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7 號文件

(譯本)

香港中區
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立法會秘書處
法案委員會秘書
(經辦人：林培生先生)

林先生：

國家安全(立法條文)條例草案

正如今天在法案委員會所提及，現夾附我們曾在較早前向委員會提供的文件(1 號文件)中所提述，Joyce 訴 DPP 的案例，煩請安排分發，以供議員參考。

保安局局長
(羅憲璋代行)

二零零三年三月二十七日

JOYCE v. DIRECTOR OF PUBLIC PROSECUTIONS.

[House of Lords (Lord Jowitt, L.C., Lord Macmillan, Lord Wright, Lord Porter, Lord Simonds), December 10, 11, 12, 13, 1945, February 1, 1946.]

Criminal Law—Treason—Allegiance—Alien—Holder of British passport—Passport issued on alien's declaration of being British subject by birth—Alien broadcasting propaganda for the King's enemies—Adhering to the King's enemies without the realm—Whether alien owing allegiance to the Crown—Rights and obligations of the holder of a British passport—Jurisdiction of English court to try alien for treason committed abroad—Treason Act, 1351.

The appellant was convicted on an indictment charging him with high treason by adhering to the King's enemies elsewhere than in the King's realm between Sept. 18, 1939, and July 20, 1940, in that he broadcast on behalf of the said enemies propaganda destined to be heard by the King's subjects, contrary to the Treason Act, 1351. He was born in the United States in 1906, the son of a naturalised American citizen and thereby became himself a natural-born American citizen. At the age of three he was brought to Ireland and stayed there until about 1921 when he came to England, where he resided until 1939. On July 4, 1933, he made application for a British passport, describing himself as a British subject by birth having been born in Galway, and was granted the passport as such British subject by birth, for a period of five years. On Sept. 24, 1938, he applied for, and was granted, a renewal of that passport for a further period of one year. On Aug. 4, 1939, he made a further application for the further renewal for one year of that passport, and the passport was again renewed to expire on July 1, 1940. On both occasions he described himself as a British subject who had not lost that national status. The purpose of the last renewal was stated to be for "holiday purposes." At some date after Aug. 24, 1939, he left England and travelled to Germany where he remained throughout the war. On his arrest in Germany in 1945, a document was found in his possession showing that he had been engaged by the German Broadcasting Corporation as from Sept. 18, 1939, as an editor, speaker and announcer of news in English. While it was admitted that the appellant, being an alien within the realm, was a person owing allegiance to the King on Aug. 24, 1939, it was contended on his behalf that (i) since allegiance due from an alien, being local in character, only continued so long as he resided within the King's dominions, the trial judge was wrong in law in directing the jury that the appellant owed allegiance to the King during the period from Sept. 18, 1939, to July 2, 1940; (ii) that an English court had no jurisdiction to try an alien for treason against the King committed in a foreign country; (iii) the renewal of the appellant's passport did not afford him, nor was it capable of affording him, any protection, at least after the declaration of war between Germany and England, nor had he ever availed himself or had any intention of availing himself of any such protection; (iv) if there were any evidence of such facts, the issue was one for the jury and the trial judge had failed to direct them thereon:—

Held: (i) by obtaining a British passport the appellant, as a person already owing allegiance to the King here, extended his duty of allegiance beyond the moment when he left England. It was immaterial that he had obtained the passport by misrepresentation and that he was not in law a British subject. In all the circumstances of the case the appellant had, at the material times, adhered to the King's enemies beyond the realm and was, therefore, guilty of treason within the meaning of the Treason Act, 1351.

(ii) the court had jurisdiction to try the appellant.

R. v. Casement (4) *applied.*

(iii) [Lord Porter dissenting]: the British passport held by the appellant entitled him to all the rights and protection afforded by such a passport, even if he had no intention of using it. There was no ground for holding that the trial judge had misdirected the jury on the issue as to whether the passport had remained at all material times in the possession of the appellant.

Decision of the Court of Criminal Appeal ([1945] 2 All E.R. 673) *affirmed.*

[EDITORIAL NOTE. The House of Lords affirm the Court of Criminal Appeal on a question of far-reaching importance. It is held that on the issue of a passport the Crown assumes the burden of protection and the holder the duty of fidelity, so that as long as the passport is held the holder may be liable for treason, even though he is an alien and the acts in question are committed outside the realm. This would appear to be a considerable extension of the rule regarding local allegiance laid down in the Resolution of the Judges in 1707, but Lord Jowitt, L.C., describes it as being merely the application of an existing principle to circumstances unforeseen at the time of the enactment of the Treason Act.

