

**Notable British Trials**

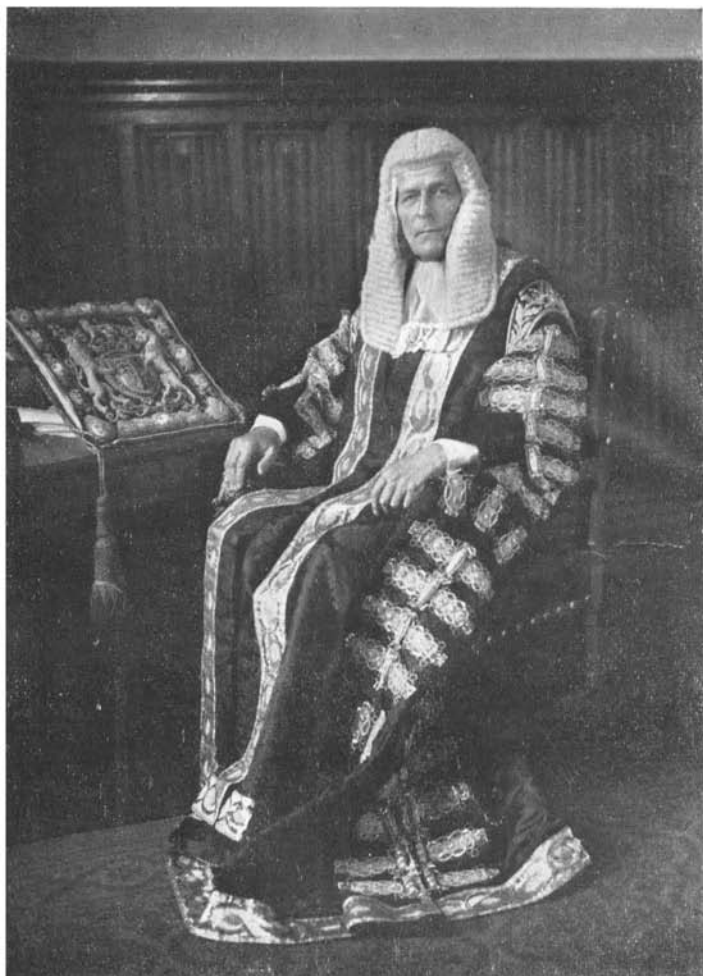
William Joyce

# Notable British Trials Series

General Editor—HARRY HODGE

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WILLIAM JOYCE	(1946)	J. W. Hall





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**The Lord Chancellor, Lord Jowitt of Stevenage**

TRIAL OF  
**WILLIAM JOYCE**

EDITED BY

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LONDON

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GLASGOW

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1946

**TO**  
**THE RIGHT HONOURABLE LORD JOWITT OF STEVENAGE**  
**LORD CHANCELLOR**  
**WHO PRESIDED AT THE HEARING OF THE APPEAL**  
**IN THE HOUSE OF LORDS**  
**THIS BOOK IS**  
**BY HIS KIND PERMISSION**  
**RESPECTFULLY DEDICATED**  
**BY**  
**THE EDITOR**

“ By and by comes W. Joyce, in his silke suit, and cloake lined with velvett : staid talking with me, and I very merry at it. He supped with me ; but a cunning, crafty fellow he is, and dangerous to displease, for his tongue spares nobody.”

—*Samuel Pepys : Diary, 14th August, 1664.*



## PREFACE.

THIS edition of the trial of William Joyce consists of a verbatim record of the trial at the Central Criminal Court, from the official shorthand notes, subject only to such editing as is inevitable to make a verbatim record readable, and to the condensation into narrative form of some of the less important evidence. I realize that more drastic editing would have improved the literary form, but unless the meaning was obscured, or the record clearly wrong, I have preferred to leave what was actually said in the stress of the trial than to substitute what counsel might have said if they had composed their speeches at leisure. A summary of the arguments (which followed substantially the same lines as in the Court of trial) with the full text of the judgments in the appeals to the Court of Criminal Appeal and to the House of Lords, are set out in Appendices III and IV. I have included in other Appendices some documents of collateral interest, such as the text of the Treason Act, 1945, some extracts from Joyce's broadcasts, and reports from different parts of the Empire and the United States as to the effect of his propaganda.

I desire to express my grateful thanks to Mr. G. O. Slade, K.C., and Messrs. Ludlow & Co., who kindly placed the whole of their papers at my disposal as soon as the case was finally disposed of; to Mr. G. R. Paling of the Director of Public Prosecutions Department for a copy of the official transcript; to the proprietors of *The Times* for permission to use the admirable reports which appeared in that newspaper of the two appeals; to Mr. Justice Tucker for reading through his summing-up of the trial; to the Attorney-General, Mr. G. O. Slade, K.C., and Mr. Gerald Howard for their assistance in checking the proofs of the trial and the two appeals; to Dr. Malcolm and his assistants of the Signet Library, Edinburgh, for their collaboration in verifying the legal

## PREFACE.

references throughout; to Mr. James H. Hodge who undertook the revision of the official text and the verification of references, and who is thus responsible for the apparently strange situation of a barrister in the Temple verifying his references in the Signet Library in Edinburgh; to Mr. E. Quentin Joyce for permission to reproduce the photograph of the accused, and for some details of his brother's career; and to Mr. Jonah Barrington, originator of the name "Lord Haw-Haw," for a very pleasant afternoon at his house in the country while he gave me all the information I asked for. And in particular I would place on record my appreciation of the trouble taken by the staffs of the High Commissioners of all the British Dominions, and by the United States Embassy to obtain reports from their respective countries as to the influence of Joyce's propaganda. I cannot but think it matter of regret that the Home Office in Great Britain, alone among all the numerous people to whom I wrote for information of one sort or another, should have flatly refused assistance, a letter to the Home Secretary receiving the uncompromising reply that the Secretary of State "regrets he is unable to give you any assistance." The regret was mutual, but even the example of the Dominions and our American Allies failed to move him when brought to his attention. This attitude was fortunately not shared by the Ministry of Information, or by the Director of Listening Research at the B.B.C. to whom they referred me, and to whom I am indebted for the information as to this country.

I am also indebted to the Director of Publicity of the B.B.C. for copies of some of Joyce's broadcasts; some other extracts of which I have availed myself were supplied for use at the trial.

J. W. H.

*London, 1946.*

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# WILLIAM JOYCE

## INTRODUCTION.

### I.

IN a sense this is written for posterity, for to his contemporaries in Great Britain William Joyce—better known by his nickname of “ Lord Haw-Haw ”—needs no introduction.

On 3rd September, 1939, Great Britain and France declared war on Germany. On 18th September, William Joyce, the holder of a British passport, and believed by the British authorities (and possibly by himself) to be a British subject, entered the German Broadcasting Service. Between 18th September, 1939, and 30th April, 1945, he broadcast regularly in English from German stations, especially Zeesen, Hamburg, and Bremen. There can hardly be anyone in Great Britain who had access to a wireless set during that period who did not at some time tune in, deliberately or by accident, to that irritating voice which proclaimed “ This is Jairmany calling,” and proceeded to prophesy—sometimes accurately—the unpleasant things that Hitler and his cronies had in store for us.

Joyce’s distinctive accent was a common topic of discussion. There were even those who insulted our senior University by alleging that it was an “ Oxford accent.” But this was an accent such as Balliol had never conceived, nor Magdalen heard; indeed, as an Oxonian, I am prepared to assert that if (which is not admitted) there be such a thing as an Oxford accent, that accent is not—thank Heaven—the accent of William Joyce, which may have been some sort of hybrid between a Yankee twang and an Irish brogue.

William Joyce, as was proved at the trial, was born on 24th April, 1906, at 1377 Herkimer Street, Brooklyn, New

## William Joyce.

York, the son of Michael Francis Joyce and his wife, Gertrude Emily Brooke, formerly of Shaw, Lancashire, whom he had married at All Saints Church, New York, on 2nd May, 1905. Michael Joyce was born in 1869 or 1870 (his age was given as thirty-six on William's birth certificate) at Ballinrobe, Mayo, Ireland. In 1888 he went to the United States; on 22nd July, 1892, he filed in the Court of Common Pleas of New Jersey a declaration of his intention to become a citizen of the United States of America "and to renounce forever all allegiance and fidelity to any and every foreign prince, potentate, state, and sovereignty whatever, and particularly to the Queen of the United Kingdom of Great Britain and Ireland, whose subject he has heretofore been." On 25th October, 1894, this declaration of intention was followed by a petition for naturalization, accompanied by a declaration on oath renouncing all foreign allegiance in the same terms as above, and Michael Joyce thereupon became a naturalized American citizen. It followed that when William was born in New York in April, 1906, he was a natural-born American. In 1909 the Joyce family returned to Ireland, and between that year and 1921 they lived at various addresses, first in County Mayo and later in Galway. In 1917 Mrs. Joyce visited England and was required to register as an alien at her native place, Shaw.

In December, 1921, William Joyce came to England, being then fifteen. His parents, with the rest of their family, followed in 1922, and settled in England; apparently, coming from Ireland, they were assumed to be British subjects, for there is, as far as I have seen, no record of any aliens registration at this time. It may be that this was the origin of the confusion as to nationality. Be that as it may, in that same year, 1922, William Joyce passed the London matriculation, and began to study science at the Battersea Polytechnic. In the following year he took up English language and literature, and history at Birkbeck College, where he studied for four years, and graduated in 1927. On 21st October, 1922, soon after his matriculation, Joyce formally applied



## Introduction.

for enrolment in the University of London O.T.C. In a preliminary letter, dated 9th August, 1922, he says, "It is my intention, if possible, to study with a view to being nominated by the University for a commission in the Regular Army. I have served with the irregular forces of the Crown, in an intelligence capacity, against the Irish guerrillas. . . . I have a knowledge of the rudiments of Musketry, Bayonet Fighting, and Squad Drill. I must now mention a point which I hope will not give rise to difficulties. I was born in America, but of British parents. I left America when two years of age, have not returned since, and do not propose to return. I was informed, at the Brigade Headquarters of the district in which I was stationed in Ireland, that I possess the same rights and privileges as I would if of natural British birth. I can obtain testimonials as to my loyalty to the Crown. I am in no way connected with the United States of America. . . . As a young man of pure British descent, some of whose forefathers have held high positions in the British Army, I have always been desirous of devoting what little capability and energy I may possess to the country which I love so dearly." The University of London O.T.C. being a unit strictly limited by the War Office to British subjects of pure European descent, the adjutant, on receipt of Joyce's formal application for enrolment, wrote to his father on 23rd October, 1922: "He says you were never naturalized as an American. Perhaps, therefore, you would confirm this point, when I shall be able to proceed with his enrolment and registration." Michael Joyce replied on 26th October: "With regard to my son William. He was born in America. I was born in Ireland. His mother was born in England. We are all British and not American citizens." So William Joyce was duly enrolled, and served till 1926. Meanwhile, from 1923 to 1925, he was a member of the British Fascists, a body whose activities at that time were largely anti-Communist. In the course of one affray between Fascists and Communists Joyce himself was slashed in the face with a razor, which left him scarred for life. On 23rd April,

## William Joyce.

1927, he came of age, and a week later married Hazel Kathleen Barr at Chelsea Register Office; that marriage was dissolved in 1936. In 1928 he did a year's post-graduate course in philology. From 1928 to 1930 he spoke for and assisted the Conservative party, and from 1931 to 1933 he studied psychology at King's College, London. From all of which it will be seen that by the time he embarked on the broadcasts for which he was tried, William Joyce was a man of very high education well qualified for the task he undertook.

On 4th July, 1933, he applied for a British passport. On the application form he described himself as a British subject by birth, "having been born at Rutledge Terrace, Galway, Ireland." The application was verified by an official of a bank (against whose good faith no suggestion has at any time been made). This rather suggests that the present system of verification is of little value: it is certainly a nuisance to those who belong to the limited classes entitled to verify, who are constantly being put in the position of offending their acquaintances or risking the making of serious statements on inadequate evidence. And what real value is it as a safeguard? If one of His Majesty's judges, or an intimate friend at the Bar came to me and said: "I'm going abroad: do you mind verifying my passport?" I should no doubt say: "By all means." But even in these circumstances, I am, in most cases, acting on inference rather than knowledge. What I *know* is that my friend has for a number of years practised at the Bar, or held a judicial office: that he speaks English like a Briton, and, possibly, that he was educated at a British school or University. From which, I *infer* that he is a British subject—an inference probably correct in at least ninety-nine cases out of 100. But one very seldom sees one's friends' birth certificates, and, if one meets them for the first time in adult life, often knows nothing about their parentage. In the hundredth case the inference can easily be mistaken. During the war of 1914-18 there were two ladies, later personally known to me as connexions of my wife, for whom I should have had not the slightest hesitation in verify-

## Introduction.

ing a passport application. All through the first Great War they lived in England as Englishwomen, doing war work, and I am sure as loyal as any two women could be. After the war they wished to go abroad, and applied for a passport. To their horror they were told: "It appears from the facts stated that you are, and always have been, German subjects." What had happened was that they were the daughters of an Englishwoman married to a German, who, at the time of their birth was British consul at a town in South America. They were brought back to England in childhood, after their father's death, and had always erroneously assumed that, having been born in a British consulate, they were British subjects (as they would have been if it had been a British *embassy*). If I remember rightly, they were given some sort of temporary document till they could be naturalized.

The list of persons entitled to verify passports is "a member or official of any banking firm established in the United Kingdom, or a Mayor, Magistrate, Provost, Justice of the Peace, Minister of Religion, Barrister-at-Law, Notary, Solicitor, Physician, Surgeon, &c." That "&c." in the circumstances is delicious. What on earth does it mean? And what would happen to a person who stated his qualification as "&c."? In these democratic days it is difficult to see the reason for so narrow and, if one may say so, so snobbish a list. One might have supposed that a man's employer would be far more reliable as a sponsor than a doctor, parson, or bank official, who sees him only occasionally, and for a limited and special purpose.

But, compared with some documents which one is asked to vouch for, a passport application is a model of sound sense. During the war I was staying in a hotel in Scotland for some weeks. A fellow guest, whom I did not for a moment doubt, asked me to sign an application for permission to enter a "protected area" to visit her brother who was the local laird. I said: "Well, I don't doubt for a moment that you are who and what you claim to be, but three weeks' hotel acquaintance is hardly enough to justify me in signing you

## William Joyce.

up as a fit and proper person to enter a protected area in war time: still, let me see exactly what has to be certified." She produced the form, and all I was asked to state was that "I have no reason to doubt the truth of the foregoing particulars," or words to that effect. I told her that I did not mind signing that, as it did not pledge me to any personal or affirmative knowledge. But what earthly use it was from a security point of view I have never discovered. But I award the prize for idiocy to the form which I was asked to sign for someone who had lost clothing coupons or ration book (I forget which). I had solemnly to declare—under fearsome penalties for false declaration—that I had put to the applicant the question "Have you lost your coupons?" and that I had received the answer "Yes"!

Is it unreasonable to suggest that the system of "verification" of applications—including passport applications—needs overhaul or abolition?

At all events, a passport was duly issued to Joyce, valid for five years; it was renewed for one year in pursuance of an application, dated 24th September, 1938, and for a further period of one year from 1st July, 1939, in pursuance of an application, dated 24th August, 1939, only ten days before the outbreak of war. That renewal became a matter of crucial importance at his trial.

Meanwhile, from 1933 to 1937, he was a member of Sir Oswald Mosley's "British Union of Fascists." In December, 1934, with Sir Oswald Mosley and others he was charged before Mr. Justice Branson and a jury at Lewes Assizes with riotous assembly at Worthing. The defendants were acquitted. On 13th February, 1937, his first marriage having been dissolved in the previous year, he married Margaret Cairns White at the Kensington Register Office.

In March of the same year he formed his own organization, the "National Socialist League." I am informed by friends in Bristol that this body had an office in Park Street, Bristol, with a shop at which one could buy, without restriction, such useful and necessary articles as rubber truncheons

## Introduction.

and daggers. One of these daggers is now in my possession, having been acquired by my friend—who gave it to me when he heard I was editing this book—for some perfectly innocent and lawful purpose. During the career of the National Socialist League, Joyce was twice charged before Metropolitan Magistrates with assault, but on both occasions the charges were dismissed. In September, 1937, he wrote "National Socialism Now," and he also wrote articles and pamphlets in support of Fascism.

The final renewal of his passport having been granted on 24th August, 1939, on the 27th Joyce ordered the National Socialist League to be dissolved, and at some date before the actual outbreak of war he went with his wife to Germany, and a fortnight later he started the broadcast propaganda which ultimately brought him to the dock. The events affecting Joyce between September, 1939, and his arrest on 28th May, 1945, can be briefly stated. In September, 1940, he was granted German nationality, and on 12th April, 1941, a German military passport was issued to him. On 26th June, 1942, he was appointed chief commentator on the German Radio for the English Group, and on 1st September, 1944, the *Kriegsverdienstkreuz* 1st Class (a civilian award) was conferred on him by Hitler. On 3rd November, 1944, a German passport was issued to him in the name of Wilhelm Hansen—the acquisition of passports showed signs of becoming a habit—possibly by that time the progress of the Allies in the west suggested the advisability of building up an *alias*, as William Joyce had every reason to think that it would be bad for his health to fall into British hands. The certificate, issued on 21st December, 1944, that he was a member of the *Volkssturm* may have had a similar object, but if so, why the reversion to his own name? It may be that lack of man power compelled everyone, including foreign broadcasters—and he was now a German citizen—to enrol in the *Volkssturm*. Be that as it may, it is not without interest to note that "Wilhelm Hansen" was said to have been born on 11th March, 1906, in Galway, Ireland, while on the

## William Joyce.

Volkssturm certificate the date and place of birth are correctly stated. On 30th April, 1945, Joyce delivered his last identified broadcast. On 28th May, 1945, he encountered two British officers near Flensburg on the Danish frontier, one of whom shot him in the leg, and they arrested him. I trust it does not sound cynical to say that if the officer had aimed higher much trouble would have been saved.

Both Joyce's parents had died in England during the war: his father, Michael Joyce, on 19th February, 1941, and his mother, Gertrude Emily Joyce, on 15th September, 1944. In 1940 Joyce wrote and published in Germany a book, "Twilight over Europe," of which 100,000 copies in German and English editions were sold on the Continent. It has never been published in England or obtainable here.

Such, in barest outline, was the career of the prisoner down to his arrest. We may now consider more closely the nature of the treasonable acts which brought him to the dock.

### II.

When Joyce first began to broadcast from Germany, just a fortnight after the outbreak of war, the British authorities, it is believed, were not a little perturbed as to the possible effect on morale, and they were far from displeased when a journalist almost immediately christened him "Lord Haw-Haw," and the name stuck. Usually the inventor of popular nicknames is unidentifiable, but the "onlie begetter" of Lord Haw-Haw was undoubtedly Mr. Jonah Barrington, then of the *Daily Express*, and now of the *Sunday Chronicle*, who kindly gave me his own account of how he came to invent the name.

He was working at that time on the collation of foreign broadcasts at a wireless receiving station in Surrey, and had come across Joyce's broadcasts several times, and realized that they had a certain "nuisance value." It occurred to him that the most effective counter was ridicule, and he wrote an article about these broadcasts in which he referred to the

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broadcaster as "Lord Haw-Haw," and gave an imaginary pen-picture of him as a brainless idiot of the type of "Bertie Wooster" in Mr. P. G. Wodehouse's books. The name "caught on"; it was taken up by the press generally, and Mr. Barrington records with joy that on 17th October, 1939, the French newspaper, *Paris-Midi*, in a burst of enthusiastic inexactitude, reported that there was a new radio traitor called "Lord Ah! Oh!" whose real name was Jonah Barrington!

Thenceforward, it is probably true to say, William Joyce's hope of exercising any real influence on British morale was at an end. From being a sinister bogey-man, he had to many people, if not to most, become a figure of fun, about whom comedians sang songs on the wireless. The Western Brothers, for instance, had a song called "Lord Haw-Haw the Humbug of Hamburg," which was one of many in similar vein.

In Appendix VIII, p. 302, the reader will find a summary of a report prepared early in 1940 by the listener-research department of the B.B.C. at the request of the Ministry of Information, on the effect of Joyce's propaganda in this country. It will be remembered that at that date the war was still in the "phoney" stage, before the invasion of Norway and Holland, and that many of Joyce's broadcasts were directed to attempts to make people dissatisfied with conditions at home, and to comparing them unfavourably with life under the Nazi regime in Germany. Curiously enough, this was the peak period of listening to Joyce, which fell to insignificant proportions when the "phoney war" ended, and never revived.<sup>1</sup> The report covers most of the period in respect of which Joyce was convicted.

Before receiving this official report, I had made personal inquiries (for what they are worth) among the particular section of the community with which I happen to be mainly in contact—the legal profession, members of my club, and so forth—and the answers showed several different reactions to Lord Haw-Haw. My own, which apparently was not a very common one, was: "By listening to Lord Haw-Haw

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<sup>1</sup> See an article on this subject in the B.B.C. Year Book, 1946.

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I am doing precisely what the enemy wants me to do. They do not put him on the air for fun, or with any good will to this country, but in the hope that people will listen, and be filled with 'alarm and despondency.' I should not believe him, anyway, so why gratify the enemy by listening?" And I never did listen, unless I got him accidentally in tuning in to something else. Others took a different view: "Oh, I always tune in to Haw-Haw and have a good laugh. He's the funniest turn on the air. One can't take him seriously." Yet others said: "It is disquieting to find how much information he seems able to get, and some of his forecasts seem to have been unpleasantly true." On the whole, my impression was—and it is gratifying to find it is in agreement with the official report—that those who regarded him as a joke, if a joke in very bad taste, probably outnumbered those who paid him serious attention. He was, no doubt, responsible for a certain amount of distress to persons residing, or having relatives and friends residing, in the places he mentioned as intended targets, but since his purpose was undoubtedly the more serious one of causing alarm and despondency among the population generally, he must go down to history as not merely a knave, but an unsuccessful knave.

His influence overseas seems to have been still more negligible, even where it can be said to have existed at all. The available information from the Dominions and U.S.A. is given in Appendix VIII, p. 307.

As to the content of Joyce's broadcasts, the B.B.C. write:—"Our impression is that Joyce was not remarkable either for accurate foreknowledge or quick information, though it was plain that he had early access to British news services, papers, magazines, &c., presumably through monitoring and neutral services." By the kindness of the B.B.C. I am able to include in Appendix VII, p. 286, some of Joyce's less happy forecasts, as well as the full text of two of his broadcasts, including the first in which Lord Haw-Haw was definitely identified by the B.B.C. as William Joyce, and the last on 30th April, 1945. The former was, of course, not his first



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broadcast, or anything like it: it was, in fact, later than the dates charged in the count on which he was convicted, but this is explained by the fact that though the B.B.C. probably "monitored" Joyce before 2nd August, 1940, they did not know it for certain as the speaker of the talks monitored was not announced, and so far as the B.B.C. were concerned it would need other evidence to prove that those talks were by Joyce. They identified the unannounced speaker as Lord Haw-Haw when he repeated his talk of 2nd August next day to North America, and they identified "Lord Haw-Haw" as William Joyce when he told them that he was Lord Haw-Haw on 2nd April, 1941.

One may perhaps sum up the general British attitude to Joyce's broadcasts in the words: "If our people ever catch Lord Haw-Haw, he'll 'get it in the neck.'" Probably thousands of people used this slang expression without giving a thought to its grim and precise accuracy in the case of William Joyce.

### III.

For if the substance of Joyce's broadcasts was regarded by many people as a joke, the fact that he should deliver them was not. Treason is an ugly thing, especially in time of war, and a traitor does not redeem his treachery because his methods make him a laughing stock—though actually his technique of building an elaborate structure of prophecy of allied disaster on a foundation of quarter-truths was a dangerous one and skilfully worked out, if only he could have induced sufficient people to take him seriously.

Hence there was no doubt whatever that if Joyce—being, as everyone then believed, a British subject—fell into British hands he would stand his trial for treason by "adhering to the King's enemies." That was also the crime of Sir Roger Casement<sup>2</sup> in the war of 1914-1918, and it is almost inevitable

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<sup>2</sup> See *Trial of Sir Roger Casement*, ed. by G. H. Knott, Notable British Trials Series. For Table of Cases cited throughout the Joyce Trial and Appeals *ante* p. xi.

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that one should compare and contrast the two cases. Both turned on questions of law; in neither were the main facts seriously in controversy: nevertheless, the contrast soon becomes more striking than the resemblance.

Casement was tried at Bar, in the King's Bench Division, before a Court of three judges and a jury, under the old and highly technical procedure in cases of treason. This procedure bristled with formalities, such as the delivery to the prisoner, ten days at least before the trial, of a copy of the indictment, a list of the witnesses and a copy of the jury panel. These things may have been necessary safeguards in periods of our history when treason sometimes meant little more than finding oneself on the wrong side politically; they are merely troublesome snares for the prosecution in days when judges are, happily, above suspicion, and the packing of juries an impossibility. Hence, when Joyce was arrested on 28th May, 1945, and it became apparent that it would be necessary to bring him to trial, he was deliberately kept on the Continent, where he had been in hospital as a result of the wound he received at the time of his arrest, while Parliament quickly passed the Treason Act, 1945,<sup>3</sup> a Statute nominally purely procedural, to assimilate the procedure on a trial for any form of treason in all respects to that on a trial for murder. This had already been done in the case of treason consisting of a direct attempt on the life of the Sovereign by the Treason Act, 1800.

I digress for a moment to register a protest, however ineffective, at the form of the new Act, which is a shocking and wholly unnecessary example of "legislation by reference." One might have supposed that all that was necessary was to say that: "The procedure in all cases of treason and misprision of treason (whether alleged to have been committed before or after the passing of this Act) shall be the same as in trials for murder," and to repeal the old Acts prescribing special procedure, including the Act of 1800, which would now be covered by the general provision. That is far too

<sup>3</sup> See Appendix II, p. 230.

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simple for Parliamentary draftsmen. Sec. 1 of the new Act begins: "The Treason Act, 1800"—so the first four words necessitate reference to a Statute nearly 150 years old; then, with unusual generosity, we are told in general terms what the Treason Act, 1800, is about—" (which assimilates the procedure in certain cases of treason and misprision of treason to the procedure in cases of murder) shall apply in all cases of treason and misprision of treason whether alleged to have been committed before or after the passing of this Act." In other words, the Act of 1800 is treated as (though not called) the "principal Act," and the practitioner or Court must turn to it to find out *precisely* what the new Act effects. He has, even then, to read it subject to five separate repeals of specific words, and to a saving clause in sec. 2, sub-sec. (2) of the new Act, the effect of which is completely unintelligible without further research into the provisions of two still more ancient Statutes of 1695 and 1708 respectively. This saving clause is said to be "for the removal of doubt," which could, one imagines, never have arisen if the Act of 1800 had simply been repealed, and re-enacted in the wider terms now desired. That there may be cases where "legislation by reference" is unavoidable or even convenient, I am not concerned to deny; but to complicate a completely simple matter by enacting something which no mortal man can possibly understand without going back 250 years through the Statute Book shocks the conscience of the ordinary person.

There is, however, a still more serious criticism of the new Act. It was introduced into the House of Lords as a purely procedural Statute<sup>4</sup> merely designed to eliminate archaic provisions in treason trials, among which was mentioned, quite incidentally, the necessity for two witnesses. The possible importance of this seems to have escaped attention, though Lord Maugham did comment on the possible

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<sup>4</sup> See *Hansard* (H.L.) 30th May, 1945, vol. 136, col. 265: "Its provisions are absolutely confined to matters of procedure, and it does not make any change whatsoever in the law as to what constitutes treason." That is strictly accurate, if an important change in the law of evidence is correctly described as a "matter of procedure." If so all the law of evidence is "procedure."

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danger of abolishing the rule that no evidence should be given of overt acts not charged in the indictment. Under sec. 2 of the Treason Act, 1695, it was necessary to have at least two witnesses, either both to the same overt act, or one to one overt act, and the other to another overt act of the same kind of treason. The Treason Act, 1800, had abolished that safeguard in cases falling within it, namely attempts on the life of the Sovereign; and now sec. 2 sub-sec. (1) of the Treason Act, 1945, provides that: "The enactments set out in the Schedule to this Act are hereby repealed in so far as they extend to matters of procedure in cases of treason or misprision of treason, that is to say, to the extent specified in the third column of that Schedule." Among the Acts so repealed is the Treason Act, 1695, except secs. 5 and 6. So the protection afforded to the accused by sec. 2 of the Act of 1695 is taken away—probably, even without sec. 2 sub-sec. (1) of the Act of 1945, that would have resulted from the application of the Act of 1800. In the Joyce case, *one witness only*, Detective Inspector Hunt, connected Joyce directly with the broadcasts. If the Act of 1695 had been in force, possibly other witnesses might have been available, but that is not self-evident, for he was not definitely identified by the B.B.C. till 2nd August, 1940, after the last date alleged in count 3.

Admitting that the line between matters of procedure and matters of substance is sometimes a narrow one, to include a statutory requirement of corroboration in the former category is rather startling.

Sec. 3 of the Act of 1945 expressly extends the Act to Northern Ireland. No reference is made in the text to Scotland, but one Scottish Act and part of another are repealed in the Schedule. It would seem, therefore, that the usual presumption applies, and that the Act extends to the whole of the United Kingdom, and that any future case of treason in Scotland would be tried like a case of murder, in the Court of Justiciary. But it is by no means clear whether the Treason Act, 1945, in altering the method of trial, has affected the *sentence* for treason. In England this is unimportant, for

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the sentence has long been the same as for murder, namely, death by hanging—the power of the King in cases of treason to commute it to beheading is so unlikely to be exercised that it may safely be disregarded. But a writer in the *Scotsman* on 24th September, 1945, under the name “Historicus” points out that the Forfeiture Act, 1870, did not apply to Scotland, where the penalty for treason is still to be “hanged, drawn, and quartered,” in addition to corruption of blood, and forfeiture of goods and gear. He suggests that though it would obviously never be carried out, this sentence would still have to be solemnly pronounced on a traitor in Scotland. I am no Scots lawyer, but the *Encyclopædia of the Laws of Scotland* bears out the correctness of the view propounded by “Historicus.” It is perhaps a tribute to the loyalty of Scotsmen that the question has never arisen in modern times.

The main issue in the Casement case was whether a person could be convicted of treason in respect of acts committed outside the King’s dominions. That case definitely settled the law on that point, and it was no longer open to Joyce’s counsel. But Casement was a British subject, and the first question in the present case was: “Is Joyce a British subject?” That question of mixed fact and law was decided in his favour, and two further questions remained which were the important issues in the trial. These questions were:

1. Can any British Court try an alien for a crime committed abroad (with the sole exception of piracy, which by the *jus gentium* has always been justiciable anywhere, on the basis that a pirate is an enemy of the human race, to be eliminated by whoever has the good fortune to catch him)?

2. Assuming that there was jurisdiction to try him at all, did the fact that Joyce had applied for and obtained a British passport impose on him a duty of allegiance during its currency even when he was outside the British dominions? The determination of this question involved a consideration of the conditions in which an alien may owe allegiance to the British Crown, and the circumstances which may put an end to such temporary or local allegiance.

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On these questions Mr. Justice Tucker ruled against Joyce, after which the verdict of the jury on the question whether he had, in fact, assisted the enemy, was inevitable, for no attempt was or could have been made to deny the facts.

Indeed, unlike many of the trials which have been published in this series, the Joyce case is of almost wholly legal interest. The reader will find none of that conflict of evidence on crucial matters of fact, and that nice weighing of counter-probabilities, nor even that insight into the baser motives of the human mind, which lend a fascination of their own to many murder trials. But *Rex v. William Joyce* will certainly rank among the leading cases on that branch of the law of treason which deals with the doctrine of allegiance, and it will probably be found of historical as well as legal importance, as the first occasion on which the House of Lords, in its judicial capacity, has pronounced on certain statements of the law based on a somewhat mysterious resolution of the judges in 1707, in the reign of Queen Anne.

## IV.

The Treason Act, 1945, having received the Royal assent on 15th June, 1945, Joyce was brought to England next day, and on 18th June he was charged before the Chief Magistrate, Sir Bertrand Watson, at Bow Street. The terms of the charge were as follows:—

“ William Joyce is charged for that he in the County of London,<sup>5</sup> within the Metropolitan Police District and within the jurisdiction of the Central Criminal Court committed High Treason between the 2nd day of September, 1939, and the 29th day of May, 1945, in that he, being a person owing allegiance to His Majesty the King, adhered to the King's enemies elsewhere than in the King's realm, to wit, in the German realm, contrary to the Treason Act, 1351.”

<sup>5</sup> The curious allegation that treason committed “ in the German realm ” was committed in the county of London, etc., is due to the statutory provisions as to venue in the case of treason committed abroad, in the Treason Act, 1543, 35 Hen. VIII, ch. 6.

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After formal evidence of arrest, he was remanded to 25th June. On that occasion the Crown was represented by Mr. L. A. Byrne, Senior Prosecuting Counsel to the Treasury (now Mr. Justice Byrne) and Mr. H. A. K. Morgan, of the Department of the Director of Public Prosecutions, while Mr. C. B. V. Head, of the firm of Ludlow & Co., solicitors, appeared for Joyce. Little, if anything, appeared in the Police Court proceedings which was not repeated at the trial. It is therefore unnecessary to give a detailed account here. Joyce reserved his defence, and after a further formal remand to avoid committal to the current session of the Central Criminal Court, which would have been inconvenient for want of time to prepare the case, he was, on 28th June, 1945, committed to the July Session.

At the July Session of the Central Criminal Court, Mr. Derek Curtis-Bennett, K.C., applied for the case to be sent over to the next session. He told Mr. Justice Charles that, looking at the indictment, the first fact for the Crown to prove was that Joyce was a person owing allegiance to our lord the King. There had been investigations in the United States as to the nationality, not only of Joyce, but of his father, and the defence had documents from the State of New Jersey concerning a man who might or might not prove to be Joyce's father. It was necessary that someone should go to the United States to see the original documents and signatures, and it might be necessary for the latter to be seen by persons who knew the handwriting of Joyce's father, so that sworn evidence in an admissible form might be before the Court. That would take time, and could not be done in that session. One matter absolutely vital in the case was Joyce's nationality. There was also a record of the birth of William Joyce in New York in 1906, and it would be the submission of the defence that if Joyce was born in the United States he could not owe allegiance to the British Crown.

Mr. JUSTICE CHARLES—I express no view about it at all.

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Mr. BYRNE (for the prosecution)—We do not desire to put any obstacles in the way of the defence. It is our desire to render any assistance of which we are capable.

Mr. JUSTICE CHARLES—There being no opposition by the Crown, I am prepared to accede to the request. This case will be adjourned until the September Session, 11th September.

At the September Session the presiding judge was Mr. Justice Tucker, who fixed 17th September for the opening of the trial. On that day Joyce was arraigned, and pleaded not guilty to an indictment containing three counts. The first count charged that being a person owing allegiance to our lord the King he adhered to the King's enemies elsewhere than in the King's realm, by broadcasting between 18th September, 1939, and 29th May, 1945: the second that being a person owing allegiance to our lord the King he adhered to the King's enemies elsewhere than in the King's realm by purporting to become naturalized in Germany. During the trial these two counts were amended by substituting "being a British subject owing allegiance" for "being a person owing allegiance," thereby emphasizing that in these counts the prosecution were relying on British nationality. The evidence of Joyce's American nationality being, as Mr. Justice Tucker said, "really overwhelming," the Attorney-General intimated that he was not going to invite the jury to say that he was British, and therefore the jury were directed to return formal verdicts of "Not guilty" on those counts. The real issue was fought out on the third count, which alleged that Joyce being a person owing allegiance to our lord the King adhered to the King's enemies elsewhere than within the realm by broadcasting between 18th September, 1939, and 2nd July, 1940. The latter was the date on which Joyce's British passport expired. It will be more convenient to deal separately with the important legal



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questions involved, the nature of which has already been indicated, and to say here that Mr. Justice Tucker ruled as a matter of law that Joyce did owe allegiance to the British Crown, and left to the jury the question whether he had adhered to the King's enemies. To that there could be only one answer, and Joyce, on 19th September, 1945, was convicted and sentenced to death.

On 27th September he gave notice of appeal to the Court of Criminal Appeal against his conviction,<sup>6</sup> on four grounds:

1. The Court wrongly assumed jurisdiction to try an alien for an offence against British law committed in a foreign country.
2. The learned judge was wrong in law in holding, and misdirected the jury in directing them, that the appellant owed allegiance to His Majesty the King during the period from 18th September, 1939, to 2nd July, 1940.
3. There was no evidence that the renewal of the appellant's passport afforded him or was capable of affording him any protection or that the appellant ever availed himself or had any intention of availing himself of any such protection.
4. If (contrary to the appellant's contention) there was any such evidence, the issue was one for the jury, and the learned judge failed to direct them thereon.

The appeal was heard before the Lord Chief Justice (Viscount Caldecote), Mr. Justice Humphreys, and Mr. Justice Lyskey, on 30th and 31st October, and 1st November, 1945.<sup>7</sup> After reserving judgment till 7th November, the Court dismissed the appeal. The Criminal Appeal Act provides that

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<sup>6</sup> It is a "vulgar error," beloved of the more popular organs of the press, and occasionally perpetrated even by the B.B.C., to describe a prisoner as appealing "against the sentence of death," which, being fixed by law, cannot be appealed against. This is carefully provided by the Criminal Appeal Act, 1907, which refers to "appeal against sentence (not being a sentence fixed by law)." The appeal in capital cases is, and must be, against conviction. In practice, leave, when necessary, is always granted in capital cases.

<sup>7</sup> See Appendix III, p. 232.

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one judgment of the Court shall be delivered, and this was given by the Lord Chief Justice, but its language makes it clear that the decision was unanimous.

No further appeal could be brought unless the Attorney-General was prepared to certify that the decision "involved a point of law of exceptional public importance, and that it was desirable in the public interest that a further appeal should be brought." On 16th November Sir Hartley Shawcross, Attorney-General, issued his certificate to that effect.

The appeal was heard by the House of Lords on 10th to 13th December, the noble and learned Lords sitting being The Lord Chancellor (Lord Jowitt), and Lords Macmillan, Wright, Simonds and Porter.<sup>8</sup> On 18th December they announced their decision dismissing the appeal (Lord Porter dissenting), and intimated that they would give their reasons at a later date, which they did on 1st February, 1946.

### V.

It may be useful to the reader as an introduction to the perusal of the trial to give some account of the law relating to nationality, of the history of passports, and of the conception of allegiance.

At common law, nationality depended on place of birth—a person born within the King's dominions was a subject, a person born outside them was an alien. On this simple doctrine various statutory modifications were grafted, of which the most important was the rule that the children and grandchildren (but not remoter issue), wherever born, of a natural-born British subject, were also British subjects, provided that the father had not before the date of the birth divested himself of British nationality. Before 1870, when the Naturalization Act was passed, a British subject could not divest himself of British nationality. Such divesting could only happen, if at all, by operation of law, *e.g.*, by outlawry.

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<sup>8</sup> See Appendix IV, p. 248.

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Thus, if Michael Joyce, the prisoner's father, being a British subject, had gone to America and William Joyce had been born there before his father acquired American citizenship, he would have been a British subject by birth. But as soon as it was proved that Michael Joyce completed the formalities of naturalization in the United States in 1894, while William Joyce was not born till 24th April, 1906, it became clear that William was an American and not a British subject.

As regards persons born since 1st January, 1915, British nationality has been governed by the British Nationality and Status of Aliens Act, 1914, which defines natural-born British subjects in sec. 1, sub-sec. (1) as follows:—

“ The following persons shall be deemed to be natural-born British subjects, namely:—

(a) Any person born within His Majesty's dominions and allegiance; and

(b) Any person born out of His Majesty's dominions whose father was a British subject at the time of that person's birth and either was born within His Majesty's allegiance or was a person to whom a certificate of naturalization had been granted; and

(c) Any person born on board a British ship, whether in foreign territorial waters or not.

Provided that the child of a British subject whether that child was born before or after the passing of this Act shall be deemed to have been born within His Majesty's allegiance if born in a place where by treaty, capitulation, grant, usage, sufferance, or other lawful means, His Majesty exercises jurisdiction over British subjects.”

(This proviso would cover persons born in British embassies and legations abroad.)

The reader will notice the recurrence of the expression “ born within His Majesty's allegiance,” and much turned at the trial of William Joyce on the meaning of allegiance. Until this case was decided any lawyer called on to explain what was meant by “ allegiance ” would probably have con-

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sidered that he had given a correct definition if he had defined it as the duty of loyalty and faithfulness owed to a Sovereign by a person within his protection, and had gone on to say that allegiance might be of two kinds, (1) natural and permanent, which is the allegiance owed to the Sovereign by his own subjects at all times, and in all places so long as the relation of subject and Sovereign subsists. It is because of this natural and permanent allegiance that a British subject can be guilty of treason even outside the British Empire. (2) The second kind of allegiance is local and temporary, being that owed to a Sovereign by an alien, so long as he remains within the dominions of the Sovereign, and under his protection. Until the Joyce case it was supposed that such allegiance automatically terminated when the alien left the realm. That must now be recognized as subject to qualification where an alien has, whether by mistake or fraud, applied for and obtained a British passport.<sup>9</sup>

The reason for the temporary and local allegiance of an alien is clear: no country can be expected to admit foreigners within its borders except on the terms that while they enjoy its hospitality they will conduct themselves in accordance with its laws, and refrain from activities subversive of its security or political institutions. Hence it is clear that a man may be subject at the same time to two allegiances. For instance, a British subject who goes on business or pleasure to the United States does not lose, or even suspend, his allegiance to the British Crown, but he has in addition a temporary allegiance to the American Constitution. He must not plot against America, but neither must he engage in activities which would be treason in Britain. This over-riding natural allegiance is recognized in the principle of international law by which a subject of a belligerent in enemy-occupied territory may

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<sup>9</sup> It was never established, nor in these proceedings was it material, whether Joyce in applying for the passport, or for its renewal, was mistaken or fraudulent in stating his nationality. It may be said that if he honestly believed himself to be British it makes his treason all the worse, since he was morally as well as legally a traitor to "the country he loved so dearly."

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not be required to bear arms against his own country. So far as ordinary law is concerned the alien is subject to the law of the country where he is temporarily residing, to the exclusion of the law of his own country; thus the Englishman in Switzerland may, if he will, add to the pleasure of drinking a glass of beer in the middle of the afternoon by thinking of his thirsty compatriots at home with two hours to wait before opening time.

It will be noticed that in defining allegiance I have brought it repeatedly into relation with the word "protection." They are, indeed, correlatives. It was said by Blackstone, and quoted by the Attorney-General in opening the Joyce case, that so long as the Prince affords protection to his subject, so long that subject owes a debt of allegiance to the Prince. And long before Blackstone in *Calvin's* case, (1608) 7 Co. Rep. 1a; 77 E.R. 377, Lord Coke refers to the maxim "*Protectio trahit subjectionem et subjectio protectionem,*" and much of the Crown's argument in the present case was based on the proposition that by deliberately applying for and obtaining a British passport, Joyce had placed himself under the protection of the Crown, and had thereby undertaken the correlative duty of allegiance so long as the right to claim the protection of the passport continued.

To enter at length in this introduction upon an examination of the authorities relating to allegiance would merely be to duplicate the trial itself, and a summary of the main points must suffice. Up to a point, both sides agreed on the effect of the authorities. In Foster's *Crown Law* (1762<sup>1</sup>), p. 183, sec. 1, it is stated: "With regard to natural born subjects there can be no doubt. They owe allegiance to the Crown at all times and in all places. That is what we call natural allegiance in contradistinction to that which is local. The duty of allegiance, whether natural or local, is founded in the relation the person standeth in to the Crown and in

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<sup>1</sup> 1762 is the date of the first edition of Foster. The edition used at the trial was the Third, of 1809, but there appears to be no material change in text or pagination.

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the privileges he deriveth from that relation. Local allegiance is founded in the protection a foreigner enjoyeth for his person, his family or effects during his residence here, and it ceaseth whenever he withdraweth with his family and effects." And on p. 185, sec. 4, he says: "And if such alien seeking the protection of the Crown and having a family and effects here should during a war with his native country go thither and there adhere to the King's enemies for purposes of hostility, he might be dealt with as a traitor. For he came and settled here under the protection of the Crown, and though his person was removed for a time his effects and family continued still under the same protection. This rule was laid down by all the judges assembled at the Queen's command, 12th January, 1707. It is to be observed that the judges in the resolution last cited laid a considerable stress on the Queen's declaration of war against France and Spain, whereby she took into her protection the persons and estates of the subjects of those Crowns residing here and demeaning themselves dutifully and not corresponding with the enemy. King William and Queen Mary did the same in their declaration of war against France, and so did his present Majesty [George III]. These declarations did in fact put Frenchmen residing here and demeaning themselves dutifully, even in time of war, upon the foot of aliens coming hither by licence of safe conduct. They enabled them to acquire personal chattels and to maintain actions for the recovery of their personal rights in as full a manner as aliens amy may. But as I said before all aliens enemy residing here under the protection of the Crown, though possibly not favoured as the persons last mentioned, yet they in case they commit crimes which in a subject would amount to treason may be dealt with as traitors. For their persons are under the protection of the law, and in consequence of that protection they owe a local temporary allegiance to the Crown." That resolution of the judges was also referred to in East's Pleas of the Crown (1803) but in somewhat different terms; the original is apparently not extant, nor are the circumstances in which it was passed known.

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The Crown sought to rely upon it as authority that in some circumstances an alien could be prosecuted for treason committed outside the realm, if he was still receiving the protection of the Crown for his family and effects. In the present case Joyce had not left his family and effects in England—for “family” clearly must be limited to wife and children over whom he can be presumed to exercise some control, and does not include parents and brothers and sisters who are in no way responsible to him. But in the Attorney-General’s picturesque phrase, by obtaining a British passport he had “enveloped himself in the Union Jack” and put himself in a position to claim British protection. That protection involved the corresponding duty of allegiance. By broadcasting for the enemy Joyce acted in breach of that duty, and was thereby guilty of treason, for which he could be tried and executed in this country. Such, in the briefest outline, was the case for the prosecution. Against it the defence urged (in addition to the argument that there was no jurisdiction at all to try an alien for a crime committed abroad), that a resolution of the judges had no binding authority, as such; it did not appear that it was a decision in any case then before a Court. In any event, it did not support the Crown’s contention, for the exception suggested in the case of the alien leaving his family and effects was due—if it was the law, which, in the submission of the defence, it was not—to his still receiving protection *within the realm*. The protection necessary to attract the duty of allegiance was the protection of the law, and it could arise only where the British law ran, that was to say, within the King’s dominions. It must, in other words, be *de jure* protection, and not mere *de facto* protection; not that there was any evidence that Joyce had ever in fact used his British passport to claim protection from any British authority anywhere.

A passport, it was submitted, was not a document granting any right to protection: it was merely recognition of the status of the holder as a British national, and a request to foreign governments to give the holder such rights as flowed

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from that status. Like other documents certifying status, it was not conclusive, but could be displaced by proof that the status did not in fact exist, and was then a mere nullity. Just as two persons going through a form of marriage were entitled to obtain an official certificate of marriage, so a British subject intending to go abroad could, and in most cases nowadays must, obtain a British passport. The rights and duties of the spouses did not flow from the certificate, but from the relation of husband and wife; and the rights and duties of the traveller did not flow from the passport but from his British nationality. The marriage certificate could be displaced by proof that the marriage was in fact bigamous on the part of one of the spouses, or that they were within the prohibited degrees; so the passport could be displaced by proof that it had been issued to an alien whether he had obtained it fraudulently or under an honest mistake as to his true national status.

Moreover, it was submitted, to say that Joyce, having wrongly obtained a British passport, thenceforth owed allegiance even though he proved that he was in fact an alien, was the introduction into our law of "crime by estoppel." He could not, in a criminal case, be debarred from setting up the defence that he was an alien because he had, for the purpose of obtaining the passport, previously alleged that he was British. (For the benefit of the lay reader, it may be explained that "estoppel" is a rule of evidence whereby, if a man has made representations as to a matter of fact, on the faith of which someone else has altered his position, the maker of the representation will not be allowed, in *civil* proceedings, to rely on the true facts—in so far as they differ from his representation—against the person who has so altered his position. But this doctrine has never found a place in *criminal* proceedings, in which a defendant can always rely on any defence open to him, notwithstanding previous contradictory statements, which may, of course, be material for cross-examination.)

The foregoing summary of the arguments does not purport



## Introduction.

to do more than give in my own words the gist of the points taken: the reader will find the full arguments, with the authorities, in the text of the trial and appeals. This introduction is only intended to make clear to him the nature of the issue. Before passing to the stages of the trial itself, a few words on the history of passports may be of interest.

The Shorter Oxford English Dictionary attributes the word to the beginning of the 16th century. It seems originally to have been a licence to leave the realm, which was otherwise prohibited at common law, possibly because it deprived the King of a man's military service. This sense, with the analogous sense of a licence to enter or pass through a country is said to be obsolete from the early seventeenth century. The definition given of the modern sense, dating from 1536, is "a document issued by competent authority, granting permission to the person specified in it to travel, and authenticating his right to protection." It will be noted that the passport is only said to *authenticate*, not to *confer*, the right to protection. The first mention of passports in the Statute Book is in 1548, 2 Ed. VI, c. 2, sec. 10, where it is applied to what would now be called a soldier's leave-pass.

There appears to be no steady or consistent development of the system of passports. They seem to have been required or not required of individuals according to the state of contemporary politics in various countries. In *Reg. v. Bernard* (1858) 8 St. Trials (N.S.) 887, Orsini was stated to have travelled in France and Belgium under a false passport, six years old, issued by the British Foreign Office under the name of Allsop. Sixty years later, before the war of 1914-18, passports were not necessary for visiting most European countries other than Russia and Turkey, but they were not infrequently carried as a convenient means of identification, and an assistance in claiming the help, in case of need, of diplomatic or consular representatives. Since the first world war, they are generally necessary for travel, and British regulations state that "British subjects travelling to foreign countries must be in possession of valid passports

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bearing, when required, the visa of the consular representative of the country or countries to be visited."

In 1887 Lord Salisbury sent a circular asking British representatives abroad to supply information as to the laws of their respective countries regarding the admission of aliens as residents. The result, published in Parliamentary Papers, 1887, No. 81, contains factual information, but no general statement as to the nature of a passport. But from the various replies it appears that a passport was regarded as a document required by the country in which the traveller found himself, as a formal reference, as a safeguard to that state. In Austria-Hungary the state authorities could grant a traveller a provisional passport, if his own was not in order, provided that he was not a suspicious character. So at that time a British subject might lawfully have entered Austria, with not a British, but an Austrian passport.

In 1872 the British Government apparently regarded it as an inconvenience that British subjects should be required to carry passports, and made representations to France with a view to their abolition. The French Government gave two reasons for retaining them: (1) Security to France; (2) They were a valuable source of revenue which she could not at the moment afford to forego. There was no suggestion that the passport was a document ensuring the holder British protection: it was rather represented as an unreasonable requirement of the French Government, resented by the British Government, and acting as a deterrent to travel. As a result of this correspondence passports were abolished between Britain and France, but the right of a British subject in France to claim protection cannot have been diminished or affected, which seems rather to support the view that the passport is merely evidence of rights, not their source.

Of judicial authority on passports there is very little. Apart from *Reg. v. Bernard* (*supra*), in *Rex v. Brailsford and M'Culloch*, [1905] 2 K.B. 730, a conspiracy to obtain a false passport for use in Russia was involved. The gravamen of the offence, as set out in the indictment, was the endanger-

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ing of the relations between this country and Russia, not a wrongful claiming of protection, and in his summing up Lord Alverstone, the Lord Chief Justice, thus defined a passport: "It is a document, issued in the name of a Sovereign, on the responsibility of a Minister of the Crown, to a named individual, intended to be presented to the governments of foreign nations and to be used for that individual's protection as a British subject in foreign countries, and it depends for its validity upon the fact that the Foreign Office, in an official document, vouches the respectability of the person named. Passports have been known and recognized as official documents for more than three centuries, and, in the event of war breaking out, become documents which may be necessary for the protection of the bearer, if the subject of a neutral state, as against the officials of the belligerents, and in time of peace, in some countries, as in Russia, they are required to be carried by all travellers." There appears to be no more recent judicial criticism or amplification of that definition, which does suggest that the protection of the bearer is the object of a passport, but not that the right to protection springs from the passport, which seems to have been a novel doctrine in the present case, though one which found favour in all three Courts, and must therefore be accepted as the law.

### VI.

The reasons for their lordships' decision, the full text of which is given in Appendix IV, were delivered on 1st February, 1946, nearly a month after Joyce's execution. It is perhaps worthy of passing comment that the Home Secretary, before allowing the law to take its course, did not think it necessary to wait and see whether any passages in their lordships' opinions might afford some ground for the exercise of clemency. It may well be that they would not have done so, and that delay would merely have been a prolongation of Joyce's ordeal.

The Lord Chancellor said that the question of law, of

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far-reaching importance, was whether an alien who had been resident within the realm could be held guilty and convicted in this country of high treason for acts committed by him outside the realm.

The Statute of 1351 was wide enough to cover any man anywhere: "If a man do levy war," &c. But the question whether the act was treasonable depended on the relation in which the actor stood to the King to whose enemies he adhered. Attention had naturally been concentrated on the question of allegiance. To say that an act was treasonable if the actor owed allegiance, and not treasonable if he did not, left undecided the question by whom allegiance was owed. New considerations might demand a reconsideration of the scope of the principle. It was not an extension of a penal law to apply its principles to circumstances unforeseen at the time of its enactment, so long as the case was fairly brought within its language.

It was implicit in the argument for the appellant that, however brief his absence from the realm, he could not, during that absence in any circumstances, by giving aid and comfort to the King's enemies outside the realm, be guilty of a treasonable act. That statement was not only at variance with the law, but was inconsistent with authority which could not be disregarded. The passage in Foster's Crown Law (already cited) had been repeated without challenge by numerous authors of the highest authority, nor had it been challenged in any judicial authority.

In the present case there was no question of vicarious protection. But was there not such protection still afforded the appellant by the Sovereign as to require his continued allegiance? It would be strangely inconsistent with the robust and vigorous common sense of the common law to suppose that an alien quitting his residence in this country, and adhering and giving aid to the King's enemies abroad, could do so with impunity.

The appellant had long resided here, but he (the Lord Chancellor) made no assumption one way or the other about

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his intention to return, and treated as immaterial the fact that he made a false statement as to his status. When he first made it, it might be that he thought it was true.

The possession of a passport by a non-British subject gave him rights and imposed on the Sovereign obligations which would otherwise not be given or imposed. He was enabled to obtain in a foreign country the protection extended to British subjects. The question was whether by the receipt of the passport he extended his duty of allegiance beyond the moment when he left the shores of this country. As one owing allegiance he sought and obtained the protection of the King for himself while abroad.

The argument that, since the protection of the law could not be given outside the realm to an alien, he could not, outside the realm, owe any duty, had no substance. At the time when the common law established between Sovereign and resident alien the reciprocal duties of allegiance and protection, it was to the personal power of the Sovereign rather than to the law of England that the alien looked. It was not therefore an answer to the Sovereign's claim to fidelity from an alien without the realm who held a British passport that there could not be extended to him the protection of the law. He was of opinion that so long as an alien held the passport he was, within the meaning of the Statute, a man who, if he adhered to the King's enemies in the realm or elsewhere, committed an act of treason.

He did not dissent from the general proposition that an alien could withdraw his allegiance on leaving the realm. But there was no suggestion that the appellant had surrendered his passport, or done any other overt act to withdraw from his allegiance, unless, indeed, reliance was placed on the act of treason itself, which in his opinion could not be done. Such an act was not inconsistent with the appellant still availing himself of the passport in other countries, and even in Germany.

With regard to the question of jurisdiction, a proper regard of the State for its own security required that all who committed the crime of treason, whether within or without the

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realm, should be amenable to its laws. There was no principle of comity to the contrary.

It was further urged for the appellant that there was no evidence that the renewal of his passport afforded him, or was capable of affording him, any protection, or that he ever availed himself or had any intention of availing himself of any such protection; and that if there was any such evidence the issue was one for the jury, and that the judge had failed to direct them thereon. That point also failed.

Lords Macmillan, Wright, and Simonds concurred with the Lord Chancellor.

Lord Porter dissented. He agreed that the renewal of the passport on 24th August, 1939, was evidence from which a jury might have inferred that he retained that document for use after 18th September, 1939, when he was first proved to have adhered to the enemy. If an alien was under British protection he occupied the same position when abroad as he would occupy if he were a British subject. But the question of continued allegiance depended on the circumstances of the case, and was a matter for the jury. In the present case a jury properly directed might well have considered that the allegiance had been terminated. He would have allowed the appeal.

It will be observed from the above summary that their lordships have expressly decided that a passport is not merely an evidential document, but one which gives rights and imposes duties; and that an alien in possession of a passport may be tried here for crimes committed abroad. Those matters may well be thought amply sufficient to justify the Attorney-General in granting his certificate. Even so, it is easy to underestimate the significance and importance of the Joyce case. *Directly*, its importance may well be small, for only in the infinitesimal number of cases in which an alien obtains, by fraud or mistake, a British passport, and then goes abroad and commits treason, can it be directly in point. A British subject is covered by his general duty of allegiance, and the passport is immaterial.

But *indirectly*, the case may well prove of vast importance.



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It has introduced into our jurisprudence, for the first time, the doctrine that a British Court has, in certain circumstances, the right to try an alien for a crime committed abroad. It does not need much imagination to see that, unless those circumstances are very precisely and narrowly defined, this may be the thin edge of a very large wedge indeed.

Secondly, it has introduced, or at least declared, the doctrine that the holder of a British passport *ipso facto* owes allegiance to the British Crown. This may have far-reaching repercussions—I am told that there are signs of them already—in British mandated territories, and among “British protected” persons, where persons who are not British subjects may be entitled to hold British passports.

It is also possible to envisage a perfectly honest person being involved in a conflict of allegiance, where it is completely impossible for him to avoid committing treason! Suppose, for instance, that Joyce, instead of being American, had been German by birth, but had lived here and honestly believed himself to be British, and went abroad with a British passport. On the outbreak of war he is claimed as a German subject, liable to military service. If he obeys, he is (under this decision) liable to be hanged by the British; if he refuses he will certainly be shot by the Germans.

The decision is no longer open to argument: the reasoning underlying it is a legitimate subject of legal discussion, and it would be untrue to pretend that it meets with unanimous acceptance among lawyers, many—possibly a majority—of whom thought the appeal would succeed.

## VII.

On 3rd January, 1946, William Joyce was hanged at Wandsworth, the Home Secretary, Mr. J. Chuter Ede, having intimated a few days earlier that he was unable to find any reason which would justify him in interfering with the course of law. A morbid-minded crowd of some 300 persons gathered outside the gaol, and according to the evening papers police had to control the crowd which surged forward to read the official notice that the execution had been carried out. Two



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men, it was reported, had travelled from Glasgow to be present. But the most scandalous aspect was the presence of young children brought by their parents.

The statutory inquest produced the inevitable verdict. One may be pardoned for some scepticism as to the value of these formal inquiries after an execution; we have never read of one which failed to record that the execution was carried out expeditiously and without a hitch. There is no reason to doubt that everything possible is done, and was done in this case, to ensure the minimum of suffering to the victim, but there are some grim stories in the history of executions, even in modern times, and there is considerable reason to doubt whether, if a hitch did occur, the regulations<sup>2</sup> would permit

<sup>2</sup> When Major Wallace Blake was tried in 1926 for a breach of the Official Secrets Act, by disclosing details of a recent execution in a newspaper article, an official of the Home Office was cross-examined as to the instructions issued on 10th January, 1925, by Sir Ernley Blackwell, K.C.B., Permanent Legal Under-Secretary to the Home Office, to Prison Governors with regard to their conduct at executions, and the form of their evidence at inquests, which was to be confined to as few words as possible, e.g., "it was carried out expeditiously and without a hitch." If pressed for details, "the Governor should say he cannot give them as he did not time the proceedings but 'a very short interval elapsed' or some general expression of opinion to the same effect." Questions were asked in the House of Commons by Mr. Pethick-Lawrence as to these instructions, but the Home Secretary (Sir W. Joynson Hicks) said: "It is undesirable to give the exact terms of the instructions . . . the less said at the inquest either by Governors or anyone else, the better." (See Hansard, 23rd June, 1927, vol. 207, No. 85, cols. 2022-2023.) One is left sharing Mr. Pethick-Lawrence's doubts whether it can possibly be proper to give a witness instructions as to the form and content of the evidence he is to give *on oath* before a judicial tribunal entitled to hear "the truth, the whole truth, and nothing but the truth." Whether any alteration has been made in the instructions since 1926 it is impossible for a private individual to know: the regularity with which the phrase "expeditiously and without a hitch" occurs in the reports of these melancholy occasions suggests that it is improbable.

At an inquest at Lincoln Prison on a man executed on 4th January, 1928, the Governor's answer to the question how long elapsed between Pierrepont entering the cell and the drop was: "I am not allowed to say anything except that a very short interval elapsed."

The Coroner—Are you allowed to say how long the body remained hanging?—No, sir, I am not.

Perhaps one day a jury will have the courage to return a verdict, "That the deceased met his death by judicial hanging, but the jury have not been allowed to receive sufficient evidence to enable them to say whether the execution was properly carried out."

In writing this I wish to make it emphatically clear that I am not for one moment suggesting that anyone concerned with the execution of Joyce failed to carry out his duty with complete propriety. My criticism is directed at the system, not at individuals or individual cases.

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any news of it to reach the outer world via the coroner and his jury. One cannot help wondering whether the American system of summoning a certain number of respectable and responsible citizens (not the type who voluntarily gather outside the gaol to stare at a sheet of paper) as witnesses of the execution, is not a greater safeguard, provided that they are not muzzled if there is anything that should be disclosed in the public interest.

For Joyce's crime one can have no sympathy whatever. Though in law an alien, he had lived many years in England, had deliberately served in the O.T.C., and had referred to her as "the country I love so dearly." But the question remains, for many thoughtful people, what useful purpose have we served by hanging Joyce, or John Amery about a fortnight earlier? Treason, it is true, is the greatest of crimes, but there are degrees even in treason, and the crime of treason by broadcasting propaganda is hardly comparable to that of treachery in the field. On the day after Joyce's execution a man named Schurch was hanged at Pentonville. He had been convicted on nine charges of giving information to the enemy, and of desertion with intent to join the enemy. Still less, one might have thought, was Joyce's crime, detestable though it was, deserving of the same punishment as the mass murders and torture of prisoners of which the Belsen criminals were convicted—mention of which is made by counsel at p. 206. In the Belsen trials, Kramer, the commandant of the infamous Belsen Concentration Camp, and ten others were executed, others were sentenced to varying terms of imprisonment, and some were acquitted.

If it be said, "There would have been a public outcry if Joyce had been reprieved," my answer would be that the first function of a legal system is to substitute the reasoned and dispassionate judgment of the law for the clamour of popular prejudice. It may, however, be doubted whether there would have been any popular clamour, for very much to my surprise I have found, with a universal reprobation of Joyce's conduct, an almost equally universal feeling, shared

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by lawyers and laymen, servicemen, and civilians, that (with the utmost respect to the eight out of nine learned judges) the decision was all wrong, and that an unmeritorious case has made bad law. The feeling, and it is, I believe, strong and widespread, is not so much that Joyce, having been convicted, should have been reprieved, but that he should not have been convicted.

If one treats the sensation-mongers who stand outside a prison during an execution with the contempt they deserve, it is, I think, fair to say that the conviction and execution of Joyce have caused more disquiet than satisfaction in the minds of the public.

## Chronological Table.

1870?	Michael Francis Joyce, the prisoner's father, born at the Neale, Killowi, Ballinrobe, Mayo, Ireland.
12th May, 1870.	Naturalization Act, 1870, passed, making it possible for the first time for a British subject to give up his British nationality.
25th October, 1894.	Michael Joyce naturalized as American citizen.
2nd May, 1905.	Michael Joyce married Gertrude Emily Brooke, formerly of Shaw, Lancashire, at All Saints Church, New York.
24th April, 1906.	William Joyce born at 1377 Herkimer Street, Brooklyn, New York.
1909.	Joyce family moved to Ireland.
1909-1913.	The family lived at various addresses in Mayo.
1913-1921.	The family lived at various addresses in Galway.
1st January, 1915.	British Nationality and Status of Aliens Act (1914) came into force.
26th April, 1917.	Mrs. Joyce visited England and was required to register as an alien at Shaw.
2nd November, 1917.	Joyce's Birth Certificate issued in New York.
December, 1921.	William Joyce came to England.
1922.	His parents followed with their remaining family and settled in England.
1922.	William Joyce passed the London Matriculation.
21st October, 1922.	William Joyce applied for enrolment in University of London O.T.C.
26th October, 1922.	Michael Joyce writes to Adjutant, "We are all British, not American citizens."
1922-1923.	Joyce studied science at Battersea Polytechnic.
1923-1927.	He studied English language and literature, and history, at Birkbeck College, graduating in 1927.
1923-1925.	He was a member of British Fascists.
23rd April, 1927.	William Joyce came of age.
30th April, 1927.	William Joyce married Hazel Kathleen Barr at Chelsea Register Office.

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1928. He did one year's post-graduate course in philology.
- 1928-1930. He spoke for and assisted Conservative party.
- 1931-1933. He studied psychology at King's College, London.
- 4th July, 1933. He applied for British passport.
- 1933-1937. He was a member of Sir Oswald Mosley's party, the "British Union of Fascists."
- 18th December, 1934. William Joyce, Sir Oswald Mosley and two others acquitted before Mr. Justice Branson and a jury at Lewes Assizes, on a charge of riotous assembly at Worthing.
1936. Joyce's marriage dissolved.
- 13th February, 1937. William Joyce married Margaret Cairns White, at Kensington Register Office.
- March, 1937. William Joyce formed National Socialist League.
- 24th September, 1938. He applied for renewal of passport for one year.
- 17th November, 1938. Charge of assault against William Joyce dismissed by Mr. Paul Bennett at West London Police Court.
- 22nd May, 1939. Charges under Public Order Act, and of assault, against William Joyce dismissed by Mr. Marshall at Westminster Police Court.
- 24th August, 1939. He applied for renewal of passport for a further period of one year.
- 27th August, 1939. He ordered National Socialist League to be dissolved.
- August, 1939. He went with his wife to Germany.
- 3rd September, 1939. War declared on Germany by Great Britain.
- 18th September, 1939. William Joyce joined German Radio.
- 2nd August, 1940. Joyce definitely identified by B.B.C. Monitors.
- September, 1940. German nationality granted to William Joyce.
- 19th February, 1941. Michael Joyce died at East Dulwich.
- 12th April, 1941. Military passport issued to William Joyce.
- 26th June, 1942. Made chief commentator on German Radio for English Group.
- 1st September, 1944. War Service Cross (a civilian award) conferred on him by Hitler.

## Chronological Table.

15th September, 1944.	Gertrude Emily Joyce died at St. Mary's Hospital, Paddington.
3rd November, 1944.	German passport issued to William Joyce in name of " Wilhelm Hansen."
21st December, 1944.	Certificate issued that William Joyce is member of Volkssturm.
28th May, 1945.	Joyce shot and arrested near Flensburg on Danish frontier.
31st May, 1945.	Joyce made statement at Lueneberg Military Hospital.
15th June, 1945.	Treason Act, 1945, passed.
16th June, 1945.	Joyce flown to this country and charged with treason.
18th June, 1945.	He appeared at Bow Street, and was remanded for a week.
25th June, 1945.	Case concluded at Bow Street. Formal remand to 28th.
28th June, 1945.	Joyce committed for trial at Central Criminal Court.
July, 1945.	Case postponed to September session to enable evidence to be obtained from America.
17th September, 1945.	Trial opened before Mr. Justice Tucker.
18th September, 1945.	Trial continued.
19th September, 1945.	Joyce convicted on third count, and sentenced to death.
27th September, 1945.	Notice of appeal given.
30th October, 1945.	Appeal begun before the Lord Chief Justice, Mr. Justice Humphreys, and Mr. Justice Lynskey.
1st November, 1945.	Judgment reserved.
7th November, 1945.	Appeal dismissed.
16th November, 1945.	Attorney-General's certificate granted for appeal to House of Lords.
10th to 13th December, 1945.	Hearing of appeal by House of Lords.
18th December, 1945.	Appeal dismissed (Lord Porter dissenting). Reasons to be given at a later date.
3rd January, 1946.	Joyce executed at Wandsworth.
1st February, 1946.	Reasons of House of Lords delivered.



# THE TRIAL

WITHIN THE  
CENTRAL CRIMINAL COURT,  
OLD BAILEY, LONDON,  
MONDAY, 17<sup>TH</sup> SEPTEMBER, 1945.

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*Judge—*

MR. JUSTICE TUCKER.

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*Counsel for the Crown—*

The ATTORNEY-GENERAL (Sir HARTLEY SHAWCROSS, K.C., M.P.)

Mr. L. A. BYRNE.

Mr. GERALD HOWARD.

(Instructed by the Director of Public Prosecutions.)

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*Counsel for the Defence—*

Mr. G. O. SLADE, K.C.

Mr. DEREK CURTIS-BENNETT, K.C.

Mr. JAMES BURGE.

(Instructed by Messrs. Ludlow & Co.)





First Day—Monday, 17th September, 1945.

THE INDICTMENT.

WILLIAM JOYCE is charged with the following offences—

1. *First Count.*

STATEMENT OF OFFENCE.

HIGH TREASON, by adhering to the King's enemies elsewhere than in the King's Realm, to wit, in the German Realm, contrary to the Treason Act, 1351.

PARTICULARS OF OFFENCE.

WILLIAM JOYCE, on the 18th day of September, 1939, and on divers other days thereafter and between that day and the 29th day of May, 1945, being then, to wit, on the said several days, a person<sup>1</sup> owing allegiance to our lord the King, and whilst on the said several days an open and public war was being prosecuted and carried on by the German Realm and its subjects against our lord the King and his subjects, then, and on the said several days traitorously contriving and intending to aid and assist the said enemies of our lord the King against our lord the King and his subjects did traitorously adhere to and aid and comfort the said enemies in parts beyond the seas without the Realm of England, to wit in the Realm of Germany, by broadcasting to the subjects of our lord the King propaganda on behalf of the said enemies of our lord the King.

2. *Second Count.*

STATEMENT OF OFFENCE.

HIGH TREASON, by adhering to the King's enemies elsewhere than in the King's Realm, to wit, in the German Realm, contrary to the Treason Act, 1351.

PARTICULARS OF OFFENCE.

WILLIAM JOYCE, on the 26th day of September, 1940, being then a person<sup>1</sup> owing allegiance to our lord the King, and whilst

<sup>1</sup> On the third day of the trial, 18th September, 1945, the indictment was amended by substituting the words "British subject" for the word "person" in counts 1 and 2, thereby making clearer the distinction between those counts, in which the prosecution based their case on British nationality, and the third count, in which they relied on the obtaining of a British passport as importing the duty of allegiance. See p. 170.

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## The Clerk of the Court.

on the said day an open and public war was being prosecuted and carried on by the German Realm and its subjects against our lord the King and his subjects, then, traitorously contriving and intending to aid and assist the said enemies of our lord the King against our lord the King and his subjects did traitorously adhere to and aid and comfort the said enemies in parts beyond the seas without the Realm of England, to wit, in the Realm of Germany, by purporting to become naturalized as a subject of the Realm of Germany.

### 3. *Third Count.*

#### STATEMENT OF OFFENCE.

HIGH TREASON, by adhering to the King's enemies elsewhere than in the King's Realm, to wit, in the German Realm, contrary to the Treason Act, 1351.

#### PARTICULARS OF OFFENCE.

WILLIAM JOYCE, on the 18th day of September, 1939, and on divers other days thereafter, and between that day and the 2nd day of July, 1940, being then, to wit, on the said several days; a person owing allegiance to our lord the King, and whilst on the said several days an open and public war was being prosecuted and carried on by the German Realm and its subjects against our lord the King and his subjects, then, and on the said several days traitorously contriving and intending to aid and assist the said enemies of our lord the King against our lord the King and his subjects did traitorously adhere to and aid and comfort the said enemies in parts beyond the seas without the Realm of England, to wit, in the Realm of Germany, by broadcasting to the subjects of our lord the King propaganda on behalf of the said enemies of our lord the King.

WILFRID W. NOPS,

*Clerk of The Central Criminal Court.*

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THE CLERK OF THE COURT—William Joyce, you are charged in an indictment containing three counts with high treason. The particulars in the first count are that on the 18th September, 1939, and on other days between that day and the 29th May, 1945, you,

# The Indictment.

## The Clerk of the Court.

being a person owing allegiance to our lord the King, and while a war was being carried on by the German Realm against the King, did traitorously adhere to the King's enemies in parts beyond the seas, that is to say, in Germany, by broadcasting propaganda. In the second count of the same indictment it is charged that you, on the 26th September, 1940, being a person owing allegiance as in the other count, adhered to the King's enemies by purporting to become naturalized as a subject of Germany, and in a third count the particulars are the same as in the first count, that is to say, you are charged with broadcasting propaganda, but the dates are different, and the dates in this case are the 18th September, 1939, and on days between that day and the 2nd July, 1940. Are you guilty or not guilty?

THE PRISONER—Not guilty.

THE CLERK OF THE COURT—There is another indictment against you.<sup>2</sup>

A Jury was empanelled and sworn.

THE CLERK OF THE COURT—Members of the jury, the prisoner at the bar, William Joyce, is charged in an indictment containing three counts: each of those charges is a charge of high treason. In the first count the particulars are that on the 18th September, 1939, and on other days between that day and the 29th May, 1945, he, being a prisoner owing allegiance to the King, while a war was being carried on by the German Realm against the King, did traitorously adhere to the King's enemies by broadcasting propaganda. In the second count it is charged that he, on the 26th September, 1940, being a person owing allegiance as before, did traitorously adhere to the enemies of the King by purporting to become naturalized as a subject of Germany, and in a third count the particulars are the same as those in the first count, that is to say, it is another charge of broadcasting propaganda on the 18th September, 1939, and on other days between that day and the 2nd July, 1940. To this indictment he has pleaded not guilty, and it is your charge to say, having heard the evidence, whether he be guilty or not.

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<sup>2</sup> This second indictment was never proceeded with.

# William Joyce.

## Opening Speech for the Prosecution.

THE ATTORNEY-GENERAL—May it please your lordship, members of the jury, in this case I appear with my learned friends Mr. Byrne and Mr. Gerald Howard to prosecute, and the prisoner is defended by my learned friends Mr. Slade, Mr. Curtis-Bennett, and Mr. Burge. To-day, nearly six years since he first entered into the employment of the German Broadcasting Corporation, William Joyce comes before you on what is the gravest crime known to our law, upon an indictment for treason.

May I, before I tell you anything about the details of this case, just make one or two preliminary observations to you in regard to it. It would be idle to shut our eyes to the fact that some of us may know, or think we know, something about this case. We may in times past have read about this man in the newspapers; we may have discussed his activities—and indeed his activities were notorious enough—it may be even perhaps in those dark days of 1940 when this country was standing alone against the whole force and might of Nazi Germany, that some of us may have heard, or thought we heard, his voice on the wireless, attempting as we may have thought to undermine the morale of our people, and perhaps at that time some of us formed feelings of dislike and detestation at what he was doing, and perhaps later on some of us heard with a not altogether unnatural satisfaction that he had been apprehended and was to be brought to trial.

