ALIEN ENEMY PERSONS, FIRMS AND CORPORATIONS IN ENGLISH LAW

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Soon after the outbreak of the present war, the English courts found themselves confronted with problems for the solution of which they were compelled to look back to decisions reached at the time of the Napoleonic Wars. For, although similar questions were ventilated before the courts during the Crimean War, and were, so far as the law of prize is concerned, treated with learning and distinction by Lushington, it was yet inevitable, both by reason of the comparative brevity of the Crimean War and of the conspicuous and overmastering ability of Stowell, whose reign in the Admiralty Court lasted for twenty-nine years (1798-1827), that the wide range of topics which he treated, covering as they did every kind of mercantile transaction, should become the classic authority for subsequent decisions. In nothing is the greatness of Stowell more conspicuous than in his grasp of principle; and the result is that to this day, notwithstanding the greater variety, complexity and interdependence of commercial dealings, notwithstanding the rapidity of communications and the rise of the limited liability company, the principles which he evolved are still true and applicable to the conditions of this war.

I. ALIEN ENEMY PERSONS

The *status in judicio* of alien enemies becomes an acute question the moment the capacity of a plaintiff to bring his action is challenged. How has English law defined an alien enemy, and under what conditions may such a person sue in the courts? In the Anglo-American system of law the test is now well settled; it is a test not of nationality but of residence or commercial domicile, not what a man is but where his business is. It may be well at this point to mention briefly some of the older authorities to which the courts were able to turn when they were first called upon, in the early days of the war, to form an opinion on the question. In Bacon's *Abridgement*¹ the doctrine is laid down that an alien enemy can sue in the king's courts only if he is in the realm by license of the Crown. The same principle is followed in *Wells v. Williams*.² This is strictly interpreted in a later case (of the Crimean War period); for it was held by Campbell, C. J.,

¹ (7th ed.) Vol. I, p. 183.

² (1607) 1 d. Reum 282; cf. also *Boulton v. Dobree* (1808) 2 Campb. 163.

in *Alcinous v. Nigreu*³ that an alien born in Russia, resident in Great Britain, though without the license of the Crown, could not maintain an action for work and labour done. Lord Stowell laid down the principle broadly in *The Hoop*⁴ that an alien enemy could not sue in British courts unless under particular circumstances, such as his coming under a flag of truce or some other act of public authority, which *pro hac vice* would relieve him of his enemy character. The same view is to be found in a case arising out of the South African war.⁵

This being, briefly, the trend of the earlier authorities, it is now to be seen how they have been applied and developed by the courts in the present war. It is clear that the meaning to be attached to license and residence requires close attention and definition. License, for example, may be either express or implied. In most cases which arise under modern conditions the license to reside is to be inferred from a number of circumstances, such as the length of time for which the alien enemy has resided or carried on business in this country. The application of these principles to the conditions of the present war was made in two important judgments. In *Princess Thurn and Taxis v. Moffitt*⁶ a writ had been issued by the wife of an alien enemy who had been compulsorily registered under the Aliens Restrictions Act, 1914, and the Orders made thereunder. It was argued for the defense that no action could lie at the suit of an alien enemy registered as such. Sargant, J., took the opposite view, and, indeed, based his judgment for the plaintiff upon this very fact of registration.

"There can be no doubt," he said, "that the effect of such registration is to amount to at least a license to the person to remain in this country. Inasmuch as the plaintiff is coming to insist on a right which is individual to herself, she has in my opinion, by virtue of her registration and by virtue of the permission thereby granted her to reside in this country, a clear right to enforce that right in the courts of this country notwithstanding the existence of a state of war."

In *Schaffenius v. Goldberg*⁷ there is an important development of this principle. An alien enemy had been interned under the Defense of the Realm Regulations. He then entered into a contract with a British subject that was in no way prohibited by any restriction relating to trading with the enemy. It was held by Younger, J., that the interned alien could bring his action; and the arguments in opposition to this view and the reasons for which the court rejected them are of such interest and importance that they deserve a closer inspection. The contention of the defense was that the plaintiff could

³ (1854) 4 El. & Bl. 217.

⁴ (1799) 1 C. Rob. 196.

⁵ *Janson v. Driefontein Consolidated Mines, Ltd.* [1902] A. C. 484.

⁶ [1915] 1 Ch. 58.

