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THE ALIENS ACT  
AND  
THE RIGHT OF ASYLUM

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BY

N. W. SIBLEY, B.A., LL.M.

AND

ALFRED ELIAS, LL.B.

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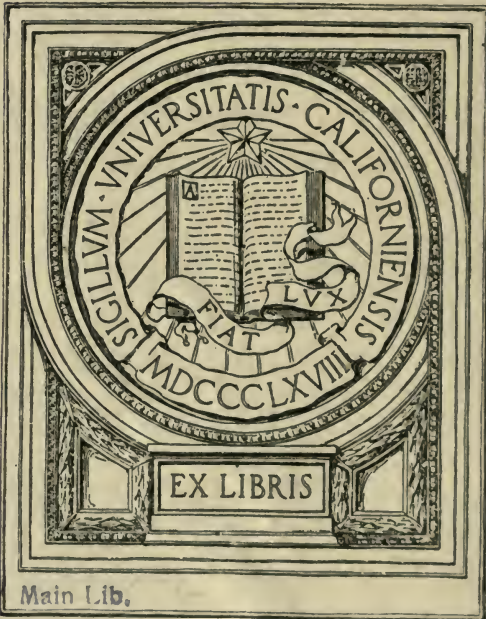
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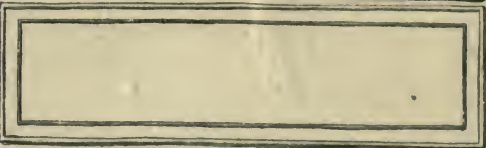
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THE ALIENS ACT  
AND  
THE RIGHT OF ASYLUM.



# THE ALIENS ACT

(STAT. 5 EDW. VII. C. 13),

AND

## THE RIGHT OF ASYLUM;

TOGETHER WITH

INTERNATIONAL LAW, COMPARATIVE JURISPRUDENCE,  
AND THE HISTORY OF LEGISLATION ON THE SUBJECT, AND  
AN EXPOSITION OF THE ACT.

BY

N. W. SIBLEY, B.A., LL.M., TRIN. H. CAMB.,

AND B.A. LONDON UNIV.;

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RUSSO-JAPANESE WAR;"

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Grotius, *De Jure Belli ac Pacis*.  
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Sir Edward Clarke's *Extradition*.  
Biron and Chalmers on *Extradition*.  
The Statutes at Large.  
United States Statutes at Large.  
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# THE ALIENS ACT

## PART I

### INTERNATIONAL LAW ON THE ADMISSION OF ALIENS, THE DROIT DU RENVOI, AND THE RIGHT OF ASYLUM

THE older doctrine of International Law was that every person had a right to live somewhere, unless he had forfeited what Vattel calls "the human character," and, therefore, that a nation had no right to refuse admitting a foreigner into her territory. Franciscus à Victoria (1480-1546) argued [*Relectiones Theologicae, s. v. iii. 2*] that the Spaniards had a right to go to the Indies and live there, "because it has been the custom from the beginning of the world for any one to go into whatever country he chooses, and prohibition of entrance is a violent measure not far removed from war."

This passage is severely criticized by Pufendorf, who urges that what Franciscus calls the Right of Natural Society and Communication does not avail in the case of a multitude of immigrants whose object is to effect a permanent settlement, and whose intentions are dubious or hostile. Pufendorf further postulates

that foreigners cannot claim any greater liberty of trading than subjects, and that the Indians were not even bound to extend to the Spaniards the same rights they had extended to other foreigners; since, in the latter case, the mining claims were assigned merely to discharge pre-existing obligations [*Pufendorf's Of the Law of Nature and Nations, bk. iii. c. iii. ss. 9, 10*]. Vattel indirectly criticizes this passage of Franciscus when he observes that when the Spaniards attacked the Americans, under a pretence that those people refused to traffic with them, they only endeavoured to throw a colourable veil over their own insatiable avarice [*Droit des Gens, l. ii. c. ii. s. 25*]. The same great authority observes that the conquest of the civilized empires of Peru and Mexico was a notorious usurpation [*Droit des Gens, l. i. c. vii. s. 81*], and as it cannot be doubted that the original design of Spanish immigration was, if not conquest, at least no more meritorious than idle curiosity, the unfortunate nature of the historical instance seems almost entirely to impair the existence of a theoretical right of free immigration. [*For a historical judgment of the Spanish conquest of Mexico, cf. Vattel, Droit des Gens, l. ii. c. iv. s. 55, and Sir H. S. Maine's Lect. Int. Law, iv. 72.*]

Grotius discusses the subject of alien immigration, and the kindred topic of the right of expulsion, in two loci of his great work [*De Jure Belli ac Pacis, lib. ii. c. 2, pl. 13 and 19*]. He treats alien immigration incidentally under the heading of Right of Transit. Some of his remarks are clearly not applicable to

alien immigration in the sense of modern legislation in the United States and this country. However, he expressly states that banished persons may seek a new home in the territories of other nations, and that their right to do so may be asserted by force if necessary [*De Jure Belli ac Pacis*, bk. ii. c. ii. s. 13]. Grotius, therefore, places the right of free migration on a very high footing. But other positions he advances are now disputable, at least on the ground of usage [*Mr. W. E. Hall's Int. Law*, pt. i. c. ii. p. 57], as he pleads for the absolute nature of the military right of continued passage, of which there is now only one instance surviving in Europe. The principal interest attaching to this passage of Grotius is that he passes what at least may be considered an indirect opinion in favour of free trade, as he urges that free transit ought to be given to goods across the territories of States that intervene between the countries of the buyer and seller, as no one has a right to impede a nation in cultivating trade with another remote nation [*Ibid.*, *supra*, par. 5].

On the subject of the right of expulsion of aliens, Grotius observes—"Even when there is great scarcity of corn, foreigners once admitted cannot be expelled, but the common evil is to be borne in common" ["Et tamen ne in tali quidem necessitate expelli posse admissos semel peregrinos, sed commune malum communiter tolerandum ostendit indicato jam loco Ambrosius," *De Jure Belli ac Pacis*, l. ii. c. ii. s. 19]. It is very difficult to understand this passage of Grotius in view of what appears to be the explicit reference of Sir

Leoline Jenkins to the pre-existence of the Droit du Renvoi [*Life and Letters of Sir Leoline Jenkins, v. ii. p. 714*]. As the Droit du Renvoi is the Right of a State to dismiss foreigners commorant in her territories, its affirmation is a contradiction in terms of the position of Grotius. It is quite true that Sir Leoline Jenkins, who though later than Grotius, was at least a publicist of the same century, admits that "the matter of Renvoy" had long gone into disuse in his day. But this seems no less clearly to imply that it must have existed anterior to the era of Grotius, since both Grotius and Sir Leoline Jenkins were writers of the same century. Grotius, however, makes no mention of it, and does not seem to consider that it ever existed.

The historical fact that Queen Elizabeth had, on several occasions, in 1571, 1574, and 1575, exercised the prerogative of ordering aliens to withdraw from the realm, since which time the right was not exercised till 1793, proves, at least as far as this country is concerned, the existence of the Droit du Renvoi anterior to the era of Grotius, no less than the accuracy of the observation of Sir Leoline Jenkins, that "the matter of Renvoy" had long gone into disuse in 1674 [*cf. Sir Erskine May's Constitutional History of Engl., v. 3, c. xi., Liberty of the Subject, p. 50*].

Pufendorf has a most instructive criticism upon this passage of Grotius. He concedes that having once admitted strangers and foreign guests, to turn them out again, unless upon good reason, is usually

censured as some degree at least of inhumanity. For this position he cites Grotius [*loc. cit., supra*] and St. Ambrose [*De Off.*, l. 3, c. 7], and admits that even scarcity and dearth do not constitute a good reason for dismissing commorant foreigners. But this apparent exception to the exception only applies, according to St. Ambrose, to foreigners who have been formerly, or may be hereafter, useful and serviceable to the State in whose territories they are commorant. Grotius cites St. Ambrose as the authority for the position that a State cannot expel commorant foreigners even when threatened with famine, but does not notice the important limitation equally insisted on. Pufendorf insists, with what certainly appears an immediate inference from the Right of Self-Preservation, "the first law of nations" [*Sir R. Phillimore's Int. Law*, v. 1, c. x. s. 210, p. 225; referring to *Vattel*, t. i. c. xiv. s. 177; and 4 *Cic. Pro Milone*], that, in the case of famine, a State may expel commorant foreigners, however meritorious, when there are no means of saving both strangers and natives.

Pufendorf's discussion of the subject of the admission of foreigners into a State is far more detailed than that of Grotius, and the historical instances he adduces are far later and more relevant. A very striking instance of the usage that he mentions is the licence given by the Emperor Valens to the Huns to settle in Thrace and to the Goths to immigrate across the Danube into Roman territory. The Huns are heard of for the first time in the reign

of Valens. Immigration into Roman territory was conceded them in 376 A.D. Two years later the Huns, Goths, Alans, and Sarmatians overthrew Valens at the battle of Adrianople [*Of the Law of Nature and Nations, bk. iii. c. iii. s. 10 and note*]. The following are some other arguments of Pufendorf on the subject of the admission of aliens. It is dangerous and disgraceful to admit aliens if there are objections to their integrity or character. A doubt is to be entertained whether a person who wanders into a foreign country on account of curiosity may claim free admission by any natural right. "If," says Pufendorf, "our people are kindly received by any nation abroad, we ought to entertain the men of that nation with an equal return of civility. As on the other hand, those who drive us from their coasts, cannot without the most stupid impudence, petition us for a more courteous treatment." It is left in the power of all States to take such measures about the admission of strangers as they think convenient, those being ever excepted who are driven on the coasts by necessity or by any cause that deserves pity or compassion. On the subject of the Right of Asylum, Pufendorf observes that "humanity, it is true, engages us to receive a small number of men expelled from their home, not for their demerits or crime," especially if they are eminent for wealth or industry, and not likely to disturb our religion or our constitution. But when it is the case of a multitude of aliens seeking admission into the territories of a State, Pufendorf considers the risk is so great that it may



affect the very existence of that State. A State which unreflectingly admits multitudes of aliens might easily find itself in as deplorable a situation as the political offender for whose benefit the right of asylum exists. Before a State incorporates a great multitude of strangers, it ought previously to ascertain: (i.) Whether a great increase in the number of inhabitants will turn to the advantage of that State; (ii.) Whether the country will be fertile enough to feed so many mouths; (iii.) Whether, upon admission of this new body, the original population of the State will be strained for room; (iv.) Whether the aliens are industrious or idle; (v.) Whether the alien immigrants may be so conveniently placed and disposed as to render them incapable of giving any jealousy to the Government of the State into which they have immigrated. It is a great danger to a State, Pufendorf observes, when a great multitude of aliens immigrate into it who are trained to arms. He also insists that espionage is another source of danger arising from alien immigration, and that aliens who pry and examine into our affairs too curiously are persons who may be kept at a distance.\*

