

*Peate*<sup>6</sup> is stated briefly : " Where danger is likely to arise unless work is properly done, there is a duty to see that it is properly done."

3. Further, as the judge had decided that the defendant was guilty of a breach of duty, whether the fault in the wiring was due to the contractor's negligence or not, he was bound to hold that the fire was not " accidental " within the meaning of the Fires Prevention (Metropolis) Act 1774 as restrictively construed in *Filliter v. Phippard*<sup>7</sup> and later cases. In this lies the distinction between the present case and *Collingwood v. Home and Colonial Stores*,<sup>8</sup> where on very similar facts an opposite decision was reached. For in that case there was a finding that the fire could not be definitely attributed to faulty electric wiring, and in any event negligence was on the facts expressly negatived.

4. The decision in this case further shows that any attempt on the part of a defendant's counsel to distinguish the degree of liability in private as distinct from that in public nuisance must, after the decision in *Wringe v. Cohen*,<sup>9</sup> prove ineffective. The owner's duty is to keep the premises in such a state that they do not injure his neighbour, whether the latter be on the highway or on his own property.

L. S. LAZARUS.

6. (1876) 1 Q.B.D. 321.

7. *Supra*.

8. *Supra*.

9. *Supra*.

#### TORT : LIBEL—PRIVILEGE—OFFICIAL COMMUNICATIONS.

##### *Szalatnay-Stacho v. Fink*.<sup>1</sup>

The defendant, F., a Czechoslovak national and Chief Military Prosecutor of the Czechoslovak army, forwarded to the Military office of the Czechoslovak President (then in England) a number of written statements, by Czechoslovak soldiers, concerning the activities of the plaintiff, S. (also a Czech national), while he was Czechoslovak diplomatic representative in Egypt. In a covering letter the defendant formulated against the plaintiff charges of serious criminal offences based upon the statements. The plaintiff sued F. for libels alleged in the covering letter. The defendant pleaded privilege, absolute or qualified.

Henn Collins J. found for the defendant on two points directly related to Czechoslovak law : (a) By the comity of nations the protection afforded by Czechoslovak law (under which no action, civil or criminal, could have been founded because the defendant was a State official acting as such) should be extended to the defendant ; i.e. the letter was absolutely privileged. (b) Under Czechoslovak law the defendant was under a duty to send the information to the President who had a duty to receive it and there was no evidence of malice ; i.e. a plea of qualified privilege was also good.

With regard to the law of libel, however, the point of interest in this case lies in that part of the judgment which dealt with one of the two pleas made by the defendant which failed ; these were that (a) as a step

1. [1946] 1 All E.R. 303 ; 62 T.L.R. 146 ; C.A. [1946] 2 All E.R. 231.

in the proceedings of a military tribunal, and (b) as an Act of State, the covering letter was absolutely privileged. The former plea received short shrift because the plaintiff was a civilian and outside the military jurisdiction of the defendant; but the latter, that the letter was privileged as an Act of State, deserves further consideration.

In *Chatterton v. Secretary of State for India*,<sup>2</sup> Lord Esher M.R. adopted as a correct statement of the law the following paragraph from Fraser on the Law of Libel and Slander<sup>3</sup>: "For reasons of public policy the (same) protection would no doubt be given to anything in the nature of an Act of State—e.g. to every communication relating to state matters made by one Minister to another or to the Crown." Henn Collins J. accepted this as authoritative and, treating the example given by Fraser as a restrictive definition of an Act of State, he decided that as the letter passed at a lower level than that of Ministers of State it could not be absolutely privileged. He stated that, as far as he was aware, there was no authority for affording the protection of absolute privilege to any communication transmitted at a lower level than that stated.

With respect, however, it is submitted, firstly, that there is as little authority for holding that communications below ministerial level are not privileged as for holding that they are, and, secondly, that the restriction of the sphere of such privilege to the single example given by Fraser and approved by Lord Esher is warranted neither by authority nor by logic.