⁷ (*Ex parte Liebmann*) [1916] 1 K. B. 284, 290, 293, 294.

not bring his action, as the fact of his internment amounted to a revocation by the Crown of his license to reside. This argument was supported by a reference to a recent case, *Rex v. Superintendent of Vine Street Police Station*,⁸ but all that this decided, as the court pointed out, was the short point that an alien enemy interned in this country is a prisoner of war, and for that reason cannot be granted a rule of *habeas corpus*.

"Internment," said Younger, J., "has not made the plaintiff an enemy. Enemy character in a trading sense has never attached to him"; and a little later in his judgment: "There has been a gradual and progressive modification in the rules of the old law in their restraint and discouragement of aliens. It is, as I have already indicated, not the nationality, but the residence and business domicile of the plaintiff that are now all-important. . . . I can find no real warrant for the contention that internment is equivalent to a revocation of the licence to remain which is implied in registration."

The Court of Appeal upheld this view.

In the case discussed above the contract was entered into *after* the outbreak of war. Where a contract was entered into between two parties *before* the outbreak of war, and one of them became subsequently an alien enemy and was interned as such, his right of action would *a fortiori* be unaffected; as was in fact decided in the unreported case of *Mayer v. Fink-Sibler*,⁹ in which the writer was engaged.

I have discussed these cases at this stage because they provide a good illustration of the way in which the license to an alien enemy to remain is interpreted under modern conditions. We may take from them the propositions that an alien enemy, that is, a person who is a subject or citizen of a state at war with Great Britain, puts off his enemy character for the time being and may appear as a plaintiff in the English courts if there is clear evidence that he has the license of the Crown to reside, such evidence being very strong in cases where the Crown has contemplated and made provision for the continued residence of alien enemies by making enactments for their registration and internment, and where, in consequence, the alien enemy has in fact been registered or interned. The case would be even stronger where an alien enemy has, in pursuance of the prescribed procedure, made application to the regular committee of the British Home Office¹⁰ for an exemption from internment and has been granted such exemption upon the condition that he produces sufficient sureties for his loyalty and good behaviour.

⁸ [1916] 1 K. B. 265.

⁹ Tried before Darling, J., in November, 1915.

¹⁰ This is strictly an Advisory Committee to the Secretary of State for Home Affairs. It is a quasi-judicial body, and includes in its membership two High Court Judges. It was set up in 1915.

We are now in a position to consider the extent of the expression "alien enemy" as used in the present war. Before it had become necessary for the High Court to give its attention to the definition of the term, a Proclamation was issued on September 9th, 1914, which, although purporting to do no more than declare the common law (for this is the utmost force that a Proclamation can possess), yet admirably sets out the gist of the true doctrine. By sec. 3 the expression "enemy" is defined as meaning "any person or body of persons of whatever nationality resident or carrying on business in the enemy country," but does not include persons of enemy nationality who are neither resident nor carrying on business in the enemy country. In the case of incorporated bodies, enemy character attaches only to those *incorporated in an enemy country*.¹¹ Sec. 6 provides that "where an enemy has a branch locally situated in British, allied, or neutral territory, not being neutral territory in Europe, transactions by or with such branch shall not be treated as transactions by or with an enemy."

There can be no doubt that the sections just quoted correctly express the conclusion to which a review of the common-law authorities would lead. It was completely borne out by the judgment of the full Court of Appeal¹² in *Porter v. Freudenberg*,¹³ a decision of peculiar fullness and authority. The court took occasion to travel outside the actual question before it, and reviewed in an exhaustive and powerful judgment the whole of the law relating to alien enemies. Their conclusions are the same as those expressed in the Proclamation.

"It is clear law," said Lord Reading, C. J., in delivering the judgment of the court, "that the test for this purpose is not nationality but the place of carrying on the business."

And again:

"For the purpose of determining civil rights a British subject, or the subject of a neutral State, who is voluntarily resident or carrying on business in hostile territory, is to be regarded and treated as an alien enemy. . . ."

By a further Royal Proclamation dated January 7th, 1915, territory in the occupation of the enemy is treated as enemy country, and enemy territory in the occupation of His Majesty's Forces or those of his Allies is treated as friendly country. This is a rule of common sense and requires no justification.