It is always possible for an alien holding a British passport to withdraw from his allegiance on leaving the realm, either by surrendering his passport or otherwise, but whether he has done so or not is a question of fact in each case to be determined by a jury. It is on this point that Lord Porter founds his dissenting judgment, as he holds that the jury, properly directed, might have found that the allegiance had terminated.

As to Allegiance, see Halsbury, Hailsham Edn., Vols. 6 and 9, pp. 414-418, paras. 460-466, and p. 291, para. 432; and for Cases, see Digest, Vol. 11, p. 498, Nos. 8-18.]

Cases referred to:

*(1) *Calvin's Case* (1608), 7 Co. Rep. 1a; 11 Digest 496, 2.

*(2) *Johnstone v. Pedlar*, [1921] 2 A.C. 262; Digest Supp.; 90 L.J.P.C. 181; 125 L.T. 809.

*(3) *R. v. Braitsford*, [1905] 2 K.B. 730; 14 Digest 117, *851*; 75 L.J.K.B. 64; 93 L.T. 401.

*(4) *R. v. Casement*, [1917] 1 K.B. 98; 14 Digest 128, *1002*; 86 L.J.K.B. 467; 116 L.T. 267, 277.

*(5) *R. v. Turner* (1816), 5 M. & S. 206; 14 Digest 430, *4552*.

*(6) *R. v. Burdett* (1820), 4 B. & Ald. 95; 22 Digest 100, *1366*.

Appeal by the accused from a decision of the Court of Criminal Appeal (Viscount Caldecote, L.C.J., Humphreys and Lynskey, JJ.), dated Nov. 1, 1945, and reported ([1945] 2 All E.R. 675). The facts are fully set out in the opinion of Lord Jowitt, L.C.

G. O. Slade, K.C., Derek Curtis-Bennett, K.C., and *James Burge* for the appellant.

The Attorney-General (*Sir Hartley Shawcross, K.C.*), and *Gerald Howard* for the Crown.

The House took time to consider its opinion.

Lord Jowitt, L.C.: My Lords, on Nov. 7, 1945, the Court of Criminal Appeal dismissed the appeal of the appellant, William Joyce, who had, on Sept. 19, 1945, been convicted of high treason at the Central Criminal Court and duly sentenced to death. The Attorney-General certified under the Criminal Appeal Act, 1907, s. 1 (6), 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 Sept. 18, 1939, and on divers other days thereafter and between that day and July 2, 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 1900, the son of a naturalised 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 33 years of age. He was brought up and educated within the King's Dominions, and he settled there.

On July 4, 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 5 years. The document was not produced, but its contents were duly proved. In it he was described as a British subject. On Sept. 26, 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 Aug. 24, 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 July 1, 1940.

On some day after Aug. 24, 1939, the appellant left the realm. The exact date of his departure was not proved. Upon his arrest in 1945 there was found upon his person a "work book" issued by the German State on Oct. 4, 1939, from which it appeared that he had been employed by the German Radio Company of Berlin, as an announcer of English news from Sept. 18, 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 judge was wrong in law and misdirected the jury in directing them that the appellant owed allegiance to His Majesty the King during the period from Sept. 18, 1939, to July 2, 1940.

3. That 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.

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 1945 to consider the scope and effect of a Statute of 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 differs little from the statement in Bracton: see 2 BRACTON 258, STEPHEN'S HISTORY OF THE CRIMINAL LAW OF ENGLAND, Vol. II, 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 commons, hath made a declaration in the manner as hereafter followeth, that is to say; 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 . . ." 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 generalisation, 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 denisation or naturalisation (I will call them all "naturalised 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 recognises 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* (1).

The natural-born subject owes allegiance from his birth, the naturalised subject from his naturalisation, 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 exuere patriam* is a fundamental maxim of the law from which relief was given only by recent statutes. Nor can the naturalised 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 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 (*ibid.*, at p. 185) comes the statement of law upon which the passage I have cited is clearly founded:

Sect. 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 Jan. 12, 1707.

The author has a side note against the last line of this passage "MSS. Tracy, Price, Dod and Denton." These manuscripts have not been traced 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 Edn., EAST'S PLEAS OF THE CROWN, 1803 Edn., Vol. I, p. 52, CHITTY ON PREROGATIVES OF THE CROWN, 1820 Edn., 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 own times by SIR WILLIAM HOLDSWORTH whose authority on such a matter is unequalled: see his article in HALSBURY'S LAWS OF ENGLAND, Hailsham Edn., Vol. 6, p. 416, note (*l*).

Your Lordships can give no weight to the fact that in such cases as *Johnstone v. Pedlar* (2) 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 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 or temporarily on the high seas beyond territorial waters or at some even distance not 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 tourist."