If any of you had feelings of that kind about this man I ask you, as I know you will, to cast them entirely from your minds. You are sworn, you know, to try this man according to our law and upon the evidence alone. I daresay that in the years to come in the pages of history it will count for nothing what happens to William Joyce in the course of this trial. He will leave no mark upon those pages. But it may count for a great deal that we, who in our various capacities are concerned in this trial should act and comport ourselves in accordance with the best traditions of English law, should try this man according to the law without fear or favour, affection or ill-will, on the evidence, unprejudiced by any preconceived notions, coldly, dispassionately, on the evidence, and on that alone. So best shall we sustain that great

# Opening Speech for the Prosecution.

The Attorney-General.

record of impartiality and equal justice which British Courts and British juries hold in the eyes of the whole civilized world.

There are two other matters to which I would like to refer before I tell you anything about the details of this case, two matters which you should have in mind throughout the observations which I shall have to make to you, and indeed throughout the whole course of this trial. The first is this: in this case, exactly as in every other case, it is for the prosecution to make out their case against the prisoner. It is for the prosecution to establish that case beyond doubt, and if at the end of it, when you have heard the whole of the evidence and you come to consider the matter under the direction of my lord, you are left with any doubt—not any frivolous, fantastic speculation, but any reasonable doubt such as you would allow to affect your conduct in your ordinary affairs of business or every-day life, then you will resolve the matter in favour of the prisoner, for that would mean that the prosecution had failed to make out their case against him. Secondly, this case, as every other case, consists partly in matters of fact and partly in considerations of law. Matters of fact are for you; matters of law are for my lord. Presently, under the direction of my lord as to the law, you will arrive at your own independent conclusion on the facts and on the evidence that has been called before you, and when in the course of the case I have occasion to refer to the facts, you must not accept them from me, you must wait until they come to be proved in the evidence, as they will be proved. So also in regard to the law, I shall have occasion in opening this case to you to indicate how the law is put on behalf of the prosecution, but I shall be doing no more than putting a submission as to the law on behalf of the Crown, subject always to my lord's better judgment. I shall be doing that in order that it should be understood from the beginning how the Crown puts this case, and in order, when you come to consider the facts, that you should see them in the legal framework which the Crown suggests is appropriate to them in this case; but remember when I refer to any legal matter it is always subject to the later correction and direction of my lord, and you will not take the law from me but from my lord when he sums up this case to you.

The prisoner, as you have heard, is charged with treason.

## William Joyce.

### The Attorney-General.

There are a number of varieties of treason known to our law, all of them striking in a greater or lesser degree at the security and safety of the State, but the treason which is charged against this prisoner in each of the three counts of this indictment is perhaps the most serious of them all, the treason of giving aid and comfort to the King's enemies, to use the old language of our law which has come down to us for 600 years—the treason of adhering to the King's enemies; the treason of assisting Germany in her war against our country and our King.

Whether or not the prisoner's activities did Germany more harm than good is a matter about which it will not be necessary for us to speculate. On 1st September, 1944, the prisoner—whether with pride or shame I cannot tell you, for I do not know—received from Hitler himself the award of the Cross of War Merit for his services to Germany during the war. When you have heard the evidence in this case you will not be left with the slightest shadow of doubt but that throughout the war from the beginning to the end of it, this prisoner was assisting the Germans and adhering to the King's enemies. That alone is not enough to make this man guilty of the offence of treason. Not everybody who assists the King's enemies is capable of committing the crime of treason; a German soldier fighting in the uniform of his country may be made a prisoner of war, but he cannot be convicted of treason, for he would be fighting for his own people and his own country and under no debt or duty of loyalty and faithfulness to the British Crown. Only those can be convicted of treason who owe a duty of loyalty and faithfulness to the British Crown, only those can be convicted of treason who, in the language of our law, the language that you have heard read in this indictment, owe a duty of allegiance to the Crown, and the first thing that you must have prominently before your minds throughout the whole course of this case is, did this prisoner owe a duty of allegiance to the British Crown?

The very basis of allegiance is this—and I am using now the language of Blackstone, one of the old masters of English law—that so long as the Prince affords protection to his subject, so long that subject owes a debt of allegiance to the Prince. Protection by the Prince, by the Crown, by the State. Protection on the one hand and allegiance on the other hand are, in the submission of

# Opening Speech for the Prosecution.

The Attorney-General.

the Crown, reciprocal things, correlative things; the two go together. "Protection"—and again I am using the words of one of our great judges of olden times—"Protection draws allegiance, just as allegiance draws protection." Those who are placed or who place themselves under the protection of the Crown owe the Crown a duty of allegiance so long as that protection continues. The usual case, the common case of protection and allegiance, arises in the case of an ordinary natural-born British subject, the man who, either because he is native born in this country, or because although born abroad, he is born of British parents, has as his birthright the protection of the British Crown, and owes permanently the corresponding duty of allegiance to the British Crown. That is the common ordinary case such as most of us find ourselves in, but although that is the ordinary case and the common case, it is not the only case, and from the most ancient times our law has recognized that aliens, people of foreign birth and foreign nationality, may place themselves under the protection of the Crown, and that whilst they remain under that protection they may owe and do owe a duty of allegiance to the Crown. In the past it was rarely possible for the Crown to extend that protection beyond our own dominions, beyond the Crown's own realm, and so that allegiance which was due from a foreigner was then called local allegiance, because it existed only so long as the alien remained within the locality over which the Crown had jurisdiction; beyond that locality the Crown had no power of exercising protection, but in more modern times, owing to the growth of international law, the growth of diplomatic usage, the Crown is able in some respects to extend its protection to subjects beyond the seas in whatever countries they may go to, and it is the case here for the Crown that whatever his nationality, whether he was British or whether he was not British, this prisoner is a man who had claimed and asserted the right to British citizenship, who had received the protection which is accorded by the Crown to British citizens, who had clothed himself in the full status of a British subject, and who in consequence owed a duty of allegiance to the Crown.

Having told you that by way of preliminary observations about this case, having indicated to you how the Crown puts the law with regard to this case, subject always to my lord's later correction



## William Joyce.

### The Attorney-General.

and direction, let me tell you something about the actual facts. After this man was apprehended there was found amongst his property, acknowledged by him, a birth certificate purporting to show that he had been born in America of a father whose birth was recorded as having taken place in Ireland. Later, in the course of a statement which he made and which I shall presently read to you, he said that he had been born in America in 1906, that his father had been born in Ireland and his mother in England, but that before his birth in America they had both of them become naturalized as citizens of the United States. If that is true—and this is a matter about which you will have to make up your minds when you have heard the whole of the evidence in this case—it would mean that at all times material to this case the prisoner was an American citizen, owing no natural duty of allegiance to the British Crown, but still capable as an alien of placing himself under the protection of the Crown, of clothing himself with the status of a British subject and thereby acquiring and taking upon himself an obligation to be loyal and faithful to the British Crown.

Now let us see what in fact he did do. In 1922 he appears to have been living apparently with his father in this country, in Oldham in Lancashire, and it seems that he was a student at the London University, and on 9th August, 1922, he wrote a letter to the Officer Commanding the London University O.T.C., which he was desirous of joining. You will hear the whole of the letter, you will have it, and I will not bother you with all the details of it now, but in the course of the letter he says this: "I must now mention a point which I hope will not give rise to difficulties. I was born in America, but of British parents. I left America when two years of age, have not returned since, and do not propose to return. I was informed at the Brigade Headquarters of the district in which I was stationed in Ireland that I possessed the same rights and privileges as I would if of natural British birth. I can obtain testimonials as to my loyalty to the Crown. I am in no way connected with the United States of America, against which, as against all other nations, I am prepared to draw the sword in British interests. As a young man of pure British descent, some of whose forefathers have held high positions in the British Army, I have always been desirous of devoting what little capabilities and

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energy I may possess to the country which I love so dearly.' That matter was inquired into, some communication was sent to the prisoner's father, and in the result he was admitted to membership of the London University O.T.C. Whether the statement in that letter as to his British nationality be true or not, this at least is apparent, that at that time he was not unwilling to represent himself as and to contract upon the basis of being entitled to all the rights and privileges of British citizenship.

Eleven years later we come to another matter of written record in this case. On 4th July, 1933, the prisoner made an application to the British Foreign Office for a passport, a British passport. You will see the application form. It will be proved in evidence before you, and again I am not going to read out all the details as to this man's history which it contains, but there are just three matters to which I would invite your particular attention when you come to look at the document yourselves. It contains in heavily leaded type a notice under the heading "Important": "Applicants and persons recommending them, are warned that should any of the statements contained in their respective declarations prove to be untrue, the consequence to them may be serious," and then in a note indicating how people are to fill in the form there is this: "State exact national status, *e.g.*, a British subject by birth or a British subject by naturalization, British-protected person, &c. In the case of a British subject by naturalization see rule 5 at back"; and then, having been warned in that way, having had his attention directly drawn to what he was to state in regard to his nationality, he says this: "I, the undersigned, William Joyce"—and he gives his address, a London address—"hereby declare that I am a British subject by birth, having been born at Rutledge Terrace, Galway, Ireland, on the 24th day of April, 1906, and not having lost the status of British subject thus acquired, I hereby apply for a passport for travelling," and then he lists a number of places to which he wants to travel, as he says, for the purpose of holiday touring.

Five years later, on 24th September, 1938, he makes an application for a renewal of that passport, the passport itself having been issued to him in the first instance for a period of five years, and in the course of that application on the application form that he had to fill in, his attention was again called to the

# William Joyce.

## The Attorney-General.

importance of the fact that the statements that he might make in the form should be true: "Applicants, and persons recommending them, are warned that should any of the statements contained in their respective declarations prove to be untrue, they will render themselves liable to prosecution." You will see it was put a little more strongly in this renewal form at that time than it had been in the original application form, and again he was required to insert his exact national status, and again he said: "I declare that I am a British subject by birth, and I have not lost that national status, and that the whole of the particulars given by me in respect of this application are true." On that, the passport was renewed for a further year, and then on the 24th August, 1939, on the very eve of the war in which this country became involved, he applied again for a further renewal of his British passport, and again under the same warning, with the same direction to state exactly his national status, he declared again that he was a British subject by birth, and that he had not lost that national status, and that the whole of the particulars given by him in respect of his application were true.

Members of the jury, on the strength and on the faith of that original application and of the two applications for renewal, a British passport was issued to William Joyce and was renewed in 1938 and in 1939, and that, in the submission of the prosecution, is a vital part of this case.

Whether the statement that he was born in Ireland was true or not, whether the statement that he was a British subject, whether by birth in Ireland or by birth in America of British parents, was true or not, the submission of the Crown is that so long as that British passport continued to be valid, so long as it was held by him, it placed him, in whatever country he chose to go, in exactly the same position under the protection of the British Crown as would be any other British subject holding a British passport properly obtained. It placed him under the protection of the British Crown, it clothed him with the status of a British subject, and it required from him the duty of faithfulness and allegiance to the British Crown in return.

The words with which a British passport opens are not idle words; let me read them to you. You will see the whole document, but let me read them to you, sanctified and recognized as they are

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by international diplomatic usage. This one, issued to this man in 1933 and renewed in 1938 and again for a further period of a year in 1939, said this: "We, Sir John Allsebrook Simon, a Member of His Majesty's Most Honourable Privy Council, Knight Grand Commander of the Most Exalted Order of the Star of India, Knight Commander of the Royal Victorian Order, Officer of the Most Excellent Order of the British Empire, a Member of Parliament, &c., &c., His Majesty's Principal Secretary of State for Foreign Affairs, request and require in the name of His Majesty all those whom it may concern to allow the bearer to pass freely without let or hindrance, and to afford him every assistance and protection of which he may stand in need." In a foreign country, friendly, neutral or belligerent, that passport entitled this man to be accorded all the rights and all the protection due to a British subject, nor were those rights insignificant even in Germany even in time of war. In Germany in time of war William Joyce, as the holder of this British passport, was entitled to all those rights which by international law one belligerent power owes to the subjects of another. Those rights Germany could disregard only at her peril, at the peril of reprisals being taken against German subjects held in this country, at the peril of satisfaction being demanded for any wrongs that might have been done to William Joyce, at the end of the war, and in the meantime, possessed of those rights he enjoyed the full protection which the neutral power looking after British interests in Germany in time of war was able to accord to him. He would have been entitled, had he so desired, to call upon that neutral power for whatever assistance or protection he might have required. The Crown say that in these circumstances he had not merely clothed himself with the status of a British subject, he had, so to speak, enveloped himself in the Union Jack, secured for himself the greatest protection that he could secure. You may think it is small wonder that in those circumstances the prosecution here say that he was required to comport and demean himself as a loyal British subject owing allegiance to the British Crown. Now let us see what in fact he did do. On 24th August, 1939, he applied for a renewal of this passport. War at that time, as you will remember, was imminent between the two countries, and within a few days, no doubt thinking, however mistakenly, that he was deserting

# William Joyce.

## The Attorney-General.

the sinking ship, he left this country for Germany. On 3rd September war broke out. Nor did this man who had protested to love this country so dearly and to be ready to draw the sword in favour of it, lose much time in associating himself with our enemies. After he was apprehended there was found amongst his property a document signed by him called, I think, a German work book, a record which apparently was to be kept of the various employments into which a person might enter. It was issued to him early in October of 1939, and it showed or purported to show that on 18th September, within a fortnight of the outbreak of war, he had been engaged by the German Broadcasting Organization as an editor, speaker, and announcer of English news, and at once he commenced broadcasting. You will hear that either at the end of September or early October he was heard by somebody in this country familiar with his voice, announcing with singular disregard of the facts—because at that time not a bomb had been dropped in either place—that Dover and Folkestone had been destroyed. I shall not bother you with the details of the various broadcasts about which you will hear, but throughout the war, from the beginning to the end, he was broadcasting over the network of the German Broadcasting system propaganda to this country.

In the work book, which you will see and have an opportunity of studying—it is in German, of course, but it will be translated—he is described as a British subject, and under the heading of "Special Qualifications" is the word "English." I cannot tell you, for I do not know, whether that means that his special qualification was that he could speak English, or that he was English, but you will probably have little doubt about this, that it was because he was a British subject that he had his great value, if he had indeed any value to the Germans at that time. They wanted him to broadcast as a British subject to his own people in the hope—the vain hope—that he might undermine the morale of his own people and seduce some of them from their allegiance to the British Crown.

Records were kept of the various broadcasts which he made from time to time, and indeed from day to day. In 1942 he appears to have been appointed to the superior position of head commentator in the English section at a salary of 1200 marks

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a month, and when the Luxemburg Station was captured by the British troops there was found there a receipt showing that he had been paid 50 marks for each of four broadcasts that he had made apparently from that station in the course of the preceding year. As I told you, in that year on the 1st September, 1944, he received the distinction from Hitler of the award of the Cross of War Merit of the First Class.

In respect of those matters he is charged with high treason in the first count of this indictment, in the first of the three counts of this indictment, with adhering to the King's enemies between 18th September, 1939, the date according to the work book from which he was first engaged by the German Broadcasting Corporation, until 29th May, 1945, the day on which he was apprehended. On that day two British officers were gathering wood for a fire in some forest in Germany near the Danish frontier, and whilst they were there looking for wood to collect, a man came along and indicated to them where there was some loose wood lying about, and he spoke to them at first in French, but later, again to indicate where there was some more wood, he spoke in English. His voice was immediately recognized, and one of the officers said to him: "Would you be William Joyce?" and when that was said, this man made a movement with his hand towards his pocket, which one of the officers—mistakenly as it turned out—thought was in order to draw a firearm, and that officer, with perhaps more mercy than many people would have shown in the circumstances, shot him in the leg. As it turned out he was not armed, but you may think that that officer was not unwise in taking every precaution against the possibility of some treachery. At all events, no harm was done, he was injured in the leg and in due course he recovered and was subsequently searched. In his possession there was found, not this time a British passport, but some form of German passport, some form of German pass, and in that document he was recorded as being of German nationality, formerly British—German, formerly British, and in the course of a statement that he subsequently made he said that he had become naturalized as a German subject some time in September, 1940.

If at that time, if in September, 1940, he was a British subject, and not as he later alleged, an American, then to become naturalized

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as a German when Germany was at war with this country, would in itself be an act of treason against this country and against the Crown, and in respect of that matter of becoming naturalized at that time, he is separately charged with treason in count 2 of the indictment.

On 31st May after being duly cautioned, and warned that he need not say anything, he made a statement and this is what he said: "I was born in Brooklyn, U.S.A., on 24th April, 1906. My father was Michael Joyce, and my mother Gertrude Emily Brooke. My father was born in Ireland in or near Ballinrobe, and my mother was born in Lancashire at Shaw. I understand, though I have no documents to prove any statement that my father was American by naturalization at the time of my birth, and I believe he lost his American citizenship later through failing to renew it because we left America in 1909 when I was three years old. We were generally counted as British subjects during our stay in Ireland and England. I was in Ireland from 1909 till 1921 when I came to England. We were always treated as British during the period of my stay in England whether we were or not. In 1940 I acquired German nationality. I believe the date was September 26th, but the certificate of naturalization is not in my possession. The only evidence I can offer in support of my statement is the entry in my Wehrpass issued subsequently to my naturalization where I am put down as of German nationality." That is the document I referred to, the German pass, in which he is recorded as: "German, formerly British." He continues, "I have been cautioned that I am not obliged to say anything. I understand that proceedings may be taken against me and that whatever I say may be written down and given in evidence."

Then he went on to say this: "I take this opportunity of making a preliminary statement concerning the motives which led me to come to Germany and to broadcast to Britain over the German radio service. I was actuated not by the desire for personal gain, material or otherwise, but solely by political conviction. I was brought up as an extreme Conservative with strong Imperialistic ideas but very early in my career, namely, in 1923, became attracted to Fascism and subsequently to National Socialism. Between the years 1923 and 1939 I pursued vigorous political activities in

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England, at times as a Conservative but mainly as a Fascist or National Socialist. In the period immediately before this war began I was profoundly discontented with the policies pursued by British Governments, first because I felt that they would lead up to the eventual disruption of the British Empire, and secondly because I thought the existing economic system entirely inadequate to the needs of the times. I was very greatly impressed by constructive work which Hitler had done for Germany and was of the opinion that throughout Europe as also in Britain there must come a reform on the lines of National Socialist doctrine although I did not suppose that every aspect of National Socialism as advocated in Germany would be accepted by the British people. One of my dominant beliefs was that a war between Britain and Germany would be a tragedy, the effects of which Britain and the British Empire would not survive and I considered that a grossly disproportionate influence was exerted on British policy by the Jews who had their reasons for hating National Socialist Germany. When in August, 1939, the final crisis emerged I felt that the question of Danzig offered no just cause for a world war. As by reason of my opinions I was not conscientiously disposed to fight for Britain for Germany"—I think that means for Britain against Germany—"I decided to leave the country since I did not wish to play the part of a conscientious objector and since I supposed that in Germany I should have the opportunity to express and propagate views the expression of which would be forbidden in Britain during time of war. Realizing, however, that at this critical juncture I had declined to serve Britain, I drew the logical conclusion that I should have no moral right to return to that country of my own free will and that it would be best to apply for German citizenship and make my permanent home in Germany. Nevertheless it remained my undeviating purpose to attempt as best I could to bring about a reconciliation or at least an understanding between the two countries. After Russia and the United States had entered the war such an agreement appeared to me no less desirable than before, for although it seemed probable that with these powerful allies Britain would succeed in defeating Germany, I considered that the price which would ultimately have to be paid for this help would be far higher than the price involved in a settlement with



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Germany. This belief was strengthened from month to month as the power of Russia grew, and during the later stages of the war I became certain that Britain even though capable of gaining a military triumph over the Germans would in that event be confronted with a situation far more dangerous and complicated than that which existed in August, 1939, and thus until the very last moment I clung to my hope of an Anglo-German understanding although I could see that the prospects thereof were small. I know that I have been denounced as a traitor and I resent the accusation as I conceive myself to have been guilty of no underhand or deceitful act against Britain, although I am also able to understand the resentment that my broadcasts have, in many quarters, aroused. Whatever opinion may be formed at the present time with regard to my conduct, I submit that the final judgment cannot be properly passed until it is seen whether Britain can win the peace. Finally I should like to stress the fact that in coming to Germany and in working for the German radio system, my wife was powerfully influenced by me. She protests to the contrary, but I am sure that if I had not taken this step she would not have taken it either. This statement has been read over to me and it is true."

Now, that is really the whole of this case. That this man adhered to the King's enemies you will not have the slightest shadow of doubt. If, on the whole of the evidence, remembering that the onus is on the prosecution in this case as in every case, you come, under my lord's directions, to the conclusion that this man was a British subject, then it is open to you to convict him on counts 1 and 2 of this indictment.

Count 3 stands in rather a different position and is put on a different basis, and I invite your very closest attention to it throughout the hearing of this case. Count 3, as you will have observed, covers the period up to 2nd July, 1940. It was on 2nd July, 1940, that the British passport which had been renewed to this man in August, 1939, came to an end, and it is in respect of that period covering the validity of the British passport that count 3 of this indictment is laid. It alleges against the prisoner that between those dates, 18th September, 1939, when he entered into the employment of the German Broadcasting Company, and 2nd July, 1940, when the passport came to an end, being between

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those dates a person owing allegiance to the Crown, he adhered to the Crown's enemies. If, under and subject to my lord's direction in regard to the law, you come to the conclusion that this man was under the protection of the British Crown between those dates, and you come to the conclusion that he owed a duty, a corresponding duty of allegiance, then, even if you are not satisfied that he was of British nationality and acquit him on the first two counts in this indictment, it would be open to you, under my lord's direction, to convict him on the third count.

Now, members of the jury, that is the whole of this case. I have no desire, my learned friends have no desire, to exaggerate the facts against this man or in any way at all to strain the law applicable to cases of this kind, and you will try this case serenely indifferent to the consequences so far as they may affect William Joyce whether your verdict be one of guilty or not, anxious only, as I indicated to you when I commenced my opening, to maintain the great traditions of the English law for equal and impartial justice. With the assistance of my learned friends I shall call the evidence before you.

## Evidence for the Prosecution.

GLADYS WINIFRED ISAAC, examined by Mr. BYRNE—I am an Assistant Secretary to the University of London Military Education Committee which administers the Regulations of the Senior Training Corps. Before the war that body was known as the Officers Training Corps, Senior Division. I am in charge of the records of the ex-cadets of the Officers Training Corps. (Shown Exhibit No. 20.<sup>3</sup>) That is a document from our records, namely, a letter signed by William Joyce, 86 Brompton Street, Oldham, Lancs. It reads, "3rd August, 1922. Dear Sir, Will you kindly forward or inform me as to how I may obtain a copy of the 'University of London Officers Training Corps Handbook,' and oblige, yours faithfully, William Joyce." (Shown Exhibit No. 21.) That is a letter from our records dated 9th August, 1922, signed William Joyce, bearing the address 86 Brompton Street, Oldham, Lancs., which reads, "Dear Sir, I received this morning, the Corps Hand-

<sup>3</sup> For list of Exhibits see Appendix I, p. 229.

## William Joyce.

Gladys Winifred Isaac.

book for which I thank you. It is my intention, if possible, to study with a view to being nominated, by the University, for a Commission in the Regular Army. I have served with the irregular forces of the Crown in an Intelligence capacity, against the Irish guerillas. In command of a squad of sub-agents I was subordinate to the late Capt. P. W. Keating, 2nd R.U.R., who was drowned in the 'Egypt' accident. I have a knowledge of the rudiments of Musketry, Bayonet Fighting, and Squad Drill. I must now mention a point which I hope will not give rise to difficulties. I was born in America, but of British parents. I left America when two years of age, have not returned since, and do not propose to return. I was informed, at the Brigade Headquarters of the district in which I was stationed in Ireland, that I possessed the same rights and privileges as I would if of natural British birth. I can obtain testimonials as to my loyalty to the Crown. I am in no way connected with the United States of America, against which, as against all other nations, I am prepared to draw the sword in British interests. As a young man of pure British descent, some of whose forefathers have held high position in the British army, I have always been desirous of devoting what little capability and energy I may possess to the country which I love so dearly. I ask that you may inform me if the accident of my birth, to which I refer above, will affect my position. I shall be in London for the September Matriculation Examination and I hope to commence studies at the London University at the beginning of the next academic year. I trust that you will reply as soon as possible, and that your reply will be favourable to my aspirations. Thanking you for your kind promise of interview. I am, Sir, yours faithfully, William Joyce."

Were inquiries then made of the prisoner's father after that letter had been received?—Yes. As a result of these inquiries an enrolment form in the Officers Training Corps signed "William Joyce" and dated 21st October, 1922, was received by the University. Exhibit No. 22 is this latter. It reads, "University of London Officers Training Corps. Form of Contract. To the Officer Commanding. Sir, Being desirous of enrolment as a cadet in the University of London Contingent, Officers Training Corps, I hereby agree, in consideration of your permitting me to be so

## Evidence for Prosecution.

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enrolled, to be bound by the Conditions and Regulations applicable to, and by the Rules of, the said Contingent at present, or from time to time thereafter, in force; and I undertake to conform to all such Conditions, Regulations, and Rules from the date of my enrolment until such time as my resignation from the Corps has been tendered and duly accepted. Your obedient servant." This is signed "William Joyce" over a sixpenny stamp. On the next page of this document are certain particulars as follows: "Particulars to be filled in by applicant." "Surname: Joyce. Christian names: William. Place of birth: New York. Date of birth: 24th April, 1906. Permanent address: 10 Longbeach Road, S.W.11. Present address: 10 Longbeach Road, S.W.11. School or Institution of the University (if any): Battersea Polytechnic, B'Beck." This last word stands for Birkbeck and has been put in afterwards. "State whether you are a matriculated student of the University: Yes. Course of study: Intermediate Science. Public or other school at which previously educated. Previous military service (if any): Worcestershire (four months). No Cert. 'A'." He had no Certificate "A" at that time but obtained this later. "State which of the units of the Contingent you desire to join: Infantry." Exhibit 23 is a receipt of Certificate "A" which reads, "Please acknowledge receipt of enclosed Certificate 'A' (Infantry) Capt. and Adjutant, University of London O.T.C., 46 Russell Square, London, W.C.1." There is the receipting signature "William Joyce, 22nd June, 1925." Exhibits Nos. 24 and 25 are two re-engagement contracts dated 22nd July, 1924, and 6th October, 1925, respectively, each bearing the signature, "William Joyce."

Cross-examined by Mr. SLADE—Having received the letter which you told us about from William Joyce, did you write to his father on 23rd October, 1922?—It was written in my office; I do not think I actually wrote it. Amongst the records in the office is a letter to the father of William Joyce which reads, "23rd October, 1922. —Joyce, Esq., 86 Brompton Street, Oldham, Lancs. Dear Sir, Your son William Joyce has seen me with a view to joining the University of London O.T.C., and has also spoken of his desiring to register as a candidate for a Commission in the Regular Army. It appears, however, that he is in doubt as to whether he is

## William Joyce.

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a 'British subject of pure European descent.' From what he tells me I think he comes within this definition, as he says you were never naturalized as an American. Perhaps therefore you would confirm this point, when I shall be able to proceed with his enrolment and registration." That letter is Exhibit No. 26.

Do you produce the original of what purports to be a reply signed "M. F. Joyce" and dated 26th October, 1922, from 86 Brompton Street, Oldham (witness shown Exhibit No. 27)?—Yes, it reads, "Capt. Peploe, Adjutant, U.L. O.T.C. Dear Sir, your letter of 23rd October received. Would have replied sooner, but have been away from home. With regard to my son William. He was born in America, I was born in Ireland, his mother was born in England. We are all British and not American citizens." I do not recollect seeing that letter when it came.

If you had seen it you would have seen that the point that the letter asked to be confirmed, which was that William Joyce's statement that his father was never naturalized as an American, is not in fact replied to in that letter?—No.

Please look at copy letter of 23rd October that I have asked you about. Do you see, "From what he tells me I think he comes within this definition, as he says you were never naturalized as an American. Perhaps therefore you would confirm this point." That is the information requested by the letter?—I think he says, "We are not American citizens."

You put the statement "We are not American citizens" as confirmation of the statement that he was never naturalized as an American?—Yes.

HAROLD GOBWIN, examined by Mr. HOWARD—I am an assistant passport officer at His Majesty's Passport Office of the Foreign Office. Exhibit No. 11 is an application form for a British passport, accompanied by a covering letter which reads, "41 Farquhar Road, S.E.19, 4th July, 1933. The Passport Office. Gentlemen, I enclose herewith an application for a passport, two photographs, and a postal order for 15s. Despatch of the passport through the post would be of great convenience to me. I am, Sirs, Your obedient servant, William Joyce." On the application form under the heading "d" is printed, "State exact national status, e.g., a British subject by birth or a British subject by naturalization,

## Evidence for Prosecution.

Harold Godwin.

British-protected person, &c." Under the heading " Declaration to be made by applicant for passport " appears the following: " London, 4th July, 1933. I, the Undersigned, William Joyce, at present residing at 41 Farquhar Road, S.E.19, London, hereby declare that I am a British subject by birth, having been born at Rutledge Terrace, Galway, Ireland, on the 24th day of April, 1906, and not having lost the status of British subject thus acquired, I hereby apply for a passport for travelling to Belgium, France, Germany, Switzerland, Italy, Austria for the purpose of holiday touring." Signed " William Joyce."

At the bottom of the form under the heading of " Important " are there these words, " Applicants and persons recommending them, are warned that should any of the statements contained in their respective declarations prove to be untrue, the consequences to them may be serious " ?—Yes.

Upon that application, which was accompanied by a photograph of the applicant, was a passport granted ?—Yes, passport No. 125943 was granted on 5th July, 1933, for a period of five years.

Mr. HOWARD—My lord, notice to produce that passport has been given to the defence; the prosecution now call for it.

Mr. SLADE—I am not in a position to produce it; my friend may use a copy.

*Examination continued*—Are you familiar with the form of passport that was issued by the Foreign Office to British subjects at this time ?—Yes, I have a specimen form of passport exactly similar so far as the formal wording is concerned to the one which was issued to William Joyce. Exhibit No. 28 is a specimen passport on the inside cover or front page of which there is a sixpenny stamp. It reads, " We, Sir John Allsebrook Simon," followed by his various titles and distinctions, " His Majesty's Principal Secretary of State for Foreign Affairs, request and require in the name of His Majesty all those whom it may concern to allow the bearer to pass freely without let or hindrance, and to afford him every assistance and protection of which he may stand in need." It is signed " John Simon."

Is Exhibit No. 2 a form applying for the renewal of a passport ?

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Harold Godwin.

—Yes, it is signed “William Joyce.” It reads, amongst other contents, “I, the Undersigned, William Joyce, at present residing at 83 Onslow Gardens, S.W.7, hereby make application for the renewal of British passport 125943 issued to me at Passport Office, London, on the 6th July, 1933, for a further period of one year. I declare that I am a British subject by birth and I have not lost that national status, and that the whole of the particulars given by me in respect of this application are true.” This is signed by the applicant William Joyce and dated 24th September, 1938. In consequence of that application a passport was renewed until 1st July, 1939.

Is Exhibit No. 3 a similar form of renewal of a passport?—Yes, it reads, “I, the Undersigned, William Joyce, at present residing at 38A Eardley Crescent, S.W.5, London, hereby make application for the renewal of British passport No. 125943 issued to me at London on the 6th July, 1933, for a further period of one year. I declare that I am a British subject by birth and I have not lost that national status, and that the whole of the particulars given by me in respect of this application are true.” It is signed William Joyce and dated 24th August, 1939. This passport was further renewed to 1st July, 1940.

Cross-examined by Mr. SLADE—Am I right in saying that one year is the minimum period for which a passport can be renewed?—It is the minimum fee if you take a period as long as a year. A passport may be renewed only for a few months; it is not the minimum in that sense.

In one of the exhibits it says, under a note (b) in the margin, “Insert number of years (not exceeding five) for which it is desired the passport shall be renewed. (See Regulations 2 and 3 overleaf).” I have not got Regulations 2 and 3; will you tell me what they say?—“Foreign Office passports may be renewed for any consecutive period of one to five years from the date of expiry.”

Am I right in saying that the minimum period for which a passport may be renewed is one year?—No, I am afraid it is not. According to what the applicant is told, at any rate, that is so, is it not?—Yes, it is. The first period is as long as a year,

R..... *5-20*  
485870  
*Ex. 3*

### Form (D). Renewal of Passport.

NOTES (See Regulations overleaf).

1. The fee for renewal is 2s. for each year from date of expiry (Regulation 5).
2. Passports which have been in existence for 10 years, or which contain no further space for visas, are not renewable (Regulation 5).
3. If the passport is to be endorsed for additional countries, a form of application [Form F] is also required. Fee 2s. (Regulation 7).

(In Christian Name and Surname, in full, in block capitals.)

I, the Undersigned, (a) WILLIAM J. JOYCE

(If last name of year last preceding that to which it is renewed the Passport must be renewed into English, if it is not.)

at present residing at 38 A, Lombly Wood, W. 5, London

(If last name of year last preceding that to which it is renewed the Passport must be renewed into English, if it is not.)

hereby make application for the renewal of British Passport No. 15943

(If last name of year last preceding that to which it is renewed the Passport must be renewed into English, if it is not.)

issued to me at London in the 26<sup>th</sup> July 1915

(If last name of year last preceding that to which it is renewed the Passport must be renewed into English, if it is not.)

for a further period of (b) 1 year

(If last name of year last preceding that to which it is renewed the Passport must be renewed into English, if it is not.)

I declare that I am a (c) British Subject by Birth and I have not lost that national status, and that the whole of the particulars given by me in respect of this application are true.

I further declare that I have no other Passport in my possession.

This Space to be left blank for use at the Passport Office.



*Galloway*  
*24th 06*

Renew for 1 periods  
to 1. 7. 40

*Sirell*  
*24 8 39*

Signature of applicant *W. Joyce*

Date 24/8/39

And I, the Undersigned, (d) Willed George Costello  
THE NATIONAL BANK LIMITED,

of St. James's Place, London, hereby declare that, to the best of my personal knowledge and belief, the above declaration of

the said Mr. W. Joyce

is true, and that I can form my personal knowledge of him ~~him~~ him as a fit and proper person to hold a Passport.

Date 24 AUG 1939

Signed *W. G. Costello*

**IMPORTANT.**—Applicants, and persons recommending them, are warned that should any of the statements contained in their respective declarations prove to be untrue, they will render themselves liable to prosecution.

**CAUTION.**—The attention of persons who are asked to sign this declaration is specially called to the fact that it can only be signed from personal knowledge of the applicant, and not from information obtained from other persons.

[OVER.]

Application by William Joyce for Renewal of Passport, dated 24th August, 1939



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for which the fee appropriate to a year is paid. It is a question of the fee really.

I gather that a passport is valid, in the first instance, for five years?—Yes. It may then be renewed up to a total of a further five years, making ten years in all.

It may be renewed, that is to say, for any period from one up to five years?—Yes.

What I am putting to you is that no one ever makes an application to renew a passport for a week?—Yes, I agree with that. The minimum asked for is one year.

Do you mean that although the minimum they ask for is a year they can be granted for less than that?—Yes.

Re-examined by the ATTORNEY-GENERAL—You said that in practice no one would apply for a renewal for a period of less than a year. Might it be that passports would in fact be issued for periods of less than a year?—The Passport Office itself may issue or renew a passport for a period of less than one year.

Supposing that for some proper reason an applicant was prepared to pay the fee for a year and only asked for a renewal for a month or three months, in a proper case would a passport be renewed to him for such a period?—Yes, I think it would.

ALBERT HUNT, examined by Mr. BYRNE—I am a Detective Inspector of the Special Branch at New Scotland Yard. I know the prisoner Joyce. I first met him in 1934 when he was a member of the British Union of Fascists, later becoming a member of the National Socialist League. I have not talked to him. During the time he held these positions I listened to public speeches made by him and am thus familiar with his voice. From 3rd September, 1939, until 10th December, 1939, I was stationed at Folkestone and whilst there remember listening to a broadcast that attracted my attention from what was said in it. I immediately recognized the voice of the person broadcasting as the prisoner's. As far as I can recollect it was about the first month after the outbreak of war, either in September or early October, 1939. The prisoner's voice stated that Dover and Folkestone had been destroyed and this remained firmly in my memory on account of the fact that there had been no enemy activity on Folkestone up to that date.

# William Joyce.

Albert Hunt.

Up to 10th December, 1939, I heard him again on the wireless<sup>4</sup> on sundry occasions but took no particular note of what he said. On my return to London on 10th December, 1939, I heard his voice on the wireless on a number of occasions between 1940 and 1944.

Did you make a shorthand note of what he said on the wireless? —Yes. Exhibit No. 4 is a book in which I made shorthand notes of what I heard the prisoner say during the times that I listened to him after I had returned to London. Exhibits Nos. 5, 6, 7 and 8 are correct transcripts of my shorthand notes of what I heard him say on the 30th January, 1943, 8th April, 1943, 12th July, 1943, and 30th August, 1944.<sup>5</sup> Exhibit No. 5, dated 30th January, 1943, begins by the prisoner saying, "In this proclamation which he addressed to the German people, the Fuehrer first called to account the fourteen years' struggle which preceded the victory of January 30th, 1933."

I do not think there is any particular matter in that until you get to the last two paragraphs but one. Do you see where it says, "The Fuehrer's proclamation," and then it expresses his gratitude to his soldiers for the—and then you could not catch all the words—"being enacted from the far North to the African desert, from the Atlantic to the wide steppes of the East, from the Aegean to Stalingrad, an epic which will survive more than one millenium. It is the Fuehrer's"—then you could not catch it all—"to the home front to remain worthy of the heroic deeds done by the troops. The proclamation continues: the total endeavour of our nation must now be increased. The heroic fight of our soldiers on the Volga should be"—then there is a blank—"to do his utmost in the struggle for the freedom of Germany and thereby in the wider sense for the preservation of the whole continent. It was the desire of our enemies to threaten peaceful towns and villages with weapons of gruesome destruction. In the fracas which our foes forced upon us, as they did before

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<sup>4</sup> It is worth pointing out that this was the *sole* evidence of any broadcast by the prisoner within the period covered by the 3rd count, on which he was convicted; that the witness had never spoken to Joyce; that he was unable to say what station he was listening to; and that all he could remember was the statement that Folkestone and Dover had been destroyed—a statement so fantastically absurd as to suggest some doubt whether a propagandist as skilful as Joyce would ever have made it.

<sup>5</sup> See Appendix VI, p. 276, for full report of transcripts.

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Albert Hunt.

in 1914, the fracas which represents to be or not to be of our race, the Almighty will be the best judge. Now our task is to fulfil our duties in such a way that before Him as the Creator of the Universe and in accordance with the"—then there is a blank—"given by him for the battle of existence, we may stand without ever faltering." So much for that one. Then Exhibit No. 6—

By Mr. JUSTICE TUCKER—There are two passages that Mr. Byrne has read. Did you understand those to be still part of Hitler's proclamation, or are those observations of the prisoner himself?—They are part of the proclamation, my lord, except the last paragraph, and in that paragraph they are the prisoner's own words.

*Examination continued*—Will you look at Exhibit No. 6, the paragraph that begins, "There can be only one reason"?—Yes, it reads, "There can be only one reason. The Prime Minister blinds himself to such prospects, however hypothetical they may be. He is the servant, not of the British public, or of the British Empire, but of International Jewish finance. This charge must be preferred against a man who has so signally violated British tradition in the course of this war. If we take one example. The Anglo-American raid on Antwerp which resulted in the death of more than 2000 peaceful Belgians and 300 innocent children. This provides a striking example of the complete lack of scruple actuating the conduct of the British Government. Belgium would never have been involved in the war at all. In essence and in substance the Belgians were abandoned by the British who had given them the most lavish promises of assistance, and now in broad daylight under conditions of excellent visibility these people are massacred, not because they are at war with the British, but because they no longer serve the purposes of the British Government. Such an act of malicious spite is not in my opinion typically British. It bears instead the hallmark of Jewish policy which has always been directed towards the eradication of Gentiles who could not be made to serve the interests of Hebrew domination." In Exhibit No. 7 in the last two paragraphs but one he is talking about the Italian campaign as follows: "I do not propose at

## William Joyce.

Albert Hunt.

the present juncture to offer any help or advice beyond remarking that in Moscow, at least, there is no disposition to consider this enterprise as a suitable and adequate discharge of an obligation undertaken by the British Government to attack Germany from the West in such a manner as to provide substantial and appreciable relief for the Soviet forces in the East. That the Germans should be gaining any ground, however large or however little, from the Bolsheviks, whilst the assault on Sicily is proceeding, is a phenomenon which finds no place in the scheme of enemy strategy. There is no value in premature generalizations, but I do not think it rash to predict that in one respect there is a very special disappointment in store for the enemy. Churchill seems to have entertained some crazy notion that if only he could deliver a blow on Italian territory, Italy would collapse.<sup>6</sup> It is evident already that the whole Italian nation is united as never before and inspired with the ardent determination to defend the Fatherland. This resolution need not be described, it will be shown in action. In the meantime the war against enemy merchant shipping is being vigorously pursued. In the course of armed reconnaissance over the Atlantic German planes set on fire two enemy vessels, one of them a liner of more than 20,000 gross registered tons. Moreover, it is announced that German U-boats have sunk another six merchantmen of 42,000 gross registered tons. Thus it is clear that British jubilation over the decrease in tonnage losses was, to say the least, ill-timed. As Admiral Lutzow recently pointed out, the war at sea has its fluctuations, but these fluctuations do not prevent this also having a general tendency, and that tendency is to destroy the strategical co-ordination of the foe by disorganizing and cutting off his supplies." In Exhibit No. 8 the fifth paragraph begins as follows: "If you had lived in Germany during the first six months of the fifth year of the war, you would have wondered why such a high and comfortable standard of living was being maintained; why so many people were engaged upon tasks which were not essential to the concentrated prosecution of the war. The answer is that the government of the Reich was not in any way neglectful of its duty or oblivious to existing potentialities, but it was thought

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<sup>6</sup> As events showed, Mr. Churchill was perfectly justified in this respect.

## Evidence for Prosecution.

Albert Hunt.

well to hold large reserves in hand. In these generalizations, however, I must accept the disposition of the Home Army, a considerable part of which was kept from the fronts by those persons who have paid the just penalty and were instantaneously crushed on 20th July.<sup>7</sup> In brief, Germany is in a position, not only to defend itself, but with the aid of time to win this war. The chief purpose of German strategy at the moment is to gain this time. Gaining time, however, does not mean sitting and waiting for something favourable to happen. It means causing something favourable to occur, and I can assure you that the German people have never been so active in their determination to shape the course of events. Our enemies may indulge in short-lived jubilation. There is no need to discourage them. This premature celebration will be transmitted into bitterness and colossal disappointment." At the bottom there is a passage: "When Mr. Cordell Hull announced that in the negotiations with Roumania, by which presumably he means King Michael and his cronies, the initiative will rest with Moscow, he is only confirming once again the fact that Roosevelt and Churchill have renounced, in favour of Stalin, all interest in Europe. On this occasion, as on many others, the White House speaks for the British Government as well as for itself."

Cross-examined by Mr. SLADE—Inspector, I have to challenge your identification of the prisoner's voice on the occasion you referred to in the first months of the war. Did I understand you to say that you have never talked to the prisoner?—Yes.

That was what you said at Bow Street?—Yes.

When the deposition was read over to you you did not notice that they put down, "I have talked to him"?—I do not recall that.

What you intended to say and did say there, as here, was you never had talked to him?—That is true.

Of course the statement that Dover and Folkestone had been destroyed in September or up to the 3rd of October, 1939, would

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<sup>7</sup> This refers to the abortive uprising and the attempted assassination of Hitler in July, 1944.

## William Joyce.

**Albert Hunt.**

have been fantastic?—Not necessarily. It could have been destroyed.

The statement was between 3rd September and 3rd October; that statement was fantastic?—Well, it was really.

No bomb of any description was dropped in this country until about September, 1940<sup>8</sup>?—I do not know.

After you left Folkestone on 10th December, 1939, were you stationed in London?—Yes, I have been in this country all the war.

Leave out September, 1940, do you not know that no bomb was dropped in this country until months after September, 1939?—Well, I can only speak from memory, but I remember the London blitz on 7th September, 1940.

You were at Folkestone when you heard this broadcast and you say you identified Joyce's as being the voice which used these words. I am suggesting to you that you are mistaken?—I am not mistaken.

To what station did you tune in?—I do not know, I was just tuning in my receiver round the wavelengths when I heard the voice.

Just twiddling it round you heard the voice. Was all that you heard the words "Folkestone and Dover have been destroyed"?—No, I heard something else, but I cannot recall it.

Was all that you heard that you can remember that Folkestone and Dover had been destroyed?—Yes.

Was that sufficient at once to discredit in your mind anything that Joyce might thereafter say?—Yes.

Re-examined by the ATTORNEY-GENERAL—You said that you had never talked to Joyce. Have you heard him talk?—Yes. He has got a voice which I would recognize again.

Have you any doubt that it was that voice that you heard in September or early October, 1939?—None whatever.

We know now that no bombs had in fact been dropped in either Dover or Folkestone at that time, but would that fact have been known to a British soldier abroad or by English-speaking listeners who may have heard that news at that time—

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<sup>8</sup> This statement is not strictly correct. The first bomb to be dropped on land in this country was on the Orkneys in October, 1939.

## Evidence for Prosecution.

Albert Hunt.

Mr. SLADE—My lord, is that a question that this detective inspector can answer?

Mr. JUSTICE TUCKER—Mr. Slade, you asked him the question whether it was fantastic or not, which is a matter of opinion. I merely propose to ask him whether he meant that it would have been fantastic to anyone who heard this in Folkestone or Dover, or whether he himself was of the opinion whether or not it would have been fantastic if heard by somebody anywhere else.

The WITNESS—No, just to people in Dover or Folkestone then, my lord.

Mr. JUSTICE TUCKER—Mr. Slade, in the interests of accuracy and to do justice to everybody the deposition that was taken has got the last witness down as saying, "I have not talked to him."

Mr. SLADE—I am obliged, my lord. The copy that we have been supplied with is "I have." It was a pure slip in the depositions.

ALEXANDER ADRIAN LICKORISH, examined by the ATTORNEY-GENERAL—I am a Captain in the Reconnaissance Regiment, R.A.C. In the evening of 28th May of this year I was in a wood in Germany somewhere near the Danish Frontier at Flensburg in company with a Lieut. Perry. We were gathering wood to make a fire and came across a person who appeared to be walking in the woods. He was the prisoner. He indicated some fallen wood to us and said, "Here are a few more pieces," in English. He spoke to us first in French, and then afterwards in English. I recognized the voice as that of the announcer or speaker on the German Radio. Lieut. Perry accosted the prisoner and said, "You would not happen to be William Joyce, would you?" The prisoner went to put his hand in his pocket and Perry fired his revolver. The prisoner fell to the ground saying, "My name is Fritz Hansen." I, thinking the same as Perry, that he was armed, rushed over to get his weapon from him and searched him at the same moment and found two passports on his person. He was unarmed and was wounded in the leg. Exhibit No. 9 is a Reisepass and Exhibit

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<sup>9</sup> The name on Joyce's German passport is given as "Wilhelm Hansen."

# William Joyce.

Alexander Adrian Lickorish.

No. 10 a Wehrpass, which are the two passes we found on him. I treated him for his wound and in due course he was taken to the frontier post. The two documents were handed to the Guard Commander.

WILLIAM JAMES SCARDEN, examined by Mr. HOWARD—I am a Captain in the Intelligence Corps and on 16th May of this year I carried out a search at the radio station at Luxemburg. There I found, amongst other documents, Exhibit No. 11 which is a document in German bearing a signature purporting to be William Joyce. I have seen the prisoner sign his name and in my view it is his signature. In the morning of 31st May I saw the prisoner at a hospital at Lueneberg. I told him my name and said, "I am charged with the duty of making inquiries into the activities of British subjects employed by the enemy during the course of the war. There is abundant evidence to show that you have been working for the German broadcasting services, and it is proposed to present a case to the Director of Public Prosecutions. I have to ask you certain formal questions relating to your nationality and I must caution you that you are not obliged to say anything and that anything you do say will be taken down in writing and given in evidence should proceedings be taken." The prisoner replied, "Of course, I am quite prepared to answer questions, but I would like to consider whether I will make a statement or not." I put a number of questions to him with regard to his nationality and made a note of his replies. I left him and saw him again at 2.30 p.m. on the same day. He said, "I would like to make a statement." I wrote down the statement, First of all I started the statement with the replies to the questions I put to him in the morning and then I cautioned him and wrote a caution into the statement. The prisoner signed that caution and then he dictated the statement which I wrote down at his dictation. I passed it to him. He read it through and signed it.

Will you look at Exhibit No. 12 (handed to witness)? Is that the statement and the replies to the questions that you asked?—Yes. "74 General Hospital, Lueneberg, Germany. 31st May, 1945. Statement of William Joyce, who saith: I was born in Brooklyn, U.S.A., on 24th April, 1906. My father was Michael Joyce and my mother Gertrude Emily Brooke. My father was born



## Evidence for Prosecution.

William James Scarden.

in Ireland in or near Ballinrobe and my mother was born in Lancashire at Shaw. I understand, though I have no documents to prove any statement that my father was American by naturalization at the time of my birth and I believe he lost his American citizenship later through failing to renew it because we left America in 1909 when I was three years old. We were generally counted as British subjects during our stay in Ireland and England. I was in Ireland from 1909 till 1921 when I came to England. We were always treated as British during the period of my stay in England whether we were or not. In 1940 I acquired German nationality. I believe the date was September 26th but the certificate of naturalization is not in my possession. The only evidence I can offer in support of my statement is the entry in my Wehrpass issued subsequent to my naturalization where I am put down as of German nationality. I have been cautioned that I am not obliged to say anything. I understand that proceedings may be taken against me and that whatever I say may be written down and given in evidence." Then there follows the signature "Wm. Joyce." "I take this opportunity of making a preliminary statement concerning the motives which led me to come to Germany and to broadcast to Britain over the German radio service. I was actuated not by the desire for personal gain material or otherwise, but solely by political conviction. I was brought up as an extreme Conservative with strong Imperialistic ideas, but very early in my career, namely, in 1923, became attracted to Fascism and subsequently to National Socialism. Between the years 1923 and 1939 I pursued vigorous political activities in England, at times as a Conservative but mainly as a Fascist or National Socialist. In the period immediately before this war began I was profoundly discontented with the policies pursued by British Governments, first because I felt that they would lead to the eventual disruption of the British Empire, and secondly because I thought the existing economic system entirely inadequate to the needs of the times. I was very greatly impressed by constructive work which Hitler had done for Germany and was of the opinion that throughout Europe as also in Britain there must come a reform on the lines of National Socialist doctrine although I did not suppose that every aspect of National Socialism as advocated in Germany would be accepted by the

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British people. One of my dominant beliefs was that a war between Britain and Germany would be a tragedy, the effects of which Britain and the British Empire would not survive, and I considered that a grossly disproportionate influence was exerted on British policy by the Jews who had their reasons for hating National Socialist Germany. When in August, 1939, the final crisis emerged I felt that the question of Danzig offered no just cause for a world war. As by reason of my opinions I was not conscientiously disposed to fight for Britain against Germany, I decided to leave the country since I did not wish to play the part of a conscientious objector, and since I supposed that in Germany I should have the opportunity to express and propagate views the expression of which would be forbidden in Britain during time of war. Realizing, however, that at this critical juncture I had declined to serve Britain, I drew the logical conclusion that I should have no moral right to return to that country of my own free will and that it would be best to apply for German citizenship and make my permanent home in Germany. Nevertheless, it remained my undeviating purpose to attempt as best I could to bring about a reconciliation or at least an understanding between the two countries. After Russia and the United States had entered the war such an agreement appeared to me no less desirable than before for although it seemed probable that with these powerful allies Britain would succeed in defeating Germany, I considered that the price which would ultimately have to be paid for this help would be far higher than the price involved in a settlement with Germany. This belief was strengthened from month to month as the power of Russia grew, and during the later stages of the war I became certain that Britain even though capable of gaining a military triumph over the Germans, would in that event be confronted with a situation far more dangerous and complicated than that which existed in August, 1939, and thus until the very last moment I clung to my hope of Anglo-German understanding although I could see that the prospects thereof were small. I know that I have been denounced as a traitor and I resent the accusation as I conceive myself to have been guilty of no underhand or deceitful act against Britain although I am also able to understand the resentment that my broadcasts have, in many quarters,

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aroused. Whatever opinion may be formed at the present time with regard to my conduct, I submit that the final judgment cannot be properly passed until it is seen whether Britain can win the peace. Finally I should like to stress the fact that in coming to Germany and in working for the German radio system my wife was powerfully influenced by me. She protests to the contrary, but I am sure that if I had not taken this step she would not have taken it either. This statement has been read over to me, and it is true. (Signed) Wm. Joyce."

On 1st June did you see the prisoner again?—Yes. I showed him certain documents. Exhibit No. 13 is one. It is a copy of a birth certificate headed "New York. Nov. 2nd, 1917. A Transcript from the Records of the Births reported to the Department of Health of the City of New York." It goes on, "State of New York. Certificate and Record of Birth of. Name of Child: William Joyce. Sex: Male. Colour: White. Date of Birth: April 24th 1906. Place of Birth: 1377 Herkimer Street. Father's Name: Michael Joyce. Father's Residence: 1377 Herkimer Street. Father's Birthplace: Ireland. Father's Age: 36 years. Father's Occupation: Contractor. Mother's Marriage Name: Gertrude Emily Joyce. Mother's Name before Marriage: Gertrude Emily Brooke. Mother's Residence: 1377 Herkimer Street. Mother's Birthplace: England. Mother's Age: 26 years." It is signed by Charles F. Yerdon, Physician.

Will you look at Exhibit No. 14? Is that a letter in German headed "Berlin, 26th June, 1942," apparently addressed to William Joyce?—Yes.

That will be translated. Will you look at Exhibits Nos. 15, 16, 17, 18 and 19?—Yes. Exhibit No. 15 is a contract written in German between the German Radio authorities and William Joyce.<sup>1</sup> Exhibit No. 16 is the document in German awarding the War Cross of the First Class to William Joyce. Exhibit No. 17 is a card in German "Deutscher Volkssturm" relating to William Joyce. Exhibit No. 18 is a certificate in German. Exhibit No. 19 is another document in German headed "Arbeitsbuch" on the front page. I produced this to him at the same time as the others were produced. On the first page of this document appears the signature "William Joyce," with which I am familiar. I produced

<sup>1</sup> See Appendix V, p. 274.

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all these various documents, namely, Exhibits Nos. 13, 14, 15, 16, 17, 18 and 19 to the prisoner and he said, "Yes, they are all my property."

Look at Exhibits Nos. 1, 2 and 3. My lord, this is for the purpose of identifying signatures. These are the application and renewal form for the passport. Do you see what purports to be on these documents 1, 2 and 3, the signature of William Joyce?—Yes, that is the signature of the prisoner. Exhibit No. 10, the Wehrpass, bears the signature of William Joyce as also does Exhibit No. 11. At the end of the contract, Exhibit No. 15, there appears the signature of the prisoner, as also on Exhibit No. 19, the workbook.

Will you look at Exhibits Nos. 20, 21 and 22? My lord, these are additional Exhibits. The first one is a letter to the Secretary of the Military Education Committee. Does that bear the signature of the prisoner William Joyce?—Yes; Exhibit No. 21 is another letter; Exhibit No. 22 is the enrolment form bearing his signature; Exhibit No. 23 is a receipt for Certificate A bearing his signature; Exhibits Nos. 24 and 25 are two forms of contract for re-engagement in the Officers Training Corps bearing his signature. Exhibit No. 19 is the workbook bearing a number 40/A166525, and Exhibit No. 10, the Wehrpass, bears on the front page on the left hand side under a heading the same number, 40/A166525.

Cross-examined by Mr. SLADE—When did the birth certificate, Exhibit No. 13, first come into your possession?—On the day before I put it to him.

You saw Joyce in the hospital at Lueneberg on 31st May and on 1st June. Was the birth certificate, Exhibit No. 13, in your possession on 30th May?—That is so.

Was that why you put the question to him about his nationality?—No. I did not examine the property at all, as a matter of fact; it was in my possession, but I did not examine it.

You did not find the birth certificate on him, did you?—No.

At the time that you were putting the question to him about his nationality did he know that it was in your possession?—I think he must have done, but I do not know.

If you do not know, on what grounds do you think he must

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have known? Did you tell him?—No. He knew he was in custody, he knew that property was in custody, and I can only assume he must have known that I had it.

In fact, it only came into your possession for the first time on the morning of the previous day?—Yes.

You have been identifying various signatures of William Joyce. If you look at the birth certificate, Exhibit No. 13, what that shows or purports to show is that he was born on 24th April, 1906?—Yes.

Look at Exhibit No. 21. That is dated 9th August, 1922. If the date on the birth certificate is correct on the 9th August, 1922, Joyce would have been 16 years and 4 months old?—Yes.

When was the first occasion on which you saw him sign his name?—31st May, 1945.

If the birth certificate is right he would then have been almost exactly 39 years old?—Yes.

So that the disparity in years between these two signatures is roughly 23 years and you do not find any difficulty whatever in recognizing the signature of a man of 39 as being the same as that of a boy of 16?—I find changes there, but I find similar characteristics.

In spite of those changes may I take it you find no difficulty in identifying the signature of a man of 39 with the signature of a boy of 16?—No.

SAMUEL LOPEZ SALZEDO, examined by Mr. BYRNE—I am a translator and interpreter of foreign languages. I have translated a number of documents which are Exhibits in this case. Exhibit No. 9 is the German passport in the name of Hansen; my translation is Exhibit No. 9A. These are correct translations. The translation of Exhibit No. 9A reads on the cover: "German State," on the first page "German State Passport No. 281/44. Name of holder William Hansen accompanied by his wife and by," there is a place left blank for children, "Nationality: German." On the second page there is a photograph apparently of the prisoner and it would seem that his name was William Hansen for the purpose of this document. Under the photograph is the signature "Wilhelm Hansen." The document goes on, "It is hereby certified that the holder is the person appearing

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in the above photograph and has signed in his own hand the signature appearing below. Hamburg, 3rd November, 1944. Chief of Police." Then there is a signature. On the third page it reads "Personal description. Calling, Teacher. Birthplace, Galway (Ireland). Date of Birth, 11th March, 1906. Residence, Hamburg. Build, medium. Face, oval. Colour eyes, blue grey. Colour of hair, dark blond. Particular identification marks, scar, right cheek." Exhibit No. 10A is my translation of Exhibit No. 10 which reads on the cover: "Military passport." On page 1 is "Military No. Berlin X/06/129/47/1. Name of holder, William Joyce. No. of identity card"—no number is given—"No. of Workbook, 40/A166525/27" followed by an "i." "No. of identification marks (in war)"—that is left blank—followed by an address, "Berlin, W.15," and the stamp of the military district. There is a signature purporting to be that of the Military District Commander. On page 2 is the stamp of the Military District and a photograph of the prisoner, with the signature "William Joyce" described as "Actual signature of holder." On pages 3 and 4 there is written "Personal particulars." Surname, Joyce. Christian name, William. Birth, 24th April, 1906. Birthplace, New York, U.S.A. Nationality, German, formerly English. Religion, believer. Family status, married. Profession according to profession register: (Studied) talks and literature: (Exercised) Speaker on the Reich Radio. Parents: Father, Michael Joyce, architect; Mother, Gertrude Joyce, Maiden name, Brooke. Education, University. Knowledge of foreign languages, English perfect English German. Professional, technical or sporting qualifications, swimming, riding and boxing." On page 5 there is "Registration. Registered as liable to military service. Military District Headquarters Berlin X, 12th February, 1941. Decision: Category K.V. Army Service Position: 1st Reserve I," followed by the signature of the Military District Commander. Exhibit No. 11A is my translation of Exhibit No. 11 which reads, "German European Radio Transmitter Head Broadcasting Station, Luxemburg. Payment Order." There is the word "Cashbook" with a number and date and "Date of letter of instructions 10th February, 1944. Pay Office is instructed" and then "To Mr. William Joyce, Luxemburg, Hotel Alfa" and then "Account No.," followed by certain numbers, "Usual residence, Berlin Charl."—that would be

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Charlottenburg—" 9 Kastanien Allee 29," then " Sound record to pay following fee " followed by " Day of week, Date, Time " giving 16.10, apparently 16th October, 9.12, 15.12, 22.1 and 22.30. These are apparently the hours. It follows on, " Title of broadcast: Views on the News; English propaganda talks, manuscript and talks at 50. Remuneration 200. Collaboration in the broadcasting or recording took place. Above amount acknowledged to have been received Luxemburg, 11th February, 1944." There is the signature " William Joyce. (Receipt only to be made out on receipt of the account at the pay office.) Subject to approval of the Berlin Directorate. Reich-Rundfunk G.m.b.H. Luxemburg Station, German Europe Broadcasting Studio, Principal Station Luxemburg." It is a receipt for 200 marks.

Now look at Exhibits Nos. 14 and 14A?—Exhibit No. 14A is my translation of Exhibit No. 14 and reads: " Foreign Director Dr. Winkelkemper, Berlin 26th June, 1942. To Mr. William Joyce. I hereby appoint you with effect as from the 1.7 of this year as Chief Commentator for the group of countries ' England.' This is an instruction to you to prepare the political comments in the English language for our news service in accordance with the directions of the superior authorities and suggestions by the director of the group of countries. I also ask you to examine the news services from the language point of view and to allocate the announcers in concert with the editorial chief who is on duty. In order that you may obtain the necessary time for your further extended duties, you are released from the news announcement service. Having regard to your extended responsibility and your many years of efficiency as an announcer and commentator I am considering a readjustment of your remuneration. You will hear further on this matter shortly. (Signed) Winkelkemper."

In Exhibits Nos. 15, and No. 15A which is your translation, there are one or two clauses I wish to draw attention to. Does that read " Contract between the Reichs-Rundfunk G.m.b.H. Berlin-Charlottenburg and Mr. William Joyce?—Yes. " (Wilhelm Frohlich of Berlin. The following contract is concluded.)" Then clause 1: " Mr. William Joyce is appointed Head Commentator in the English editorial Department of German Broadcasting Stations for Europe. His work will be arranged according to the plan of

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distribution of business prepared by the Foreign Directorate. In other respects the mutual rights and obligations are determined by the provisions below of this contract. The regulations as to remuneration of the Reichs-Rundfunk G.m.b.H. will not apply save in so far as they are hereinafter expressly referred to: Clause 2. Mr. William Joyce will receive a gross monthly salary of 1,200 Reichsmarks (one thousand two hundred Reichsmarks) payable in advance on the 1st of each month. This salary covers all claims of Mr. William Joyce against the Reichs-Rundfunk G.m.b.H. in respect of his work on behalf of the latter unless shift or Sunday extra work is done for service reasons. In addition to the salary, children's allowances will be granted to the same amount and on the same conditions as in the case of the remaining members of the permanent staff of the Reichs-Rundfunk G.m.b.H. The Reichs-Rundfunk G.m.b.H. will during the currency of the contract grant an additional allowance for maintenance of  $4\frac{1}{2}$  per cent. of the monthly salary including the children's allowance in accordance with Section I of the appended annexe to the Service Contract. At Christmas Mr. William Joyce will receive a special bonus under Clause 10 of the remuneration regulations of the Reichs-Rundfunk G.m.b.H." and then Clauses 7 and 8. Clause 7 reads: "Mr. William Joyce is bound to place the whole of his work at the disposal of the company," and Clause 8: "The carrying on of any accessory occupation by Mr. William Joyce is only permissible with the express consent of the directorate. He has no right to enter into obligations of an exclusive character towards firms producing gramophone records," and Clause 10 reads: "This contract comes into force on and from July 1st, 1942. The period of notice of termination is three months to end at the close of a calendar quarter. Berlin-Charlottenburg, July 3rd, 1942. Reichs-Rundfunk G.m.b.H.", and then there is a signature. After that there is the signature of "William Joyce."

Is Exhibit No. 16A your translation of Exhibit No. 16, namely, the Award of the Cross of Merit in War?—Yes, that reads: "In the name of the German people I award to the Chief Commentator William Joyce of Berlin-Charlottenburg the Cross of War Merit of the 1st Class. Führer's Headquarters, 1st September, 1944. The Führer." There are two signatures "A. Hitler" and





IM NAMEN  
DES DEUTSCHEN VOLKES  
VERLEIHE ICH

dem Hauptkommandator  
William Joyce  
in Berlin-Charlottenburg

DAS  
KRIEGSVERDIENSTKREUZ  
1. KLASSE

Führerhauptquartier, den 1. September 1944.

DER FÜHRER

**Cross of War Merit awarded to William Joyce**  
(The first signature is that of Adolf Hitler)

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"Meissner." Exhibit No. 17A is my translation of the Volkssturm card, Exhibit No. 17, which has on it "German Volkssturm Gau Berlin. Name: Joyce. Christian name: William. Born on 24.4.1906 in New York. Residing at 29 Kastanienallee, Berlin-Charlottenburg is a member of the German Volkssturm. German Volkssturm Berlin. District V Battalion, Wilhelmplatz I." This is dated Berlin, 21st December, 1944, and signed "G. Knispel, Local Group Chief."

Look at Exhibit No. 18 and your translation No. 18A. Does that read "Reichs-Rundfunk-Gesellschaft, Broadcasting Company for the realm." Is that the transmitting company for the realm?—Yes. It reads: "The German transmitting station for Europe Board of Management Reichs-Rundfunk G.m.b.H. (1) Berlin-Charlottenburg 9, Masurenallee. Certificate to be produced at the booking office. (1) Berlin-Charlottenburg 9, Masurenallee 8-14. 29.3.1945. Our ref st. We hereby certify on behalf of Mrs. Margaret and Mr. William Joyce, collaborators in the English Editorial Department of the German Transmitters for Europe, that they have temporarily been transferred to the transmitting station of Apen. As it may be necessary for service reasons for Mr. and Mrs. Joyce to have to return to Berlin at any time we request that a corresponding re-notification of journey be handed them." This is signed by somebody called "Hopp," signing apparently for the Reichs-Rundfunk G.m.b.H., the German Transmitters for Europe.

Now look at Exhibits Nos. 19 and 19A, your translation?—Yes. On the cover it reads: "German State Workbook." On page 1: "Workbook (Law of 26 February, 1935, State Gazette, page 311). No. 40/A166525"—which corresponds with the number of the Wehrpass—"Name, William Joyce," and then the actual signature of the holder "William Joyce." On page 2 it reads: "Date of Birth, 24th April, 1906. Birthplace, Galway. District, Ireland. Nationality, Great Britain. Family status, married. Place of residence and address, Berlin, Friedrichstrasse 30. Berlin-Charlottenburg, Steifensandstrasse 4. Berlin-Charlottenburg, Kastanienallee 29." On page 3 it reads: "Vocational Training. School Training, Honours, London University, 1923-1932. Special qualifications (e.g., driver's licence for motor vehicles), English." Page 4 reads: "Only to be filled in by Labour Office. Previous

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occupations of long duration. 1. Lecturer Victoria Tutorial College, London, England (from) 13.9.26 (to) 16.4.35. 2. Director of Propaganda and Deputy Leader British Union of Fascists, National Socialists, London, England, 16.4.33-11.3.37. 3. Leader British National Socialist Party, London, England, 2.4.37-27.8.39. 4. Editor and Speaker German Radio Company, Berlin-Charlottenburg, 19.9.39." On page 5: "Occupational Group 27. Class of occupation i. Issued on 4th October 1939," followed by the stamp of the Labour Office and a signature. On pages 6 and 7: "Entry by employers. Name and place of concern. German Radio Company, Berlin-Charlottenburg 9, Masurenallee 8-14. Date of beginning of employment 18th September, 1939. Nature of employment, Announcer of English news, Reichs-Rundfunk G.m.b.H. Berlin-Charlottenburg." In No. 2, German Radio Company is given as the name and place of the concern, "Berlin-Charlottenburg. Nature of business, The German Broadcasts for Europe. Date of beginning of employment, 1st July, 1942. Nature of employment, Head Commentator in English section."

FRANK BRIDGES, examined by Mr. HOWARD—I am Chief Inspector, New Scotland Yard. At 20 minutes past 4 on the afternoon of Saturday, 16th June, 1945, I saw the prisoner after he had arrived in this country under military escort. I told him that I was a police officer, that I was going to arrest him and take him to Bow Street where he would be charged with high treason. I cautioned him and he said, "Yes, thank you." Later that day he was charged with treason under the Treason Act, 1351. The charge was read over to him and he was cautioned and he replied, "I have heard and taken cognisance. To-day I shall not add anything to the statement I have made to the military authorities."

The ATTORNEY-GENERAL—My lord, there is no statement, and that is the case for the Crown.

### Submission by the Defence.

Mr. SLADE—My lord, I submit to your lordship as a matter of law that there is no case to go to the jury upon any of the three counts, the subject-matter of this indictment. The three

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counts are all alike in two respects: each of them in the statement of the offence alleges that William Joyce was then, that is to say at the material date, a person owing allegiance to His Majesty the King. Upon the face of the indictment there was nothing to distinguish between counts 1 and 3, and indeed until I heard my friend the Attorney-General open the case on the third count I had not appreciated there was any distinction between them, except that the lesser count 3 was included in the greater, which is count 1, in period of time. As he has now been good enough to tell me what his case is on that point I will deal with that separately. No one disputes now that as to both these counts 1 and 2 the prosecution must establish—of course, it is sufficient at the present moment that they should show merely a *prima facie* case—that William Joyce is a British subject, because if he is an alien, apart from count 3, he can only owe allegiance to His Majesty the King so long as he is within the King's dominions, and in this case it is alleged that the acts complained of were done outside His Majesty's dominions, namely, in the German realm.

The third count, as now explained by my learned friend the Attorney-General, says, as I understand it, this: Notwithstanding that to-day you are not a British subject, if the prosecution fail to prove that you are, notwithstanding the fact that the offences are alleged to have taken place outside His Majesty's dominions, you, nevertheless, being an alien, assuming that against the prosecution for this purpose, and being outside the King's dominions, owe allegiance to His Majesty the King because you have by what must *ex hypothesi* be false statements obtained possession of a British passport. That, of course, is a pure question of law.

With regard to the counts 1 and 2, I am now submitting to your lordship that there is not even *prima facie* evidence to go to the jury that William Joyce is or ever has been a British subject. Nationality is a question of status. It is not a question of contract or mere position; it is a question of status, and status must be in every case a question of mixed fact and law, so far as this country's nationality is concerned, it being, of course, a question of English law. My submission to your lordship really comes to this, that if I am a Chinese, by screaming from the

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house tops fifty thousand times that I am a British subject, I do not become one; secondly, by making fifty thousand declarations that I am a British subject I do not become one; thirdly, by swearing on oath that I am a British subject or by a statutory declaration I do not become one, and it makes no difference whether I make those statements because I honestly believed them to be true or whether I make them for some ulterior motive of obtaining a British passport. I cannot alter my status nor can I create a status by anything which I can do. In other words, it takes two people at least to make status, the person who is the subject and the Crown in this country who, by Act of Parliament or otherwise at common law, confers that status upon persons.

I will take an illustration to show your lordship what I am submitting, and shall preface it with this remark. When a person says that he was born in London on 14th October, 1891, that is, and must be, pure hearsay, because he cannot possibly say when he was born or where he was born. He is only repeating what someone else has told him. I will take a stronger case than that against myself. Supposing a man was charged with bigamy, marriage, of course, being a question of status, and the prosecution having proved the second ceremony of marriage put a witness into the box who said, "I was present at the wedding breakfast and as the bridegroom was about to cut the cake I heard him turn to his bride and say, 'I think I might just as well tell you now that I am married already and my wife is still living.'"

A witness having been put into the witness-box to testify to that statement having been made by the bridegroom, in my respectful submission that would be no evidence whatever, not even *prima facie* evidence, that the prisoner was married, enjoyed the status of a married man, and that his wife was still living at the time of the second ceremony of marriage.

I do not wish to weary your lordship with a long submission and a large number of authorities in support of it, if it has to be done twice over, and I only want to adopt the practice which is more convenient to the Court. So far as the first submission is concerned, certainly at some stage of this trial I shall have to trouble your lordship with a reference to the authorities, firstly, as to what constitutes a British subject, and, secondly, as to the duration of what my friend the Attorney-General has rightly called

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local as opposed to natural allegiance. That question, of course, must arise on the third count. So far as that count is concerned I respectfully submit it can only be a pure question of law as to which there can be no question at all for the jury. Putting it in its baldest possible form, it means this, that a person not being a British subject, that is to say an alien, can in certain circumstances owe allegiance to His Majesty the King while he is outside His Majesty's dominions. In my respectful submission there is no authority for that statement of the law anywhere. If there is, I have not been able to find it, except one reference to a passage which I may have to deal with in due course, in Foster's Crown Law in 1762. One other word before I ask your lordship which is the more convenient course for me to adopt, because at some time or other I should like to have the advantage of hearing the Attorney-General's legal arguments so as to have an opportunity of replying to them. Quite apart from my submission, I admit, of course, that the Crown only has to show a *prima facie* case that William Joyce is a British subject, and the statements which Joyce has made I have summarized.

Put shortly, my four points are these: firstly, that status is a question of mixed fact and law; secondly, that admissions are pure hearsay, so-called admissions; thirdly, as I shall show your lordship in a moment, they are themselves contradictory, although I appreciate that that would not mean that there was not some evidence, if I am wrong, I mean, on the second point; and, fourthly, which is more of a comment, that if William Joyce was in fact born in Ireland, nothing would have been simpler than for some witness for the prosecution to have produced his birth certificate, because there are Acts in force with regard to the registration of births in Ireland just as there are in England and Wales since the 1837 Act. I therefore submit to your lordship on those grounds so far as counts 1 and 2 are concerned the admissions which have been made—I will just summarize them—are not *prima facie* evidence of what is a mixed question of fact and law, namely, the status of William Joyce. Summarizing the various statements with the dates, there are Exhibit No. 1, dated 4th July, 1933, which is the declaration to obtain a passport. British subject by birth, born in Galway, 24th April, 1906. Exhibit No. 2, British subject by birth—that is dated 24th

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September, 1938, and it was the first application for renewal. Exhibit No. 3, again British subject by birth, second application for renewal, dated 24th August, 1939. Exhibit No. 9 in German, No. 9A in English, dated 3rd November, 1944, German passport, page 3, the birthplace is stated to be Galway, Ireland, and the date of birth 11th March, 1906. Exhibit No. 10, in German, 10A in English, 12th April, 1941, the birthplace is stated to be New York, U.S.A., and the nationality German, formerly English. The prisoner's statement, Exhibit No. 12, made on 31st May, 1945, born in Brooklyn, U.S.A., 24th April, 1906; and Exhibit No. 13, the birth certificate which was issued on 2nd November, 1917. It gives the date of birth as 24th April, 1906, the place of birth as 1377 Herkimer Street, and the father's birthplace as Ireland. Exhibit No. 17, which is in German, No. 17A being in English, is dated 21st December, 1944. That is a Volkssturm card, and the statement is that the prisoner was born in New York on 24th April, 1906. Exhibit No. 19 is in German, 19A in English. In the German workbook, which was issued on 4th October, 1939, the date of birth is given as 24th April, 1906, the birthplace as Galway, the district as Ireland, and the nationality as Great Britain. My lord, in the additional evidence—I have not got all the exhibit numbers—the first one is Exhibit No. 21. That is the letter of 9th August, 1922, the one produced by Miss Isaac this morning, in which he says, "I was born in America but of British parents." In the contract of enrolment, which is Exhibit No. 22, the statement made by the prisoner was that the place of birth was New York and the date 24th April, 1906. Of course, the fact that they are contradictory, I respectfully agree, does not mean that at this stage of the case there would not be evidence either way, if a man can affect his status or give evidence of his status by making admissions. I base my submission on counts 1 and 2 purely upon the fact that admissions by a man or a declaration by a man, no matter how often repeated, is no evidence at all, not even *prima facie* evidence, of status. If your lordship is against me on that submission, then I feel it would be perhaps wrong now to go on to my submission upon the third count, which is purely a question of law, if it means arguing it twice, and I would like your lordship to be good enough to indicate which

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would be the better stage to go into this pure question of law. If, of course, I am right in my submission in regard to counts 1 and 2, those counts, however, become a pure question of law, because assuming everything against myself for the purpose of my submission, I should still be submitting to your lordship that, as a matter of law, Mr. Joyce could not owe any allegiance to His Majesty the King, whether he obtained one or fifty passports by false pretences, assuming that they were obtained by false pretences.