It may be taken, then, that *Porter v. Freudenberg* has finally decided the question, Who is an alien enemy. It is clear from this case that

¹¹ The words in italics have a special significance, in view of a subsequent decision of the House of Lords which I shall discuss at a later stage.

¹² Consisting of the Lord Chief Justice of England and six Lords Justices.

¹³ [1915] 1 K. B. 857, 868, 869.

no person can properly be called an alien enemy (for the purpose of suing and being sued) if he resides in this country by license, express or implied, or if he carries on business here. On the other hand, all persons are alien enemies, even though their nationality may be British, who voluntarily reside in enemy country or in territory which is in effective military occupation. For this purpose, and in this limited sense, there is only one test, the test of residence and business. There is no other. It may, therefore, be truly said that the expression "alien enemy" as used in and defined by the English courts for commercial purposes is a highly technical expression, and bears an esoteric meaning which to the layman may well prove misleading.

At this point, it will be well to consider the important question discussed by the court in *Porter v. Freudenberg* of the effect, if any, upon English law of certain parts of the Hague Convention which have been claimed as directly bearing upon the status of alien enemies in civil courts in time of war. The Fourth Hague Convention of 1907¹⁴ deals with the laws and customs of land warfare. It has been signed and ratified by Great Britain. Section 2 of that convention is headed "Of Hostilities." Art. 23 of that section sets forth a number of acts of warfare which are prohibited to signatories of the convention, *e. g.*, to employ poisoned weapons, to declare that no quarter will be given, to employ arms, projectiles or material calculated to cause unnecessary suffering. Subsection (12) of this article lays down that it is forbidden

"to declare abolished, suspended or inadmissible the right of the subjects of the hostile party to institute legal proceedings."

The opposing views may be very briefly put. It is the German contention that this subsection constitutes a general prohibition against any legislative measures which in time of war would place the subject of an enemy state in the position of inability to enforce the execution of a contract by recourse to the tribunals of the state in regard to which he is an alien enemy. The English view (and it is believed that this is widely shared in the United States) is that the subsection bears a strictly limited application to occupied territory, and does no more than prohibit the military authorities in command of such territory from preventing access to the civil courts on the part of residents of that territory. It is to be conceded that the German delegates at the Hague Conference, who were in fact responsible for the introduction of the subsection, plainly stated the intention and meaning which their Government would attach to such a provision; and on the eve of the outbreak of war, the German Ambassador in London made a personal enquiry of the British Foreign Office regarding the legal status of alien

¹⁴ Pulling's *Emergency Legislation*, Supp. 3, p. 547.

enemies in the event of war. The Court of Appeal took the view (though a decision on the point was scarcely necessary for the determination of the question before it) that the English view of the subsection, according to which the interpretation it bears is the limited one relating only to the rights of the inhabitants of occupied territory, was correct; both on the general ground that the subsection was so placed in the general scheme of the convention in which it is found that it must have a strictly military application, and, more particularly, because a prohibition against declaring suspended, etc., the rights of action of alien enemies could have no relevance or meaning in regard to a country such as England whose law operated automatically, on the outbreak of war, to suspend the rights of action of subjects of hostile states. The German Government made strenuous efforts, even up to the last moment before the severance of relations, to press their view upon the British Government, but unsuccessfully. But it is doubtful whether the application of the English rule operates as unfavourably against the subjects of a foreign state as the German Government seems to have supposed. It is the peculiarity of the English law of alien enemies that it makes the test not nationality but domicile. The Continental systems throw the stress on nationality. It follows from this that not all German subjects, for example, are, according to English law, alien enemies as such. This consideration is worth bearing in mind; for it at once considerably restricts the area over which alien enemy prohibitions operate. In short, the English rule does little more than affect, either by renewal or suspension, the rights of action of alien enemies (and in this must be included even British subjects) resident in an enemy country at the outbreak of and during war.

We may now pass on to examine some of the decisions in which the status of "alien enemies" has been reviewed. The fundamental principle is that the alien enemy cannot be the *actor*; he cannot initiate or set in motion proceedings in the courts. Lord Reading, C. J., has thus stated the rule:¹⁵

"When once hostilities have commenced, he cannot, so long as they continue, be heard in any suit or proceeding in which he is the person first setting the Courts in motion. If he had given notice of appeal before the war, the hearing of his appeal must be suspended until after the restoration of peace."

