

ALIEN ENEMIES

One of the consequences of war is the absolute interdiction of all trading or correspondence by a British subject with the inhabitants of a hostile country save by the special permission of the Sovereign. This legal principle was re-stated by the Lord Chief Justice of England in a recent appeal case which brought up the question of the legal status of alien enemies. His Lordship pointed out that a British subject residing voluntarily in an enemy state would have no civil rights, and therefore would be as much an alien enemy as a subject of that state living and doing business in England. Indeed it was possible for such a subject to be treated as if he were a British citizen. Alien friends were so treated continually.

The common law holds that no subject of a hostile state has any rights, save as specially conferred upon him by the King. Indeed his goods and property of all kinds are at the disposition of the Crown. It is considered that when such an alien has registered under the Aliens Restriction Act he has received the tacit consent of the Crown to his residence in British territory. From that moment he is an alien friend and his civil rights are defensible in the Courts as if he were a British subject. A registered alien, therefore, can sue in a British court for a debt due him. But an unregistered alien is considered as an enemy. As such, no British subject has any right to do business with him. Naturally he cannot sue, for by applying to the courts, he is applying for the assistance of the King, to whom he is hostile. On the other hand he may be sued by a British subject, for that subject is entitled to the assistance of the King to get his rights from the King's enemy.

Some doubt has been expressed about the applicability of the British common and statutory law on this question because of a clause in the Hague Convention under the article "On Hostilities." This clause said: "It is forbidden to declare abolished, suspended, or inadmissible the right of the subjects of the hostile party to institute legal proceedings." The Lord Chief Justice, by quoting the context, showed that the clause had special reference to the status of individuals in a conquered or occupied country. For example, he cited the case of Belgium, now overrun by the German armies. According to the Hague Convention the Germans had no right to prevent the Belgian inhabitants from having access to the Belgian courts, now controlled by Germans. The Hague Convention had not abrogated British common law nor did it affect in the slightest degree the status of an alien enemy. Briefly, an unregistered German, Austrian, or Turk is an outlaw. A registered enemy has the King's permission to reside in the Empire and as such is entitled to the protection of the King's Courts. |

In connection with the cases which produced the general judgment by the Lord Chief Justice one curious legal point arose. In an English joint-stock company, properly and legally formed, one share was held by a British subject. All the rest were held by Germans residing in Germany. Before the war this company sold a quantity of goods to a British subject, who, after the declaration of war, refused to pay for them under the plea that he was forbidden to deal with the enemy. The Court of Appeal held that the company was a person, in law, and further, that it was an English person because of its letters-patent. For that reason the debt had to be paid. It is worth noting that a dissenting judgment was entered by Lord Justice Buckley. He declared that such an artificial "person" as a company could not pay allegiance to the King and therefore that it could not claim the assistance of the King in the courts. If by incorporating themselves any number of alien enemies could have full rights as British subjects the situation called loudly for amending legislation.