

N O T E S as to STATUTES and REGULATIONS with reference
to SENDING LETTERS and MONEY to ENEMY COUNTRIES.

The Treason Act of 1351 makes it treason to give "aid and comfort" to the King's Enemies. Lord Reading in R. v. Casement in his summing up to the Jury (1917. 1. K.B. 98 at p. 133) construed these words as meaning Acts which strengthened the enemies of the King in the conduct of the War against the King. The Acts in question here would not appear to have done this.

Apart from the Treason Act there was not in force at the outbreak of war any penal statute directed against any of the Acts indicated in our instructions.

There was, and is, however, a rule of Common Law making illegal what is usually called "trading with the enemy". The extent of this rule has generally been considered in connection with Prize proceedings. The most important Prize case upon this point during the present war was "The Panariellos" (31. T.L.R. 326 & 32 T.L.R. 458). We know of no case of a conviction for a Common Law trading with the enemy, but the absence of such a case is to be explained by the fact that in all wars such acts as the Government desires to prevent and punish are made Statutory offences. It is at all events clear that "trading with the enemy" is illegal. The extent of the rule has been lately considered by Sargant J. and the Court of Appeal in Robson v. Premier Oil & Pipe Line Ltd. (1915 2 Ch. 124) The Court of Appeal while expressly declining to decide, as Sargant J. appears to have decided (at p. 131) that all intercourse commercial or not, is illegal, laid down (at p. 136) that any intercourse whether commercial or not which could tend to the detriment of this country or to the advantage of the enemy was forbidden (See also Van Uden v. Burrell 1916. S.C. 391.)

Any Act done since the outbreak of war of such a nature constituted a Common Law misdemeanour unless the intercourse was permitted by the Crown.

By Defence of the Realm Regulation 50, first published November 28th 1914, there was a general prohibition on assisting the enemy. This made in effect the Common Law misdemeanour punishable summarily, or by Court Martial.

The War Legislation falls into two categories (1) the Trading with the Enemy Acts and Proclamations and (2) the Defence of the Realm Acts and the Regulations made thereunder.

The Trading with the Enemy Proclamation of September 9th 1914 (Manual of Emergency Legislation p. 378) stated the law and declared it to be contrary to law to have financial transactions with the enemy and § 5 (1) warned all persons not to pay any sums of money to or for the benefit of the enemy and warned all persons that to do so was a crime except in so far as the same was permitted by Royal licence.

Until that date by the Proclamation August 5th 1914 any transaction not treasonable was permitted with Germany. Austria came into the war 12 midnight, August 12th 1914, and by Proclamation of that date the Proclamation of August 5th was extended to that country (p. 97 Manual Em. Leg. 1914) The Act passed subsequently on September 18th 1914 (4 & 5 G.V. Cap. 87) (Manual p. 420) made the offence triable either under the Summary Jurisdiction Acts or upon indictment. Subsequent Acts and Proclamations have not altered the position.

Up to October 14th 1914, the Regulations issued under the Defence of the Realm Act (4 & 5 Geo. V. Caps 29 & 63) did not deal with the question of Foreign correspondence. The

Amending Regulations of October 14th 1914 (Emergency Legislation Supplement II p. 99) contained a new Regulation 16 C. which made it an offence triable by Court Martial. (Consolidated Regulations § 27 Emergency Manual p. 414) to transmit to a person resident in an Enemy country any letter "otherwise than through the post". The substance of this Regulation has been in force ever since, subject to the exemptions the material one of which will be dealt with hereafter.

In the Consolidated Regulations of November 28th 1914 (Supplement II p. 104 at p. 112) Regulation 16 C. became Regulation 24. The same Regulations (p. 119) made an offence against it triable either by Court Martial or before a Court of Summary Jurisdiction.

There were immaterial amendments on May 10th 1916 (Statutory Rules & Orders 1916 p. 234) November 6th 1916 (ibid p. 266) February 6th 1917 (S.R. & O. 1917 p. 264) and February 16th 1917 (ibid p. 267)

The amendments of July 17th 1917 (ibid p. 301) left this offence unaltered but created a new one by Regulation (24 B. (3)) viz : the transmission of a letter through the post in such a manner as to evade censorship unless the sender proved that he did not intend to evade the censorship.

By the same amendments the Secretary of State was empowered to exempt letters etc. from the prohibition contained in Regulation 24.

Upon September 3rd 1917 (London Gazette of September 7th 1917) the Home Secretary by virtue of this power exempted "any document conveyed in a sealed bag for or on behalf of the British Foreign Office or any British or Foreign Embassy or Legation". This exemption was republished upon June 27th 1918 (London Gazette June 28th 1918).

There were further amendments of this part of the Regulations upon April 27th 1918 (Gazette April 30, 1918) which are not material.

The law being as is stated above, we think the points indicated in our instructions can be best dealt with in the following propositions :

QUESTIONS.

- (1) Was it illegal to write to his family in the Enemy country ?

- (2) Was it illegal for him to write to his family by sending his letters to be posted in a neutral country ?

ANSWERS.

- (1) It was at all times an offence at Common law to send any letters to the Enemy whether through the post or not which could tend to the advantage of the enemy or the detriment of this Country. As to "Innocent letters" (i.e. letters not of the sort defined in the above) sent through the post addressed to the enemy, the Court of Appeal has left this question open but the decision of Sargant J. appears to make the act illegal.

- (2) It was at all times after October 14th 1914 an offence under the Defence of the Realm Regulations to send letters even "innocent" letters to an enemy otherwise than through the post (except in a diplomatic

bag as to which see below). It was not until the issue of Regulations 24 B (3) on July 17th 1917 an offence to send "innocent" letters to the enemy enclosed in a letter sent through the post to a neutral country. But this proposition is sufficient to paragraph 1 above. After July 17th 1917 it was an offence under Reg. 24 B (3) to send letters even if "innocent" to an enemy in a letter sent through the post to a neutral country unless the sender could prove he did not intend to evade the censorship.

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(3) Was it illegal for him to send his letters through the Ambassador as above described ?

(3) It was after October 14th 1914 up to September 3rd 1917 an offence to send even "innocent" letters to an Enemy in a neutral bag. There is divided opinion as to the effect of the Secretary of State's order of September 3rd 1917 upon the transmission of letters in this way after that date. On the one hand it is urged that the effect of the Home Secretary's order of 3rd September 1917 was to make it no longer illegal after that date to send "innocent" letters to the enemy in a diplomatic bag on the other hand it is urged that the Order only authorised the sending of documents connected with the Foreign Office, Embassy or Legation.

(4) Was it illegal for him to send money to his family for their support, and for the Burial of his Mother &c. ?

(4) It was not illegal to send money to Germany or Austria up to September 9th 1914 provided the terms of the Proclamation of August 5th 1914 and August 12th 1914 were observed. After that date it was illegal to send any money without the license of the Crown.

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N O T E S:

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COUNTRIES.

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