

recommendation of the trial judge is accepted by the governor in council. Certainly I am not prepared to say that, in every case where a jury makes a recommendation for mercy, that recommendation is accepted by the governor in council.

Mr. DIEFENBAKER: That is, a recommendation for mercy.

Mr. ILSLEY: Yes.

Mr. DIEFENBAKER: I know of a case where it was not accepted.

Mr. ILSLEY: Sometimes where there is no recommendation from anyone, judge or jury, there are commutations.

Mr. SMITH (Calgary West): I wish to leave no doubt in anyone's mind, not only that I am in favour of capital punishment for murder, but that I am in favour of capital punishment by way of hanging. It is the greatest deterrent I know of, after some experience in criminal matters.

Then, I should like to ask a question about this definition of the crime of infanticide. What is the reason for it? The minister may have made a previous statement with respect to it. I gather from the section that it applies where there is some doubt about the sanity of the mother who does away with the child. Does it apply only to the mother? Might it not also apply to other relatives? I have in mind a case of infanticide of some years ago where two people were charged with murder. They lived in a district far removed from towns or cities. Apparently this child was conceived prior to wedlock; and these two people, because of fear, distress and talk of the neighbours, did away with the child. In other words, could it not be that the father of the child might be included, or does this apply to the mental derangement of the mother through suffering? Then, is there much of this type of crime? What is the reason for the section? Have we been allowing parents guilty of infanticide to go free? The minister will understand that there is some interference here with the law with regard to insanity, or the rules thereto.

Mr. ILSLEY: My information is that there are cases where the mother kills her newborn child, and that in the normal case of that kind it is useless to lay a charge of murder against the woman, because invariably juries will not bring in a verdict of guilty. They have sympathy with the mother because of the situation in which she has found herself. Therefore crown prosecutors, and those who lay charges, if they are to obtain convictions lay charges of concealment of birth; or a

charge that is equal to concealment of birth. Anyone who looks at the section will see that it is really not concealment of birth, but rather concealment of the body. However, this charge is known as concealment of birth. Sentences of a few months, or even shorter than that, are imposed. To a minor extent that brings the law into disrepute, because the offence is murder; that is, unless the woman is insane.

Many years ago in England the crime of infanticide was created by statute. It applies to cases where there is not the degree of mental derangement amounting to insanity.

Mr. SMITH (Calgary West): The minister has in mind Macnaughton's case.

Mr. ILSLEY: It does not go as far as the rule in Macnaughton's case. Those rules were laid down in 1842, or the early part of the nineteenth century.

Mr. SMITH (Calgary West): And never been changed.

Mr. ILSLEY: We have taken the wording of the English statute. Those words are found in section 7, and there are English cases on this section. Therefore we are not without precedent to guide judges and juries in determining the circumstances in which a charge of infanticide is proper. We have placed the penalty at three years. It is purely a matter of judgment; the time may be too short, or it may be too long. I am told, however, that even in cases where manslaughter has been charged and convictions obtained—and I should think obtained quite improperly, because I cannot think how a charge of that kind would have any of the elements of manslaughter—sentences have been rarely more than two years.

Therefore we have set three years as the maximum imprisonment for a conviction on a charge of infanticide. I believe it is correct to say that in that respect the law of Great Britain is different; their law places it on an equal footing with manslaughter. The information we obtained is that, under these particular circumstances where the child is newly born and where the mother has not fully recovered from the effects of giving birth to the child and by reason thereof the balance of her mind is disturbed—

Mr. SMITH (Calgary West): That is a big word.

Mr. ILSLEY: Yes. In view of that, the sentence is never more than a few months, or one or two years, and we think three years would be the proper term of imprisonment for infanticide.