\* *Of the Law of Nature and Nations, bk. iii. c. iii. s. 9.* A curious illustration of this last observation of Pufendorf occurs in one of the State Trials, that of F. H. De la Motte for high treason (1782), 21 St. Tr. 687. In that case a French subject, an ex-colonel of the regiment of La Soubise, who could only have entered the country on some pretext of the right of asylum, as England and France were at war at the time (1780), was convicted on an indictment for committing high treason by adhering to the King's enemies. His offence consisted in sending many particulars of the condition of the navy to France, including the secret signals of the fleet [*cf. the Solicitor-*

Vattel not only considers that a nation has a right to expel a commorant alien, but even that it may detain him. Like Pufendorf, the former considers alien immigration may become a source of danger from the facilities it affords for espionage. Thus he contends that the alien is free at all times to leave, "nor have we a right to detain him, except for a time, and for very particular reasons, as, for instance, an apprehension in war time, lest such foreigner, acquainted with the state of the country, and of the fortified places, should communicate his knowledge to the enemy" [*Droit des Gens*, l. ii. c. viii. s. 108]. A right to detain a commorant alien under such very peculiar circumstances is clearly an entirely different thing from a right to expel him. However, Vattel very definitely says that a State may expel commorant aliens, *semble*, under all circumstances, except when the aliens have been refused retreat anywhere else, and they can find sufficient land for themselves without depriving the inhabitants of what is sufficient for them.\*

*General's speech, ibid., supra, p. 807*. In all the other cases of spies tried for committing high treason by adhering to the King's enemies, the prisoners were native-born subjects, and the intelligence they sent was intercepted [*R. v. Hensey*, 19 *St. Tr.* 1341; 1 *Burr.* 642; *R. Lord v. Preston*, 12 *St. Tr.* 645; *R. v. Stone*, 25 *St. Tr.* 1155]. But the Attorney-General declared to the jury in De la Motte's case that "a more vigilant, a more industrious, or a more able spy was never placed in any country. The intelligence he procured will astonish you" (*Ibid.*, p. 710); and *cf. Sir James FitzJames Stephen's Hist. Crim. Law of Engl.*, v. 2, p. 282.

\* *Droit des Gens*, l. ii. c. ix. s. 125—"If the country inhabited by this nation is scarcely sufficient for herself, she is under no obligation to allow a band of foreigners to settle in it for ever; she may even

Vattel does not put the doctrine of local or temporary allegiance on as high a footing as it undoubtedly stands in modern times, as enunciated by a Lyndhurst [*Hansard's Parl. Deb.*, vol. cxxiv. p. 1046, referring to the *Times*, March 5, 1853], or a Campbell [*Times*, April 19, 1858, trial of *Simon Bernard*], half a century ago, or by Lord Russell of Killowen at the trial at bar of Dr. Jameson and his officers [*Times*, July 29, 1896]. But the doctrine of International Law, as enunciated by eminent contemporary writers like Prof. De Martens, has changed on this subject.

Lord Lyndhurst observed that "foreigners residing in this country, as long as they reside here under the protection of this country, are considered in the light of British subjects, or rather subjects of Her Majesty,

dismiss them at once, if it be not convenient to her to grant them a permanent settlement. As they have the resource of seeking an establishment elsewhere, they cannot claim any authority from the right of necessity, to stay in spite of the owners of the country. But it is necessary, in short, that these fugitives should find a retreat; and, if everybody rejects them, they will be justifiable in making a settlement in the first country where they find land enough for themselves, without depriving the inhabitants of what is sufficient for them. But, even in this case, their necessity gives them only the right of habitation; and they are bound to submit to all the conditions, not absolutely intolerable, which may be imposed upon them by the master of the country,—such as, paying him tribute, becoming his subjects, or at least living under his protection, and, in certain respects, depending on him. This right, as well as the two preceding, is a remnant of the primitive state of communion." With regard to Vattel's observation that a State may require commorant aliens to pay tribute, a certain interest attaches to a statement in Halleck's *Int. Law*, v. 1, p. 461, that "the law of Louisiana, imposing a tax on legacies payable to aliens, probably is not opposed to International Law." According to the above statement in Vattel, such a tax is clearly justifiable.

and are punishable by the criminal law precisely in the same manner, and to the same extent, and under the same conditions, as natural born subjects of Her Majesty." But Vattel considers that the commorant alien "is not obliged to submit, like the subjects, to all the commands of the sovereign; and, if such things are required of him as he is unwilling to perform, he may quit the country" [*Droit des Gens*, l. ii. c. viii. s. 108; but cf. *supra*, ante, 102].

On the other hand, the prohibition against the landing of undesirable immigrant aliens, and the consecration of the Right of Asylum, are topics that Vattel discusses, from the point of view of the law of nations, in thorough harmony with the trend of modern municipal legislation both in this country and the United States. From the point of view of international usage, Vattel remarks that, in some countries in the middle of the eighteenth century, the same class of aliens were prohibited access, *e.g.* vagabonds and outcasts, which it is the express object of modern English and American legislation to exclude.\*

With regard to the theory of International Law on the topic of the admission of immigrant aliens, Vattel considers that a nation has not merely the right, but is even bound, "to follow the suggestions of prudence."

\* "There are States, such as China and Japan, into which all foreigners are forbid to penetrate without an express permission; but, in Europe, the access is everywhere free to every person who is not an enemy of the State, except, in some countries, to vagabonds and outcasts" [*Droit des Gens*, l. ii. c. viii. s. 100].

Even fugitives and exiles may be rejected for good reasons. Further, fugitives and exiles must be rejected if they are infected with contagious disease, and may be rejected if a nation has just cause to fear that they will corrupt the manners of the citizens, or that they will create religious disturbances, or occasion any other disorder, contrary to the public safety [cf. *Droit des Gens*, l. i. c. xix. s. 231; and *The Aliens Act*, 1905, s. 1, sub-s. (3)]. The right of asylum, therefore, either as described by Pufendorf or Vattel, cannot be put on the footing of an absolute or unconditional right. Vattel introduces two limitations of the right, one arising from the necessities of the State whose shelter is sought, the other from the character of those claiming the right of asylum. Persons who violate all public security, and declare themselves the enemies of the human race, not merely cannot claim the right, but must be punished wherever they are seized, though that should be out of the territory of the State against whose laws they have offended. But while a State is bound to follow the suggestions of prudence in granting a perpetual residence to a man driven from his country, "this prudence should be free from unnecessary suspicion and jealousy; it should not be carried so far as to refuse a retreat to the unfortunate, for slight reasons, and on groundless and frivolous fears. The means of tempering it will be, never to lose sight of that charity and commiseration which are due to the unhappy. We must not suppress these feelings even for those who have fallen into misfortune through their own fault. For, we

ought to hate the crime, but love the man, since all mankind ought to love each other" [*Droit des Gens*, l. i. c. xix. s. 231].

In view of Vattel's observation, speaking of the usage, that in Europe "the right of access is everywhere free" [*Droit des Gens*, l. ii. c. viii. s. 100], it becomes a little difficult to understand the late Mr. W. E. Hall's conclusion that there is no trace in law or history of the Right of Society and Communication [*W. E. Hall's Int. Law*, 5th ed., 56, 57]. It is no less clear, from the same passage of Vattel, that the modern international usage, preventing the access of vagabonds and outcasts, was in the course of growth in the eighteenth century. This makes it a little difficult to understand why Mr. W. E. Hall should consider the Act of Congress of 1882 regulating immigration as "a somewhat excessive instance of the use of a right, which in the most limited view of the scope of sovereignty must be admitted to exist." The Act merely prohibits the landing of any foreign convict, lunatic, idiot, or any person unable to take care of himself or herself without becoming a public charge [s. 2]. If the Act of Congress of 1882 be construed as an infringement of comity, it is not possible to arrive at any other conclusion than that the Aliens Act, 1905, is a still worse case of infraction, as the Act of Parliament is undoubtedly more severe than the Act of Congress, as will be seen. In view of the indubitable advance that humanity has made since the date of Vattel, and, in no insignificant degree, under his influence, it is very difficult to

consider that the class of persons whose access is now prevented by municipal legislation, does not implicitly correspond to "the vagabonds and outcasts" regarding whom there was prohibition of access in some States in Vattel's time.

Heffter observes, "Aucune puissance ne peut refuser de recevoir sur son territoire les sujets d'une puissance amie, dès qu'ils justifient d'une manière régulière de leur individualité. Elle ne peut, après les avoir reçus, les renvoyer de son territoire sans les motifs qui doivent être communiqués à leurs gouvernements respectifs. Dans tous le cas le renvoi ne peut s'effectuer avec des formes blessantes, si la conduite de l'individu renvoyé ne les justifie pas. C'est une conséquence du droit au respect" [*Le Droit International Public de l'Europe, par. A.-G. Heffter (1866), transl. by Jules Bergson, s. 33, p. 64*]. But Heffter seems to admit, in a note to the above passage, that his views were not shared by Prussian publicists on the subject of renvoi [*L'article relatif au renvoi de MM. Hecker and Itzstein de la Capitale de la Prusse, inséré dans les Annales de jurisprudence prussienne (LXV., p. 569) ne présente pas exactement ces principes*]. Heffter's views are quite inconsistent with those of Prof. F. de Martens, the passages of whose work on International Law treating the subject of aliens possess a double interest. Not only do they proceed from the pen of a most eminent publicist, but the passages in question must also as clearly be supposed to give the Russian view of what are the principles of International Law as regards

aliens; and it is, in a principal degree, immigration from Russia to this country that has led to the placing of the Aliens Act on the statute-book.