The law as left by *Chatterton's Case* was simply that an Act of State was absolutely privileged and that a communication on a ministerial level, or higher, was an example of an Act of State so privileged. No exhaustive definition of an Act of State for the purposes of the rule had been attempted. In this case, however, the definition is supplied. However restrictive it may seem, however easily the imagination may run to acts which, though not satisfying the rule as here laid down, would appear to be acts which so closely concern the State as to make their protection desirable, yet such a restriction on the scope of absolute privilege is in accord with the general tendency of the courts.

On appeal, the judgment was affirmed, but on other grounds. It was held that the principle of absolute privilege for official documents was based on public interest and would not necessarily apply to foreign documents. Somervell L.J. recognised that the presence of the Czechoslovak government in England created an unprecedented state of affairs, but *Hart v. Gumpach*<sup>4</sup> was distinguished. There an action was brought before Her Majesty's Empire Court for China between two British subjects both in the service of the Chinese Government based on false representations alleged to have been made by the defendant in his official capacity in China. In that case, therefore, everything happened in China, and it was natural to argue that Chinese law should apply. In the present case, everything happened in England. It was held that the comity of nations did not compel the English courts to apply Czechoslovak law to acts done in England. "This would be to make an inroad on a very fundamental principle." The result, therefore, was that the document was not absolutely privileged.

2. [1895] 2 Q.B. 189, at p. 191.

3. 6th Ed., p. 197.

4. (1873) L.R. 4 P.C. 439.

Counsel for the defendant did not even argue that the document was protected as an act of state. Presumably, therefore, the decision of Henn Collins J. was accepted on this point.

The defendant, however, was held entitled to succeed on the plea of qualified privilege. English law was applied, though Czechoslovak law was material in so far as it revealed the actual relationship of the defendant to those to whom the document was published. The defendant was under a duty to refer the grave charges to the responsible officials who had an interest in receiving them.

D. P. DERHAM  
AND THE HONOUR CLASS IN TORT.

### TREASON.

*Joyce v. Director of Public Prosecutions.*<sup>1</sup>

Whatever view one may take of the demerits of the prisoner, it is difficult to feel satisfied with the decision of the House of Lords in *Joyce's Case*. However great the need for flexibility in law generally, the criminal law should be as fixed and certain as possible, and although in theory a court only declares what the law has been, an extension of a rule in a particular criminal case in fact operates retrospectively as it declares punishable an act which had commonly been regarded as outside the sanctions of the criminal law. It is significant that the learned commentator in the *Law Quarterly Review*<sup>2</sup> states that before the *Joyce* trial began the overwhelming majority of the legal profession would have answered in the negative the question in the case, on the ground that an alien could owe allegiance to the King only while he was within the realm. Kenny<sup>3</sup> supports this view.

The question for decision was whether an alien who has been resident within the realm can be convicted of treason because of acts committed by him outside the realm. *Joyce* was an American citizen, though he obtained a British passport by describing himself as a British subject. As he had been brought to Ireland at the age of three years and resided in England from 1921-1939, it may have been a natural error. There was no evidence whether *Joyce* made the statement honestly or fraudulently.

The doctrine of *Foster* was that the local allegiance of an alien ceased when he withdrew his family and effects and he cites a declaration of all the judges assembled by the Queen's command on January 12, 1707, which states that, if an alien, seeking the protection of the Crown, and having a family and effects here, should during a war with his native country, adhere to the King's enemies, he can be convicted of treason. No original record of this Resolution exists: it is clearly not a precedent in any binding sense. Any authority which it should receive depends merely on its acceptance by *Foster*, *Hawkins*, *East*, *Chitty* and *Holdsworth*. *Joyce*, however, left no immediate family in England and the

1. [1946] 1 All E.R. 186; 62 T.L.R. 208.

2. Vol 62, p. 105.

3. *Outlines of Criminal Law*, 15th ed., 313.