That is to say, that in any action in which he had been plaintiff, he cannot begin appeal proceedings while an alien enemy; but if he is not the *actor*, that is, when he has been brought before the court as defendant, he may, even though an alien enemy, commence an appeal.

The right of alien enemies to defend an action appears never to have been expressly considered and decided upon until the present

¹⁵ *Portier v. Freudenberg* [1915] 1 K. B. 857, 884.

war. On general principles, and in view of language used in regard to the status of alien enemies by judges and text-writers which would seem to justify the conclusion that an alien enemy is totally *ex lex*, and that he is simply nonexistent in the eye of the law, it might have been not unreasonable to suggest that an alien enemy could neither sue nor *be sued*. But it is clear that a disability to be sued may lead to results repugnant to common sense and expediency. It was upon this ground that Bailhache, J., based his decision in *Robinson & Co. v. Continental Insurance Co. of Mannheim*.¹⁶ The point was taken for the defendants that they could not be sued. The court took an adverse view, Bailhache, J., stating the law as follows:

"But to hold that a subject's right of suit is suspended against an alien enemy is to injure a British subject and to favour an alien enemy and to defeat the object and reason of the suspensory rule. It is to turn a disability into a relief."

This admirably clear statement seems to commend itself to law and to good sense.

The same result appears to have been reached in American law.¹⁷

It follows from the principles just stated that an alien enemy may not counterclaim.¹⁸ For a counterclaim is in essence no more nor less than a new and separate action which for purposes of convenience and for the saving of expense is tried together with the main action; the defendant who counterclaims is *pro tanto* the actor.

By the same reasoning, it has been held¹⁹ that an alien enemy may be sued where the cause of action arose after the outbreak of war as well as before, but may not initiate a new proceeding by a third party notice for indemnification; for this is distinct from, and not incidental to, his right of defense.

Before passing altogether from the consideration of the status of alien enemy persons, notice might be taken of *London & Northern Estates Co. v. Schlesinger*,²⁰ in which it was held by Ridley, J., that an Order made under the Aliens Restriction Act, 1914, preventing the lessee of a flat from residing in a certain place does not relieve him from the obligation of paying rent to the lessor of a flat in that place, taken before the war.

II. THE STATUS OF FIRMS AND CORPORATIONS

The rights in the English courts of alien enemy firms did not pass without attention in previous wars. The matter generally arose out

¹⁶ [1915] 1 K. B. 155, 159.

¹⁷ *McVeigh v. U. S.* (1871) 11 Wall. 259.

¹⁸ Cf. *Porter v. Freudenberg* and *Robinson v. Mannheim Insurance Co.*, *vide supra*.

¹⁹ By Ridley, J., in *Halsey v. Lowenfeld* [1916] 1 K. B. 143.

²⁰ [1916] 1 K. B. 20.

of the question whether a cargo of goods was seizable as prize or not. A mercantile house might have one branch in enemy territory and one in neutral or friendly territory; and the result would be that the goods involved in the trade with the hostile branch would be confiscable, while those involved in that with the neutral or friendly branch would not. This question is, of course, quite distinct from that which is the subject of this article, namely, the capacity of alien enemy persons, firms and corporations for suing and being sued. It is mentioned only to show that the problem of the commercial house with wide ramifications is not new, and that principles were already to hand which could be applied to the facts of the present war.

The result of the common-law authorities was expressed in the Royal Proclamation of September 9th, 1914, which, *inter alia*, drew attention to the illegality of trading with enemy firms and went on to provide that

"where an enemy has a branch locally situated in British, allied or neutral territory not being neutral territory in Europe, transactions by or with such branch shall be transactions by or with an enemy."

It is true that this provision and the authorities which will be cited are in strictness relevant only to the question of trading with the enemy, with which this article is not concerned. But they are of value in so far as they yield by inference the proposition that branch houses not domiciled in enemy territory or in neutral territory in Europe can maintain an action in the English courts, even though other branches of the same business possess an enemy domicile. This principle was carried to some length in *W. L. Ingle, Ltd. v. Mannheim Insurance Co.*²¹ in which it was held by Bailhache, J., that where an insurance company had a head office in Germany and a branch office in London, transactions with the branch in London would not be transactions involving trading with the enemy. The significance of this decision lies in the fact that the friendly domicile prevails, even though the domicile of the head office is in enemy territory. But on the other hand, the case of *Leader v. Direction der Disconto Gesellschaft*²² may be compared, for it was there held that where the London branch of a bank of which the head office was in Berlin was permitted to carry on business according to the terms of a license given by the Treasury under an Order made under the Aliens Restriction Act which prescribed the way in which the assets were to be applied, an English firm which had obtained a judgment could not issue execution against the assets of the London branch. There is no conflict, however, between this case and that previously referred to, for the *Leader* case may be regarded as a decision on the circumstances, and

²¹ [1915] 1 K. B. 227.