Mr. JUSTICE TUCKER—Count 3, of course, although it is relied upon, put in the alternative way—if there is some evidence that the prisoner was a British subject, that would support count 3 as well. That being so, I think it would be convenient at this stage to deal with that aspect of the matter, and then in certain events you might be able to renew your submission on the alternative basis of count 3.

Mr. SLADE—I am obliged to your lordship, and if that is equally convenient to the Court I would prefer it for this reason. My learned friend, the Attorney-General, has been good enough to promise me a list of his cases. I have given him a list of mine and I have sent it up to the Court so that your lordship might have the volumes before you. I do not know the books at the moment on which my learned friend is going to rely. I am not making the slightest complaint, I have had the greatest possible assistance, but in fact they have not reached me. I shall have time to look at them and that will give me an opportunity of replying to my friend's legal argument afterwards. The first question that I desire to argue involves the question of what is a British subject. That involves a consideration of not merely who is a British subject now in 1945, but what the law was in 1906. For the purpose of my argument the only fact I want your lordship to assume, if indeed it requires any assumption, is that the birth certificate which has been put in by the prosecution, namely, Exhibit No. 13, accurately states the date of the prisoner's birth as 24th April, 1906. The law involves an investigation of three things: (1) Where was the prisoner born? (2) What was his father's nationality at the time of his birth? (3) What was the father's nationality at such time as the prisoner came



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of age, which would be on 23rd April, 1927? To show your lordship that the law which obtains now is not necessarily the law which obtained in 1906—

Mr. JUSTICE TUCKER—I am not quite clear what you are doing, Mr. Slade. Are you amplifying your submission that there is no evidence on the basis of admissions made by the prisoner?

Mr. SLADE—Yes. I understood your lordship to say that I should deal with the question of a British subject.

Mr. JUSTICE TUCKER—Yes, as to whether there is evidence at the present stage at all which would be sufficient to leave to the jury as some evidence of British nationality.

Mr. SLADE—There are declarations and admissions made by the prisoner. I am now submitting that they are questions of mixed fact and law. In order to have the slightest weight one would have to assume that Mr. Joyce, at the time the admissions were made, had some knowledge of what the law was at the time, otherwise of course his admissions would not be worth the paper on which they were written. For example, let us take a fantastic case. Suppose that he was born in this country—and it is assumed that because he was born in this country, which would be a very natural assumption—he was a British subject. Of course there are cases where a person who is born in this country may have been a British subject at one time, assuming he was an infant, and ceased to be a British subject when his father became naturalized. But I am hoping that I can assist your lordship in coming to a conclusion on the question of being a British subject, because it is difficult to explain my submission without knowing what the law was. It is now laid down by the British Nationality and Status of Aliens Act, 1914, which has been amended by various subsequent Acts, but not in any form material to this case. The Act as amended by the Acts of 1918 and 1922 is set out in Halsbury's Statutes, vol. 1, p. 185. I do not think that the Statute I am reading from now has been amended so as to cover the slight variations of 1918 and 1922. I do not think there is any difference on the point, but at sec. 1 (3) are these words: "Nothing in this section shall, except as otherwise expressly provided, affect the

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status of any person born before the commencement of this Act." The words "except as otherwise expressly provided" must refer back to the words immediately following the small letter (c), "Provided that the child of a British subject, whether that child was born before or after the passing of this Act." That is the only passage in sec. 1 where anything making the Act retrospective appears expressly. If this Act did apply sec. 1 (1) reads in this way: "The following persons shall be deemed to be natural-born British subjects, namely (a) any person born within His Majesty's dominions and allegiance; and (b) any person born out of His Majesty's dominions whose father was, at the time of that person's birth, a British subject," and who fulfils any of the following conditions.

Now sec. 12 (1) says: "Where a person being a British subject ceases to be a British subject, whether by declaration of alienage or otherwise," which of course would include naturalization, "every child of that person, being a minor, shall thereupon cease to be a British subject unless such child, on that person ceasing to be a British subject, does not become by the law of any other country naturalized in that country," and the proviso is immaterial. There is nothing to show that sec. 12 does not come into operation as regards everyone the moment the Act came into operation, which was on the 1st of January, 1915. There is no corresponding proviso to sub-sec. (3) of sec. 1, but I will tell your lordship what the corresponding law was before this Act came into force with regard to that. Lastly, sec. 13, and this is very important, says: "A British subject who, when in any foreign state and not under disability, by obtaining a certificate of naturalization or by any other voluntary and formal act, becomes naturalized therein, shall thenceforth be deemed to have ceased to be a British subject." Disability is defined in sec. 27 as meaning the status of being a married woman or a minor, lunatic or idiot. Upon the assumption that none of those sections applies to the case of William Joyce because he was born before 1st January, 1915, the law dealing with this point is very conveniently set out in the first edition of Halsbury's Laws of England which happens to have been published in 1907.

Mr. JUSTICE TUCKER—I do not want to stop you, Mr. Slade,

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but I am finding it a little difficult to follow because, at the present moment, there is no evidence as to when this man was born.

Mr. SLADE—Exhibit No. 13, my lord.

Mr. JUSTICE TUCKER—That is no evidence yet. It is a birth certificate. It only becomes evidence when there is some evidence of the identity of the prisoner with the person described in the certificate. At the present moment I merely know that there is a document in existence which purports to show that somebody was born on a certain day.

Mr. SLADE—My lord, in my respectful submission that has been put in as having been acknowledged by William Joyce to be his property and is quite clearly referring to his own birth certificate. If it did not refer to that it would have been wholly irrelevant.

Mr. JUSTICE TUCKER—I have expressed my view as to the legal effect of this document. It was put in without objection as part of the general material in the case as a document which he acknowledged as being in his possession together with a number of other documents. At the present moment, in my view, there is no evidence to prove when this man was born—at the present stage. I quite follow your submission with regard to whether or not a man can make an admission as to his status. That seems to be quite another matter. I find it a little difficult to follow how at the present stage an investigation as to the precise law of nationality in 1906 or at any other date is material.

Mr. SLADE—Of course, I quite understand your lordship finding it difficult because I am afraid the point which your lordship has just put to me, and which, of course, I accept, has never occurred to me. Of course, I can quite see your lordship's point. Your lordship means it merely purports to be a birth certificate of a person of the name of William Joyce. Accepting what your lordship says, I find it difficult at the moment to see how that can be in a sense otherwise than in my favour, because if there is no evidence at all of where this man was born, none of any

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description whatsoever except his own statements which are contradictory, then can I not for the purposes of my submission that it cannot affect his status argue, firstly, that to say that he was a British subject the admission would have to go to the extent of saying that he was either born within the King's allegiance or was born outside the King's allegiance of a British father at the time of his birth. In the absence of this birth certificate there is no evidence that he was born within His Majesty's allegiance, except, of course, the man's own statements which I am submitting are not evidence at all. I say that in order to raise a *prima facie* case that Joyce was a British subject, the prosecution must show a *prima facie* case that he was born in this country, or a *prima facie* case that his father was a British subject at the time of his birth. The statement of William Joyce, Exhibit No. 12, has been put in by the prosecution, and the first line of that says: "I was born in Brooklyn, U.S.A., on 24th April, 1906." My lord, I should have respectfully submitted to your lordship that that statement having been put in is some evidence that he was born on that date, and I am also reminded that there is another document which refers to the maiden surname of his mother, Miss Brooke, which also appears upon the birth certificate as the mother's name before marriage, Gertrude Emily Brooke, but taking that against myself—

Mr. JUSTICE TUCKER—Your submission really covers all that. You say a man cannot admit what his status is and that any admission he makes must be in the nature of hearsay, and with regard to your submission that the prosecution must prove either that the man was born in Britain, or that his father was a British subject at the time of his birth, if your submission is correct, you would say that he could not give first-hand evidence of either because he would not know anything about it at the time he was born. That seems to me to cover everything if it is right.

Mr. SLADE—Your lordship, of course, is quite right. I was only referring to the authorities, because without referring to the authorities it does appear that those are the two requirements of British nationality or one of them is. I was taking the law as it is now, and the law, slightly different, as it was before

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the 1914 Act was passed, for the purpose of showing that by either law a prerequisite of British nationality, assuming that the prisoner was born out of this country or out of His Majesty's dominions, was that the father should be at the time of his birth a British subject. Putting it against myself for the moment, the birth certificate gives the father's birthplace as Ireland. If the son can only speak to his own birthplace by hearsay, *a fortiori*, he can only speak to his father's birthplace by hearsay. My concluding remarks on my submission are these. Whenever one wants to prove any form of status, for example, bankruptcy, if you want to prove that a man is an undischarged bankrupt, if it is a bankruptcy offence, it is not sufficient to take a statement by the man that he was made bankrupt and that he is still undischarged: you have to produce the record from the Bankruptcy Court to show when the Receiving Order and the Adjudicating Order were made. That applies to any form of status. There can be no stronger evidence against a man on a question of pure fact than his own admission, but in my respectful submission, where it is not a question of fact but a question of applying the correct law to the facts in a criminal case, an admission is not even *prima facie* evidence.

Mr. JUSTICE TUCKER—Yes, Mr. Attorney.

The ATTORNEY-GENERAL—My lord, in my submission status is a question of law dependent upon certain facts. The facts are birth in a particular locality or birth of parents of a particular nationality. Both those matters, birth and parentage, are matters of fact proveable, in my submission, in any way appropriate to the proof of any other matter of fact. Not every birth can be proved by the production of a birth certificate or by the evidence of somebody who happened to be present at the time, but if my learned friend's submission were right it would mean that no person could ever give evidence of his own nationality. I do not think it is necessary for me to go so far as to say all, but certainly most matters of fact are capable of proof either by affirmative evidence or by admission, and an admission to be binding on the person who makes it does not have to relate to something which is within that person's personal knowledge: it is equally a binding

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admission if it is based upon information which that person has been given and which information he is content to accept. So far as they go every document in this case, whatever their evidential value may be, with the exception of the prisoner's own statement, Exhibit No. 12, tends to show facts in relation to birth and parentage which if uncontradicted would lead to a conclusion of British nationality. If the matter were left at this stage as a question of fact, the jury or a tribunal of fact might well say, in assessing the relative importance which they would attach to the prisoner's statement made after he had been apprehended and at a time when he had been warned that he might be prosecuted, that that was not a document to which they were prepared to attach so much weight as to the letter to the officer commanding the O.T.C., or as to the three declarations made in the application for a British passport or to the letter sent to the O.T.C. authorities by the prisoner's father. That letter—not one which it would have been open to me to put in as evidence in this case, and to which I was careful not to refer—has been very properly put in by my learned friend and now, in my submission, becomes an important piece of evidence in this case. True, my learned friend made some comment on it to the witness. He suggested it was an equivocal answer to the question which had been put in the letter from the O.T.C. authorities: "Were you ever naturalized?" but the witness said, and a tribunal of fact might regard the answer as a very good one, that he thought the letter was a complete answer to the question inasmuch as it stated that neither of them were American citizens and that they were British. Even if one looked at the birth certificate for what it is worth, it would, in my submission, be evidence, if it is evidence of anything, of British nationality. True, it records the birth in America, but it records the father's birthplace as being Ireland. I ask your lordship to say that if the matter rests here the documents are really all one way, that my learned friend can not reprobate the seven exhibits which go to suggest British nationality and approbate the one exhibit, the prisoner's statement, which appears to suggest American nationality, but taking the documents as a whole, and bearing in mind the context of Exhibit No. 1, the statement and all the rest of the documents, the evidence as to the fact would lead to a conclusion of British nationality. I am not at all sure

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that my learned friend put the onus right in this matter. In the first volume of *East's Pleas of the Crown* there is a passage at p. 51 referring to a case of *Aeneas Macdonald*, (1747) 18 State Tr. 857, which was a treason case tried in 1747, and the passage I would rely on is this. Lord Chief Justice Lee, in directing the jury, told them that as to the question whether or not the prisoner was a native of Great Britain the presumption in all such cases was against the prisoner, and that where he puts his defence on that issue the proof of his birth out of the King's dominions lay upon him. The matter is dealt with in *Roscoe's Criminal Evidence*, 15th edn., at p. 1099. There, under the heading "proof of being a subject," it is said: "Apparently slight *prima facie* evidence is sufficient, if uncontradicted. In 1571 *Story*, (1571) *Dyer*, 298a, admitted the allegation that he was born English but objected that for seven years he had been in the service of the King of Spain, but the Court refused to accept the plea. . . . 'If he spoke English,' said Lord Chief Justice Holt in *Vaughan*, (1696) 13 State Tr. 494, 'that is some evidence he is an Englishman (*i.e.*, a subject) where there was evidence that defendant had admitted that he was an Irishman.' The question is clearly for the jury." Then, my lord, it goes on to discuss the case, but, in my submission, the authorities here are all one way. If, indeed, there is any onus on the Crown at all, it is one which is lightly discharged and here, on the evidence from the documents, from the declaration, from the father's own letter showing that his attention was specifically directed to that point, my submission is that the tribunal must find the fact as to birth and parentage which would enable your lordship to rule that this man was a British subject if those facts remained uncontradicted.

Mr. SLADE—I have looked up the case *Aeneas Macdonald*, which is also reported in *Foster's Crown Cases*, p. 60. That was the case where Lord Chief Justice Lee said in substance that in cases of treason everything was assumed against the prisoner, and Sir Michael Foster made a similar statement, your lordship will remember, with regard to the onus of proof in cases of murder which were disapproved by the House of Lords in *Woolmington's* case, [1935] A.C. 462, "Lord Chief Justice Lee, in his direction to the jury, told them that the overt acts laid in the indictment

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being fully proved and not denied by the prisoner, or rather admitted by his defence, the only fact they had to try was whether he was a native of Great Britain, if so, he must be found guilty. And as to that point he said the presumption in all cases of this kind is against the prisoner, and the proof of his birth out of the King's dominions, where the prisoner putteth his defence on that issue, lieth upon him. But whether the evidence that had been given in the present case (which he summed up very minutely) did or did not amount to such proof he left to their consideration." That was, of course, evidence put forward by the prisoner for the purpose of rebutting the onus which the Chief Justice had put upon him. I gather from my friend's reference to *Roscoe*, p. 1099, that *Aeneas Macdonald*, (1747) 18 State Tr. 857, was the authority for that statement of the law.

The ATTORNEY-GENERAL—*Aeneas Macdonald* and the other case I mentioned of *Vaughan*.

Mr. SLADE—My lord, in my respectful submission, that is not the law as it stands to-day, and anything of that kind must be taken to have been overruled by the House of Lords in *Woolmington's* case. Indeed, Foster himself was overruled in dealing with the onus of proof in murder cases. Your lordship will remember *Woolmington's* case [1935] A.C. 462, but perhaps I might refer to it quite shortly. The head note reads: "In a trial for murder the Crown must prove death as the result of a voluntary act of the prisoner and malice of the prisoner. When evidence of death and malice has been given, the prisoner is entitled to show by evidence or by examination of the circumstances adduced by the Crown that the act on his part which caused death was either unintentional or provoked. If the jury are either satisfied with his explanation or, upon a review of all the evidence, are left in reasonable doubt whether, even if his explanation be not accepted, the act was unintentional or provoked, the prisoner is entitled to be acquitted. Statement of the law in Foster's *Crown Law* (1762), p. 255, disapproved," and at p. 480 there is the well-known passage from the speech of Lord Sankey, the Lord Chancellor, at the foot of the page: "If at any period of a trial it was permissible for the judge to rule that the prosecu-



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tion had established its case and that the onus was shifted on the prisoner to prove that he was not guilty and that unless he discharged that onus the prosecution was entitled to succeed, it would be enabling the judge in such a case to say that the jury must in law find the prisoner guilty and so make the judge decide the case and not the jury, which is not the common law. It would be an entirely different case from those exceptional instances of special verdicts where a judge asks the jury to find certain facts and directs them that on such facts the prosecution is entitled to succeed. Indeed a consideration of such special verdicts shows that it is not till the end of the evidence that a verdict can properly be found and that at the end of the evidence it is not for the prisoner to establish his innocence, but for the prosecution to establish his guilt. Just as there is evidence on behalf of the prosecution so there may be evidence on behalf of the prisoner which may cause a doubt as to his guilt. In either case, he is entitled to the benefit of the doubt. But while the prosecution must prove the guilt of the prisoner, there is no such burden laid on the prisoner to prove his innocence and it is sufficient for him to raise a doubt as to his guilt; he is not bound to satisfy the jury of his innocence. This is the real result of the perplexing case of *Rex v. Abramovitch*, (1914) 31 T.L.R. 88, which lays down the same proposition, although perhaps in somewhat involved language. Juries are always told that, if conviction there is to be, the prosecution must prove the case beyond reasonable doubt. This statement cannot mean that in order to be acquitted the prisoner must 'satisfy' the jury. This is the law as laid down in the Court of Criminal Appeal in *Rex v. Davies*, (1913) 29 T.L.R. 350, the headnote of which correctly states that where intent is an ingredient of a crime there is no onus on the defendant to prove that the act alleged was accidental. Throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt subject to what I have already said as to the defence of insanity and subject also to any statutory exception. If, at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given by either the prosecution or the prisoner, as to whether the prisoner killed the deceased with a malicious intention,

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the prosecution has not made out the case and the prisoner is entitled to an acquittal."

Mr. JUSTICE TUCKER—I am very familiar with *Woolmington's* case, [1935] A.C. 462, and I do not propose at the present stage to rule that the onus is upon you, but I am disposed, subject to what you say, to hold that at the present stage there is some evidence which, if uncontradicted, would entitle the jury to come to the conclusion that this man was a British subject. If and when any other evidence is before them, it may well be that in balancing up the whole of the evidence the onus would be on the prosecution to prove, where the issue has arisen and there is any controversy about it, that the man was a British subject.

Mr. SLADE—Assuming your lordship is ruling against me I would say—I am only saying it for the purpose of reinforcing my argument—supposing I were to say, "Very well, I will call no evidence," it would be for the jury to say whether the prosecution could be said to have proved beyond all reasonable doubt that the man who from the time he was sixteen, because he was assuming the date of birth as 1906, and he was sixteen when he wrote Exhibit No. 21 and Exhibit No. 22, has made contradictory statements about a matter which he could have no personal knowledge of, has proved beyond all reasonable doubt either that his father was born in Galway or that he was born in Ireland. I accept your lordship's ruling without the slightest hesitation.

Mr. JUSTICE TUCKER—I think when a man signs an application for a passport and describes himself as a British citizen, it is impossible to say there is not some evidence in favour of the proposition that he is of British citizenship.

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Mr. SLADE—Members of the jury, you have heard his lordship rule that the prisoner's own statements that he was born in Great Britain, his claim to be a British subject, his declaration that he is a British subject, statements such as those contained in the birth certificate, that his father was born in Galway, so long as they are uncontradicted, form some evidence that he is in law

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a British subject. I submitted, I thought it my duty to submit, that point that there was no evidence. In point of fact I am hoping to prove to you conclusively, or as conclusively as one can prove anything, that the prisoner has never been a British subject at any time throughout his life, and to do so by admissible evidence. The onus lies upon the prosecution to establish a fact beyond all reasonable doubt; the only onus which lies upon me is of showing that the preponderance of probability is that William Joyce was never a British subject, even if any onus lies upon me at all, and that I have little doubt of my ability to do. You have had to listen to some rather dull quotations from law books when I was addressing my lord on my submission. I shall have to quote two more passages of the law to you. When I say the law I mean, as my learned friend the Attorney-General said, what in this case the defence submits to be the law; whether it is in fact the law or not, as I say, my lord will direct you. I am going to endeavour to be as dispassionate as my learned friend for the prosecution has been, and I only ask you to bear in mind that, while he frankly admits in his very, very fair opening speech that the onus lies upon the prosecution to prove anything against the prisoner beyond all reasonable doubt, the burden of proof which rests upon me, when any burden of proof does rest upon me, is not of that kind, but merely to satisfy you that the balance of probability is in support of the fact which the defence alleges to be true. I have to trouble you with these passages of the law because if I do not you will not know what the witnesses whom I am going to call are seeking to prove. Mr. Joyce's case is that he has never been a British subject at any time throughout his life. In order to prove that he has never been a British subject throughout his life you have got to know what the law says a British subject is. I have already cited various authorities to my lord, in my submission showing what the law said constituted a British subject since 1st January, 1915. I read a sub-section of one of the sections which showed that that state of the law was said by the Act of Parliament not to affect the status of anyone who was born before 1st January, 1915, and I am going to ask you to assume for one moment that the birth certificate, Exhibit No. 13, is accurate in saying that Joyce was born on 24th April, 1906. I will deal later with the place where he was

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born and the place where the certificate says that his father was born. Assume that he was born in 1906—of course, the 1914 Act was not passed until eight years later, and we have to deal with the law as it stood in 1906. I am going to read one passage as to what I am suggesting the law is from a well-known book which was published in 1907, and therefore is up to date for the purpose of 1906, and I am then going to read to you two sections, and two sections only, of an Act which was then in force called the Naturalization Act of 1870. The passage I desire to read to you is from vol. I of the 1st edn. of Halsbury's well-known Laws of England, pp. 302 and 303, and the paragraph is No. 662: "An alien is, at common law, a subject of a foreign state who has not been born within the allegiance of the Crown. The status of a person, as to whether he is an alien or not, is determined by the law of this country. Persons born within the allegiance of the Crown include (1) Everyone who is born within the dominions of the Crown whatever may be the nationality of either or both of his parents." A child born in England of a Chinese father and a Portuguese mother, who I presume would be Chinese by marriage, but who was Portuguese before marriage—a child born in London of a Chinese father and a Portuguese mother is British. Bear that in mind. *Prima facie*, anyone born within the King's dominions, that is to say, Canada, England or where you like, is British. I will pass over (2) which merely refers to children of His Majesty the King and of ambassadors—we are not troubled with that. "(3)"—and I want you to listen to these words—"Any person whose father or paternal grandfather was born within the dominions of the Crown, although he himself was born abroad"—now these are the vital words—"provided that at the time of his birth his father had not ceased to have the rights of a British subject (otherwise than by death)."

Now I will summarise that and you will follow it quite clearly. Leaving out children of His Majesty, and the children of His Majesty's ambassadors abroad, in 1906 you could become a British subject in one of two ways, either by being born in England—when I say England I include all His Majesty's dominions—or else being born abroad, provided that your father was at the time of your birth a British subject, that is to say he had not ceased to have the rights of a British subject except, of course, by dying. You

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then say: Well, how does a person cease to have the rights of a British subject? Why not once a British subject always a British subject? The answer is that until the year 1870 that was the law: once a British subject always a British subject. There was no manner of means before the year 1870 whereby any British subject could ever divest himself of his allegiance. In 1870 the Naturalization Act was passed and I must read to you two sections. The first section is sec. 6: "Any British subject who has at any time before, or may at any time after the passing of this Act, when in any foreign state and not under disability voluntarily becomes naturalized in such state, shall from and after the time of his so having become naturalized in such foreign state, be deemed to have ceased to be a British subject and be regarded as an alien." There is a long proviso which has nothing whatever to do with this case and so I will not trouble you with it. Any British subject who, either before or after the passing of this Act, 1870, has become voluntarily naturalized in a foreign state, not being under a disability—you need not trouble about that; it refers to idiots, lunatics, and things of that kind—shall from and after the time of his having become so naturalized cease to be a British subject. Then sec. 10: "The following enactment shall be made with reference to the national status of women and children: . . . (3) Where the father being a British subject, or the mother being a British subject and a widow, becomes an alien in pursuance of this Act, every child of such father or mother who during infancy has become resident in the country where his father or mother is naturalized, and has, according to the laws of such country, become naturalized therein, shall be deemed to be a subject of the state of which the father or mother has become a subject, and not a British subject."

Now, summing both those passages of the law up, and applying them to the facts of this case, it comes to this. Joyce will never have been a British subject if (1) he was not born in England, *i.e.*, England and the Dominions; (2) if his father, although born in Ireland, had ceased by naturalization to be a British subject at the time that William Joyce, the prisoner, was born; and (3)—this is a different point—suppose I were unable to prove that Joyce had never been a British subject, that is to say, assume against myself that I was only able to prove that his father

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had become naturalized after the son's birth, so that the father was still a British citizen, having been born in Ireland. Then, at the son's birth, nevertheless, if the father became an American citizen at any time while William Joyce was a minor, that is up to twenty-one years, under the sub-section which I have just read to you, the moment that Michael Joyce, the father, assuming his name was Michael Joyce for the moment, became naturalized after 1906 and before 1927, the date when William Joyce became of age, by virtue of sec. 10, sub-sec. (3) of the Act that I have just read to you, every child of such father or mother who during infancy has become resident in a country where the father or mother is naturalized and has, according to the law of that country, become naturalized therein shall be deemed to be a subject of the state of which the father or mother has become a subject and not a British subject. You will therefore see that there was justification for my statement some time ago that the fact that although in 999 cases out of a thousand a person who is born in this country is a British subject, in fact he always is at birth, he might not be a British subject at any particular time thereafter for two reasons: (1) he may have become a naturalized American himself, for example, in which case he would cease to be a British subject under sec. 6, or (2) while still an infant his father could change his nationality for him by the father becoming naturalized while he was still an infant.

I will just outline the nature of the evidence I am going to call before you. I shall hope to be able to prove that the prisoner's father was Michael Francis Joyce who frequently called himself simply Michael Joyce. I shall prove or endeavour to prove that his mother was Gertrude Emily Joyce, formerly Gertrude Emily Brooke. I shall hope to prove that Michael Joyce was born in Ireland at Ballinrobe, County Mayo—I cannot tell you the exact year, but it was either 1868, 1869 or 1870—that the father went to America in 1888 or thereabouts; that while he was in America in 1888 he decided to become a naturalized American citizen; that on a date in July, 1892, he took the necessary preliminary steps according to American law, and I shall be calling evidence about American law, and made what is called a declaration of intention to become an American citizen and of renouncing his allegiance to Her Majesty Queen Victoria; that on 25th October,

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1894, he took the final steps and became, according to American law, a naturalized American citizen, by swearing the necessary oath before the judge in open Court in the Court of the County of Hudson in the State of New Jersey on 25th October, 1894; that he came over for a trip to this country in 1904 or 1905 and became engaged to a lady, Gertrude Emily Brooke, who lived near Crompton and Preston, Lancashire; that they were to return to America to be married; that the brother of Gertrude Emily Brooke, now unfortunately deceased, who was a solicitor, was asked to accompany them to make certain that the marriage was legal; that Gertrude Emily Brooke was married to Michael Francis Joyce in the Church of All Saints at the corner of Madison Square and 129th Street, New York, on 2nd May, 1905, according to the rites of the Roman Catholic Church, and I shall produce a copy of the marriage certificate; that William Joyce was the first child of that union, born eleven months later, namely, on 24th April, 1906, at 1377 Herkimer Street, I believe in New York City, certainly in the State of New York.

If I am right in my narrative so far I hope you will have followed the legal consequences that ensue, if my statement of the law to you is correct. You have got Michael Francis Joyce, a British subject, born in Ballinrobe in the County of Mayo, Eire, or Ireland as it was then known, a British subject. You get Michael Francis Joyce becoming a naturalized American citizen on 25th October, 1894. Now will you bear in mind that on 25th October, 1894, sec. 6 of the Naturalization Act of 1870 would come into operation so far as the father, Michael Joyce, was concerned: "Any British subject who has at any time before or may at any time after the passing of this Act when in any foreign state"—in this case the United States of America—"and not under disability"—no one suggests that Michael Joyce was under any disability—"voluntarily became naturalized in such state," which was what he did on 25th October, 1894, "shall, from and after the time of his so having become naturalized in such foreign state, be deemed to have ceased to be a British subject," and therefore on 25th October, 1894, Michael Joyce ceased to owe any allegiance whatever to Her Majesty Queen Victoria. If that is so, that means that when William Joyce was born, eleven and a half years later, on 24th April, 1906,

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in New York City, he was born out of His Majesty's dominions and born of a father who was not a British subject at the time of his birth: in other words, William Joyce was born and always remained a subject of the United States of America, which he still is.<sup>2</sup> Assume for one moment that although I was able to prove that Michael Joyce is an American citizen, I was unable to prove—assume it against myself—that I was unable to prove that he was naturalized on 25th October, 1894, to take an arbitrary date, and I am taking this date for a specific reason—assume I was only able to establish that Michael Joyce was an American citizen in the year 1917, that is to say, instead of being eleven years before his son was born, eleven years after his son was born. If I prove that William Joyce, the prisoner, was born on 24th April, 1906, in 1917 he would be eleven. I shall prove that he resided with his parents for at least three years from his birth until the year 1909 when they left for Ireland. What would happen then? We should then go from sec. 6 of the Act of 1870 to sec. 10, sub-sec. (3) of the Act of 1870: "Where the father being a British subject"—I am assuming against myself for the moment that he was up to 1917—"becomes an alien in pursuance of this Act"—that is in pursuance of naturalization under sec. 6—"every child of such father or mother who during infancy has become resident in the country where the father or mother is naturalized, and has, according to the laws of such country, become naturalized therein, shall be deemed to be a subject of the state of which the father or mother has become a subject and not a British subject." So, as I told you, even if I fail to prove that Mr. Michael Joyce, William Joyce's father, became naturalized as an American citizen before his son's birth, it would be sufficient for William Joyce to cease to be a British subject if his father became a naturalized American subject at any time before the date on which he attained legally his majority, which was on 23rd April, 1927: his birthday was 24th April, 1906.

Now let me give you an idea of the evidence by which I propose to prove the matters which I have outlined to you. There are one or two difficulties; with the consent of my learned friend the Attorney-General I propose, in due course, to read a letter

<sup>2</sup> Unless his naturalization in Germany before America entered the war divested him of his American citizenship.



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which has passed between my solicitor and the Director of Public Prosecutions, because if the chain of evidence which I am able to give can be challenged in cross-examination I may even yet be forced to ask my lord to adjourn the trial to enable the evidence of William Joyce's uncle, John Joyce, to be given—he, at the present moment, is in the United States—and also one other witness. The position is this. There is no means known to the criminal jurisdiction of this country whereby evidence can be taken, as it can in civil cases, in America, and used in the form of a deposition at a criminal trial in this country. I know of none, and I have searched every authority. Moreover, there is no manner of means whereby I can force Mr. John Joyce to come and give evidence in this Court. Had I got Mr. John Joyce here, he being, of course, a contemporary of his brother, Michael Francis, my task would be easier, but I do not anticipate any adjournment will be necessary in the absence of Mr. John Joyce and one witness whose name I shall mention later on. We have done our best, and I anticipate I shall be able to establish the points I wish to make to you to your entire satisfaction.

Captain Scarden seemed surprised when I suggested that he was able quite easily to identify the signature of William Joyce when he was sixteen with the signature of William Joyce when he was thirty-nine. I did not ask Captain Scarden those questions, which he rather seemed to fear at the moment—witnesses are so much on the defensive when you ask them questions—because I was challenging his veracity. I was not in the slightest. I asked him those questions because that is precisely the task with which I am confronted myself, and I thought if he had no difficulty in doing it you would accept it all the more readily from my witnesses that they would have no more difficulty than he did.

Let me tell you the obvious hiatus that I have got here. First of all, I am going to produce a copy of what I will call the United States naturalization record. That has been sealed and certified so as to become evidence automatically in a Court of law under sec. 7 of the Evidence Act of 1851. That document, when I put it in, of course, will merely prove that a Michael Joyce was naturalized. Supposing I put in my own birth certificate and handed it to you now, you would look at the birth certificate and see that a G. O. Slade was born on a certain date in London,

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but it would not be the slightest evidence: there may be fifty G. O. Slades, and if my name were G. O. Smith there might be hundreds of them. Unfortunately, of course, both Joyce's parents are dead. I am unable to give you exact details, but I will prove their death. The mother died as recently as 1944 and the father in 1941. I find myself confronted with a certain difficulty when I put in the sealed copy—I shall put in a sealed copy with a photostat copy which shows the actual signatures of Michael Joyce on the oath of naturalization on 25th October, 1894. What, therefore, I have got to do, of course, is to show that that Michael Joyce who was naturalized as an American on 25th October, 1894, was the Michael Joyce who married Gertrude Emily Brooke on 2nd May, 1905, and subsequently became the father of the prisoner. Now I will tell you why I do it and why I asked that question of Captain Scarden. I am going to call two witnesses as to handwriting, one an expert and one the manager of the bank at which Michael Joyce kept his account for eleven years, and who was familiar with his handwriting on cheques. Amongst the materials that they will have before them will be signatures on documents which I am able to prove conclusively were signed by Michael Joyce and they will prove that these are the same as the two photostatic signatures on his naturalization record of 25th October, 1894. The difficulty is that there is eleven years between the two closest documents that I have: the marriage took place on 2nd May, 1905, the naturalization on 25th October, 1894, that is, about eleven years. Unfortunately, in America, unlike this country, no part of the entry in the marriage register at the church is either in the handwriting of the bride or the bridegroom, but fortunately they do have what they call a civil entry relating to the marriage in America, and the search of the civil entry of the marriage of that couple, who were married on 2nd May, 1905, has disclosed the fact that the whole of the left-hand side which contains the particulars of the bridegroom, Michael Francis Joyce, is in his handwriting, and the whole of the right-hand side which contains the particulars of the bride is in the handwriting of Gertrude Emily Brooke who became Gertrude Emily Joyce. I have got plenty of others, but the earliest date I have for the purpose of comparing the known signatures with the naturalization record signature in 1894 is the civil entry in the marriage certificate known

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to be in the handwriting of the father of the prisoner, which is dated 2nd May, 1905. In addition to that the handwriting experts will have in front of them a tenancy agreement with the Royal Irish Constabulary, dated 1910; they will have also a will—what we call a holograph will—entirely in the handwriting of Michael Joyce, and, of course, signed by him, in 1907; they will have a cheque drawn by Michael Joyce in favour of the prisoner, William Joyce, dated 26th April, 1923; they will have an L.C.C. education form signed by Michael Joyce on 20th November, 1935; and, finally, they will have a letter signed "Father," and written entirely in Michael Joyce's handwriting, which was sent by the father to his son, that is to say, the prisoner's brother, Edwin Quentin Joyce, in March, 1940. I cannot get anything nearer than that because, as I told you, Mr. Michael Joyce, the father, died in 1941. I shall have no difficulty in proving that all those documents are in the handwriting of Michael Joyce. All those documents will be available to the one expert and the bank manager for comparing with the evidence of the two signatures where they appear upon what is called the petition of naturalization and the oath sworn and subscribed in open Court by Michael Joyce who was naturalized in October, 1894. If we require them, we have also the documents which were produced by Miss Isaac about the O.T.C., and I elicited from that witness in cross-examination that, having received information from William Joyce, she communicated with the father, Michael Joyce, and she actually produced the original of Michael Joyce's reply; so we have the signature to that document, Exhibit No. 27, which will serve as a further comparison. So much for bridging the gap between 1894 and 1905, but, of course, I should not rely solely upon that. That is all I can get so far as the actual identification of the Michael Joyce with the Michael Joyce we are concerned with.

As to the question whether Michael Joyce was a British subject or not I can give you a good deal more evidence. I shall be calling Mr. Holland, and if his evidence should be challenged in cross-examination I shall be calling his wife also, Mrs. Holland. I say if his evidence should be challenged, because we never call witnesses to support others whose evidence is not challenged in cross-examination, because that would mean that their evidence was accepted. I shall call Mr. and Mrs. Holland, or Mr. Holland alone as the case

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may be, to prove this, that Gertrude Emily Brooke was a school friend of Mrs. Holland at Shaw in Lancashire, that both she and her husband remember when Michael Joyce came over from America and became friendly with Gertrude Emily Brooke, the wife's school friend. They remember the two becoming engaged, and they remember the two of them leaving for America to get married. This is the most helpful part of the Hollands' evidence. It so happened that, in 1906, Mr. and Mrs. Holland decided to emigrate themselves, and they reached New York State, or may be New Jersey. They will say that they lived at an address only eleven miles from where the Joyces were then living as husband and wife, because they had been married since; that is to say, Mrs. Holland found herself living at a distance of only eleven miles from the address where her old school friend lived at Herkimer Street and they became visitors to each other at alternate week-ends. Mr. Holland will say that when he reached New York the Joyces had a baby aged six or seven months, a baby named William, and they will say that they knew that baby, and they will identify that baby, because they kept in touch with the parents throughout, as being the prisoner, William Joyce. Now that is quite disinterested and dispassionate evidence, and if that is true you will see that, even though I could not prove the date of birth, as shown in Exhibit No. 13, which purports to be the birth certificate, you will have the fact that William Joyce, in October, 1906, looked five or six or seven months old—they cannot bind themselves down to the exact month. You will have the fact that in October, 1906, when the Hollands in America paid their first visit to their old friend, Mrs. Joyce, formerly Miss Brooke, they had a baby, William, who was six or seven months old, and that he is that man. Not only that, but as I say, they visited alternately at each other's homes for some three years at week-ends until Mr. and Mrs. Joyce decided to return to Ireland.

I thought passports were a comparatively recent persecution, but at any rate they were in use in 1909. I thought they came in more or less in the last war, but in 1909 they were in use in America, because Mr. Holland will tell you that Mr. Michael Joyce had to get a passport to return from America to Ireland, and by the day that he left New York for the port of embarkation

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the passport had not arrived, and therefore Mr. Holland consented to wait for the arrival of the passport so as to be able to deliver it personally to Mr. Michael Joyce the moment it arrived. He did wait for the arrival of the passport and it did arrive and Mr. Holland did hand it personally to Mr. Michael Joyce and—that is the salient point—he will tell you that it was an American passport. The next evidence I shall call before you, besides the evidence of Edwin Quentin Joyce, is this. I shall prove to you that during the last war, namely, in 1917—and this is why I take the year 1917 as an illustration—both Mr. and Mrs. Joyce were forced to register as aliens in this country in Lancashire, and I have served a subpoena upon the representatives of the Chief Constable of the County of Lancaster to produce the Register of Aliens for Shaw, in Lancashire, or that portion of Lancashire round Shaw, purporting to show the registration of those two as aliens.

Now I suppose it is unlikely that any very technical objections will be taken to the admissibility of evidence in a case like this, and if any objection is taken it is a matter for my lord to rule upon, but if necessary Mr. and Mrs. Joyce both being dead, I shall submit that an admission of alienage by a deceased person is what we call a declaration against interest, and a declaration by deceased persons which is against their own financial or proprietary interests is admitted upon the footing that a person is unlikely to make an untrue statement against his own interests. That is the footing upon which it is admitted, and also this document is a document which is kept in the custody of the police and never leaves the custody of the police. I shall be able to prove to you by producing the register that in the year 1917 in the Register of Aliens there are two entries, one is numbered 10272 and the other 10273, and they refer to the Mr. and Mrs. Michael Joyce who were formerly Mr. Michael Joyce and Miss Gertrude Emily Brooke, and this is what it says: "Register of Aliens. Serial number and date of entry 10272, 28.4.1917 (28th April, 1917). Surname: Joyce. Christian name: Michael. Nationality and birthplace: nat. (American)," which I construe to mean naturalized American. "Birthplace: Galway, Ireland. Postal address: 31 Manchester Road, Shaw. Trade or occupation and name of employer, if any: nil. Date of birth"—in this

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case it gives the 6th December, 1866. "Householder, leaseholder, lodger or servant: lodger. Particulars of Family"—10273, same date, 28.4.17—"Joyce, Gertrude Emily. Nationality and birth-place: American by marriage"—of course, the wife always takes the nationality of her husband—"Crompton, Lancs." As I told you, Shaw is near Crompton. "Postal address: 31 Manchester Road, Shaw. Date of birth: 26th August, 1887," and apparently somebody took the trouble to correct that, because 1887, which is the date of Mrs. Joyce's birth is altered to 1879 and initialled on the 20th of July, 1917, and it says here, "Particulars of family (column 9) Wife, Gertrude E. Son, William, 24.4.06"—the same date in those particulars 1906—"Daughter, Frances, 29.4.12. Visiting Shaw to settle probate of will, then returning to Ireland." I have limited myself at the moment to reading to you the entries which appear on the actual Register of Aliens itself. I shall also get a witness from the Chief Constable's office of the Lancashire County Council to produce certain correspondence which took place between them and the police in Galway, but I am not going to deal with that in my opening remarks until I am satisfied that the evidence of that correspondence is admissible in favour of my client.

Mr. JUSTICE TUCKER—Members of the jury, we will adjourn now. Since the year 1940 it is now possible for juries in cases of this kind to be allowed to separate and go to their homes. Before that you would have been kept all together in some convenient place, but make sure that although you are now allowed to separate you do not discuss this case with anybody or allow anybody to discuss it with you, please.

The Court adjourned.

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Second Day—Tuesday, 18th September, 1945.

Mr. SLADE—May it please your lordship; members of the jury, when we adjourned yesterday I had reached the stage where I was about to read to you the sealed copy of what I called the Naturalization Record, Exhibit No. 29. This consists of two documents, one called the "Declaration of Intention," that was

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on 22nd July, 1892, and the other called the "Petition," which is dated 25th October, 1894, and the rest of the documents which your lordship has are merely necessary variations of it following judicial proceedings.

Mr. JUSTICE TUCKER—What is the date of the document itself, not of the certification of it?

Mr. SLADE—The first document is headed: "State of New Jersey. Be it remembered, that on the 22nd day of July, 1892," and the second document is the Petition of Michael Joyce. Your lordship will see that the third time the name Michael Joyce appears it says: "Sworn in open Court this 25th day of October, 1894." I mentioned yesterday that in the year 1894—I have no knowledge of the law of America, but I have evidence to prove it—as the law then stood the pre-requisites for American naturalization were that the applicant should have resided in the United States for a period of five years; that he should make a declaration of intention to apply for naturalization two years before he actually obtained naturalization, and I think—I speak subject to correction as to American law—thirdly, that he should have resided in the State where he applied for naturalization for a period of not less than one year. There is one other very important point I have to mention to you, both these documents I am going to read out are printed forms with the appropriate particulars filled in in ink. The declaration of intention, although it bears a signature "Michael Joyce," is not signed in the handwriting of Michael Joyce, because apparently the practice in these days was for the intention to be drawn by the Clerk of the Court, and a glimpse of this document, the declaration of intention, shows that the whole of the inked particulars that are filled in are in the same handwriting, not only the signatures, but the body of the document. I only mention that because no one here is suggesting that what purport to be the signatures of Michael Joyce on the declaration of intention are in fact the signatures of Michael Joyce, but when one comes to the petition, the name "Michael Joyce" appears four times. It starts with: "The Petition of Michael Joyce," that is merely written in, and is not in Michael Joyce's handwriting. The second time it says:

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“ He therefore prays he may be admitted to become a citizen of the United States.” That is the second time where the name appears, and that is, according to the case for the defence, in the signature of Michael Joyce. The third occasion where it appears is: “ I, Michael Joyce, the above named petitioner ”; that, again, is not the signature of Michael Joyce; and the fourth time where it appears it says: “ Sworn in Open Court this 25th day of October, 1894, Michael Joyce,” with the signature of the judge immediately underneath it; that is in the handwriting of Michael Joyce. Recapitulating, therefore, of the four times in which the name Michael Joyce appears in the petition, sometimes referred to as the application, the second and fourth times are in the signatures of the Michael Joyce who we seek to prove was the father of the prisoner.

I will read the documents through. The first is the declaration of intention: “ State of New Jersey. Be it remembered, that on the 22nd day of July in the year of our Lord, 1892, before me, Dennis M’Laughlin, Clerk of the Court of Common Pleas, in and for the County of Hudson (the said Court being a Court of Record having Common Law Jurisdiction and a Clerk and Seal) personally appeared Michael Joyce, an Alien, a native of Ireland, aged about 25 years who, being duly sworn, according to law, on his oath, doth declare and say that he arrived in the United States on or about the 4th day of May in the year of our Lord 1888 ”—that was the year I told you of yesterday—“ That it is his bona fide intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any and every foreign prince, potentate, state and sovereignty whatever, and particularly to the Queen of the United Kingdom of Great Britain and Ireland, whose subject he has heretofore been. Subscribed and sworn to before me this day and year written above. Dennis M’Laughlin, Clerk (Signed) Michael Joyce ”—it is not in fact signed by Michael Joyce—“ State of New Jersey, Hudson County. I, Dennis M’Laughlin, Clerk of the Court of Common Pleas, in and for the County of Hudson aforesaid, do hereby certify that the foregoing is a true copy of the ‘ Declaration of Intention to become a citizen of the United States of America,’ of Michael Joyce. (County Seal.) As the same is filed of record in my office. In testimony whereof, I have hereunto subscribed



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my name and affixed the Seal of the said Court in the County aforesaid, this 22nd day of July A.D. 1892. Dennis M'Laughlin, Clerk." The vital document is the petition. I am sorry that the photostat copy on the face of it is not too clear. It reads: "To the Judges of the Court of Common Pleas in and for the County of Hudson, State of New Jersey. The Petition of Michael Joyce, a native of Ireland. Respectfully showeth: That your petitioner arrived in the United States of America in the year 1888 and that in pursuance of an Act of Congress, entitled 'An Act to establish a uniform rule of Naturalization, and to repeal the Acts heretofore passed on that subject,' made a declaration of his intention to become a Citizen, conformably to the said Act, before this Court, a certificate whereof is hereunto affixed; that he has resided within the limits and under the jurisdiction of the United States for five years and for one year at least, within the State of New Jersey; that he has never borne an hereditary title or been of any orders of nobility in the kingdom whence he came, or elsewhere. He therefore prays he may be admitted to become a citizen of the United States. Michael Joyce." That, as I have said, is in the handwriting of Michael Joyce. "I, Michael Joyce"—not in the handwriting of Michael Joyce—"the above-named petitioner, do, on my solemn oath, declare that the contents of my petition are true; that I will support the Constitution of the United States; that I will renounce and relinquish any title, or order of nobility, to which I am, or hereafter may be entitled, and that I do absolutely and entirely renounce and abjure all allegiance and fidelity to any Foreign Prince, Potentate, State and Sovereignty whatever, and particularly to the Queen of the United Kingdom of Great Britain and Ireland. Sworn in Open Court this 25th day of October, 1894. Michael Joyce." That is in the signature of Michael Joyce. Then it bears the signature: "John Kenny, Judge, State of New Jersey, Hudson County. John Duane, a citizen of the United States, being duly sworn according to law, says that he is well acquainted with the above-named petitioner, and that, to his knowledge and belief, he has resided within the limits and under the jurisdiction of the United States for five years, and for one year at least within the State of New Jersey, and that, during the same period he has behaved himself as a man of good moral character, attached to

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the principles and Constitution of the United States, and well disposed to the good order and happiness of the same. John Duane. Sworn in Open Court this 25th day of October, 1894. John Kenny, Judge."

Members of the jury, you may remember that I told you yesterday that if my evidence on these points should be challenged, it might be necessary for me to apply to his lordship for an adjournment with a view to getting the evidence of John Joyce, the uncle of the prisoner, and I mentioned at the time there was one other witness whose evidence it would be necessary for me to obtain. That witness is Joseph Duane, brother of John Duane, the attesting witness or referee, who is dead. If I bring him here he might say his brother was known to be the friend of Michael Joyce who later married Gertrude Emily Brooke. I am calling at least one, and if his evidence should be challenged, a second American lawyer, who will prove to you that the moment that oath was sworn in open Court by Michael Joyce on the 25th October, 1894, without more he thereupon became, according to the American law as it stood in 1894, a citizen of the United States of America. Why the renunciation of allegiance is expressed particularly with regard to Her Majesty Queen Victoria is because if you are to become a subject by naturalization and were previously a subject of Great Britain, the particular renunciation would be to the Queen of Great Britain. If you had been a subject of the King of Spain, the particular renunciation would have been to the King of Spain.

I want to say a few words about the birth certificate, Exhibit No. 13; I do not suppose you have seen it yet, but you will have it later. Exhibit No. 13 says: "New York, November 2nd, 1917." Of course, in 1917 the prisoner, assuming he was in fact born on 25th April, 1906, would be eleven and a half years old. As you know, in this country anyone can go to Somerset House at any time and obtain a certificate of their birth. This certificate was obtained on 2nd November, 1917, showing the birth on 24th October, 1906. "A transcript from the Records of the Births reported to the Department of Health of The City of New York. Registered Number 11596." I merely emphasize this because if this was a document produced by the German lie factory, nothing would have been simpler than to make inquiries in New York as to

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whether a registered number 11596 in fact appeared as the registered number of the birth of William Joyce. "Name of child: William Joyce. Sex: Male. Colour: White. Date of Birth: April 24/1906"—I want you particularly to notice this—"Place of Birth: 1377 Herkimer Street. Father's Name: Michael Joyce. Father's Residence: 1377 Herkimer Street. Father's Birthplace: Ireland. Father's Age: 36 years." That would have made his birth in 1870; would it not? I told you it was 1868, 1869 or 1870. "Father's Occupation: Contractor. Mother's Marriage Name: Gertrude Emily Joyce. Mother's name before marriage: Gertrude Emily Brooke. Mother's residence: 1377 Herkimer Street. Mother's Birthplace: England. Mother's Age: 26 years. Number of children born to this mother, including present birth: One. I, the undersigned, hereby certify that I attended professionally at the above birth and I am personally cognisant thereof; and that all the facts stated in said certificate and report of birth are true to the best of my knowledge, information and belief. Signature: Charles F. Yerden, Physician. Residence, 1276 Herkimer Street. Date of Report: May 7th, 1906. A True Copy. S. J. Byrne, M.D., Assistant Registrar."

I am calling Mr. Edwin Quentin Joyce, the prisoner's brother, who will produce to you a copy of his parents' marriage certificate. Just so that you may follow the chain of evidence I will tell you what that says. It starts with a quotation from the Gospel according to St. Matthew. "All Saints Church. Madison Avenue and 129th Street, New York. This is to certify that Michael F. Joyce and Gertrude E. Brooke were lawfully married at All Saints Church on the 2nd day of May, 1905, according to the Rite of the Roman Catholic Church, the officiating priest being the Rev. C. F. Crawley, with John J. Ferris and Mary Naughton as witnesses, as appears from the Matrimonial Register of this Church. (Signed). Rev. J. W. Power, Pastor, c/o Mr. B. Stanton, Sexton. 21st June, 1905." As I told you, it is not the practice in the churches, certainly in the Roman Catholic churches in New York, for either the bride or the bridegroom to make any entry in the marriage register, as it is, of course, in this country; and in order to assist you the prosecution have been kind enough to supply me with a photostat record of the civil entries of that marriage, and I am

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going to put in a sealed copy of that as Exhibit No. 30. Before your lordship looks at it, my friend suggests that I have to call some witness to put it in. In my submission I have not to do so; I have been supplied with it by the Director of Public Prosecutions.

The ATTORNEY-GENERAL—My lord, I am taking no point about it, and I do not seek to put any kind of difficulty in my learned friend's way, but I think it is right that some witness, any witness, I apprehend, should produce it in the witness box and say he produced it so that it appears on the shorthand notes as being produced in the proper form. My learned friend is calling a number of witnesses, and he can well call one if he wishes to put it in.

Mr. JUSTICE TUCKER—Mr. Attorney, I think the position is that every document requires a witness to prove it properly, unless it is a document which proves itself, one or the other. I do not think there is any magic in calling a witness totally unconnected with the document simply to say as a matter of form, "I produce it."

The ATTORNEY-GENERAL—I think it might preferably be an American lawyer to produce this document.

Mr. JUSTICE TUCKER—Mr. Slade, I think we had better wait for a moment.

The ATTORNEY-GENERAL—I hope your lordship will not think I am objecting to Mr. Slade opening the whole of his case and putting in the documents at this stage, but I respectfully suggest, in view of the form of the words which my learned friend used, that it would be best to have a witness at some stage.

Mr. SLADE—Far from making the slightest complaint, I wish to say that the prosecution have been of the utmost assistance to me. I do not see how I should serve any useful purpose by calling a witness to produce documents who knows nothing about them. Might I do this in order to meet my friend's reasonable requirements? I am calling an American lawyer who will, no doubt, be able to prove that the American law requires civil entries to be made of a marriage in New York State or New Jersey State as the case may be, and ask him to produce the document in that way.

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Mr. JUSTICE TUCKER—Perhaps we had better wait and see what the witnesses do say. You have made the position very clear to the jury, Mr. Slade. It is merely a step in building up your submission that this man is an American citizen.

Mr. SLADE—If your lordship pleases. Members of the jury, I shall have to defer giving you the information by which I hoped to connect quite definitely the birth certificate, Exhibit No. 13, with the prisoner. You may remember that the position in regard to the birth certificate is this: the birth certificate was not found on the prisoner, it was produced to him by Captain Scarden on the 11st June, 1945, and he acknowledged it to be his property. You will bear in mind that it states that William Joyce is the son of Michael Joyce and Gertrude Emily Brooke, but there is one other document I am going to read to you because I am calling, as I intimated, the representative from the office of the Chief Constable of the County of Lancashire to produce the Aliens Register. I read that out to you yesterday. You may remember that that says this, referring of course to the year 1917: "Particulars of Family. Gertrude E."—there is a separate registration for her—"Son, William, 24/4/06." In other words, the date of birth precisely corresponds with the date of birth shown on Exhibit No. 13, and the name of the wife and her maiden surname exactly corresponds of course with the mother of William Joyce who married Michael Joyce. The only other matters I have to mention are these. I told you that both the father and the mother of the prisoner were dead. I will prove by evidence the dates when they died. The father, Michael Francis Joyce, died on 19th February, 1941, and the mother died on 15th September, 1944. That, of course, is why I am unable to call either of them to prove that William Joycè was their son, and I am unable to call Michael Joyce himself to prove that he was the person who was naturalized in 1894.

Two further observations only, and I will call my evidence. I am not calling the prisoner as a witness because, as you have heard, in the submission which I made to my lord, he cannot possibly give you any evidence of when or where he was born. Still less can he give you any evidence of when his father was naturalized. And my final word is with regard to what has been called count 3. You have probably followed the argument upon count 3, and I am

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Mr. Stade.

not going to discuss with you questions of law or attempt to trouble you with them, but the argument for the prosecution upon count 3 is this. You, William Joyce, applied for a British passport, stating that you were a British subject by birth. As a result of that application a British passport was in fact issued to you which lasted for five years. You applied for renewal of that passport, again stating that you were a British subject by birth, or that your status had not changed, and a renewal was given to you for the space of one year. At the expiration of that year you again applied for a renewal of the passport, stating the same as before, and in consequence of that application a second renewal was given to you, which I understand it is suggested expired on the 2nd July, 1940. I am not in a position to dispute that evidence and I do not intend to dispute what is incontrovertible. Whether those facts bring upon the prisoner the duty of allegiance is, as I understand it, a pure question of law which his lordship will decide. I therefore do not propose to trouble you with any arguments upon that point. I will make them at the proper time to my lord, and now with the assistance of my learned friends I will call my evidence before you.

### Evidence for the Defence.

FRANK HOLLAND, examined by Mr. CURTIS-BENNETT—I am a retired civil engineer and was born at Shaw, Lancashire, on 31st March, 1883. I live at Pear Tree Cottage, Hoath, Canterbury, Kent. I knew a lady whose name was Gertrude Emily Joyce. Her maiden name was Gertrude Emily Brooke and she was nick-named Queenie when I first knew her. She was a school friend of my wife whom I married on 7th September, 1905. She married Michael Joyce.

Do you know that Gertrude Emily Brooke went to the United States in 1905?—Yes. She left Ireland with her brother Edgar, who was a solicitor, to get married in 1905. I was not there when she got married, as my wife and I emigrated to the United States the following year in May, 1906. When we got to the United States we lived in Westerley, Rhode Island, and after that in New York City. We moved to New York City about six months after we got

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**Frank Holland.**

to the United States, that would be about November, 1906. I was in the employ of contractors for the Pennsylvania Railway Company and my address was 1019 Boston Road, New York City.

When you got to New York at about the end of 1906 did you see anything of Gertrude Emily Joyce as she then was?—It was the first visit we paid. They were the only people we knew in New York, and we went there naturally. They were living in Brooklyn at an address in either Herkimer Street or Herkimer Road. This was the first time I had actually met Michael Joyce, although I think I remember seeing him in Shaw when he came to see his wife's family before they were married. When I got to the United States they had one child, a boy William Joyce who at the end of 1906 would be a few months old. We used to visit the Joyces very often; either they came to see us or we went to see them—it would be about once a month perhaps. Michael Joyce left New York in about 1909, and his wife left after him. The son left the United States also. I believe they went to Ireland. I had seen this boy gradually growing up, through visiting his father's house, from the winter of 1906 until 1909.

Before Michael Joyce went away from the United States did he have to have some sort of document?—He had a passport. Before the passport arrived he left his home in Herkimer Street and I took his passport to him at Hoboken in New Jersey. I did not notice what sort of a passport it was. I got it from his wife who gave me it in Brooklyn. After Michael Joyce left we saw more of his wife than we had before, until she also left the United States with the boy William Joyce.

Had you any knowledge of the nationality of Michael or Gertrude Joyce when you were seeing them in New York?

The ATTORNEY-GENERAL—My lord, would that be evidence?

Mr. JUSTICE TUCKER—If what the prisoner said as to his nationality is evidence, why is not what the father said evidence?

The ATTORNEY-GENERAL—An admission made by the prisoner is evidence against himself; the father is not a party to these proceedings.

Mr. JUSTICE TUCKER—No, he is dead, and I shall admit the evidence.

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Frank Holland.

*Examination continued*—Do you know where Michael Joyce was born?—No.

In what country, do you know?

Mr. JUSTICE TUCKER—You are straying a little from the question you asked. I think you are entitled to know whether the man, at the time the witness knew him, was passing as an American subject.

*Examination continued*—You knew Michael Joyce for about three years?—Between two and three years. He told me he was an American citizen and he advised me to become one too. I came across to England in January, 1915, with my wife and went to Marske-by-Sea in Yorkshire. By that time I had changed my nationality to that of an American citizen. I did this about five years before the war when I was working for S. Pearson & Son on the State contract for New York. When I was in England at this time I did not see anything of Mr. and Mrs. Joyce or their son. I think they were in Ireland. I do not know whether they ever came over to this country, and I do not remember seeing them, because I was busy on Government work. The first time I saw them after they had left New York in 1909 would be, I think, about 1919. This was at East Dulwich. They still had their boy, William Joyce, with them who would be about thirteen by then, and other children. I never saw William Joyce at Shaw, Lancashire, as I never went there myself. I had to register as an alien over here.

Do you know whether Michael Joyce or his wife had to register?—I do, as an alien. They were registered here as aliens in, I think, 1917, when I had to register.

How do you know that if you did not see them until 1919? Was that something they told you?—Yes, I know it because it almost amounted to persecution when I arrived in this country. If you are an alien in this country the police hunt you from one county to another. She told us of the trouble she was having. In 1916 I went back to the United States in the employment of the British Government as a British subject, returning in 1917. I was then working in Yorkshire helping to build a school for gunnery. I made a mistake in my statement. Nineteen-seventeen



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was the time I went to Yorkshire. The first time I did not go to Yorkshire, I went to Shaw in Lancashire.

It is not easy to remember all these things. When you came back in 1915 you now say you went to Shaw in Lancashire?—Yes, that was where I had registered as an alien. I do not remember ever seeing the Joyces at Shaw. In 1919 I saw the Joyces again, who had come over on a visit, and saw them on and off from that time onwards up to the time of Mrs. Joyce's death in 1944.

Seeing the child, William Joyce, when he was a small baby, seeing him up till he was three, seeing him in 1919, and seeing him again when he came back, can you tell us by looking round this Court who William Joyce is?—That is William Joyce [indicating prisoner]. I kept in touch with the Joyce family all those years.

Will you look at Exhibit No. 30 before we read it? One side of the document has writing in one hand and the other side in another hand. Do you recognize either of these handwritings?—Yes. "Gertrude Emily Brooke" on the right-hand side. I do not recognize that on the left.

Exhibit No. 30 reads like this: "The City of New York. Department of Health. State of New York. Certificate and Record of Marriage. No. of certificate"—a number which I cannot read—"of Michael F. Joyce and Gertrude E. Brooke. Groom's Residence: 1377 Herkimer Street. Bride's Residence: Shaw, Lancashire, England. Groom's Age: 36 years. Bride's Age: 25 years. Groom's Colour: White. Bride's Colour: White. Groom: Single, Widowed or Divorced: Single. Bride: Single, Widowed or Divorced: Single. Groom's Occupation: Contractor. Birthplace: Ireland. Bride's Birthplace: England. Groom's father's name: Martin. Bride's father's name: William. Groom's mother's maiden name: Mary Naughton. Bride's mother's maiden name: Emily Warburton. Number of Groom's marriage: 1st. Number of Bride's marriage: 1st. I hereby certify that the above-named groom and bride were joined in marriage by me, in accordance with the laws of the State of New York at All Saints R.C. Church in the Borough of Manhattan, City of New York, this 2nd Day of May, 1905. Signature of person performing the ceremony, C. A. Crowley. Official Station: Clergyman. Resi-

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**Frank Holland.**

dence: 47 E. 129th Street, N.Y. Witnesses to the marriage: John J. Ferris. Mary Naughton." (To the witness): When you became a British subject again, did you have to go through some formalities?—Yes.

EDWIN QUENTIN JOYCE, examined by Mr. SLADE—I am a civil servant living at 86 Underhill Road, East Dulwich, and am the third son of Michael Francis Joyce and Gertrude Emily Joyce, whose maiden name was Brooke. I was born in Galway, Ireland, on 28th August, 1917. The prisoner in the dock is my eldest brother. The second child of my father's marriage was my elder brother, Francis Martin Joyce, and I have a younger brother and sister named Robert Patrick Joyce and Gertrude Joan Brooke Joyce. My sister and two brothers are both alive. My father mentioned the question of his nationality in conversation with me on a number of occasions.

What did he say to you about it? First of all, what did he tell you, if anything, that his nationality was?—

The ATTORNEY-GENERAL—I must formally object again to this, my lord.

Mr. JUSTICE TUCKER—I think that the nationality under which a man passes is a different thing from specific statements made by a man. I think it is some evidence which is admissible in a case of this kind to say that a man was generally recognized or taken to be a citizen of a certain country, but where there is an issue of this kind I think statements made by the father of the man to this witness is on a different basis, and I do not think it is strictly admissible.

Mr. SLADE—I can give your lordship my authority, but I do not desire to press it; I would not have put the question if it had not been supported by the authorities. The case I have in mind is *In re Perton*, 1885, 53 L.T.Rep., 707. There is another authority which is helpful, that is the *Tipperary* case, 1875, 3 *O'Malley & Hardcastle*, 19. The way I make my submission is this. There are two kinds of declarations by a deceased person which are admissible—we already have evidence that Michael Joyce is deceased—(1) declarations against financial interests—I

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do not suggest that that is this—and (2) declarations against proprietary interests, and the authority *In re Perton* is the authority for the proposition that an admission in regard to status is an admission against one's proprietary interest in this way, only a British subject is entitled to the franchise, only a British subject is entitled to become a member of the House of Commons, and so on, and to make a declaration that you are no longer a British subject is a declaration against proprietary interests. I have not got *In re Perton* here, but I remember the facts, and shortly they were these. In that case, which in a sense may be termed a pedigree case, the question turned upon whether a deceased person was legitimate or illegitimate. The Crown were claiming the estate upon the footing that the deceased person was illegitimate, and the Crown put in evidence which was objected to, which was admitted, containing a declaration by the deceased person himself that he was illegitimate. It was admitted on two grounds, firstly, that it was a pedigree case and it was admissible on that ground, and the learned judge also said that he thought it was admissible as being against interest. The case is also cited in the 11th edn. of Taylor on Evidence, vol. I, p. 461, as authority for the statement that admissions against status are declarations against interest. It does not matter whether the declaration is oral or in writing.

Mr. JUSTICE TUCKER—What do you say, Mr. Attorney?

The ATTORNEY-GENERAL—My lord, the rule in pedigree cases is, of course, a well known one, but there is a great distinction, in my submission, in pedigree cases and in cases concerning nationality. I have not had the opportunity of seeing the case to which my learned friend referred, but there is a passage in Archbold at p. 425 under the heading "Private Documents." My learned friend has said there is no distinction in principle between oral evidence and evidence of documents in these cases; "In pedigree cases an entry in a family Bible, an examined copy of an inscription on a tombstone, a pedigree hung up in a family mansion, and the like, are admissible in evidence . . . but there does not appear to be any authority extending this principle to criminal cases."

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Mr. JUSTICE TUCKER—This is not dealing with a declaration made against interest, is it? The question is whether the rule about declaration against interest is peculiar to any one class, or whether it is common to criminal cases as well.

The ATTORNEY-GENERAL—In my submission, if it exists at all it stands on the same basis as the declaration as to pedigree; it has never been extended to a criminal case.

Mr. JUSTICE TUCKER—If I am asked to rule upon this I shall want some assistance, Mr. Attorney; I cannot deal with this satisfactorily on the rather vague material I have got before me at the moment. I must see the cases if the defence persist in it.

Mr. SLADE—My lord, the fault is entirely mine; I have brought so many books; it is also to be found in 1 T.L.R. 655.

Mr. JUSTICE TUCKER—Mr. Slade, would it be convenient for you to call any other witness and defer this?

Mr. SLADE—I will defer that question altogether.

*Examination continued*—In 1923 did your family remove from Lancashire to Allison Grove, West Dulwich?—Yes, and in September, 1940, our house was almost completely destroyed by enemy action. A trunk, some furniture and one or two small boxes were saved. My father died on 19th February, 1941, at 86 Underhill Road, and my mother died on 15th September, 1944. I have been through all my father's papers, including those in the property I have mentioned as being saved. I have been able to find nothing dealing with the question of his nationality.

Do you remember an incident some years ago when certain documents were destroyed?—Yes, I do. To the best of my recollection it was about eleven years ago. My father destroyed them and gave me a reason for doing so. I saw him burn a number of papers, and I noticed about one that he was preparing for destruction that it had an American Eagle embossed on it, and I believe also a sort of red seal towards the bottom of the sheet. When I was hunting for papers in connexion with my father's nationality just after proceedings were instituted at Bow Street I found a copy of a marriage certificate.

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**Edwin Quentin Joyce.**

Is Exhibit No. 31 the document you found?—Yes. The marriage certificate relates to my father and mother, and my father's name according to the certificate is Michael F. Joyce, or Michael Francis Joyce. When he did not sign "Michael F. Joyce" he signed either "Michael Joyce" or "M. F. Joyce."

Is Exhibit No. 32 a document that you found amongst your father's papers?—Yes, it is a tenancy agreement signed "Michael F. Joyce" in my father's handwriting. That is the only part of this agreement that I recognize as being in his handwriting.

Will you look at this will, Exhibit No. 33? Was that another document that you found amongst your father's papers?—Yes. My mother took out letters of administration and got the probate. Apart from the signatures and addresses of the two attesting witnesses the remainder of this document is in my father's handwriting. This paid cheque, Exhibit No. 34, has the signature in my father's handwriting and is made payable to my brother William Joyce. It is dated 26th April, 1923. Exhibit No. 32, the tenancy agreement, is dated 10th July, 1910, and Exhibit No. 33, the will, is dated 23rd April, 1917. Exhibit No. 35 is an L.C.C. Education Form, dated 20th November, 1935, from the London County Council. I found it amongst those old effects of my father in one of the tin boxes: it refers to my sister Gertrude Joan Brooke Joyce. With the exception of the signature, address and occupation of the witness the rest of that is in my father's handwriting. Exhibit No. 36 is a letter in my father's handwriting, dated 13th March, 1940, addressed by my father to me. It commences "Dear Quentin" and is signed "Father."

Will you look at Exhibit No. 30, the entries in the Civil Register? Have you ever seen it before or not?—Yes, I have seen this before. The handwriting on the left hand side is my father's handwriting and sets out the particulars of the bridegroom to a marriage celebrated on 2nd May, 1905.

Mr. SLADE—We have already had the right-hand side identified as the handwriting of the mother. My lord, that concludes all the evidence-in-chief on the subject I mentioned; perhaps I may take *Perton's* case shortly. The head note (53 L.T.Rep. 707) says: "Evidence—Illegitimacy—Declarations of deceased person whose legitimacy is questioned—Family Tradition—Admissibility." It

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reads: " P. died intestate, and the Crown claimed his property on the ground that he was also illegitimate. The evidence which it relied on to prove illegitimacy were (1) declarations made and letters written by P. whilst alive asserting his own illegitimacy; (2) absence of proof that the man whom P.'s next-of-kin asserted to be P.'s legitimate father was alive at the date of P.'s conception; (3) family tradition . . ."—I do not think I need trouble your lordship with that. I will try to find the passage in the long judgment which deals, not with the pedigree point, but with the declaration against interest. I see a passage here, the last line but one on p. 709, this is from the judgment of Mr. Justice Chitty. " Another ground which occurs to me for admitting the evidence is that the declaration is against the proprietary and pecuniary interest of the person who makes it. If a man is seen cutting a tree, that is considered to be some evidence of ownership, and the statements he makes at the time are admissible in evidence of course as against him and those who claim under him. The basis on which the declarations of deceased persons against their interest are admitted is the great probability of truthfulness. It is considered to be most improbable that a man would not tell the truth in a matter of that kind. That is only a practical rule—it is not an absolute guarantee of truth, because cases have been known where a declaration against pecuniary interest has been made with a sinister purpose. When the sinister purpose is established in evidence, then of course the declaration, though against interest, falls to the ground; but, still, the existence of this interest is considered to be a sufficient general guarantee of the truthfulness of the statement. Now, to my mind, every man has a strong *prima facie* interest in maintaining his own legitimacy—of avoiding that kind of stigma which society attaches to a man, more or less justly or unjustly, because he is illegitimate. Cases no doubt have occurred in which a man has preferred to be thought the illegitimate son of a profligate nobleman rather than the son of an honest tradesman. Such cases are rare, and, to my mind, are not sufficient to form a general line for action. The declaration of the deceased person in regard to his legitimacy or illegitimacy is one which relates to his status and to his rights." Here we are dealing with status.

Mr. JUSTICE TUCKER—That was in fact a pedigree case, was it not?

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MR. SLADE—It was a pedigree case, my lord, and the learned judge puts his decision upon both grounds. I think in the Times Law Reports it says there was also another ground. Both were cases of interest, one was legitimacy, and now we are dealing with nationality, and in my respectful submission most people in this country would consider it very much against their interest to admit they had lost their British nationality; it would deprive them of a number of privileges, and in my submission it would be a declaration against proprietary interest.

THE ATTORNEY-GENERAL—That it is against interest I am not for a moment disputing. The question in this case is in my submission first of all whether declarations against interest are admissible in criminal cases, and secondly, whether this is a declaration against interest in fact. As to the first point, may I refer your lordship to a passage in Roscoe's Criminal Evidence; I have the 15th edn., at p. 28. There, towards the bottom of the page, are set out the numerous exceptions, I think there are at least eight of them, to the ordinary hearsay rules; declarations against interest is one of the eight. Then in the following paragraph there is a reference to heads numbered 2 to 5, which includes the declaration against interest, and it says: "Evidence under these four heads seems to be unknown in criminal cases." I would say frankly and at once that without some considerable research into the cases I should not like to argue that such declarations were not of themselves admissible in criminal cases, but one would have to see what justification there was for the rule that appears to be here suggested, that what was admissible in a civil case would not be admissible in a criminal case. I put my objection for the moment on the ground that this is not a declaration against interest, and I would like to adopt the objections which my learned friend made yesterday to the admission of oral evidence in regard to these matters. Those objections, if well founded, would appear to be equally applicable to a declaration of a deceased person in regard to the same matter. Is a declaration as to nationality a declaration against interest? I am bound to say it comes a little surprisingly from the defence in this case to say that a declaration of a man that he is not of British nationality is a declaration against his interest; it may be a declaration against certain interests and not against others. A

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declaration that a man is not a British subject may deprive him of certain British rights, but it may entitle him to other rights which would accrue to him under the nationality which he professes. I ask your lordship to say this is not a declaration against interest in law.

MR. JUSTICE TUCKER—I shall not exclude this evidence.

*Examination continued*—Did your father at any time discuss his nationality with you?—Yes, sir, he did so on a number of occasions. He said that he was an American. I would say when I was about ten years old I was first conscious of his having mentioned that, between ten and eleven, and then on other occasions after that. That is the earliest I can recall. On other occasions he told me in a general way that he was American. He told me not to talk about the matter outside as it might not be to his interests if the facts were made generally known. I identify the two postcards Exhibits Nos. 37 and 38 as being in the handwriting of my mother. One is addressed to Mrs. Frank Holland, 1019 Boston Road, New York City, and is dated 15th October, 12.30 a.m., 1907, postmark Brooklyn, New York. The other one is addressed to Mrs. Emily Holland at 1019 Boston Road, New York City, the postmark being Brooklyn, New York, July, 2.30 p.m.—the postmark is partly obliterated.

MR. JUSTICE TUCKER—Mr. Slade, I am sure it is unnecessary for me to draw your attention to the fact that there has been no questioning of the last two witnesses.

MR. SLADE—I fully appreciate that, my lord, and I had it in mind when I put those last two postcards in, but there was one reason for doing so.

JOHN WOODMANSEY, examined by Mr. CURTIS-BENNETT—I am a Detective Superintendent in the Chief Constable's Office of the Lancashire Constabulary, at Hutton, near Preston. Exhibit No. 39 is correspondence, records, reports and Alien Register relative to the registration of Michael Joyce and Gertrude Emily Joyce as aliens here in 1917. It begins with a file No. A.L.140. County Police Office—Rochdale, 7th May, 1917. I have not got the



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Identity Book, but have an extract which reads: "From Acting Superintendent at Rochdale to Chief Constable. Aliens Identity Book. Gertrude Emily Joyce, Serial No. 10273. Gertrude Emily Joyce, an American, residing at 31 Manchester Road, Shaw, applies for an identity book. Joyce came to this country on 26th April, 1917, along with her husband for the purpose of proving a will and intends to return to America on or about the 11th instant. She is unable to produce any documentary evidence as to her nationality. One shilling, cost of identity book, received." It is signed by an official, J. T. Clarke. This is followed by a document, dated 8th May, 1917. "From the Chief Constable to Superintendent at Rochdale. Identity Book. Gertrude E. Joyce. As the above named proposes to leave the country on or about the 11th instant C.C."—that stands for Chief Constable—"does not propose to issue an identity book to alien as it will probably not be required by her." The next document is dated 25th June, 1917: "From Superintendent at Rochdale to Chief Constable. Alien, Gertrude Emily Joyce. Serial No. 10273. Gertrude Emily Joyce, American, who has been staying at 31 Manchester Road, Shaw, since 26th April, 1917, left this district on 8th June, 1917, to go to 1 Rutledge, Rockbarton, Galway, Ireland, without notifying the police. (Signed) R. Jump, Superintendent." From the Register of Aliens, dated 28th April, 1917, there is the following extract with regard to Joyce, Gertrude Emily. Serial No. 10273: "Surname: Joyce. Christian names: Gertrude Emily. Nationality and birthplace: American—birthplace Crompton, Lancashire," that is American by marriage.