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 (3) ([1905] 2 K.B. 730, at 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 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 a passport is acquiring substantial privileges. A well known writer on international law has said (see OPPENHEIM'S INTERNATIONAL LAW, 4th Edn., Vol. I, p. 556) that by a universally recognised customary rule of the law of nations every State holds the right of protection over its citizens abroad. This rule thus recognised 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 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* (4), 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.

Finally (and these are the third and fourth 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 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 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 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 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 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 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.

My Lords, I am asked by Lord Simonds 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 Lord Jowitt, L.C. 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 Lord Jowitt, L.C.

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 Aug. 24, 1939, was evidence from which a jury might have inferred that he retained that document for use on and after Sept. 18, 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, owe 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 recognised in authoritative text books and the relevant cases to be owed because, as Hale (Pleas of the Crown (1778), Vol. I, p. 60) 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 criticised 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 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. In *R.* v. *Brailsford* (3), LORD ALVERSTONE says ([1905] 2 K.B. 730, at 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 the late SIR WILLIAM MALKIN in the LAW QUARTERLY REVIEW, Vol. 49, p. 493, 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 24 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 (INTERNATIONAL LAW, 5th Edn., Vol. 1, p. 266), "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* (4) 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 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 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 Sept. 18, 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 Aug. 24, 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 Sept. 18, 1939, was found in his possession when he was captured, and that at any rate by Dec. 10 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 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 Aug. 24, 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 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 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. . . . 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 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 his 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 Aug. 24, and Sept. 18, 1939, armed with a British passport, he had somehow entered Germany. Now members of the jury, thereafter up until July 9, 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 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 judge then refers to a broadcast, of which there was uncontradicted evidence that it had been made before Dec. 10, 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 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 is 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 re-read 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 judge as doing other than ruling that in law the appellant continued to owe allegiance to His Majesty on Sept. 18, 1939, on Dec. 10, 1939, and, indeed, until July 2, 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 contained 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 Aug. 24, 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 Sept. 18. The judge, as I see it, regards the renewal as proving conclusively that the duty continued until the passport ceased to be valid, 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 ([1946] 2 All E.R. 673, at p. 676) :

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 Sept. 18, 1939, and between that date and July 2, 1940, this appellant did owe allegiance to the King. We agree with TUCKER, J., that the proper way of approaching that question is to see

whether anything had happened between Aug. 24, and Sept. 18, 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 July 2, 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 Sept. 18. If I thought that the obtaining of the passport on July 24 proved in law that the appellant retained it for use at least until Sept. 18, 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 PLEADING, EVIDENCE AND PRACTICE, 31st Edn., at 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 *R. v. Turner* (5) 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. 84, and BEST ON EVIDENCE, 12th Edn., p. 352, and is explained by HOLROYD, J. (himself a party to the judgment in *R. v. Turner* (5)), in *R. v. Burdett* (6) ((1820), 4 B. & Ald. 95, at p. 140) :

[The rule in question] 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 untrue.

It this be the true principle, the failure of the prisoner to give 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 sect. 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 naturalised 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 due 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 society. Apart from this the 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 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.

Appeal dismissed.

Solicitors: *Ludlow & Co.* (for the appellant); *Director of Public Prosecutions* (for the Crown).

[*Reported by* C. St.J. Nicholson, Esq., *Barrister-at-Law.*]

NUGENT-HEAD v. JACOB (INSPECTOR OF TAXES).

[King's Bench Division (Macnaghten, J.), November 5, 1945.]

Income Tax—Sched. D—Income arising from foreign possessions—Married Woman—"Living with her husband"—"Living . . . separate from her husband"—Assessment on wife as feme sole—Husband on military service abroad—Wife entitled in her own right to income from abroad—Income Tax Act, 1918 (c. 40), *All Schedules Rules*, r. 16.

The appellant, an American citizen, married an Englishman in 1933. She lived with her husband in London until 1938, when he joined the army and was stationed at various places in the United Kingdom. In 1941 the husband was sent abroad for 3 years on military duty, but the appellant continued to reside in the marital home in London, which contained the husband's personal effects and which was at all times available to the husband should he be able to return to it. Under a settlement made on her, the appellant was entitled to a considerable income from property in America. Her income for the year 1941-42 amounted to £13,615 of which £7,082 was remitted to her in London and the balance retained to her credit in America. It was admitted that the whole of the income became assessable for the year 1942-43 under Case V of Sched. D to the Income Tax Act, 1918, as "income arising from possessions out of the United Kingdom." An assessment in the sum of £7,082 was made upon the appellant as a *feme sole* pursuant to the Income Tax Act, 1918, All Schedules Rules, r. 16, which provides that: "A married woman acting as a sole trader, or being entitled to any property or profits to her separate use, shall be assessable and chargeable to tax as if she were sole and unmarried: Provided that (1) the profits of a married woman living with her husband shall be deemed the profits of the husband and shall be assessed and charged in his name, and not in her name or the name of her trustee; and (2) a married woman living in the United Kingdom separate from her husband; whether the husband be temporarily absent from her or from the United Kingdom or otherwise, who received any allowance or remittance from property out of the United Kingdom, shall be assessed and charged as a *feme sole* if entitled thereto in her own right, and as the agent of her husband if she receives the same from or through him, or from his property, or on his credit." It was contended for the appellant that, as she was "a married woman living with her husband" within the meaning of the Income Tax Act, 1918, All Schedules Rules, r. 16, proviso (1), her income must be deemed to be the income of her husband who must be assessed and charged for tax upon it. It was contended for the Crown that, although the appellant was "living with her husband" within the meaning of the Income Tax Act, 1918, All Schedules Rules, r. 16, proviso (1), she was also "living separate from her husband" within the meaning of the Income Tax Act, 1918, All Schedules Rules, r. 16, proviso (2), and should, therefore, be assessed to tax as a *feme sole* in respect of the remittance:—

