

*Treaty of Peace (Japan) Act*

under indictment, and the term of imprisonment prescribed shall not exceed two months for summary conviction and two years for conviction under indictment. The nub of the matter is this, Mr. Chairman. In my submission, while previously the same power has been given to the governor in council to do certain things that become necessary in the light of these treaties, it is neither necessary nor desirable that the governor in council should be given the kind of powers that are proposed under section 4 of the bill, to enact what is in effect penal legislation and to prescribe penalties that directly relate to the liberty of the subject.

Precedents for legislation of this kind are frankly quite mixed, Mr. Chairman. If one looks at the previous statutes which have been passed by this parliament following the ratification of peace treaties, one finds that in all cases there is legislation similar to section 3 in the bill before us, and some precedents are in harmony with the scheme of legislation provided in section 4. For instance, in the *Treaties of Peace Act, 1919*, chapter 30 of the statutes of that year, it was provided that—

Any order in council made under this act may provide for the imposition by summary process or otherwise of penalties in respect of breaches of the provisions thereof—

Then there is a provision that it should be laid before parliament as soon as may be after it is made. Similarly, in the *Bulgarian Peace Treaty Act, 1920*, chapter 4 of the statutes of that year, we have a provision identical to that which I read from the act of 1919. In the *Hungary and Turkey Treaties of Peace Act, 1922*, chapter 49 of the statutes of that year, we have a similar provision. Then after the conclusion of world war II, this parliament in 1948 passed the *Treaties of Peace (Italy, Roumania, Hungary and Finland) Act, 1948*, chapter 71, and the provision was changed somewhat. Section 4 of that act provided as follows:

Subject to subsection two, the governor in council may prescribe a fine or term of imprisonment—

—and so on, being the language that we have in section 4 now before the committee.

Whatever may be said for these precedents, in my respectful submission there is a better course to follow, and that better course is the one followed recently by the parliament of the United Kingdom in passing a bill to deal with the same circumstances dealt with in the bill now before this house. It was a bill to provide for carrying into effect the treaty of peace with Japan and the protocol thereto. On examination it will be noticed that in this case the parliament of the United Kingdom did not vest in His Majesty in council the power to prescribe penalties for breach of

these orders in council. It established the penalties in the statute itself, but did reserve leave to His Majesty in council to reduce the penalty. Parliament did fix the penalty in the statute. This is the language used by the parliament of the United Kingdom in that regard:

Any order in council made under this section may provide that persons contravening or failing to comply with provisions of the order shall be guilty of offences against this section, and (except in so far as any such order may provide for less penalties), any person guilty of an offence against this section shall be liable on summary conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding three months or to both such imprisonment and such fine, or on conviction on indictment to a fine not exceeding five hundred pounds or to imprisonment for a term not exceeding two years or to both such imprisonment and such fine.

In the light of that better precedent it seems to me that the course the house ought to follow here is not to enact provisions in the terms of section 4, but to provide a penalty in the act that will operate as a maximum in all cases, that is with respect to conviction upon summary hearing and also conviction under indictment. We shall then be preserving the sound principle that parliament ought to do legislating of this kind, and parliament ought not to vest in the governor in council power to pass penal laws of this kind which directly affect the rights and liberties of the subject.

In the committee I offered an amendment to section 4 of the bill, Mr. Chairman, which would have adopted the better precedent to which I have referred in the recent enactment of the United Kingdom. I would ask the minister if he would agree to the amendment of section 4 so that it might read as follows, and this is the language of the amendment that I introduced in the committee:

Any order in council made under this act may provide that persons contravening or failing to comply with the provisions of the order shall be guilty of offences against this section and except in so far as any such order may provide for less penalties, any person guilty of an offence against this section shall be liable on summary conviction to a fine not exceeding \$100 or a term of imprisonment not exceeding two months or both, and on conviction under indictment to a fine not exceeding \$1,000 or a term of imprisonment not exceeding two years or both.

May I say, sir, that the amendment will not change the maximum which is named in the present bill, but let it not be thought that this is a simple matter of form. In my submission it is a matter of substance because it relates directly to the principle that in matters of this kind parliament can, as in the present case, do its own legislating and need not and should not hand over to the governor in council this power to establish penalties which include terms of imprisonment. It is not