By Mr. JUSTICE TUCKER—Are you reading 28th April, 1917, from the register?—Yes.

Read it out?—"Serial No. 10273. Date of entry 28.4.17. Joyce, Michael. Nationality: American. Birthplace: Galway, Ireland. Postal address: 31 Manchester Road, Shaw. Occupation: Nil. Date of Birth: 6th December, 1866." Then it goes on to say "Particulars of family."

*Examination continued*—Continue from No. 9, "Particulars of family"?—"Wife: Gertrude E. Son: William (born) 24.4.06. Daughter: Francis, 29.6.12. Date of arrival in district, 26th

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April, 1917, from Galway, Ireland. Remarks Column: Visiting Shaw to settle probate of will, then returning to Ireland," and in the column 12 "Signature of alien"—there is no signature, but it is marked off "To Ireland 15.5.17." The second item is "10273 (serial number). Joyce, Gertrude Emily. American by marriage. Birthplace: Crompton, Lancs. Postal address: 31 Manchester Road, Shaw. Occupation: nil. Date of Birth: 28th August"—the original entry was 1887, and it has been crossed out and made 1879. "Particulars of family: Husband," and then it is marked off 10272, "Date of arrival in district and previous place of residence, 26th April. 17. Galway, Ireland," and later on Mrs. Joyce apparently returned to this country again and later returned to Galway, Ireland, on the 11th August, 1919. The daughter "Frances" is spelt F-r-a-n-c-i-s. It looks as if it ought to be a son. It is spelt the wrong way. The person who made these entries is not at the moment available.

Have you got there what is said to be "Change Report"? —Yes, dated 25th June, 1917. It reads: "Surname: Joyce, Gertrude Emily. Nationality and birthplace: American. Crompton, Lancashire. Postal address: 31 Manchester Road, Shaw. Particulars of family: Husband, Serial No. 10272. Date of arrival in district and previous place of residence, 26th April. 17. 1 Rutledge, Rockbarton, Galway, Ireland. Arrived in England 26/4/17. Remarks: Change permanent. Date of Departure or change: left on 8/6/17. New address or destination: 1 Rutledge, Rockbarton." This is followed by a letter from the Lancashire Constabulary, dated next day, "From the Chief Constable of Lancashire to the Inspector General, Royal Irish Constabulary, The Castle, Dublin. Alien: G. E. Joyce. Sir, I enclose herewith form A.R.-D., change report, in respect of the above named alien who removed from Shaw to Rockbarton on the 8th instant without notifying the police of her intended change of address. I should be glad to know whether this alien has reported her arrival in your area to the police at Rockbarton, and if so will you kindly cause her to be interviewed and ascertain what explanation she has to give for failing to notify the police at Shaw of her intended change of address and inform me of the result. I am, sir, your obedient servant." This is followed by a letter from the "County of Galway, W.R. County Inspector's Office, Galway,

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28th June, 1917. Alien: G. E. Joyce. For report." Then there is a report reading like this: " I beg to report that Mrs. Gertrude Emily Joyce is the wife of Michael F. Joyce of No. 1 Rutledge Terrace, Salthill, one of the most respectable, law-abiding and loyal men in this locality and one who has been consistently an advocate of the ' pro-allied ' cause since the beginning of the war. He returned from the United States to Ballinrobe, County Mayo, in October, 1909, and Mrs. Joyce his wife also went there on 2.11.09 where they remained until May 1913, when they came to reside at Salthill where they have extensive house property. Mrs. Joyce was born an Englishwoman at 31 Manchester Road, Shaw, Lancashire, and went to the States to marry her husband. She states she was only three or four years there altogether and she regrets very much not having reported her departure to the police at Shaw and says that as her husband had reported himself and told her the matter was all right, she did not think a personal report was necessary." Then " A. Neither Michael F. Joyce, her husband, nor herself, consider themselves aliens. The former asserts that he has abandoned his claim as a citizen of U.S.A. by failing to get himself registered there within two years after leaving the country for Ireland. They were not considered as aliens here and have not been registered as such. (Signed) Bernard Reilly," followed by a note: " Where was Michael Joyce born? If in Ireland did he take out naturalization papers in the U.S.A.? Sergeant Reilly. Salthill, 2.7.17. I beg to report that Joyce was born at Ballinrobe, Co. Mayo. He emigrated to United States of America and took out naturalization papers there. He left the United States in October, 1909, and has resided in the Counties of Mayo and Galway, W.R., ever since," and then there is a further note: " Submitted 3rd July, 1917. Please see ' A.' Under the circumstances there seems some doubt whether these people are aliens at all," and then over the page, 6th July, 1917, letter " From the Chief Constable of Lancashire to the Inspector General, Royal Irish Constabulary, The Castle, Dublin. Alien Gertrude E. Joyce. Sir, I am much obliged for your report No. 8656 of the 5th instant. In view of the fact that Mr. Joyce was admitted to American nationality and has not been readmitted to British nationality I must treat his wife as an American subject. I should be much obliged if you would kindly cause Mrs. Joyce

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to be cautioned for the offence she has committed against the provisions of the Aliens Restriction Order." That would be for not reporting her address as an alien. The matter closes with "I beg to report having cautioned Mrs. Joyce accordingly on this date," namely, 8th July, 1917. "(Signed) Bernard Reilly."

**BERNARD REILLY**, examined by Mr. CURTIS-BENNETT—I am a retired police officer living at 73 Almonds Green, West Derby, Liverpool. I remember Michael Joyce well. In 1917 I was a sergeant in the Royal Irish Constabulary stationed at Salthill, which is about a mile outside Galway. Michael Joyce was living at 1 Rutledge Terrace, Salthill, with his wife and his son, the prisoner. I visited Michael Joyce for the purpose of finding out matters which I wanted to know for my report, and spoke to him and his wife.

When speaking to Michael Joyce did the question of his nationality arise at all?—Yes, he told me he thought at that time that his nationality was British, but that he had taken out citizen papers in the United States, and that he thought he had abandoned the claim as a citizen on account of not having, after a lapse of two years, got registered in the United States again.

He had taken out naturalization papers in the United States, but he had lost that nationality by the lapse of time?—Yes, in not having asked to be re-registered.

**WILLIAM YUILE FORBES**, examined by Mr. SLADE—I am an examiner of questioned documents at 109 Kingsway, London, Liverpool, Glasgow, and Edinburgh. I live at 71 Dee Banks, Chester. I have been employed in this capacity for some twenty years and have also been employed by Departments of His Majesty's Government, the police, banks, and insurance companies, and the American Government. Exhibit No. 33 is an original will, dated 23rd April, 1907. Exhibit No. 32 is a Royal Irish Constabulary form, dated 1910. Exhibit No. 35 is an original London County Council form, dated 20th November, 1935. Exhibit No. 34 is an original cheque, dated 26th April, 1923. Exhibit No. 36 is an original letter signed "Father," dated 13th March, 1940. Exhibit No. 29 consists of a certificate, dated 1945. It is a declaration of intention, and another certificate and a photostat

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of a petition. That is what is called the naturalization record. On the petition the name Michael Joyce appears four times. I have carefully and microscopically examined Exhibits Nos. 33, 32, 35, 34, and 36 with the signature "Michael Joyce" where it appears for the second and fourth times on the petition. I have made enlargements. These are Exhibit No. 40.

Exhibits Nos. 33, 32, 35, 34, and 36, or the relevant portions of them, the signatures, are not challenged by the prosecution and are in the prisoner's father, Michael Joyce's, handwriting. In your opinion, in whose writing are the signatures "Michael Joyce" where they appear for the second and fourth times in the petition on the naturalization record?—The same handwriting. I have no doubt about that whatever. I would expect to find some changes in the handwriting of a man in 1894 as compared with 1910, but I have taken note of the fact and made allowance for these changes.

Mr. SLADE—Mr. Stebbings, your lordship will hear, is entitled to diplomatic immunity, but is willing to assist your lordship on any question.

HENRY ENDICOTT STEBBINGS, examined by Mr. SLADE—I am the First Secretary of the American Embassy in London, and I am also commissioned as a constable, being the officer designated by the Ambassador as chief of the Consular Section of the Embassy in London. I am supervising officer for all the other American Consulates in Great Britain and Northern Ireland, and have been a Foreign Service Officer for some fourteen years. In the course of my training and duties I have become familiar with the citizenship laws of the United States, not only as they are to-day, but as they were in 1894. I have seen copies of Exhibit No. 29, the naturalization record. I have also seen the declaration of intention and the petition. The petition consists, amongst other things, of an oath taken in open Court by Michael Joyce on 25th October, 1894, and certified by a citizen of the United States, John Duane, also sworn in open Court on the same date. According to the law of the United States of America the swearing of that oath by Michael Joyce and of that oath by John Duane granted Michael Joyce American citizenship. He thereupon, by American

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law, became an American citizen without any further formal order or requirement of any description. If the Michael Joyce referred to in this document married in New York and a son was born to him after he had become an American citizen the nationality of that son would be an American citizen by birth. If at some subsequent time the father lost the American nationality which he had acquired in 1894, according to American law there would be no effect upon the status of the son who was born in America.

Mr. SLADE—That is the case for the defence, my lord. Before I address the jury perhaps your lordship would be good enough to give some indication to us as to what matters there are for the jury to try.

Mr. JUSTICE TUCKER—Mr. Attorney, perhaps you would assist me now by saying whether, having heard the evidence which has been adduced by the defence, you are going to invite the jury to come to the conclusion that this man was a British subject or not.

The ATTORNEY-GENERAL—No, my lord. I indicated as far as I properly could in opening that I was not going to press that point, and I certainly do not consider it my duty to invite them to say so.

Mr. JUSTICE TUCKER—Very well, Mr. Attorney, I think everybody must agree that the evidence which has been tendered is really overwhelming. That leaves us with count 3 as the only effective matter which we have to deal with. With regard to that, Mr. Attorney, I think it would be perhaps the most convenient course that you should elaborate your submission in regard to that in order that Mr. Slade may know how to put his case and then he could reply. At some time I hope you will be able to give me a little assistance in regard to the nature, history, and effect of a passport, as to which I am at the moment somewhat ignorant.

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The ATTORNEY-GENERAL—My lord, there is very little law on it, but I will tell your lordship what I have been able to discover about it. I will say at once that I think that the submission I am about to make is not covered by any express authority—it is,

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perhaps, none the worse for that. I think it was Baron Parke who said in one of the cases that it is one of the incalculable advantages of our common law that it is applicable to new circumstances perpetually repeating themselves. My general submission is that when one looks to see what the basis of allegiance to the Crown is one finds that it rests upon the existence of protection by the Crown. May I, first of all, refer to two cases which at first sight appear to be against me. It is true, of course, as I say, that there is no existing authority upon the matter and that hitherto the allegiance due from an alien to the Crown has been dealt with under the name of local allegiance, and has not hitherto been considered in the cases as arising apart from birth in the case of a natural born British subject or from residence or from oath in the case of those who have not been natural born subjects. That, in my submission, was so until comparatively modern times. It is a little difficult to say exactly when, but until comparatively modern times the passport system had not come into being at all, and the Crown was not in general able to vouch for its citizens or for those whom it was protecting once they had left Crown territory. Once a person entitled to protection had left the territory over which the Crown had jurisdiction he had to prove his right to protection *ad hoc* and he had no documentary evidence which he could carry with him which formed in itself a certificate entitling him to protection as, in my submission, a passport does.

In order to see whether a temporary allegiance, which in the cases is often described as local allegiance, is based merely on presence within the territory of the Crown or is based on some other and rather wider notion, one has to look at a number of old cases in a number of the old books, and one finds, I think, in all of them, with the exception of the two cases to which I am going to draw your attention, the general proposition expressed that allegiance, whether it be local allegiance or natural allegiance, is based upon protection. You find phrases to the effect that allegiance and protection are correlative things, that they are reciprocal things, that the one draws the other, and all through the line of authority dealing with the matter you will find allegiance to be on that basis of protection.

The chief case which appears, at first sight, to be against

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me is the case of *Johnstone v. Pedlar*, [1921] 2 A.C. 262. I do not think I need trouble your lordship with the facts in that case, but it was a case where the question of the right of an alien to sue in tort was under consideration and where the possible defences are discussed at p. 292. In the course of the speech by Lord Sumner there is a passage which is against me. In the last paragraph it says: "Personally, I do not think that either Lord Coke's language or the maxim to which he refers—*Protectio trahit subjectionem, et subjectio protectionem*—points to such a conclusion. The matter, which he had in hand, is the contrast between *ligeantia localis*, which begins no earlier than and continues no longer than the presence of the alien amy within the realm, and the lasting allegiance of the subject born. I do not think that Lord Coke conceived of it as quasi-contractual or as involving mutuality." That was the passage in *Calvin's case*, (1608) 7 Co.Rep. 1a, which seemed to put the thing on the basis of an implied contract, a view as to which there is some other authority, but with which Lord Sumner in this passage disagrees. He goes on to say: "The principle that the sovereign can refuse the alien permission to enter the realm and that the alien has no right to enter is inconsistent with the existence of any such basis for local ligeance." My lord, I confess it is difficult to see why that is so. One might have said that an alien who chooses to take advantage of the permission of the sovereign to enter the realm, having no right to enter it without such permission, enters it on the acceptance of the obligation to allegiance when he does so. I do not think for the purposes of my case it is necessary to base the doctrine of allegiance on any kind of implied contract or on any basis of mutuality.

Mr. JUSTICE TUCKER—On what basis does Lord Sumner put it then?

The ATTORNEY-GENERAL—He goes on to say this, my lord: "It is clear that the obligation to obey the laws and that civil and criminal liability in case of disobedience to them are not dependent on anything in the nature of an actual grant of protection or recognition of the alien's presence or licence to him to remain and if, his entry having been prohibited, he should contrive to



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enter surreptitiously and for a time be undetected, I conceive that during that interval he would still be liable to suit or prosecution for his acts done in defiance of the ordinary law." He bases it, so far as obedience to the ordinary law is concerned, entirely upon presence, known or unknown, within the King's realm and whether or not it carries with it any right of protection.

Mr. JUSTICE TUCKER—What does the right to protection mean? I thought that the right to protection of the alien, one of the rights at any rate he gets, is that he is within the King's peace. Lord Sumner would not object to that proposition.

The ATTORNEY-GENERAL—He is dealing with it on the rather stronger basis of contract and saying that in spite of the fact that the presence of the alien is unknown he would still be within the general scope of the law. He concedes, I think, and I do not think there is any authority which takes a different view, that the presence of the alien does give rise to a right of protection: whether there is any basis of mutuality about it is another matter.

Mr. JUSTICE TUCKER—The relevance of this case is that he does not take the view that there is mutuality and that protection has got nothing to do with it. He puts it on the basis of physical presence only.

The ATTORNEY-GENERAL—Yes, my lord. It does not appear that that matter had been the subject of any argument in the course of the case. There is a passage at the bottom of p. 277 in Lord Cave's speech: "I should add that the judgment of O'Connor, M.R., in the Court of Appeal was mainly founded upon the view that the right of a resident alien to protection is contingent on his observing the duty of allegiance while in the realm, and that the respondent, having been guilty of treasonable acts, had thereby forfeited his right to the protection of the King's Courts. But this question was not raised in the defence, and (either for that reason or because a decision on the wider question was desired) was not seriously argued in your Lordships' House and accordingly I think it best to express no opinion upon it." Then at p. 284 there is a further short passage in the course of the speech of Lord Atkinson relying on Foster—I shall refer presently to

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Foster—in which Lord Atkinson says: “For the same reason an alien enemy can be prosecuted for high treason if he has accepted the protection of the sovereign, but not otherwise.” Then, at p. 297, in the third paragraph on that page there is a short passage in the speech of Lord Phillimore: “From the moment of his entry into the country the alien owes allegiance to the King till he departs from it, and allegiance, subject to a possible qualification which I shall mention, draws with it protection, just as protection draws allegiance.” So that there seems to have been some considerable difference of view upon this point which had not been argued in the course of the case and it was not necessary for the decision of the case.

Mr. SLADE—I wonder if the Attorney-General would mind my pointing out that if he had read Lord Atkinson’s remarks at the top of p. 284, “For the same reason,” your lordship would see what that was by reading the preceding few words.

The ATTORNEY-GENERAL—I am obliged. “A friendly alien resident in this country can undoubtedly be prosecuted for high treason”—he refers to the *De Jager* case [1907] A.C. 326—because it can then be averred that he acted *contra liganantia suæ debitum* (*Calvin’s* case, (1608) 7 Co.Rep. 1a). For the same reason an alien enemy can be prosecuted for high treason if he has accepted the protection of the sovereign, but not otherwise.” I was going to refer your lordship to *Calvin’s* case. There the liability of the friendly alien was put on that basis, that he had accepted the protection of the sovereign.

The other case which contains the passage which appears to be against me is the case of the *Stepney Election Petition*, (1886) 17 Q.B.D. 54. The point in that case was that “Persons born in Hanover before the accession of Queen Victoria to the throne of the United Kingdom and not naturalized, are, though resident in the United Kingdom, aliens, and not entitled to vote at the election of members of Parliament.” At p. 62 there is a passage half-way down the page after the reference to *Calvin’s* case: “Blackstone is equally express: ‘It is a principle of universal law that the natural-born subject of one prince cannot by any act of his own—no, not by swearing allegiance to another—

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put off or discharge his natural allegiance to the former; for this natural allegiance was intrinsic and primitive, and antecedent to the other; and cannot be divested without the concurrent act of that prince to whom it was first due. Indeed, the natural-born subject of one prince, to whom he owes allegiance, may be entangled by subjecting himself absolutely to another, but it is his own act that brings him into these straits and difficulties, of owing service to two masters; and it is unreasonable that by such voluntary act of his own he should be able at pleasure to unloose those bands by which he is connected to his natural prince," and then he gives a reference to Blackstone, "and he remarks that down to the time of the Revolution of 1688, for 600 years the oath, whenever administered, was 'to be faithful to the king and his heirs.' Now, the 'natural prince' of a Hanoverian not naturalized in any other country is undoubtedly the King of Hanover or the sovereign who now by conquest represents that King, i.e., the German Emperor. It is not suggested that either the King or the Emperor ever relinquished their claim to the allegiance of these subjects; that allegiance, therefore, remains. Thirdly, the inconveniences that would follow from this claim to elect at the will of the subject were pointed out in the argument, and they are, as far as an argument *ab inconvenienti* ever can be, practically conclusive. If the Queen of these islands and the German Emperor were to go to war (*absit omen*, as the judges said in *Calvin's* case, (1608) 7 Co.Rep. 1a, but it has been and may be so again), any one of these resident non-naturalized Hanoverians would undoubtedly, if serving in the British army and taken prisoner, be liable to be shot as a traitor in arms against his sovereign, and the case would be the same with an Englishman (and there must be many such) residing in Hanover, not naturalized and serving in the German armies. The instance of *Aeneas Macdonald*, (1747) 18 State Tr. 857, shows—though under a somewhat different head of law—that such a case is by no means imaginary."

Now, my lord, I come to the part of the case which appears to be against me: "But that a man rightfully and legally in the allegiance of one sovereign could be also rightfully and legally treated as a traitor by another, cannot be the law. Yet it follows inevitably from Mr. Charles's premises, when the essential character of allegiance is understood. Sir William Blackstone, in the passage

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already cited, gives such a man small consolation. 'The natural-born subject of one prince, to whom he owes allegiance, may be entangled by subjecting himself absolutely to another; but it is his own act which brings him into these straits and difficulties of owing service to two masters.' Sir William Blackstone plainly had never heard of the doctrine that a man could get rid, by election, of an allegiance he was born under." My lord, in my submission, that passage, if one reads it with some care, is clearly not wrong, because it is the undoubted law, and has been for many hundreds of years, that an alien in this country owing a permanent and natural allegiance to the country of his birth may, none the less, owe local allegiance, at least while he is in this country, and could be prosecuted for treason in this country in the doing of something which might indeed have been his duty to do for his own natural sovereign. Possibly the significant words here are the words that Lord Coleridge uses, "rightfully and legally," and my submission is that the quotation from Blackstone makes it quite clear that a man may voluntarily place himself under a dual allegiance. Of course, there may be a double nationality, giving rise to conflicting claims to allegiance. I do not know what the American law is, but it is the law of some countries that a person born in some countries is a subject of them; although he may be born of parents of a different nationality, he is by the law of that country subject to the laws of nationality of that country. There is, in my submission, the very well settled case of local allegiance in its strictest sense due from a resident alien. In any event the passage to which I have referred your lordship there is *obiter*. With that exception, so far as I have been able to ascertain, the authorities, so far as they go, are the other way.

The earliest case is *Calvin's case*, (1608) 7 Co.Rep. 11a. That case dealt with the nationality of people born after the accession of King James the First to the English throne, people born in Scotland. At p. 8 in that report, in para. 3, there is a passage on which I rely: "Concerning the local obedience it is observable, that as there is a local protection on the King's part, so there is a local ligeance on the subject's part." Then the case refers to a case of *Sherley*: "Sherley, a Frenchman, being in amity with the King, came into England, and joined with divers subjects of this realm in treason against the King and Queen, and the

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indictment concluded *contra ligeant' suæ debitum*; for he owed to the King local obedience, that is, so long as he was within the King's protection; which local obedience being but momentary and uncertain, is yet strong enough to make a natural subject, for if he hath issue here, that issue is a natural born subject." Your lordship will see the basis of the allegiance which is due from the alien is the protection which the alien has whilst he is within the realm: "He owed to the King local obedience, that is, so long as he was within the King's protection."

Then, my lord, one goes on to Coke's Institutes, the third part, 6th edn., 1680. In the first chapter, at the bottom of p. 4, there is a reference to *Calvin's* case, and in the last paragraph on that page it is said: "And all aliens that are within the realm of England, and whose Sovereignes are in amity with the King of England are within the protection of the King, and do owe a local obedience to the King, (are *homes* within this Act) and if they commit High Treason against the King, they shall be punished as Traitors, but otherwise it is of an enemy, whereof you may read at large." My lord, that reference is, in my submission, an authority for this proposition, that presence within the territory of the King is not enough. An alien coming into the King's realm, perhaps as a member of enemy forces, perhaps as a spy remaining in this country for some time unknown to the sovereign, is not under a duty of allegiance because he is not receiving the protection of the Crown. It is only in the case of an alien friend who is not only resident in the country, but is resident here as a protected person, receiving the benefit of the Crown's protection, that you get the corresponding duty of allegiance arising.

As one goes through the old books one finds the same doctrine repeated in the 1st vol. of Hale's Pleas of the Crown, chap. X, heading of "Treason," para. 2, at the top of p. 59. It says: "Because as the subject hath his protection from the King and his laws, so on the other side the subject is bound by his allegiance to be true and faithful to the King; and hence all indictments of high treason run *proditorie*, as a breach of the trust, that is owing to the King, *contra ligeantia suæ debitum*, against that faith and allegiance he owes to the King and *contra*," and so on. "And hence it is, that if an alien enemy come into this kingdom hostilely to invade it, if he be taken, he shall be dealt with as an enemy, but

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not as a traitor, because he violates no trust nor allegiance. But if an alien, the subject of a foreign prince in amity with the King live here, and enjoy the benefit of the King's protection, and commit a treason, he shall be judged and executed, as a traitor; for he owes a local allegiance." There again, my lord, the matter is being put, as I submit, on this basis, that something more is required than the tie of mere presence in the King's realm, something tying the person who is to be put under an obligation of allegiance to the King and to the King's laws, and that is the protection which the King can give, and thus the distinction is drawn between the enemy alien who may be resident in the country for some considerable time, but who is not enjoying the King's protection, and an alien who is receiving the benefit of the King's protection; if he enjoy the benefit of the King's protection and commits a treason, then he shall be judged and executed as a traitor.

May I refer your lordship to East's Pleas of the Crown. At p. 52 in the 1st vol. of East there is a passage to which I invite your lordship's particular attention, because it deals with the case of an alien who is no longer within the King's realm, and it is the first, and, I think, probably the only authority, for the view that in spite of the fact that the factor of residence has ceased the allegiance may continue, and the allegiance is held here to continue because, although residence on the part of the alien himself has gone, there remains a tie between the alien and this country of a kind which is held to be sufficient to continue the duty of allegiance which arose from residence. At the bottom of p. 52 your lordship will see the paragraph: "Local allegiance is that which is due from a foreigner during his residence here; and is founded in the protection he enjoys for his own person, his family, and effects, during the time of that residence. This allegiance ceases whenever he withdraws with his family and effects; for his temporary protection being then at an end, the duty arising from it also determines. But if he only go abroad himself, leaving his family and effects here under the same protection, the duty still continues; and if he commit treason, he may be punished as a traitor; and this whether his own sovereign be at enmity or at peace with ours."

My lord, it is the fact in this case, of course, that the prisoner left his father and mother and some brothers and sisters in this

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country, but he took his wife away with him when he left this country in August, 1939, for Germany. Whatever may have been the position with regard to the continuance of some family tie, my submission, of course, is that he retained a tie with this country by holding a British passport and retaining the protection of that document.

Mr. JUSTICE TUCKER—Was the evidence that when he applied for the passport it included his wife as well?

The ATTORNEY-GENERAL—I think not, but my learned friend will look it up and make quite sure.

Mr. JUSTICE TUCKER—Read on from where you were reading, Mr. Attorney.

The ATTORNEY-GENERAL—Yes, my lord. “Therefore if he aid even his own countrymen in acts or purposes of hostility, while he is resident here, he may be dealt with in the same manner. The above rule was laid down by all the judges assembled, at the Queen’s command, on the 12th January, 1707.”

Mr. JUSTICE TUCKER—That applies, I apprehend, to all that has gone before.

The ATTORNEY-GENERAL—I apprehend so. At the foot of that page there is a passage just before one gets to the last paragraph: “But an alien enemy, not domiciled here, taken in avowed hostilities against the King or his government is no traitor, though leagued with rebels; for he violates no trust or allegiance. On the trial of several quakers for their third offence upon the Stat. 16, Car. 2, an act for suppressing seditious conventicles, one of them pleaded that he was an alien born in France, and so not within the penalty of the act, which is levelled against every person, &c., ‘*being a subject of this realm*’; but this was overruled, because as long as he lived here under the King’s protection, he is a *subject* of the realm, and punishable for transgressing its laws: but it was admitted, that if the Statute had said, being a *natural born* subject, &c., it would not have extended to him.”

Then there is a passage in Foster’s Crown Law, at p. 185. My learned friend, in the course of his submission yesterday, drew

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your lordship's attention to the fact that in *Woolmington's* case, [1935] A.C. 462, one passage in Foster had been over-ruled, but although I think my learned friend rather invited your lordship to take this view, your lordship may think that the whole of this authority has not been undermined by the House of Lords in the decision in *Woolmington's* case on one part of the matter. On p. 185, sec. 4, there is a reference which I indicated when I cited East to the decision of the judges in 1707. I shall start at sec. 2. "An Alien whose Sovereign is in Amity with the Crown of *England* Residing here and Receiving the Protection of the Law oweth a Local Allegiance to the Crown during the time of his Residence. And if, during that Time He committeth an Offence, which in the Case of a natural-born Subject would amount to Treason, He may be dealt with as a Traitor. For his Person and Personal Estate are as much under the Protection of the Law as the Natural-born Subject's; and if He is injured in either, He hath the same Remedy at Law for such Injury. Sect. 3. An Alien whose Sovereign is at Enmity with Us living here under the King's Protection, committing Offences amounting to Treason, may likewise be dealt with as a Traitor. For He oweth a Temporary Local Allegiance, founded on that share of Protection He receiveth." And then sec. 4 reads: "And if such Alien seeking the Protection of the Crown having a Family and Effects here should during a War with his Native Country go thither and there Adhere to the King's Enemies *for purposes of Hostility*, He might be dealt with as a Traitor. For He came and settled here under the Protection of the Crown. And though his Person was removed for a time, his Effects and Family continued still under the same Protection. This Rule was laid down by all the Judges assembled at the Queen's Command, Jan. 12th, 1707."

My lord, in sec. 1 the basis of the thing is, in my submission, that the alien is as much under the protection of the law as the natural-born subject. Equally in the case of the alien who is no longer resident but is travelling abroad on the King's passport, he is equally under the protection of the Crown in whatever foreign country he may happen to be as a British subject travelling under the same passport: both have the same passport and both enjoy the same right to protection.

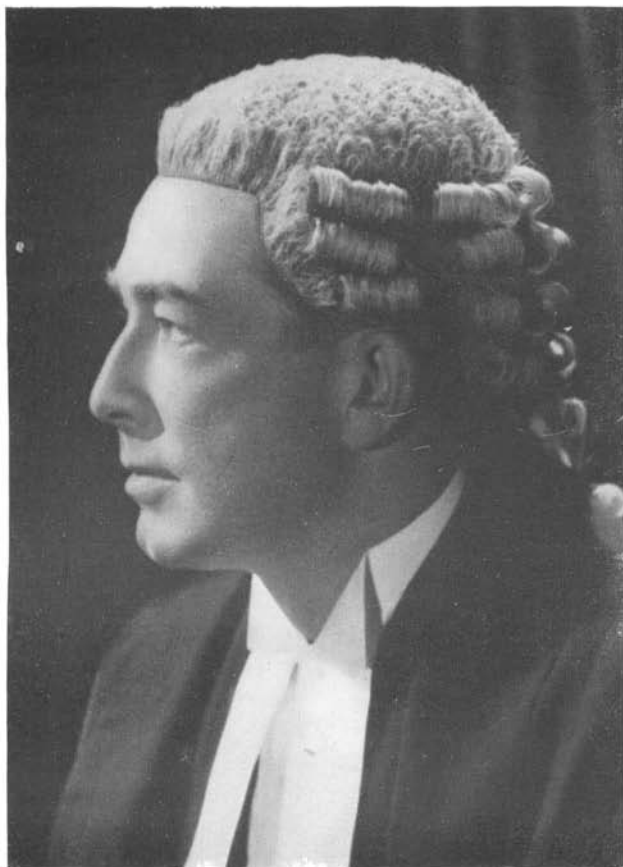
Then there is a passage in the 1st vol. of Blackstone's Commen-



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tries at p. 370 which, indeed, goes a little further than I find it necessary to go myself, although there is some other authority for the view that is here expressed. Blackstone deals with the mutuality of the obligation, the matter to which Lord Sumner referred in the course of his speech, and this is said at p. 370: "Local allegiance is such as is due from an alien, or stranger born, for so long time as he continues within the King's dominion and protection: and it ceases the instant such stranger transfers himself from this kingdom to another. Natural allegiance is therefore perpetual, and local temporary only; and that for this reason, evidently founded upon the nature of government, that allegiance is a debt due from the subject, upon an implied contract with the prince, that so long as the one affords protection, so long the other will demean himself faithfully. As, therefore, the prince is always under a constant tie to protect his natural-born subjects, at all times and in all countries, for this reason their allegiance due to him is equally universal and permanent. But, on the other hand, as the prince affords his protection to an alien, only during his residence in this realm, the allegiance of an alien is confined, in point of time, to the duration of such his residence, and, in point of locality, to the dominions of the British empire." That statement of the law was no doubt complete at that time. At that time the prince did not and could not afford his protection to an alien once that alien had given up his residence within the realm, consequently the allegiance of the alien was confined to the realm, but in later years, with the development of international law and usage, the prince was able to afford protection to his subjects outside the realm, and he does so, in my submission, by the issue of a passport and that passport, whether issued to one who is a natural-born British subject or to one whose position may be one of statelessness—a condition which the law of all countries recognizes—or one who is in fact fortuitously an alien, that protection is just the same in the case of each of those several categories of persons. I rely on this passage as an authority for the view that the whole basis of the allegiance is the protection which the sovereign extends to the person who in return owes it. That view, expressed in Blackstone, putting it on the basis of mutuality, on the basis of an implied contract, has been discussed in some of the books. It finds some favour in the books on inter-



*Photo. by Yevonde*

**The Attorney-General, Sir Hartley Shawcross, K.C., M.P.**

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national law. For instance, in the 1st vol. of Phillimore's International Law, at p. 454, there is this passage: "With respect to the administration of criminal law, it must be remembered that every individual on entering a foreign territory binds himself by a tacit contract to obey the laws enacted in it for the maintenance of the good order and tranquility of the realm, and it is manifestly not only the right, but the duty of a state to protect the order and safety of the society entrusted to its charge equally against the offences of the foreigner as of the native." He puts this as a proposition of international law and goes on to say: "This proposition, it should be observed, must not be confounded with another, namely, the alleged right or duty of a state to punish a *citizen* for an offence committed *without* its territory—this is a proposition of municipal, the other is one of international law."

Having cited those authorities for the view that allegiance arises from protection, is reciprocal with protection, is a correlative thing, I turn to an authority for the proposition that allegiance continues, although the right to protection may be in suspense. There I rely on the case of *De Jager v. Attorney-General of Natal*, [1907] A.C. 326. In Foster the paragraph I cited is an authority for the same proposition. The matter dealt with in *De Jager's* case was this: "A resident alien within British territory owes allegiance to the Crown, and if he assists invaders during the absence of State forces for strategical or other reasons he is rightly convicted of high treason. Special leave to appeal from a judgment to that effect refused. There is no sufficient authority for the doctrine that the alien's duty of allegiance ceases if an enemy makes good his military occupation of the district in which the alien resides." At p. 328, in the course of the judgment of the Judicial Committee, the Lord Chancellor, Lord Loreburn, referred to the argument of Sir Robert Finlay, as he then was, and he said: "Their lordships are of opinion that there is no ground for this contention"—that is, the contention that when the protection ceases its counterpart ceases—"The protection of a State does not cease merely because the State forces, for strategical or other reasons, are temporarily withdrawn, so that the enemy for the time exercises the rights of an army in occupation. On the contrary, when such territory reverts to the control of its rightful Sovereign, wrongs done during the foreign occupa-

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tion are cognizable by the ordinary Courts. The protection of the Sovereign has not ceased. It is continuous, though the actual redress of what has been done amiss may necessarily be postponed until the enemy forces have been expelled. Their lordships consider that the duty of a resident alien is so to act that the Crown shall not be harmed by reason of its having admitted him as a resident." One may add, as a corollary to that, that the Crown shall not be harmed by reason of having admitted a person to the protection and to the status of a British passport holder. Then Lord Loreburn goes on: "He is not to take advantage of the hospitality extended to him against the Sovereign who extended it. In modern times great numbers of aliens reside in this and in most other countries, and in modern usage it is regarded as a hardship if they are compelled to quit, as they rarely are, even in the event of war between their own Sovereign and the country where they so reside. It would be intolerable, and must inevitably end in a restriction of the international facilities now universally granted, if, as soon as an enemy made good his military occupation of a particular district, those who had till then lived there peacefully as aliens could with impunity take up arms for the invaders. A small invading force might thus be swollen into a considerable army, while the risks of transport (which in the case of oversea expeditions are the main risks of invasion) would be entirely evaded by those who, instead of embarking from their own country, awaited the expedition under the protection of the country against which it was directed." I do not think I need read the rest of the judgment to your lordship.

There is an American case to which I would like to refer. That is the case of *Carlisle v. The United States*, (1872) 16 Wall. 147, a decision of the American Supreme Court. The short point there was that an alien—he was a British subject as a matter of fact, if I recall it rightly—was domiciled in one of the Confederate States, in one of the areas occupied by the Confederate States, during the American Civil War, and he sold saltpetre to be used, as he knew, by the Confederate armies in the making of gunpowder, and it was held that he was guilty of an offence. The American Courts seem to have adopted almost exactly the view of the law which had already been expressed in the old English books, and Mr. Justice Field, in the course of his judgment, at p. 154 said: "By allegiance is meant the obligation of fidelity and obedience which the indivi-

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dual owes to the government under which he lives, or to his sovereign in return for the protection he receives. It may be an absolute and permanent obligation, or it may be a qualified and temporary one. The citizen or subject owes an absolute and permanent allegiance to his government or sovereign, or at least until, by some open and distinct act, he renounces it and becomes a citizen or subject of another government or another sovereign. The alien whilst domiciled in the country owes a local and temporary allegiance, which continues during the period of his residence. This obligation of temporary allegiance by an alien resident in a friendly country is everywhere recognized by publicists and statesmen. In the case of *Thrasher*, a citizen of the United States resident in Cuba, who complained of injuries suffered from the government of that island, Mr. Webster, then Secretary of State, made in 1851 a report to the President in answer to a resolution of the House of Representatives in which he said: 'Every foreigner born residing in a country owes to that country allegiance and obedience to its laws so long as he remains in it, as a duty upon him by the mere fact of his residence, and that temporary protection which he enjoys, and is as much bound to obey its laws as native subjects or citizens. This is the universal understanding in all civilized states and nowhere a more established doctrine than in this country.' And again: 'Independently of a residence with intention to continue such residence; independently of any domiciliation; independently of the taking of any oath of allegiance or of renouncing any former allegiance, it is well known that by the public law an alien or a stranger born, for so long a time as he continues within the dominions of a foreign government, owes obedience to the laws of that government, and may be *punished for treason* or other crimes as a native born subject might be.' " Then he goes on to refer to Hale and East and Foster and approves the law as there laid down.

My lord, that case shows that there, as in this country, the view was accepted that the local allegiance, the temporary allegiance, of the foreigner continued, although the right to protection was temporarily in suspense. I rely upon that because it may be said here that in time of war the protection afforded to the British passport holder, who was by accident or design in hostile territory, came to an end. In my submission that is not so: at the highest

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that it could be put it would be that the protection afforded to the British passport holder was in suspense. As your lordship knows, in a number of respects the protection does continue in fact. It is not capable of being exercised to the same extent as may be possible in times of peace, but a degree of protection does continue so long as civilized countries continue to observe the usages of international law and the ordinary diplomatic practices.

MR. JUSTICE TUCKER—The application for the passport was not confined to Germany.

THE ATTORNEY-GENERAL—No, my lord. We have not seen the passport, but the passport application referred to most of the Continent. Belgium, France, Germany, Switzerland, Italy, Austria.

MR. JUSTICE TUCKER—So the passport may have been effective if used in some of those other countries?

THE ATTORNEY-GENERAL—Yes, it could have been effective if used in the neutral countries; it could also be used in the belligerent countries to the extent that it entitled the holder to the protection and interest of the protecting power. It enabled the holder to ensure that he was not called up by the belligerent power for military service in its own forces, I should think, and it entitled him to whatever rights under the ordinary law of nations that particular belligerent power agreed to observe. I cannot say whether this rule would be observed in the case of Germany or not, but in point of fact the protecting power, Switzerland, did continue to operate throughout the war. The fact that it is called the protecting power is perhaps not without interest, and it leads one to think of the large class of persons who are called protected persons, not British subjects by birth, not British subjects under the Statute. I suppose now the largest class of them is in Palestine. In my submission, those persons, although not of British nationality, enjoying as they do the protection of the Crown, could certainly commit treason, although they were absent from Palestine. In that connexion there is perhaps some comparison to be drawn between a personal passport and a ship's passport, which is a somewhat older conception. In the case of

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a ship's passport, a ship flying a particular flag and with the pass of a particular country is not allowed to dispute that she is of the nationality of that flag and of that pass. A passport itself, in my submission, is an extension into the realm of international law and diplomatic practice of the sovereign's protection, and once protection is seen to be the basis of allegiance, then, in my submission, there is no reason at all in principle to limit it to cases where the protection arises because of residence. I would invite your lordship to say that it may arise because of birth, it may arise because of an oath of allegiance having been taken, it may arise because of some presence in territory, and equally it may arise in any other circumstances in which the alien concerned voluntarily places himself as a subject under the protection of the Crown, invoking, in fact, the protective obligations of the Crown. The protective responsibilities of the State are in many respects much more onerous in the case of a passport holder than they are in the case of a resident alien. In the case of an ordinary resident alien the alien shares simply a general protection which is afforded to any resident, the State is completely passive, but in the case of a passport holder the position of the State may be active.

The words in the passport which I mentioned to the jury are not idle words, and they mean that the whole of the diplomatic and consular machinery of the State is capable of invocation by the passport holder. The books contain many instances of the way in which the State has intervened to protect the rights of its subjects, even in time of war: there is the obvious possibility of reprisals being undertaken against enemy nationals in this country in the event of our nationals or protected persons in a foreign country being improperly treated: there is the further possibility, and one sees it in what has happened in the course of the war which has just come to an end, of satisfaction being demanded at the end of the war for any wrong done to individuals who are British subjects or British protected people. In peace time the degree of the protection, of course, may be much greater. There are the blockade cases. The blockade of Greece was a very notable instance of it in 1850, arising out of the *Don Pacifico* case, where the State actively intervened to protect the rights of

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one of its subjects. A similar case occurred against *Venezuela* in 1902, the *Stevenson* case.

The Crown really does assume, and I am not using language of any kind of exaggeration when I say so, grave responsibilities to protect a person to whom it issues a passport, and equally of course it may be under grave responsibilities to other powers in respect of the acts of the passport holder abroad. Having issued a passport to a particular person, whether a British subject or not—

Mr. JUSTICE TUCKER—Are passports issued to people who are not British subjects?

The ATTORNEY-GENERAL—They can be, as I understand, issued to people who are not British subjects. I imagine that the ordinary case is the case of a British subject, but there is no legal restriction. They have been issued to stateless persons, but after the last war the number of stateless persons became so large that a new procedure was adopted and in certain circumstances, although again there was no obligation on the Crown in regard to it, a special form of passport, called the Nansen passport, was issued. It was, in fact, no more than a kind of certificate of identity; it entitled the holder to no kind of special protection. But, my lord, where deliberately, or by mistake, or as the result of fraud, the Crown has issued a passport to a particular person as a British subject it vouches for him, for his nationality and, indeed, for his respectability, and the Crown may be involved in exactly the same kind of diplomatic representations that it would make itself if a foreigner in this country misbehaved himself, in the event of that passport holder in a foreign country misbehaving himself and doing acts which resulted in State intervention.

There is only one case of any real interest on passports. There is another case, and an earlier case, which I ought to mention. I have not got it by me, but I can tell your lordship quite shortly what the effect of it was. It was a criminal case in which neither the argument nor the judgment was reported, but it was a criminal case in which it was sought to prove foreign nationality by production of a United States passport. The passport was produced and it was sought, I think, to put an American lawyer into the



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witness-box to say that passports would only be issued by the United States of America to American-born subjects. It was held that the evidence was inadmissible. There would be many arguments in that case which would not affect this case in the slightest degree. The fact that the United States issued a passport to a person who was not an American subject would not exclude the possibility that that person was subject to the laws of England or some other country. It may be that it was disputed on the ground that there was no identification in that case of the person to whom the United States of America had issued the passport. That is all that case said, and it does not, in my submission, afford any assistance here either one way or the other.

A case of some interest is that of *Brailsford*, [1905] 2 K.B. 730. That is a case where there was an indictment against two defendants for a conspiracy, and it was alleged that the defendants had unlawfully conspired together to obtain a passport in the name of one of the defendants by falsely pretending that the defendant desired to use the passport himself whilst travelling in Russia, but in fact intended that the passport should be used by another person. They were indicted for that offence as an offence which was one to the public mischief and endangering the continuance of the peaceful relations between the King and the Tsar and their subjects respectively. It is a little interesting to observe the words of the indictment there, because to the extent that they go they appear to afford some support for the view which I just put to your lordship, that this country is under a measure of responsibility to foreign countries in respect of the acts of those persons to whom it may issue passports. That is exactly the form of the indictment here, "to the endangerment of the continuance of the peaceful relations between the King and the Tsar."

At p. 741, in the course of his summing-up to the jury, the Lord Chief Justice states this: "You have a copy [of the passport] before you and I need not read it. You would know, even if you had not seen the copy passport, that it is a representation by the highest official of the British Empire—namely, the Foreign Minister—a requisition in the name of His Majesty to all concerned to allow Mr. Arthur Henry Muir M'Culloch to pass freely without let or hindrance, and to afford him every assistance and protection

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of which he may stand in need. . . . That is not a document which anybody, according to the law of England, is entitled to take or use unless he is Mr. Arthur Henry Muir M'Culloch. In obtaining that document, if they obtained it with the knowledge that Mr. Arthur Henry Muir M'Culloch was not going to use it, I tell you they were obtaining from the public authority a document which would be of public importance and be used by the bearer for the purpose of his national protection, and in getting that and allowing it to be used by other people, if you are satisfied upon the evidence that they did so, they were carrying out acts which were injurious to the public, in that a public officer was asked to issue to one man a document which they knew was going to be used by another."

Then, my lord, the matter went to appeal, and at the bottom of p. 744 this passage appears: "We are clearly of opinion that the count is good and that the conviction must stand; but in deference to the arguments of Sir Robert Reid, and as the point has never arisen directly before, we think it right to state the reasons for our decision. It is not necessary for us to decide whether, apart from conspiracy, the obtaining of a passport by false pretences, namely, by alleging that it was required for the use and protection of A. B., whereas it is, in fact, intended to be used by some third person not known or recommended by the Foreign Office is of itself a misdemeanour; but, as the question has some bearing upon the validity of the conviction on the first count, we desire to make a few observations thereon. It will be well to consider what a passport really is. It is a document issued in the name of the Sovereign on the responsibility of a Minister of the Crown to a named individual, intended to be presented to the Governments of foreign nations and to be used for that individual's protection as a British subject in foreign countries, and it depends for its validity upon the fact that the Foreign Office in an official document vouches the respectability of the person named. Passports have been known and recognized as official documents for more than three centuries, and in the event of war breaking out become documents which may be necessary for the protection of the bearer, if the subject of a neutral State, as against the officials of the belligerents, and in time of peace in some countries, as in Russia, they are required to be carried

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by all travellers." At that time the passport system was very much in its infancy and passports were not usually required for foreign travel in time of peace. I have not been able to ascertain how long they have existed in anything like their present form. They seem to have originated in the form of passes given by the sovereign of one state permitting the passage through his state of foreign subjects: in other words, they were not issued by the subject's sovereign but by the opposite sovereign. I have been unable to ascertain when the name was given to what is in effect a certificate of identity which is accepted with or without the visé by the foreign power and on which the holder of it is allowed to pass through the foreign country. The judgment goes on: "It is not necessary to do more than to remember certain incidents in the 19th century to see what grave international questions might arise in the event of a person holding a passport receiving ill-treatment in a foreign country. It cannot, of course, be maintained that every fraud and cheat constitutes an offence against the criminal law, but the distinction between acts which are merely improper or immoral and those which tend to produce a public mischief has long been recognized," and then it goes on to discuss the law in regard to public mischief. There are other passages in books on international law on the manner in which the protection of the state is exercised for its subjects in foreign countries, but I do not think at this stage of this case they would be of assistance to your lordship, and I do not know of any other authority which is directly in point. My submission, summing it all up, is—

Mr. JUSTICE TUCKER—Before you do that—you have emphasized the protection aspect of the passport as such, but may it not be that the allegiance that is said to be local may depend upon the residence of the alien, and if that be so, as has been indicated in some of the authorities you have referred to, the residence may not cease by reason of a merely temporary absence from the realm? Supposing during the recent war, before Italy came into the war, an Italian subject had contrived somehow to have got out of this country for twenty-four hours and to have adhered to the enemy by some act during that twenty-four hours and then returned to this country, would he not still be guilty of treason based upon

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presence here, although the act was physically committed outside the country?

The ATTORNEY-GENERAL—I would respectfully submit, certainly so.

Mr. JUSTICE TUCKER—If that is so, may not in some cases the holding of a passport for a limited period in itself indicate that the departure is for a limited period and not for a permanent period?

The ATTORNEY-GENERAL—I would respectfully submit that that is so. The passport is an indication that the person, while leaving the country, is still remaining tied to the country, and has the intention to return. The form of the application is that it is expressed to be for “a holiday tour,” and there is in the application itself every indication, in my submission, that the passport holder is applying for facilities to leave this country and to go to various countries for a holiday tour with a view to his eventual readmission to this country. That, perhaps, is one of the most important effects of a passport in diplomatic usage. There was at one period a number of people wandering about Europe who found it difficult to find any state which would accept them as its nationals. That was one of the reasons for the present passport system between the two wars. It is clear that the international consequence of the issue of a passport by a state is that the state which issues the passport will readmit the holder to its own territory, and so if that holder goes to Belgium, France, Switzerland, Italy or Austria and they do not want him to stay, they can deport him with the assurance that the issuing country will receive him back. Without such a passport they might find themselves saddled with an alien whose presence was not wanted and yet find it impossible to deport him to some other country because no other country would receive him. The passport is not only a certificate of identity, but it is an undertaking that the person who holds it will be allowed to return. I would invite your lordship to say that, as in the case quoted in Foster and East, the alien who leaves his country, but has his family remaining behind him, the presence of his family being some evidence as

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to his intention eventually to return, constituting a tie between himself and his country, so here the existence of a passport is some evidence of intention to return and is some tie between the alien and the state.

Mr. JUSTICE TUCKER—Mr. Attorney, if that is right, that, I think, would be a question for the jury, would it not—the intention with which the passport was taken out and used?

The ATTORNEY-GENERAL—Yes, my lord, I think it would. Putting the whole thing in a sentence, I would submit, on behalf of the Crown, that it is unthinkable that a person who has apparently been domiciled in this country, who has the whole of his family living in this country and who leaves the whole of his family, his relatives, his father and mother and sisters and brothers, with the exception of his wife, in this country, who has secured from this country the substantial matter of protection that the issue of a passport involves, who has secured the right to return to this country at any time as a British subject, who has declared himself to be a British subject, who uses the passport and travels on it as a British subject, even perhaps, as in this case, secures employment on it—it is, in my submission, unthinkable that such a person should not at the corresponding date owe allegiance to the Crown. I would ask your lordship to deal with the matter, and I submit it in this way under two heads, that here is a man who was resident and, indeed, domiciled in this country—all the evidence goes to show that—and who left it for a period of time for a purely temporary purpose, retaining the tie of his passport and some family relationship, and, secondly, on the basis that here was a man who quite independently of any continuing residence of that kind was under a duty of allegiance because of the protection of the Crown with which he clothed himself.

Mr. JUSTICE TUCKER—Mr. Attorney, with regard to count 3, with regard to the other side of the picture, the only overt act laid under count 3 is the broadcasting, the evidence of the witness who said he heard a voice which he identified as that of the prisoner saying that Folkestone and Dover had been destroyed, is it not?

The ATTORNEY-GENERAL—There is the contract, my lord.

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Mr. JUSTICE TUCKER—The contract was dated much later.

The ATTORNEY-GENERAL—Yes, my lord, the contract itself referred to a later period, I respectfully agree, but there is the workbook, possibly the award, although I do not think I can place much reliance upon that. It is dated 1944. There is the workbook, Exhibit No. 19A, and the prisoner's statement. The workbook gives 18th September as the date on which he entered into the employment of the Broadcasting Corporation. Hunt did say in his evidence that although that was the only occasion when he remembered actually what the man had said, he heard him on a number of occasions before he came back to London on 11th December. It is in Exhibit No. 19A at p. 6.

Mr. JUSTICE TUCKER—The date of employment was 18th September it would seem. Yes, Mr. Slade.

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Mr. SLADE—In my submission to your lordship an alien only owes allegiance to His Majesty the King so long as he is resident within the King's dominions. The whole of the authorities cited by the Attorney-General go to prove that fact, with one possible exception. The only exception that I have been able to find is the statement which appears in East's Pleas of the Crown and in Foster's Crown Law. I have been unable to track it down, and it is difficult to say from the somewhat meagre reports whether or not it is obiter. May I commence as the Attorney-General did, putting the cases which he said were against him. May I commence by putting the only statement of the law which, in my respectful submission, can possibly be said to be contrary to the submission which I have just put to your lordship, namely, in a word, that a non-resident alien, if I may use that convenient expression, owes no duty of allegiance. Will your lordship look again at Foster's Crown Law? My friend quoted from p. 185. May I ask your lordship to look at p. 183, sec. 1: "With regard to Natural-born Subjects there can be no doubt. They owe allegiance to the Crown at all Times and in all Places. This is what We call *Natural* Allegiance, in Contradistinction to that which is

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Local. The Duty of Allegiance, whether Natural or Local, is founded in the Relation the Person standeth in to the Crown, and in the Privileges He deriveth from that Relation. Local Allegiance is founded in the Protection a Foreigner enjoyeth for his Person, his Family or Effects during his Residence here; and it Ceaseth whenever He withdraweth with his Family and Effects." Turning to p. 185, section 4, where the theory submitted is expounded, Foster says this: "And if such Alien seeking the Protection of the Crown having a Family and Effects here should during a War with his Native Country"—the evidence here is that Joyce left in August, 1939—"go thither and there Adhere to the King's Enemies *for purposes of Hostility*, He might be dealt with as a Traitor. For He came and settled here under the Protection of the Crown. And though his Person was removed for a time, his Effects and Family continued still under the same Protection. This Rule was laid down by all the Judges assembled at the Queen's Command, *Jan. 12th, 1707.*" Your lordship sees a reference to manuscripts, Tracy, Price, Dod and Denton. Then it goes on: "It is to be observed that the Judges in the Resolution last cited laid a considerable Stress on the Queen's Declaration of War against *France* and *Spain*; whereby She took into Her Protection the Persons and Estates of the Subjects of those Crowns residing here and demeaning themselves dutifully, and not Corresponding with the Enemy. King *William* and Queen *Mary* did the same in their Declaration of War against *France*, and so did His present Majesty. These Declarations did in fact put *Frenchmen* residing Here and demeaning themselves dutifully, even in time of War, upon the foot of Aliens coming hither by Licence or Safe-conduct. They enabled Them to acquire Personal Chattels and to maintain Actions for the Recovery of their Personal Rights in as full a manner as Aliens *Amy* may. But as I said before, all Aliens *Enemy* residing Here under the Protection of the Crown, though possibly not Favoured as the Persons last mentioned, yet They in Case they commit Crimes which in a Subject would amount to Treason, may be dealt with as Traitors. For their *Persons* are under the Protection of the Law; and in Consequence of that Protection, they owe a Local Temporary Allegiance to the Crown." It is the protection of the law which counts.

Looking at the same reference in East's Pleas of the Crown again, I would like to start a little bit earlier, at vol. I, p. 52.

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I think my friend started reading at the foot of p. 52. I want to read a little earlier: "Local allegiance is that which is due from a foreigner during his residence here, and is founded in the protection he enjoys for his own person, his family, and effects, during the time of that residence. This allegiance ceases whenever he withdraws with his family and effects." The argument of the Attorney-General for the moment is, leaving out the family and effects, this allegiance ceases whenever he withdraws his family and effects, and provided he has no *animus revertendi*—those are the words which the Attorney-General is asking your lordship to read into that for the moment—"for his temporary protection being then at an end, the duty arising from it also determines. But if he only go abroad himself, leaving his family and effects here under the same protection, the duty still continues; and if he commit treason, he may be punished as a traitor; and this whether his own sovereign be at enmity or at peace with ours. Therefore if he aid even his own countrymen in acts or purposes of hostility, while he is resident here, he may be dealt with in the same manner. The above rule was laid down by all the judges assembled, at the Queen's command, on the 12th January, 1707." Your lordship will observe it is not easy to see what the rule was which was laid down in 1707 by all the judges. On a strict grammatical reading it is different in East from the way it is put in Foster. The rule which is laid down according to East is, and I will read it again: "Therefore if he aid even his own countrymen in acts or purposes of hostility while he is resident here, he may be dealt with in the same manner. The above rule was laid down by all the judges assembled." It may be possible to read into both, including the six or seven lines which immediately precede, "Therefore if he aid even his own countrymen in acts or purposes of hostility while he is resident here." If that is the case it would be quite impossible to say whether the rule was laid down in any particular case or whether it was purely obiter, but in my submission the grammatical construction is that it only applies to the words "while he is resident here," and that is in consonance with the whole of the authorities on the point "It has indeed been observed, that the judges, in that resolution, laid considerable stress on the Queen's declaration of war against France and Spain, in which she expressly took under her protec-



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tion the persons and estates of the subjects of those crowns residing here and demeaning themselves dutifully, and not corresponding with the enemy: for by that declaration, say they, those aliens were put upon the foot of aliens coming here by licence or safe conduct." I take that to mean that by that declaration Her Majesty the Queen, I suppose it would be Queen Anne, was putting enemy aliens upon the same footing as aliens amy, because she was putting them upon the same footing as aliens coming here by licence. " Yet I cannot think that this circumstance essentially altered the case; for the mere fact of being domiciled here does in itself imply an allegiance and an engagement to be true and faithful to the government by which such domicile is protected; and at any rate that the party shall not take advantage of this indulgence to prejudice the state more easily and effectually. This latter I take to be the true ground upon which an alien enemy, domiciled in this country, may, in sound reason and justice, be dealt with as a traitor for aiding or advising his own countrymen in acts of hostility." The ground upon which East puts it is that certainly an alien enemy should not be put in a better position by being allowed to come and remain over here while the sovereign is at war than any other person would be for the purpose of doing injury to the State. As your lordship sees, he says: " Yet I cannot think that this circumstance essentially altered the case "—that was the circumstance, I imagine, that he had temporarily gone during the war, leaving his family here which the Queen had taken under her protection.

Then he comes to a different point, a case relating to an ambassador. I will deal with the question of a passport when I come to it, but may I say that you do not leave your family here when you leave your father here. You have got no say whether your father will stay here or whether he will go elsewhere; you do not leave your family here by leaving your brother, who is of age, here, or anyone else who is *sui juris*, or anyone else over whom you have no control. " Your family " means, in my respectful submission, your wife and your own children, and " effects " means the effects which belong to you and not the effects which belong to your father or to your sister or to your brother. The evidence, your lordship will remember, with regard to the wife—

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there is no evidence that there are any children—appears, among other places, in the prisoner's statement, Exhibit No. 12.

**Mr. JUSTICE TUCKER**—The prisoner's statement may be evidence in so far as it contains admissions, but the mere fact that he has stated facts in his statement does not prove the truth of those facts.

**Mr. SLADE**—Does not prove them, but I respectfully submit a statement put in those circumstances and including the words "This statement has been read over to me and is true," and being put in by the prosecution, is some evidence. If your lordship rules against me, then I change my tactics and say that there is no evidence given by the prosecution, which is equally satisfying from the point of view of the defence. No evidence that Joyce went abroad leaving his wife.

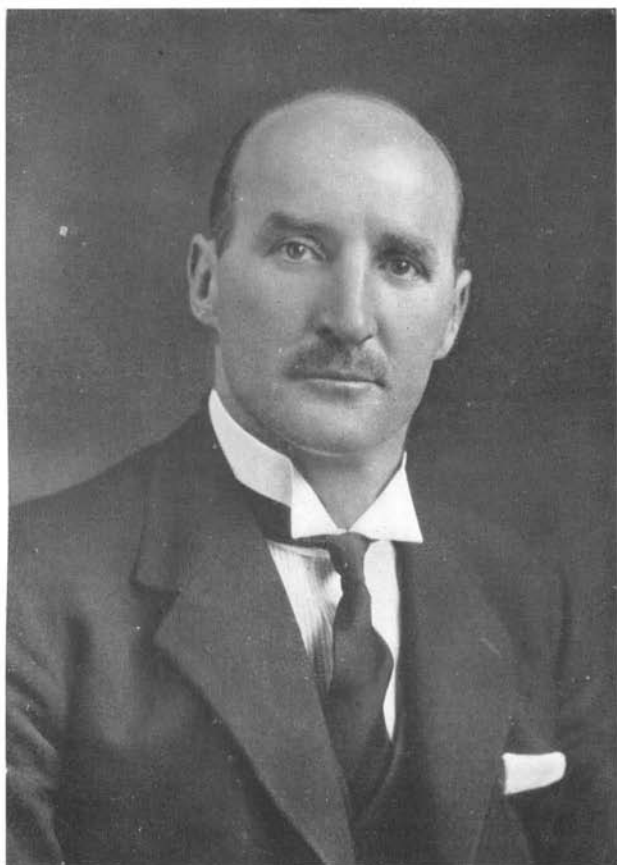
**Mr. JUSTICE TUCKER**—There is no evidence, so far as I know, that he was ever married. According to the evidence of the prosecution, it is true he made some reference to the presence of his wife when he was arrested, but I do not know when he was married or anything about it, or whether he was married in August or September, 1939.

**The ATTORNEY-GENERAL**—My lord, in the passport application form he is asked whether married or single: he says "Married," and then he is asked to give his domicile.

**Mr. SLADE**—Surely, my lord, if his statement is not evidence, the statement in the passport would be evidence. If the statement is evidence—your lordship rules it is not—it deals with the point I want to deal with further.

**Mr. JUSTICE TUCKER**—Mr. Slade, it is a matter we have to deal with in the Criminal Courts again and again and again. A man makes a long statement to a police officer full of details: that is not evidence until he comes into the witness-box and swears to the truth of it. Statements made by him in an application for a passport could, of course, be used as evidence against him.

**Mr. SLADE**—I do not profess to have profound knowledge of



**Mr. G. O. Slade, K.C.**

*Photo. by Lafayette*

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criminal law or of any law at all. Your lordship is obviously right and I am wrong. May I say in those circumstances I would not dream of advancing that argument any further. May I submit that, in so far as there is evidence that he is married, it is contained in the passport and there is no evidence that his wife was living here.

Mr. JUSTICE TUCKER—It is merely a matter indicating that the severance from this country must be a final act and not something merely temporary.

Mr. SLADE—I submit to your lordship it means this, that so long as you leave your wife and family and your effects under the King's protection, that is to say, you rely upon the King to protect those who are nearest and dearest to you and your own effects by being given the help of the law to protect those effects, you cannot say "I will go off and commit treason somewhere else, leaving my wife and children over here under the protection of your Majesty." That is how I should put it. If that is so, then a number of the dicta of the law lords in *Johnstone v. Pedlar*, [1921] 2 A.C. 262, must have been singularly unfortunate, and, indeed, a number of the dicta in all these books, which seem to say that it ceases as soon as the alien leaves the country. I have referred to the two in which alone any suggestion to the contrary can be found. Apart from those two I should have thought that the contrary was almost unarguable if I had not heard my learned friend arguing it. Now I want to give your lordship, if I may, a collection of instances where it is said over and over again that allegiance is co-existent only with residence in the case of an alien.

Mr. JUSTICE TUCKER—Are you contending that residence means the physical presence in this country of the man?

Mr. SLADE—Yes.

Mr. JUSTICE TUCKER—He must always be physically present in the country when he commits a treasonable act?

Mr. SLADE—Yes. I say the only authority, if it is an authority, to the contrary is in the two passages which I have read. I think

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I am right in saying that not one single authority has been quoted apart from those two passages which suggests anything to the contrary. Passage after passage which my learned friend has quoted is quite inconsistent with local allegiance applying to a non-resident alien.

Mr. JUSTICE TUCKER—Even in the case of the Italian which I put to you?

Mr. SLADE—In that case I should say he was not triable for treason, he would not be an enemy alien at the moment he went out, and I say he would not commit the offence of treason, whatever other offence he might commit, and I say that the Treachery Act of 1940 was passed for the express purpose of bringing those persons within the ambit of the criminal law. I told your lordship I would give you a reference, because there are several more than *Johnstone and Pedlar*. I think there are more than my learned friend mentioned. Before I cite them may I add this. My learned friend, the Attorney-General, kept on saying to your lordship something to this effect in the course of his submission; after citing Coke's Institutes he said: "Not only who is resident here, but who receives protection." After quoting Hale's Pleas of the Crown he said: "Something more is required than the mere presence of the alien here if he enjoys the benefits of the King's protection"—something more. May I respectfully agree with that argument, to this extent at least, that whatever more may be required, if anything, the *sine qua non* is residence here, and may I furthermore say that I shall elaborate this argument when I come to the passport.

International law, if there is such a thing as international law, which I do not for one moment admit, has nothing whatever to do with this case. Allegiance depends upon the municipal law of this country, that is to say, the constitutional law of this country. There is no sanction attached to international laws, as we have noticed in the last two wars of this country. I shall take *Johnstone v. Pedlar*, [1921] 2 A.C. 262, first of all. The plaintiff in that case, I think, was a naturalized American citizen as in this case. He had come over to Ireland, as it then was, and taken part in treasonable activities by illegal drilling. He brought an action of

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tort to recover certain property of which he had been deprived, and the defence which was put up was in substance that the money was withheld from him on the authority of the Government and that that was an act of State. Your lordship knows, of course, you cannot have an act of State against a British subject, and this case held that you could not have an act of State against an alien amy while resident in this country. The argument put up for the defence, but not raised in the pleadings, was that whatever right an alien amy might have had by his residence within the King's dominions he had forfeited by reason of his treasonable activities. Therefore this case is important upon two aspects of the present case. If there is anything in the argument of my friend about the passport, which I will deal with in due course, I shall say that whatever protection was afforded to Joyce by the British passport, he must lose the right to it the moment he did, as the prosecution alleged that he did, start treasonable activities. That point was left undecided in *Johnstone v. Pedlar*. In the speech of Lord Finlay, commencing with the last line on p. 272, your lordship will see: "The plaintiff is not a subject of the British Crown, but he was, at the time of his arrest, within British territory. It was contended for him that he must be treated for the purposes of the present case as a British subject, inasmuch as he was at the time resident in Ireland. Hale, in his Pleas of the Crown, vol. I, p. 542, after discussing a Statute of Henry VIII, giving to any of the King's subjects whose goods have been taken away the right to a writ of restitution on conviction of the thief, says: 'Though the Statute speak of the King's subjects, it extends to aliens robbed; for though they are not the King's natural-born subjects, they are the King's subjects, when in England, by a local allegiance.' The subject of a state at peace with His Majesty, while permitted to reside in this country, is under the King's protection and allegiance and may be convicted of high treason in respect of acts committed here." My lord, Lord Finlay is quite clearly saying here that while permitted to reside in this country he is under the King's protection and allegiance and may be convicted of high treason in respect of acts committed here. He could not commit acts here if he were out of the jurisdiction. "The proposition put forward on behalf of the appellant was that residence in this country

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does not put an alien in the same position as a British subject in respects of acts of State of the Government and does not entitle him to bring an action against a tortfeasor, whose act has been ordered or adopted by the Government. I am quite unable to accept this proposition as a correct statement of our law. On such a view of the law aliens in this country instead of having the protection of British law would be at the mercy of any department entitled to use the name of the Crown for an 'Act of State.' It would have effects upon aliens in this country of a far-reaching nature as to person and property. If an alien be wrongfully arrested, even by order of the Crown, it cannot be doubted that a writ of *habeas corpus* is open to him, and it would be surprising if he has not the right to recover damages from the person who has wrongfully imprisoned him. He has corresponding rights as regards his property. I am unable to find any ground either of principle or of authority for a proposition so sweeping, which would profoundly modify the position in this country of many aliens whose conduct, while resident here, has been quite without reproach. But it does not necessarily follow that an alien who abuses for treasonable purposes the permission of the Crown to reside in this country, will still be at liberty to claim the rights of a British subject as against the servants of the Crown who have carried out any act of State affecting him or his property. While he is in this country the alien as a matter of law is in the allegiance of the Crown, and he cannot get rid of this 'local allegiance' so as to acquire while here any immunity for crimes committed against the State. But it would be a somewhat startling proposition that an alien who is engaged in acts of rebellion can claim as against the Crown or its agents that he enjoys the immunity of a British subject in respect of acts of State. While repudiating all the obligations can he retain as between himself and the Crown all the benefits attaching to the status of a British subject? One who is by birth or by naturalization a British subject and commits treason still, of course, remains for all purposes, a British subject, and must be treated as such in every respect. But the alien in this country remains an alien still, although for the time also a British subject in virtue of local allegiance. If he be guilty of treasonable acts, can he be permitted to assert for his own benefit, against the servants of the Crown, the status of a subject

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of the Government which he is endeavouring to subvert? *Prima facie* the subject of a state at peace with His Majesty is, while resident in this country, entitled to the protection accorded to British subjects."

I now invite your lordship's attention to Lord Cave at p. 275, the second paragraph: "When a wrong has been done by the King's officer to a British subject, the person wronged has no legal remedy against the Sovereign, for 'the King can do no wrong'; but he may sue the King's officer for the tortious act, and the latter cannot plead the authority of the Sovereign, for 'from the maxim that the King cannot do wrong it follows, as a necessary consequence, that the King cannot authorize wrong.' On the other hand, where the person injured is an alien resident abroad, the above rule does not apply; and if the act causing the injury is adopted by the Sovereign as an act of State, the alien is without redress except by diplomatic action taken through the Government of his own country." I am reading that particular passage because in a moment I shall hope to be able to show what my friend's submission will lead to if it is correct.

May I, while I am citing that, tell your lordship what is in my mind. We are concerned here with a British passport which has in fact been issued to an American subject. The Crown has no jurisdiction to issue British passports to American subjects. Your lordship was told at some stage of this case yesterday the sort of protection that a man owning a British passport became entitled to. Let us see by taking an illustration what sort of protection he would get when *ex hypothesi* he is an enemy subject. Say he goes to Spain and someone in Spain wants to do him an injury and he says, "You may not do that to me. I shall go and see our ambassador in Madrid, all the time *ex hypothesi* being an American having obtained a British passport. He goes to the ambassador and says, "Protect me, this man wants to harm me." The ambassador says, "You must not harm this man, he is a British subject," to which the Spaniard replies, "Nothing of the kind; that is what he tells you. He is an American and your Crown had no right to issue a passport to an American subject." I can only ask the question rhetorically: What protection does your lordship think that an American would get in those circumstances in Spain? Take one more illustration. *Ex hypothesi*,



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as I say, Joyce is now an American subject. Supposing in August, 1939, when he left Great Britain, instead of going to Germany, he had gone to New York, his own country, and supposing America had come into the war against us instead of on our side, he would have been liable for service in the American army. Whatever he tried to do, if the passport lasted for a year, and it might have lasted for five years—it had an extension for five years—he would commit treason against this country by fighting for his own country. There are other absurdities which I will deal with later, but in my submission, quite apart from all these, it is extravagant in the extreme to say that a man who, according to the case for the prosecution, left this country for the express purpose of committing acts which would be undoubtedly treasonable, if he owed allegiance, only left here temporarily, intending to come back, and put his head into the lion's mouth so that he could be sentenced to be hanged. That is the sort of extravagant suggestion, if I may say so, which is being put forward in this case.

Mr. JUSTICE TUCKER—Are they not questions for the jury in so far as it becomes a question for the jury? You say a man who left for the purpose of committing treasonable activities. I do not know whether that was so or not. I do not know what was in his mind when he left in August, 1939, if indeed he did leave in August. I do not know whether there is any evidence when he left. His application for the passport was in August, I think, but I do not know whether there is any evidence when he left.

Mr. SLADE—I think the evidence is the second renewal in August, 1939.

Mr. JUSTICE TUCKER—You tell me, in your submission, that he left in August with the deliberate purpose of treasonable activities: I have no evidence of that.

Mr. SLADE—I hope I am not trying to address your lordship upon any matter which is for the jury. I will deal with the question later with the jury, if there is any evidence at all; whether there is any evidence at all is a matter for your lordship. I will only for the moment put the *reductio ad absurdum* which I shall

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put later on to show the sort of consequence which would emerge if the Attorney-General is right in his submission.

Mr. JUSTICE TUCKER—I do not want to say anything which would embarrass you at this stage, but when we are dealing with this kind of subject, when you talk about coming back to the country and putting his head in a noose, it might depend on whether we won the war or not or whether there had been an early peace. All kinds of things may have been in the minds of people in August, 1939.

Mr. SLADE—I respectfully agree. He would only come back if there were an early peace which resulted in a victory for Germany. I merely cite the words “The King cannot authorize wrong”—His Majesty the King would not dream of authorizing the issue of a British passport to an American citizen. The only reason it was done in this case was because the Foreign Office was deceived by the mis-statements made in the form of application. “But there is a third case, namely, where the person aggrieved is an alien ami resident here; and I think that it is the established law that such a case falls within the first and not within the second of the above categories.” My lord, I am reading this from Lord Cave’s opinion in *Johnstone v. Pedlar*, [1921] 2 A.C. 262, because I think it may assist your lordship to know how, in my submission, the law in regard to aliens amy came to be established. At one time they had absolutely no rights whatever. Their rights started by being purely civil rights. They could not protect their property. “It was laid down by Littleton that an alien could bring no action, real or personal, but as regards an alien amy this proposition was disputed by Coke, who said: ‘In this case the law doth distinguish betweene an alien, that is a subject to one that is an enemy to the King, and one that is a subject to one that is in league with the King; and true it is that an alien enemie shall maintaine neither reall nor personall action, *donec terra fuerint communes*, that is, untill both nations be in peace; but an alien that is in league, shall maintain personall actions; for an alien may trade and traffique, buy and sell, and therefore of necessity he must be of ability to have personall actions; but he cannot maintaine either reall or mixt actions.’”—so Coke was in dis-

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agreement there. "Certainly Littleton's rule was not recognized by the law merchant or in Chancery; and before the end of the 16th century it was established that at common law an alien friend could own chattels and sue on a contract or in tort in the same manner as a British subject. No doubt a friendly alien is not for all purposes in the position of a British subject. For instance, he may be prevented from landing on British soil without reason given; and having landed, he may be deported, at least if a statute authorizes his expulsion. But so long as he remains in this country with the permission of the Sovereign, express or implied, he is a subject by local allegiance with a subject's rights and obligations." Lord Cave there, in my respectful submission, is clearly saying the alien had no status at all. Gradually the law evolved so as to give him rights to maintain personal actions, to have, in other words, the same benefit of the laws of this country that a British subject had, and the corollary to that was that allegiance and the laws of this country only apply in this country and in the British dominions and they cease to apply when you go out of the King's dominions, and the correlation between allegiance and protection is the protection afforded by the laws of this country as administered by the Crown. At any rate, Lord Cave said quite clearly, so long as he remained in this country there is a local allegiance. I do not think I need read any more from Lord Cave.

The next opinion is the opinion of Lord Atkinson at p. 283, the last line: "A friendly alien resident in this country can undoubtedly be prosecuted for high treason"—*De Jager's case*—"because it can then be averred that he acted *contra ligentia sua debitum*; *Calvin's case*. For the same reason an alien enemy can be prosecuted for high treason if he has accepted the protection of the sovereign, but not otherwise." "Accepted the protection of the sovereign" must mean in that context accepted the protection of the sovereign by becoming resident in this country. That is what it means "for the same reason." Curiously enough, Lord Atkinson cites a passage in Foster. The next passage in Lord Sumner's speech which my friend read is at p. 292, "The matter, which he had in hand, is the contrast between *ligentia localis* which begins no earlier than"—my lord, I do emphasize these words—"and continues no longer than the presence of the alien

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amy within the realm." Your lordship asked me whether I meant physical presence and I said yes—there is no distinction between physical presence and presence, as Lord Sumner says, "no earlier than and continues no longer than the presence of the alien amy within the realm." If that is right, in my respectful submission, the whole of the case for the Crown goes; if the case for the Crown is right, then Lord Sumner is wrong.

Then, finally, on this case Lord Phillimore, at p. 297, in the third para., says: "From the moment of his entry into the country the alien owes allegiance to the King till he departs from it." It does not say till he departs from it either with or without intention to return. Allegiance, subject to a possible qualification which I shall mention, draws with it protection just as protection draws allegiance. If the Crown is right, then Lord Phillimore is wrong.