After pointing out that the rights and duties of a State with regard to aliens depends both on municipal law (*législation intérieure*) and treaties, Prof. de Martens observes, "Chaque État, en vertu de son omnipotence à l'intérieur a le droit indubitable de fixer les conditions aux quelles il les (*i.e.* étrangers) admit sur son territoire." There are only two limitations of this proposition; commorant foreigners must not be placed outside the pale of the law, and cannot be the object of general expulsion. Prof. de Martens claims that the oukaze of Catherine II. permitting aliens to settle where they liked in Russia, proves the broad views of Russian Government on this subject. After pointing out that commorant aliens (*subditi temporarii*) may be required to submit to special legislation, Prof. de Martens observes, "Ces dispositions des lois et ordonnances peuvent être désavantageuses et vexatoires; elles peuvent différer complètement de celles des autres États; elles peuvent même être contraires à une saine politique et à une bonne administration; mais dès qu'elles ne sont pas en opposition avec les traités internationaux, les étrangers sont obligés de s'y conformer. C'est à eux à se rendre compte d'avance de la situation juridique où ils se trouveront dans le pays qu'ils désirent habiter" [*Traité de Droit International*, t. 1, p. 448]. This unconditional affirmation of the right of a State to regulate commorant aliens is all the more remarkable



as it proceeds from the jurist of a State that has no special laws on the subject of commorant aliens, though it possesses such as regards Jews. In 1881, the English Government protested against the expulsion of Lewihson, an English subject who was a Jew, from Russia. His offence was that he had committed an infraction of Russian law as regards Jews. Prof. de Martens considers it is difficult to appreciate the action of the British Government in this case, but he approves of the attitude finally assumed by Great Britain that, even by treaty, English subjects in Russia could not claim any rights beyond those accorded by Russian law to Russian subjects. According to Prof. de Martens, "Les réfugiés politiques ne jouissent d'aucune espèce de privilège par comparaison aux autres étrangers. Il n'y a aucune raison pour qu'ils bénéficient d'une protection spéciale." This he considers to be the view taken of the right of asylum both by Great Britain and Switzerland, and the accuracy of his observation as regards this country can be at once gathered by comparing the passage in his work on International Law with that in the summing up in *R. v. Bernard*, where Lord Campbell defined the Right of Asylum [*Traité de Droit International, Par F. de Martens, Professeur à l'Université de Saint-Pétersbourg, Membre de l'Institut de Droit International, Traduit du Russe, Par Alfred Leo, Paris, 1883, t. 1, p. 449; and The Queen against Simon Bernard (1858), 8 St. Tr. (N.S.), cols. 1055, 1061, for the reference of Lord Campbell, L.C.J., to the Right of Asylum*].

A very singular instance of the *Droit du Renvoi* occurred in 1858. Among the demands made by the French Government on neutral States owing to the *attentat* of Orsini, was a request addressed to the Federal Council of Switzerland that Italian refugees should be expelled from the Cantons touching the French frontiers. As a consequence the Federal commissioners demanded the dissolution of the Italian societies, the members of which were either sent back into Italy or the interior of Switzerland [*cf. Times for March 13, 1858*]. Count Walewski, at that date French Minister for Foreign Affairs, explained the nature of this request by "the law of legislative defence and the principles of the rights of nations." The action of the French Government was unfavourably animadverted upon at the time, but seems susceptible of being elucidated as an appeal by one State to another to exercise the *Droit du Renvoi*. The attempt of Orsini on the life of the Emperor followed on that of Pianora, and when it is a question of the Right of Self-Preservation, a State, which is menaced by rebels issuing from the territory of a conterminous State, is warranted by International Law in crossing the frontier, and in taking the necessary means for her safety, whether these be the capture or dispersion of the rebels, or the destruction of their stronghold, as the exigencies of the case may require [*Sir R. Phillimore's Int. Law, v. 1, s. 213*, referring to the action of the British Government in Portugal in 1826, and on the American frontier at Niagara in 1838; and as regards theory, *cf. Vattel's*

*Droit des Gens*, livre iii. c. vii. s. 133]. Even if the action of the French Government in 1858 were not capable of justification by an appeal to the *Droit du Renvoi*, it seems clear that it would have been justified in taking even stronger measures. The fact that a prohibition against the landing of foreign immigrants has at length found a place on the statute-book recalls the decided expression of opinion of Lord Herschell in *Musgrove v. Chun Teeong Toy*, (1891) L. R. App. Cas. pp. 272, 277, that "by International Law this country has a right to keep the alien out."

## PART II

COMPARATIVE JURISPRUDENCE ON THE PROHIBITION  
OF LANDING IMMIGRANTS, ON THE RIGHT OF  
EXPULSION, AND THE RIGHT OF ASYLUM

IN many States laws of more or less stringency are in force, preventing the access, or providing for the expulsion, of alien vagabonds, destitute persons, criminals, and others whose presence in the country would be undesirable [*Accounts and Papers, Commercial Reports, Parliamentary Papers, 1887, No. 81*]. The case of *Musgrove v. Chun Teeong Toy* [*supra*] shows that in the colony of Victoria, by sect. 3 of the Victorian Chinese Act, 1881, a Chinese immigrant has no legal right to land in the colony until a sum of £10 has been paid for him.

In 1887, Lord Salisbury addressed a Circular Despatch to Her Majesty's Representatives in Europe and the United States requesting copies of Laws or local Regulations prohibiting the admission or continued residence of destitute aliens in the countries where they resided. This inquiry led to a most interesting Parliamentary Paper, whose effect is fairly summarized by saying that it showed that Great Britain at that date stood almost alone in not having

any laws regulating the admission or continued residence of destitute aliens. Portugal, Russia, the Canton of Glarus, Saxony, Turkey, and Sweden and Norway nominally disclaim having any special laws. It is, however, very difficult to believe that Russia does not expel aliens, and in Saxony there is a kind of residuary power of expulsion. The power of expulsion of aliens is far more general than prohibitions against their admission.

Immigration laws exist in Cis-Leithania, Bavaria, Belgium, Bulgaria, and Denmark. France has no immigration laws except for her colonies. No immigration laws exist in Bohemia, Hungary, Italy, Montenegro, Portugal, Russia, Spain, Sweden and Norway, Turkey, Wurtemberg, the Canton of Glarus, or Saxony.

A power of expulsion is much more general. France, by a Law of December 3, 1849, possesses a power of expelling an alien by Ministerial Decree. From that date to the present time the power of expulsion in this country has fallen into total desuetude as far as the statute-book is concerned. Prussia has no special Regulations relating to the expulsion of aliens; but, with what seems indisputable justice, claims to exercise the right by International Law [*Vattel's Droit des Gens*, l. ii. c. ix. s. 125]. Where there are no special laws, the matter seems generally regulated by Order of the Minister of the Interior and by the police authorities on the Continent. The power of alien expulsion is as general in Western as it is in Eastern Europe. It exists, in one form or another,

throughout the Dual Monarchy. It is curious to note, in view of recent experience in this country, that Austria and Denmark specifically prohibit aliens who are leaders of tamed animals from crossing their frontiers [*Acc. and Papers, Comm. Reports, 1887, No. 81, pp. 2 and 15*].

But, of the different nations, the United States seems to have specially developed their legislation on the subject of immigrants, and particularly of pauper immigrants. The reasons of the action of the United States on the subject was well explained in a letter from Mr. T. F. Bayard to Sir L. West, in which he observed, "This Government could not fail to look with disfavour and concern upon the sending to this country, by foreign Government agencies and at the public cost, of persons not likely to develop qualities of thrift and self-support, because it is assumed that they have friends in this country able to help and support them. The mere fact of poverty has never been regarded as an objection to an immigrant, and a large part of those who have come to our shores have been persons who relied for support solely upon the exercise of thrift and manual industry; and to such persons, it may be said, the development of the country has in a large degree been due." But the economic and political conditions of the United States, Mr. Bayard proceeded, rendered the immigration of paupers, contract labourers, or criminals peculiarly unacceptable [*Parl. Pap., 1887, No. 81*]. In May, 1872, Mr. Fish, Secretary of State, declared that the transport of paupers from Cuba to the

United States is in violation of the United States' laws and international comity. It is stated in the Digest of the International Law of the United States (Wharton), 1886, Washington, vol. 1, p. 50, that "the Government of the United States is not willing and will not consent to receive the pauper class of any community who may be sent or may be assisted in their immigration at the expense of Government or of municipal authorities." Again, "The shipping of known paupers or criminals to the United States is regarded as a violation of the comity which ought to characterize the intercourse of nations, and should be prevented by every proper measure." The immigration of Chinese into the United States has likewise been the subject of numerous legislative Acts [*The Act of Congress of the 3rd March, 1875; The Treaty of the 17th November, 1880; The Act of the 6th May, 1882*]. An Act of the 28th May, 1881, supplemented by the Act of the 21st April, 1883, confers, in the State of New York, on the Commissioners of Emigration, the power to examine persons and articles arriving at New York from foreign countries, in order to ascertain whether the persons arriving are able to support themselves and do not fall to the charge of the public. An Act of the 3rd February, 1882, which applies to the whole of the United States, directs that persons incapable of living on their own resources, and who must become chargeable to the public, may not be landed in any part of the Federal territory [*Parl. Pap., 1887, No. 81: Paper of M. Edouard Clunet, Advocate of the Court*

of Paris]. In July, 1884, the Emigration Commissioners sent back fifty-two Roumanians. At the same date, Judge van Brunt dismissed a writ of habeas corpus in the case of Slovitz, who claimed that he had been permitted to land. An extraordinary instance of immigration occurred in 1879. A number of persons left Russia to escape military service, emigrated to Brazil, and returned thence to Antwerp without means of subsistence. They were finally repatriated at the expense of the Belgian Government, and provided with 75 roubles each, without which sum Russia refused to repatriate them [*Parl. Pap.*, 1887, No. 81, p. 29].

