

*Treachery Act*

curious option with regard to punishment for treason. The best legal advice that the committee could get on that point was this, that the judge has the option of imposing death as the penalty or of letting the accused go altogether; he has no discretion to do anything between those two extremes.

Mr. HANSON (York-Sunbury): That is an astonishing statement.

Mr. ILSLEY: It surprises my hon. friend? Well, it surprised every member of the committee with a possible exception of one, who, to his great credit, raised the point. The provisions of the section relating to treason are that the person who is convicted of treason shall be liable to suffer death. It is different from the provision relating to murder, where he must suffer death if he is convicted of murder. The provision of the code which gives the judge a discretion to reduce the penalty provided by the section does not extend, it would seem, to the section relating to treason; it extends only to the sections relating to imprisonment. If the penalty is life imprisonment, the judge imposing the sentence can make it anything less than life, but in the case of treason he apparently has an option, either to send the accused away with a warning or otherwise, or to sentence him to be hanged. That is not a satisfactory condition in so far as punishment is concerned. I do not think that this is the position in England, either. I believe that in England, treason, if established, must result in capital punishment.

These are some of the defects in the existing law both as regards proof and as regards punishment. The "mischief" sections are not appropriate to the conditions which may arise. They are not complete; they were not designed with a war or apprehended war or anything of the kind in view; they are what might be called peace-time criminal sections.

The Official Secrets Act, while dealing with spying, wrongful communication of information, unauthorized use of information, and other things of the character under consideration, is not complete for the purpose in mind. It does not authorize imprisonment for more than seven years, a maximum which the committee deemed inadequate in some circumstances. After due consideration we decided that there should be enacted in this country a provision such as the United Kingdom enacted with regard to certain serious offences. The offences I have in mind can be very shortly stated.

The offence which it is thought proper to punish with death is that if, with intent to

[Mr. Ilesley.]

help the enemy, any person does or attempts or conspires with any other person to do any act which is designed or likely to give assistance to the naval, military or air operations of the enemy, to impede like operations of his majesty's forces, or to endanger life, he shall be guilty of an indictable offence and shall on conviction suffer death. There is another provision of the act; it relates to somewhat less serious offences.

Mr. HANSON (York-Sunbury): Is not a new offence created by that provision?

Mr. ILSLEY: This other provision of the act is not found in the treachery act of the United Kingdom. It is found in the defence regulations of the United Kingdom.

Mr. HANSON (York-Sunbury): But it is a new offence in Canada.

Mr. ILSLEY: Yes. It may be included among certain existing offences or many acts which would be offences under this other provision to which I have referred. But in this form it is not in the law of Canada at the present time. In that sense it is new in this act. It is taken from the defence regulations of the United Kingdom. Defence regulation number '2A reads:

If, with intent to assist an enemy, any person does any act which is likely to assist an enemy or prejudice the public safety, the defence of the realm or the efficient prosecution of war, then, without prejudice to the law relating to treason, he shall be guilty of an offence against this regulation and shall, on conviction or indictment, be liable to penal servitude for life.

With the proper change in terminology necessary by reason of our practice here we have adopted that section exactly as it is. These are the two main sections of the Treachery Act. That is the substance of the act. It may be thought that the capital offence section is pretty severe. The committee fully considered the desirability of providing a discretionary power in the judge to make the punishment either death or life imprisonment, and after very full consideration it was their opinion that no discretionary power of that kind should be vested in the judge, although it is fair to say that the committee were not unanimous. One member and perhaps others felt that there should be that option on the part of the judge. It is fair, however, to add that these members do not feel too strongly on that point, knowing that it is a debatable matter. The large majority of the committee were of the opinion that, these offences being extremely serious—because they must be done with intent to help the enemy—once the intent and the act are proved, there should be no option but that the person convicted should suffer death.