Mr. JUSTICE TUCKER—Yes, subject always to this, Mr. Slade. A statement of the law has always got to be looked at having regard to the particular subject-matter which was under discussion in any particular case. I am not saying in the least that you are wrong, but in case after case emphasis, of course, is laid on residence and so forth. The whole question is whether in every case where those words are used they are necessarily given an exhaustive examination. You say either the Crown is wrong or Lord Phillimore is wrong.

Mr. SLADE—I am not suggesting for one minute that any of those passages are part of the *ratio decidendi* in this case. I am not saying it is exhaustive, and it is open, of course, to the perfectly fair comment that none of their lordships' minds was specifically directed to that point—that I agree. No doubt law lords make statements which go beyond the requirements of the occasion when their minds are not directed to that point, but there is a remarkable uniformity, if they are mistakes, in this case. Of course, I am suggesting they are not mistakes. If they err, they do so in good company, because they err with Blackstone and Hale and other writers whom I shall mention to your lordship in a moment. The next are Chief Justice Cockburn and, I think, Baron Bramwell.

The Court Adjourned.

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The Attorney-General.

Third Day—Wednesday, 19th September, 1945.

The ATTORNEY-GENERAL—Before my learned friend resumes his argument I have an application which I wish to make to your lordship with regard to counts 1 and 2 of the indictment. I have had an opportunity of considering the matter with my learned friends during the adjournment, and I would ask your lordship's leave to amend counts 1 and 2 by inserting the words "being a British subject" in substitution for the words "being a person owing allegiance to the Crown." I think that would help to clarify the position on the record, and it would make it clear that in respect of the first two counts we had relied on the defendant's duty of allegiance as a British subject. As the matter stands the arguments which I have addressed to your lordship on count 3 would be applicable to count 1, at all events, up to the date of the expiration of the passport. If we amended the first two counts in that way, it would be quite clear in relation to anything which can be left to the jury that the first two counts are dealing with the matter on the basis of British nationality, and I shall, of course, invite the jury to find, and your lordship will direct them, that the evidence is the other way.

Mr. JUSTICE TUCKER—Mr. Slade, have you any objection to that?

Mr. SLADE—To put it quite frankly, the point was mentioned to me two minutes ago; I am not complaining about that at all, and, of course, quite candidly I have not had the opportunity of seeing any possible repercussions which might result. That is all. I have received so much assistance from the prosecution that I would not appear to be ungracious, and I put it that way. Your lordship appreciates the nature of the case I have to defend. I do not want it to be said in any way that I have actually consented to that.

Mr. JUSTICE TUCKER—Yes. I think it is a proper amendment to be made, and so far as I can see I think it is one that is likely to be of assistance to the defence rather than the reverse. Let the amendment be made.

The CLERK OF THE COURT—Instead of the word "person" the words "British subject" to be inserted.

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*Submission by Defence on Count 3 (continued).*

Mr. SLADE—Your lordship may remember that on p. 185 of Foster's Crown Law the reference to the resolution of all the judges of 12th January, 1707, contains a marginal note which I read as "Manuscripts, Tracy, Price, Dod and Denton." I have been puzzled to know what that referred to and I have not succeeded in ascertaining at the moment. From my researches last evening I think the explanation may be this, and for the information I am going to give your lordship I am indebted to an article entitled "The Parliamentary Declaration of Treason," written by Professor Samuel Pezneck in 46 Law Quarterly Review, which I am having sent for. Apparently it was the practice shortly after the Restoration for the judges to hold conferences before a trial or a body of trials for attainder of treason was held. Usually they were accompanied by the counsel for the Crown, and they thereupon laid down the law without hearing any argument upon it, except possibly from counsel for the Crown, and the article I am referring to recites that Sir Mathew Hale himself attended one of those conferences in 1675, and the article also recites what Sir Mathew Hale had to say about that practice. I leave it there. I only mention it so that your lordship may notice the differentiation between the word "might" which appeared in one and, I think, the word "may" which appeared in the other. I mention that because of any weight which might otherwise be attached to that resolution of the judges. That is only surmise.

I may refer your lordship now to Sir William Blackstone. When I cited passages from the Law Lords' opinions in *Johnstone v. Pedlar*, [1921] 2 A.C. 262, I said that it would be a fair comment that their lordships' minds in making those statements were not directed towards the particular point with which your lordship has to deal. The same certainly cannot be attributed to Sir William Blackstone, and if Sir William Blackstone is right, then the Crown is wrong. In vol. I, p. 370, his language admits of no possible misunderstanding. "Local allegiance is such as is due from an alien or stranger born for so long time as he continues within the king's dominions and protection, and it ceases the instant such stranger transfers himself from this kingdom to another." I would ask your lordship to bear that in mind in connexion with the illustration of the Italian. "Natural allegiance is therefore perpetual and local temporary only, and that for this reason evidently

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founded upon the nature of the government, that allegiance is a debt due from the subject, upon an implied contract with the prince, that so long as the one affords protection, so long the other will demean himself faithfully. As therefore the prince is always under a constant tie to protect his natural born subjects at all times and in all countries, for this reason their allegiance to him is equally universal and permanent." These are the words on which I most categorically rely. "But, on the other hand, as the prince affords his protection to an alien only during his residence in this realm, the allegiance of an alien is confined in point of time to the duration of such residence, and in point of locality to the dominions of the British empire." I emphasize those last few words because, in due course, I shall submit to your lordship that this Court has no jurisdiction to try count 3 at all, and that neither this Court, nor any Court in England, has jurisdiction to try an act of alleged treason committed by an alien abroad. I hope to be able to cite to your lordship almost overwhelming authority for that proposition.

Mr. JUSTICE TUCKER—That would, of course, depend upon the statute which creates the offence.

Mr. SLADE—I shall call your lordship's attention to *Reg. v. Jameson*, [1896] 2 Q.B. 425, and to the Statute creating the offence. In 1707 certainly this was the law if Sir William Blackstone is right. The Treason Act which is material to the point is the Treason Act of 1543, which I shall deal with in a moment, which had also been passed some 150 years before 1707 and longer before this case. I content myself for the moment with saying this, that no Court in this country has jurisdiction to try any treason alleged to have been committed by an alien abroad, and that is the corollary to Sir William Blackstone's insistence that residence in this country is the *sine qua non*. My lord, I ought to say that in raising that point about jurisdiction, which I shall trace out later, I am indebted to my friend Mr. Burge for very kindly suggesting it to me, and I shall respectfully submit in due course that it is a good point, and, indeed, an unanswerable point. For the moment I am merely concerned to show your lordship why all these learned authors and learned judges are so anxious to emphasize that residence is essential when you are dealing with an alien.

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The next case is one to which, I think, your lordship has not yet been referred, *Reg. v. Keyn*, (1876) 2 Ex.D. 63. It is an extremely long case, and I only propose to read two passages, but I will read the head note because your lordship will see how it turned upon jurisdiction, although this is not one of the cases I specifically rely on in relation to jurisdiction: "The prisoner was indicted at the Central Criminal Court for manslaughter. He was a foreigner and in command of a foreign ship, passing within three miles of the shore of England on a voyage to a foreign port; and whilst within that distance his ship ran into a British ship and sank her, whereby a passenger on board the latter ship was drowned. The facts of the case were such as to amount to manslaughter by English law: *Held*, by the majority of the Court" [Chief Justice Cockburn, Chief Baron Kelly, and so on; there was a number of dissenting opinions, as your lordship sees, Lord Coleridge, Mr. Justice Brett, and so on] "that the Central Criminal Court had no jurisdiction to try the prisoner for the offence charged. By the whole of the majority of the Court on the ground that, prior to 28 Henry VIII, c. 15, the admiral had no jurisdiction to try offences by foreigners on board foreign ships, whether within or without the limit of three miles from the shore of England; that that and the subsequent statutes only transferred to the Common Law Courts and the Central Criminal Court the jurisdiction formerly possessed by the admiral; and that, therefore, in the absence of statutory enactment, the Central Criminal Court had no power to try such an offence." On p. 150, in the last paragraph but one of the judgment of Baron Bramwell, who, of course, was one of the majority, he says: "There is another remark I wish to make on this head. As a rule, where the Sovereign has jurisdiction there is allegiance, permanent, as subject or citizen, or temporary, as being within the territory. In such a case there is a corresponding duty of protection. Do any of those exist in this case?" It is put more strongly by Chief Justice Cockburn at p. 236: "But, in order to render a foreigner liable to the local law, he must, at the time the offence was committed, have been within British territory if on land, or in a British ship if at sea. I cannot think that if two ships of different nations met on the ocean, and a person on board of one of them were killed or wounded by a shot fired from



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the other, the person firing it would be amenable to the law of the ship in which the shot took effect. According to the doctrine of Lord Coke in *Calvin's* case protection and allegiance are correlative; it is only where protection is afforded by the law that the obligation of allegiance to the law arises; or, as I prefer to put it, it is only for acts done when the person doing them is within the area over which the authority of British law extends, that the subject of a foreign state owes obedience to that law or can be made amenable to its jurisdiction." I would like to read on a little: "But for the opinion expressed by my Brother Denman, I should have thought it beyond all dispute that a foreign ship, when not in British waters, but on the high seas, was not subject to our law. Upon this point I had deemed all jurists unanimous, and could not have supposed that a doubt could exist. Upon what is the contrary opinion founded? Simply upon expediency, which is to prevail over principle. What, it is asked, is to happen if one of your officers, enforcing your revenue laws, should be killed or injured by a foreigner on board a foreign ship? What is to happen if a British and foreign ship meeting on the ocean, a British subject should be killed by a shot fired from the foreign ship? In either of such cases would not the foreigner guilty of the offence be amenable to the English law? Could it be endured that he should escape with impunity? If brought within the reach of a British Court of Justice, could he not be tried and punished for the offence, and ought he to be permitted to escape with impunity, or ought he not to be tried and punished for such offence? My first answer is that the alternative is fallacious. He will not escape with impunity. He will be amenable to the law of his own country, and it is not to be presumed that the law of any civilized people will be such, or so administered, as that such an offence should escape without its adequate punishment. As regards the amenability of the offender under such circumstances to our law, it will be time enough to determine the question when the case arrives. If the conviction and punishment of the offender can only be obtained at the sacrifice of fundamental principles . . ."—then the Lord Chief Justice goes on.

The next authority that my friend cited is from Coke, vol. III, p. 4, of the *Institutes*, the last paragraph but one: "And all aliens that are within the realm of England, and whose Sovereigns

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are in amity with the King of England are within the protection of the King and do owe a local obedience to the King, (are *homes* within this act) and if they commit High Treason against the King they shall be punished as Traitors, but otherwise it is of an enemy whereof you may read at large." In my respectful submission, why Sir Edward Coke there is saying "whose Sovereignes are in amity with the King of England" is this, that the Attorney-General, in opening the case said that any alien who is placed or places himself within the jurisdiction of the Crown is amenable to the justice of this country, which, indeed, is true, but if an alien chooses to come over here while his country is at peace and misde.means himself over here, of course he has only himself to blame if he has a divided allegiance, but supposing an alien comes over here and while he is over here his sovereign declares war upon England, he would at once, if my friend's proposition is correct, be placed, through no fault of his own, under the protection of two sovereigns who *ex hypothesi* are at war with each other. That is why, in my respectful submission, Sir Edward Coke emphasizes the words "are in amity with the King of England," but there again Sir Edward Coke makes it clear that residence and local allegiance are co-extensive only.

The next authority is Hale's Pleas of the Crown, p. 59. The passage my friend read was towards the end of p. 59: "But if an alien, the subject of a foreign prince in amity with the king live here, and enjoy the benefit of the king's protection, and commit a treason, he shall be judged and executed, as a traitor; for he owes a local allegiance." The words are, of course, "live here," otherwise Hale carries the matter no farther.

The next case was *Calvin's* case, (1608) 7 Co.Rep. 1a, and I shall have to read a little more of *Calvin's* case. I have the report in 77 English Reports, 382. May I read from 4b. It says in my copy in para. 5: "and, first, *de ligeantia*. 1 (a) Ligeance is a true and faithful obedience of the subject due to his Sovereign. This ligeance and obedience is an incident inseparable to every subject; for as soon as he is born he oweth by birth-right ligeance and obedience to his Sovereign." Then there is a Latin quotation, but I will not trouble your lordship with that. That is where one finds the expression "Therefore it is truly said that protection draws subjection and subjection protection." I desire to emphasize that this

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protection is always the protection of our laws which is only applicable so long as the alien is within the realm. At p. 383 in the English Reports, 5b 2 in your lordship's report, it says: "There is found in the law four kinds of ligeances: the first is, *ligeantia naturalis, absoluta, pura et indefinita*, and this originally is due by nature and birthright, and is called"—what I translate as highest allegiance—"and he that oweth this is called" subject born. The second is acquired allegiance "not by nature but by acquisition or denization." The third is called local allegiance "wrought by the law; and that is when an alien that is in amity cometh into England, because as long as he is within England, he is within the King's protection; therefore so long as he is here he oweth unto the King a local obedience or ligeance, for that the one (as it hath been said) draweth the other." May I emphasize that the Latin maxim there is expressly applied to the protection which arises from residence, that is to say, the power of the laws, and it is that which draws the duty of allegiance. May I ask your lordship to look finally in this case at 6a, 3: "Concerning the local obedience it is observable, that as there is a local protection on the King's part, so there is a local ligeance of the subject's part. And this appeareth in 4 Mar. Br. 32 (e) and 3 and 4 Phil. and Mar. Dyer 144. Sherley, a Frenchman, being in amity with the King, came into England, and joined with divers subjects of this realm in treason against the King and Queen, and the indictment concluded *contra ligeant' sue debitum*; for he owed to the King local obedience, that is, so long as he was within the King's protection; which local obedience being but momentary and uncertain, is yet strong enough to make a natural subject, for if he hath issue here, that issue is a natural born subject." Of course, if he had issue in Italy it would not be a British subject. That is *Calvin's* case which was, I think, in the early 17th century.

The next case my learned friend cited was *De Jager v. Attorney-General of Natal*, [1907] A.C. 326. If the Crown is right, the whole of the elaborate argument of Sir Robert Finlay in that case was quite pointless. De Jager was a Dutchman who was resident in a place called Waschbank in Natal, and Natal was British territory; therefore he was a Dutchman resident in British territory. The Boers occupied Waschbank, part of Natal, and the British were

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forced temporarily, in fact for six months, I think, to retire to Ladysmith, and while the Boers were in occupation De Jager, of course, being a Dutch subject would be a Boer. While the Boers were in occupation of Waschbank and the British were at Ladysmith he acted treasonably, and it was argued by Sir Robert Finlay, and this is the second important point in this case, that as he had lost *de facto* British protection when the British forces were removed from Waschbank, his duty of local allegiance which he owed as a Dutch subject resident in British territory ceased: in other words, as he lost *de facto* the one, the one draweth the other and the other went, and my friend emphasized the words, its counterpart went also. That emphasizes the point which I desire to make when I come to make my eventual submission on this point. It is not the *de facto* protection which counts, nor is it a claim to protection on a passport to which you are not entitled which counts: it is the right to protection *de jure*. If the Crown's argument were correct, Sir Robert Finlay was wasting his time, because his client was quite obviously guilty, even if his argument succeeded, because it would mean this, that a Dutch subject resident in British territory, who until the time of the occupation by the Boers owed allegiance, notwithstanding the fact that he was an alien, and notwithstanding the fact that Waschbank temporarily became territory outside the control of Her Majesty, continued to owe allegiance and could therefore commit treason.

I will not trouble your lordship again with my friend's American authority, *Carlisle v. The United States*, (1872) 16 Wallace 147, but I jotted down as my friend read it that Mr. Justice Field in the passage which he quoted, at p. 154, said in substance the alien owes a local and temporary allegiance which continues during this residence. I think those were the words. I do not think there are any other cases that I need trouble your lordship with. I am not going to refer to the *Stepney Election Petition*, (1886) 17 Q.B.D. 54, because, although the Attorney-General was good enough to say that it contained a passage which was against him, that passage is not nearly so strong as the passages I have read to your lordship and particularly the passage from Blackstone.

Your lordship asked us if we could give any assistance in connexion with passports. My professional client, Mr. Head, and I have both endeavoured to do so. Mr. Head has been particularly

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industrious in the matter, and I think the only thing we can find is this, that there is an article called "The Passport System," by N. W. Sibley, in the Journal of Comparative Legislation, New Series, vol. VII. I think it was written in 1906, which was the year after the *Brailsford* case. I have myself found a case which I will refer to shortly, because I think it may be a little bit helpful on what I may call the passport issue. That is *Rev. v. Ketter*, [1940] 1 K.B. 787, in the Court of Criminal Appeal. "The appellant was born in Palestine in 1911, and until 1923 he was admittedly a Turkish subject. He lived in Palestine until 1937 when he came to England with a passport entitled 'British passport. Palestine,' and issued by the British High Commissioner in Palestine. The appellant having been convicted of offences under the Aliens Order, 1920: *Held*, that the appellant was an alien and had been rightly convicted, he not having become a British subject either by virtue of art. 30 of the Treaty of Peace with Turkey signed at Lausanne on 24th July, 1923 (which provided that Turkish subjects habitually resident in territory which, in accordance with the provisions of that Treaty, was detached from Turkey should become *ipso facto*, in the conditions laid down by the local law, nationals of the State to which such territory was transferred), or by virtue of the Palestine Mandate which was given by the League of Nations to Great Britain on 24th July, 1922, since Palestine was not transferred to, and consequently was not annexed (within sec. 27, sub-sec. 1, of the British Nationality and Status of Aliens Act, 1914, as amended by sec. 2, sub-sec. 6, of the British Nationality and Status of Aliens Act, 1918) by Great Britain by either the Treaty or the Mandate. *Held*, further, that the effect of the Palestinian Citizenship Order, 1925, was *prima facie* that the appellant, being a Turkish subject habitually resident in Palestine on 1st August, 1925, then became a Palestinian citizen. Even if the Order, at least so far as the first paragraph was concerned, was of no force or validity because it had been made by the mandatory power and not by the administration of Palestine, who were responsible under art. 7 of the Mandate, the appellant would remain a Turkish subject and not become a British subject." My friend the Attorney-General referred to certain rights of parties in British protected territory. Palestine, no doubt, would come within that description.

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Of course, it is only fair to say the onus of proof that he was a British subject in this case rested upon the appellant, your lordship will remember, under the specific terms of the Aliens Restriction Act, 1914, and my friend said that he specifically stated that such subjects would not be British subjects. I am not suggesting for one minute he has made any mis-statement of the law, I am merely saying we shall now see what happened to a person coming to England armed with what is said to be a British passport by the High Commissioner in Palestine, and thereby clothed with the status of a British subject, all he got was a sentence of eleven days' imprisonment and recommended for deportation, and that conviction was confirmed. It was taken to the Court of Criminal Appeal and the judgment of the Court was delivered by Mr. Justice Singleton, the Court being Mr. Justice Humphreys, Mr. Justice Singleton, and Mr. Justice Lewis.

Mr. JUSTICE TUCKER—What exactly does the case show? I follow that it shows that he did not gain much benefit from the passport, but what else does it show apart from that?

Mr. SLADE—It shows this, according to the argument when we come to the passport question, that here was a man who *de facto* having a passport, which was a British passport, was entitled to the protection of the Crown—that is what was alleged—but I am suggesting that the protection of the Crown that the passport afforded to him in this particular case was that he got sent to prison when he got over here, because in fact and in law, as it now appears, he turned out to have the status of a Turkish subject. Mr. Justice Singleton said this: “At the trial at the Central Criminal Court, Mr. Lester”—that was counsel for the appellant—“based his case almost wholly on the passport issued to the appellant which he claimed was a British passport, but it is difficult to see that this could lead the appellant to think that he was a British subject or could make him one.” The argument put forward was that he became enveloped in the Union Jack and clothed with the status of a British subject. That is why I cited that case. The Court held, in point of fact, that although the High Commissioner had issued to this man a passport which was styled a British passport, it was not a British passport in

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law or in fact—I do not know which makes fact and law. Mr. Justice Singleton, delivering the judgment of the Court, said: “The only question before this Court is whether the appellant is an alien within the British Nationality and Status of Aliens Act, 1914. If he is an alien it is not disputed that he committed the offences alleged. By sec. 27, sub-sec. 1, of the Act ‘alien’ means a person who is not a British subject, and by the same sub-section, as amended by sec. 2, sub-sec. 6, of the British Nationality and Status of Aliens Act, 1918, ‘British subject’ means ‘a person who is a natural born British subject or a person to whom a certificate of naturalization has been granted or a person who has become a subject of His Majesty by reason of any annexation of territory.’” I think I conveyed that to your lordship; not only that, but I went so far as to make it clear that the onus lay upon the appellant here of proving that he was not a British subject and it did not lie upon the Crown to prove that he was. I was intending to put that point against myself.

Before I pass to my point on jurisdiction, which I submit is essentially bound up with this point of protection and allegiance, I said that I would give your lordship the reference to the conference of the judges. I have now got vol. 46 of the Law Quarterly Review. I am reading from “The Parliamentary Declaration of Treason,” by Professor Samuel Rezneck, at p. 85. The sole point of this reference is in the hope of assisting your lordship as to what was meant by a resolution of the judges in 1707. Dealing with the conference of the judges he says: “A second case is reported by Hale, who was himself present at the conference of judges where it arose in 1675. A number of weavers had risen in riot against the use of an improved ‘engine’ loom. The judges divided evenly, five against five, on the question as to whether the offence constituted a levying of war under the Statute of 1352 (*sic*) or was merely a riot. They agreed that, if the attorney-general saw fit to prosecute for treason, a special verdict might be found, and the matter could then receive further consideration. Or, ‘according to the clause of the statute of 25 Edward III, the declarative judgment of the King and both houses of Parliament might be had, because it was a new case and materially differed from other cases of like nature formerly resolved.’ Neither suggestion was followed, because the prosecution proceeded against the

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men only on the rioting charge. Generally, however, such a suggestion was not even made. The judges did not scruple to debate the law and to reach an agreement as to the nature of the offence either before the trial or after the trial, when a special verdict had been found. They were left with no doubts to refer to parliament"—the Statute contained power to refer debateable points to Parliament. "There was the notorious case of Peacham in 1615, in which Bacon, as Attorney-General, exerted pressure upon the judges in order to bring them to agree that the offence in question constituted treason under the statute of 1352 (*sic*). For a time Coke, who was Chief Justice, resisted the pressure on the ground that such 'particular and auricular taking of opinions was not according to the custom of the realm.' Bacon insisted that it was an obligation of the judges to give counsel to the Crown when called upon; the manner might differ with the circumstances, although 'the ordinary course was to assemble them.' Faced with the threat that he would be left alone in his opposition, Coke gave way and added his opinion in writing to those of the other judges. Joint conferences of all the judges held both before and after the trial in cases of treason were a common and accepted practice in the period following the Restoration. In spite of Hale's warning, they served both to advise the Crown and to interpret the general law of treason, thereby dispensing with the need of making reference to parliament. Between 1660 and 1663, for example, the judges met with the government counsel a number of times, usually in Serjeants' Inn, in order to arrange for various trials involving treason. During his trial Sir Harry Vane was prepared to protest against this practice, citing Coke as his authority." In two footnotes it says: "One of the best-known 16th century precedents of a judicial conference held prior to a trial occurred in 1595, in the *Oxford Enclosure Cases*. In commenting upon this case, Sir Matthew Hale was moved to admonish the Courts 'to be very wary in multiplying constructive . . . treasons, for we know not where it will end.' He added that the decision in such cases properly belonged to parliament, under the clause of reservation." Then it says: "The judges of this period were able to wave aside Coke's authority with the observation that his post-humous writings contained 'many great Errors.'" It also refers to Coke's protest against the practice from Bacon's correspondence



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with James I, as reprinted in 2 State Trials. That was extended following the Restoration in 1660 and the resolution referred to in those two books, and I think only in those two books, was in 1707.

Now I pass to the question of jurisdiction. In the submissions I am making to your lordship now, of course, I am assuming two things: first, which I think is now conceded, that the defence has proved that the prisoner Joyce is an alien, indeed, I act upon that assumption; and, second, as indeed each one of these counts alleges, that the treason was committed in the German realm. Indeed, of course, if it could possibly have been said to be constructively committed in this country, one would have to consider the question of limitation of prosecutions in treason which I have explained, but it is not even suggested; each one of the counts alleges "in the German realm." A succinct method of referring your lordship to what I respectfully submit is the law on this point is by referring to the 9th vol. of the 2nd edn. of Halsbury's Laws of England, at p. 55, sec. 3: "The limits of criminal jurisdiction. English Courts exercise criminal jurisdiction in respect of acts done by all persons, whether British subjects or aliens: (1) within the territory of England; (2) on board a British ship on the high seas, or in foreign rivers below bridges, where the tide ebbs and flows, and where great ships generally go; (3) on the open sea within the territorial waters of the King's dominions; also in respect of certain acts done by British subjects on land abroad, or on any ship on the high seas which is not British. English courts do not exercise criminal jurisdiction in respect of acts of foreigners abroad, or at sea, except within the territorial waters of the King's dominions, or on British ships, and in the case of piracy *jure gentium*, which is triable and punishable everywhere, no matter where or by whom it is committed. Jurisdiction in respect of acts committed in England is the jurisdiction of the common law. Jurisdiction in respect of acts committed on board a British ship in the places above referred to is the Admiralty jurisdiction. Jurisdiction in respect of acts committed elsewhere is derived from Statute."

Now we come to common law jurisdiction: "At common law the exercise of criminal jurisdiction is limited to crimes committed within the land of England with its ports and harbours, bays,

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gulfs, and estuaries and so much of the outer coast as extends to low water mark. The Courts of common law have always exercised jurisdiction over all persons who committed crimes within these limits, whether such persons were subjects of the King or resident aliens or mere casual and temporary alien visitors. In respect of acts done outside those limits there was no jurisdiction at common law." I will now pass from Admiralty jurisdiction, which is immaterial, and come to p. 62, sub-sec. 3. We now come to the alteration of the common law by Statute. "Jurisdiction in respect of crimes committed out of England. Treasons committed by a British subject out of England, and oppressions committed out of England by colonial governors, are triable in the King's Bench Division of the High Court of Justice, or before such commissioners and in such shire of the realm as may be assigned by the King's commission." Your lordship will see amongst the references to that authority is the Statute in note (b) which is in fact the Treason Act of 1543, 35 Henry VIII, c. 2. I will refer your lordship to that and also to a very recent book on the point and the judgment of the Court in the *Jameson* case, [1896] 2 Q.B. 425, as to the construction of Statutes. All Statutes must be construed as being limited to trying offences committed within British jurisdiction in dealing with an alien. It would be an affront to the sovereign power of another country for us to arrogate to ourselves the right to try, for example, a Frenchman for having committed a murder in France, even if we could get hold of him. We have a right to try a murder committed by a British subject in France. My lord, if Halsbury is right—I will refer your lordship to other authorities—if I may read one more section, I think it makes it conclusive. I will not trouble your lordship with the various acts, perjury, &c., or the Merchant Shipping Act. I will refer to the Foreign Enlistment Act because the *Jameson* case dealt with that. That is at the foot of p. 63: "The Foreign Enlistment Act, 1870, extends to all the dominions of the King, including the adjacent territorial waters. Any subject of the King who acts in contravention of the Statute anywhere, or any foreigner temporarily resident in any part of the King's dominions who does so in the King's dominions"—he does not say outside the King's dominions—"commits an offence for which he may be tried in the place where the offence was wholly or

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partly committed, if such place is in the King's dominions, or in any place in the King's dominions where the offender may be." Para. 80 is the passage: "Generally speaking, except in the case of piracy *jure gentium*, no person who is not a subject of the King can be tried in England in respect of any act which he commits outside the King's dominions."

Mr. JUSTICE TUCKER—That would depend upon the construction of the particular Statute in each case.

Mr. SLADE—I do not dispute that Parliament can do anything, I do not dispute that Parliament could pass an Act of Parliament to-morrow allowing the Courts of this country to try a Chinese for bigamy committed in China or a Chinese for bigamy committed in Sweden. As to the construction of the Acts of Parliament I have brought *Reg. v. Jameson*, [1896] 2 Q.B. 425. "By sec. 11 of the Foreign Enlistment Act, 1870, 'if any person within the limits of Her Majesty's dominions, and without the licence of Her Majesty, prepares or fits out any naval or military expedition to proceed against the dominions of any friendly State, the following consequences shall ensue: (1) Every person engaged in such preparation or fitting out, or assisting therein, or employed in any capacity in such expedition, shall be guilty of an offence':—*Held*, that, if there be an unlawful preparation of an expedition by some person within Her Majesty's dominions, any British subject who assists in such preparation will be guilty of an offence even though he renders the assistance from a place outside Her Majesty's dominions. By sec. 2 of the said Act, 'This Act shall extend to all the dominions of Her Majesty.' And by sec. 3 'This Act shall come into operation in the United Kingdom immediately on the passing thereof, and shall be proclaimed in every British possession by the governor thereof as soon as may be after he receives notice of this Act, and shall come into operation in that British possession on the day of such proclamation.' An indictment alleged that 'within the limits of Her Majesty's dominions and after the coming into operation therein of the Act called the Foreign Enlistment Act, 1870,' certain offences against the said Act were committed: *Held*, that the indictment sufficiently alleged the Act to have been in operation in that part of Her Majesty's dominions in which the alleged offences were committed." The

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passage is, however, in the judgment of the Court of Crown Cases Reserved, and I am quoting from the judgment of Lord Chief Justice Russell of Killowen, at p. 430: "If in the result it be necessary, in order to show that the Act was in operation in the place where the expedition was prepared, to prove that the Act was duly proclaimed there, failure on the part of the Crown to prove such proclamation will be fatal. But it is not a matter that need be averred in the indictment. It is enough for the purposes of the indictment to allege that the Act was in fact in operation in the place in question. I pass on to the objections taken to the 9th and subsequent counts, which I may deal with briefly. But first I should like to make some observations with regard to the rules of construction applicable to statutes such as this. It may be said generally that the area within which a statute is to operate, and the persons against whom it is to operate, are to be gathered from the language and purview of the particular statute." That is what your lordship put to me. "But there may be suggested some general rules—for instance, if there be nothing which points to a contrary intention, the statute will be taken to apply only to the United Kingdom"—now this is the important part—"but whether it be confined in its operation to the United Kingdom or whether, as is the case here, it be applied to the whole of the Queen's dominions, it will be taken to apply to all the persons in the United Kingdom or in the Queen's dominions, as the case may be, including foreigners who during their residence there owe temporary allegiance to Her Majesty. And, according to its context, it may be taken to apply to the Queen's subjects everywhere, whether within the Queen's dominions or without." These are the vital words: "One other general canon of construction is this—that if any construction otherwise be possible, an Act will not be construed as applying to foreigners in respect to acts done by them outside the dominions of the sovereign power enacting." The Lord Chief Justice goes on: "That is a rule based on international law by which one sovereign power is bound to respect the subjects and the rights of all other sovereign powers outside its own territory." Of course, Sir Starr Jameson was a British subject.

So as to bring the law right up to date I propose to read

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from an essay by Professor Stallybrass published in 1945, and then I will refer to the Treason Act of 1543. I really adopt this as part of my argument. The book is vol. IV of *English Studies in Criminal Science*, "The Modern Approach to Criminal Law," at the foot of p. 444: "(iii) *Limitation of Jurisdiction by Territory*. By English common law crime is essentially territorial. 'All crime is local. The jurisdiction over the crime belongs to the country where the crime is committed. (*Macleod v. A-G. for N.S.W.*, [1891] A.C. 455.)' 'All jurisdiction is properly territorial, and *extra territorium jus dicenti impune non paretur*. (*Sirdar Gurdial Singh v. Rajah of Faridkote*, [1894] A.C. 670.)' Such is the fixed rule of common law. No criminal proceedings can be taken in this country for a crime committed abroad (*R. v. Hooper*, (1734) W. Kel. 190), but over crimes committed in England the common law Courts have jurisdiction even if committed by aliens only temporarily resident in this country. (*In re Barronet*, (1852) 1 E. & B. 1), including perhaps prisoners of war (*Molière's case* (1758) Fost. 188 n. *Contra, R. v. Johnson*, (1809) 29 St. Tr. 82 at p. 398; *R. v. Lopez*, (1858) D. & B. 525 at p. 543). Such persons are treated as owing a temporary allegiance to the Crown (per Lord Campbell, C.J., in *R. v. Tchorzewski*, (1858) 8 St. Tr. N.S., 1091). But no such doctrine can apply to an alien enemy who is not yet a prisoner of war (*Perkin Warbeck's case*, (1500) 7 Co. Rep. 6b). Protection and allegiance are co-extensive."—again saying it is the protection of the law. "But allegiance as the sole foundation of jurisdiction has perforce been in fact abandoned (Beckett in *British Year Book of International Law*, VI, pp. 51-2). But statutes have made some inroads upon the rigidity of this common law rule. Statutes have in certain cases given English Courts jurisdiction to deal with crimes committed by British subjects abroad. The chief of these offences are: treason by a statute of 1543 (35 Hen. VIII, c. 2). . . ." The next one goes on to murder, bigamy and offences against the person and so on. May I just repeat those words, "Crimes committed by British subjects abroad, the chief of these offences are treason by a statute of 1543."

Mr. JUSTICE TUCKER—He does not say anything about crimes committed by foreigners abroad. There are some Statutes which deal with that. Does not the Explosives Act deal with that?

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Mr. SLADE—Halsbury, dealing with the Explosives Substances Act, 1883, para. 72, p. 63, says this: “ A subject of the King is triable in England, if without the King’s dominions he unlawfully and maliciously does any act with intent to cause by an explosive substance an explosion. . . . ”

Mr. JUSTICE TUCKER—Yes, it was the case where express provision was made for doing an act outside the country which takes effect elsewhere.

Mr. SLADE—Yes, my lord; indeed, it would be quite inconsistent with what Halsbury has said, except in the case of piracy. The Treason Act, 1543, of course, has to be read in the light of the canon of construction which Lord Chief Justice Russell mentioned in *Jameson*. I have not looked to see whether it was repealed by the Treason Act of 1945. I assume, of course, against myself it was not.

Mr. JUSTICE TUCKER—Where is the Treason Act of 1543 to be found?

Mr. SLADE—The most convenient place, I think, is Halsbury’s Statutes, vol. 4, p. 308. My friend tells me it is in the latest edition of Archbold, at p. 1058. I, myself, prefer to look at the Statute, because it is not always easy to find what is quotation from the Statute and what is Archbold. It is entitled “ An Act concerning the trial of treasons committed out of the King’s Majesty’s dominions.” “ For obviating doubts as to the trial of treasons and misprisions of treason committed abroad. ‘ Forasmuch as some doubts and questions have been moved, that certain kinds of treasons misprisions and concealments of treasons, done perpetrated or committed out of the King’s Majesty’s realm of England and other his Grace’s dominions, cannot ne may by the common laws of this realm be enquired of, heard and determined within this his said realm of England; for a plain remedy order and declaration therein to be had and made, be it enacted by authority of this present Parliament, that: all manner of offences being already made or declared, or hereafter to be made or declared by any the laws and statutes of this realm, to be treasons misprisions of treasons or concealments of treasons, and done perpetrated or

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committed or hereafter to be done perpetrated or committed by any person or persons out of this realm of England, shall be from henceforth enquired of heard and determined before the King's justices of his bench for pleas to be holden before himself, by good and lawful men of the same shire where the said bench shall sit and be kept, or else before such commissioners and in such shire of the realm as shall be assigned by the King's Majesty's commission, and by good and lawful men of the same shire; in like manner and form to all intents and purposes as if such treasons, misprisions of treasons or concealments of treasons had been done perpetrated and committed within the same shire where they shall be so enquired of heard and determined as is aforesaid.' ” And then: “ Peers shall be tried by peers. Provided always that if any of the peers of this realm shall happen to be indicted of any such treasons or other offences aforesaid by authority of this Act, that then after such indictment they shall have their trial by their peers in such like manner and form as hath been heretofore accustomed.” My book refers to *Reg. v. Lynch*, [1903] 1 K.B. 444, and *Rex v. Casement*,<sup>3</sup> [1917] 1 K.B. 95. I do not concede that that Statute applies to aliens at all, but if it does apply to aliens at all it can only apply to aliens in respect of offences or treasons committed within the King's dominions upon the canon of construction put forward by the learned Lord Chief Justice.

Mr. JUSTICE TUCKER—I do not quite follow what you say. I follow the canon of construction. That would apply to any Act of Parliament; that would apply to the Act of 1351 which is what we are dealing with. I do not quite follow how this carries the matter any farther.

Mr. SLADE—I do not think it does. It may be said that the 1351 Statute enacted nothing at all, but was merely declaratory of the existing law.

Mr. JUSTICE TUCKER—It really provides how people who offend against that Act outside the realm are to be tried.

Mr. SLADE—Quite, my lord, it is purely procedural, and is

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<sup>3</sup> See also *Trial of Sir Roger Casement*, ed. by G. H. Knott, *Notable British Trials Series*.

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merely expressed to be passed to resolve doubts with regard to procedure. One could not, in any event, treat a procedural Statute as enacting the law. It really, in my respectful submission, requires no argument at all, because we know in civil cases it is an affront or considered to be an affront to the sovereignty of another realm to issue a writ upon a foreign subject in that realm which says that "His Majesty commands you within eight days." You can get leave to serve a writ upon a British subject in the British dominions, but you have to serve notice of writ upon a foreigner.

Mr. JUSTICE TUCKER—I think that is rather different; that is where you are going into the foreign country and doing something there. If a man commits an offence abroad you cannot go and arrest him there; you have got to wait until he comes here. It is rather different.

Mr. SLADE—Yes. Joyce was arrested abroad, but I am not on that point at the moment. I am merely saying that it would be quite inconsistent with the ordinary comity of nations for one nation to arrogate to itself the right to try subjects of another nation for acts committed while they were within the territory of that nation. If that were not so anyone, to take a fantastic case, could take an American subject who was paying a visit over here and try him over here for a murder which it was alleged he had committed in New York. There was every reason for the rule laid down by the learned Chief Justice, because that is exactly what one would expect when dealing with the question whether the Statute applies to British subjects generally or only to British subjects within the United Kingdom or the Dominions. He then says even if that construction is possible or even probable you must not extend it to aliens abroad, because that would be contrary to international comity. That is all I desire to say to your lordship subject to this one final point. If your lordship should be against me upon the pure point of law and on the point of law with regard to jurisdiction, there still arises the point before I address the jury—perhaps your lordship would assist me because my friend might want to reply—whether your lordship is going to leave any special question to the jury for a special verdict or whether your lordship is going to direct the jury generally.



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Mr. JUSTICE TUCKER—I have not yet decided, Mr. Slade, whether there is anything for the jury at all.

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The ATTORNEY-GENERAL—My lord, may I first of all deal with the point of jurisdiction. In my submission that point really begs the whole question in this case, the question whether or not the prisoner was under a duty of allegiance to the Crown. If one looks at the Statute, and in my submission it cannot be doubted that it is within the power of Parliament to pass a Statute creating criminal offences in foreigners abroad, if one looks at the original Statute of treasons, it is clear on that Statute as construed in the *Casement* case, [1917] 1 K.B. 98, that it does apply to offences committed outside the realm. That was, of course, the great argument in the *Casement* case, as your lordship will remember. It was contended in that case, although no question of nationality arose, that the Statute was limited to offences committed within the realm and, after considerable argument in the trial, it was held that it applied to offences wherever they were committed. The Statute itself, as to the persons who might commit the offence of treason, appears to cover anybody, British subjects or foreigners, any person. The effect of the cases has been to qualify the Statute to this extent, that it only covers those persons who are under a duty of allegiance to the Crown. One is then thrown back to what is, in my submission, one of the primary questions in this case: Was the prisoner under a duty of allegiance to the Crown? If one accepts the view that the Statute of Treasons applies to acts committed outside the realm and applies to persons who owe a duty of allegiance to the Crown, then, in my submission, the procedural Act which your lordship has, the Act of 1543, clearly brings to an end any doubt that might have hitherto existed in regard to the jurisdiction to try a foreigner: it makes it quite clear in regard to all persons whether they be foreigners or not, that treasons committed outside the realm are triable in the King's Courts. My learned friend says that so to hold would be an affront to the comity of nations. In my submission, no. The exercise of what is well recognized in international law by

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the term protective jurisdiction is accepted on the part of all nations.

May I refer on that to Hall on International Law, 8th edn., 1924, at part 2, c. 4, "Sovereignty in relation to the territory of the State." At p. 261, para. 62, there is this paragraph: "The municipal law of the large number of European countries enables the tribunals of the state to take cognizance of crimes committed by foreigners in foreign jurisdiction. Sometimes their competence is limited to cases in which the crime has been directed against the safety or high prerogatives of the state inflicting punishment, but it is sometimes extended over a greater or less number of crimes directed against individuals." And then he goes on to cite a great number of instances of foreign countries exercising an extra-territorial, generally protective jurisdiction of that kind. My side note is "Crimes committed by foreigners in territory foreign to the State exercising jurisdiction." The international validity of Statutes of this kind is a matter about which one might no doubt argue, but to say that the existence of such a Statute is an affront to the comity of nations, in my submission, is quite wrong. I think it is right to say that there is hardly a state in the world which does not, in fact, exercise a protective jurisdiction over foreigners in respect of crimes committed outside its own territory.

Mr. JUSTICE TUCKER—What do you call protective jurisdiction?

The ATTORNEY-GENERAL—I am limiting the jurisdiction and I am limiting the principle of protective jurisdiction in this sense. It is recognized that states are entitled to make laws affecting foreigners even in respect of offences committed outside their own territory so far as such laws are reasonably necessary for their own protection. That is why it is limited very often to matters, as Hall puts it—I have not the exact phrase in my mind now—affecting the safety or high prerogatives of the state, of which, of course, treason is pre-eminently one.

There is a very short passage in Roscoe, p. 213, referring to 1 Pitt Cobbett, 219, under the heading of "Jurisdiction and Venue": "Jurisdiction over aliens abroad is 'usually only in virtue of some special connexion, such as service within three months on board a British vessel.'" Here, of course, the special

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connexion which makes this alien subject to the jurisdiction of the Court is, in my submission, the connexion of allegiance. That is why I say with respect, the submission put by my learned friend seems really to beg the real question in this case, which is the question of allegiance. If there is allegiance, then under the Statute of Treasons and the Statute of 35 Henry VIII there is jurisdiction to try. My learned friend referred to the case of *Keyn*, [1876] 2 Ex.D. 63, but that was a very different case. That was a case of a common law offence where the matter for decision was whether a death which occurred on a foreign ship could be said to have taken place within the territorial jurisdiction of the British Courts, and it was held that it was not within the territorial jurisdiction. It was a very different case, a common law offence: here is a statutory offence, and although, no doubt, the general canon of construction would be not to give extra-territorial effect to the Statute either in relation to foreigners or to British subjects, one has to look at the language and purpose of each particular Statute to see what Parliament intended in each particular case. Here, in my submission, it is perfectly clear on the *Casement* case that the effect of the Statute of Treasons is of an extra-territorial kind; then once one sees it is of an extra-territorial kind, one has to ascertain: Is the particular defendant who is alleged to have committed an offence under it one of that class of persons who can commit offences under the Act, and is that class of persons a class of persons whether British subjects or not, who owe allegiance to the British Crown? On the opposite page of Archbold on which the Statute of Henry VIII is set out, on p. 1059, there is the Statute of Edward VI in regard to treasons abroad, which provides that: "If any of the King's subjects, denizens, or other, do commit or practise out of the limits of this realm in any outward part any of the offences which by this Act are made or heretofore now standing in force have been made treason, that then such treasons" shall be triable as if they had been committed within the realm. Then your lordship sees the note: "This enactment has not been specifically repealed, but there is no trace in the text books or in reported cases or in those of which the record is preserved in the Record Office, of the trial of any foreign treason by any other procedure than that provided by 35 Henry VIII."

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Mr. SLADE—That has been repealed by the Treason Act of 1945.

The ATTORNEY-GENERAL—I am obliged; I am told it is a Statute which is now repealed. Even so, it was until 1945 a Statute, and I will draw attention to the note. Apparently that Statute, although it refers to foreign treasons, has never been in fact relied upon, foreign treason always having been dealt with under the Statute of Henry VIII. I would submit to your lordship that there can be no doubt on the construction of the Statute of Treasons that it embraces offences committed anywhere within the realm or outside it, in the words of the Statute, by persons who owe allegiance, and that so to construe it, far from being an affront to the comity of nations or inconsistent with the accepted principles of international law, is in accordance with the accepted practice of all countries in the exercise of their protective jurisdiction.

Going back to the beginning of my learned friend's argument, my learned friend said that with the exception of the passages in Foster and East there was no authority for the proposition that the non-resident alien was under any duty of allegiance. My lord, the no-authority proposition is often used and it is right that proper weight should be attached to it, but if it were always accepted as a ground for a negative decision, our laws would have been quite incapable of expanding and broadening down from precedent to precedent in the way which is, of course, characteristic of the common law. If there is no precedent for this case it is simply because in no previous case have comparable circumstances arisen. The passport is a document of comparatively modern growth. There have been very few cases—there has been one certainly—of treason since the introduction of passports: indeed passports only came into general use in the course of this century, and in the course of that time there has, as far as I can recall, been one case, and one only, under the Treason Act. Foster and East are, in my submission, powerful authorities for the view that the essential basis of allegiance is the right to protection, especially when one remembers that there is excluded from the obligation of allegiance the possibly resident but the non-protected alien. It is perfectly true, as my friend says in the case of all the books that have been cited, that protection is related to

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residence, but, in my submission, the only significance to be attached to that is that in those days at the time of those decisions or those expressions of opinion as to the state of the law, residence was in fact the only way in which the Crown could effectually take a person under the protection of the sovereign, and the protection of the sovereign originally depended on executive action rather than on judicial action. The alien was put under the King's peace. In the course of the growth of our common law that came to mean under the jurisdiction and protection of the King's laws as administered in the King's Courts, but, in my submission, it is merely an extension of that principle to say that the alien who continues under the executive protection of the King when he goes with a British passport into a foreign land is in the same position as the resident alien was in the days of *Calvin's case*, (1608) 7 Co.Rep. 1a, and of Coke and of Foster. Both the protection of the ordinary territorial law of the country and the protection of the King's diplomatic representative and the King's armed forces have their source, have their *fons et origo* in the same place, in the sovereign power of the King ensuring in his own territory the maintenance of the King's peace through the judicial machinery of the country, and ensuring outside his territory, so far as his force enables him so to do, the protection of those he takes under his protection against any invasion of their rights by a foreign power.

My friend placed considerable reliance on the case to which, at the beginning, I drew your lordship's attention of *Johnstone v. Pedlar*, [1921] 2 A.C. 262, and he said in relation to that case, and indeed in relation to one or two other authorities, notably, I think, Blackstone, to which I referred your lordship, that either Lord Phillimore must be wrong or the Crown's contention in this case must be wrong, but, my lord, not so. In my submission there is not a word in any part of *Johnstone v. Pedlar*, in any one of the opinions in that case, which properly read, not too narrowly interpreted, is inconsistent with the submission which is being made on behalf of the Crown in this case. It is true that case referred to residence, it is true that Blackstone, in the passage that has been quoted, refers to the allegiance ceasing when the alien transfers himself from this country, but one has got to see what is meant by residence and what is meant by transfer in

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that context, and one has to remember that in those days—I think in Blackstone's day and in the early days in which this matter was discussed—residence in general was a more permanent matter than it may be in more modern times. Travel was not easy, communication was not easy, mere transient visits were not so common, and in the ordinary case I suppose an alien who left the country was likely to be leaving it permanently and for good. As I understood my learned friend's argument—I am not at all sure that I am doing justice to him on this point—my learned friend rather relied on *Johnstone v. Pedlar* as being some authority for the proposition that the very commission of an act of treason put an end to the allegiance, put an end to the right to protection, and therefore put an end to the allegiance. He was referring to the words used in that case and adopted in that case from Lord Coke: Protection draws allegiance and allegiance draws protection, and therefore if allegiance goes, he said protection goes: in other words, that argument is to say this, that the moment a person, who being under the protection of the Crown, and consequently under a duty of allegiance to the Crown, commits a treason, his allegiance comes to an end and he is not triable for it. Lord Sumner's opinion in *Johnstone v. Pedlar* is, in my submission, exactly to the opposite effect. He is discussing the doctrine of mutuality there and he is saying once protection arises it does not cease merely because the person who owes a duty of allegiance because of its existence commits treason. Once the protection arises it continues until by some positive act of election on the part of the Crown it is withdrawn. No doubt when the person who has been placed under the protection of the Crown and owes the corresponding duty of allegiance commits treason it is open to the Crown to withdraw the protection, but unless the Crown so elects to do the protection continues and the traitor remains under the protection of the Crown even when he is being tried for treason. There is nothing to prevent a traitor who has committed one treason, not exactly at the same time, committing another treason: he remains under the protection and, consequently, he remains under the duty of allegiance. It was in that sense, in my submission, that Lord Sumner was attacking the doctrine of mutuality: allegiance draws protection, protection draws allegiance. The relationship having arisen it cannot be terminated by unilateral

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action on the part of the subject who is taken under the protection of the Crown.

Then my learned friend said in terms that the Crown had no jurisdiction to issue a passport to an American subject. My lord, in passing, I might say this, and I think it is, for reasons which will occur to your lordship, desirable to say it, that although at the time material to the issue of a passport this man was an American subject, the evidence before the Court at the moment as to his nationality is that he is a German subject, but acquired German nationality at a date before America came into the war, and his present position, of course, is that he is not an American but a German subject.

Mr. SLADE—My lord, that is a matter of German law upon which there is no evidence.

Mr. JUSTICE TUCKER—For the moment it seems to me that all that has been established is that he has never been a British subject with the fact that he has stated that he became a naturalized German.

Mr. SLADE—The form of the indictment is “purported to become naturalized.”

The ATTORNEY-GENERAL—I am relying on his own statement and on the fact that he had a German passport. There is no authority whatever for the proposition that the Crown has no jurisdiction to issue a passport to an American subject, and, in my submission, it is clearly wrong. It is done, I will not say every day, but with considerable frequency.

Mr. JUSTICE TUCKER—I have had no evidence about it, Mr. Attorney. As far as my researches show, passports, I understand, are issued as part of the prerogative of the Crown, and I suppose that under that prerogative the Crown issues a passport to whomsoever it likes, but, of course, it is unthinkable that the Crown would issue a British passport to an American citizen describing him as a British citizen.

The ATTORNEY-GENERAL—In practice that would undoubtedly be the position, but not always, because the position of dual

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nationality is well recognized and it is particularly recognized in the case of America. There is no evidence of this, but it is, I think, a matter of law. An American woman who marries a British subject acquires British nationality and is thereby entitled to a British passport, but she is still entitled to an American passport because she does not lose her American nationality.

Mr. JUSTICE TUCKER—She gets a British passport as a British subject by international law.

The ATTORNEY-GENERAL—Yes, my lord, but the sole fact that a person has another status is no reason why the British Crown cannot grant a British passport. If my friend had put it on the other basis, that the Crown had no jurisdiction to grant a British passport to a person who is not a British subject, then, if I may say so with respect, he might have been on a little stronger ground, but, even so, my submission is that it is quite clear that such a proposition would have been wrong, indeed, the very application form which is in evidence in this case refers not only to British subjects and to naturalized subjects but to British protected subjects, and a British passport can be issued and is issued to persons whether they be British subjects or not whom the Crown, in the exercise of its prerogative powers, thinks right to protect. My learned friend referred to *Rex v. Ketter*, [1940] 1 K.B. 787, in which a passport had been issued not by the British Crown or by the Secretary of State, but by the Consular officials of Palestine, and he placed some reliance upon that case. My lord, there is another case of *Markwald* (unreported) which goes even further, perhaps, in the direction in which my friend wanted to go, but it goes no way at all for the purposes of this case. *Ketter's* case and *Markwald's* case both turn on the construction of the British Nationality and Status of Aliens Act. Under the Act everybody is an alien who is not a British-born or naturalized British subject. *Markwald's* case was a case which dealt with a person who had a certificate of naturalization granted to him in Australia and it was held none the less that he was an alien in this country, because the British Nationality and Status of Aliens Act in defining British subjects and including within the scope of the term the naturalized subject referred only to persons who were naturalized in accordance with the provisions



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of that Act, and it was held that that did not embrace a person naturalized by the provisions of an Australian Act: it was a local naturalization which did not extend to this country. Both those cases are very narrow decisions only covering the construction of the 1914 Act. My learned friend gave the rather curious hypothetical case of a passport granted whether by mistake or fraud or not to a person who was not a British subject and who found himself in conflict with the authorities in Spain, and he suggested to your lordship that a Spanish national might have gone to a British consul and impeached the authority of the passport, and the consul would have said: "Oh, very well, we will tear the passport up." Your lordship will probably think that no consular or other official would have any kind of authority to tear up the protection of a command of His Majesty that a particular person was to be accorded the privileges of a British subject or the privilege of protection by British consular officials. It is a situation which is discussed in the books on international law; it is recognized by foreign powers. One might produce evidence tending to show that a passport had been secured by fraud or by mistake, but it is universally held that no one can impeach a passport and that the only power which can withdraw it and put an end to its effect and authority is the power which had issued it, in other words, in this country the Sovereign,<sup>4</sup> and so long as this passport was in existence, not withdrawn, not countermanded, this man, whether he was an American subject, or whatever his nationality may have been, was entitled to be treated with the rights and the privileges of a person protected by a British passport, he was entitled to call on the assistance of diplomatic or consular officials, and was entitled to be regarded by foreign powers as a person clothed with the status, as I put it, of a British subject, whatever his nationality may have been.

If I may say so with respect, I have heard nothing in my learned friend's very distinguished argument in this case to lead me to withdraw from the position that I have taken up in regard

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<sup>4</sup> But in this as in other matters the Sovereign acts through his officials and servants. If it came to the knowledge of a diplomatic or consular official that the holder of a British passport claiming his protection had obtained the passport in error or by fraud, would it not be his duty to withdraw it in the Sovereign's name?

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to "protection." My submission as to that I made to your lordship and I will not repeat it, but I do attach the very strongest importance to the proposition that a person who enjoys the effective protection of the British Crown is under a duty of allegiance so long as that protection continues. Even if that proposition were wrong, the question would remain: "What is 'residence' for the purposes of this rule?" Is it synonymous with mere presence and only with mere physical presence within the territory of the Crown, or does it, on the other hand, approach domicile? Again, as I submit, it is right perhaps to remember the circumstances of the times when the rule as to residence was first enunciated. There were not likely to be many transient visitors—foreigners—coming to this country; they were, for the most part, likely to come for some time and likely, when they went, to have gone permanently. Since those days travel has become very much easier. The resolution of the judges, as stated in Foster and East, makes it quite clear that even in those days "residence" was not being construed in the narrow sense of mere presence. The man who, although he was not present in the country, had left either his family or his effects in the country remained within the rule as laid down there.

My lord, is it to be said that an alien who is resident, resident in the more permanent sense, domiciled perhaps, in this country, but who takes an aeroplane or who takes a speedboat and goes outside the territorial jurisdiction, outside the three-mile limit, or over to the Continent, and there commits some act which would be treasonable if committed by a British subject and immediately returns to this country after an absence of an hour or two, is not to be amenable to our Courts in a matter of treason? If that is not right, where is the line to be drawn between the resident alien, who is properly deemed resident although he may not be physically present in the country at a particular moment, and the alien who has finally shaken the dust of the country off his heels? I would submit that the test for this purpose is that an alien can be said to depart from this country—I am using the phrase in one of the authorities; Blackstone, I think, said, "transferred from this country"—when he has left the country and severed those ties which bound him to the country as a subject—not as a national, but as a subject. As your lordship,

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of course, knows, the word "subject" in this context is not synonymous with nationality. A man who has left the country and in leaving it has put an end to the ties which bound him to the country as a subject and has left it intending to leave it permanently—

Mr. JUSTICE TUCKER—That is getting very near the domicile test, is not it? There is no trace in any of the cases that domicile has ever occurred to anyone on this question.

The ATTORNEY-GENERAL—No. I respectfully agree. I am not sure that the doctrine of domicile was discussed or, indeed, that it existed at that early time.

Mr. JUSTICE TUCKER—I did express the view yesterday tentatively that it might be a question for the jury as to the intent, and so forth. I am inclined to the view, and I should like your assistance on this, that it seems to me that what is essential to your case is the reliance you place on the protection afforded by passport. If you are right about that, then it would appear to me to be a pure question of law, irrespective of the *animus* with which the defendant may have left the realm.

The ATTORNEY-GENERAL—My lord, I think I would, with respect, be inclined to put it on the two feet: one of residence, defining "residence" at the lowest in this sense, as continuing until the ties which made the resident a subject of this country had been broken, and one of the ties would be the existence of a passport. If the resident alien leaves the country, he leaves it with a passport, enabling him to return to the country; he leaves it with a passport which is issued to him for the purpose of going on a holiday, and then he continues to be resident for the purposes of the authorities. Alternatively, if not resident in that sense, he continues to be protected by the possession of the passport. Even there I am not sure that there might not be a question of fact for the jury. Would this proposition be right: Would it be a question of fact whether or not the prisoner, having at the time an English domicile, applied for and obtained the protection of the Crown in order that he might enjoy that protection whilst temporarily travelling abroad?

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— Mr. JUSTICE TUCKER—The evidence is all one way; the evidence stands uncontradicted; and it occurs to me it is a matter of law whether on that evidence the prisoner owed allegiance or not. When I say that it is uncontradicted, I am dealing merely with the actual facts. If the state of his mind, the intent with which he left the country, is an element, then that might be a matter for the jury, but I doubt whether that is an element for their consideration, having regard to the way in which you put the case.

The ATTORNEY-GENERAL—My lord, the facts on both heads are ascertained and not in dispute; the facts as to residence and as to the ties which still remain, apart from the passport. There is evidence of the passport application forms, as to what he states his residence to be; there is evidence as to the family; no evidence whatever as to the wife, unless one takes the statement in the 1933 application that he is married. As to whether that marriage continues or whether his wife, if he continued to be married to her, left with him at the end of August or in early September, 1939, there is no evidence.

Mr. SLADE—There is evidence in Exhibit No. 18A, the English translation.

Mr. JUSTICE TUCKER—Anyway, I do not think we need go into that, Mr. Attorney. There is no evidence that he left his wife or children in this country.

The ATTORNEY-GENERAL—No, my lord, there is no evidence on that. There is evidence that he left his parents with whom, if Exhibit No. 36 means anything, he appears to have had close ties of sympathy, in this country. My lord, I do not pretend to rely on it to any great extent, except to show that he was not completely divorced from his family associations. There is some evidence in the passport application form and the application for its renewal that at least he had some business association with a bank, the same bank throughout the period of years preceding his departure, which might be enough to infer that he had a banking account. There is no evidence that he transferred it or transferred any property; but all those matters, as your lordship says, are matters not in dispute, but they are before your lordship,

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and I do ask your lordship to say here that in the circumstances of this case a person who, being domiciled in this country, applies for a passport for holiday purposes does not cease to be resident in it merely because he leaves the country. My lord, we do not know at what date he left the country, and I say advisedly he may have left at any date between 25th August and 16th September; but if there had been no war, or if the war had ended more abruptly and in a different way, the presumption would be, in my submission, that he would do what presumably he had done in the case of his previous passport: he would return here. He had applied for a holiday passport and, having had his holiday, he would take up and resume his home in the country with which he had clearly all his ties and associations.

I do not think there is any other point upon which I can assist your lordship.

MR. JUSTICE TUCKER—Mr. Slade, you were asking some question.

MR. SLADE—I was going to ask your lordship whether you would allow me to make one observation only on one point which my friend made. That was merely the point on which he suggested my point about jurisdiction begged the question of allegiance. In my respectful submission, the two questions have nothing whatever in common, and it can be shown conclusively in this way: If you allege that a person has committed treason, you have to allege that he owes allegiance, and some tribunal professes to try that question. My first point is that this tribunal has no power or jurisdiction to try that question, a totally different question. If I were wrong, then one could always obtain jurisdiction over aliens by merely alleging without proving it that they owed allegiance. That is all I desire to say upon that point. There is one other point. My friend mentioned the case of *Casement*, [1917] 1 K.B. 98. Your lordship remembers that not only was *Casement* a British subject, but the sole point was whether the words "adhering elsewhere to the King's enemies" applied.

MR. JUSTICE TUCKER—Mr. Slade, you were asking me whether I was intending to take a special verdict of some kind. I should like your views and assistance on the matter and also with regard

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to whether or not, assuming that I am against you on your submission, there is any question for the jury or whether it is purely a question of law for me on the facts.

Mr. SLADE—My lord, I should respectfully suggest, as your lordship put it tentatively to the Attorney-General, that this is a pure question of law for your lordship. I took that view yesterday. I thought we were getting into the region of domicile when we were talking about “intent.”

The ATTORNEY-GENERAL—My lord, there is one other passage that I intended to draw your lordship’s attention to. It does not carry the matter much further. It is on this question of passports, about which there is so little authority. In the 10th vol. of the *Encyclopedia of the Laws of England*, 2nd edn. (1908), p. 585, this is said about passports: “A passport is the accepted international evidence of nationality. In its usual form it certifies that the person described in it is a citizen or subject of the country by whose authority it is issued, and requests for him permission to come and go as well as lawful aid and protection. Other documents, such as safe-conducts, letters of protection, and special passes for individuals, and even passes for vessels, are often referred to as passports, and not altogether inaccurately, since their object is to secure for the particular person or property freedom of movement and lawful protection. But these documents are used chiefly in war, and are granted on the strength of the personality rather than of the nationality of the individual, being issued, according to the circumstances of the case, even to enemies (see Moore, *Digest of International Law*, Washington, 1906, vol. III, sec. 492). Thus a sea brief, sea letter or pass, granted by the supreme authority of a nation in time of war, declaring that a ship sails under the authority of such nation, is termed a passport; with the flag, such a document is the principal proof of neutrality (*The Success*, 1 Dod. 132; *The Vrow Elizabeth*, 5 Rob. C. 4; *The Vigilantia*, 1 Rob. C. 1; *The Vreede Sholtys*, 5 Rob. C. 5; see Abbott, *Merchant Shipping*, 12 edn., p. 296 n.). The more familiar sense of the term is that of a document delivered by the Foreign Office, or under the authority, requesting foreign Governments to afford aid and protection to the holder.” Your lordship was referred to Mr. Sibley’s article. That was written in, I think,

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1907. Mr. Sibley is the joint author with Lord Birkenhead of a book on international law. In that article he drew an analogy between the ordinary passport issued to an individual and a sea pass. In that quotation that I have just read to your lordship reference is made to that, and the case was cited of a ship which possessed a sea pass and was travelling under the flag of the state to which the pass related, and it was held in relation to such a document that the shipowner and the skipper were not allowed to impeach the validity of the pass or to say that they were not of that nationality.

Mr. JUSTICE TUCKER—I shall give my ruling on these submissions which have been made at 2 o'clock and, if necessary, then address the jury on any issue that remains for them.

(Adjourned for a short time.)

Mr. JUSTICE TUCKER—Mr. Attorney and Mr. Slade, I shall direct the jury on count 3 that on 24th August, 1939, when the passport was applied for the prisoner, beyond a shadow of doubt, owed allegiance to the Crown of this country, and that on the evidence given, if they accept it, nothing happened at the material time thereafter to put an end to the allegiance that he then owed. It will remain for the jury, and for the jury alone, as to whether or not at the relevant dates he adhered to the King's enemies with intent to assist the King's enemies. If both or either of you desire to address the jury on that issue, of course, now is your opportunity.

Mr. SLADE—My lord, perhaps I might ask your lordship just this point on that ruling. The third count, I think, says: "By broadcasting." I am respectfully submitting that the only evidence capable of going to the jury is the allegation that, within one month of the outbreak of war, Joyce broadcast that Dover and Folkestone had been destroyed.

Mr. JUSTICE TUCKER—Coupled with the entries in the work pass, I think it is, which is signed by him, which purport to show the date upon which he was taken into the employment of the German Broadcasting Corporation, and some portion of his

## Closing Speech for the Defence.

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own statement where he says the purpose for which he went to Germany.

Mr. SLADE—My lord, is not the count limited to “ adhering to the King’s enemies by broadcasting propaganda ”?

Mr. JUSTICE TUCKER—Those are all matters for the jury, Mr. Slade.

## Closing Speech for the Defence.

Mr. SLADE—May it please your lordship. Members of the jury, the only point you have to consider, being directed as a matter of law that the prisoner did owe allegiance to His Majesty the King from 24th August, 1939, and on all material dates thereafter, is whether he committed the offence with which he is charged in what has been called the third count of this indictment. That offence is that he adhered to the King’s enemies by broadcasting propaganda on behalf of the Germans. I think the limit of the offence—I have not the date in front of me—was 2nd July, 1940.

The only piece of evidence that I recollect being given of any broadcast within that period was the broadcast of the words spoken to by Inspector Hunt, which he said he heard while he was at Folkestone at a date which he placed as being within the first month of the war: “ Folkestone and Dover have been destroyed.” You may remember that I challenged his evidence upon that by suggesting that he had mistaken the voice which he heard. He was quite insistent that he had made no mistake; but you will bear in mind that his evidence was that although he had attended meetings at which Mr. Joyce had been present and said he was familiar with his voice, he had never at that time spoken to him. Therefore you have to consider, and my lord will direct you that you have to consider, whether the prosecution have proved beyond all reasonable doubt this one point, that it was Joyce who broadcast those words in the first month of the war.

I cannot do better than ask you to do what the Attorney-General asked you to do at the outset of his opening of this case, to put aside from yourselves prejudice altogether. As he so truly remarked, Joyce will be all forgotten after a nine days’ wonder, or after some short space of time, but the way that justice is



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done in this country will not be forgotten. You may think it a tribute that in the trials now proceeding at Belsen most of those Germans are being defended by British officers. I can well understand a person saying: "Don't try him at all; shoot him without trial." You may think that that would be one of the best things to do. But what I do say is if you are going to try him, try him, and do not make a mockery of the trial. You, members of the jury, have, of course, a most difficult task. Joyce has been branded as "Lord Haw-Haw"; he has been branded as a traitor. Everyone talks of him as though he were already condemned and convicted, but you are here to try whether he is guilty or not.

I have not called Joyce to give evidence. I have not contested that he made the broadcasts that form the subject-matter of count 1 and count 2. I think there were various dates in 1943. In each of those cases Inspector Hunt was asked or given instructions to make a note of what he heard. He made a note, and he gave evidence of the precise things that Joyce said. Having got the precise things that he said, you can say whether he was adhering to the King's enemies or not. Subject to what my lord may say to you in his direction, that is not what you have to consider at all. I will assume against myself that in the years 1941, 1942, 1943, and 1944 he was adhering to the King's enemies. The only point that you now have to consider is whether he was adhering to the King's enemies during the first month of the war.

"Adhering to the King's enemies" is a mixed question of fact and law. The only evidence which is before you of any fact which he did which can be described as adhering to the King's enemies by broadcasting propaganda was, as I have told you, that speech he is alleged to have made. No one, of course, suggests that Inspector Hunt would go into the witness-box and say what he did not honestly believe to be true. The only question is: Is he mistaken, or, as I would rather put it, are you satisfied beyond all reasonable doubt that he could not be mistaken? These are the points that I would ask you to bear in mind. You have heard the language that Joyce used in 1943 and 1944. It has all been given in evidence. However you may disagree with it or however you may have been amused by it, at any rate it is a reasoned statement—it is not the sort of statement which you would describe, and that I

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describe as the grotesque statement, that in September, 1939, or may be up to 3rd October, 1939, Folkestone and Dover had been destroyed. There were no visits of aeroplanes to this country at that time; there were no atomic bombs; there was nothing whatever to destroy Dover or Folkestone. There were no long-distance guns capable of coming from Germany to this country. The French coast was still in the hands of the French. It would have been a fantastic thing to say. It is suggested it would be a fantastic thing to say to those who were over here, but what about the British soldiers who were overseas and not here and might hear it at that time and would not know that it was untrue? Well, you are entitled to use your own recollection of matters which are common knowledge. I do not profess to remember how many British soldiers were overseas in the first month of the war. There may have been some; there may not. I do not remember; but you will gather how likely it was that there was any great number of British soldiers overseas by 3rd October, 1939. Moreover, if you are going to use a man as a broadcaster throughout a war which looks like lasting some time, if you want, at any rate, to give him the verisimilitude of a person that you could listen to, give him some semblance of appearance of a man you would listen to, I should think that it would be the worst possible thing from the Germans' point of view, and the worst possible thing from Joyce's point of view, to start his broadcasts to the British nation, not merely with a lie—because a lie might be given, as I say, a semblance of truth—but to start his career with a lie which was demonstrably and palpably false and which everyone must know to be false within forty-eight hours, even if they did not know it to be false at that moment. Therefore, I respectfully suggest to you, the probabilities are that he did not make that particular broadcast.

Of course, it will be said: "Well, if he did not make that particular broadcast, why did not you put him into the witness-box to say so?" Well, members of the jury, it is not for me to disprove the case; it is for the case to be proved against me beyond all reasonable doubt. It is quite obvious that most of the relevant matters in this case Joyce is not and never has been in a position to deny. One of the most relevant matters was, of course, whether he signed the application for a passport;

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whether he signed the applications for renewals. Of course he did. There is no point in putting him into the witness-box to deny that. Another point is: Did he make the broadcast in 1943? Of course he did. I cannot put him into the witness-box to deny that. You may think that the fact that he has not attempted to go into the witness-box to deny those things at any rate would leave some semblance of character in him in that respect. The question for you is not whether he has gone into the witness-box to deny it, but whether the prosecution have proved it beyond all reasonable doubt. Now what doubt was there? Let me remind you. The detective officer had heard Joyce speak; that is to say, had heard him speak in person. He had never spoken to him, but he had heard him speak. We are now dealing, are we not, with the first occasion on which he is ever alleged to have broadcast? Voices do not sound the same when you broadcast and, at any rate, the first time you hear them when they are broadcast they do not sound the same as when you have heard them many many times so that you can say: "Oh, Germany calling; that is Joyce's voice." Do not forget that the first time you heard "Germany calling," you might not have recognized him. When you heard them for the thirtieth, fortieth, or fiftieth time, the moment you heard the words: "Germany calling," you would associate them with Joyce. What was the inspector's evidence about that? He says: "I was in Folkestone; I do not remember which station I tuned in to; I was just turning the thing round; I heard something more than the evidence I have given you, but the only thing that I can remember having heard was just the words 'Dover and Folkestone have been destroyed.'"

I ask you, members of the jury, to say that you are not satisfied beyond all reasonable doubt that it was Joyce who used those words on that occasion; and I ask you to say, furthermore, that if you are satisfied about that, contrary to my respectful submission to you, you are still not satisfied that the saying of those words constituted adhering to the King's enemies. Every time you tell a lie to British subjects you do not adhere to the enemies of His Majesty the King. That is all he is alleged to have said.

I will only say this once more and never say it again. I am sure that in coming to a conclusion upon the evidence, as you are sworn to do, as to whether Joyce made this broadcast in the

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first month of the war, you will not allow your minds to be swayed by what he did in the second month of the war and, still less, the second year, third year, fourth year or fifth year of the war. You have now to take your minds back to the first month of the war and say whether you are satisfied of two things beyond all reasonable doubt; one, that Joyce in fact made that broadcast at all and that Inspector Hunt is not mistaken; and, two, that, if he made it, the mere broadcasting from an enemy radio station of the words "Dover and Folkestone have been destroyed" constitute adhering to the King's enemies. Of course, if the mere broadcasting from a foreign station that, shall we say, "First Class" has won the Derby, when you know that "First Class" has not won the Derby—if the mere broadcasting of that from Germany to England is adhering to the King's enemies, then I agree it is equally adhering to the King's enemies to say that Dover and Folkestone have been destroyed, and that whether it is true, I suppose, or whether it is false. In my submission, you require something much more than a mere mis-statement that Dover and Folkestone have been destroyed to constitute an adherence by a British subject or an alien who owes allegiance to the Crown of England to the King's enemies for the purpose of amounting to treason.

Now, members of the jury, there are only two more points, and I propose to refer to them merely to get rid of them. My lord reminds me that, in addition to the evidence of the actual broadcast in the first month of the war, there was a certain document, a work book (Exhibit No. 19) issued to Joyce quite early on, and there were various other indications that it was the intention of the Germans to use him for the purpose of broadcasting and his intention, I will assume against myself, was to be so used, but you do not adhere to the King's enemies merely because you intend to do so in the future; that is to say, merely because he undoubtedly adhered to the King's enemies—assuming this against myself—in 1942, 1943, 1944, and 1945. You are not concerned with that, in my respectful submission. That is no criterion whatever whether he was in fact adhering to the King's enemies in the first month of the war; that is to say, September to 3rd October, 1939; and I ask you, therefore, to say—and I ask you to judge it entirely upon the evidence and to put all considerations

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of hostility and of dislike away from you, remembering the serious consequences of your verdict to this man, and putting out of your minds altogether everything that happened subsequently to the first month of the war—that you are not satisfied, firstly, that he ever made a broadcast which is entirely different from any other sort of broadcast he has ever been proved to have made since, namely, a silly demonstrable lie having no significance and one which could be contradicted absolutely and which was contrary to any reasoned statement of, what I may call, the Fascist view; and if you are satisfied of that beyond all reasonable doubt—again solely relating to this one period during the first month of the war—that, secondly, you are not satisfied beyond all reasonable doubt that in making that remark, namely, that Dover and Folkestone had been destroyed, he at that moment, never mind what he did thereafter, but at that moment, adhered to the King's enemies.

## Closing Speech for the Prosecution.

The ATTORNEY-GENERAL—May it please your lordship. Members of the jury, in this case the onus is fixed fully and firmly upon the Crown to satisfy you beyond reasonable doubt that this prisoner adhered to the King's enemies between 18th September, 1939, and 2nd July, 1940, by broadcasting propaganda, and I shall invite you to say that the mere act of broadcasting as an employee of the German radio system was an act of adhering to the King's enemies, irrespective of the particular subject-matter of any particular broadcast.

Members of the jury, that this man did broadcast is left beyond any doubt by his own statement to which, in so far as it consists of admissions, you are entitled to refer. You will have an opportunity of looking at the whole of it, and my lord will no doubt refer to it in the course of his direction which he is about to make. I shall only refer to three sentences. At the beginning, and by way of explanation, he says this: "I take this opportunity of making a preliminary statement concerning the motives that led me to come to Germany and to broadcast to Britain over the German radio service. I did not wish to play the part of a conscientious objector and since I supposed that in Germany I should have the opportunity to express and propagate views the

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The Attorney-General.

expression of which would be forbidden in Britain during time of war." Finally: "I am also able to understand the resentment that my broadcasts have, in many quarters, aroused."

Members of the jury, in the work book signed by the prisoner and acknowledged by him it appears that on 18th September, 1939, he was taken into the employment of the German Broadcasting Company as an announcer of English news. The case does not stop there. In the evidence of Inspector Hunt you will remember that the inspector said that not only at the end of September or the beginning of November, 1939—he was not quite sure of the exact date—but on many subsequent occasions, both when he was at Folkestone, until 11th December, and subsequently, in the course of 1940, he heard the prisoner's voice, with which he was familiar, broadcasting on the German wireless.