As the Act of Congress, 1882, regulating immigration, is in many important particulars a forerunner of the Aliens Act, 1905, it may be advisable to summarize its provisions, and to compare it with the English Act of Parliament. By the first section of the Act [*Forty-seventh Congress, Sess. 1, Ch. 376, (1882)*] a duty of fifty cents is to be levied on every passenger not a citizen of the United States who shall come by steam or sail vessel from a foreign port to any port within the United States. The duty is collectible at the port of landing, and is to be paid into the Treasury, and to be known as "the Immigrant Fund." The duty is to be a lien on the vessel. By s. 2, the Secretary of the Treasury is charged with the duty of executing the provisions of the Act. The governor of each State may designate a State commission, board, or officers to take charge of the local affairs of immigration in the ports of the State, and



the Secretary of State has the power of entering into contracts with such a body or persons, who are, however, to execute the provisions of the Act without compensation [*cf.* s. 4]. The State commission, board, or officers are to examine the condition of passengers on their arrival. They are then to report to the Collector of Customs of the port if there are among the passengers any of the class of persons the Act prohibits from landing. The persons the Act prohibits from landing are convicts, lunatics, idiots, or "any person unable to take care of himself or herself without becoming a public charge." By s. 3, matters of administration are referred to and entrusted to the Secretary of State, such as bonds, entries, and other papers to be used for the enforcement of the Act. By s. 4, all foreign convicts except those convicted of political offences, upon arrival, shall be sent back to the country to which they belong and from whence they came. Then follows the stipulation that the Act is to be administered without compensation by the person, whether corporate or individual, designated to execute its provisions. The expense of the return of persons not permitted to land is to be borne by the owners of the vessels in which they came.

It cannot be doubted that the general scope and purpose of the Aliens Act, 1905, is implicitly identical with that of the Act of Congress. The undesirable alien steerage passenger who is to be prevented from landing by the Act of Parliament [*Aliens Act, 1905, Stat. 5 Edw. VII. c. 13, s. 1, sub-s. (3), and s. 8, sub-s. (1)*] seems fairly susceptible of being defined, in the

words of the Act of Congress [*An Act to regulate Immigration*, 1882, s. 2], as, "a foreign convict, lunatic, idiot, or any person unable to take care of himself or herself without becoming a public charge." But the Act of Parliament is far more elaborate than the Act of Congress, the latter merely consisting of a very few sections. To sum up, the Aliens Act, 1905, and the Act of Congress may be said to correspond—

(1) In prohibiting merely the landing of undesirable alien immigrants, not of alien immigrants generally.\*

(2) In the character of the alien immigrants who are prohibited from landing [*cf. supra*].

(3) In imposing a liability on the shipowner [*cf. Aliens Act*, 1905, s. 1, and s. 4, sub-s. (2), and *Act of Congress*, 1882, s. 4]. The extent of the shipowner's liability is not the same. The Aliens Act does not expressly provide, like the Act of Congress, s. 4, that the expense of the return of the persons prevented from landing is to be borne by the owners of the vessels in which they came. It is clear that under the Act of Parliament, the shipowner must convey the alien away from the United Kingdom; but apparently he is neither bound to do so at his own cost, nor to convey him back to his own country. But it seems some such stipulation as that in the

\* Mr. A. J. Balfour observed in the House of Commons that the measure "only excludes, broadly speaking, those who are likely to become a public charge:" *Times*, May 3, 1905, col. c, *ad. fin.*, and speech of Mr. Akers-Douglas, col. e, *supra*. And *cf. Aliens Act*, 1905, s. 1, and *Act of Congress*, 1882, s. 2.

Act of Congress must be read into the Act of Parliament, as by s. 4, sub-s. (2) of the latter, when an expulsion order has been made against an alien within six months after his entering the country, the master of the vessel that conveyed him to the United Kingdom, and the master of any vessel belonging to the same owner, is bound to convey the alien, and even his dependents, back again, and to afford him proper accommodation and maintenance during the passage. The liability of the shipowner is thus clearly more serious under the Act of Parliament than under the Act of Congress, which provides nothing about the return of an alien after he has once entered the country.

(4) In the salvo of the Right of Asylum [*cf. Aliens Act, 1905, s. 1, sub-s. (3), and Act of Congress to regulate Immigration, 1882, s. 4*]. There is a marked difference between the classes of persons who can claim the right in the two cases. The Act of Congress merely confers the benefit of the Right of Asylum to "foreign convicts who have been convicted of political offences." This involves a far more restricted construction of the Right of Asylum than that found in the Aliens Act, by which the Right of Asylum is conferred on persons seeking admission into this country either to avoid "prosecution or punishment" for a political offence or on religious grounds. And further, the Right of Asylum is conferred by the Act of Parliament on persons seeking admission into this country in order to avoid "religious persecution." The Act of Congress is entirely silent on this last

head. It is further nearly essential to observe that the category of persons who can claim the Right of Asylum under the Act of Congress, and that of those who can do so under the Aliens Act, are mutually exclusive categories. A person fleeing from either prosecution or persecution [*Aliens Act*, 1905, s. 1, sub-s. (3)], who alone can claim the Right of Asylum under the Act of Parliament, cannot, *ex vi terminorum*, claim to be a person who has been convicted of a political offence so as to claim the salvo in the Act of Congress, 1882, s. 4, and *vice versa*.

The following are some of the broader distinctions between the two Acts of legislation :—

(1) The Aliens Act, 1905, is a highly penal Act.

(2) There is no "Immigration Fund" provided by the Aliens Act, 1905.

(3) Persons who are appointed by the Secretary of State to carry the Aliens Act, 1905, into effect are to receive salary and remuneration up to an amount approved by the Treasury [s. 6, sub-s. 1]. The Act of Congress, 1882, s. 4, stipulates that the provisions of the Act are to be executed without compensation by persons designated.

(4) By the Aliens Act, 1905, the Secretary of State may make an expulsion order against any person who has landed in contravention of the Act [*cf. Stat. 5 Edw. VII. s. 3*]. Nothing is said on this point by the Act of Congress. Perhaps it may be supposed that the United States, like Prussia, claims by International Law a power of expulsion [*Parl. Pap.*, 1887, No. 81; and *Pufendorf's Of the Law of Nature and Nations*,

*bk. iii. c. iii. s. 10*; *Vattel's Droit des Gens, l. ii. c. ix. s. 125*].

(5) There is nothing in the Act of Congress of 1882 to correspond to the elaborate requisitions of the Aliens Act, 1905, s. 1, sub-s. (3). Under the Aliens Act, the alien immigrant and the master of the vessel are required to furnish particulars under penalty of three months' imprisonment with hard labour for making a false statement [*Aliens Act, 1905, Stat. 5 Edw. VII. s. 1, sub-s. (3), and s. 5, sub-ss. (1), (2), and s. 7, sub-s. (4)*]. The Act of Congress, 1882, does not say how the persons designated to execute the provisions of the Act are to arrive at the information whether or not a foreigner landing at a port in the United States is a convict, lunatic, etc.

(6) The Act of Congress, 1882, s. 1, contemplates, at least up to a certain pecuniary amount, the relief of such immigrants as are in distress. There is nothing to correspond to this provision in the Aliens Act, 1905, the reason seeming to be that the Act of Parliament does not create any immigration fund. It is, possibly, of considerable interest to observe that it is clearly in the power of this country to create an Immigration Fund that would be at least as productive as that of the United States, even if it were merely levied on the same principle. Immigration to this country cannot compare with the immigration into the United States.\*

\* In one year alone (1880-81) 789,000 persons emigrated to the United States [*Clunet's Paper, Parl. Pap., 1887, No. 81*]. It cannot, however, be supposed that that number settled there, the figures

But the duty leviable under the Act of Congress, 1882, s. 1, is a duty on the passenger movement into the United States, and is due alike from all passengers, whether they are merely in transit or intend to settle permanently in the country. A similar duty imposed in this country would provide an Immigration Fund that would rival that of the United States. More than eight hundred thousand persons landed in the United Kingdom in 1904.\*

The circumstance that while the Aliens Act, 1905, does not create an Immigration Fund, such a course seems attended with obvious advantages, recalls the fact that history shows that legislation on the subject of the admission of aliens exhibits a distinct tendency to be recurrent. During the debates on the Bill, a remarkable prediction was made that it would be found necessary to supplement this measure by another [*Speech of Mr. Winston Churchill, Times,*

probably referring to the passenger movement. But nearly twenty million persons emigrated to the United States during the eighty years (1820-1900), at an average rate for the last decade of 384,000 persons per annum. According to the lists obtained under the Registration of Aliens Act, 1836 [*repealed by the Aliens Act, 1905, s. 10, sub-s. (2)*], from the master of vessels bringing aliens into the United Kingdom, the average volume of immigration into this country for the last ten years is 67,425 alien immigrants per annum. It will, however, be seen that it is not certain what inference can be drawn from these figures [*Parl. Pap., Board of Trade Return as regards Immigration, 1904; and cf. Appendix III., infra, p. 142*].

\* Cf. Appendix III., where the summary of the Passenger Movement between the United Kingdom and European countries is given, taken from Parl. Pap., Copy of Statistical Tables relating to Emigration and Immigration from and into the United Kingdom in the year 1904, and Report to the Board of Trade thereon.

June 28, [1905]. From the close of the eighteenth century to the first quarter of the nineteenth, no less than ten Aliens Acts were passed.

The absolute efficiency of the Act of Congress regulating immigration constitutes another reason for anticipating that it may be found advisable to incorporate substantially similar provision in the Aliens Act, 1905, to those of the American legislation as regards imposing a duty on all foreign passengers. During the debates in the House of Commons, it was stated that in the last twelve years over 40,000 persons had been debarred from entering the United States [*Speech of Sir Howard Vincent, House of Commons, Times, May 3, 1905*]. In 1904, 18,691 immigrants were rejected by the United States, but far larger numbers had their passages refused. On account of disease, 6000 intending emigrants to America were rejected at German frontier stations, and 2000 more on the quays [*Times, May 3, 1905, for speech of Major Evans-Gordon on the Aliens Bill*]. In comparison with the enormous volume of the passenger movement outward from Europe to the United States, the above numbers may seem insignificant. But it must be remembered that the Act of Congress, like the Act of Parliament, is aimed, not at the alien, but at the undesirable alien immigrant [*Speech of Mr. Akers-Douglas, on the second reading of the Aliens Bill, Times, May 3, 1905*].

