

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.

sole argument on which a duty of allegiance could be based was that he obtained a British passport in 1933 and renewed it in 1939. After August 24th 1939, he left England and there was no evidence that he intended to return, although he stated that he desired the renewal of the passport for holiday purposes. This passport expired on July 1st 1940. The House of Lords decided that so long as he held the passport, he was claiming protection from the Crown and therefore owed a duty of allegiance.

Morally Joyce was guilty of treason. He held himself out to the Germans as a British subject and his German "work book" showed that he was employed as such. It was because of the background of his supposed British nationality that the Germans wished to employ him. Had he escaped conviction, the public would have regarded the Courts as accepting a technical defence without merits. However, in the criminal law, the prisoner has the right to rely on the most technical points—the Courts have never admitted that a man should be convicted merely because he is morally guilty although technically outside the statute.

Lord Porter agreed with the majority as to the effect of holding a British passport, but he declined to hold that the mere fact of the issue of a passport cast on Joyce a duty of allegiance till the passport expired in 1940. There was no evidence that Joyce kept the passport after the outbreak of war. The Crown argued that the onus lay on the prisoner to prove a withdrawal of allegiance but Lord Porter thought that, while the prisoner's failure to give evidence on this point increased the weight of the evidence against him, it could not be regarded as conclusive. These matters were not put to the jury and on this ground Lord Porter would have allowed the appeal. He agreed that the general question of the extent of an alien's duty was of exceptional public importance: but it was also necessary, both in peace and war, that the proper line should be drawn between the function of the judge and the jury. "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 and never more important when the charge of treason is in question."

THE HONOUR CLASS IN WRONGS.