²² [1915] 3 K. B. 154.

on the interpretation of the specific license under which the London branch of the bank carried on business.

It can be said of these contemporary decisions on questions relating to branch houses that they involve little or no departure from the main principles enunciated by Stowell. It is a striking tribute to the genius of that illustrious man that the foundations which he laid were so firm and comprehensive that on them has easily been reared the intricate superstructure of modern commercial relations. The limited liability company, however, is a recent growth; the conditions and circumstances under which it carries on business are new; and when there is added to this the complexity of international operations, we are confronted with a legal problem of quite exceptional difficulty which must be solved without any very great assistance from the past.

Little more will be done in this article than to endeavour to summarize the law as it has been left by the now famous decision of the House of Lords in *Daimler Co. Ltd. v. Continental Tyre & Rubber Co. Ltd.*²³ The whole question has been discussed by Dr. Ernest Schuster in a paper read by him before the Grotius Society of England and printed in the second volume of *Proceedings* at page 57, a paper to which the writer is deeply indebted, and which is rich in learning, acute in reasoning, and profound in thought.

How is the commercial domicile of a corporation to be determined? The question would become acute in a case where a limited liability company was registered in Great Britain but was, in point of control, entirely an enemy concern. English law has always very strongly insisted upon the complete distinction between the corporation and the persons (*e. g.*, shareholders) who compose it. But a point might be reached when the directors and shareholders resident in enemy territories might exercise such a real control over the activity of the company that the courts might be driven to examine the whole basis of the idea of incorporation and to declare that a body substantially of enemy character should not defeat the legal incapacity of alien enemies to sue by the technicality of English registration. I shall endeavour to trace the stages by which the present doctrine was reached.

The Proclamation of September 9th, 1914, expresses negatively the doctrine that the place of incorporation is the test of a company's domicile, for it provides that

"in case of incorporated bodies, enemy character attaches only to those incorporated in an enemy country."

At the end of 1914, the case of the *Continental Tyre & Rubber Co. Ltd. v. Daimler Co. Ltd.* was before the full Court of Appeal,²⁴ the

²³ [1916] 2 A. C. 307.

²⁴ [1915] 1 K. B. 893.

same court which decided *Porter v. Freudenberg*. The Continental Tyre Company was registered in England; out of 25,000 £1 shares one was held by the secretary, a naturalized British subject, resident in Great Britain; the directors and all the other shareholders were all German subjects resident in Germany. This company issued a writ after the outbreak of war and obtained a judgment against the Daimler Co. This was, therefore, an ideal test case. The Court of Appeal (Buckley, L. J., dissenting) held that it could not look behind the fact of the English incorporation in order to consider the nationality of directors or shareholders. The company was, therefore, not an alien enemy, and was entitled to bring its action.

The next case to be noticed is *Rex v. London County Council*,²⁵ an authority not directly in point, but yet of some significance. The council, as the statutory authority for the grant and renewal of cinematograph licenses, refused to renew the license of a cinematograph company registered in England on the ground that the *large majority* of the shares were held by alien enemies. Lord Reading, C. J., held that the council were entitled in the exercise of their discretion to refuse the renewal. The court put its decision upon the following rather special ground:

"If the Council are of opinion that the exhibition of cinematograph films accompanied by music should not be entrusted to a company so largely composed of persons whose interest or whose desire at the present time is or may be to inflict injury upon this country, can it be held as a matter of law that the Council have travelled beyond the limits allowed to them? I think not."