In the House of Commons, Mr. Balfour, on the third reading of the Aliens Bill, observed that some of our colonies placed severe limitations on immigration.

Canada, South Africa, and New Zealand prohibit British and Irish from landing when likely to become a public charge. According to a Parliamentary Paper, this right of exclusion has only been exercised by Canada in some five hundred instances for the last four years. The Cape has returned some hundred and thirty persons of all nationalities as undesirable immigrants for the last four years. While the prohibition against landing exists in New Zealand, it does not appear to have been exercised in any one single instance since 1900. But the effect of severe restrictions against immigration is much more apparent at the port of embarkation than at that of disembarkation [*Parl. Pap. relating to Emigration and Immigration, 1904, Part I, p. 60*]. One instance of a British colony which has more severe restrictions on immigration than even the United States is the colony of Victoria. By the Chinese Act, 1881, s. 3, the colony imposes a poll-tax of £10 on every Chinese immigrant [*cf. ante, p. 18, and the case of Musgrove v. Chun Teeong Toy, (1891) L. R. App. Cas. 272*].



## PART III

THE STATUS OF ALIENAGE; THE HISTORY OF LEGISLATION IN GREAT BRITAIN ON THE SUBJECT OF THE ADMISSION, EXPULSION, RESIDENCE OF ALIENS; AND AN ANALYSIS OF THE ALIENS ACT

## A. THE STATUS OF ALIENAGE

THE alien in early times had no status recognized by the Common Law, but lived under privileges derived from the King [*cf. Pollock and Maitland's History of English Law, v. 1, p. 464*]. The forty-first clause of Magna Carta merely allowed aliens who were merchants to enter and freely depart from the realm. As the Common Law gave the alien no rights and imposed no duties upon him, it seems very difficult to decide whether the clause in Magna Carta was an exception to a general prohibition of the admission of aliens or not. There was no express prohibition, but the spirit of feudal times may have virtually imposed an implicit prohibition against the immigration of large numbers of aliens—at least for military reasons. But in any case the Common Law does not seem to have made any definite pronouncement on the admission of aliens such as is met in International Law.

An alien whom it is the object of the Aliens Act to exclude is the undesirable alien steerage passenger who seeks to land at any port of the United Kingdom [cf. *Stat. 5 Edw. VII. c. 13, s. 1 and s. 8*]. In order to define this expression, it remains necessary to arrive at a definition of the term "alien." In *R. v. Burke*, (1868) 11 C. C. C. 138, Lord Bramwell (then Bramwell, B.) defined an alien as "a subject of a foreign State who has not been born within the allegiance of the Crown of this kingdom." This appears to be the definition of an alien at the Common Law, by which "allegiance," which is first met with as a term in the earlier Year-Book, means "a geographical tract" [*Pollock and Maitland's History of English Law, v. 1, p. 442*. The exact expression in the Year-Book is "King's ligeance"]. At the Common Law, the place of birth is all-important, "a child born within any territory that is subject to the King of England is a natural-born subject of the King of England, and is no alien in England," and therefore, "with some exceptions, every child born elsewhere is an alien, no matter the nationality of its parents" [*Pollock and Maitland's History of English Law, v. 1, p. 442*]. The Stat. 25 Edw. III., *de natis ultra mare*, provided that children born without the King's ligeance, whose fathers and mothers at the time of their birth were British subjects, should enjoy the advantages of native-born subjects.

The Common Law definition of a British subject is too narrow, both as regards "subject" and "alien."

A person who is born without the dominions of the Crown may be a British subject, even if his father was also born out of the dominions of the Crown [*Statutes 4 Geo. II. c. 21, s. 1; 13 Geo. III. c. 21*]. Again, by the Naturalization Act, 1870 [*Statute 33 Vict. c. 14*], s. 4, it was enacted that any person who was a natural born subject by reason of being born within the dominions of the Crown, and was also at the time of his birth a subject of a foreign State by the law of such State, might make a declaration of alienage (in manner prescribed) when of full age, and should thereby cease to be a British subject.

*In re Bourgoise* (1889), 41 Ch. D. 310, 321, Lindley, Cotton, Bowen, L.JJ., declined to decide whether children born in France could be British subjects or not, when their father was a Frenchman, who obtained a certificate of naturalization here and then returned to France, and their mother was an Englishwoman. Lord Lindley considered the point "one of very great difficulty." But when the father is a British subject, both his children and grandchildren are British subjects by statute though born abroad. The great-grandchildren, under the above circumstances, are aliens [*Foot's Private Int. Jur.*, 3rd Ed. p. 3, referring *Cockburn on Nationality*, pp. 7-10, 94; and to the *Statutes 4 Geo. II. c. 21, s. 1; and 13 Geo. III. c. 21; and to Bacon's Case, Cro. Ch. 602, which established that the transmission of nationality depends upon the father alone*]. It is one of the *apices juris* of Private International Law whether a certificate of naturalization transmits

nationality, at all events when the child is born out of the dominions of the Crown. The Acts of George II. and George III. presumably do not apply to naturalized persons. But in any case the joint effect of these Acts and the Naturalization Act clearly justifies the positions that a person born out of the dominions of the Crown may be a subject, and that an alien may be born within the dominions of the Crown if he makes a declaration of alienage. If a certificate of naturalization does not transmit nationality, a position for which there is some authority, the principle that the transmission of nationality depends upon the father alone seems liable to exception.

The Aliens Act, 1905, s. 1, sub-s. (3), exempts from the prohibition against landing persons, (1) who, after having resided more than six months in the United Kingdom, sailed thence to another country, where they were refused admission, and then returned direct;\* (2) who have been born in the United Kingdom, whose fathers were British subjects.

The Act, therefore, implicitly adopts as the definition of an alien, a person who either (1) was not born in

\* It is curious to note that, in exempting persons who cannot find a retreat elsewhere from the prohibition against landing, the Aliens Act is *pro tanto* a mere enforcement of International Law. But the exemption clearly goes beyond what International Law requires, as Vattel only says that it is a duty to receive foreign fugitives if everybody rejects them, and their settlement will not deprive the original inhabitants of their means of subsistence [*Droit des Gens*, l. ii. c. ix. s. 125]. Neither of these exceptions to the right of a nation to prohibit access can be pleaded in favour of aliens seeking admission into this country at the present day.

the United Kingdom, or (2) was born in the United Kingdom, but whose father was not a British subject. The above provision in the Aliens Act implicitly designates as aliens persons who are British subjects under the Statutes 4 Geo. II. c. 21, s. 1, and 13 Geo. III. c. 21. By these statutes the descendants of a native-born British subject remain British subjects for two generations though born abroad. The Aliens Act, therefore, implicitly designates as an alien, (1) a person born in the United Kingdom whose father was an alien; (2) a person born without the dominions of the Crown, whose father or grandfather was a British subject; (3) a person born in the dominions of the Crown overseas. The severe restrictions imposed upon immigration by Canada, South Africa, and New Zealand extend to persons of British and Irish nationality [*cf. Parl. Pap. relating to Emigration and Immigration, 1904, Part I. p. 60*], and this clearly explains the reason of the Aliens Act extending to colonial-born British subjects. It is a mere instance of reciprocity, which, from the point of view of International Law, Pufendorf considers ought to determine questions of immigration [*Of the Law of Nature and Nations, bk. iii. c. iii. s. 10*]. But in view of the penal nature of the Aliens Act, it is difficult to consider that a doubt might not arise whether a colonial-born British subject could commit an offence as an "undesirable immigrant" against the Act. The expression "immigrant" is to be construed "alien steerage passenger" [s. 8, sub-s. (1)]. A doubt would certainly

seem likely to arise in the case of criminal proceedings instituted under the Act, whether a colonial-born British subject who happened to be "a steerage passenger" could be described as an "alien steerage passenger." The same objection equally applies in the case of persons who are statutory British subjects, or persons who having been born in the United Kingdom are native-born subjects, though their fathers were not.

But it is essential to remember that though the Act does not expressly define "an alien," it places in that category all persons not born in the United Kingdom, and a person who was so born, unless his father was also a British subject. It seems to afford an explanation of the artificial definition of an alien that the Act implicitly gives, that it is aimed, not at aliens generally, but at the undesirable immigrant.

#### B. HISTORY OF ENGLISH LEGISLATION ON THE SUBJECT OF THE ADMISSION, EXPULSION, AND RESIDENCE OF ALIENS, AND SOME REMARKS ON THE ORIGINAL CONNECTION BETWEEN THE ALIENS ACTS AND EXTRADITION

Sir R. Phillimore observes, "During periods of revolutionary disturbances both on the Continent and within this kingdom, it has been customary to pass Acts of Parliament authorizing certain high officers of the State to order the departure of aliens from the realm within a specified time, and their imprisonment in cases of refusal. This power, as Mr.