You are asked to discredit and reject the evidence of Inspector Hunt in regard to the actual terms of the broadcast which he heard at the end of September or early in October to the effect that Dover and Folkestone had been destroyed, and you are asked to say that you are not satisfied that that broadcast was made because the making of it would have been a fantastic thing. Members of the jury, fantastic no doubt to people living in Dover or Folkestone; fantastic it may be to people living in this country at that time and knowing exactly how the war was progressing, but not quite so fantastic, do you think, to British soldiers, if you will, in the far-flung outposts of the Empire, to British garrisons abroad, and not only to British soldiers, but English people in foreign parts able to listen to the wireless propaganda of the Germans, but not able so readily perhaps to get accurate, immediate, and first-hand knowledge of what actually was happening in England at that time? You are entitled to remember what was happening in the course of the war at that time. It would not have been impossible for Germany to destroy Folkestone or Dover as they had destroyed other places in other parts of Europe, and you may think that however fantastic those statements might have appeared to Inspector Hunt in Folkestone, their effect upon listeners in distant parts might have been of a very different kind.

Members of the jury, the onus in this case, as I said to you just now, and as I said to you when I first addressed you

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on Monday morning, is firmly fixed upon the Crown, and the last thing that the prosecution desires in this case is to exaggerate the facts or to stretch the law. The less you might consider the prisoner entitled to receive justice at the hands of a British Court, the more vitally important it is to see that he secures justice, justice according to law and justice according to the evidence, and if, when you have considered the facts, you are left in any doubt, any real doubt, not any fantastic speculation, because nothing is capable of proof with absolute certainty, but any reasonable doubt such as would affect you in your own affairs, then, of course, you will acquit him, and I would invite you so to do.

Members of the jury, appearing as I do for the Crown in this case, I invite you to say that this case is far beyond doubt, and it is your duty, in loyalty to your oaths, to find this man guilty of the offence of which he stands charged.

## Summing-up.

MR. JUSTICE TUCKER—Members of the jury, this prisoner, William Joyce, stands indicted on three counts in this indictment, and they all three charge him with the offence of high treason, but in somewhat different circumstances.

The first count charges him that on 18th September, 1939, and on divers days thereafter, and between that day and 29th May, 1945, being then, to wit, on the said several days, a British subject owing allegiance to our lord the King (omitting some formal words) and during which time an open and public war was being prosecuted and carried on by the German Realm and its subjects against our lord the King, then and on the said several days traitorously contriving and intending to aid and assist the said enemies did traitorously adhere to and aid and comfort the said enemies in parts beyond the seas without the realm, to wit, in the realm of Germany, by broadcasting to the subjects of our lord the King propaganda on behalf of the said enemy.

The second count charges him that on 26th September, 1940, then being a British subject owing allegiance to the King, during the progress of the war he traitorously contriving and intending to aid and assist the enemies did traitorously adhere to and aid and comfort the said enemies in parts beyond the seas without

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the realm, to wit, in the realm of Germany, by purporting to become naturalized as a subject of the realm of Germany.

Now, members of the jury, just a word or two about those two counts, because you have got to give your verdict on those two counts as well as on the third count. The essence of those two counts is that at the time in question the prisoner was a British subject owing allegiance to the King and owing allegiance as a British subject. Now that was a matter for the Crown to prove and to prove beyond all reasonable doubt in some way or another. I ruled at the close of the case for the prosecution that there was some *prima facie* evidence that he was a British subject because he had so stated in his application for passports, and accordingly the case proceeded on those two counts, and yesterday a volume of evidence was adduced before you, which you will remember, called by the defence, all with a view to establishing that from the material date, and, in fact, at all times, William Joyce, the prisoner, had never been a British subject at all by reason of the fact that he was born in America, born of parents, one of whom, the father, was at that time a naturalized American subject. As soon as that became proved there was an end of the case on the first two counts, because the essence of those counts is that the man was alleged to have been a British subject. The evidence was clear that this man at all material times, at those times, was not a British subject at all, but an American subject.

Now, members of the jury, that would have been a question of fact for you to decide on the evidence if the matter had been left to you; that would have been a matter of fact and not of law to ascertain the facts, and it would then have been for me to say and direct you whether or not, on those facts, he was or was not a British subject, but when that overwhelming mass of evidence had been put into the witness-box I invited the learned Attorney-General, representing the Crown in this case, to say whether or not after he had heard that evidence and after he had refrained from cross-examining a single one of those witnesses (as you will remember was the fact) he was going to invite you, as a jury, to say that this man was a British subject, and he said what, of course, you would naturally expect him to say, that on that evidence he would not invite you so to hold. Unless he had



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said that I should have expressed no view on the matter whatever, but left it to you; it was only when he intimated that, having heard that evidence, he, on behalf of the prosecution, was not going to invite you to come to the conclusion that this man was a British subject that I expressed the opinion that the evidence in that direction was overwhelming; you heard it and, no doubt, you will be able to form your own opinion on that matter. That being the case, and as on that evidence the Crown do not ask for a verdict of guilty on those two first counts, the essence of which is the proof that the prisoner was a British subject, coupled with the further proof, of course, that being a British subject he had adhered to the King's enemies—as the prosecution recognize that they have failed to prove one of the essential elements necessary to a conviction under those counts, your duty is naturally to return a verdict of not guilty on those two counts, because the prosecution agree that there is no real proper evidence on which you could possibly come to any such conclusion. You are sworn to decide this case on the evidence and on the evidence alone.

Members of the jury, with those observations I pass to count 3, which has been so much discussed yesterday and to-day. That count charges high treason by adhering to the King's enemies elsewhere than in the King's realm, to wit, in the German realm, contrary to the Treason Act, 1351, and the particulars of the offence are that William Joyce on 18th September, 1939, and on divers other days thereafter and between that day and 2nd July, 1940, being then, to wit, on the several days, a person owing allegiance to our lord the King and whilst on the several days an open and public war was being prosecuted and carried on by the German realm and its subjects against our lord the King and his subjects, then and on the said several days traitorously contriving and intending to aid and assist the said enemies of our lord the King against our lord the King and his subjects did traitorously adhere to and aid and comfort the said enemies in parts beyond the seas without the realm of England, to wit, in the realm of Germany, by broadcasting to the subjects of our lord the King propaganda on behalf of the said enemies of our lord the King.

Now, members of the jury, under that count there are two matters which have got to be established by the prosecution and

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established by them beyond all reasonable doubt, and so far as matters of fact are concerned you have to deal with them and there is a direction that I have to give you; all matters of law, pure matters of law, are for me and for me alone; that is my responsibility. You have to take the direction in law from me, but all questions of fact are for you and for you alone, and all the essential elements necessary to constitute the offence have got to be proved by the prosecution beyond all reasonable doubt before you can convict the accused man. The first thing that the prosecution have got to establish is that at the material time the prisoner, William Joyce, was a person owing allegiance to our lord the King. Now, in my view, I have already intimated, after hearing the very learned and very helpful submissions that have been made by both the learned counsel in this case; the conclusion that I have reached as a matter of law is, if you, as a jury, accept the facts which have been proved in this case without contradiction—of course, you are entitled to disbelieve anything if you wish—if you accept the facts which have been proved and not denied in this case, then at the time in question, as a matter of law, this man, William Joyce, did owe allegiance to our lord the King, notwithstanding the fact that he was not a British subject at the material time.

Now, members of the jury, although that is a matter for me entirely and not for you, I think it will be convenient if I explain quite shortly the reasons for which I have arrived at that view, partly for your assistance and by way of explanation, and perhaps for consideration hereafter in the event of this case possibly going to a higher Court. The offence of treason is hundreds and hundreds of years old; the very Act under which he is being prosecuted is an Act nearly 600 years old—1351. It has been amended from time to time, but that Act was only passed for the purpose of clarifying or endeavouring to clarify the then existing law, and it has been found to serve its purpose, so far as I know, for 600 years without difficulty, and certainly without recent amendment so far as the essentials of the offence are concerned. But facts and circumstances change as time advances; as travel becomes easier, as facilities for travel are extended and so forth, the world in which we live is very different from the world of 1350 or thereabouts, and it is necessary to apply the law, which never changes, unless

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it is amended by Parliament, to the facts as they exist at the time with which one is dealing.

Members of the jury, a man may owe allegiance in two different ways: a British subject owes what is called a natural allegiance, he carries it with him wherever he goes; he cannot get rid of it, he cannot cast it off, and if he adheres to the King's enemies anywhere he is guilty of treason. A man who is not a British subject only owes allegiance as a result of having come within the King's realm and having thereby put himself under the protection of the King, as it is called. In these days that may mean the protection of a democratic form of government and the laws of the country. In primitive times it may have rested more on the executive protection that he received from the King himself or his immediate servants, but that appears to have been the basis of the allegiance which is owed by persons who are not British subjects by birth, and there can be no doubt or question but that an alien, an alien friend, owes allegiance to the Crown of this country so long as he is resident within the realm. The question which has arisen in this case is whether or not an alien who has undoubtedly—undoubtedly—put himself under the protection and thereby acquired a status under which he owes allegiance to the Crown can divest himself of that allegiance by setting foot off the shores of this country, although in so doing he may still be availing himself of the protection which is afforded to British subjects by the issue of a passport, what has been picturesquely described by the learned Attorney-General as leaving this country wrapped up in the Union Jack. That is the issue in this case, and the fact that there has never been a case precisely like it is not conclusive one way or another. It is necessary to consider what is the fundamental law on the subject and then to apply that to the facts of a particular case.

Now, in coming to the conclusion I have, let me say at once there is one phrase used by the learned Attorney-General which is rather picturesque perhaps, but which I think may be misleading and which I do not quite agree with, and that is where he says that a man who leaves the country in this way armed with a British passport has thereby clothed himself with British citizenship. You cannot do that; you are either a British citizen or you are not a British citizen; you cannot become a British citizen

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by saying you are a British citizen. You cannot become a British citizen by carrying a British passport. There is no such thing known to our law as crime by estoppel; you cannot become a traitor by estoppel, as it is called. None the less, I think it is the law that if a man who owes allegiance by having made his home here, having come to live here permanently, thereby acquiring allegiance as he undoubtedly does, then steps out of this realm armed with the protection which is normally afforded to a British subject—improperly obtained, maybe, but none the less obtained—if he leaves this realm, as the Attorney-General called it, wrapped up in the Union Jack, that is to say, using and availing himself of the protection of the Crown in an executive capacity which covers him while he is abroad, he does not thereby divest himself of the allegiance which he already owes.

On 24th August, 1939, beyond a shadow of doubt this man, who had come to Ireland with his parents as a boy when he was three years old, according to the evidence called by the defence, had lived in this country, according to the evidence of the police officer Hunt, for a number of years. He had taken active part in the political life of this country, which he was perfectly entitled to do, and then in 1933 he made application for a passport to enable him to leave this country if he so desired. We do not know whether he actually availed himself of that passport, but he got a passport and in the application, dated 4th July, 1933, he described himself as William Joyce, gave his address, said, "Am a British subject by birth," he gave his place of birth as Galway, which we now know was not accurate, and said that he required a passport for travelling to Belgium, France, Germany, Switzerland, Italy, and Austria for the purpose of holiday touring, and according to the statement on that passport in the official part it says: "Issued British Empire, Europe, &c., 5th July, 1933." So he appears to have obtained a passport available in the British Empire, Europe, &c. As I say, whether he made use of that passport by going abroad then or not we do not know, but by 1938 the five years' period had expired and on 24th September, 1938, which was a significant date in the world's history, he made an application for the renewal of that passport. The application for renewal does not have to state, apparently, the purpose for which it is required, as the original one did;

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the application was made for the renewal of one year and the official form shows "Renewed one period to the 1st July, 1939." Again we do not know whether that passport was used or whether it was not. The application for renewal was made in 1938.

Then on 24th August, 1939, which was also approaching a vital date in world history, an application was made for renewal, and on both those applications the prisoner described himself as a British subject by birth and we know that a passport was accordingly granted to him. The passport appears to have received sanction on 24th August, 1939, the day the application was made. Precisely when it was issued we do not know and we have not seen the passport, because that, of course, would be in his possession; notice to produce has been given, but it is not forthcoming. But we do know what is the form of passports in existence at that time. The formal part of the document is in these words: "We, Sir John Allsebrook Simon, a Member of his Majesty's most Honourable Privy Council"—then setting out his other orders and titles—"His Majesty's Principal Secretary of State for Foreign Affairs request and require in the name of His Majesty all those whom it may concern to allow the bearer to pass freely without let or hindrance, and to afford him every assistance and protection of which he may stand in need." Members of the jury, it is a fact that by the comity of nations people armed with passports of that kind, by the courtesy, it may be, of foreign countries, receive the consideration and protection and so forth which is due to a subject of the state which has issued a passport of that kind. It is true to say that the protection afforded thereby is of an executive kind, I think; it is a protection not giving him the protection of any law while he is abroad, but giving him the protection which the executive of this country will give by diplomatic action, or, in extreme cases, by going to war, because the treatment of a subject of one nation by another has before now led to war. That is the kind of protection which is afforded by a passport.

The next that we know of the prisoner, William Joyce, is that, according to the work pass, Exhibit No. 19, which he admitted after arrest to be one of his possessions—that is a document which you will see when you retire and you will have to deal with it in another connexion; I am only dealing with the law of allegiance at the moment—that is a document which shows (and it bears

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his signature on the first page) under the heading of " Previous occupations of long duration, No. 4: Editor and speaker, German Radio Company, Berlin-Charlottenburg, 11th September, 1939," and on p. 6 under the column " Name and place of concern: German Radio Company, Berlin-Charlottenburg. Date of beginning employment 18th September, 1939. Nature of employment: Announcer of English news." That, according to the document which he admitted to be his property, which is called a work book and which bears his signature, appears to show that that was the capacity in which he was employed on 18th September, 1939. So between 24th August and 18th September, 1939, armed with a British passport, he had somehow or another entered Germany.

Now, members of the jury, thereafter up until 2nd July, 1940, when his passport ran out, he remained under such protection as that passport could afford him during his stay in Europe. The application for the passport had not been confined to Germany; so he was in possession of a passport which might, if he had so wished, been of much more use to him perhaps, at any rate if he had been a loyal subject, in some neutral country than in Germany. I mention that only because it has been said: What kind of protection would an English passport be to a man in Germany after the war had broken out? Well, there may be a great deal of force in that observation, though even then there are rights which a belligerent nation is, by international law, bound to extend to the civilian subjects of the country with which it is at war. But dealing with the protection which is, in fact, afforded by a passport of this nature, I merely mention the fact that the passport—at any rate the application, and apparently the grant followed the application—in fact was a renewal of the passport which had been granted in 1933 and was available for the British Empire, Europe, &c.; so he was not confined to Germany, of course, and was afforded protection throughout Europe, a protection which might have been a very real protection in some other country than Germany you may think.

Now, members of the jury, those are the facts upon which I have to decide whether or not this man at the material time owed allegiance to the British Crown, or rather, I prefer to put it, whether anything had happened to cause the allegiance which he undoubtedly owed on 24th August, 1939, and had owed for

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years and years—whether anything had happened thereafter to bring that allegiance to an end.

Now, members of the jury, many, many years ago the judges who had to decide these matters in days when treason trials were much more frequent than they are now—there are numerous kinds of different treason—came to this conclusion (and I am reading from a book of great authority, East's Pleas of the Crown, in which it records what the decision was the judges came to): "Local allegiance is that which is due from a foreigner during his residence here and is founded on the protection he enjoys for his own person, his family and effects during the time of that residence. This allegiance ceases whenever he withdraws with his family and effects; for his temporary protection being then at an end, the duty arising from it also determines. But if he only go abroad himself, leaving his family and effects here under the same protection, the duty still continues, and if he commit treason he may be punished as a traitor: and this whether his own sovereign be at enmity or at peace with ours. Therefore if he aid even his own countrymen in acts or purposes of hostility, while he is resident here, he may be dealt with in the same manner. The above rule was laid down by all the judges assembled at the Queen's command on the 12th January, 1707." That was apparently what the judges resolved, and that would be very considerable authority upon which I might act, but the matter does not rest there, because that decision is recorded in this ancient book of great authority and, so far as I am aware, the accuracy of it has not been questioned. That gives added authority, if that were necessary, to the resolution arrived at by the judges. It is perfectly true that in the cases that have been quoted to me, cases dealing with facts very different from the present, other definitions of treason have been given rather different from that and emphasizing the essential of residence, but so far as I am aware no case has been cited to me, and no author, at any rate, has ever ventured to say that the law, in the terms as laid down there in East's Pleas of the Crowns, is wrong.

The same resolution really is referred to in another book of great authority, Foster's Crown Law, and there, reading from p. 185, sec. 2: "An alien whose sovereign is in amity with the Crown of England, residing here and receiving the protection

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of the law, oweth a local allegiance to the Crown during the time of his residence and if during that time he committeth an offence which in the case of a natural born subject would amount to treason he may be dealt with as a traitor. For his person and personal estate are as much under the protection of the law as the natural born subject's and if he is injured in either he hath the same remedy at law for such injury." Then sec. 3: "An alien whose sovereign is at enmity with us, living here under the King's protection, and committing offences amounting to treason may likewise be dealt with as a traitor. For he oweth a temporary local allegiance founded on that share of protection he receiveth." Sec. 4—and this is the material section—says: "And if such alien seeking the protection of the Crown and having a family and effects here should, during a war with his native country, go thither and there adhere to the King's enemies for purposes of hostility, he might be dealt with as a traitor. For he came and settled here under the protection of the Crown; and though his person was removed for a time his effects and family continued still under the same protection. This rule was laid down by all the judges assembled at the Queen's command, January the 12th, 1707."

Now, members of the jury, the force of that decision twice reported in books of authority is this, that if correct it shows at any rate that the physical presence of an alien in this country is not an essential ingredient in the offence of treason, because according to that he can be convicted of treason if he adheres to the enemy, although he has left the realm, if his family and effects and so forth are receiving protection. If that is right, it shows at any rate that the submission of learned counsel for the defence is not right to this extent, when he submits that this Court can, under no circumstances, ever have any jurisdiction over a foreigner once he has left the shores of this country, and it seems to me to indicate that the real basis of this law of treason is founded upon the protection which a man is receiving from the Crown to which he has acquired allegiance by residence. I see no reason whatever why that allegiance and that protection should not cover him when he is away from this country carrying the King's passport, just as much as when he has left his ox and his ass behind him in this country. Do not let me be misunder-



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stood. There is no evidence whatever in this case that this man left his family or effects in this country. For a man of thirty-three to go abroad and leave his father and mother and brothers and sisters is not the kind of leaving a family behind which is referred to in those cases. I merely refer to those cases for the purpose of showing that, in my view, it is the protection which is one of the essentials to bring about—I will not say to bring about—but at any rate to preserve the allegiance which has already become due from the foreigner by his adopting this country as his home and his residence.

Now, members of the jury, at some length I have dealt with this matter as I thought it right for your proper understanding. I thought after the very able addresses that I heard on this subject from the learned counsel that it was only due to them that I should make known my views on this matter and the reasoning by which I have arrived at those views. I pass over the subsequent authorities and cases which have been cited which repeat and deal with the law, because, in my view, they are all dealing with different facts and different circumstances. Nothing is more misleading than to take an extract from a case dealing with certain facts and treat it as of universal application. You have got to find out what the principle of the thing is and then apply it to the facts with which you are dealing, and, in my view, if these statements of the law that I have referred to in East's Pleas of the Crown and Foster's Crown Law are right, I do not think that I am in any way extending the principles of the law in saying that a man who in this way adopts and uses the protection of the sovereign to whom he has already acquired an allegiance remains under that allegiance and is guilty of treason if he adheres to the King's enemies.

I accordingly pass from that aspect of the matter. That is my responsibility. I may be wrong; if I am I can be corrected. My duty is to tell you what I believe to be the law on the subject and that you have to accept from me, provided you believe those facts about the passport, going abroad, and so forth. If you do not believe that, you are entitled to reject it and say so, because you are not bound to believe everything, but if you accept the uncontradicted evidence that has been given, then, in my view,

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that shows that this man at the material time owed allegiance to the British Crown.

Now, if that is so, then the matter passes into your hands, and from now onwards I am dealing with matters which are your concern, and your concern alone, with which I have got nothing to do; they are matters of fact, and the onus of proving those facts is upon the prosecution from first to last and it never shifts. Now what have they got to prove? They have got to prove that during this period, as I have already indicated, this man adhered to the King's enemies without the realm, namely, in Germany, traitorously adhered to and aided and comforted the said enemies in parts beyond the seas by broadcasting to the subjects of our lord the King propaganda on behalf of the said enemies of our lord the King. Members of the jury, adhering to the King's enemies and aiding and comforting them means nothing more than actively throwing in your lot with the enemy, actively assisting the enemy. Put a little more elaborately, in a famous case after the last war the jury were directed as follows (it was dealing with a British subject and, therefore, I am altering the words "British subject"): "If a subject owing allegiance does an act which strengthens or tends to strengthen the enemies of the King in the conduct of a war against the King, that is in law the giving of aid and comfort to the King's enemies. Again if a British subject commits an act which weakens or tends to weaken the powers of the King and the country to resist or to attack the enemies of the King and the country, that is in law the giving of aid and comfort to the King's enemies." All I need add to that is that it must be done with the intention of aiding the King's enemies as well. A man must not only aid and comfort the King's enemies, but he must do so with that intent and he must do so voluntarily. It does not mean if he is compelled by the Germans to do so by *force majeure*, but if he voluntarily adheres to the King's enemies or actively assists them with intent to assist them in a war against this country, that is adhering to the King's enemies and giving them aid and comfort.

Members of the jury, what are the facts about that? Perhaps not so full as one could wish covering the material part of the case, because in considering these matters you will confine yourselves, and be careful to confine yourselves, to the dates set out

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in this indictment, namely, between 18th September, 1939, and 2nd July, 1940. Pay no attention whatever, put away from your minds altogether, the evidence which has been given with regard to activities alleged against him under the other two counts for this reason. This man was, at any rate up to the time when he may have purported to become a German citizen, an American citizen, although I have held that so long as he was under the protection of a passport he owed allegiance to the Crown; directly that protection ceased, ceased for good and all and he did not seek to renew it, he, as an American citizen, by the law of this country, at any rate by the law of treason, was entitled, as far as I know, to change his nationality and become a German with protection from Germany. Therefore do not put against him in considering his activities in this period when he held this passport anything he may have done thereafter, which, being an American citizen, he may have been entitled to do, and for the purposes of this case it is best to assume he was entitled to do.

What is the evidence with regard to what he did during this material time? As I have said, it is perhaps to be regretted that you may not have had a little fuller information with regard to this than you have got, and I say that merely for this reason, that while the police officer who gave evidence on this matter, Inspector Hunt, told you of one broadcast in which he recognized this man's voice and said there were a number of others he heard at Dover or Folkestone or wherever he was down there during the late autumn of 1939, one would have thought and hoped that it would have been possible perhaps to have known what was the contents of some of those other broadcasts, even if he did not remember them. But there it is; you have got to do the best you can on the material that has been offered to you. Now what did this man Inspector Hunt say? He was a detective inspector, and he said that he had known the prisoner since 1934; he had not spoken to him, but he had listened to him making political speeches from time to time and he said he knew his voice. He said that on 3rd September, 1939, he was stationed at Folkestone and he was there till 10th December, 1939. He said: "I then returned to London. While at Folkestone I listened to a broadcast. I recognized the voice immediately as the prisoner's. It was during the first month of the war. He said Dover and Folkestone



*Photo. by J. Russell & Sons*

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had been destroyed. There had not been any enemy activity at Folkestone at that time. I heard him again on the wireless on sundry occasions," and then after he returned to London he took notes of it. Now that is the evidence of Inspector Hunt. It is for you to say entirely whether you accept it and believe it and rely upon it as fair identification of the voice of this prisoner. Those are all matters entirely for you, but in coming to your decision you are entitled, I think, to have regard to that work pass that I have already referred to, Exhibit No. 19, the ownership of which he admitted, in which you will remember it was shown on p. 6 that on 18th September, 1939, he was employed as an announcer of English news by the German Radio Company, Berlin-Charlottenburg 9.

Then, members of the jury, after this he had been apprehended in Germany in circumstances which you remember and which I need not refer to. He made a statement which is Exhibit No. 12. [His lordship read through the statement made to Captain Scarden at Lueneberg, see p. 72.]

I think that is the whole of the very short material upon which you have to come to the conclusion as to whether or not it has been proved to your satisfaction, beyond all reasonable doubt, that during the period in question this man adhered to the King's enemies, comforted and aided them with intent to assist them, and that he did so voluntarily. These are the matters which you have to consider. You have heard what has been said to you by learned counsel about these broadcasts. Do you think it is essential for propaganda that it should either be false or true? Propaganda may be true and some may be false, may it not? Does it matter whether it is false or true if it is broadcast over the enemy radio system? What is the purpose and object of a broadcast from Germany in English? What is the purpose of it—to assist the Germans or to assist the English? These are all matters for your judgment and you will come to your conclusion thereon as you think right and proper.

Now, members of the jury, there are only one or two other observations that I want to make before parting with this case, and one of them is just this, one matter that I think I had better just clear right out of the way, because it has got nothing whatever to do with this case. When this man was put up to plead on

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the first day of his trial he pleaded not guilty to this indictment, and then the learned Clerk, following the practice of this Court, said: "There is a further indictment against you." At that stage I stopped him because I think it is better to deal with one thing at a time. The jury are only concerned with the particular charge or indictment against the man; he may even be prejudiced if it were known that there was some other indictment against him. In this case there can be no possible prejudice against him by reason of the other charge, and I am going to tell you what it is so as to remove any idea you may get in your heads that there is any mystery or secrecy about the matter at all. He is charged in a second indictment with an offence under the Treachery Act, as it is called, of 1940. It is only an alternative way; all the facts relied upon are exactly the same as in this case. It is nothing new, no new crime or fact; it is merely an alternative way of putting this matter, which may or may not have to be gone into according to the result of this case. I am only telling you that; it is no concern of yours whatever. I am only telling it to you so as to remove any false idea you may have in your heads that there was any secrecy or mystery about this second indictment.

You have heard the whole of this case. You have had the assistance, if I may say so, of the admirable addresses you have listened to by the learned Attorney-General, who has put the matter so fully before you. You have also had, and I have had, what I agree entirely to have been the distinguished assistance of Mr. Slade in this matter. Now, members of the jury, Mr. Slade may be, for all I know, having a very uncongenial task in this case, but how can justice be administered if people charged with these offences are not defended and are not defended by able and responsible counsel? How can you get at the truth of any matter unless members of the Bar, acting in accordance with the highest traditions of the Bar, put their services at the disposal of men of all kinds and of all races, whatever the charge may be that is brought against them? Members of the jury, some people sometimes talk about the law's delays and clamour for what is called swift justice. This case was postponed from the July sessions to the September sessions. Supposing it had not been, what would have been the result? Look at this mass of evidence that has been

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obtained from America and elsewhere with the assistance of those legal gentlemen who have put themselves at the service of this man in order that you, as a British jury, may know the real and true facts before you arrive at your verdict. If there had not been, if I may say so, this proper adjournment of this trial it would have been heard on incomplete evidence, and a jury might have very likely come to the conclusion that this man was a British subject when, in fact, he was nothing of the kind, because there had not been sufficient time for the quiet and unhurried collection of the material upon which a British jury should be directed to try a case of this kind or of any kind.

Members of the jury, those first two counts are of very, very grave importance, and on those counts the evidence has come out favourable to the defendant and he is saved from those two counts, which may or may not in history be a matter of vital importance. I mention that for the purpose of explaining to you how necessary it is that these matters should be considered on the evidence and that you should have the proper evidence. People should not clamour merely for speed at all costs.

Now, as you have been very rightly told and reminded—you have been told already once—William Joyce would play a very small part in the world's history, and our demeanour, the way we comport ourselves in this case, is of greater importance to us than is William Joyce—observations that are very true, but I only add this, that it is not only the way we outwardly comport ourselves in the proceedings in this Court, but it applies, and applies with even greater force, to the way you comport yourselves when you retire to consider your verdict, to be sure that you arrive at what you honestly believe to be a true verdict according to the facts, regardless of opinion or anything of that kind, and it applies to me in the very responsible decisions of law that I have had to come to in this case.

Members of the jury, will you kindly retire now, and with regard to counts 1 and 2 I think, no doubt, having regard to the attitude taken by the learned Attorney-General, you will return a verdict of not guilty. On count 3 you will ask yourselves whether or not the case has been proved to your satisfaction beyond all reasonable doubt. If it has you will say he is guilty; if it has not, and you are left in any kind of doubt about it, you

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will say he is not guilty. Will you kindly retire and let me know how you find?

(The jury retired to consider their verdict at 3.37 and returned into Court at 4 o'clock.)

The CLERK OF THE COURT—Members of the jury, are you agreed upon your verdict?

The FOREMAN OF THE JURY—We are.

The CLERK OF THE COURT—Do you find the prisoner, William Joyce, guilty or not guilty on the first two counts of this indictment?

The FOREMAN OF THE JURY—Not guilty, my lord.

The CLERK OF THE COURT—Do you find him guilty or not guilty on the third count of high treason?

The FOREMAN OF THE JURY—Guilty.

The CLERK OF THE COURT—You find him guilty on the third count of high treason and not guilty on the first and second counts, and that is the verdict of you all?

The FOREMAN OF THE JURY—That is.

The CLERK OF THE COURT—Prisoner at the Bar, you stand convicted of high treason. Have you anything to say why the Court should not give you judgment according to law?

(Proclamation.)

### Sentence.

**Mr. Justice Tucker**—William Joyce, the sentence of the Court upon you is, that you be taken from this place to a lawful prison and thence to a place of execution, and that you be there hanged by the neck until you be dead; and that your body be afterwards buried within the precincts of the prison in which you shall have been confined before your execution. And may the Lord have mercy on your soul.



# List of Exhibits.

## APPENDIX I.

### LIST OF EXHIBITS.

1. Letter from Joyce to Passport Office, dated 4th July, 1933, enclosing application for passport.
2. Application for renewal, 24th September, 1938.
3. Application for renewal, 24th August, 1939.
4. Shorthand notes taken by Inspector Hunt.
5. Transcript of notes taken by Inspector Hunt of Joyce's broadcast on 30th January, 1943.
6. Transcript of notes taken of Joyce's broadcast on 8th April, 1943.
7. Transcript of notes taken of Joyce's broadcast on 12th July, 1943.
8. Transcript of notes taken of Joyce's broadcast on 30th August, 1944.
9. German State passport in name of "Wilhelm Hansen."
- 9A. Translation of Exhibit No. 9.
10. German military passport (Wehrpass) in name of Joyce.
- 10A. Translation of Exhibit No. 10.
11. Receipt for 200 marks.
- 11A. Translation of Exhibit No. 11.
12. Statement of William Joyce taken after arrest on 31st May, 1945.
13. New York birth certificate of Joyce.
14. Letter to Joyce from Winkelnkemper, dated 26th June, 1942.
- 14A. Translation of Exhibit No. 14.
15. Contract appointing Joyce Head Commentator in English Editorial Department of German Broadcasting Stations, dated 3rd July, 1942.
- 15A. Translation of Exhibit No. 15.
16. Award to Joyce of Cross of War Merit (signed A. Hitler).
- 16A. Translation of Exhibit No. 16.
17. Volkssturm Card.
- 17A. Translation of Exhibit No. 17.
18. Certificate for Booking Office.
- 18A. Translation of Exhibit No. 18.
19. Arbeitsbuch in the name of William Joyce.
- 19A. Translation of Exhibit No. 19.
20. Letter from Joyce to Military Education Committee, dated 3rd August, 1922.
21. Letter from Joyce, dated 9th August, 1922, relative to his birth.
22. Enrolment Form for University of London O.T.C. signed by Joyce 21st October, 1922.
23. Receipt for Certificate A signed by Joyce.
24. Re-engagement contract in O.T.C., dated 22nd July, 1924.
25. Re-engagement contract in O.T.C., dated 6th October, 1925.
26. Letter to Joyce's father inquiring as to his nationality, dated 23rd October, 1922.
27. Reply to Exhibit No. 26 by M. F. Joyce.

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28. Specimen passport.
29. American Naturalization Record consisting of (a) certified photostatic copy of Declaration of Intention; (b) certified photostatic copy of Petition for Naturalization. Both signed by Michael Joyce.
30. Certified copy of marriage certificate of Joyce's parents.
31. Copy of marriage certificate of Joyce's parents found by Quentin Joyce amongst his father's papers.
32. Tenancy Agreement, dated 10th July, 1910, signed "Michael F. Joyce."
33. Will of Michael Joyce, dated 23rd April, 1917.
34. Cheque signed "M. F. Joyce."
35. L.C.C. Education form signed "M. F. Joyce."
36. Letter beginning "Dear Quentin" and signed "Father."
- 37 and 38. Two postcards in handwriting of prisoner's mother.
39. Correspondence, Records, Reports, and Aliens' Register relative to registration of Michael Joyce and Gertrude Emily Joyce as aliens in Great Britain in 1917.
40. Enlargements of handwriting of Michael Joyce.

## APPENDIX II.

### THE TREASON ACT, 1945.

(8 & 9 Geo. 6 Ch. 44).

An Act to assimilate the procedure in all cases of treason and misprision of treason to the procedure in cases of murder. [15th June, 1945.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1. The Treason Act, 1800 (which assimilates the procedure in certain cases of treason and misprision of treason to the procedure in cases of murder) shall apply in all cases of treason and misprision of treason whether alleged to have been committed before or after the passing of this Act.

2. (1) The enactments set out in the Schedule to this Act are hereby repealed in so far as they extend to matters of procedure in cases of treason or misprision of treason, that is to say, to the extent specified in the third column of that Schedule.

(2) For the removal of doubt it is hereby declared that nothing in the Treason Act, 1800, shall be deemed to have repealed any of the provisions of the Treason Act, 1695, or of the Treason Act, 1708, except the provisions of those Acts specified in the third column of the Schedule to this Act.

3. (1) This Act may be cited as the Treason Act, 1945.

(2) The Treason Act, 1800, as applied by this Act, shall extend to Northern Ireland.

(3) For the purposes of section six of the Government of Ireland Act, 1920, this Act shall be deemed to be an Act passed before the appointed day.

# Treason Act, 1945.

## SCHEDULE.

### ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
28 Hen. 8. c. 7 (I).	An Act of slander.	So much of the Act as extends to Northern Ireland sec. 3 of the Statute 26 Hen. 8. c. 13.
5 & 6 Edw. 6. c. 11.	An Act for the punishment of diverse treasons.	Sec. 4.
7 & 8 Will. 3. c. 3.	Treason Act, 1695.	The whole Act, except secs. 5 and 6.
2 Anne c. 5 (I).	An Act to make it high treason in this kingdom to impeach the succession to the Crown, as limited by several Acts of Parliament.	Sec. 2.
7 Anne c. 21.	Treason Act, 1708.	Secs. 2, 4, 9 and 14.
19 Geo. 2. c. 9.	Jurors (Scotland) Act, 1745.	The whole Act.
5 Geo. 3. c. 21 (I).	An Act for the better regulating of trials in cases of high treason under the Statute of 25 Edw. 3.	The whole Act.
6 Geo. 3. c. 53.	Treason Act, 1766.	The whole Act.
39 & 40 Geo. 3. c. 93.	Treason Act, 1800.	In the title, the words "in certain cases"; the preamble; and the words "in compassing or imagining the death of the King"; the words from "where the overt act" to "bodily harm"; and the words from "and none of the provisions" to the end of the Act.
1 <sup>st</sup> & 2 Geo. 4. c. 24.	Treason (Ireland) Act, 1821.	Sec. 2.
6 Geo. 4. c. 22.	Juries (Scotland) Act, 1825.	Sec. 21.
6 Geo. 4. c. 50.	Juries Act, 1825.	Sec. 21.
5 & 6 Vict. c. 51.	Treason Act, 1842.	Sec. 1.
17 & 18 Vict. c. 26.	Treason (Ireland) Act, 1854.	The whole Act.
23 & 24 Geo. 5. c. 36.	Administration of Justice (Miscellaneous Provisions) Act, 1933.	In the First Schedule, the entry relating to the Statute 35 Hen. 8. c. 2.

# William Joyce.

## APPENDIX III.

### REX v. JOYCE.

COURT OF CRIMINAL APPEAL, 30-31st OCTOBER, 1st NOVEMBER, 1945,  
BEFORE

The Lord Chief Justice (Viscount Caldecote), Mr. Justice Humphreys, and Mr. Justice Lynskey.

Mr. G. O. Slade, K.C., Mr. Derek Curtis-Bennett, K.C., and Mr. J. Burge appeared for the Appellant; The Attorney-General (Sir Hartley Shawcross, K.C., M.P.), Mr. L. A. Byrne, and Mr. Gerald Howard for the Crown.

#### GROUND'S OF APPEAL.

(1) The Court wrongly assumed jurisdiction to try an alien for an offence against British Law committed in a foreign country.

(2) The learned judge was wrong in law in holding, and misdirected the jury in directing them, that the Appellant owed allegiance to His Majesty the King during the period from 18th September, 1939, to 2nd July, 1940.

(3) There was no evidence that the renewal of the Appellant's passport afforded him, or was capable of affording him, any protection, or that the Appellant ever availed himself, or had any intention of availing himself, of any such protection.

(4) If (contrary to the Appellant's contention) there were any such evidence, the issue was one for the jury and the learned judge failed to direct them thereon.

#### Argument for Appellant.

Mr. Slade, in opening the appeal, recalled that the indictment had consisted of three counts, of which the first two were amended at the trial and were not proceeded with. The third count, which was not amended, and on which Joyce was convicted, charged that, while he was a person owing allegiance to the Crown, he was guilty of high treason by adhering to the King's enemies elsewhere than in the King's realm between 18th September, 1939, and 2nd July, 1940, contrary to the Treason Act, 1351. The first two counts were not proceeded with because they alleged that Joyce at the time of the offences charged was a British subject. After evidence on the question of nationality had been given Mr. Justice Tucker said that the evidence was overwhelming that Joyce was not a British subject, and the Attorney-General said that he would not press the point. That left count three as the only effective matter to be dealt with at the trial.

The only evidence to which it was necessary to refer the Court was that in connection with the obtaining by Joyce of a British passport on 4th July, 1933. In making his application for the passport Joyce stated that he was a British subject by birth and had not lost the status so acquired. A passport was granted to him on 5th July, 1933, for a period

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of five years. In July, 1938, he applied for its renewal for one year, again stating that he was a British subject by birth and that he had not lost the status so acquired. The passport was again renewed on 1st July, 1939, for one year. 18th September, 1939, was the date on which it was proved that Joyce was employed by the German Broadcasting Corporation. Mr. Justice Tucker directed the jury that on 24th August, 1939, Joyce, beyond all shadow of doubt, owed allegiance to this country, and that on the evidence, if the jury accepted it, nothing happened at the material time thereafter to put an end to the allegiance which he then owed.

He (counsel) submitted that one matter of the utmost materiality happened, and that was that Joyce left this country. They knew that he was in England on 24th August, 1939, and that he was in Germany on 18th September, 1939, and the whole of the indictment charged treason outside the realm. Mr. Justice Tucker ruled that Joyce was a person owing allegiance to the King, and that he did not divest himself of that allegiance by leaving the country. He (counsel) submitted that a man could not divest himself of allegiance; it was the law which did so. There could be no such thing as crime by estoppel. The underlying ground of the conviction clearly was that because a man had falsely represented himself as a British subject and had thereby obtained the *de facto* protection of this country he continued to owe allegiance to it.

Mr. Slade said that his first point was that the local allegiance due from an alien only continued so long as he resided within the King's Dominions. There were two subsidiary points under that heading. The phrase used in *Calvin's case* ((1608) 7 Coke's Rep. 1A) and in other cases was that "protection draws allegiance just as allegiance draws protection." In his submission the protection referred to in that maxim was the protection of our laws, and was co-extensive only with our legal jurisdiction. The form of the old indictment for treason was "against the peace of our Sovereign Lord the King his Crown and dignity." The King's peace only ran where the King's laws ran, and that was the protection referred to in the maxim which he had quoted. The second sub-proposition of his first submission was that protection meant the right to protection, and not merely the *de facto* enjoyment of it. A person with a forged passport might, until the fraud was discovered, get *de facto* protection.

His second main submission was that neither the Central Criminal Court nor any other Court in this country had jurisdiction to try the offence charged in the present case, because on the facts proved it was an offence alleged to have been committed by an alien abroad. So soon as it transpired that the appellant was an alien all jurisdiction to try him in the Courts of this country ceased. With the sole exception of piracy, which by the *jus gentium* was justiciable anywhere, there had never been a case in the criminal law of this country in which its Courts had assumed jurisdiction to try an alien for an offence committed abroad.

The effect of holding that Joyce owed allegiance to the Crown in the circumstances would be that the mere possession of a British passport without any evidence as to the holder's acts or intentions, whatever he

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did and however he acted, placed him under a duty of allegiance to this country until the passport expired.

Counsel then referred to *Calvin's case (supra)*, which he described as the leading case on the kinds of allegiance, and said that that case showed (1) that, to owe allegiance, an alien must be within the King's dominions; and (2) that he only had the King's protection so long as he was within those dominions. The allegiance in question was the local allegiance due from an alien, and it was only due from an alien so long as he was within the King's dominions, because the counterpart of that allegiance was protection, and protection only subsisted where the King's peace was in force; that was, within his dominions.

Counsel next referred to the following passage in Blackstone's Commentaries (book 1, c. 10, p. 369): "Local allegiance is such as is due from an alien, or stranger born, for so long time as he continues within the King's dominion and protection; and it ceases the instant such stranger transfers himself from this kingdom to another. Natural allegiance is therefore perpetual, and local temporary only. . . . As the prince affords his protection to an alien only during his residence in this realm, the allegiance of an alien is confined (in point of time) to the duration of such his residence, and (in point of locality) to the dominions of the British Empire."

Counsel contended that it was necessary to distinguish between two kinds of protection, protection in fact and the protection of the King's law. It was the latter which went with allegiance. Natural allegiance was due to the King from a British subject because the King extended the protection of his law to his subjects wherever they might be, just as he could legislate for them wherever they might be. It was in accordance with the comity of nations that the Sovereign should legislate for his subjects wherever they might be, and his protection extended correspondingly. But it would be contrary to the comity of nations for the King to legislate for aliens outside his dominions, and an alien lost the protection of the King's law when he left this country because there was no jurisdiction here in respect of his actions when he was abroad.

Mr. Slade submitted that that statement of the law was irreconcilable with Mr. Justice Tucker's ruling, or with the resolution of her Majesty's Judges passed in 1707.

The Lord Chief Justice—If you are right on this point an alien can go backwards and forwards across the Channel owing allegiance when he arrives at Dover and no longer owing it when he lands at Calais?

Mr. Slade—Yes.

Mr. Justice Humphreys—And although he is resident in this country?

Mr. Slade submitted that such a person would not be resident in this country when not physically there. Local allegiance ceased the moment the alien passed outside the three-mile limit of territorial waters.

The Lord Chief Justice—Would such a man be free to plot and plan against this country abroad and then to return here on the following day?

Mr. Slade—It has been done hundreds of times before. This country

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has a complete right to say to an alien, "you may or may not return here."

Mr. Justice Humphreys expressed doubt whether such a right existed as against any person holding a British passport.

Mr. Slade next read the following passage in Foster's Crown Cases 3rd edn. (1809) at p. 183): "Local allegiance is founded in the protection a foreigner enjoyeth for his person, his family, or his effects, during his residence here; and it ceaseth whenever he withdraweth with his family and effects." Counsel submitted that that was wrong, and that the continued residence in the King's dominions of an alien's family and effects was immaterial. In no circumstances could the Courts of this country have jurisdiction to try an alien for his acts committed outside the country. The foundation of the rule given in Foster was the leaving by the alien of his family and effects in this country, but, as Mr. Justice Tucker had pointed out, there was no evidence that Joyce had done that.

At p. 165 of Foster's Crown Cases the following passage appeared: "And if such alien, seeking the protection of the Crown, and having a family and effects here, should, during a war with his native country, go thither, and there adhere to the King's enemies for purposes of hostility, he might be dealt with as a traitor. For he came and settled here under the protection of the Crown; and, though his person was removed for a time, his effects and family continued still under the same protection. This rule was laid down by all the judges assembled at the Queen's command, 12th January, 1707." And (at p. 186) Foster added, in reference to aliens, "for their persons are under the protection of the law; and, in consequence of that protection, they owe a local temporary allegiance to the Crown." Counsel pointed out the explanation given by Sir Michael Foster (at p. 185) of that resolution of the judges, and submitted that the author was thereby expressing surprise at the rule and seeking to give it a restricted application. Nowhere, except in that resolution, had a distinction ever been drawn between local allegiance owed by the alien himself, and allegiance owed by the alien vicariously, in his absence from the King's dominions, because his family and effects remained there.

Counsel referred to Bacon's Abridgment, 7th edn. (1832), vol. I., p. 178, and read the following passage from East's Pleas of the Crown (1803) at p. 52), which had reference to the judges' resolution: "Local allegiance is that which is due from a foreigner during his residence here; and is founded in the protection he enjoys for his own person, his family, and effects, during the time of that residence. This allegiance ceases whenever he withdraws with his family and effects; for his temporary protection being then at an end, the duty arising from it also determines. But if he only go abroad himself leaving his family and effects here under the same protection, the duty still continues; and if he commit treason, he may be punished as a traitor: and this whether his own Sovereign be at enmity or at peace with ours."

Mr. Slade submitted that, if Mr. Justice Tucker's ruling were right, the words "whenever he withdraws with his family and effects" would

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have to be read with some such qualification as "unless he does so holding a British passport." He contended that physical residence decided local allegiance. Blackstone spoke of local allegiance as ceasing "the instant" the alien left this country. Conversely, if a man had lived in Peking for ninety-five years and came to this country for seven minutes he owed local allegiance to the King during that time.

Counsel, having referred to Hale's Pleas of the Crown and other authorities, the Lord Chief Justice observed that those learned authors were not thinking of the facts of a case like this. This case exhibited new facts, and the Court must see whether those facts fell within the principle concerned.

Mr. Slade contended that Mr. Justice Tucker's decision was not the application of the existing law to the new facts, but involved an alteration of the law. Mr. Justice Tucker in effect said that possession of a British passport was a sufficient substitute for the family and effects in the United Kingdom—which did not apply to this case. All the prerequisites for the application of the rule formulated by the judges in 1707 were lacking, and were to be replaced by a passport.

The Lord Chief Justice said that Mr. Slade seemed to be asking the Court to construe the passages from the authors whom he was quoting as if they were Acts of Parliament.

Mr. Slade said that he was not taking isolated passages and construing them as if they were statutes. His point was that those authors had made statements about the cessation of local allegiance which were either right or wrong, and that if they were right Mr. Justice Tucker's ruling must be wrong.

Counsel next referred to *Johnstone v. Pedlar* [1921] 2 A.C. 263, and read the following passages (at pp. 292 and 297) from the speeches of Lord Sumner and Lord Phillimore respectively: "The matter . . . is the contrast between *ligeantia localis* which begins no earlier than and continues no longer than the presence of the alien amy within the realm, and the lasting allegiance of the subject born. . . . From the moment of his entry into the country the alien owes allegiance to the King till he departs from it, and allegiance, subject to a possible qualification which I shall mention, draws with it protection just as protection draws allegiance."

Mr. Slade referred to *Reg. v. Keyn* ((1876) 2 Ex.D. 63), which had been followed in 1878 by the Territorial Waters Act. That case decided, by a majority of seven judges to six, that a foreigner in command of a foreign ship could not be indicted in this country for manslaughter in respect of an act committed by him within three miles of the shores of England. The Act of 1878 reversed that decision. Sir Alexander Cockburn, C.J., in that case (at p. 236) said (a passage on which he (counsel) strongly relied): "According to the doctrine of Lord Coke in *Calvin's* case ((1608) 7 Coke's Rep. 1A), protection and allegiance are correlative: it is only where protection is afforded by the law that the obligation of allegiance to the law arises; or, as I prefer to put it, it is only for acts done when the person doing them is within the area over which the authority



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of British law extends, that the subject of a foreign State owes obedience to that law, or can be made amenable to its jurisdiction. But for the opinion expressed by my Brother Denman, I should have thought it beyond all dispute that a foreign ship, when not in British waters, but on the high seas, was not subject to our law. Upon this point I had deemed all jurists unanimous, and could not have supposed that a doubt could exist. Upon what is the contrary opinion founded? Simply upon expediency, which is to prevail over principle."

Turning to his second main submission, that no Court in this country had jurisdiction to try the offence charged in this case, Mr. Slade said that it was complementary to his first main submission—namely, that the local allegiance due from an alien only continued so long as he resided within the King's Dominions.

Mr. Justice Humphreys—You are saying that no alien can commit high treason against this country when outside and that, therefore, Joyce has committed no crime known to our law?

Mr. Slade said that that was a very clear way of putting his point. Referring to Halsbury's Laws of England (2nd edn., vol. 9, pp. 55, 62, and 80), counsel pointed out that at common law the authorities of this country could not touch even her own subjects outside the realm. Parliament had passed Statutes which gave the Court power in many cases to deal with British subjects for offences committed abroad, but the King and Parliament had never used their unfettered powers of legislation to pass a Statute empowering the Courts to deal with an alien who committed an offence outside the realm.

Mr. Slade said that his third and last submission was thus stated in the grounds of appeal: "(3) there was no evidence that the renewal of the appellant's passport afforded him or was capable of affording him any protection, or that the appellant ever availed himself or had any intention of availing himself of any such protection; (4) if (contrary to the appellant's contention) there were any such evidence, the issue was one for the jury, and the Judge failed to direct them thereon." In making that submission, he (counsel) would assume that both his previous contentions had been decided against Joyce.

The necessary consequence of Mr. Justice Tucker's ruling was that if, one month after perfectly properly obtaining a British passport, Joyce had become a naturalized American, he would have remained under allegiance to Britain until his British passport expired. In fact, Joyce's case was that he was taking no advantage of any protection afforded by his British passport. No evidence was given that any such advantage had been taken. No evidence was called to show whether he had ever availed himself of the protection of the passport or had simply torn it up. Therefore no facts had been left to the jury on the question of protection.

Dealing with the meaning of the "protection" the giving of which a British passport required and requested, Mr. Slade said that the word "required" was clearly addressed to representatives of his Majesty. Such a word could not be addressed to any foreign official. He referred to *Re*

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v. *Ketter* [1940] (1 K.B. 787) and said that the protection which attracted allegiance was not protection *de facto* but the legal right to protection. If Mr. Justice Tucker's ruling were right, anyone who fraudulently obtained a passport owed allegiance until the fraud was discovered. Counsel further submitted that the Crown could not have jurisdiction to issue a British passport to an alien *qua* alien. A passport so issued did not confer on the alien the right to British protection. The protection in fact obtained did not attract allegiance. Assuming that the passport offered some protection which attracted allegiance, the moment that the alien holding the passport indulged in treasonable activities he forfeited that protection. There must be some way in which a person could divest himself of the local allegiance. It could not be that for the remainder of the currency of the passport the holder in all circumstances remained under the duty of local allegiance.

Lastly, counsel submitted that, when the holder of the passport first committed an act said to be treasonable, *eo instanti* the protection afforded by the passport, and the allegiance which was its counterpart, came to an end.

At the conclusion of Mr. Slade's argument, the Lord Chief Justice intimated to the Attorney-General that the Court did not desire to hear him on Mr. Slade's third submission based on the third and fourth grounds of appeal, but that they did wish to hear him on the rest of the case, particularly the question of jurisdiction.

### Argument for the Crown.

The Attorney-General said that it would be convenient to deal with that point first. Mr. Slade had said again and again that if what this authority or that said was correct, Mr. Justice Tucker's decision must be wrong. He (the Attorney-General) submitted that that was not so unless those authorities were read in a very literal and restrictive sense and without regard to the matters in hand at the time. It was not like that that the principles of English law were elucidated. The slavish search for exact precedent was always a somewhat sterile pursuit. The incalculable advantage of the whole system of British law was that its principles were capable of adaptation to the new circumstances perpetually arising. The question was whether the old principles of the law of treason could be applied to the circumstances of the present case.

The historic function of his Majesty's judges in treason cases was to adapt old principles to new circumstances. There must be few cases in the past in which the reasons for applying the existing principles to new circumstances were more obvious and compelling than they were in the present case. He (counsel) had heard nothing which compelled him to resile from his submission to Mr. Justice Tucker that the argument that an alien could not be tried by the Courts of this country for an offence committed abroad begged the whole question. Parliament could do what it pleased, and he (counsel) would seek to show that in the Treason Act, 1351, it had in fact made the trial of an alien for such an offence possible.

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The jurisdiction of the Courts to deal with offences committed abroad which struck at the security of the State had been recognized in international law, and there was no rule against it. He referred to Oppenheim's International Law (5th edn., vol. I, p. 267), and submitted that it was not now a rule of international law that the exercise by the Crown of a protective jurisdiction was an affront to the comity of nations or contrary to international law. The whole question was whether the Treason Act as interpreted by the authorities was applicable in circumstances like the present. If there were no authorities on the point, it would be unarguable that the Crown were right in their contention. The words "any man" clearly covered an alien. The authorities had confined the offence to treason by persons owing allegiance to the Crown. The question was by what persons treason could be committed. The answer was by anyone under the protection of the Crown, who owed a corresponding allegiance. Then came the question what was the duty of allegiance. He (counsel) submitted that there was abundant authority, all one way, that the duty of allegiance arose as a kind of reciprocal obligation to the protection given by the British Crown.

The Attorney-General said that he submitted that the essential question in the case was not where the offence of treason was committed, but by what persons it could be committed. Mr. Slade had made the submission that at common law even subjects of this country could not be tried for an offence committed abroad. So far as that submission was relevant to the present case, it was wrong. At common law a British subject committing treason abroad could be tried here. That was laid down by all the judges in the *Casement* case, [1917] 1 K.B. 98. The only real question in the present case was whether the person who committed the allegedly treasonable act was one who could commit treason. He submitted that everyone, alien or no, who was under a duty of allegiance, could commit treason. If a person was under a duty of allegiance, it did not matter that he was an alien. The temporary absence of an alien outside this country did not put an end to allegiance. A person who declared his residence to be in a particular place, and intimated his intention to depart for a holiday abroad, was not considered to be no longer resident in his home. He remained resident in the country of his home.

One could not help speculating that if the war had ended in October, 1939, by some negotiated arrangement, or by the victory of the Germans, Joyce would have come back to this country and resumed what he had stated to be his home. On the other hand, it was clear that an allegiance originally based, as in the present case, on residence, could be terminated. He was not suggesting that an alien who was under a duty of allegiance because of his residence could not get rid of that allegiance. The test was whether the protection which originated in his physical presence in this country had been retained and maintained by some tie between himself and the Sovereign. Such a tie might be created by leaving effects in this country under the protection of the Sovereign, or by having sworn

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allegiance, or by having taken out a passport and having thus sought for and obtained the protection of the Crown.

That the basis of allegiance was protection was not to be doubted, and that protection could continue although the physical presence of the person concerned had come to an end was clearly laid down by the resolution of the judges in 1707 and by the opinion of the masters of the common law. Mr. Slade said that the protection contemplated must be the protection of the law, but that view showed a complete disregard of the origin of protection under the feudal system, and of the historical position of an alien in the view of the English common law. That historical position, so far from being that the alien was protected by the law, was that the King had to intervene by his prerogative and dispensing powers to protect the alien from laws which were penal and discriminatory against him.

Dealing with the question of the protection afforded by a passport, the Attorney-General said that originally a passport granted to the person obtaining it a safe conduct through the King's own territory. That was what an alien obtained in early days. A modern passport was an extension into the realm of international law of the Sovereign's protection. It contained first of all a request in the name of his Majesty to a foreign State or its representative to allow the bearer to pass through a foreign country, and, secondly, it required the servants of his Majesty abroad to offer him every assistance and protection of which he stood in need. The appellant in the present case, by obtaining a passport, secured the protection of the Crown. How he obtained it was completely irrelevant. To take a parallel case, if a person fraudulently obtained a certificate of naturalization the holder of it was, until it was revoked, entitled to all the rights of a naturalized citizen. It was unarguable that, while this country was at war and the appellant was in Germany, he was not receiving the protection of the Crown. The highest that it could be put would be to say that the protection was in suspense at the time because he was in a country where the protection of the Crown could not reach him.

It was said, however, that the protection, if it ever existed, was terminated. He (the Attorney-General) did not doubt that by a clear and unequivocal renunciation an alien might throw off the protection which he had acquired, but there was no evidence in the present case that the protection afforded by the passport was ever thrown off until the appellant became naturalized as a subject of the German State, down to which date he was describing himself as a British subject. Mr. Slade in his speech, perhaps using the language of hyperbole, had said that this thing or that was fantastic. Perhaps he (the Attorney-General) was entitled to say that it would be quite a remarkable thing if the English common law were impotent to deal with the case of a person like the appellant who had notoriously boasted of his treason. It would be an unthinkable outrage on the principles of the common law to say that a person who, by making his home in this country and by applying for a passport as a British subject, had acquired the protection of the British Crown, had, when he



*Photo. by Press Portrait Bureau*

**The Lord Chief Justice of England, Viscount Caldecote**

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went abroad—as he stated in his application for the passport for the purpose of taking a holiday—severed his allegiance to the Crown.

## Reply for the Appellant.

Mr. Slade, in replying, said that the Attorney-General had argued that, where one had a man like the appellant, who, the Attorney-General said, was continually boasting of his treason, one must modify the law to meet present requirements. There had been confusion in the case between allegiance and nationality; and it had been said that foreigners were being tried in this country every day. He respectfully agreed, and he hoped that nothing which he had said went within a mile of suggesting that this country had no jurisdiction to try foreigners for offences committed within its jurisdiction.

The Attorney-General had said that the Treason Act, 1351, used the expression "a man" in connexion with a charge of treason, and said that that meant "a man" anywhere, and that the only limitation that the common law had placed on the expression was to say that it meant a man who owed allegiance to the King. Allegiance had nothing to do with nationality, and jurisdiction depended on nationality.

In *Macleod v. Attorney-General for New South Wales*, ([1891] A.C. 455) Lord Halsbury, L.C., quoted the judgment of Baron Parke in *Jefferys v. Boosey* ((1854) 4 H.L. Cas. 815, at p. 926) as follows: "The legislature has no power over any persons except its own subjects—that is, persons natural born subjects or resident or whilst they are within the limits of the Kingdom. The legislature can impose no duties except on them; and when legislating for the benefit of persons must, *prima facie*, be considered to mean the benefit of those who owe obedience to our laws and whose interests the legislature is under a correlative duty to protect." Lord Halsbury, continuing, said: "All crime is local. The jurisdiction over the crime belongs to the country where the crime is committed, and except over her own subjects her Majesty and the Imperial Legislature have no power whatever."

Blackstone made it quite clear that the physical presence of an alien in this country was necessary to give jurisdiction to try him. It was said that one must not read Blackstone too closely, but where was one to look except to such great masters of the law? If the resolution of the judges in 1707 was right, then Blackstone was wrong, and Lord Sumner was wrong in *Johnstone v. Pedlar*, ([1921] 2 A.C. 262) when he referred to the *ligeantia localis* "which begins no earlier than and continues no longer than the presence of the alien amy within the realm." If he (Mr. Slade) had erred, he was content to have erred in the company of Lord Sumner, not to mention Blackstone.

At the conclusion of the arguments the Lord Chief Justice said that the Court would deliver judgment on Wednesday, 7th November, 1945.

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## Judgment.

The LORD CHIEF JUSTICE—William Joyce, the appellant in this case, was convicted at the Central Criminal Court of the crime of high treason in that he on 18th September, 1939, and between that date and 2nd July, 1940, being a person owing allegiance to our lord the King, traitorously adhered to and gave aid and comfort to the King's enemies without the Realm of England, to wit, in the Realm of Germany, by broadcasting to the King's subjects propaganda on behalf of the said enemies. The indictment contained two other counts charging the crime of high treason but alleging that the appellant was a British subject. Upon those counts the appellant was acquitted with the approval of the presiding judge, Mr. Justice Tucker, and of the Attorney-General representing the Crown, as the evidence showed clearly that he never has been a British subject. In those circumstances, the count of the indictment upon which the conviction took place may be treated as a count charging the appellant that he, not being a British subject but being a person owing allegiance, did adhere to the King's enemies as aforesaid. The jury, upon evidence amply sufficient for the purpose, found that the appellant did adhere to and aid and comfort the King's enemies without the Realm of England, to wit, in the Realm of Germany as alleged, and the learned judge held as a matter of law that at that time the appellant was a person owing allegiance to His Majesty. It is against that decision in law that this appeal is brought, and it is common ground that if that decision was wrong the conviction cannot stand.

The material facts appear to be as follows. The appellant was born in the United States of America in 1906, the son of a naturalized American citizen, and thereby became himself a natural-born American citizen. When about three years of age the appellant was brought to Ireland, where he stayed until about 1921, when he came to England. He stayed in England until 1939, being then thirty-three years of age. He was, therefore, brought up, educated and settled within the King's Dominions. On 4th July, 1933, he made application for a British passport describing himself as a British subject by birth, having been born in Galway, the passport being asked for for the purpose of holiday touring in Belgium, France, Germany, Switzerland, Italy, and Austria. He was granted the passport, as such British subject by birth, for a period of five years. On 24th September, 1938, the appellant applied for a renewal of that passport for a further period of one year, again describing himself as a British subject by birth who had not lost that national status. That application was granted. On 24th August, 1939, he made a further application for the further renewal for one year of that passport, again describing himself as a British subject by birth who had not lost that national status, and the passport was again renewed to expire on 1st July, 1940. Upon his arrest there was found in the possession of the appellant a document showing that he had been engaged by the German Radio Company of Berlin-Charlottenburg as from 18th September, 1939, as an announcer of English news. On

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those facts it is clear beyond dispute that the appellant, at least up to 24th August, 1939, owed allegiance to the Crown as an alien "resident," whatever that word may mean, in this country, who was here under the protection of the Crown. The grounds upon which that duty is based have not always been stated by judges in the same terms, but it cannot be doubted that any Court which is called upon to decide the question whether a person, not being a British subject, is guilty of treason committed beyond the realm, is bound to have regard to the evidence as to his being resident in the King's Dominions, and to the evidence as to his being at the material time under the protection of the Crown. We do not doubt that such a person may by his acts be shown to have withdrawn himself from that protection and to have ceased to be resident in England, with the result that the duty of allegiance is no longer owed by him. Each case must be decided upon its own facts. We are not called upon to lay down, and have no intention of laying down, the law applicable to every case of treason beyond the realm charged to have been committed by an alien. We have to look at the evidence in this case and upon that evidence to decide whether the trial judge was right or wrong in holding as a matter of law that on 18th September, 1939, and between that date and 2nd July, 1940, this appellant did owe allegiance to the King. Now we agree with Mr. Justice Tucker that the proper way of approaching that question is to see whether anything had happened between 24th August and 18th September to divest the appellant of that duty of allegiance which he unquestionably owed at the earlier of those dates. The one and only fact relied upon by counsel on his behalf is that he left England at some date after 24th August and travelled to Germany. The argument was that the act of leaving England, whatever may have been the circumstances, rendered the appellant incapable of committing the offence charged since the physical presence in the King's Dominions of the appellant is and was essential to the commission by him, being an alien, of the crime of high treason. If that argument is sound no alien can ever be guilty of that form of high treason which consists of adhering to the King's enemies without the Realm. It is a startling proposition and one which after mature consideration this Court is quite unable to accept. It appears to be based to a great extent upon the language of Sir William Blackstone in his Commentaries, vol. 1, p. 370: "Local allegiance is such as is due from an alien, or stranger born, for so long time as he continues within the King's Dominion and protection; and it ceases the instant such stranger transfers himself from this kingdom to another." Then lower down the learned writer says: "As therefore the prince is always under a constant tie to protect his natural-born subjects at all times and in all countries, for this reason their allegiance due to him is equally universal and permanent. But, on the other hand, as the prince affords his protection to an alien only during his residence in this realm, the allegiance of an alien is confined (in point of time) to the duration of such his residence, and (in point of locality) to the dominions of the British Empire."



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That statement of the law may be accepted as perfectly correct so far as it goes and it is in accord with the writings of all the great masters of the common law, but it is not exhaustive for it omits something which must, we think, have been known to Sir William Blackstone lecturing and writing in the middle of the 18th century. His Commentaries were first published in 1765. We find nothing in that passage to indicate that in the opinion of the writer the residence so much insisted upon by him would be broken by a mere temporary absence on business or pleasure. The writer makes no attempt to define the word "residence" or explain what he means, leaving the word to be construed in its ordinary meaning. The reason for the omission may be that Blackstone's Commentaries form, to use the language of the Earl of Birkenhead in his short *Life of Blackstone* (p. 203), "an elementary textbook for students and must be judged as such." However that may be, Sir Michael Foster in his book upon Crown Law, first published in 1762, having in sec. 1, p. 183, of the Introduction to the Discourse on High Treason, dealt with the case of natural-born subjects, deals in sec. 2 and 3 with aliens whose sovereign is either in amity or at enmity with the Crown of England, and lays down the law with regard to such persons in much the same language as is used by Blackstone. He then observes in sec. 4: "And if such alien seeking the protection of the Crown having a family and effects here should during a war with his native country go thither and there adhere to the King's enemies *for purposes of hostility*, he might be dealt with as a traitor. For he came and settled here under the protection of the Crown. And though his person was removed for a time, his effects and family continued still under the same protection. This rule was laid down by all the judges assembled at the Queen's command, 12th January, 1707."

In 1803, Mr. East published his work upon the pleas of the Crown and refers in similar terms to that resolution of the judges, and after discussing the circumstances in which the resolution came to be passed, appears to treat it as settled law.

Serjeant Hawkins in the first edition of his book upon the pleas of the Crown, published in 1716, makes no reference to this resolution of the judges, but in later editions of his work he sets out that resolution in the same terms as the other writers, as do all other text book writers, and we have not been referred to any work of authority or to the judgment of any Court disapproving of the law as there stated. Criticisms have been made by Mr. Slade upon the practice of the judges holding such meetings and those criticisms may be well founded, but the law as stated and accepted by Foster and others has stood unchallenged, as Mr. Slade admits, for nearly 250 years, and we cannot now hold that we are not bound by it.

The importance of the matter in the decision of the present case is two-fold. If the law as stated by Foster is correct, it is clear that Mr. Slade has put his case much too high in claiming, as he does, that the appellant could not in law be guilty of high treason committed abroad because he was not a British subject, and, secondly, it seems to negative

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a further proposition based on want of jurisdiction to be referred to later in this judgment. It does not purport to show that the present appellant was guilty of the crime charged since the case put does not apply here, there being no evidence that the appellant on going abroad left his wife or effects behind him. It still remains for the Crown to show that upon the proved facts of this case he did owe the duty of allegiance to His Majesty. If there was no other evidence upon the subject than the proved fact of his departure from England after 24th August the Crown might be in a great difficulty, and we express no opinion as to what would have been the proper course to adopt, beyond observing that it might have been necessary to leave further matters to the jury since the jury alone can draw inferences of fact from such evidence as they accept. But in our judgment the facts relating to the application for, the granting of, and the renewal of, the passport in this case make it clear that as a matter of law the appellant was still owing allegiance to the Crown when he commenced to adhere to the King's enemies by broadcasting as alleged in the indictment and found by the jury. We cannot agree with Mr. Slade that the case of the appellant is to be treated as precisely the same as that of a foreigner who had once in his life paid a visit to this country of a few hours' duration. Blackstone seems to require "residence," Foster speaks of a person "settled" here. We were much pressed by the appellant's counsel with a number of cases in which there are dicta appearing in favour of the appellant's contention. The high-water mark of these cases is perhaps to be found in *Johnstone v. Pedlar*, [1921] 2 A.C. 262. One quotation will suffice. Lord Sumner at p. 292 said: "The matter which he (Lord Coke) had in hand is the contrast between *ligeantia localis*, which begins no earlier than and continues no longer than the presence of the alien army within the realm, and the lasting allegiance of the subject born." That passage does not touch the question which we have to consider. It certainly does not define the offence of treason. The only point argued in that case was whether the defendant could rely on a plea that the plaintiff was an alien, and that his money had been detained by direction of the Crown as an act of State. It was held that the plea was bad.

On his arrest the appellant made a statement put in evidence at the trial which contained these passages: "We (that is his parents and himself) left America in 1909 when I was three years old. We were generally counted as British subjects during our stay in Ireland and England. I was in Ireland from 1909 till 1921 when I came to England. We were always treated as British during the period of my stay in England whether we were or not."

It was further proved that in 1922 the appellant wrote a letter asking to be admitted as a member of the Officers' Training Corps attached to the University of London, stating that he had been born in America but of British parents, that he left America when two years of age, that he had not returned since to America and did not propose to return there, that he had been informed at the Brigade Headquarters in Ireland that

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he possessed the same rights and privileges as he would if he had been of natural British birth, and added that he could obtain testimonials as to his loyalty to the Crown. Following upon that came the application for the passport and the two renewals of the passport, the last being as stated on 24th August, 1939, so that on the very eve of war the appellant had taken every step in his power to safeguard his right of re-entry into England, and meanwhile to insure his treatment in any foreign country as a British citizen. A British passport is something more than a means of identification. It is a document, as was stated by the Lord Chief Justice, Lord Alverstone, in the *Brailsford* case, [1905] 2 K.B. 730, of high public importance. He observes, p. 745: "It will be well to consider what a passport really is. It is a document issued in the name of the Sovereign on the responsibility of a Minister of the Crown to a named individual, intended to be presented to the Governments of foreign nations and to be used for that individual's protection as a British subject in foreign countries, and it depends for its validity upon the fact that the Foreign Office in an official document vouches the respectability of the person named. Passports have been known and recognized as official documents for more than three centuries, and in the event of war breaking out become documents which may be necessary for the protection of the bearer, if the subject of a neutral State, as against the officials of the belligerents, and in time of peace in some countries, as in Russia, they are required to be carried by all travellers."

The form of passport issued in this case requests the foreign Government and requires the diplomatic and consular representatives of His Majesty to allow the bearer to pass freely without let or hindrance and to afford him every assistance and protection of which he may stand in need, and the possession of such a document clearly entitles the holder to return to the country which has issued the passport. It is, therefore, plainly a protection in every sense of that word to the holder while he is absent from the King's Realm. We entertain no doubt that if it is possible for a foreigner to owe the duty of allegiance to the British Crown although not at the moment within the British Realm, as we think it is, the appellant at the time when he adhered to the King's enemies did owe that allegiance.

The next point made by counsel for the appellant was one which he expressed as being a point raising the question of jurisdiction. The point as stated by the learned counsel was this. Assuming that the appellant was proved to have been a person owing allegiance to the King at the time when he did adhere to the King's enemies in the Realm of Germany, nevertheless he cannot be tried for that offence by any Court in England. We experience some difficulty in understanding precisely the grounds upon which this submission was made. It is said to be complementary to the other submission that because the appellant was an alien he could not commit the offence charged against him in the indictment, and therefore could not be tried for it, but upon the footing that an alien may commit, and that this appellant did commit, the crime charged in the indictment,

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we find it difficult to understand why he cannot be tried for that crime. It is quite true to say that the Statute of 1351 creating the offence does not refer in terms to the trial anywhere of a person offending against the statute and the point was one which troubled, as the books show, the minds of lawyers in many cases and for many years. Indeed, it was for the reason that there was no clear pronouncement by Parliament as to where and by whom a person ought to be tried who offended abroad against the Statute of 1351 that Parliament in 1543 passed the Act of 35 Henry 8, c. 2: "An Act concerning the trial of treasons committed out of the King's Majesty's Dominion. Sec. 1. Venue for treasons committed abroad. Forasmuch as some doubts and questions have been moved that certain kinds of treasons . . . done perpetrated or committed out of the King's Majesty's Realm of England cannot by the common laws of this Realm be inquired of heard and determined within this his said Realm of England: for a plain remedy . . . be it enacted . . . that all manner of offences being already made or declared or hereafter to be made or declared by any of the Laws and Statutes of this Realm to be treasons . . . and done and perpetrated or committed or hereafter to be done perpetrated or committed by any person or persons out of this Realm of England shall be from henceforth inquired of heard and determined before the King's justices of his Bench for pleas to be holden before himself by good and lawful men of the same shire where the said Bench shall sit and be kept . . . in like manner and form to all intents and purposes as if such treasons . . . had been done and perpetrated and committed within the same shire where they shall be so inquired of heard and determined as is aforesaid." The shire referred to in the section has been generally understood as Middlesex.

It appears to us that the only point of jurisdiction which can possibly arise upon the terms of this Statute depends upon the assumption that the words "any person or persons out of this Realm of England" does not include an alien owing allegiance to His Majesty the King.

In 1916 the Court of Criminal Appeal dealt with the appeal of Roger David Casement who had been convicted of high treason by adhering to the King's enemies without the Realm, and in that case no question was raised upon the appeal other than the question whether the matter described in the indictment was any offence against the Treason Act of 1351, and in giving the judgment of the Court of five judges dismissing the appeal, Mr. Justice Darling observed as follows: "The Statute 35 Hen. 8, c. 2, was passed 'for the Trial of Treasons committed out of the King's Dominions.' The only question dealt with was how such treasons were to be tried. Under this Statute the present trial was rightly held in the King's Bench, provided that what was done by the appellant amounted to treason under the Act of 1351. If it was such a treason, it was rightly tried."

We say the same thing in this case. We can find no justification for holding that because the appellant in this case is not a British subject, therefore although he can commit the crime alleged in the indictment of

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being a person who has adhered to the King's enemies while owing allegiance to the King, yet no Court has power to try him because he is an alien. It is right to add that Mr. Slade agreed if the appellant was triable in this country as the result of the Statute of Henry VIII he was properly so tried at the Central Criminal Court.

A further point was taken by Mr. Slade that assuming the Court was against him on his first two points there was no evidence that the renewal of the appellant's passport afforded him or was capable of affording him any protection, or that the appellant ever availed himself or had any intention of availing himself of any such protection and if there was any such evidence the issue was one for the jury and the learned judge failed to direct them thereon. It is true that no direct evidence was called in respect of the effect of the passport, but the document speaks for itself, and we have already dealt with its effect in the earlier part of this judgment. In our view the passport was capable of affording him protection none the less because it was obtained by a misrepresentation and it is quite immaterial whether the appellant availed himself of that protection or not, as he had sought such protection and it was available for his use.

For these reasons we find ourselves in complete agreement with the decision of the trial judge and substantially for the same reasons.

The appeal is dismissed.

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## APPENDIX IV.

### APPEAL TO THE HOUSE OF LORDS.

JOYCE v. DIRECTOR OF PUBLIC PROSECUTIONS, 10th, 11th, 12th and 13th  
DECEMBER, 1945, BEFORE

The Lord Chancellor, Lord Macmillan, Lord Wright, Lord Porter, and Lord Simonds.

Mr. G. O. Slade, K.C., Mr. Derek Curtis-Bennett, K.C., and Mr. J. Burge appeared for Joyce; the Attorney-General (Sir Hartley Shawcross, K.C., M.P.) and Mr. Gerald Howard for the Crown.

### PETITION.

*In the House of Lords.*

#### ON APPEAL.

From the Court of Criminal Appeal (England).

*To the Right Honourable the House of Lords:*

#### THE HUMBLE PETITION AND APPEAL OF WILLIAM JOYCE.

WHEREAS Your Petitioner has, in pursuance of sec. 1, sub-sec. 6 of the Criminal Appeal Act, 1907, obtained the Certificate set out in the Second

# Appeal to the House of Lords.

Schedule hereto of His Majesty's Attorney-General, that the decision of the Court of Criminal Appeal hereinafter referred to involves a point of law of exceptional public importance and that it is desirable in the public interest that a further appeal should be brought from the said Court of Criminal Appeal.