HELD: (i) on the facts, the appellant did not live separate from her husband within the meaning of the Income Tax Act, 1918, All Schedules Rules, r. 16, proviso (2), and was, therefore, not assessable to tax on the remittance. The income remitted to this country must be assessed on the appellant's husband.

(ii) on a proper construction of the Income Tax Act, 1918, All Schedules Rules, r. 16, provisos (1) and (2), proviso (2) could not be treated as qualifying proviso (1), but as dealing with a case where the spouses have separated in the ordinary sense of the word.

[EDITORIAL NOTE. The provisions of General Rule 16, relating to the assessment of a married woman living separate from her husband, are ambiguous, but the better opinion seems to be that she is only to be separately assessed if the separation is due to judicial decree, mutual agreement, desertion or the like. It was held in *R. v. Cramer* ([1919] 1 K.B. 564) that a husband and wife do not cease to be "living together" within the meaning of the Larceny Act, 1916, s. 30, because the husband is, as in the case under consideration, on military service abroad, and Rowlatt, J., distinguishing this case in *Eadie v. I.R. Comrs.* ([1924] 2 K.B. 198), pointed out that the position was entirely different where the parties leave each other because they cannot tolerate being under the same roof. He adds that "in order to be properly understood the proviso in question must be construed with reference to the matter with which it was meant to deal. It is meant to define the circumstances in which a husband can be charged to income tax in respect of the income of his wife as being income accruing to her while she is living with him."

As to Liability to Income Tax of Married Women with Separate Income, see HALSBURY, Hailsham Edn., Vol. 17, pp. 373, 374, para. 767; and for Cases, see DIGEST, Vol. 28, p. 90, Nos. 570-573.]

Case referred to:

*(1) *Derry* v. *Inland Revenue* (1927), 13 Tax Cas. 30; Digest Supp.; [1927] S.C. 714.

Case Stated under the Income Tax Act, 1918, s. 149, by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the King's Bench Division of the High Court of Justice. The taxpayer, a married woman, appealed against an assessment to income tax under Case V of Sched. D to the Income Tax Act, 1918, All Schedules Rules, r. 16, made upon her as a *feme sole* in the sum of £7,082 for the year 1942-43 in respect of income arising from foreign possessions. The following facts were found by the Commissioners:—

The appellant and her husband were married in 1933 and lived together in London. She was and is an American citizen and at all material times has been ordinarily resident in the United Kingdom. The appellant's husband, an Englishman, joined the Army in 1939. Until Nov., 1941, he was stationed at various places in this country, and his wife continued to live in London, but frequently went to stay at hotels near where her husband was from time to time stationed. The husband spent all his periods of leave with his wife. In Nov., 1941, he went on active service overseas . . . His wife continued to reside in London in a flat which she acquired in her own name in July, 1940, the husband's personal effects were left in her care and the flat constituted the marital home which was at all times available to the husband should he be able to return to it . . . It was admitted on behalf of the respondent that the appellant was living with her husband within the meaning of the Income Tax Act, 1918, All Schedules Rules, r. 16, proviso (1).

The appellant was entitled in her own right to a life interest in certain income arising abroad under . . . dispositions which were all governed by American law.

Some of the income arising under these dispositions was remitted from America to the appellant in the United Kingdom, and in 1941-1942, the year preceding the year of the assessment under appeal, the amount of such remittances was £7,082 . . . By the Finance Act, 1940, s. 19, the appellant's income arising under the said dispositions has been chargeable to income tax on the basis of the full amount arising abroad (whether remitted to the United Kingdom or not) during the year preceding the year of assessment.

The full amount of such income arising abroad during the year preceding the year of assessment under appeal was agreed to be £13,615.