Canning observed, had undoubtedly been exercised by the Crown, sometimes with, sometimes without, the consent of Parliament" [*Phillimore's Int. Law*, v. 1, p. 233, referring to 5 Canning's Speeches, 255]. The first Aliens Act was the Statute 33 Geo. III. c. 4, A.D. 1793, and was followed by Lord Granville's note dismissing the French ambassador, M. Chauvelin, after the execution of Louis XVI.\*

\* The Aliens Act of 1793 was followed in rapid succession by a whole body of statutes—Stat. 38 Geo. III. c. 50, 77; 41 Geo. III. c. 24; 42 Geo. III. c. 93; 43 Geo. III. c. 155; 54 Geo. III. c. 155; 55 Geo. III. c. 54; 56 Geo. III. c. 86; 58 Geo. III. c. 96; 1 Geo. IV. c. 105; 3 Geo. IV. c. 97; 5 Geo. IV. c. 37; and 7 Geo. IV. c. 54. This last is omitted in the otherwise exhaustive list given in *Phillimore's Int. Law*, v. 1, p. 234 and note. All these had been repealed on the passing of the Stat. 6 Will. IV. c. 11. This Act merely provided for the registration of aliens, and said nothing about their expulsion. The Act of 1836 has been repealed by the Aliens Act, 1905 [*Stat. 5 Edw. VII. c. 13, s. 10, sub-s. (2)*]. In 1848 an Act was passed [*Stat. 11 Vict. c. 20*] providing for the removal of aliens. By the first section of this Act the Secretary of State or Lord Lieutenant of Ireland was empowered to order aliens to depart out of the realm, when, upon information given in writing, it should be considered it was expedient to remove the alien for the preservation of the peace and tranquillity of any part of the realm. This Act was repealed by the Statute Law Revision Act of 1875, an act of legislation that seems to have been clearly supererogatory, since, by s. 7 of the Removal of Aliens Act, its duration was limited to one year. In 1858, when the Act of 1848 had not been formally repealed, Lord Palmerston declared in the House of Commons that a power of removing aliens on mere suspicion would lead to abuse, and that to grant it was out of the question [*Ann. Reg. 1858, p. 33*]. These remarks of Lord Palmerston must probably be interpreted in the light of public opinion in the first decades of the Queen's reign towards the question of the right of expulsion of aliens. The *Times*, about this date, commenting on a most remarkable case of circumstantial evidence before Lord Blackburn, observed that at any rate in a trial before an English jury it could not be said that it was any disadvantage to be an alien

The Aliens Bill of 1793 was a first-class measure, and Lord Loughborough's speech in defence of it procured him the Chancellorship. Although brief, it was a masterpiece of the laboured elegance that characterized the Parliamentary utterances of that day. The substance was even more remarkable than the form. He declared that no such crisis had arisen since the days of Elizabeth; but that while in 1588 this country was threatened by an enemy inspired by religious fanaticism, the enemy of that day was inspired by

[Times, August 10, 1861, referring to *R. v. Franz* (1861), 2 *F. and F.* 580]. The same comment could even be more aptly made about the acquittal of Bernard (1858), 8 *St. Tr. (N.S.)* 887. But while public opinion may at that time have viewed the expulsion of aliens with dislike, the Right of Expulsion is not merely founded on International Law, but is a prerogative of the Crown, and, before Lord Palmerston's time, had on several occasions received statutory sanction.

Every one of the Aliens Acts from 1793 onwards, till 1826, had conferred such a power. The Act of 1793 empowered His Majesty's Principal Secretaries of State to arrest any alien whom they suspected to be "a dangerous person," and either detain him in custody or order him to quit the kingdom [*Stat. 38 Geo. III. c. 50, s. 16; repealed by the Stat. 43 Geo. III. c. 155*]. By this last Act [*ibid.*, s. 2] aliens could be expelled by proclamation on mere suspicion. The only Aliens Act that did not consecrate the Right of Expulsion was the Registration of Aliens Act, 1836. After 1803 aliens were liable to be expelled by proclamation on mere suspicion till 1836. The power conferred on the Secretary of State to expel an alien by the Aliens Act, 1905, s. 3, is, though not a power of removal on suspicion in terms, very nearly so in effect, since under it an alien may be expelled when he has not committed any offence to the law, for which he has not been punished, and even when he has not committed any crime at all [*Aliens Act, 1905, s. 3, sub-s. (1), par. (b) (i)*].

It is difficult to refrain from observing that, down to the present day, the date of legislation on the subject of aliens in this country, synchronizes with an era of revolutionary disturbance on the Continent.



“the fanaticism of infidelity.” He portrayed in alarming characters the progress the ideas of the French Revolution were making in England; and declared that they involved the public profession of atheism and the triumph of anarchy and confusion. He concluded by alluding to the Lord George Gordon riots, and by expressing the opinion that the situation would have justified an even stronger measure than the Aliens Bill then before the House [*Lord Campbell's Life of Lord Loughborough, in the Lives of the Chancellors, v. viii. p. 112*]. In this speech Lord Loughborough declared that the massacres of Paris in September were perpetrated by not more than 200 persons, in the midst of a city containing 600,000 inhabitants, with 30,000 men under arms. He therefore implored the Lords not to despise the disaffected, although they might be few. Lord Loughborough's speech was practically a denunciation of the ideas of the French Revolution; and the form of immigration objected to seems to have been implicitly the immigration of political propagandists. Like the present measure, the Act of 1793 was not aimed at the immigration of aliens generally, but against the immigration of certain objectionable persons [*cf. Lord Loughborough's speech, supra, and the speeches of the Prime Minister and Home Secretary on the Aliens Bill, Times, May 3, 1905*]. The “dangerous person” of the Act of 1793, s. 1, has become “the undesirable alien” of the present measure.\*

\* It is, however, perfectly clear that another aspect of the question, the numbers of alien immigration, possesses very serious claims to

Lord Campbell observes of the Aliens Act of 1793, that, contrary to the Common Law, it established the vexatious and useless system of passports for all aliens.\*

The Secretary of State was authorized to expel all aliens from the kingdom; and regulations for the discovery of all aliens were imposed on the keepers of inns and lodging-houses, to be enforced by the attention. That the alien question has thus become aggravated is only too patent from the debates on the Aliens Bill in either House of Parliament [*cf. the Times Parliamentary Report for April 19, May 3, June 28, June 29, 1905, for the debates in the House of Commons, and August 4 for the debate in the House of Lords on the Aliens Bill*], and from Parliamentary Papers [*cf. Parl. Pap. relating to Emigration and Immigration, 1904, Part I.*]. In the House of Lords the Bishop of London observed that "there were 63,000 aliens in Stepney alone, and 107 streets were said to have been acquired by aliens in six years. This meant a great displacement of British residents. It was estimated that 52,000 English people had left the district during the last decade. With such large numbers of people pouring into the district and making life almost unbearable for those who lived there, he felt that their lordships were justified in passing the clause." Parliamentary Papers show that 1993 aliens were granted poor-law relief in Stepney in 1902, and 2231 in 1903; and no less than 2825 aliens were granted poor-law relief in Stepney alone in 1904 [*Parl. Pap. relating to Emigration and Immigration, 1904, Part I. p. 64*].

\* This observation of Lord Campbell does not constitute a disapprobation of the passport system in the ordinary sense of a permit granted by the Foreign Office to travel in a certain country. The Act of 1793 [*Stat. 33 Geo. III. c. 4, ss. 9, 10, 11*] required aliens to take out passports even when passing to and from all parts of the kingdom. Further, aliens might be required to exhibit their passports when travelling by a magistrate. The observation of Lord Campbell that the passport system applied to all aliens is clearly not quite accurate, as by sect. 10 of the Act, alien merchants were excepted from the above restrictions. They were furnished with passports, but were given full liberty to pass and re-pass to and from all parts of the kingdom.

punishment of transportation. From 1793–1826, the statutes passed on the subject exhibit a general similarity, and the reason for their number was that they were generally limited in their duration. These Acts were aimed, not merely at the prevention of the landing of aliens, but at their regulation while resident in the United Kingdom enforced by a system of licences or certificates, and passports were equally requisitioned from an alien either on entrance into, or exit from, the United Kingdom. These Acts were exceedingly severe; a master of a vessel who neglected to require a passport from an alien departing the realm was subject to a fine of £500. The penalty for forging a passport or licence was one year's imprisonment and transportation beyond the seas for seven years. The boat or vessel landing an alien who had not made the declaration required, and produced his passport, was liable to be forfeited.\*

An alien who was found within the realm, after his expulsion had been ordered either by proclamation or by warrant, was guilty of a capital offence. An alien could not move from one place to another in the United Kingdom without a passport, and a licence to reside was merely operative within a certain district, and might be limited in point of time. Aliens, by an Act of 1803, were required to

\* *Stat. 38 Geo. III. c. 50, s. 18 (1798), Regulation of Aliens Act.* It is of some interest to observe that this provision, which seems to be the first instance of the forfeiture of a vessel by statute, a penalty inflicted by the Foreign Enlistment Acts of 1819, s. 7, and 1870, s. 8, should be found in an Act which, like those Acts, can claim to be an enforcement of International Law.

give up all their weapons, their houses were liable to be searched for arms, and they incurred a penalty of six months' imprisonment for being at large in the United Kingdom without licence. The Aliens Acts exhibit, as might be expected, a decreasing scale of severity. The penalties under the Aliens Act of 1836 were merely a small fine for landing without making a declaration and producing a passport; there was no power of expulsion, and the principle of supervision was practically abandoned, as the alien was no longer liable to produce a certificate on demand, though one had to be issued to him. This Act does not appear to have prohibited the alien from landing even if he did not make a declaration or produce a passport; it was apparently sufficient that in default he should be liable to pay a small fine. The wholly different character of the early Aliens Acts to the later seems signalized in the circumstance that one of the former dealt with extradition.\*

\* *Stat. 42 Geo. III. c. 92, s. 21*, which required magistrates to apprehend persons accused of forgery, murder, or fraudulent bankruptcy in France, Spain, or Holland, and deliver them over to justice under a treaty made "between his Majesty and the French Republick, his Catholic Majesty, and the Batavian Republick." Sir Edward Clarke, in his brilliant and learned work upon extradition, considers "that the history of the subject in England begins with the treaties made with the United States, in October, 1842, and with France in 1843," and seems to suggest that these were the first treaties. In another passage, Sir Edward Clarke, in reciting the history of the law in France, observes in a note that "it would appear that other treaties had formerly existed, but had either been renounced or allowed to fall into disuse." Reference is then given to an authority; but no mention is there made of any treaty to which Great Britain was a party, and therefore the treaty explicitly alluded to in the Aliens Act of 1802, s. 21, seems to

