies will protect their own reputations, of course. But I deprecate this type of legislation, especially as it applies against the representatives of a testator. If a successor is a blood successor he has more knowledge, of course. But I am not going to defend his position. In any case the minister might consider the possibility of giving the court some leeway so that it need not exact the full penalty.

Mr. ILSLEY: The word "or" in line 31 should be "to." It is only a clerical error, and I would ask that the change be made.