Before the House of Lords gave its famous decision when the *Daimler* case came to them from the Court of Appeal, Bargrave Deane, J., in the Admiralty Court, considered the point in the case of *The Polzeath*.²⁶ He held, in determining the question where a company's principal place of business is situate within the meaning of sec. 1 of the Merchant Shipping Act, 1894, that

"to decide the true character and entity of a business or company you must ascertain where the motive or directing force of the business or company comes from; in other words, where the real life is, and not where the limbs move to give effect to that living power."²⁷

²⁵ [1915] 2 K. B. 466, 475. Cf. also *Robson v. Premier Oil & Pipe Line Co. Ltd.* [1915] 2 Ch. 124, in which it was held that during war an alien enemy may not vote in respect of shares in an English company, the right being suspended.

²⁶ [1916] P. D. 117 (affirmed by the Court of Appeal).

²⁷ Cf. *The Tommi* [1914] P. D. 251 and *The Poona* (1915) 31 TIMES L. R. 411, 1 BR. & COL. P. C. 275, in which the President of the Admiralty Division expressed a doubt as to right of companies composed of aliens to sue even though incorporated in Great Britain.

It will be noticed that in both the authorities just quoted there is a current of opinion moving away from the strict doctrine of the Court of Appeal in the *Daimler* case, that the determining factor in deciding the domicile of a corporation is the place of its registration. Attention is beginning to be paid to the quality of the persons who compose the corporation in order to ascertain the real seat of its activity.

Dr. Schuster's Grotius Society paper was read on May 30th, 1916, nearly two months before the judgment of the House of Lords in the *Daimler* case. The learned writer, after a full consideration of the treatment of corporations in foreign law, inclines to a view different from that of the Court of Appeal, being of opinion that

"a corporate body should be deemed to be domiciled in the place of its administrative centre, being the place at which the persons directing the policy of the corporation habitually meet."

This is, in effect, the doctrine of "control" which was adopted and expounded in Lord Parker's judgment in the House of Lords.

When the *Daimler* case²⁸ came before the Lords in July, 1916, they reversed the Court of Appeal, holding that the mere fact of registration in Great Britain does not of itself determine the domicile of a limited company as English. But the appeal was allowed by some of the Lords on a different ground, namely, that the secretary had no authority to issue a writ in the action. As this was all that was relevant for the decision of the appeal, any excursion into the larger question of the status of the company became, strictly, unnecessary. But fortunately, a matter of such gravity and importance was not passed over without comment. Lord Parker, in a judgment delivered on his own behalf, and on that of Lords Mersey, Sumner and Kinnear, discussed the main question, and laid down principles for determining the domicile of corporations.

"It would seem, therefore, logically to follow," said Lord Parker,²⁹ "that, in transferring the application of the rule against trading with the enemy from natural to artificial persons, something more than the mere place or country of registration or incorporation must be looked at. My Lords, I think that the analogy is to be found in control, an idea which, if not very familiar in law, is of capital importance and is very well understood in commerce and finance. The acts of a company's organs, its directors, managers, secretary, and so forth, functioning within the scope of their authority, are the company's acts and may invest it definitively with enemy character."

This judgment of the House of Lords may be taken to have established that the status of corporations for purposes of suing is to be

²⁸ [1916] 2 A. C. 307.

²⁹ [1916] 2 A. C. 339.

tested by the notion of *control* and no longer by sole reference to the place of incorporation.⁸⁰ But the difficulties which arise when the doctrine is applied in practice are considerable. At which point is it to be said that the acts of a company are under enemy control? The answer to this must vary with the particular circumstances of each case. Again, is this a question of law for a judge or a question of fact for a jury? The answer to neither of these questions is entirely clear. It seems safest to say that an enemy status can be pronounced for only after the most careful examination of the constitution and composition of the company in every case, regard being had to all the circumstances before the court. Beyond this, it is not wise to go.

It is hoped that the cases which have been discussed above will illustrate the manner in which the English courts have applied themselves to some of the commercial problems created by the war. The law in regard to the rights of action of alien enemy persons and corporations may now be regarded as settled. The principles have by now been fixed, and only their application remains. The indubitable community between the English and American systems of law justifies the writer in hoping that this article may prove not without interest to American students and practitioners, who doubtless will be confronted with similar situations to those which the English courts have not unsuccessfully overcome. He cannot doubt that their treatment in the courts of the United States will furnish a rich and lasting contribution to the literature of this branch of that law which the two countries have so largely in common.

⁸⁰ Followed in *In re Hilcees*, 33 TIMES L. R. 28.