C. AN ANALYSIS OF THE ALIENS ACT, 1905 [STAT. 5  
EDW. VII. c. 13]

The Act may be said to differ in its leading features from all previous legislation on the subject of aliens. All previous legislation dealt in terms with aliens generally, though the Act of 1793 was no doubt implicitly aimed at propagandists of the ideas of the Revolution of 1789. But this limitation did not find be nowhere mentioned. But the fact that England concluded a treaty of extradition with Holland seems to furnish adequate explanation of an observation of Heath, J., in *Mure v. Kaye* (1811), 4 Taunt. 34, 43, that "in Lord Loughborough's time the crew of a Dutch ship mastered the vessel and ran away with her, and brought her into Deal, and it was a question whether we could seize them and send them into Holland; and it was held we might." Such an act must nearly necessarily have involved murder, and by the treaty alluded to in the Act of 1802, murder was an extradition crime by the treaty between this country and the Batavian Republic. Lord Loughborough's Chancellorship coincides in date with the period within which the treaty must have been ratified [*cf. Clarke upon Extradition*, 3rd ed., pp. 123 and 180; *Lord Campbell's Life of Lord Loughborough in The Lives of the Chancellors*, v. viii. pp. 117-192. The chancellorship of Lord Loughborough was from 1793-1801. The observation of Heath, J., in *Mure v. Kaye* (*ibid.*, *supra*) is alluded to both in *Clarke upon Extradition*, 3rd ed., p. 23, and in *Extradition*, by H. C. Biron and K. E. Chalmers, p. 5, where, however, no mention is made of the treaty alluded to in the Aliens Act of 1802, s. 21. The importance of the matter clearly lies in the circumstance that the treaty referred to is a general treaty between four Powers, two of whom at least were great Powers, and therefore it may be regarded as the first international consecration of the principle of Extradition by treaty. It is pointed out in *Clarke on Extradition* that no early treaty can be appealed to on the subject (*ibid.*, 3rd ed., p. 22), and there is no mention of any general treaty on extradition (*ibid.*, p. 180). Therefore the treaty mentioned in the Act of 1802 may be regarded with some plausibility as having laid the foundations of the Law of Extradition].

any expression in the Act itself. The Registration of Aliens Act, 1836, dealt with aliens generally. The Aliens Act, 1905, deals with undesirable aliens only.\*

The Act of 1905 further differs from all previous legislation on the topic in its entire abandonment of the principle of residence under licence and certificate for the alien after landing, in its declaration of the Right of Asylum, both on religious and political grounds [*cf. The Aliens Act, 1905, s. 1, sub-s. (3)*], in the final abandonment of the passport system,† in its recognition of a distinction between passengers [*Aliens Act, 1905, s. 8*], and in the character of the persons expressly excepted [*Ibid., supra, s. 1, sub-s. (3)*]. The Aliens Act, 1905, differs from all the previous Aliens Acts,

\* The great and undoubted urgency of the evil the Act is meant to provide against was described in a passage of the speech of Mr. Akers-Douglas, on introducing the Aliens Bill in the House of Commons. The Home Secretary observed that criminal statistics showed that alien crime had steadily increased in this country, both absolutely and relatively to prison population. In 1900, 3130 alien prisoners were received in prisons; in 1904, the number was 4774. He had received complaints, not only from recorders and from the London stipendiary magistrates, who had to deal with very many of these cases, but also from the Judges of the High Court, as to the large amount of work—he thought unnecessary work—which came upon them by reason of the presence of this class of criminals [*Times, April 19, 1905*].

† The Stat. 6 Will. IV. c. 11, the Registration of Aliens Act, 1836, required an alien on arrival from abroad (*inter alia*) to produce his passport. This Act having been repealed [*Aliens Act, 1905, s. 10, sub-s. (2)*] seems another indication of the desuetude into which the passport system is falling, though a recent prosecution has shown that it is still of importance as regards Russia. British subjects are now free to enter Belgium, France, Holland, Italy, Denmark, Sweden and Norway, without passports, according to a Foreign Office list issued in 1897. Italy abandoned the passport system in 1860.

except the Acts of 1826 and 1836, in being a permanent and not a temporary measure. All the Acts passed, 1793-1824, were limited in their duration; either definitely, to a period of two years and a session of Parliament; or indefinitely, till the conclusion of a general peace. In all the previous Aliens Acts, it was the practice to except ambassadors, their servants, and all infants generally from the operation of the Act. There might be some relevance in urging that the two last exceptions should be introduced into the Act of 1905, although it is confined to steerage passengers. The persons excepted from the operation of the Act are of a totally different character to those excepted in the previous Acts, being persons who, after a residence of six months in the United Kingdom, have sailed to a foreign country, where they have been refused admission, and have returned thence direct to the United Kingdom; and persons born in the United Kingdom, whose fathers were British subjects [s. 8]. The Aliens Act of 1798 contained a declaration of the Right of Asylum in the preamble. But the preamble of a statute is a parliamentary and not a legislative enactment.\*

\* Cf. the remark of Fitzgibbon, L.J., in *Wallis v. Russell* (1902), 2 Irish R. K. B. 585, 609. The salvo of the Right of Asylum found in the Extradition Act, 1870, s. 3, sub-s. (1), differs from that in the Aliens Act, 1905, s. 1, because the latter enures for the protection of persons persecuted on religious grounds, as well as persons liable to be prosecuted for political offences. Sir J. F. Stephen defines a political offence as one that is incidental to, and forms part of, political disturbances [*Hist. Crim. Law Engl.*, v. ii. p. 71]. It does not, on the other

The prohibition against landing without having furnished the particulars required by the Aliens Act, 1905, s. 1, sub-s. (1), involves a reversion to the earliest Aliens Acts of 1793 and 1798. After 1801, one does

hand, seem possible to speak of a person who flees from persecution on religious grounds, probably from mob violence, as a "religious offender," even for the purpose of conceding the Right of Asylum to him. Sir J. F. Stephen is very averse to introducing any wide exceptions in favour of political offenders [*cf. Hist. Crim. Law Engl., v. ii. p. 14*]. Sir J. F. Stephen's definition of a political offence was adopted by the Court in *Re Castioni* (1891), 1 Q. B. 149. Mr. J. S. Mill, in the House of Commons in 1866, defined a political offence as "any offence committed in the course of a furthering of civil war, insurrection, or political commotions" [*Cf. Clarke upon Extradition, Appendix cclx.*]. It is somewhat curious to note that while Mr. J. S. Mill's definition, as might be expected, is wider than Sir J. F. Stephen's, both are alike open to the logical objection that they involve "Circulus in definiendo." Anarchists are not political offenders who can claim the Right of Asylum either by international or municipal law. Vattel, after observing that the exiled and the banished have a right to live somewhere, adds, "We ought to except from this rule those villains who, by the nature and habitual frequency of their crimes, violate all public security, and declare themselves the enemies of the human race. Poisoners, assassins, and incendiaries by profession, may be exterminated wherever they are seized; for they attack and injure all nations, by trampling underfoot the foundations of their common safety" [*Droit des Gens, l. i. cxix. p. 109, Chitty's Transl.*]. These observations are all the more significant, because "beyond comparison the most humane of the publicists is Vattel, a Swiss" [*cf. Sir H. S. Maine's Lectures on Int. Law, vii. p. 126*]. International Law is part of the Law of England, as Lord Lyndhurst observed. International Law is literally part of the Law of England, as far as withholding from Anarchists the Right of Asylum is concerned. "The efforts of Anarchists are directed primarily against the general body of citizens; . . . the party of anarchy is the enemy of all Governments; . . . anarchist offences are directed mainly against private citizens; . . . anarchy is not a political offence within the meaning of the Extradition Act" [*per Cave, J., in re Meunier* (1894), 2 Q. B. 415, 419].



not meet any specific prohibition against landing. It was sufficient compliance with the requisitions of the Aliens Acts that the alien should make his declaration on arrival; and this seems to have been possible after he had landed, as it was only required he should make his declaration somewhere near his port of arrival. One feature common to all the Aliens Acts which is found in the present measure is that the *onus probandi* always lies on a person of showing that he is not an alien [*Aliens Act, 1905, s. 7, sub-s. (5)*]. The wording of this provision is not quite the same as that invariably met in the earlier Acts [*cf. Stat. 38 Geo. III. c. 50, s. 22; Stat. 6 Will. IV. c. 11, s. 11*], but the meaning is equally clear. The occasion arises when criminal proceedings are instituted against the alien either for contravening the prohibition against landing [*Aliens Act, 1905, s. 1, sub-s. (5)*], or for being found in the United Kingdom after an expulsion order has been made against him [*Ibid., supra, s. 3, sub-s. (2)*], or for making a false statement or false representation to an immigration officer, medical inspector, Immigration Board, or to the Secretary of State [*Ibid., supra, s. 7, sub-s. (4)*]. The introduction of the term *onus probandi*, and the language of the seventh section, shows that this provision must relate to criminal proceedings instituted under the Act, and to administration of the Act by either the immigration officer, medical inspector, or Immigration Board.\*

\* During the debates on the measure in the House of Commons, the Prime Minister observed that it was to be regarded as one dealing in "a very expeditious manner with a matter of administration,"

The Aliens Act, 1905, s. 7, sub-s. (5), therefore affords another instance of the many other cases where the burden of proof is cast by statute on particular parties [*cf. Taylor on Evidence, s. 345*], as by the Forgery Act, 1861 (24 & 25 Vict. c. 98), ss. 9, 10, and other sections; by the Coinage Offences Act, 1861 (24 & 25 Vict. c. 99), ss. 6, 7, and other sections; and Explosive Substances Act, 1883 (46 & 47 Vict. c. 3), s. 43 [*Best on Evidence, 9th ed., p. 246*].

The exception introduced by s. 1, sub-s. (5), of the Aliens Act to the generally prohibitive clause against landing in the case of a merely conditionally disembarked immigrant, seems clearly due to an incident that arose in the application of the Act of Congress regulating Immigration.\*

In July, 1884, the Commissioners of Emigration at New York decided that fifty-two Roumanians who had come to New York on the *Westphalia* were unable to support themselves, and must be returned to Europe. Chief Justice Steckler procured a writ of habeas corpus for the benefit of one of them, Aram

and not as a Bill dealing with legal rights [*Times, July 4, p. 6, col. f*]. Sir R. Finlay observed that the inquiry whether an alien immigrant is undesirable or not does not constitute a charge [*Ibid., supra*]. It is clearly essential, in order to understand the Act, to keep in mind the distinction between the normal action of the Act, which is purely administrative, and the criminal proceedings to which an infraction of its provisions may give rise [*cf. Table of Penalties and Punishments, infra, 81-2*].