Your said Petitioner humbly prays that the matter of the Order set forth in the First Schedule hereto may be reviewed before His Majesty the King in his Court of Parliament and that the said Order may be reversed or that your Petitioner may have such other relief in the premises as to His Majesty the King in his Court of Parliament may seem meet and if it shall seem meet to His Majesty the King in his Court of Parliament so to order, that the Director of Public Prosecutions may be ordered to lodge such case as he may be advised and the circumstances of the case may require, in answer to this Appeal and that such further and other directions in the premises as may be necessary for the due determination of the said Appeal may be given as to His Majesty the King in his said Court of Parliament may seem meet.

## FIRST SCHEDULE.

In the Matter of certain Criminal Proceedings wherein the Director of Public Prosecutions was the Prosecutor and William Joyce was the Defendant.

The Order of the Court of Criminal Appeal, dated 7th November, 1945, appealed from is in the words following, namely :

IN THE COURT OF CRIMINAL APPEAL.

REX v. WILLIAM JOYCE.

Upon consideration being this day had by the Court of Criminal Appeal as duly constituted for the Hearing of Appeals under the Criminal Appeal Act, 1907, of the Appeal of the above-named Appellant against conviction, the Court doth determine the same and doth dismiss the said Appeal.

Dated this 7th day of November, A.D. 1945.

## SECOND SCHEDULE.

In the Matter of the Criminal Appeal Act, 1907, and in the Matter of an Appeal by William Joyce to the Court of Criminal Appeal.

I HEREBY CERTIFY that the decision of the Court of Criminal Appeal of 7th November, 1945, in the Matter of the Appeal of the above-named William Joyce involves a point of law of exceptional public importance and that, in my opinion, it is desirable in the public interest that a further appeal should be brought.

(Sgd.) HARTLEY SHAWCROSS,  
*Attorney-General.*

LAW OFFICERS' DEPARTMENT,  
16th November, 1945.

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## Argument for the Appellant.

Mr. Slade, opening the appeal, referred to the proceedings at the Central Criminal Court, and read the statement of facts from the judgment of the Court of Criminal Appeal. His first submission, said counsel, was that the local allegiance due from an alien only continued so long as he resided within the King's dominions. He submitted, secondly, relying on *Calvin's* case ((1608) 7 Coke's Rep. 1A), that "protection draws allegiance just as allegiance draws protection," and that the protection there referred to was the protection of our laws and co-extensive only with our legal jurisdiction. Thirdly, that protection meant the right to protection, and not merely the *de facto* enjoyment of it, which might be had by a person who obtained a passport by fraud.

He submitted, fourthly, that the Courts of this country had no jurisdiction to try an alien for an offence alleged to have been committed abroad. The only exceptions to that rule were piracy and offences committed on British ships in foreign waters.

Lord Macmillan observed that it might be regarded as a third exception where an Act of Parliament gave the Courts jurisdiction to try aliens for certain offences committed abroad. He had in mind the Fisheries Acts, and also *Mortensen v. Peters* ((1906) 8 Fraser (J.) 93), an interesting case which, perhaps because a Scottish case, had not been cited to the Courts below.

Mr. Slade said that he conceded, of course, that Parliament could provide what it liked, but his submission was that the authorities unanimously established that the expression "a person" in a statute meant a British subject. The Treason Act, 1351, used the word *homme*. The comity of nations required that that word should be interpreted as meaning a British subject.

His (counsel's) fifth submission was in two parts: (a) there was no evidence that the renewal of Joyce's passport afforded him or was capable of affording him any protection, or that he ever availed himself or had any intention of availing himself of any such protection; (b) if (contrary to Joyce's contention) there was any such evidence, the issue was one for the jury, and the Judge failed to direct them on it.

Counsel referred to *Calvin's* case (*supra*) and to Blackstone (Com., Bk. I, ch. 10, p. 370), where that author defined local allegiance as being due from an alien for so long as he continued within the King's dominion and protection. Counsel next referred to the following passage in Foster's Crown Law (3rd edn. (1809), at p. 185): "And if such alien, seeking the protection of the Crown, and having a family and effects here, should, during a war with his native country, go thither; and there adhere to the King's enemies for purposes of hostility, he might be dealt with as a traitor. For he came and settled here under the protection of the Crown; and, though his person was removed for a time, his effects and family continued still under the same protection. This rule was laid down by all the Judges assembled at the Queen's command, 12th January, 1707."

## Appeal to the House of Lords.

Replying to Lord Macmillan, Mr. Slade said that the original manuscript of the judges' resolution was apparently non-existent.

Lord Wright observed that the judges, having declared the law in that manner, must have issued their resolution in some solemn form.

Counsel referred to Bacon's Abridgment (7th edn. (1832), vol. 1, p. 178), and submitted that the word "settled" in the judges' resolution meant "resident," and that resident meant physically present, although in any event Joyce left no family or effects in this country in 1939.

Counsel referred to Coke upon Lyttleton (1832 edn., ss. 198, 199), and submitted that Joyce, while on enemy territory, was quite incapable of taking advantage of any protection which this country could have afforded him. Joyce had forfeited the right to protection by this country when he went to Germany in 1939.

The Lord Chancellor said that he thought the proposition elementary that allegiance was only due from an alien while he was in this country. The question, surely, was whether there were any exceptions to that rule.

Mr. Slade said that his point, which did not seem to him to have been met in the Courts below, was that no protection outside our territory could be such as to found a duty of allegiance.

Replying to Lord Porter, counsel agreed that he was submitting that when Joyce left this country he received no protection of the law, and that even administrative protection was withdrawn from him on the declaration of war.

Replying to a question from Lord Porter as to the protection conferred by a British passport, counsel submitted that no protection was derived from a passport as such. One obtained the protection because one was a British subject, and one got that whether one had a passport or not.

Lord Wright observed that sooner or later in the case their lordships would have to consider the exact effect of a passport, which might or might not prove to be the crux of the case.

Mr. Slade quoted extensively from an article by Sir John Salmond on Citizenship and Allegiance in the "Law Quarterly Review," vol. 17, 280 and vol. 18, 49, and gave examples of the absurd consequences which, he said, would follow if the decision of Mr. Justice Tucker and the Court of Criminal Appeal were right. For instance, if a British subject, the lawful holder of a British passport, went to another country and became naturalized there, then, although by statute he ceased to be a British subject immediately on his naturalization, nevertheless he continued, according to the decision of the Courts below, to owe allegiance to the British Crown for the unexpired term of his passport. Concluding his arguments on his first three points, Mr. Slade quoted from an article on passports in the Journal of Comparative Legislation.

The Lord Chancellor asked whether, supposing that, contrary to counsel's first three submissions, Joyce remained under allegiance to the Crown after leaving England in 1939, his (counsel's) fourth submission, that the Court had no jurisdiction, was of any help to Joyce.

Mr. Slade submitted that, even if Joyce continued to owe allegiance



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after leaving this country, there was still no Court here which had jurisdiction to try him: first, because there was no statute giving jurisdiction to try an alien for an offence against our law committed abroad; and, secondly, because, otherwise, it would always be possible, merely by alleging that any person owed allegiance, to bring him within the jurisdiction of the Courts of this country for trial of the question whether he owed allegiance or not. He (counsel) wished to draw the distinction between a substantive crime and the jurisdiction to try it. For the Court to be able, merely by alleging allegiance, to give itself jurisdiction to try the question of law whether or not there was allegiance would offend against the principle that no Court could confer jurisdiction on itself. The Court admittedly derived jurisdiction to try a British subject by alleging that he was a British subject; but there was a difference between alleging that a person was a British subject, a fact which founded the Court's jurisdiction if it was true, and alleging allegiance which was only a factor in the particular offence alleged.

Counsel then turned to the authorities on the question of the construction in statutes of the words "or any person," and referred to Maxwell on the Interpretation of Statutes (8th edn., p. 130), *Reg. v. Jameson*, ([1896] 2 Q.B. 425) and *McLeod v. Attorney-General for New South Wales*, ([1891] A.C. 455).

Counsel referred to sec. 4 of the Treachery Act, 1940, as showing how the legislature had had regard to the comity of nations by its careful definition of the persons who could be guilty of the offences created by the Act. The only possible application to an alien abroad of that Act was in respect of an offence committed by him while subject to naval, military, or air force law.

Turning to his fifth and last submission, counsel read the summing up of Mr. Justice Tucker, and argued that, even if the resolution of the judges as set out in Foster's Crown Law (3rd edn. (1809), at p. 185) were correct, Mr. Justice Tucker would be extending it because none of the prerequisites stipulated in that resolution existed in the present case. Counsel next read the judgment of the Court of Criminal Appeal. On his last point, Mr. Slade submitted that, assuming that all his previous submissions were wrong, assuming, against Joyce, that the mere granting of a passport to an alien imported a duty of allegiance by the alien to the Crown, even so an alien must be able to divest himself of the protection which gave rise to that allegiance. It could not be the law that, whatever happened, and in all circumstances, just for the period during which the passport happened to remain in force the alien must continue under allegiance to the Crown.

If that were right, then it must be a question of fact in each case—it could not be one of law—by what act, at what date the alien had divested himself of the protection and the corresponding allegiance. Even if it were said that the mere fact that a man obtained a passport raised at any rate a *prima facie* case, and shifted the burden of proof on to him, the question of fact involved must be left to the jury. It was the

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duty of the judge to direct them what the evidence was, and to tell them in such a case that evidence which was sufficient to call for an answer from the defence was not necessarily enough to satisfy the jury. But in any event the issue must be left to them, and here it could not be said that it had been left to them at all. They were directed by Mr. Justice Tucker as a matter of law that Joyce continued to owe allegiance throughout the currency of his passport.

### Argument for the Crown.

The Attorney-General, opening his argument, said that no branch of our law had been so much subject to judicial construction as the law of treason. The search for an exact precedent to cover the present case was singularly sterile. There could have been no case in the history of the law of treason in which the inducements to apply, not new principles, but the existing principles, of law to new facts were more compelling. He (the Attorney-General) would deal first with the point on jurisdiction. Mr. Slade had referred repeatedly in his argument to the comity of nations. Only those rules of international law were imported into our law which were generally and fully accepted. There was no rule of international law which inhibited the jurisdiction of the Court in a case like the present.

Replying to the Lord Chancellor, counsel said that his argument was that, if there were a duty of allegiance and a crime were committed in breach of that allegiance, the question of jurisdiction did not arise. In any case the question was not where treason could be committed—it could be committed anywhere—but by whom it could be committed. Joyce could have surrendered his passport, and in that event his allegiance might well have been at an end.

Lord Macmillan referred to the question as being one of status and asked whether there was anything that a man could do to attract protection to himself.

The Attorney-General submitted that there was, for instance, by taking some oath or by joining one of the services.

Lord Wright observed that the act conferring protection on Joyce was not done by him, but by the issuing of the passport to him.

Counsel submitted that there must be a presumption that Joyce, having applied for the passport, had used it for the purpose of going abroad.

The Lord Chancellor said that the question of protection would have to be considered.

The Attorney-General submitted that Mr. Slade's argument on the question of allegiance and protection showed a complete misconception of the origin and nature of the protection which a passport conferred. The protection which aliens used to enjoy was essentially an executive protection against our law. The use of a passport was to enable aliens to pass freely in this country protected from the ordinary operation of our laws which used to be highly restrictive and penal against foreigners.

Continuing his argument, the Attorney-General said that he conceded

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that a British subject could terminate his allegiance by becoming the naturalized citizen of a foreign State. He could also, for example, hand back his passport. There must be some overt act of substance terminating allegiance. He (counsel) was not, however, prepared to say that the overt act of handing back the passport to a British consul in Germany would justify this country in refusing subsequently to readmit the person concerned. If Mr. Slade's argument were right it would follow that a subject of British mandated, or even British protected, territory, holding, as such person did, a British passport, would not be under a duty of allegiance to the Crown. That argument, if correct, would have serious and far-reaching consequences.

The Attorney-General next considered the question of residence, and submitted that a mere temporary absence from the country did not put an end to it.

Asked by the Lord Chancellor how he knew that Joyce's absence from the country in 1939 was intended to be temporary, counsel replied that the passport had originally been granted for holiday travelling. The renewals had been unqualified, and he would submit that an application for a plain renewal of a passport would be presumed to be for the same purpose as the original passport. A person going abroad for a holiday did not cease to be resident in this country. Residence was something more than mere physical presence, and temporary absence did not put an end to it.

Counsel next submitted that the real basis of allegiance, however it originated, was the protection afforded by the Crown and accepted by the subject. All the old authorities agreed in putting allegiance on that basis. Mr. Slade had submitted that the protection afforded by the Crown to the holder of a British passport in Germany came to an end on the outbreak of war with Germany. But he (the Attorney-General) contended that that was not so. Administrative protection was not withdrawn, though direct protection by his Majesty's representatives might come to an end. The Crown continued to exercise protection through the medium of the protecting Power, and the holder of a British passport might well benefit from that. Dealing with Mr. Slade's submission that the issue whether or not Joyce had made any use of his passport should have been left to the jury, the Attorney-General discussed the authorities on the question what course the Court of Criminal Appeal should take where it was established that matters for the jury had not been left to them.

The Lord Chancellor observed that there was no evidence as to any use made by Joyce of the passport.

The Attorney-General submitted that there was a clear inference of user of the passport to be drawn from the fact of the application for it.

The Lord Chancellor said that if there was an inference to be drawn the jury should have drawn it.

The Attorney-General said that the inference was a matter of accepted international usage. Counsel then quoted an article entitled International Law in Practice, in the "Law Quarterly Review," vol. 49, p. 489, written

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by Sir William Malkin in 1933. Mr. Slade, said the Attorney-General, had contended that the protection afforded was that of our law. No doubt there were *dicta* in the authorities which, divorced from their context, appeared to support that view. But the danger of treating *dicta* in that way was illustrated by *V/O Soufracht v. Gebr. van Udens Scheepvaart en Agentuur Maatschappij*, ([1943] A.C. 203). To say that the protection afforded was that of our law was to misapprehend the origin of allegiance. Joyce had the status of a protected person, not that of a British subject. Many persons had the status of protected persons who were not British subjects.

Lord Porter suggested that it would be more appropriate to use a neutral term and say that a relationship was established between the person holding a British passport and the Crown.

The origin of a passport, the Attorney-General continued, appeared to be a document of State permitting an alien to travel within the State's own boundaries. He (counsel) did not think that there was really any connexion between such a document and a modern passport, which was a matter of international law.

Joyce enjoyed exactly the same protection, whether it were called protection of law or protection in fact, as any British subject would have enjoyed in the same circumstances at that time. It was quite idle to suggest that there was no protection. Though the rights to protection might be in suspense, the duty of allegiance remained. There was in any event no right to protection legally enforceable against the Crown. The burden was on the person who sought the protection to show that it was not in fact afforded. It was immaterial that the protection had been obtained by a false, or even by a fraudulent, representation. It was not open to a State, as a matter of international usage, to disregard a British passport and deny the holder's nationality.

Concluding his argument, the Attorney-General said that, once a man had obtained the Sovereign's protection—using that word as expressing the general administrative, executive and legal protection—once that was seen to be the basis of the matter there was no reason in principle for limiting allegiance to cases where protection arose simply from the fact of residence. Joyce had voluntarily sought to obtain all the protection which the Crown could give to a British subject travelling abroad. It was as a British subject holding a British passport that Joyce was in Germany in the middle of September, 1939, when he obtained his appointment as a broadcaster, and it was in the character of a British subject that he eventually became a naturalized German.

He (counsel) submitted, in this important case—important because of the effect it would have in defining the position of all persons who placed themselves in the protection of the British Crown—that it would be an unthinkable outrage on the common law of this country if the crime of treason were held not to have been committed; if a person, who had made his home here and enjoyed all the benefits of British citizenship, should be held, while temporarily absent from the country, not to be under a reciprocal duty of allegiance to it.

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## Reply for the Appellant.

*Mr. Slade, replying, said that he would like to place before their lordships the principles with which they were confronted: (1) There had never before this been a case where an alien had been convicted of treason in respect of acts committed abroad; (2) there was no reported case of any Court in this country having assumed jurisdiction to try an alien for an offence committed abroad; (3) Joyce had been convicted, and his conviction had been upheld, on the strength of a resolution passed by the judges in 1707 which ran counter to every principle of constitutional law as enunciated in all the text-books; (4) Joyce's conviction, since there was no evidence that he left any family or effects behind here when he went to Germany in 1939, ran counter not only to the law as it was before the judges' resolution was passed but also to that resolution itself. There was no reconciling the resolution with *Calvin's* case ((1608) 7 Coke's Rep. 1A), or with Blackstone, or with *Johnstone v. Pedlar*, ([1921] 2 A.C. 262.)*

He (counsel) submitted that an alien soldier could not be tried for treason for an act committed abroad. There was no reported case where an alien mercenary had been tried for an act of treason committed abroad. Before 1940 such a person would have been tried under sec. 4 of the Army Act, and in 1940 he became triable under the Treachery Act of that year.

He (counsel) was indebted to the Attorney-General for the illustration which he had given in his argument of a protected subject. He (Mr. Slade) submitted that there was no intermediate stage between a British subject and a British protected subject. If the protection afforded by a passport begot allegiance, then the *de facto* protection afforded by a British mandate must surely also beget allegiance. Of all the cases which had disfigured our legal history, trials for treason were the worst. Of the cases which, to borrow the Attorney-General's phrase, had outraged our common law, trials for treason formed the majority.

Criticizing the resolution of the judges of 1707, counsel said that it had been framed with no one present to call attention to *Calvin's* case, (1608) 7 Co.Rep. 1A, which had been the unchallenged law for 100 years before, and no one to represent the extent of the constitutional implications involved in such a resolution. Moreover, the conviction of Joyce and the judgment of the Court of Criminal Appeal were not consistent with the law as stated by Sir Michael Foster. The judges' resolution which Foster set out in his *Crown Law* (3rd edn. (1809), at p. 185) was not in accord with his statement of the law at p. 183. Foster said that the local allegiance ceased so soon as the alien withdrew his person and effects. The Courts below in the present case said that that was not so if the alien held a British passport. Foster made it clear that the protection in question was the protection of our law. There could be no other object in his insistence on the presence in this country of the alien's family and effects. The effect of this conviction was to contradict that and say that the protection in attracting allegiance was not that of our law in the case of a person holding a British passport.

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The Attorney-General had been constrained to admit that this conviction would have been correct also if Joyce had been a German when he left this country. The result was that, if a German spy wished, in obedience to his natural instincts, to return to Germany when war between Germany and England became imminent, and obtained a British passport because that was the only way in which he could get out of the country, he would be held guilty of treason. Again borrowing a phrase used by the Attorney-General, he (Mr. Slade) submitted that it was a singularly sterile process to attempt to interpret the Treason Act, 1351, by reference to the modern conceptions of international law.

Discussing the question of what had or had not been left to the jury, Mr. Slade said that he made no complaint of Mr. Justice Tucker's summing-up on the facts which appeared in evidence. He complained, however, of the failure to direct them on facts about which no evidence had been given but which were for them, or on an issue which should have been left to them. Finally, he submitted that it could not be said that any reasonable jury, even if they had received the directions which were lacking, would necessarily have reached the same conclusion.

At the end of the arguments their lordships adjourned until 3 p.m., when the Lord Chancellor stated that their lordships would like a little more time for consideration and would announce their decision at 10.30 a.m. on Tuesday, 18th December, 1945.

On that day, the House, by a majority of four to one, Lord Porter dissenting, dismissed the appeal.

The LORD CHANCELLOR said—I have come to the conclusion that the appeal should be dismissed. In common with the rest of your lordships, I should propose to deliver my reasons at a later date.

Lord MACMILLAN—I agree.

Lord WRIGHT—I also agree.

Lord PORTER—In agreement with all your lordships, I think that the renewal of his passport, which Joyce obtained on 24th August, 1939, was evidence from which the jury might have inferred that he retained that document for use up to 18th September of that year, when he was proved to have first adhered to the King's enemies, and might therefore have inferred that he continued to owe allegiance to the Crown up to that date. As, however, in my view, the question whether he did so retain it was never left to the jury, but they were directed as a matter of law that his duty of allegiance was extended to the later date, and as your lordships cannot send the case back for retrial, I would myself allow the appeal on that ground.

Lord SIMONDS—I concur in the opinion given by my noble and learned friend on the Woolsack.

## Reasons

*of House of Lords delivered 1st February, 1946.*

The LORD CHANCELLOR—My lords, on the 7th November, 1945, the Court of Criminal Appeal dismissed the appeal of the appellant, William Joyce, who had on the 19th September, 1945, been convicted of high

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treason at the Central Criminal Court and duly sentenced to death. The Attorney-General certified under sec. 1 (6) of the Criminal Appeal Act, 1907, that the decision of the Court of Criminal Appeal involved a point of law of exceptional public importance and that in his opinion it was desirable in the public interest that a further appeal should be brought.

Hence this appeal is brought to your Lordships' House. And, though in accordance with the usual practice the certificate of the Attorney-General does not specify the point of law raised in the appeal, it is clear that the question for your lordships' determination is whether an alien who has been resident within the realm can be held guilty and convicted in this country for high treason in respect of acts committed by him outside the realm. This is in truth a question of law of far-reaching importance.

The appellant was charged at the Central Criminal Court on three counts, upon the third of which only he was convicted. That count was as follows :—

## STATEMENT OF OFFENCE.

High Treason by adhering to the King's enemies elsewhere than in the King's Realm, to wit, in the German Realm, contrary to the Treason Act, 1351.

## PARTICULARS OF OFFENCE.

William Joyce, on the 18th day of September, 1939, and on divers other days thereafter and between that day and the 2nd day of July, 1940, being then—to wit on the several days—a person owing allegiance to our lord the King, and whilst on the said several days an open and public war was being prosecuted and carried on by the German Realm and its subjects against our lord the King and his subjects, then and on the said several days traitorously contriving and intending to aid and assist the said enemies of our lord the King against our lord the King and his subjects did traitorously adhere to and aid and comfort the said enemies in parts beyond the seas without the Realm of England, to wit, in the Realm of Germany by broadcasting to the subjects of our lord the King propaganda on behalf of the said enemies of our lord the King.

The first and second counts, upon which the appellant was found not guilty, were based upon the assumption that he was at all material times a British subject. This assumption was proved to be incorrect; therefore upon these counts the appellant was rightly acquitted.

The material facts are few. The appellant was born in the U.S.A. in 1906, the son of a naturalized American citizen who had previously been a British subject by birth. He thereby became himself a natural born American citizen. At about three years of age he was brought to Ireland, where he stayed until about 1921, when he came to England. He stayed in England until 1939. He was then thirty-three years of age. He was brought up and educated within the King's Dominions, and he settled here.

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On the 4th July, 1933, he applied for a British passport, describing himself as a British subject by birth, born in Galway. He asked for the passport for the purpose of holiday touring in Belgium, France, Germany, Switzerland, Italy, and Austria. He was granted the passport for a period of five years. The document was not produced, but its contents were duly proved. In it he was described as a British subject. On the 26th September, 1938, he applied for a renewal of the passport for a period of one year. He again declared that he was a British subject and had not lost that national status. His application was granted. On the 24th August, 1939, he again applied for a renewal of his passport for a further period of one year, repeating the same declaration. His application was granted, the passport, as appears from the endorsement on the declaration, being extended to the 1st July, 1940.

On some day after the 24th August, 1939, the appellant left the realm. The exact date of his departure was not proved. Upon his arrest in the year 1945 there was found upon his person a "work book" issued by the German State on the 4th October, 1939, from which it appeared that he had been employed by the German Radio Company of Berlin as an announcer of English news from the 18th September, 1939. In this document his nationality was stated to be "Great Britain" and his special qualification "English." It was proved to the satisfaction of the jury that he had at the dates alleged in the indictment broadcast propaganda on behalf of the enemy. He was found guilty accordingly.

From this verdict an appeal was brought to the Court of Criminal Appeal, and I think it right to set out the grounds of that appeal.

They were as follows:—

1. The Court wrongly assumed jurisdiction to try an alien for an offence against British law committed in a foreign country.
2. The learned judge was wrong in law in holding and misdirected the jury in directing them that the appellant owed allegiance to His Majesty the King during the period from 18th September, 1939, to 2nd July, 1940.
3. There was no evidence that the renewal of the appellant's passport afforded him or was capable of affording him any protection or that the appellant ever availed himself or had any intention of availing himself of any such protection.
4. If (contrary to the appellant's contention) there were any such evidence, the issue was one for the jury and the learned judge failed to direct them thereon.

The Court of Criminal Appeal, as I have already said, dismissed the appeal, and it will be convenient if I deal with the grounds of appeal in the same order as did that Court, first considering the important question of law raised in the second ground.

The House is called upon in the year 1945 to consider the scope and effect of a Statute of the year 1351, the 25th year of the reign of Edward III. That Statute, as has been commonly said and as appears from its terms, was itself declaratory of the common law; its language



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*differs little from the statement in Bracton (see 2 Bracton 253, Stephen's History of the Criminal Law, vol. II, p. 243). It is proper to set out the material parts. Thus it runs :*

“Whereas divers opinions have been before this time in what case Treason shall be said and in what not, the King at the request of the Lords and of the Commons hath made a declaration in the manner as hereafter followeth : that is to say (amongst other things) if a man do levy war against our lord the King in his realm or be adherent to the King's enemies in his realm, giving them aid and comfort in the realm or elsewhere.”

Then (I depart from the text and use modern terms) he shall be guilty of treason.

It is not denied that the appellant has adhered to the King's enemies giving them aid and comfort elsewhere than in the realm. Upon this part of the case the single question is whether, having done so, he can be and in the circumstances of the case is guilty of treason.

Your lordships will observe that the Statute is wide enough in its terms to cover any man anywhere, “if a man do levy war, &c.” Yet it is clear that some limitation must be placed upon the generality of the language, for the context in the preamble poses the question “in what case treason shall be said and in what not.” It is necessary then to prove not only that an act was done but that, being done, it was a treasonable act. This must depend upon one thing only, namely the relation in which the actor stands to the King to whose enemies he adheres. An act that is in one man treasonable, may not be so in another.

In the long discussion which your lordships have heard upon this part of the case attention has necessarily been concentrated on the question of allegiance. The question whether a man can be guilty of treason to the King has been treated as identical with the question whether he owes allegiance to the King. An act, it is said, which is treasonable if the actor owes allegiance, is not treasonable if he does not. As a generalization, this is undoubtedly true and is supported by the language of the indictment, but it leaves undecided the question by whom allegiance is owed and I shall ask your lordships to look somewhat more deeply into the principle upon which this statement is founded, for it is by the application of principle to changing circumstances that our law has developed. It is not for His Majesty's judges to create new offences or to extend any penal law and particularly the law of high treason, but new conditions may demand a reconsideration of the scope of the principle. It is not an extension of a penal law to apply its principle to circumstances unforeseen at the time of its enactment, so long as the case is fairly brought within its language.

I have said, my lords, that the question for consideration is bound up with the question of allegiance. Allegiance is owed to their sovereign lord the King by his natural born subjects; so it is by those who, being aliens, become his subjects by denization or naturalization (I will

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call them all "naturalized subjects"); so it is by those who, being aliens, reside within the King's realm. Whether you look to the feudal law for the origin of this conception or find it in the elementary necessities of any political society, it is clear that fundamentally it recognizes the need of the man for protection and of the sovereign lord for service. *Protectio trahit subjectionem et subjectio protectionem*. All who were brought within the King's protection were *ad fidem regis*: all owed him allegiance. The topic is discussed with much learning in *Calvin's case*, 1608, 7 Co. Rep. 1a.

The natural born subject owes allegiance from his birth, the naturalized subject from his naturalization, the alien from the day when he comes within the realm. By what means and when can they cast off allegiance? The natural born subject cannot at common law at any time cast it off. *Nemo potest exere patriam* is a fundamental maxim of the law from which relief was given only by recent Statutes. Nor can the naturalized subjects at common law. It is in regard to the alien resident within the realm that the controversy in this case arises. Admittedly he owes allegiance while he is so resident, but it is argued that his allegiance extends no further.

Numerous authorities were cited by the learned counsel for the appellant in which it is stated without any qualification or extension that an alien owes allegiance so long as he is within the realm and it has been argued with great force that the physical presence of the alien actor within the realm is necessary to make his act treasonable. It is implicit in this argument that during absence from the realm, however brief, an alien ordinarily resident within the realm cannot commit treason; he cannot under any circumstances by giving aid and comfort to the King's enemies outside the realm be guilty of a treasonable act.

My lords, in my opinion this which is the necessary and logical statement of the appellant's case is not only at variance with the principle of the law, but is inconsistent with authority which your lordships cannot disregard.

I refer first to authority. It is said in *Foster's Crown Cases*, 3rd edn., p. 183—"Local allegiance is founded in the protection a foreigner enjoyeth for his person his family or effects during his residence here: and it ceaseth, whenever he withdraweth with his family and effects." And then on p. 185 comes the statement of law upon which the passage I have cited is clearly founded, "Sec. 4: And if such alien, seeking the protection of the Crown and having a family and effects here should during a war with his native country go thither and there adhere to the King's enemies for purposes of hostility, he might be dealt with as a traitor. For he came and settled here under the protection of the Crown: and, though his person was removed for a time, his effects and family continued still under the same protection. This rule was laid down by all the judges assembled at the Queen's command January 12th, 1707."

The author has a side note against the last line of this passage "MSS. Tracey, Price, Dod and Denton." These manuscripts have not been traced

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but their authenticity is not questioned. It is indeed impossible to suppose that Sir Michael Foster could have incorporated such a statement except upon the surest grounds and it is to be noted that he accepts equally the fact of the judges' resolution and the validity of its content. This statement has been repeated without challenge by numerous authors of the highest authority—*e.g.*, Hawkins, Pleas of the Crown 1795 Ed. East, Pleas of the Crown, vol. I, p. 52. Chitty on the Prerogatives of the Crown, pp. 12, 13. It may be said that the language of some of these writers is not that of enthusiastic support, but neither in the text books written by the great masters of this branch of the law nor in any judicial utterance has the statement been challenged. Moreover, it has been repeated without any criticism in our times by Sir William Holdsworth whose authority on such a matter is unequalled: see his article in *Halsbury's Laws of England*, 2nd edn., vol. VI, p. 416, note (t) sub-title "Constitutional Law."

Your lordships can give no weight to the fact that in such cases as *Johnstone v. Pedlar* [1921] 2 A.C. 262, the local allegiance of an alien is stated without qualification to be coterminous with his residence within the realm. The qualification that we are now discussing was not relevant to the issue nor brought to the mind of the Court. Nor was the judges' resolution referred to nor the meaning of "residence" discussed.

In my view therefore it is the law that in the case supposed in the Resolution of 1707 an alien may be guilty of treason for an act committed outside the realm. The reason which appears in the Resolution is illuminating. The principle governing the rule is established by the exception: "though his person was removed for a time his family and effects continued under the same protection," that is, the protection of the Crown. The vicarious protection still afforded to the family, which he had left behind in this country, required of him a continuance of his fidelity, [It is thus not true to say that an alien can never in law be guilty of treason to the sovereign of this realm in respect of an act committed outside the realm.]

My lords, here no question arises of a vicarious protection. There is no evidence that the appellant left a family or effects behind him when he left this realm. I do not for this purpose regard parents or brothers or sisters as a family. But though there was no continuing protection for his family or effects, of him too it must be asked, whether there was not such protection still afforded by the sovereign as to require of him the continuance of his allegiance. The principle which runs through feudal law and what I may perhaps call constitutional law requires on the one hand protection, on the other fidelity, a duty of the sovereign lord to protect, a duty of the liege or subject to be faithful. Treason, "trahison" is the betrayal of a trust: to be faithful to the trust is the counterpart of the duty to protect.

It serves to illustrate the principle which I have stated that an open enemy who is an alien, notwithstanding his presence in the realm, is not within the protection nor therefore within the allegiance of the Crown. He

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does not owe allegiance because although he is within the realm he is not under the sovereign's protection.

The question then is how is this principle to be applied to the circumstances of the present case.

My lords, I have already stated the material facts in regard to the appellant's residence in this country, his applications for a passport and the grant of such passport to him and I need not restate them.

I do not think it necessary in this case to determine what for the purpose of the doctrine, whether stated with or without qualification, constitutes for an alien "residence" within the realm. It would, I think, be strangely inconsistent with the robust and vigorous commonsense of the common law to suppose that an alien quitting his residence in this country and temporarily on the high seas beyond territorial waters or at some even distant spot now brought within speedy reach and there adhering and giving aid to the King's enemies could do so with impunity. In the present case the appellant had long resided here and appears to have had many ties with this country, but I make no assumption one way or another about his intention to return and I do not attach any importance to the fact that the original passport application and, therefore, presumably the renewals also were for "holiday touring."

The material facts are these, that being for long resident here and owing allegiance he applied for and obtained a passport and, leaving the realm, adhered to the King's enemies. It does not matter that he made false representations as to his status, asserting that he was a British subject by birth, a statement that he was afterwards at pains to disprove. It may be that when he first made the statement, he thought it was true. Of this there is no evidence. The essential fact is that he got the passport and I now examine its effect.

The actual passport issued to the appellant has not been produced, but its contents have been duly proved. The terms of a passport are familiar. It is thus described by Lord Alverstone, L.C.J., in *Brailsford's* case, [1905] 2 K.B. 730, p. 745. "It is a document issued in the name of the Sovereign on the responsibility of a Minister of the Crown to a named individual, intended to be presented to the Governments of foreign nations and to be used for that individual's protection as a British subject in foreign countries." By its terms it requests and requires in the name of His Majesty all those whom it may concern to allow the bearer to pass freely without let or hindrance and to afford him every assistance and protection of which he may stand in need. It is, I think, true that the possession of a passport by a British subject does not increase the Sovereign's duty of protection, though it will make his path easier. For him it serves as a voucher and means of identification. But the possession of a passport by one who is not a British subject gives him rights and imposes upon the Sovereign obligations which would otherwise not be given or imposed. It is immaterial that he has obtained it by misrepresentation and that he is not in law a British subject. By the possession of that document he is enabled to obtain in a foreign country the protection

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extended to British subjects. By his own act he has maintained the bond which while he was within the realm bound him to his Sovereign. The question is not whether he obtained British citizenship by obtaining the passport, but whether by its receipt he extended his duty of allegiance beyond the moment when he left the shores of this country. As one owing allegiance to the King he sought and obtained the protection of the King for himself while abroad.

Your lordships were pressed by counsel for the appellant with a distinction between the protection of the law and the protection of the Sovereign, and he cited many passages from the books in which the protection of the law was referred to as the counterpart of the duty of allegiance. Upon this he based the argument that, since the protection of the law could not be given outside the realm to an alien, he could not outside the realm owe any duty. This argument in my opinion has no substance. In the first place reference is made as often to the protection of the Crown or Sovereign or Lord or Government as to the protection of the law, sometimes also to protection of the Crown and the law. In the second place it is historically false to suppose that in olden days the alien within the realm looked to the law for protection except in so far as it was part of the law that the King could by the exercise of his prerogative protect him. It was to the King that the alien looked and to his dispensing power under the prerogative. It is not necessary to trace the gradual process by which the civic rights and duties of a resident alien became assimilated to those of the natural born subject; they have in fact been assimilated, but to this day there will be found some difference. It is sufficient to say that at the time when the common law established between Sovereign Lord and resident alien the reciprocal duties of protection and allegiance it was to the personal power of the Sovereign rather than to the law of England that the alien looked. It is not, therefore, an answer to the Sovereign's claim to fidelity from an alien without the realm who holds a British passport that there cannot be extended to him the protection of the law.

What is this protection upon which the claim to fidelity is founded? To me, my lords, it appears that the Crown in issuing a passport is assuming an onerous burden, and the holder of the passport is acquiring substantial privileges. A well known writer on international law has said (see Oppenheim, 5th edn., vol. I, p. 546) that by a universally recognized customary rule of the law of nations every State holds a right of protection over its citizens abroad. This rule thus recognized may be asserted by the holder of a passport which is for him the outward title of his rights. It is true that the measure in which the State will exercise its right lies in its discretion. But with the issue of the passport the first step is taken. Armed with that document the holder may demand from the State's representatives abroad and from the officials of foreign Governments that he be treated as a British subject, and even in the territory of a hostile State may claim the intervention of the protecting Power. I should make it clear that it is no part of the case for the Crown that the appellant

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is debarred from alleging that he is not a British subject. The contention is a different one: it is that by the holding of a passport he asserts and maintains the relation in which he formerly stood, claiming the continued protection of the Crown and thereby pledging the continuance of his fidelity.

In these circumstances I am clearly of opinion that so long as he holds the passport he is within the meaning of the Statute a man who, if he is adherent to the King's enemies in the realm or elsewhere commits an act of treason.

There is one other aspect of this part of the case with which I must deal. It is said that there is nothing to prevent an alien from withdrawing from his allegiance when he leaves the realm. I do not dissent from this as a general proposition. It is possible that he may do so even though he has obtained a passport. But that is a hypothetical case. Here there was no suggestion that the appellant had surrendered his passport or taken any other overt step to withdraw from his allegiance, unless indeed reliance is placed on the act of treason itself as a withdrawal. That in my opinion he cannot do. For such an act is not inconsistent with his still availing himself of the passport in other countries than Germany and possibly even in Germany itself. It is not to be assumed that the British authorities could immediately advise their representatives abroad or other Foreign Governments that the appellant, though the holder of a British passport, was not entitled to the protection that it appeared to afford. Moreover the special value to the enemy of the appellant's services as a broadcaster was that he could be represented as speaking as a British subject and his German work book showed that it was in this character that he was employed, for which his passport was doubtless accepted as the voucher.

The second point of appeal (the first in formal order) was that in any case no English Court has jurisdiction to try an alien for a crime committed abroad and your lordships heard an exhaustive argument upon the construction of penal Statutes. There is, I think, a short answer to this point. The Statute in question deals with the crime of treason committed within or, as was held in *R. v. Casement*, [1917] 1 K.B. 98, without the realm: it is general in its terms and I see no reason for limiting its scope except in the way that I indicated earlier in this opinion, viz.: that, since it is declaratory of the crime of treason, it can apply only to those who are capable of committing that crime. No principle of comity demands that a State should ignore the crime of treason committed against it outside its territory. On the contrary, a proper regard for its own security requires that all those who commit that crime, whether they commit it within or without the realm should be amenable to its laws. I share to the full the difficulty experienced by the Court of Criminal Appeal in understanding the grounds upon which this submission is based, so soon as it has been held that an alien can commit, and that the appellant did commit, a treasonable act outside the realm. I concur in the conclusion and reasons of that Court upon this point.

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Finally (and these are the 3rd and 4th grounds of appeal to the Court of Criminal Appeal) it was urged on behalf of the appellant that there was no evidence that the renewal of his passport afforded him or was capable of affording him any protection or that he ever availed himself or had any intention of availing himself of any such protection, and if there was any such evidence the issue was one for the jury and the learned judge failed to direct them thereon.

Upon these points too, which are eminently matters for the Court of Criminal Appeal, I agree with the observations of that Court. The document speaks for itself. It was capable of affording the appellant protection. He applied for it and obtained it, and it was available for his use. Before this House, the argument took a slightly different turn. For it was urged that there was no direct evidence that the passport at any material time remained in the physical possession of the appellant and that upon this matter the jury had not been properly directed by the learned judge in that he assumed to determine as a matter of law a question of fact which it was for them to determine. This point does not in this form at least appear to have been taken before the Court of Criminal Appeal and your lordships have not the advantage of knowing the views of the experienced judges of that Court upon it. Nor, though the importance of keeping separate the several functions of judge and jury in a criminal trial is unquestionable, can I think that this is a question with which your lordships would have had to deal with in this case, if no other issue had been involved. For it is clear that here no question of principle is involved. The narrow point appears to be whether in the course of this protracted and undeniably difficult case the learned judge removed from the jury and himself decided a question of fact which it was for them to decide. This is a matter which can only be determined by a close scrutiny of the whole of the proceedings.

My lords, this is a task which in the circumstances of this case your lordships have thought fit to undertake. I do not propose to examine in detail the course of the trial and the summing up of the learned judge, though I may perhaps be permitted to say that it was distinguished by conspicuous care and ability on his part. But having read the whole of the proceedings I have come to the clear conclusion that the learned judge's summing up is not open to the charge of misdirection. It may well be that there are passages in it which are open to criticism. But the summing up must be viewed as a whole and upon this view of it I am satisfied that the jury cannot have failed to appreciate and did appreciate that it was for them to consider whether the passport remained at all material times in the possession of the appellant. Upon this question no evidence could be given by the Crown and for obvious reasons no evidence was given by the appellant. It has not been suggested that the inference could not fairly be drawn from the proved facts if the jury thought fit to draw it and I think that they understood this and did draw the inference when they returned the general verdict of "guilty."

This point therefore also fails.

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The LORD CHANCELLOR—My lords, I am asked by my noble and learned friend Lord Simmonds to say that he concurs in the opinion which I have just read.

Lord MACMILLAN—My lords, I have had the advantage of reading in print the Opinion which has just been delivered by the Lord Chancellor. I am in entire agreement with it.

Lord WRIGHT—My lords, I also have had the same advantage. I fully agree with, and concur in, the opinion which has just been delivered by the Lord Chancellor.

Lord PORTER—My lords, I have already stated that I agree with your lordships in thinking that the renewal of William Joyce's passport, obtained on the 24th August, 1939, was evidence from which a jury might have inferred that he retained that document for use on and after the 18th September, 1939, when he was proved first to have adhered to the enemy, and therefore I can deal with this part of his appeal very shortly.

It is undisputed law that a British subject always, and an alien whilst resident in this country, owes allegiance to the British Crown and therefore can be guilty of treason.

The question, however, remains whether an alien who has been resident here, but leaves this country, can, whilst abroad, commit an act of treason.

The allegiance which he owes whilst resident in this country is recognized in authoritative text books and the relevant cases to be owed because, as Hale (Pleas of the Crown I, p. 58) says, "the subject hath his protection from the King and his laws."

If then he has protection he owes allegiance, but the quality of the protection required has still to be determined. On behalf of the appellant it was strenuously contended that unless the alien was enjoying the protection of British law he owed no allegiance. My lords, I think that this is to narrow the obligation too much. Historically the protection of the Crown through its dispensing power was afforded to the alien in this country earlier than the legal protection which came later.

Therefore any protection, whether legal or administrative, would in my view be enough to require a corresponding duty of allegiance.

It was said in the second place, however, that in no case could an alien, however long he had been resident here, commit an act of treason whilst he was abroad.

This argument again seems to me to limit unduly the extent of his obligation.

It is in contradiction of the resolution of the judges in 1707, whereby it was declared that if an alien who has been resident here goes abroad himself but leaves his family and effects here under the same protection, the duty (i.e., of allegiance) still continues.

This resolution has been criticized as being merely the opinion of the judges in consultation with prosecuting counsel, and not given as a decision in any case. The criticism is true, but the resolution has been repeated in text book after text book of high authority, and though not



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authoritative as a legal decision, it still has the weight of its repetition by great lawyers and the fact that it is nowhere challenged.

Foster, Hale, East, Hawkins, Chitty, and Bacon all set it out. Blackstone alone omits it, but Blackstone was giving a general view of the Laws of England, and an omission to set out a particular extension of the general rule is not necessarily a denial of its existence.

Equally the fact that many cases also state only the general rule in cases where no more is required is not a denial of the existence of certain modifications or extensions of it.

It is true that even in the case with which the resolution deals the alien, though absent himself, is vicariously protected by the laws of this country in the person of his family and effects, but it is still no more than protection.

Does then the possession of a passport afford any such protection as that contemplated by the rule? I think it does. Even after war is declared, some protection could be afforded to holders of British passports through the protecting power, and again it would be useful and afford protection in neutral countries.

"It will be well to consider what a passport really is," says Alverstone, L.C.J., in *R. v. Brailsford*, [1905] 2 K.B. 730. It is a document issued in the name of the sovereign on the responsibility of a Minister of the Crown to a named individual, intended to be presented to the Governments of foreign nations and to be used for that individual's protection as a British subject in foreign countries," and the late Sir William Malkin in vol. 49 of the *Law Quarterly Review*, speaks of "the extensive though perhaps somewhat ill-defined branch of international law which may be called the diplomatic protection of citizens abroad."

It must be remembered that the matter to be determined is not whether the appellant took upon himself a new allegiance, but whether he continued an allegiance which he had owed for some twenty-four years, and a lesser amount of evidence may be required in the latter than in the former case. I cannot think that such a resident can in war time pass to and fro from this country to a foreign jurisdiction and be permitted by our laws to adhere to the enemy there without being amenable to the law of treason. I agree with your lordships also in thinking that if an alien is under British protection he occupies the same position when abroad as he would occupy if he were a British subject. Each of them owes allegiance, and in so doing each is subject to the jurisdiction of the British Crown.

"The law of nations," says Oppenheim, vol. I, p. 266, 5th edn., "does not prevent a State from exercising jurisdiction within its own territory over its subjects travelling or residing abroad, since they remain under its personal supremacy." Moreover, in *R. v. Casement*, [1917], 1 K.B. 98, the point was directly decided in the case of a British subject who committed the act of adhering to the King's enemies abroad, and the decision was not seriously controverted before your lordships.

But, my lords, though the renewing of a passport might in a proper case lead to the conclusion that the possessor, though absent from the

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country, continued to owe allegiance to the British Crown, yet in my view the question whether that duty was still in existence depends upon the circumstances of the individual case and is a matter for the jury to determine. In the present case, as I understand him, the learned judge ruled that in law the duty of allegiance continued until the protection given by the passport came to an end—i.e., in a year's time—or at any rate until after the first act of adhering to the enemy, which I take to be the date of the appellant's employment as broadcaster by the German State on 18th September, 1939.

The Court of Criminal Appeal take, I think, the same view, but since your lordships, as I understand, think otherwise, I must set out the facts as I see them. The appellant, admittedly an American subject, but resident within this realm for some twenty-four years, applied for and obtained a passport, as a British subject, in 1933. This document continued to be effective for five years, and was renewed in 1938 and again on 24th August, 1939. Extensions are normally granted for one year, and that given to the appellant followed the normal course. It would, I think, not be an unnatural inference that he used it in leaving England and entering Germany, but in fact nothing further was proved as to the appellant's movements, save that his appointment as broadcaster by the German State, dated 18th September, 1939, was found in his possession when he was captured, and that at any rate by December the tenth he had given his first broadcast. Nothing is known as to the passport after its issue, and it has not since been found.

My lords, for the purpose of establishing what the learned judge's ruling was, I think it necessary to quote his own words to the representatives of the Crown and of the prisoner before they addressed the jury. They are as follows: I shall direct the jury "on Count 3" (the only material count) "that on 24th August, 1939, when the passport was applied for, the prisoner beyond a shadow of doubt owed allegiance to the Crown of this country and that on the evidence given, if they accept it, nothing happened at the material time thereafter to put an end to the allegiance that he then owed. It will remain for the jury, and for the jury alone, as to whether or not at the relevant dates he adhered to the King's enemies with intent to assist the King's enemies. If both or either of you desire to address the jury on that issue, of course, now is your opportunity."

After that ruling both counsel proceeded to address the jury, the defence submitting that the appellant had not adhered to the King's enemies, the Attorney-General that he had. No other topic was touched upon by either of them, and in particular no argument was addressed to the question whether the appellant still had the passport in his possession and retained it for use or as to whether he still owed allegiance to the British Crown.

After counsel's address to the jury the learned judge summed up, and again I think I must quote some passages from his observations.

One such is: "Under that count (i.e., Count 3) there are two matters

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which have got to be established by the prosecution . . . beyond all reasonable doubt . . . The first thing that the prosecution have to establish is that at the material time the prisoner, William Joyce, was a person owing allegiance to our lord the King. Now [in] my view, I have already intimated . . . as a matter of law is, if you as a jury accept the facts which have been proved in this case beyond contradiction—of course you are entitled to disbelieve anything if you wish—if you accept the facts which have been proved and not denied in this case, then at the time in question, as a matter of law, this man William Joyce did owe allegiance to our lord the King, notwithstanding the fact that he was not a British subject at the material time. Now, members of the jury, although that is a matter for me entirely and not for you, I think it will be convenient if I explain quite shortly the reasons by which I have arrived at that view, partly for your assistance, explanation, and perhaps for consideration hereafter in the event of this case possibly going to a higher court."

Again he said: "None the less I think it is the law that if a man who owes allegiance by having made his home here, having come to live here permanently, thereby acquiring allegiance, as he undoubtedly does, if he then steps out of this realm armed with the protection which is normally afforded to a British subject—improperly obtained, it may be, but none the less obtained . . . using and availing himself of the protection of the Crown in an executive capacity which covers him while he is abroad, then in my view he has not thereby divested himself of the allegiance which he already owed."

Later he says: "So between 24th August and 18th September, 1939, armed with a British passport, he had somehow entered Germany. Now, members of the jury, thereafter up until the 2nd July, 1940, when his passport ran out, he remained under such protection as that passport could afford him during his stay in Europe."

Once again he says: "I do not think I am in any way extending the principles of the law in saying that a man who in this way adopts and uses the protection of the sovereign to whom he has already acquired an allegiance remains under that allegiance and is guilty of treason if he adheres to the King's enemies.

"Members of the jury, I accordingly pass from that aspect of the matter; that is my responsibility. I may be wrong; if I am I can be corrected. My duty is to tell you what I believe to be the law on the subject and that you have to accept from me, provided you believe those facts about the passport, going abroad and so forth. If you do not believe that you are entitled to reject it and say so, because you are not bound to believe everything, but if you accept the uncontradicted evidence that has been given, then in my view that shows that this man at the material time owed allegiance to the British Crown.

"Now if that is so, then the matter passes into your hands, and from now onwards I am dealing with matters which are your concern and your concern alone, with which I have got nothing to do; they are matters of

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fact, and the onus of proving those facts is upon the prosecution, from first to last, and it never shifts.

“ Now what have they got to prove? They have got to prove that during this period, as I have already indicated, this man adhered to the King's enemies without the realm, namely, in Germany.”

The learned judge then refers to a broadcast, of which there was uncontradicted evidence that it had been made before 10th December, 1939, to the prisoner's engagement as a German broadcaster to Britain, and to the prisoner's statement, which was put in evidence by the Crown and from which I need only quote the words: “ Realising, however, that at this critical juncture I had declined to serve Britain, I drew the logical conclusion that I should have no moral right to return to that country of my own free will and that it would be best to apply for German citizenship and make my permanent home in Germany.”

After reading the statement the learned judge added: “ I think that is the whole of the very short material upon which you have to come to the conclusion as to whether or not it has been proved to your satisfaction beyond all reasonable doubt that during the period in question this man adhered to the King's enemies, comforted and aided them with intent to assist them, and that he did so voluntarily. Those are the matters which you have to consider.”

My lords, I have read and reread the summing up as a whole, and I think I have quoted all the material passages from it. Whether I pay regard to its general import or confine myself to the particular passages set out above, I cannot read the words of the learned judge as doing other than ruling that in law the appellant continued to owe allegiance to His Majesty on 18th September, 1939, on 10th December, 1939, and indeed until the 2nd July, 1940, and leaving to the jury only the question whether during this period the appellant adhered to the King's enemies.

The passage in the summing up containing the words “ provided you believe those facts about the passport, going abroad and so forth ” in my opinion merely instructed the jury that they had to be satisfied that the accused man did obtain a renewal of his passport, did go abroad, and did make a statement, but that if they were so satisfied, then in law the prisoner continued to owe allegiance at all material times after he left this country. If it means more than this I should regard it as a totally inadequate direction as to what must be proved in order to show that the allegiance continued after he left this country. But I do not think it does mean more than I have indicated.

As I have stated, the renewal of the passport on 24th August, 1939, was, in my view, evidence from which a jury might infer the continuance of the duty of allegiance. What the prosecution have to show is that that duty continued at least until 18th September.

The learned judge, as I see it, regards the renewal as proving conclusively that the duty continued until the passport ceased to be valid,

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unless some action on the part of the Crown or the appellant was proved which would put an end to its protection.

The Court of Criminal Appeal, in my opinion, took the same view. Their words are: "We have to look at the evidence in this case and upon that evidence to decide whether the trial judge was right or wrong in holding as a matter of law that on 18th September, 1939, and between that date and 2nd July, 1940, this appellant did owe allegiance to the King. Now we agree with Tucker, J., that the proper way of approaching that question is to see whether anything had happened between 24th August and 18th September to divest the appellant of that duty of allegiance which he unquestionably owed at the earlier of those dates."

This ruling, as I see it, can only mean that the appellant's duty of allegiance remained in force until 2nd July, 1940, unless it was shown by him or on his behalf that something had occurred to put an end to that duty. It puts the onus on him to show some action terminating that obligation. The passport was never found again, and he may have used it only to gain admittance to Germany and may then have discarded it. Indeed, his statement, if believed, indicates that this was his object, and the mere fact that the renewal was for a year proves nothing, since, as was proved in evidence, that is the normal period of extension. There is no evidence that he kept it for use on or after 18th September.

If I thought that the obtaining of the passport on 24th July proved in law that the appellant retained it for use at least until 18th September, unless he was shown to have withdrawn his allegiance, I should accept this ruling. But I do not think it correct. It could only be supported on the ground that allegiance continues until the appellant shows that it is terminated.

The Attorney-General supported this contention by a reference to Archbold's Criminal Practice (1943), p. 330, where it is stated that if a matter be within the knowledge of the accused and unknown to the Crown the onus of proof is cast upon the former. For this proposition the case of *R. v. Turner* (1816), 5 M. & S. 206, is said to be an authority. But that case has been explained as dependent upon the special provisions of the Game Laws and as being, therefore, not of general application. The true principle is, I think, set out in Phipson on Evidence, 8th edn., p. 34, and Best on Evidence, 12th edn., p. 252, and is explained by Holroyd, J. (himself a party to the judgment in *R. v. Turner (supra)*) in *R. v. Burdett* (1820), 4 B. & A. 95, p. 140: The rule in question, he says, "is not allowed to supply the want of necessary proof, whether direct or presumptive, against a defendant of the crime with which he is charged but when such proof has been given it is a rule to be applied in considering the weight of evidence against him, whether direct or presumptive, when it is unopposed, unrebutted, or not weakened by contrary evidence which it would be in the defendant's power to produce, if the fact directly or presumptively proved were not true."

If this be the true principle, the failure of the prisoner to give

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evidence as to his dealing with the passport goes to increase the weight of the evidence against him, but does not make the evidence of his applying for and receiving it proof conclusive in law that he continued to retain it for use or at all. That he received it may be some proof to go to the jury that he retained it, but it is no more; it is not a matter upon which a Court is entitled to rule that a jury must draw the inference that he retained his allegiance. Indeed at one point in his argument the Attorney-General used language which, in my view, accepted this as the true principle when he said: "I put the passport merely as evidence of the existence of protection. If he" (i.e., the accused) "discarded it on his return that might make a difference." To this observation I would merely add that the renewal of the passport was at best but some evidence from which a jury might infer that the duty of allegiance was still in existence. Unless, however, the accused man continued to retain it for use as a potential protection, the duty of allegiance would cease, and it was for the jury to pronounce upon this matter.

I do not understand your lordships to rely upon the proviso to sec. 4 of the Criminal Appeal Act, nor do I think it could be said that no substantial miscarriage of justice had occurred, if I am right in considering that the matter should have been left to the jury. The test has been laid down by your Lordships' House to be whether a reasonable jury properly directed must have come to the same conclusion.

In the present case a reasonable jury properly directed might have considered that the allegiance had been terminated. Against the mere receipt of the passport there has to be set the fact that its possession was at least desirable if not necessary to enable the accused man to proceed to Germany from this country, the fact that it was not found in his possession again or anything further known of it, his statement as to his intention of becoming naturalized in Germany and his acceptance of a post from the German State. At any rate these were matters for a jury properly directed to consider. They were not directed on them and, as I have stated, in my view, they were told that the matter was one of law and not for them.

My lords, the question of the extent to which an alien long resident in this country continues to owe allegiance after he has left it and whether the request for and acceptance of a passport makes the duty of allegiance still owed until the protection of that passport ceases by effluxion of time or at least for some period after its issue is, and has been certified to be, a point of law of exceptional public importance. One matter to be decided in solving that question is the boundary line between the functions of a judge and those of a jury. Apart from this principle, that questions which are rightly for the jury should be left to them and that a proper direction should be given is, as I think, also of great public importance. The one matter concerns this country only in the exigencies of war, though then no doubt it is of vital importance: the other is a necessary element in the true administration of the law in all times of peace and war.

If the safety of the realm in war time requires action outside the ordinary

# William Joyce.

rule of law, it can be secured by appropriate measures such as a Defence of the Realm Act, but the protection of subject or foreigner afforded through trial by jury and the due submission to the jury of matters proper for their consideration is important always, but never more important than when the charge of treason is in question.

For these reasons I would myself have allowed the appeal.

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## APPENDIX V.

(EXHIBIT No. 15A.)

### CONTRACT.

Between the Reichs-Rundfunk G.m.b.H. Berlin-Charlottenburg  
and

Mr. William Joyce (Wilhelm Fröhlich), of Berlin  
the following contract is concluded :

#### CLAUSE 1.

Mr. William Joyce is appointed Head Commentator in the English editorial department of German Broadcasting Stations for Europe. His work will be arranged according to the plan of distribution of business prepared by the Foreign Directorate.

In other respects the mutual rights and obligations are determined by the provisions below of this contract. The Regulations as to remuneration of the Reichs-Rundfunk G.m.b.H. will not apply save in so far as they are hereinafter expressly referred to.

#### CLAUSE 2.

Mr. William Joyce will receive a gross monthly salary of 1200 Reichsmarks (one thousand two hundred Reichsmarks), payable in advance on the 1st of each month. This salary covers all claims of Mr. William Joyce against the Reichs-Rundfunk G.m.b.H. in respect of his work on behalf of the latter unless shift or Sunday extra work is done for service reasons. In addition to the salary, children's allowances will be granted to the same amount and on the same conditions as in the case of the remaining members of the permanent staff of the Reichs-Rundfunk G.m.b.H.

The Reichs-Rundfunk G.m.b.H. will, during the currency of the contract, grant an additional allowance for maintenance of  $4\frac{1}{2}$  per cent. of the monthly salary including the children's allowance, in accordance with sec. 1 of the appended annexe to the Service Contract.

At Christmas Mr. William Joyce will receive a special bonus under Clause 10 of the Remuneration Regulations of the Reichs-Rundfunk G.m.b.H.

#### CLAUSE 3.

In the event of death of Mr. William Joyce during the currency of the contract, his relatives (wife or children, if the latter kept a common

# German Broadcasting Corporation Contract.

household with the deceased) will receive the salary until the expiry of the month following that of death. (As to the order of succession of parties entitled see annexe to the Service Contract.)

## CLAUSE 4.

The provisions contained in the annexe to the service contract are component parts of this contract (I. Provisions as to the Allowance for Maintenance; II. Provisions as to the Obligation of Secrecy; III. Allowance to Staff members in respect of copyright services; IV. Regulations as to the registration and use of rights enjoying statutory protection by members of the staff; V. Service Regulations).

## CLAUSE 5.

Should Mr. William Joyce have to carry out service journeys by order of his department he will receive for this an allowance for travelling expenses under Group A of the Travelling Expenses Regulations in force from time to time for the Reichs-Rundfunk G.m.b.H.

## CLAUSE 6.

Mr. William Joyce will receive holidays according to the Holidays Regulations in force for the Reichs-Rundfunk G.m.b.H. from time to time.

## CLAUSE 7.

Mr. William Joyce is bound to place the whole of his work at the disposal of the company.

## CLAUSE 8.

The carrying on of any accessory occupation by Mr. William Joyce is only permissible with the express consent of the Directorate. He has no right to enter into obligations of an exclusive character towards firms producing gramophone records.

## CLAUSE 9.

Without the express consent of the Directorate of the Reichs-Rundfunk G.m.b.H. or the competent service department Mr. William Joyce may not appropriate to himself, make use of or render accessible to third persons for non-service purposes service documents, printed matter, drawings or other illustrative material in the original or reproductions. Service relations with the Reich Chamber of Culture or the several competent Chambers are not hereby affected.

## CLAUSE 10.

This contract comes into force on and from July 1st, 1942. The period of notice of termination is three months to end at the close of a calendar quarter.

Berlin-Charlottenburg, July 3rd, 1942.

REICHS-RUNDFUNK GMBH.

by deputy (signature)

by deputy (signature)  
(signed) William Joyce.



# William Joyce.

## APPENDIX VI.

EXHIBITS Nos. 5, 6, 7, 8.

### TRANSCRIPT OF SHORTHAND NOTES TAKEN BY INSPECTOR HUNT AT B.B.C. STUDIOS.

1. *Taken at B.B.C. Studios on the occasion of a Broadcast on 30th January, 1943.*

Joyce said—"In this Proclamation which he addressed to the German people, the Fuehrer first called to account the fourteen years' struggle which preceded the victory of 30th January, 1933. He described afresh how, after the world war which they had not wanted, the German people have suffered under the consequences of defeat through President Wilson's breach of faith contrary to dictate (*sic*). Again he called attention to the fact that all the injustices of the years 1919 to 1933 were perpetrated, not against National Socialist Germany, but against democratic Germany. Then the Fuehrer recalls the spoliation of the German nation by international Jewry. The misery of the economic crisis and unemployment which prevailed in 1932, the rupture of the German people. At the turn of the year 1933, said the Fuehrer, Germany was threatened with complete bankruptcy and National Socialism was left with a terrible . . . to take over. The Fuehrer then gave a survey of the measures that National Socialism had taken to ensure immediate economic recovery. The consequence was that before the expiry of the year . . . the last of the unemployed were again at work. . . . These achievements were such that there was definitely nothing in the democratic countries to be compared to them. Only Fascist Italy had accomplished similar achievements. . . . There are roads to possibilities of solving the external problems in spite of all the Bolshevist catastrophes. The German example of National Socialism succeeded year by year in making ever greater progress along the way to the restoration of Germany's right to live. New German fighting forces were built up only after the Fuehrer's peaceful proposals for loyal co-operation had been declined. . . . To-day on the 10th anniversary of the coming to power we can now recognize what would have happened if, on 30th January, 1933, Providence had not called National Socialism to power. For ten years before this time Bolshevism had been carrying out a systematic . . . programme of vast dimensions with a view to the attack on Europe . . . on 22nd June, 1941. . . . The only reason is that in the year 1933 Germany feared a political, moral and material basis entitling her to the leadership in her struggle upon which the fate of the world depends. In former days there existed in Germany only two possibilities. Either the victory of the National Socialist revolution or the Bolshevist disaster. And now . . . there likewise exist . . . only these two alternatives. Either Germany, with the German forces of Europe as a whole, or else there will bear down upon this continent of ancient culture . . . Mongolian hordes destructive as they proved to be in Russia itself. . . . Swamped

## Notes of Broadcasts taken by Hunt.

over Europe the world would collapse and this result of human labour of a thousand years instead of being the most flourishing continent on the earth would be replaced by inconceivable barbarity. If National Socialism had accomplished nothing more than what already lies behind it, it would rank as one of the mightiest manifestations in the history of the world, but nevertheless Europe would be lost to the marvellous progress of our movement . . . Whatever blows of fate may fall upon us now they are nothing as compared with what all will suffer if barbaric hordes of the East sweep over our part of the world. Every single life which is sacrificed in this battle will live in the generations of the future in recognition of the fact that in this way there cannot be . . . but only the survivors of the annihilated . . . National Socialism will carry on the fight fanatically. During last winter the Jewish leaders were exulting because in their eyes the collapse of the German forces appeared to be inevitable, but events transpired otherwise. In this winter they can entertain some hope, but they will find out that the strength of National Socialist ideals is greater than their aspirations or yearnings . . . This strength will bind everyone to the fulfilment of his duty and will do away with anybody who opposes . . . National Socialism will wage this struggle until such time as there comes a new 30th January, that is to say the day of . . . victory. The Fuehrer's proclamation then expresses his gratitude to his soldiers for . . . being enacted from the far North to the African desert, from the Atlantic to the wide steppes of the East, from the Aegean to Stalingrad, an epic which will survive more than one millenium. It is the Fuehrer's . . . to the home front to remain worthy of the heroic deeds done by the troops. The proclamation continues, the total endeavour of our nation must now be increased. The heroic fight of our soldiers on the Volga should be . . . to do his utmost in the struggle for the freedom of Germany and thereby in the wider sense for the preservation of the whole continent. It was the desire of our enemies to threaten peaceful towns and villages with weapons of gruesome destruction. . . . In the fracas which our foes forced upon us as they did before in 1914, the fracas which represents the be or not to be of our race, the Almighty will be the just judge. Now our task is to fulfil our duties in such a way that before Him as the Creator of the Universe and in accordance with the . . . given by him for the battle of existence, we may stand without ever faltering. . . . From the ruins of our towns and villages there will emerge a new life which will develop further that stage in which we believe, for which we are working, a National Socialist Greater Germany. . . . In this day there will be for permanence a strength to protect the European family of nations in the future as well as against danger from the East. The Greater German Reich and its allies will, furthermore, have to secure in common these territorial areas which . . . are indispensable to the preservation of their material existence."

(Signed) A. HUNT,

*Inspector.*

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2. Taken at B.B.C. Studios on the occasion of a Broadcast on 8th April, 1943.

Introductory male voice said: "Germany calling. Here are the stations Calais 514 metres, Breslau 316 metres, Cologne 456 metres, Luxemburg 1293 metres, and the short wave transmitter DXX 48.86 metres. And now here is William Joyce at the microphone to give you "Views on the News." "

William Joyce said—"To-day's report from the German Supreme Command announces that in general yesterday passed quietly on the Eastern Front. Sporadic enemy attacks against the Kuban bridgehead and in the central Kharkov sector were repulsed. I sometimes wonder whether the average listener in Britain fully comprehends the significance of this change which has come about of late in the Soviet theatre of war. To appreciate the nature of the transformation it would be necessary to look up some of the newspapers published, say, towards the end of January, or to consult the records of B.B.C. broadcasts for the same period. At that time there was no suggestion that the Bolsheviks had merely engaged in a great offensive for the purpose of effecting local improvements in their positions. In those critical days British propagandists did not hesitate to assert that the fate of Germany's armies and of Germany herself hung in the balance. Hydraheaded (?) adventurers like Benes predicted that the German troops would first have to fall back and then retreat into their own territory before the Bolshevik onslaught. It would be idle to deny that during the course of this past winter there did arise a crisis of grave magnitude upon the solution of which the survival of European culture and of all those values that we honour depended. It would be perhaps presumptuous to expect in a world conflict of this nature no great crisis should ever confront even those who have their victims in their grasp. It is in the nature of war to produce crises and it is those who learn the lessons of experience that succeed in minimising them or avoiding their repetition. As to the lesson which Germany has learned there is no need to give any formal explanation. In due course certain powerful and decisive facts will speak for themselves. The highest moral which can be drawn from the winter campaign and especially from the epic of Stalingrad is that under a great leader and with the strength of the greatest heroic inspiration the people can overcome dangers and difficulties which would merely sweep the weak and irresolute away. I dwell upon this subject because there seems to be a tendency even in those British quarters which a couple of months ago took the Soviet victory for granted, to pretend now that the present lull on the Eastern Front is exactly what might have been expected. It is not right that British propagandists should be permitted to adopt this totally dishonest issue and therefore I would ask our British listeners to consult back numbers of their newspapers, if in fact they can procure them, and trace the predictions which were made with the position which actually prevails. Such a consultation of the records will show certain facts. First, the Bolsheviks

## Notes of Broadcasts taken by Hunt.

did not succeed in recovering the agricultural and industrial wealth of the Ukraine, so vital to the sustenance of their war effort. Secondly, they did not succeed in smashing the German armies and depriving them of the power to strike hard blows. This latter fact has already been amply demonstrated by the German advance in the southern sector which led to the recapture of Kharkov amongst other results. The third consideration which must be borne in mind is that the Soviet attempt to obtain these two main objectives involved sacrifices and losses for the Red Army on a scale too prodigal for description. In order to estimate the effect of these extraordinary losses upon the Bolshevik war potential, we must . . . the stern test of facts. There can be no doubt whatever that if Moscow was urging London last summer to establish a Second Front without delay, the pressure in this direction has been multiplied through recent weeks. There is little doubt that Churchill is extremely desirous of conforming to the Soviet requirements in so far as the possibility may exist. He is not in the slightest degree influenced by the thought of what fate would befall Europe if the Bolsheviks were to emerge as victors. Nor does he seem to be greatly influenced by the consideration that a Soviet triumph would automatically mean a loss of British economic interests in the Middle East, including oil holdings of great value. Nor is there any evidence that he perceives the threat to India which would at once come into being if the Kremlin succeeded in acquiring the mastery of the European Continent. There can be only one reason. The Prime Minister blinds himself to such prospects, however hypothetical they may be. He is the servant, not of the British public, or of the British Empire, but of International Jewish finance. This charge must be preferred against a man who has so signally violated British tradition in the course of this war. If we take one example. The Anglo-American raid on Antwerp which resulted in the death of more than 2000 peaceful Belgians and 300 innocent children. This provides a striking example of the complete lack of scruple actuating the conduct of the British Government. Belgium would never have been involved in the war at all. In essence and in substance the Belgians were abandoned by the British who had given them the most lavish promises of assistance, and now in broad daylight under conditions of excellent visibility these people are massacred, not because they are at war with the British, but because they no longer serve the purposes of the British Government. Such an act of malicious spite is not in my opinion typically British. It bears instead the hallmark of Jewish policy which has always been directed towards the eradication of Gentiles who could not be made to serve the interests of Hebrew domination. Such a . . . of German National Socialist philosophy is evidenced by the rising tide of anti-Jewish feeling in Britain which has excited such bitter protests from the *News-Chronicle*, a journal which, like many other British newspapers, is under Jewish control. On Tuesday, the *News-Chronicle* published a second leading article on the subject and to judge by the number of letters which the editor has received the Jewish problem is now becoming a question of widespread and topical

## William Joyce.

interest in England. The *News-Chronicle* faithfully reflects the Jewish demand that anybody who is convicted of making an anti-Jewish remark should be sent to prison. It is pointed out by this paper that Sir Oswald Mosley is already in gaol. This former Minister of the Crown has made a number of attempts, apparently useless, to ascertain why he must be kept in custody. The *News-Chronicle*, however, gives the complete answer. If I am not mistaken one of the American Presidents said 'the individual has the right to speak his mind.' This also used to be one of the chief principles of the unwritten code which has been loosely described as the British Constitution. When, however, a leading London newspaper demands that anybody who crosses the Jews should be arrested and imprisoned it is not hard to draw the right conclusion as to what forces in reality dominate the Government of Britain. As to the increase in the British dislike of the Jewish race I must fundamentally disagree with the *News-Chronicle* which describes this movement as the result of Nazi influence. There are millions of people in Britain to-day who distrust the Jews intensely and yet whom it would be ridiculous to place in the category of Germany's friends. It is not merely that the Jews have, as usual, exploited the opportunities of making money which the war has presented. It is not only that this race—this community within a community—has devoted a considerable amount of acumen to black marketing or that as is well known the Jew in England is trying to extract himself as far as possible from the perils and inconveniences to which air raids give rise. All these typical manifestations of the Jewish character may have irritated the British people, but certainly cannot have surprised them. The present growth of feeling against the Jews is to be determined not by the incidental but by the fundamental. There are many people in Britain to-day who are wondering why they should be at war at all. If, as the *Times* declares, the balance of power is dead in Europe and cannot be resurrected, there are great numbers who wonder dispiritedly how their country is to recover its lost export markets after the war and how, to mention one aspect only, British shipping will be able to compete with American. That is a subject that was fully treated by Roderick Dietze last night. It cannot escape the attention of all thinking people in Britain that their future has not only been mortgaged to the White House, but has been totally surrendered to the discretion of Wall Street. . . . There are many evils that the war will bring upon his country. He cannot think of one single advantage that it will confer. In the circumstances it is only natural for him to ask on whose behalf the war is being fought. If the British newspapers demand that anybody who criticises the Jews should be sent to gaol that is sufficient proof that in Britain to-day there is one power stronger than the power of King, Parliament or people. It is the power of the Jews who are dragging a great Empire down to its ruin in pursuit of their own war of sordid revenge."

Another male voice then said: "Germany calling. You have just been listening to 'Views on the news.' Thank you for your attention."

(Signed) A. HUNT,  
*Inspector.*

9th April, 1943.

## Notes of Broadcasts taken by Hunt.

3. Taken at B.B.C. Studios on the occasion of a Broadcast on 12th July, 1943.

Male voice (identity unknown) said, "Germany calling. Here are the stations Calais one, 514 metres; Calais two, 301.6 metres; Köln, 456 metres; Breslau, 316 metres; Luxemburg, 1293 metres; and the short wave transmitter DXX, 41.27 metres. . . ."

This person then read news, closing with the words, "and now you will hear, 'Views on the news,' by William Joyce."

William Joyce said: "To-day's report from the German Supreme Command announces further details of the great battle now raging in the East between Byelgorod and Orel. German troops have succeeded in surrounding and annihilating a large enemy force. Several thousand prisoners were taken in this particular engagement and 129 Soviet tanks were destroyed or put out of action, while a large number of guns and other weapons were captured. During yesterday's operations on the sector of the front where the heavy fighting is taking place, 220 enemy tanks and 70 Soviet aircraft were destroyed. Since the 5th July when the action began the Bolsheviks have lost no fewer than 28,000 prisoners, 1640 tanks and 1400 guns. The number of their fatal casualties has been high. On this latter point no figures are as yet available, but in the past, particularly during the course of pitched battles, the Soviet losses in dead have been at least three or four times as great as their losses in prisoners. In general, the speculations of the enemy concerning the meaning and purpose of the operation between Byelgorod and Orel do not deserve to be examined seriously since they are at best only an attempt to elicit information as to the German intention, and, I may say, clumsy attempts. It is not, however, without interest to note the reports of the American Agency of the United Press from Moscow which states that the latest developments in this sector are occasioning interest in the Soviet capital. The German onslaught, declares this enemy source, has so far proved irresistible and to check it has been beyond the limits of human power. On the other hand, it is hoped in Moscow that its momentum will abate. Otherwise, says the message, serious consequences might arise. Upon this analysis of the situation there is no comment from Berlin, but I do not know of any past occasion upon which United Press went out of its way to paint a favourable picture of the German prospects. At any rate, there is excellent reason to believe that the enemy's grand strategical plan for the summer of 1943 comprised a Soviet offensive, synchronising with an attack from the Mediterranean, which in fact took the form of a landing on Sicily. If that indeed were the plan it can already be described as a failure. Certainly the enemy expeditionary force is on the island of Sicily, but not by any stretch of the imagination can it now be said that the Soviets are on the offensive. That they would have launched an offensive had their designs not been . . . is, however, far more than probable. As it is, whilst Berlin military circles have abstained from

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*making any general statement concerning German aims in the East, it is manifest that in the one sector where the major fighting is taking place, it is at present the German forces that have the upper hand. It is, however, only just to acknowledge that they have encountered fierce resistance. From the Sicilian theatre of war comes the news that the Anglo-American forces have failed to increase the extent of coastline which they hold. Yesterday at selected points German and Italian troops went over to the counter-attack and in the first clash threw the enemy back. German and Italian air formations attacked enemy formations, sinking a number of large transports and landing boats. Three cruisers and 42 transports were damaged, whilst an Italian submarine sank a cruiser of 10,000 tons. Over and around Sicily in the course of yesterday, the enemy lost thirty-eight aircraft and it is reported that ten German planes are missing. The general tendency of British and American propaganda concerning the Sicilian campaign is to indulge in some form of rejoicing at the fact that landings have taken place, to throw out optimistic hints which may be seized with avidity by those who want to celebrate imaginary triumphs, and at the same time to stress the fact that the main engagement and the greatest dangers still lie ahead. One of the first British ministers to discuss it in public was Mr. Morrison who on Saturday spoke of the enterprise in very ambitious phrases, but nevertheless refrained from describing the venture as a second front. It would not surprise me to learn that a very large section of the British public is now wondering whether the attack on Sicily really deserves to be considered in this light.*

I do not propose at the present juncture to offer any help or advice beyond remarking that in Moscow at least, there is no disposition to consider this enterprise as a suitable and adequate discharge of an obligation undertaken by the British Government to attack Germany from the west in such a manner as to provide substantial and appreciable relief for the Soviet forces in the east. That the Germans should be gaining any ground, however large or however little, from the Bolsheviks, whilst the assault on Sicily is proceeding, is a phenomenon which finds no place in the scheme of enemy strategy. There is no value in premature generalizations, but I do not think it rash to predict that in one respect there is a very special disappointment in store for the enemy. Churchill seems to have entertained some crazy notion that if only he could deliver a blow on Italian territory, Italy would collapse. It is evident already that the whole Italian nation is united as never before and inspired with the ardent determination to defend the Fatherland. This resolution need not be described, it will be shown in action. In the meantime the war against enemy merchant shipping is being vigorously pursued. In the course of armed reconnaissance over the Atlantic German planes set on fire two enemy vessels, one of them a liner of more than 20,000 gross registered tons. Moreover, it is announced that German U-boats have sunk another six merchantmen of 42,000 gross registered tons. Thus it is clear that British jubilation over the decrease in tonnage losses was, to say the least,

## Notes of Broadcasts taken by Hunt.

ill-timed. As Admiral Lutzow recently pointed out, the war at sea has its fluctuations, but these fluctuations do not prevent this also having a general tendency, and that tendency is to destroy the strategical co-ordination of the foe by disorganising and cutting off his supplies. The war has now reached a very interesting stage. The cloud of inertia has lifted. Once again steel meets steel and I can tell you that here in Germany there is a perfect and wholehearted confidence in the certainty of victory. In Britain of late the opinion is often being expressed that 1943 will prove to be a year of decision. On this proposition I give no judgment for the moment, but of one thing I am sure, 1943 will prove to be a year of most unpleasant surprises for Germany's enemies."

The unknown voice that had introduced Joyce then said: "Germany calling. You have just been listening to 'Views on the News,' by William Joyce. Thank you for your attention. . . ."

(Signed) A. HUNT,  
*Inspector.*

4. Taken at B.B.C. Studios on the occasion of a Broadcast on 30th August, 1944.

An unknown male voice speaking in English said: "Germany calling. This is Calais one, Cologne, Luxembourg, Friesland, and the short wave transmitter DXQ 9 31-89 metres. You are about to hear 'Views on the News,' by William Joyce."

William Joyce said: "To-day's report from the German Supreme Command in its account of the operations in France gives a clear picture of the military situation. After the German divisions had brought to a stand-still repeated attacks launched by the enemy in the Seine bridgehead north-west of Paris, they withdrew in accordance with their orders to the north-east. The city of Rouen was relinquished by the German troops after its docking facilities and other installations of military importance had been destroyed. Between Paris and . . . American forces, attempting a thrust northwards, were brought to a halt. In the southern part of Paris there was heavy fighting, whilst to the south of the Marne enemy mechanised formations have reached the district of Chalons where a tough engagement is now taking place. In the Rhône valley, German tank formations have repulsed numerous attacks from the east, a large number of enemy tanks being destroyed, whilst in the occupied regions west of the Franco-Italian Boundary, the Germans have recaptured the town of Briançon which had been temporarily occupied by French terrorists and American reconnaissance troops. Generally the position in France is regarded by Allied propagandists in one way and by me in another. I can well understand their display of solid satisfaction at the gains in ground which the invading expeditionary forces have achieved during the last few weeks. They would not be human if they did not rejoice at the retirement of the German forces and from these withdrawals they are deducing inferences which are not only out of conformity with the facts, but which



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represent, I must say, very bad propoganda. Without specifying in detail their flamboyant predictions I can sum them up by saying that they promise the complete collapse of Germany in the immediate future. And yet if one ponders on such place names as Soissons and . . . anyone whose experience goes back to the period of 1914-1918, may well wonder why it is taken for granted that because German troops are now fighting on the battlefields familiar in the last war, they are confronted with defeat. This assumption can be sustained on one basis only, namely, on the theory that as the fifth year of the war draws to its close, the Reich has exhausted its resources, consumed itself, and that it has no further factors of advantage which can be brought into play in the coming phase of the conflict. There are many people in Britain who hold this theory. There is an excuse for them. They are ignorant of the facts. They are being informed by their newspapers and wireless that the end is near. They are unable either to observe or to gauge the mighty and significant developments which are taking place in Germany to-day. Even, of course, if they were here, they would not, as members of the general public, be able to assess the potentialities of the German armament industry or to foresee what new and decisive weapons it will introduce into the struggle in its final phase. Some of them, however, who possess first-hand experience of V.I. would undoubtedly have an open mind on this subject. They would be less sceptical and apprehensive if they could, however, foresee, if they had eyes to see, the immense mobilisation of energies which have so far been latent. If you had lived in Germany during the first six months of the fifth year of the war, you would have wondered why such a high and comfortable standard of living was being maintained; why so many people were engaged upon tasks which were not essential to the concentrated prosecution of the war. The answer is that the government of the Reich was not in any way neglectful of its duty or oblivious to existing potentialities, but it was thought well to hold large reserves in hand. In these generalizations, however, I must accept (*sic*) the disposition of the Home Army, a considerable part of which was kept from the fronts by those persons who have paid the just penalty and were instantaneously crushed on 20th July. In brief, Germany is in a position, not only to defend itself, but with the aid of time to win this war. The chief purpose of German strategy at the moment is to gain this time. Gaining time, however, does not mean sitting and waiting for something favourable to happen. It means causing something favourable to occur, and I can assure you that the German people have never been so active in their determination to shape the course of events. Our enemies may indulge in shortlived jubilation. There is no need to discourage them. This premature celebration will be transmuted into bitterness and colossal disappointment. If we turn to the Eastern theatre of war, we find that in Roumania, several Soviet attacks in the vicinity of Buzau and in the Bistrita Valley came to grief yesterday. Enemy forces which penetrated Hungarian territory through the passes in between these localities were at several points thrown back by counter-attacks. Whilst

## Notes of Broadcasts taken by Hunt.

several engagements took place yesterday on other sectors of the Eastern front, there is no development calling for special mention. Whilst measures have been taken to deal with the military situation arising from the treachery of the Bucharest clique, and whilst these measures have been successfully translated into practice, it is evident that the strengthening of the German forces in the East has checked the momentum of the Soviet onslaught. On the other hand, it must be supposed that the Soviet command will, in the near future, exert every effort in order to nullify the effect of the increased German resistance. In the political field, of course, it is as plain as a pikestaff that this Palace intrigue in Bucharest can be of no profit to Britain, whatever advancement Bolshevism may derive from it. When Mr. Cordell Hull announced that in the negotiations with Roumania, by which presumably he means King Michael and his cronies, the initiative will rest with Moscow, he is only confirming once again the fact that Roosevelt and Churchill have renounced, in favour of Stalin, all interest in Europe. On this occasion, as on many others, the White House speaks for the British Government as well as for itself. As to the methods of Soviet Imperialism, I should like to draw your attention to a very good sample to which I have not, as yet, alluded. The Supreme Soviet in Moscow has declared that citizens serving, or who have served, I quote, with the Polish Army in Russia, or have aided that Army, have the right to adopt Polish citizenship and the same right will be given to their families. The decree goes on to specify that this power of assuming Polish nationality will be granted to the inhabitants of the western regions of the Soviet Union. In other words, Mr. Stalin, having disposed of a large section of the elements supporting Mikolajczyk by means of the abortive Warsaw rising, which the Soviet helped to instigate by direct summons to insurrection, Mr. Stalin now claims the right to confer Polish nationality on his agents in order that they may tyrannise over the Poles with some semblance, however faint, of constitutional form. Suppose that in August, 1939, the government of the Reich had claimed the right to transform Germans into Poles for political purposes. Such a stratagem would certainly have had interesting results, but what a storm of indignation would have been created in London. It is otherwise to-day. Churchill has renounced all British interests in Europe and those of his people who are not blind now realise that the pretext for this war was far removed from the cause of it, namely, the subservience of the so-called democratic politicians to their Jewish masters."

Another unknown male voice, "You have just been listening to 'Views on the News,' by William Joyce. Thank you for your attention."

(Signed) A. HUNT,  
*Inspector.*

# William Joyce.

## APPENDIX VII.

### SPECIMENS OF BROADCASTS BY WILLIAM JOYCE.

#### I. EARLY UNIDENTIFIED BROADCASTS IN ENGLISH FROM GERMAN STATIONS.

The following dialogues between Smith, an Englishman, and Schmidt, a German (distinguished throughout as E. and G.) have been kindly supplied by the B.B.C. from their monitoring records, but it is not certain whether they were by "Lord Haw-Haw," who was not definitely identified till 2nd August, 1940. He may have been one of the broadcasters, one of whom was known to the monitors as "Sinister Sam," who may have been Lord Haw-Haw, possibly. My own personal feeling, for what it is worth, is that whether or not he broadcast them under instructions, the scripts do not read like Joyce's composition. It is difficult to believe that a man who had lived in England, accepted as an Englishman, for eighteen years would have made Smith such a caricature of even the unpleasant type of *nouveau riche* he was intended to represent. He is much more like, in thought and idiom, the foreigner's idea of the comic Englishman: Joyce would surely have toned him down into something more lifelike. The text is full of expletives and idiocies of speech which could hardly be expected to come from the pen of anyone with even the most remote contact with the English people. The crudity of the text could only offend the ears of any possible recipient in this country and must indeed have had exactly the opposite effect to that desired by the German propaganda staff.—Ed.

\* \* \*

(1) 26th October, 1939—*From Podebrady, repeated Hamburg.*

Schmidt, a German, and Smith, an Englishman, who have been acquainted for some time, have just met in an hotel in Switzerland. Despite the war they have exchanged cordial greetings and settled down at a table with a couple of drinks. With only perfunctory preliminaries the discussion turns to politics. You will now overhear their conversation.

- E. Well, now, old man, tell us about this war of yours.  
G. My dear Smith, I don't know all about it—and it isn't ours.  
E. Don't get cross, but I mean after all Hitler started it didn't he?  
G. Who declared war on Germany?  
E. Well, of course actually we did, but you see we were solemnly pledged to defend the independence of Poland. We couldn't back out, you know.  
G. I see. And if I'm not mistaken you promised to give the Poles full military support should they become involved in a conflict with Germany.  
E. Yes, old chap, I'm so glad to find one German who really understands.  
G. I'm sorry, but I just do not understand. I want to know how many troops and how many planes you sent to the assistance of Poland before she completely collapsed. I mean what did you actually do to save your gallant little ally?  
E. Hum, I don't know about that, but I do know that my income tax has gone up to 7s. 6d. in the pound, and I suppose we aren't making all these sacrifices for nothing.  
G. My good old John Bull, let us stick to the point if we can. Do you know that on the second day of the war in Poland Smigly-Rydz

## Specimens of Broadcasts.

wanted surrender, but the British ambassador in Warsaw told him that hundreds of your planes were on their way to help him, laying Germany in ruins en route?

- E. Aha, I find it hard to believe that. I think it is just propaganda.
- G. But my good Smith, why should you think it should be just propaganda? I suggest that your government had instructed its ambassador in Warsaw to say that it was about to keep its promises.
- E. Oh well, I suppose I must agree that our people might have been a little more active, but after all we did put up the blockade pretty quickly.
- G. Agreed. You are fighting against Hitler and the Nazi system, aren't you? Not against the German people as such.
- E. You've just hit the nail on the head. I am really beginning to feel rather hopeful if you Jerrys view the matter in that way . . . (short gap).
- G. Really you can't expect me to keep personalities out of a matter which is essentially personal. What in fact you are saying is that I must either alter my critical beliefs . . . or else see my nearest and dearest starve. That, mark you, is democracy.
- E. Oh well, if all Nazis were like you—Waiter, a couple of Johnny Walkers. No, you see, we fellows couldn't make out what you were doing in Poland at all.
- G. Quite, you couldn't see that we wanted to save our flesh and blood from a brutal military dictatorship. And by the way, we Germans cannot see what you British are doing in Palestine.
- E. That's quite simple. In accordance with the peace treaties we are pledged to maintain law and order and hold the balance fairly between Jews and Arabs.
- G. And that I suppose is why your politicians promised each party separately, and independently that it should govern Palestine after the war was over?
- E. Now, old boy, don't be sarcastic! I'm not responsible for what the last generation did.
- G. Ah, now we're getting down to brass tacks! I think I've found an Englishman who shows signs of understanding.
- E. Why? What do you mean?
- G. I mean you've just said what Hitler has been saying for years. We German people do not propose to be held responsible for the crimes and errors of the politicians of a quarter of a century ago.
- E. Well, ah, yes. But treaties are treaties.
- G. Of course. That's what the Arabs thought. That's what we thought when twenty years ago you promised the Sudeten Germans self-determination. That's what Beck and Smigly-Rydz thought when they were waiting for your troops and aeroplanes to come and help save Poland.
- E. Look here, old man, let's be frank. This question of Poland is really beside the point. There is no harm in my admitting that. After all Chamberlain has said as much in the House of Commons. The real question is this damned Nazi system of yours, which, much as we like you personally, we cannot tolerate.
- G. Thanks for small mercies. I'm glad you admit that Poland was only a pretext. But wasn't it just a bit cynical to give her the most sacred assurances of military assistance, to drag your people into war, on the pretext of fulfilling this most solemn word, and then to observe that Poland was a mere incident, and that her fate didn't really matter?

## William Joyce.

- E. Oh, well, I suppose all politics are a bit cynical you know. But you see, after all, personal liberty and democracy are worth defending even if one has to go about their defence in a slightly unorthodox manner.
- G. Well, Smith, did anyone in your government ask you if you wanted to fight?
- E. No, certainly not. But you can hardly expect that—I'm only an individual.
- G. In a democracy hasn't the individual the right to say whether he wants war or not?
- E. Oh dear, you Germans can never understand. You see we have to trust our leaders, otherwise we get nowhere. . . . (a gap). Well, we elected them, of course.
- G. And didn't we elect Hitler?
- E. Um, I suppose in a sense you did, but it was not the same thing as one of our elections.
- G. Aha, I quite believe you. At your elections they promise to save the pound and then smash it; they promise to save agriculture and then ruin it; they promise to cure unemployment and then make it worse. Hitler promised us that he would free us from the settlement of Versailles, and he has done so.
- E. Now, now, don't get excited! I only meant . . . you can't get rid of Hitler if you want.
- G. We don't want, and if we did, we wouldn't ask for your help. By the way, can you get rid of Chamberlain or Churchill?
- E. Oh ho yes.
- G. When?
- E. Oh, some day. Of course one doesn't have elections in war time, and anyhow I don't know who could take Chamberlain's place.
- G. I see, after years of bloodshed and suffering you can get rid of the men who caused it if they haven't expired of old age. So that is your democracy.
- E. I'm afraid you Germans are constitutionally incapable of understanding democracy. You see you have been so long accustomed to Prussianism and autocracy, pardon my saying so, that you just cannot grasp the idea of civic freedom.
- G. Well, all right, I won't argue with you on that point. If we are constitutionally incapable of appreciating democracy why are you fighting. . . .
- E. Well, of course it is not only that—your economic experiments are really quite outside the pale of the international financial system which we regard as necessary.
- G. In other words, because we want to make the best of our own resources we have annoyed the capitalists and Jewish moneylenders who regard all people as their legitimate prey. So you are really fighting for international capitalists?
- E. Excuse me a minute, would you, old boy, there's that chap Murgatroyd from the Foreign Office. I really must have a word with him. So long, old chap.
- G. So long.

(2) 9th December, 1939—From Bremen.

- E. Hallo, old boy, how goes it? Not off for Christmas yet?
- G. I'm very well, indeed, thank you, and I'm leaving for Hamburg to-morrow.
- E. Haw Haw! Back to rations, eh?
- G. As a German, I'm very glad to think we have rationing at present. It prevents people like you buying everything up.

## Specimens of Broadcasts.

- E. People like me? What the blazes do you mean?
- G. Don't be annoyed. I only meant people with plenty of money.
- E. Oh, did you now? Well, let me tell you my good fellow that I'm a damned poor man, and this new Income Tax is going to make things worse.
- G. Now, my good Smith, I have been in England—down in Shoreditch, you know—and I never thought that English poor could afford to spend months in fairly expensive Swiss hotels. As for Income Tax, well, you had better blame those who led you into this war, or go and complain to Sir Jasper Murgatroyd of the Foreign Office, who supplies you with your political information.
- E. Well, old boy, I don't think that sounds very friendly. You have no idea how hard hit we fellows with only about £10,000 a year are to-day. Paupers, just damned paupers. As for Murgatroyd, well, he's not in a very good humour to-day.
- G. What's the matter with him? Is his liver out of order?
- E. No-o-o, chap lives on soda-water and biscuits. But he's dreadfully upset—by the way, this is entirely confidential—about the behaviour of some of these wretched South American States. Really, he doesn't know what it's coming to, this League of Nations.
- G. Why? What are they doing? What's the matter with the League now?
- E. Haven't you heard, the cads?
- G. Oh, I've noticed that the South American representatives seemed to be taking a strong line against Russia, but as you were speaking against Russians in our last conversation, I don't quite see why you are annoyed. I mean, last time you nearly went mad when I mentioned Russia.
- E. Well, old chap, I agree with everything I said about the blasted Russians, but you see, you Germans are no diplomats. There's a great deal of difference between saying these things in quiet conversation and telling them to the whole world.
- G. What on earth do you mean, old chap? I can't quite follow. Are you for Russia or against her?
- E. Oh, damn it all, old man, against of course, every time. Bah! Bolshies! But it's just as well not to let Russia know at present, you see.
- G. Why? If you are against her, why not say so? You blame us for marching into Poland, but you say Russia was only executing Lord Curzon's wish. Then you pretend to be indignant at the invasion of Finland, but you say that Russia should not be allowed to know that you are against her. Do try, like a good fellow, to clear up the situation.
- E. Waitah! er—er—half bottle of Martell . . . Thanks. Well, you see, it's like this, old man, Russia has already been very nasty about this business of blockading German exports, and has threatened to take reprisals if we go too far. Well, there's India to think of. Damn it, sir, when I was at Poona, we always said the old Ruskies would come in one day and grab the lot. Japan cutting up rough, too. Threatens to nab our ships if we go ahead with this policy of confiscating your wretched exports.
- G. Er—Pardon me, they are not wretched. If they were, you wouldn't want them.
- E. All right. But, anyway, there's also the Middle East and Near East to think of. In Palestine, the wretched Arabs haven't the intelligence to see that the Jews could rule the country best. Oh, it's a hell of a mess. Well, then, even a German like you can see that we've got to tread carefully in dealing with Russia, much as we hate her.

## William Joyce.

- G. Well, Smith, that's the clearest explanation that you have given me for a very long time. Perfectly lucid. But if that's the case, why on earth did you move against Russia at all? Why did you get all these little powers to assemble in Geneva?
- E. Ah, you Germans are no diplomats. You just cannot understand, old horse, how we English people love freedom. Always ready, by Gad sir, to champion the cause of any little nation that becomes a victim of aggression. Damn it, sir, we couldn't let Finland down, could we?
- G. Er—you let Poland down.
- E. No sir, I object to that statement.
- G. Well, then, how many troops and planes did you send in fulfilment of your promise to her?
- E. Oh, come, not troops and planes, but she had our full moral support, and her Government is still functioning to-day, somewhere in France—I forget the name of the place.
- G. That's wonderful, amazing and marvellous. And is that how you intend to help Finland?
- E. Well, er—er. Murgatroyd says we won't do any less for Finland than we did for Poland.
- G. That's not quite so easy. I don't quite see how you could.
- E. Look here, old boy, I don't mind a joke, but if you're always going to adopt that sarcastic tone, I don't think our talks will continue. No, damn it, I'm sure they won't.
- G. Oh, Lord, I'm sorry. Don't deprive me of your company. I enjoy every moment of it.
- E. Nice of you to say so, old man. But, honestly, I do my best to explain everything.
- G. Of course, of course. Well then you will probably explain something else to me?
- E. Gladly, Schmidt, old sir.
- G. If all these states were asked to send their representatives to Geneva for the purpose of taking some form of action against Russia, why should you be so surprised when Bolivia and Argentine demand Russia's expulsion from the League? And propose definite support for Finland? I mean, did you expect them to do anything else?
- E. Well, my dear chap, all this indecent haste, all this getting up and talking about action, all this pointed rudeness in public, simply isn't democratic. It's simply not done. I mean, nobody who had been to a public school would behave in that manner. South American temperament, I suppose, but not gentlemanly.
- G. You didn't seem to mind them contesting Italy in 1935?
- E. Oh, no, no. The Italians were just bally Fascists, what?
- G. I see, democratic impartiality. But really, Smith, I repeat my question, what did you suppose would happen when the League met? I mean, how do you think it should have been handled?
- E. Yes, yes. I forgot you Germans know nothing about democracy. Ah, let me see. Well, the idea would have been to spend some time in collecting committees and sub-committees. I don't know what they're called, the more the better—twenty heads are better than one, y'know. Then would come detailed considerations of resolutions. After a couple of months, when everything had been fully weighed and maturely considered, there would be full and public meeting at which the little nations could take the lead, England and France, of course, giving them moral support in the background.
- G. Do you really mean the small nations would have to lead the charge?

## Specimens of Broadcasts.

- E. Well, damn it all sir, it's the small nations that have most to fear from aggression. It's up to them to help themselves.
- G. I see. While England stays in the background.
- E. Damn it all, old man, don't you think we've got enough on hand with Germany?
- G. Yes, Smith, I think you have more than enough. But you've only yourselves to thank for it. Your idea is apparently to (?goad) little states into attacking big ones, whilst you remain in the background, waiting for any advantage you can pick up or extract from their sacrifice.
- E. Huh! Typically German way of putting it. No. I mean that we should encourage small states to tread the path of freedom and self-respect, in so far as British interests permit. We can give them good advice—but British lives, no—no—no Sir.
- G. I thought at the beginning of the war you said that you were fighting for Poland.
- E. Oh no, old chap. You're out of date. Chamberlain contradicted that view weeks ago. We're not fighting for Finland either, but we must give the impression of doing something. Otherwise democracy would be discouraged all over the world.
- G. I see. So the right method of encouraging democracy would be to talk about Finland for several months, behind closed doors, until all her problems were settled.
- E. More sarcasm. And how did you like Ciano's explanation of the reasons why Italy hadn't come into the war, eh?
- G. Very well, thank you. Germany has never had any desire to extend the conflict, and as the Italian Foreign Minister explained, the neutrality of Italy is in accordance with wishes of the Fuehrer himself.
- E. Huh! Don't you think it's due rather to the traditional friendship between England and Italy?
- G. Do you mean the tradition of friendship that you showed in 1935 when you tried to persuade the world—the whole world—to starve the Italians by application of what were called sanctions? Have your newspapers been calling the Duce a gangster for all these years in order to demonstrate this tradition of friendship?
- E. Sorry, but your sarcasms get on my nerves. I think I'll go and talk to Murgatroyd over there. He really is well informed. His daughter is going to marry one of the Rothschilds.
- G. All right, Smith. Take him a biscuit and some soda-water, and tell him that I hope the Foreign Office has a miserable Christmas and a very unhappy New Year. I hope you enjoy yourself.
- E. Well, goodbye. Have a good time, if you can.
- G. You bet I shall. So long, old chap.

(3) *25th March, 1940—From Hamburg (Summary).*

- E. Well, old boy, how goes it?
- G. Very well, thanks, and how are you?
- E. A little bit worried, old man.
- G. Politics?
- E. Sir Jasper Murgatroyd of the F.O. has told me such a lot. But he said I was not to discuss it with anybody else.
- G. I don't blame him in the very least if he warned you not to reveal to me anything about Finland, or let's say, Italy.
- E. Oh, good lord, old chap, were you listening to our conversation? I mean, I'm not worried about that. Do tell me how you got to know.



## William Joyce.

- G. As our old friend from Scotland Yard would say, "information received from undeniable and authentic sources." I'm not going to be any more indiscreet than you are. The only memorable words your politician Asquith uttered were "Wait and see."
- E. By gad, I heard that a long time ago. (Abuse of Germany, Russia, and Japan ending with expression of belief that subjugation of these would render world fit for democrats to live in.)
- G. I'm glad I'm not a democrat.
- E. If it were not for rationing, black-out, and lack of petrol, I'd go back to old England to find out what people are thinking. Damn it all, my dear chap, there's nothing funny about the situation.
- G. I would remind you that you are dealing with Nazi Germany this time, and not with Germany of 1914.
- E. Profound, old man, profound. Damn it all, if you weren't Nazi we would not be fighting you. By the way, old chap, what exactly does Nazi mean? (Not surprisingly, this question elicits from Schmidt the orthodox definition of German National-Socialism. This is sprinkled with comments from Smith, who says on Kultur that of course he knows Harry Roy and his band, and finally that the whole thing seems rather like hard work.)  
Nothing daunted, G. gives reasons for being (a) nationalist and (b) socialist.
- E. But socialists don't behave like gentlemen. They go round all the time waving red flags, shouting indecent phrases, and causing strife.
- G. But they cannot find enthusiasm for a state which cannot provide millions of people with a living.
- E. Living! Living! By gad, are you off your head? Everybody has a living in England.
- G. Really, what about the unemployed?
- E. They go on the dole; there's the public assistance committee and all that.
- G. How would you like to live on the dole, or beg for your bread?
- E. Let's be practical. You Germans are full of idealistic talk. I've got my cash, and I'm jolly well going to hang on to it. I'm one of the lucky people, that's all.
- G. (Follows panegyric on patriotism among German people, from Schmidt.)
- E. Umm. Well, I must say that that revolution among the German people takes a damn long time materialising. Well, I suppose you chaps are patriotic. I wish I could say the same for ours. Of course, ours are too damn well educated. That's what's done it. As soon as the proletariat started to read, we damn well made our road to hell, by gad, sir.
- G. Well, it's highly conceivable that education will open the eyes of the poor to their exploitation by international finance. . . . reduce unemployment and abolish poverty, and no-one will love England better than the English workers. Then they would have some cause to love her. Now they haven't.
- E. You're bolshevik.
- G. You're losing the war.
- E. I'm more convinced than ever that Chamberlain is right. If our common herd went National-Socialist, I'd never set foot in the old country again. Damme if I would.
- G. (Apparently in a reverie.) There would come a new England, far beyond your comprehension, poor old Smith.
- E. Grrr. You get on my nerves. You depress me so. Good-night.
- G. Unearned income has its disadvantages.

# Specimens of Broadcasts.

(4) 21st April, 1940—From Hamburg.

(Usual introduction about providing themselves with refreshment, &c. Smith, as usual, is played by Sinister Sam, but a different announcer takes Schmidt. He speaks with a staggily German-speaking-English accent, and is frequently difficult to understand.)

E. Have a cigar, old horse?

G. I thought in England cigars are a prerogative of the rich?

E. Oh, I say, old boy, don't rub it in. It's quite true that Neverfly Aircraft are doing a little better, and I've managed to acquire a few good little things at 30 per cent. But you know, old boy, this budget business is rather getting on my nerves. I suppose I oughtn't to admit it and all that, but you Huns are costing us a pretty penny, what?

G. Seven million pounds a day; you would, I suppose, call that a pretty penny. It could also be called an insupportable drain on your finances. But I don't think it quite fair to blame us Huns altogether. We didn't declare this war on you.

E. (Coughs.) A mere technicality. We went to war in defence of rights of small nations, what? (Pronounced Wah?)

G. Oh, I suppose that is why you try to take over Norway's territorial waters, in spite of Norway's protests. That is why Duff Cooper says neutrals must be coerced by force if necessary into your camp. That is why Rumania, Holland, Belgium, and many other countries are to-day in a condition of extreme nervousness.

E. Don't talk like that, old boy. They're afraid of Germany, wah?

G. Hardly. There's no reason why we should wish to antagonize neighbours who supply us with our needs. But you have every reason to try to stop them. After all, it is to your advantage and not to ours that friendly relations should be broken off. Take the example of the British ship full of arms and explosives recently discovered by Rumanian Police on the Danube.

E. Look here, old son, I don't think we had better discuss that. Murgatroyd of the F.O. said incidents of that kind were beyond the understanding of ordinary people like myself. And—er—it wouldn't be in the public interest to discuss them you know. (He orders brandy, with comment on its scarceness these days.) But all this nervousness and unrest is worrying me just a bit.

G. Why? Are you beginning to feel pangs of conscience over the activities of your secret service?

E. Pangs of fiddlesticks. I'm beginning to feel pangs of doubt over my investments. You never know what markets are going to do next.

G. That doesn't worry me at all. What investments I have are all in Germany. Although I don't get more than 5 or 6 per cent. I know that is safe enough. We have no stock exchange.

E. Ha ha. I suppose that's because Goebbels and Goering have money invested themselves, and with their customary brutality which we all know, forbid free movements in the market, wah?

G. I must say that that is the clearest explanation of financial stability (?) that I ever heard. It sounds like Sir Jasper.

E. Well, I must admit, he did give me the idea.

(Note.—Schmidt loses his place here, and says the same bit over again.

S. Sam reveals considerable stage experience by saving situation, and saying, "yes, you said that before, but—" Schmidt loses his head, and there is considerable confusion.)

G. (Speculation is a curse, and if it were stopped, many people in England might be grateful?)

## William Joyce.

- E. Nonsense, old boy; without a free market, and intricate mechanism of speculation, there is no such thing as getting rich quickly.
- G. Ah, I was talking about ordinary people, not parasites and exploiters.
- E. Now, now, now, Schmidt, don't get personal. I don't like it, old boy.
- G. (Very courteous.) I had no intention of being personal. But, if the cap fits, you know, I'm very sorry.
- E. (Furious.) Here, I say, you, I don't want to quarrel with you, but, by gad, if anybody had said such a thing to my grandfather—well, he'd have got a good horse-whipping.
- G. Who was your grandfather?
- E. Sir, you make me sick. Of all the bounders—
- G. No, no. Calm down. And tell me something about the £. Perhaps you can enlighten me. There, there. Order another brandy for yourself.
- E. (Completely pacified.) Dammit, sir, you're right. I lost my temper. Sorry. Ah, yes, about the £. Well, the jolly old £'s all right, isn't it? Respected all over the world, wah? Safe as the Bank of England, wah?
- G. Well, it may be as safe as the Bank of England, but that isn't saying very much. If it is respected all over the world, can you tell me why thirteen out of sixteen nations that adhered to it last September have now deserted it altogether?

(Note.—Precisely same point is made in New B.B.S. of 16th April, 1940. "In 1938 sixteen countries belonged to sterling block, and by the end of last year only France, Egypt, and Iraq remained." Same point is also made in two broadcasts about loss of prestige to £ owing to anxiety of rich to send assets to U.S.)

- E. Cads, I suppose (one epithet missing) schools, and all that. Then I suppose your Fifth Column has been going round attacking it, what?
- G. I am not quite sure what you mean by our Fifth Column.
- E. Oh, I mean these Gestapo fellows who wander round foreign countries disguised as Chinamen, and all that sort of thing.
- G. I have never heard of such a curious brand of police. (Inaudible question about sabotaging £.)
- E. Don't be an ass, old horse. I don't mean that, but your propaganda keeps undermining confidence—confidence in everything in the market, old boy.
- G. (Still very genial and innocent.) Well, I am not in a position to accept your statement that our propaganda is responsible. If it were, the material position would remain just as unfortunate for you. Let us take a concrete example. In New York market recently the £ has fallen to 3.45 dollars. You surely don't think German agents are responsible.
- E. But the official rate is still about four dollars.
- G. But (? that) gives no real indication of the value attached to your £. Besides you just said that in the market confidence is everything. Well, won't a sharp fall in free sterling undermine confidence still further?
- E. It might, but we have been trying to point out to those Yankee dunderheads that our own Government is responsible for the drop. It made regulations requiring certain classes of our exports to be paid for in (? foreign) specially authorized sterling.
- G. But can't you give the Yankees credit . . . They know perfectly well your Government would never have taken such a step unless very worried, that's what undermines confidence.

## Specimens of Broadcasts.

- E. I don't think it's as bad as that. You see the free sterling accumulated in New York because a lot of our chaps thought it would be better to have their money over there.
- G. And do you think the Americans are going to trust you if your plutocrats move their capital to a safer place?
- E. Oh for heaven's sake, old chap, can't you just forget this National Socialism of yours? Can't you see, dammit, sir, that old England is finance, and that unless our cash is safe, the old country is finished?
- G. Whose cash, precisely? Coalminers'?
- E. Don't talk bally tommy-rot. When I say cash, I mean the cash of the people who matter. Stock Exchange, public schools, and all that. Huntin' and fishin' type.
- G. Thanks for the information. But doesn't it occur to you that when the Yankees see them getting their money out it affects your whole position?
- E. Oh, well, let them, the cads. They've no breeding, anyway.
- G. Now that you have lost the market in Scandinavia and the Baltic, your currency will be even harder hit.
- E. Ah, yes, but that was where Churchill was so clever. We've lost our imports from those countries as well as exports, so things may balance up. Our Winston's no fool.
- G. Surely bacon, butter, and timber were commodities to which you attached some importance?
- E. Aha. What really worried me is that we have got to raise over two thousand million pounds in next financial year.

(Schmidt suggests it is more likely to be three thousand, and Smith says they can dodge that smack in the eye for the £ by making the lower classes do their bit.)

- E. What's that over there? Look where Sir Jasper is drinking his soda water.
- G. It looks like police officers approaching. He has been trying some Fifth Column rascality.
- E. Outrageous. A Diplomat in a first-class hotel. Unheard of, an outrage. Look here, I must go up at once and look after a little packet Jasper gave me. There's the manager going over too. Good-bye.
- G. Good-bye, and keep out of prison.

(Almost verbatim : there was much less padding than usual in dialogue.)

# William Joyce.

## II.—FIRST TALK DEFINITELY ESTABLISHED AS BY JOYCE.

*Bremen, 2nd August, 1940. 22.15 B.S.T. Repeated Zeesen, 3rd August.\**

### BRITAIN'S COWARDICE IN WAR.

There are times when it is unchivalrous to disparage an opponent, and there are times when it is definitely unwise, but it is not possible to view otherwise than with contempt the conceptions of fighting that Britain has shown in this war. Her behaviour is all the more surprising since she had established, and certainly not without justification, a reputation for the military virtues of courage and rugged strength. Indeed, at the beginning of last September, she was regarded by millions of neutral people as the greatest fighting power in the world, apart altogether from the question of her armaments. And the shattering of this illusion is perhaps the most profound moral shock that England's friends have had to bear in this tragic conflict, needlessly prolonged through her Government's choice. First of all it was expected that after all the mighty threats and all the angry gestures of her politicians, real and instant action would be taken to help Poland. Downing Street gave her a few drums of mustard gas, and the false assurance that 1500 planes were on the way to help her. And *there* the British contribution ended.

*Chased out of Norway.*—Then the Norwegian Government received every assurance, holy and unholy, that Norway would be defended to the last British Tommy, and, relying on this assurance, committed its country to a very foolish course of action. Three weeks sufficed to chase the British Expeditionary Force out of Norway into the sea. When asked to explain the debacle, the Prime Minister of Britain explained that the German air force had rendered impossible the landing of sufficient troops and armaments to enable a useful campaign to be conducted. "But," said he, "Norway would not become a side-show in the war." This prophecy, indeed, was fulfilled, but not in the sense intended by the British Government.

Next came the campaign in Holland and Belgium. From captured documents published by the German Foreign Office, we are aware not only that these two countries had received the fullest and most explicit promises of assistance from Britain, but that the most extensive preparations for their participation in the war had been made. Of these two states which were to be used as a base of attack against the Ruhr, one surrendered in five days, and the other in eighteen.

What was England's contribution? An expeditionary force which carried out a glorious retreat, leaving all its equipment and arms behind, a force whose survivors arrived back in Britain, as the *Times* admits, practically naked. No doubt the soldiers fled according to orders; no doubt

\* Although Joyce started broadcasting in September, 1939, as was proved at the trial, his name was not announced, and it was some time before his identity was definitely established by the monitoring service of the B.B.C. The first talk reproduced above, dated 2nd August, 1940, is the first they definitely established as Joyce's.

## Specimens of Broadcasts.

they found themselves utterly at a loss to cope with the German dive bombers and other engines of modern scientific warfare, but whatever excuses may be found for their plight, the solid fact remains that the men who made the war were reduced to boasting of a precipitous and disastrous retreat as the most glorious achievement in history. Such a claim could only besmirch the proud regimental standards inscribed with the real victories of two centuries. What the politicians regarded, or professed to regard, as a triumph, the soldiers regarded as a bloody defeat from which they were extremely fortunate to escape alive.

*British Lion at Oran.*—The next test of Britain's might was the Battle of France. All the professions of brotherly love and platonic adoration which Churchill had poured forth to the French politicians resolved themselves into ten divisions, as compared with eighty-five British divisions which had been in France at the height of her struggle in the last war. As the world knows, their effect was nil, and when Reynaud telegraphed madly night and day for aircraft he was granted nothing but evasive replies. The glorious R.A.F. was too busy dropping bombs on fields and graveyards in Germany to have any time available for the Battle of France. But after the final drama of Compiègne and the defeat and the utter collapse of the French, the heroic might of the British lion suddenly showed itself at Oran. That inspired military genius, Winston Churchill, discovered that it was easier to bomb French ships, especially when they were not under steam, than to save the Weygand line. If it was so hard to kill Germans, why not, he reasoned, demonstrate Britain's might by killing Frenchmen instead? They were beaten, and would be less likely to resent it. Besides, if they did not think that the British forces would fire, the operation would have certain great military initial advantages, which a genius, such as Churchill, was bound to perceive.

*Invasion is Expected.*—This attitude of mind brings us to the present time when German forces are destroying Britain's armament works, crippling her railways, closing her harbours, smashing her convoys, and sinking hundreds of thousands of tons each week of her tonnage, and when invasion is expected to come to her soil at any moment. Churchill, the genius, has his answer ready. What is it? Many people in England are not sure. It consists of several parts. First, Germany's ambulance planes are to be attacked wherever seen. They can easily be identified by the Red Cross which they bear, and they are unarmed, so the great brain conceives another possibility of victory. The fact that these planes have saved many British lives weighs as nothing in comparison with the triumph that can be achieved by shooting them down. The second part of the answer is to be found in the instructions issued to British bombers flying over Germany. In reply to the charge that these machines were dropping bombs on entirely non-military places, Mr. Churchill, with another flash of genius, replies, "Of course. The planes have to fly so high that the targets cannot be distinguished." Otherwise, they would be shot down by the Germans. In consequence of this instruction, harmless civilians have been murdered at Hanover and in other towns.

## William Joyce.

*Bombs will Speak.*—The British Prime Minister has abandoned all pretence that these bombing operations have military objectives. The principle is, "Drop your bombs wherever you can, without being seen, and what they hit, they hit." It is unnecessary to say that a terrible retribution will come on to the people who tolerate as their Prime Minister the cowardly murderer who issues these instructions. Sufficient warnings have already been given. Bombs will speak for themselves. But there is one well-attested and proven fact that the people in Britain should bear in mind. When the Germans attack an objective which they have selected, they do not wait for dark nights or clouds. They swoop down to a distance of perhaps only 100 ft. or 200 ft. in broad daylight, or at any rate under the best possible conditions of visibility. German bombs are never dropped at random. Each one finds its mark. The operations are conducted, not to provide material for the German press, but to annihilate the enemy's resistance. These facts may be doubted by many people in Britain to-day. But among those who survive Mr. Churchill's war, they will be a matter of common knowledge not to be disputed.

*Suicides' Academies.*—The same ineffectual, idiotic, petty attitude which has characterized Britain's whole conduct of the war marks the amazing training schemes for civilians upon which Churchill smiles with benign approval. Suicides' academies have apparently been set up all over Britain. The headmasters are cunning blackguards, who teach the inmates how to make bombs at the modest cost of two shillings each, how to poison water supplies by throwing dead dogs into streams, and how to kill sentries noiselessly from behind. So bombs, at two shillings a time, home-made in accordance with Lesson 7, are to be used against the German Stukas. Truly, the Lord has afflicted these people with blindness. Home-made bombs, dead dogs, and lady finger-breakers are expected to defend England against the forces which wiped out the Maginot Line in a few days! Well, it is clear that, when it comes to her own defence, England will be as weak as she was in defending her allies. No wonder American correspondents are not allowed to see the damage which the German attacks have already caused in Britain. However, what has been done is but a pale shadow of what is to come. The people of England will curse themselves for having preferred ruin from Churchill to peace from Hitler.

### III.—EXTRACTS FROM VARIOUS BROADCASTS.

(1) *Breslau, 5th July, 1942.*—"What is the outlook with regard to this second front to-day? . . . Germany would more cordially than ever welcome such a false move on the part of the enemy. . . . I am doubtful whether the British Government will risk any invasion of Europe this year."

(2) *Zeeseu, 4th September, 1943.*—"Now that we have arrived in the fifth year of war, I will only say that German victory is certain. The German people know that while many blows are yet to be struck, the final blow will be struck by Adolf Hitler."

## Specimens of Broadcasts.

(3) *German European Service in English, 26th December, 1943.*—"Invasion of Europe will bring Allied disaster."

(4) "*Views on the News*" by William Joyce, 4th January, 1944.—". . . But can the ordinary British soldier or sailor understand why he should have been expected to die in 1939 or 1940 or 1941 to restore an independent Poland on the old scale, whilst to-day he must die in order that the Soviets may rule Europe? Surely it must occur to him that he is the victim of false pretences. But after the collapse of the Second Front the whole of the British people will want to know what compensation they can expect on the score of their sacrifices."

(5) "*Views on the News*," 31st January, 1944.—". . . If Churchill and Roosevelt keep their promise to launch an attack upon Europe in the West or elsewhere, the German Supreme Command has made full and satisfactory provisions to deal with any such contingency. There is no possibility that any such enterprise could succeed, and it is clear that if the British and Americans expose themselves to such mortal losses as the attempt to invade Europe would involve, it will only be because Stalin insists upon the venture."

(6) "*Views on the News*," 13th April, 1944.—"If he responds to the insistent demands of the Kremlin for an invasion of Western Europe, the result will be not only a catastrophic defeat for the British forces, but a general weakening of Britain, the effects of which will last for many decades and possibly for generations. That is why Stalin is requesting the British fly to walk into the German parlour."

(7) "*Views on the News*," 17th April, 1944.—". . . There are to-day hundreds of thousands of British soldiers and sailors who will cease to live during the attempt to invade Western Europe. They are prepared to sacrifice their lives, but for what? For their country? Demonstrably not. Britain has only the prospect of stark poverty before her. For the rights of small nations? Certainly not. What British politician wants to hear of Poland to-day? For what, then, are these men to die? They are to die for the Jewish policy of Stalin and Roosevelt. If there is any other purpose to their sacrifice, I challenge Mr. Churchill to tell them what it is."

(8) *German European Service in English, 17th June, 1944.*—"Bombardment by a new device of centres essential to the British war effort. The action was long delayed, but who can deny that the moment selected for it was chosen most appropriately from the military point of view? . . . Germany has more secret weapons than one."

(9) *German European Service in English, 7th January, 1945.*—" . . . the German command dictates the course of events in the winter battle in the West . . . collapse of the myth that the Reich will be overwhelmed by immense masses of British and U.S. troops, employing irresistible quantities of arms and equipment."



# William Joyce.

## IV.—JOYCE'S LAST RECORDED BROADCAST.

*Hamburg, 30th April, 1945.*

“VIEWS ON THE NEWS,” BY WILLIAM JOYCE.

### GERMANY'S SURRENDER WOULD NOT BRING PEACE TO EUROPE.

(*Note*—First few words missed) . . . that the German resistance continues despite the successes which the Allies have gained during the past few days. Germany is sorely wounded but her spirit is not broken. Her people are conscious of their duty and of their (?nation). In this hour of supreme trial, they seem to understand the European position with a clarity which is, unfortunately, denied to the people of Britain, and they realise that the great alternative lies between civilization and Bolshevisation. That is the dominant truth, in comparison with which other considerations have to take second rank or such lesser place as they merit. Let us be realistic and candid with ourselves. Self-deception is a dangerous pastime, especially these days. Of the numerous and wild rumours which naturally spread like wildfire in circumstances of the present kind, I will take no notice. Any fool or any fraud can manufacture them at will and can find a ready market for them. But having listened attentively to a number of B.B.C. programmes within the last twenty-four hours, I have come to the conclusion that millions of men and women in Britain must be thinking “Ah well, it will soon be over now. We can at long last get back to peace and do something constructive for a change.”

This feeling of relief is very human. But I assure you it is not justified. The cessation of hostilities in Europe, when it comes, will not bring security or prosperity, nor, in my opinion, will it bring more than a very temporary respite from war. There is no need to stress that in the Far East a great and bitter struggle lies ahead, and Britain is pledged to participate in it to the full extent of her means. Apart from this commitment, however, there is the growing threat of Soviet Imperialism to British interests. How modest, how harmless does Germany's request for the return of Danzig seem in contrast to the immense acquisitions of the Soviet Union and the further ambitions of the Kremlin. Stalin is not content with Poland, Finland, the Baltic States, Rumania, Bulgaria, Hungary, and Eastern Slovakia. He wants the whole of Central Europe, with Norway, Turkey, and Persia thrown in. And if these territories fall to him, his lust for aggrandisement will only be stimulated still further. He sees now the Bolshevik dream of a world proletarian revolution changing into a substantial prospect of bachelor (?) politics.

In London, in August, 1939, many of my British acquaintances argued to this effect: “Danzig in itself is not so important. Nor, for that matter, do we care much about the Poles. But as a matter of principle, Hitler must be stopped somewhere.” I pointed out there was nothing unreasonable in the request that the German city of Danzig should return to the German Reich, and the answer was: “That may be so, but if

## Specimens of Broadcasts.

Germany grows too strong we shall be in deadly danger." And if the Soviet Empire adds to its strength from week to week, if the Red hand extends to the Near and Middle East, will the danger to Britain be less deadly than if a Germany, with no outlet whatever to the sea, with no outlet to Asia, had peacefully acquired minor gains of territory with historical or racial justification? These are questions not to be thrust aside as inconvenient; they are not academic. They are vitally real. Let nobody venture to suggest that the Soviets can be relied upon to apply the principle of negotiation and to refrain from armed force. This is a pernicious illusion, as the case of Bulgaria abundantly demonstrated. The Bolsheviks did not declare war on the country until she had ceased to fight; they marched in and imposed their own terms before the Western Allies had a chance even to indicate what they considered to be suitable. It is perhaps worth while to examine a couple of striking examples to show in what light the Soviets regard negotiations and inter-Allied co-operation. The Moscow news agency Tass informs the world, including the British and U.S. Governments, that a new and provisional government has been formed in Austria. A glance at the composition suffices to detect the signature of Joseph Stalin writ large upon it. This so-called Austrian Government is only a variant of the Lublin Committee, transparently an agency established by Moscow for the purpose of bolshevising Austria. Now, until a few weeks ago it was constantly expected in London diplomatic circles that Britain and the U.S.A. would have much to say concerning the fate of Austria, if Germany should be defeated. It was hinted that if the Soviets advanced far enough their opinion would have to be asked and considered, but the establishment of a Red Junta under the control of the Kremlin to rule Austria was not, I am convinced, any part of the somewhat nebulous British plans for the settlement of Europe. But lo and behold, we find that once again, for the nth time, Stalin has acted independently, without consulting his allies. They may humbly acquiesce; their views on the subject are quite immaterial. If any fragment of unity existed between the major Allies, such an important step would have been announced simultaneously and jointly in London, Washington, and Moscow.

And so it transpires that Poland is not the only theme of difference. It is merely a pattern to be applied wherever the Soviet imperialists get the chance to apply it. It might be said that on 31st August, 1939, the atmosphere of Europe was explosive, but to-day it is supercharged with explosives of the highest power. The terrible war through which we have been passing is but the prelude to a struggle of a far more decisive nature.

The second example of Soviet diplomatic methods which I cite, is the behaviour of Molotov at San Francisco. I am not going to recapitulate in detail the series of awkward incidents which he has brought about since the conference began, his alterations to the arrangements for the chairmanship being only one case in point; I would rather draw the moral

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from his latest gesture, which has been to inform the British and U.S. Foreign Ministers that Soviet Russia would agree to the representation of Argentina in Warsaw (*sic*) only should their communist clique in Warsaw be granted the same privilege. He has the calm effrontery to demand that an independent Republic of South America should be excluded from the conference, unless Stalin's handpicked Communists are admitted. Most of you will be unable to understand what interests Soviet Russia has in South America, or what prescriptive claim she can have to pass judgment upon South American governments. The answer to the riddle is, of course, that Stalin takes the whole of the world to be his province.

Such is the attitude of the Red dictator who menaces the security of the whole world, and whose power to-day constitutes the greatest threat to peace that has existed in modern times. Britain's victories are barren; they leave her poor, and they leave her people hungry; they leave her bereft of the markets and the wealth that she possessed six years ago. But above all, they leave her with an immensely greater problem than she had then. We are nearing the end of one phase in Europe's history, but the next will be no happier. It will be grimmer, harder and perhaps bloodier. And now I ask you earnestly, can Britain survive? I am profoundly convinced that without German help she cannot.

(*Editorial Note.*)—As this book may be read in future years when the events of the war of 1939-1945 are no longer matters of universal knowledge and personal memory, it may be well to remind readers that the date of "Britain's Cowardice in War," 2nd August, 1940, was about two months after the evacuation of the British Expeditionary Force from Dunkirk, and about six weeks before the Battle of Britain was at its height. The next extract, July, 1942, belongs to a period when a certain number of persons with more zeal than sense were chalking on walls such slogans as "Invade NOW in the West." The two of 1943 are given as good examples of wishful thinking, and prophecy that went wrong. Those of the early part of 1944 show Joyce getting nervous about the prospect of a second front, and also trying to sow discord between the allies. That of 17th June, 1944, was a few days after the beginning of the flying-bomb attacks on Southern England. The optimism of 7th January, 1945, was due to the temporary and limited success of a German counter-offensive. Finally, his last broadcast, a week before the final collapse of Germany, is mainly devoted to trying to make trouble between Russia and her Western allies. All his broadcasts remind one of the words of Tennyson:

"A lie which is all a lie can be met and fought with outright.

But a lie which is part a truth is a harder matter to fight."

### APPENDIX VIII.

#### I. EFFECT OF JOYCE'S BROADCASTS IN GREAT BRITAIN.

At the request of the Ministry of Information, the B.B.C. undertook, in December, 1939, to make a special study of the reactions of the public

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to the broadcasts in English from Hamburg. The machinery and methods used were in the main those which the B.B.C. has found by experience to be useful, and now continuously employs, for securing an impartial report on the reception by the public of its own broadcast programmes. The final report, dated 8th March, 1940 (which is unfortunately too long for publication in full), was based on material derived from four separate sources :

(i) From 34,000 interviews with members of the public, who were being interrogated primarily about their listening to B.B.C. programmes, but to whom supplementary questions about Hamburg listening were also put.

(ii) From 750 questionnaires completed in writing by listeners of varying types.

(iii) From a special sample enquiry, consisting of 5000 interviews constituting a complete cross section of the adult population of Great Britain.

(iv) From correspondence with the B.B.C., both solicited and unsolicited.

The following is the text of the summary prefixed to the report (paragraphs 2 to 9) :

2. At the end of January, 1940, out of every six adults in the population, one was a regular listener to Hamburg, three were occasional listeners, and two never listened. (At that time four out of every six people were listening regularly to the B.B.C. News.) Most listening to Hamburg takes place at 9.15 and 10.15 p.m. Throughout January and February the habit of listening to Hamburg regularly was on the decline. Inquiries showed that the number of listeners to Hamburg in the last days of February was approximately two-thirds of the number who listened in the last week of January.

3. The black-out, the novelty of hearing the enemy, the desire to hear both sides, the insatiable appetite for news, and the desire to be in the swim have all played their part both in building up Hamburg's audience and in holding it together. The entertainment value of the broadcasts, their concentration on undeniable evils in this country, their news sense, their presentation, and the publicity they have received in this country, together with the habit of listening to them, have all contributed towards their establishment as a familiar feature in the social landscape.

4. All types of person are to be found among Hamburg's public but men are greater listeners than women, and people under fifty years of age are greater listeners than people over fifty. Those whose families have been broken up by the war, and those whose money incomes have gone down, listen no more to Hamburg than do people not so affected.

5. The one outstanding feature in the Hamburg audience is an interest in public affairs. The average listener to the German broadcasts in English is a more politically conscious person than the average non-listener to Hamburg. He listens more regularly to B.B.C. News and to Front Bench talks than the average non-listener to Hamburg. He reads more newspapers and chooses the more serious papers. He has more often made up his mind on political questions than has the man who does not listen to Hamburg.

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6. Tests have been applied to see whether the habit of listening to Hamburg influences public opinion. A cross section of the whole population, classified according to the extent to which they listen to Hamburg, have expressed their opinion on, for example, rationing in this country. By this means it has been possible to contrast the views of listeners to Hamburg with those of non-listeners. It has been found that the views of these two groups are not always the same.

7. As compared with people who do not listen to Hamburg, listeners are more conscious of such disunity as exists within the Empire, and more prepared to credit Hitler with positive social achievements. On these points they may be said to take up the view that Hamburg would wish them to take up. On the other hand they are more favourable to rationing in this country, and not materially more convinced than non-listeners to Hamburg that, whoever does gain from this war, it will not be the Nazis. On these points they take precisely the opposite view to that taken up by Hamburg propaganda.

8. Careful study reveals, in the views of those who listen regularly to Hamburg, an unmistakable consistency. But this consistency is not one which would be in any way encouraging to the Hamburg propagandists. It exists only because the people who listen regularly to Hamburg tend to be those who are most interested in public affairs. Such people realise, without promptings from Hamburg, that some parts of the Empire are not united on the issue of the war, understand the reasons for rationing, are willing to give Hitler credit for certain pre-war achievements in the social field. On certain points they evidently hold views which the enemy wishes to encourage, and may even have encouraged. But there is little evidence that they would not have held those views in almost as great a measure if Hamburg had never broadcast in English.

9. This study has been made in the context of a relatively static war. It is safe to say that, as yet, widespread hatred of the enemy does not exist. But if there were widespread suffering, hatred might grow, and the task of the Hamburg propagandists would become correspondingly more difficult. If there were widespread social discontent, on the other hand, this would be Hamburg's opportunity. It is certain that the impact of Hamburg propaganda should be kept under constant observation.

One example must suffice to show how the report dealt in detail with various aspects of Joyce's broadcasts.

### " MOTIVES FOR LISTENING TO, AND THE PUBLIC'S OPINION OF, THE HAMBURG BROADCASTS."

#### *Why do people listen to Hamburg?*

30. Although the habit of listening to entertainment programmes in English from abroad was general in this country before the war, the habit of listening to foreign stations for news in English is a recent development. The policy to be pursued to counter it must take into account the causes of its growth. In studying the reasons for its growth, it is

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important to distinguish between the primary causes, which would predispose the British public to listen to news from Germany, and the satisfaction which such listening brings.

31. Naturally as soon as a war breaks out the demand for news from any source is clamant. The relative inactivity of this war has meant that the supply of news has fallen far short of the demand. That in itself has undoubtedly sent many listeners ransacking the wavebands. The desire to "hear both sides," too, is considerable among a people that prides itself on its fairmindedness. An extremely important primary cause of listening to news from Hamburg is, undoubtedly, curiosity, with which must be coupled the novel "thrill" of hearing, from the comfortable security of one's fireside, the voice of one's would-be destroyer. The black-out must also take its share of responsibility; listening, as a leisure activity, has increased enormously as a result of it and Hamburg has benefited accordingly.

32. If these are sufficient reasons why the habit of listening to Hamburg began, there are now still more reasons why it should continue. The *Written Questionnaire* contained a question on this point. Listeners were asked to say what they thought were the chief reasons why people listen to Lord Haw-Haw. On the basis of public comments already received, a list of nine possible reasons was drawn up and listeners were invited to endorse any which they felt represented their answers. (Space for other, unlisted, reasons was also provided.)

The results were:—

	Thought to be one of the chief reasons by Per cent.
"Because his (Lord Haw-Haw's) version of the news is so fantastic that it is funny" - - -	58
"Because so many other people listen to him and talk about it" - - - - -	50
"Because people are amused at his voice and manner" - - - - -	38
"Because they like to hear the German point of view" - - - - -	29
"Because they hope to get more news" - - -	26
"Because his anecdotes make people laugh" - - -	26
"Because he is a good broadcaster" - - -	15
"Because the B.B.C. news is so dull" - - -	9
"Because he is so clever" - - - - -	6

The three reasons which head the list represent "satisfactions" which the Hamburg broadcasts give to those who listen to them—entertainment value and the social cachet of having heard Haw-Haw. These three have apparently outstripped the desire to hear the other fellow's point of view, and the plain hunger for news, both of which operate as primary causes of listening. There are some, though not many, so the evidence suggests, who regard news from all sources as equally untrustworthy. But no evidence can be found of any belief anywhere that news from Germany is consistently reliable and B.B.C. news consistently the reverse. It is significant

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that the 750 listeners questioned gave little support for any reasons for listening other than those given in the list, although an extremely important reason was omitted altogether—the momentum of habit itself.

### *People's opinions about Hamburg broadcasts.*

33. The content of spontaneous comments on the Hamburg broadcasts collected from the *Special Sample* can be summarised as follows:—

Group.	Approximate per cent. of Listeners to Hamburg.
1. Believe that Hamburg broadcasts contain grains of truth; that Hamburg sometimes secures news scoops	17
2. Regard Haw-Haw as first class entertainment	16
3. Believe that Hamburg broadcasts are lies, rubbish, stupid, silly, mad	15
4. Respect the skill of Hamburg propaganda	4
5. Dislike, or are angry with Haw-Haw	4
6. Are bored with Hamburg propaganda	3
7. Fear Haw-Haw's influence	3
8. Have contempt for Haw-Haw's influence	2
9. Are suspicious of news from both sides	2
10. Desire to hear both sides	2

### *Why people do NOT listen to Hamburg?*

38. From the negative standpoint, evidence was taken on why people do not listen to the Hamburg broadcasts. The *Written Questionnaire* asked those who never listen to give their reasons. 53 per cent. declared they had never been sufficiently interested, 16 per cent. that they had listened at one time but had subsequently lost interest, and 22 per cent. that their sets were not adequate. Only a handful said they considered it unpatriotic to listen.

39. Before leaving this subject one final point should be made. By whatever means Hamburg has got its audience it has held it—or much of it. Hamburg broadcasts may be mendacious, unscrupulous, and often laughable to English ears, “but if they bore some of the people all the time, and all of the people some of the time, they do not bore most of the people most of the time.”

Space forbids more than the quotation of one paragraph from the section of the report dealing with “The Effects of Hamburg Propaganda On Public Opinion.” (This was not selected for complete citation, since the subject matter of Joyce's broadcasts, and therefore very probably their effects, naturally changed greatly after the war entered its more active phase, and part of this section might have become out-of-date.) But the following probably remains true:—

41. It is significant that the Hamburg points which meet with any substantial measure of approval from listeners are all ones which could be, and frequently are, made within this country and are accepted as perfectly legitimate criticisms in no way inconsistent with a desire to prosecute the

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war to a successful conclusion. Genuinely defeatist propaganda appears to fall on singularly unreceptive ears.

In a covering letter dated 30th January, 1946, with the report, Mr. R. J. E. Silvey, Listener Research Director of the B.B.C., says: "There is this to be added to the document. We found on investigation that listening to Haw-Haw shrank to insignificant proportions as soon as the phoney war period finished and never revived throughout all the years that followed." On this subject readers are referred to an article by Mr. Silvey in the B.B.C. Year Book for 1946.

## II. EFFECT OF JOYCE'S BROADCASTS OVERSEAS.

From Reports furnished through the Offices of the Dominion High Commissioners and the American Embassy in London.

1. *Australia*.—(From Amalgamated Wireless (Australasia), Ltd.). So far as statistics are concerned there is no record as to the reception from the technical standpoint or the viewpoint of the public of these broadcasts in Australia. The general view of Australians whose opinions have been sought is that only a few enthusiasts would bother to try and hear the transmissions and, generally speaking, Lord Haw-Haw was a person of no importance whatever to the average Australian. The Sydney Office advises that Joyce was hardly known to Australians except through references made to him as Lord Haw-Haw which appeared in the press from time to time. In the very early days of the war there was a rise in the listening audience to overseas broadcasts probably mainly due to the fact that on occasion listeners felt that news was being withheld from them. The highest figure noted that ever showed up in any of the radio surveys indicated that 2 per cent. of the listeners on the day previous to the survey had their receivers tuned in to the short-wave service from other countries. It is thus unlikely that Joyce was taken seriously by any substantial section of the Australian public.

2. *Canada*.—(From the Canadian Information Service in Ottawa through the Office of the High Commissioner in London.) A fair answer to the importance of Joyce as far as Canada is concerned would be that the name of Lord Haw-Haw was as widely known in Canada in 1940, 1941, and the early part of 1942 as it was in the United Kingdom, but that what he was actually saying was not at all widely known. This was because all but a very few Canadians who knew about him were talking about him and making jokes about him, had gained all their knowledge of him from cabled press dispatches. Some of these reported items of news disclosed for the first time in Joyce's broadcasts, but the majority were based on a sentence or two of comment from a broadcast which, by juxtaposition to fact in the story, were shown to be untrue or ridiculous. In other words, most of the stuff reaching Canadians from Haw-Haw had been "decontaminated" by the correspondents. A little later when the Haw-Haw problem became definitely a serious one in England, and the



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correspondents started to describe its seriousness, their dispatches probably came as a bit of a surprise and jolt to the Canadian public who had been accustomed to regard almost all Haw-Haw's stories as a bit of a joke. This reaction, of course, does not apply to the very small percentage of Canadians who had short-wave receivers capable of receiving European stations consistently and with a fair degree of clarity. However, there was little effect on morale since most of such people able to afford good short-wave receivers had sufficient education and judgment to do at least some of their own "decontamination." Amongst these people was observed an entirely different attitude towards the Joyce broadcasts than that held by the average man in the street. Most of them realized that Joyce's work was genuinely clever, morale-breaking propaganda. It was no surprise to them when the press dispatches from England finally started to discuss seriously the measures being taken to render his broadcasts ineffective. In a nutshell, Joyce had little, if any, morale depressant effect on Canadians and it was only because of the difficulties of hearing him easily in that country. Some of his material was planned and beamed for Canadian listeners, but very few heard it. Nevertheless, one instance is known where Joyce achieved a definite military morale effect at a lonely Atlantic coast outpost. Joyce's intelligence was apparently so good that he could tell personnel at this outpost just about what stage of construction they had reached. He then told them to go on and work hard because German forces would soon be landing there and would want to use the outpost as a base for other operations against the North American Continent. This was no joke to the construction crews and to the service personnel. The base in question was definitely vulnerable at that time. It is not thought that at that place there was any question of the slightest depressing effect on the construction crews, although the hope of many of the military personnel was that the Germans would come so that they could "get a crack at them." It is very doubtful if there was any effect at all on the rapidity with which construction work proceeded. Another factor in Joyce's over-all failure to achieve any real effect in Canada was the fact that apart from isolated instances of good intelligence such as the one noted above, German intelligence about Canada for propaganda purposes was notably poor and out-of-date throughout the war. The Nazi had apparently done an extraordinarily thorough job of collecting data for propaganda purposes in Canada, but seemed to have finished it as long ago as 1936 or 1937. After the war started they placed so much reliance on this out-of-date data that their broadcasts were frequently ridiculous. For example, for a long time they put in items of news which they could get from the ordinary world news services a great deal of detail apparently supplied from their own files. If a news story was centred in Montreal they would fill in a mass of detail about who lived at such and such a number and such and such a street. Usually the people or the grocery store or the butcher mentioned had moved or changed ownership in the meantime and the result was that the few who listened to short-wave broadcasts knew that the enemy's information was phoney.

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3. *New Zealand*.—(From the National Broadcasting Service in Wellington through the Office of the High Commissioner in London.) The opinion is held that Joyce was not widely heard in New Zealand, and by the time that he was known in that country he was a joke and was listened to as such. His effects from the services point of view were negligible as far as it is possible to ascertain.

4. *South Africa*.—(From the Union Director of Information through the Office of the High Commissioner in London.) No official record was kept of the effect of the broadcasts by Lord Haw-Haw upon the people of South Africa. The main radio campaign against South Africa was conducted in Afrikaans by Ericht Holm over the Zeesen short-wave station and this undoubtedly did have a pronounced effect on certain sections of the population. His broadcasts were eagerly listened to by the anti-war element and his arguments freely quoted in support of the anti-war and neutrality campaigns. The pro-war element derived much amusement from the broadcasts of Ericht Holm which were all delivered in Afrikaans. As for Joyce's broadcasts, his talks only served to amuse the English-speaking section of the population except, perhaps, for his anti-Semitic utterances which were occasionally quoted in conversation by those members of the English-speaking section antagonistic to Jews in South Africa.

5. *United States of America*.—(From the Office of War Information through the American Embassy in London.) Only a comparatively small number of people in the United States have short-wave radio sets. It is estimated that 3 per cent. of the people with radios can get short-wave programmes—approximately 2,000,000 people. Reception from Europe has always been subject to difficulties, and it seems that relatively few could have heard Joyce direct. At the same time, however, a good many excerpts from his broadcasts were published in American newspapers and he was a very well-known name.

### APPENDIX IX.

#### BIOGRAPHICAL NOTES.

THE LORD CHANCELLOR, The Right Honourable William Allen, first Baron Jowitt of Stevenage, was born in 1885, the only son of the Rev. William Jowitt, Rector of Stevenage. He was educated at Marlborough and New College, Oxford. He was called to the Bar by the Middle Temple in 1909, and took silk in 1922. He sat in the House of Commons first as a Liberal for the Hartlepoons, and as a Socialist for Preston and Ashton-under-Lyne. He became Attorney-General in the Labour Administration of 1929, receiving the customary Knighthood, and in 1931 a Privy Councillorship. During the war he was Solicitor-General 1940-42, Paymaster-General, 1942, Minister without portfolio, 1943. On the accession to power of the Socialists in 1945 he was, in accordance with general expectation, appointed Lord Chancellor, and raised to the peerage.

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**LORD MACMILLAN**, of Aberfeldy. The Right Honourable Hugh Pattison Macmillan, born in 1873, was, like the Lord Chancellor, a "son of the manse," being the only son of the Rev. Hugh Macmillan, D.D., LL.D., of Greenock. He was educated at Edinburgh and Glasgow Universities, where he had a distinguished scholastic career. He now holds the Honorary degree of LL.D. or D.C.L. from at least ten Universities. He became an Advocate and a Scottish K.C. and in the Labour Government of 1924 was Lord Advocate, which on that occasion was understood to be a non-political appointment. In 1930 he became a Lord of Appeal in Ordinary. At the beginning of the war he served for a short time as Minister of Information, but in 1941 returned to his judicial duties. He has served as a member or more usually as chairman of very numerous public committees.

**LORD WRIGHT**, of Durley. The Right Honourable Robert Alderson Wright was born in 1869, son of John Wright, South Shields. He was educated privately and at Trinity College, Cambridge, of which he was a Fellow from 1899-1905, and is now an Honorary Fellow. He was called to the Bar in 1900, taking silk in 1917, and becoming a Bencher of the Inner Temple in 1923. In 1925 he was appointed a judge of the King's Bench Division of the High Court, and in 1932 was made a Lord of Appeal. His appointment as Master of the Rolls in 1935 was a rare, if not unique, example of a Lord of Appeal returning to the Court of Appeal as its President, but in 1937 he returned to the Lords, where he has since continued to sit. Lord Wright is Deputy High Steward of the University of Cambridge.

**LORD PORTER**, of Longfield. The Right Honourable Samuel Lowry Porter was born in 1877, a son of the late Hugh Porter. He was educated at Emmanuel College, Cambridge, and called to the Bar in 1905. He received the M.B.E. for his services in the first World War, and took silk in 1925. He was Recorder of Newcastle-under-Lyme from 1928 to 1932, and of Walsall from 1932 till his appointment as a High Court judge in 1934. Like Lord Wright and Lord Simonds he went straight from the High Court to the House of Lords, being made a Lord of Appeal in Ordinary in 1938. He was chairman of the Tribunal which inquired into the leakage of Budget information in 1936. In 1940 Birmingham University conferred on him the Honorary degree of LL.D.

**LORD SIMONDS**, of Sparsholt. The Right Honourable Gavin Turnbull Simonds was born in 1881, the second son of the late L. de L. Simonds, of Basingstoke. He was educated at Winchester College (of which he became a Fellow in 1933) and New College, Oxford, where he took a double first in Classics. He was called to the Bar in 1906, and took silk in 1924. He became a Bencher of Lincoln's Inn in 1929, and in 1937 was appointed a judge of the Chancery Division. He was chairman of the National Arbitration Tribunal from 1940 to 1944, when he was appointed a Lord of Appeal in Ordinary.

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**THE LORD CHIEF JUSTICE OF ENGLAND**, The Right Honourable Thomas Walker Hobart Inskip, first Viscount Caldecote of Bristol, was born in 1876, the 2nd son of James Inskip, of Bristol, father of a distinguished family, for one of Lord Caldecote's brothers became Lord Mayor of Bristol, while another was Bishop of Barking. Lord Caldecote himself was educated at Clifton College and King's College, Cambridge. He was called to the Bar in 1899, and took silk in 1914. In the first World War he served in the Naval Intelligence Department of the Admiralty from 1915 to 1918. In Parliament he represented first Bristol Central and later the Fareham Division of Hampshire. He was Solicitor-General from 1922 to January, 1924, and returned to that office after the fall of the Labour Government in November of the same year, and continued till 1928 when he became Attorney-General till the Government fell in 1929. In 1931, like Lord Jowitt in the present war, he returned to the junior Law Officership till 1932, when he again became Attorney-General till 1936, when he was appointed Minister for the Co-ordination of Defence. In 1939, he became Secretary of State for the Dominions, but was shortly afterwards made Lord Chancellor, and raised to the peerage as Viscount Caldecote. In 1940 he returned to the Dominions Office, and became Leader of the House of Lords. In the same year he succeeded Lord Hewart as Lord Chief Justice of England. It may be doubted whether anyone has ever before held both the offices of Lord Chancellor and Lord Chief Justice. He resigned in January, 1946, owing to ill health.

The **RIGHT HONOURABLE SIR TRAVERS HUMPHREYS** was born in 1867, the fourth son of Charles Octavius Humphreys, a solicitor. He was educated at Shewsbury School and Trinity Hall, Cambridge. He was called to the Bar in 1889, and in 1908 became Junior, and in 1916 Senior Prosecuting Counsel to the Crown at the Central Criminal Court. He is a Bencher of the Inner Temple, and was successively Recorder of Chichester and of Cambridge before his elevation to the Bench as a judge of the King's Bench Division in 1928. He was made a Privy Councillor in the New Year's Honours of 1946, soon after the Joyce trial.

The **HONOURABLE SIR GEORGE JUSTIN LYNKEY** was born in 1888, a son of the late George Jeremy Lynskey, solicitor. He was educated at St. Francis Xavier's College, Liverpool, and Liverpool University. He was himself admitted a solicitor in 1910, and was called to the Bar in 1920, taking silk in 1930. He became a Bencher of the Inner Temple in 1938, and was judge of the Salford Court of Hundred from 1937 till he was made a judge of the King's Bench Division in 1944.

The **RIGHT HONOURABLE SIR FREDERICK JAMES TUCKER** was born in 1888, and was educated at Winchester College and New College, Oxford. He was called to the bar in 1914, and took silk in 1933. He was honorary secretary of the Barristers' Benevolent Association from 1918-27, and honorary treasurer from 1933-37. He was a member of the General Council of the Bar from 1930-37. In 1936 he became Recorder of Southampton, and in the following year was made a judge of the King's Bench Division. The Joyce case was one of the last criminal cases he tried for very soon afterwards he was promoted to be a Lord Justice in the Court of Appeal.

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SIR HARTLEY SHAWCROSS, K.C., M.P., was born in 1902, and was educated at Dulwich and abroad. Having taken first place in the Bar final examination, he was called in 1925, and took silk in 1939, when he also became a Bencher of Gray's Inn. He was senior law lecturer from 1927 to 1934 at Liverpool University, which in 1934 conferred on him the Honorary Degree of LL.M. In 1941 he became Recorder of Salford; in 1942 he was appointed Regional Commissioner of the North-Western Region; in 1943 he became chairman of the Catering Wages Committee, and a member of the Home Secretary's Advisory Council on the Treatment of Offenders. On the accession to power of the Labour Government in July, 1945, he was appointed Attorney-General, and became Chief British Prosecutor in the Nuremberg trials of the principal German war criminals.

The HONOURABLE SIR LAURENCE AUSTIN BYRNE was born in 1896, was called in 1918, and later became a Bencher of the Middle Temple. He was counsel to the Mint at the Central Criminal Court from 1928 to 1930, Junior Prosecuting Counsel to the Crown 1930 to 1937, second Senior, 1937 to 1942, and Senior 1942 to 1945. Between the hearing of Joyce's appeal by the Court of Criminal Appeal and the hearing in the House of Lords he was made a judge of the High Court and attached to the Probate, Divorce, and Admiralty Division.

Mr. GERALD OSBORNE SLADE, K.C., was born in 1891, the second son of Sir James Benjamin Slade, and was educated at Lindisfarne College, Westcliff, Bedford School, and Trinity College, Cambridge. He was called to the Bar in 1921, and took silk in 1943. He has been Chancellor of the Diocese of Chelmsford since 1934, and of Southwark since 1944, and Recorder of Tenterden since 1942. In 1939 he was a member of the Lord Chancellor's Committee on the Law of Defamation.

Mr. FREDERICK HENRY (DEREK) CURTIS-BENNETT, K.C., was born in 1904, the only son of the late Sir Henry Honeywood Curtis-Bennett, K.C., and grandson of Sir Henry Curtis-Bennett, Chief Magistrate. He was educated at Radley and Trinity College, Cambridge, and was called to the Bar in 1926. He took silk in 1943. He was Recorder of Tenterden from 1940 to 1942, when Mr. Slade succeeded him on his transfer to Guildford.

Mr. STEPHEN GERALD HOWARD was born in 1896, the only son of the late Major S. G. Howard, C.B.E., D.L., of Newmarket. He was educated at Harrow and Balliol College, Oxford. In the first World War he served as a Flight Lieutenant in the R.F.C. and R.A.F. from 1916 to 1918. In 1922 he contested the Eye Division of Suffolk as a Coalition Liberal. He was called to the Bar in 1924, and became a Bencher of Lincoln's Inn in 1942, in which year he became First Junior Counsel to the Treasury at the Central Criminal Court. On Mr. Byrne's elevation to the Bench in 1945, Mr. Howard became Third Senior Counsel. In 1943 he became Recorder of Bury St. Edmunds, and is a J.P. for Cambridgeshire.

Mr. JAMES BURGE was born in 1906, and was educated at Cheltenham and Christ's College, Cambridge. He was called to the Bar in 1932, having been Yarborough Anderson scholar, and Profumo and Paul Methuen prizeman in the Inner Temple. He served in the R.A.F. 1940-1944, as Deputy Judge Advocate from September, 1941. In July, 1943, he was appointed counsel to the Post Office at the Central Criminal Court.