\* It was stated in the House of Commons by the Home Secretary that the examination of a conditionally disembarked immigrant will take place either on the quays or else in buildings provided at the cost of the shipowner [*Times, July 18, 1905, p. 7, col. a*].

Slovitz, and the remaining fifty-one were sent back. The writ had been granted by Judge Van Brunt, of the Supreme Court of the State of New York. At about the same time the Anchor Line refused to carry back Patrick Kearney and his seven children, who had arrived on the *Furnessia*, and whom the Commissioners had excluded under the law. Slovitz had been sent over by a benevolent society, and the Kearney family by the Poor Law Guardians at Ballina, in Ireland. The two cases were heard on the same day. Judge Van Brunt dismissed the writs. He decided that the Commissioners had only done their duty. For Slovitz it was urged that the examination in his case had not been held until after he had left the ship, and that for this reason he had been permitted to "land." But the judge brushed away this plea, holding that an examination on board ship was not required by law. "No technical meaning," said he, "is to be given to the words 'permitted to land,' but they are to be construed as referring to permission to enter the country" [*Parl. Pap.*, 1887, No. 21, referring to extract from *New York Times of June 14, 1887*]. The provision in the Aliens Act, s. 1, sub-s. (5), renders it quite impossible that there can be any attempt to evade the Act similar to that which was unsuccessfully attempted in the case of the Act of Congress.

The Aliens Act, 1905, is naturally divisible into three principal parts, the first consisting of the prohibition against the landing of undesirable immigrants, the second of their expulsion, and the third of the

responsibility thrown upon the master and ship-owner. This division is essentially based upon the three sets of Rules and Orders published [*cf. Appendix I, pp. 95-124*]. The prohibition against landing requires to be carefully distinguished from the provisions relating to the expulsion of aliens, as the circumstances out of which an expulsion order may be issued can arise in any part of the United Kingdom, and do not call into operation the machinery set up by the Act at immigration ports. The Rules regulating the administration of the Act as regards the prohibitions against landing constitute certain ports "Immigration Ports."\* An "Immigration Port" may be defined as a place where immigration officers and medical inspectors have been appointed and Immigration Boards established. The sequence of events, in a case where the administration of the Act does not call into operation the prohibition against landing, is that the immigrant officer gives the alien steerage passenger leave to land orally [*Appendix I, p. 97*] after receiving from the immigrant a written form signed and attested [*Appendix I, p. 119*]. When leave to land is withheld either by the medical inspector [*Appendix I, p. 97*] or by the immigrant

\* The immigration ports are Cardiff, Dover, Folkestone, Grange-mouth, Grimsby, Harwich, Hull, Leith, Liverpool, London (including Queenborough), Newhaven, Southampton, and the Tyne Ports (comprising Newcastle, North Shields and South Shields, which are to be deemed to constitute one port for the purpose of these Rules). *Cf. Statutory Rules and Orders, 1905, No. 1325, and post, Appendix I, p. 113.*

officer, a written form has to be used [*Appendix I*, pp. 103-4]. A notice of refusal of leave to land has to be served both on the master of the ship and on the immigrant [*cf. Appendix I*, p. 104]. The immigrant may at once give oral notice of appeal to the immigration officer; and the master, owner, or agent of the ship are allowed twenty-four hours to give notice, which must be in writing [*cf. Appendix I*, p. 105]. The immigration officer must then give notice of appeal to the Immigration Board clerk, which must be in a prescribed form, either by telegram [*cf. Appendix I*, p. 106] or by letter [*Appendix I*, p. 106]. The Immigration Board clerk must then summon, either by telegram [*cf. Appendix I*, p. 108] or by letter [*cf. Appendix I*, p. 108], the Immigration Board, which is to be convened within twenty-four hours of notice of appeal. The Immigration Board clerk must also give notice of the time and place of meeting of the Immigration Board to the immigration officer, and where necessary, to the medical inspector, in both cases in a prescribed form, whether by letter or telegram [*cf. Appendix I*, pp. 109-110]. The Immigration Board does not give notice to the immigrant personally, but must give notice to the master (or owner or agent of the ship) of either refusal or leave to land, in a prescribed form, which may be either by telegram or letter [*cf. Appendix I*, pp. 111-112]. The Immigration Board, under normal circumstances, will only hear and examine the immigrant (and the master, owner, or agent of the ship if an appellant). The immigration officer must

always attend the Board, and the medical inspector must do so in the case of an immigrant rejected on medical grounds. When the immigrant is brought before the Immigration Board, he is regarded as conditionally disembarked for the purposes of the Act, and therefore the master of the ship may be required to give security for him by bond. Conditional disembarkation before inspection is only granted by the Secretary of State when he is satisfied of the conditions under which it may be obtained. A ship-owner may give security by bond covering all the ships owned by him arriving at the port or ports where conditional disembarkation has been sanctioned. The immigration officer may prohibit transmigrants (who are excepted under normal circumstances from the operation of the Act) from leaving the ship, if he is not satisfied with the master's return of transmigrants. The Rules define an immigrant ship as a ship which brings to the United Kingdom more than twelve alien steerage passengers. When a ship lands alien passengers at a non-immigration port in the United Kingdom, the Rules require the master, immediately on arrival, to furnish in a prescribed form a return of aliens in all parts of the ship to the Preventive Officer of Customs [*cf. Appendix I, p. 121*]. But the prohibitions against the landing of undesirable immigrants cannot be supposed to extend to non-immigration ports, as there is no Immigration Board at such places to which the alien may appeal.

The conditions determining whether an alien steerage passenger is an undesirable immigrant or not

are framed in the disjunctive, not the conjunctive. Therefore wherever one of the four conditions are proved, the person becomes an undesirable immigrant, though in other respects he may satisfactorily pass inspection.\*

If the inspection were a judicial, and not an administrative act, it would be clearly possible to compare the requisition that the immigrant must show that he has means [*cf. par. (a), infra*] with the standing interrogatories that were administered in the British Prize Courts during the Great War to the masters, officers, and mariners of vessels captured at sea by our Navy or privateers, either as enemy vessels or neutral ships carrying either enemy goods or contraband, or violating a blockade [*cf. Standing Interrogatories 1, Christopher Robinson's Admiralty Reports (1799), p. 381*]. In both cases it would be the case of an inquiry in which the question of nationality was a determining element, the action

\* The Aliens Act, 1905, s. 1, sub-s. (3), says, "For the purposes of this section an immigrant shall be considered an undesirable immigrant—

"(a) if he cannot show that he has in his possession or is in a position to obtain the means of decently supporting himself and his dependents (if any); or—

"(b) if he is a lunatic or an idiot, or owing to any disease or infirmity appears likely to become a charge upon the rates [*this is an enforcement of International Law: cf. Vattel's Droit des Gens, l. i. c. xix. s. 231*] or otherwise a detriment to the public; or—

"(c) if he has been sentenced in a foreign country with which there is an extradition treaty for a crime, not being an offence of a political character, which is, as respects that country, an extradition crime within the meaning of the Extradition Act, 1870; or—

"(d) if an expulsion order under this Act has been made in his case."

would be penal, and the person to whom the interrogatories were administered would be claimant. In the Prize Court the alien claims property, while, if there were an Aliens Court, he would claim a right, *i.e.* the right of entering the country. The plea of British nationality would be a good claim in either case; and, as has been suggested, it cannot be supposed that the Act intends that British colonial-born subjects or statutory British subjects shall be finally prohibited from landing as undesirable immigrants, though it appears that they are not exempted from inspection. But the inspection of immigrants under the Aliens Act, s. 1, is merely administrative. The Immigration Board is not a Court, and has no power to administer an oath. This fact seems to impair the efficacy of the Act, so far as it places any reliance on the unsworn statements of the immigrant, in keeping out the class it is desired to exclude, the alien criminal. It might be urged that an habitual criminal would not hesitate to make a false statement where he is not put upon his oath, and made amenable to the penalties of perjury. The answer clearly is, that though there is no Aliens Court for the purposes of the Act, an immigrant who makes any false statement or false representation to an immigration officer, medical inspector, Immigration Board, or to the Secretary of State, is liable on conviction to imprisonment for a term not exceeding three months' hard labour [*cf. Aliens Act, 1905, s. 7, sub-s. (4)*]. Further, if an alien refuses to give information required by the master of the ship in order to enable him to make a



return as to aliens, or if he gives false information, he is liable on summary conviction to imprisonment for a term not exceeding three months with hard labour [*cf. Aliens Act, 1905, s. 5, sub-s. (2)*].

The very serious difficulty that exists when it is the case of prosecuting in this country a person who is charged with committing a crime on land out of the United Kingdom applies, *mutatis mutandis*, to information about an alien who seeks to land on our shores [*Phillimore's Int. Law, v. 1, p. 416, referring to Lord Lyndhurst's speech in the House of Lords: cf. Times and Hans. Parl. Deb., 1853*]. This difficulty, of course, is one of evidence. It seems almost impossible that adequate evidence will be forthcoming to satisfy each of the particulars regarding the alien required by the Act. The difficulty seems enhanced by the fact that the inspection of the alien is not a judicial proceeding. It is perhaps noticeable that, if it were, none of the questions implicitly addressed to the alien immigrant [*Aliens Act, 1905, s. 1, sub-s. (3)*] would be inadmissible if he were a witness at a judicial proceeding. It seems clearly admissible to ask an immigrant if he is likely to become a detriment to the public, since a witness may be asked if he has been suspected of committing a crime [*per Parke, B., in R. v. Wood (1841), Kent Sp. Ass. M. 5 and 5 Jurist, 225*], and may be interrogated as to "the general tenour of his conversation" [*per Holt, L.C.J., at the trial of Ambrose Rookwood for high treason (1696), 13 St. Tr. 139, 211*]. A practical answer to this objection to the efficiency of the Act,

namely, the difficulty of evidence, is that the Act of Congress, which has proved so signally effective, is clearly open to the same theoretical objection. The information required by the Aliens Act in another sense renders testimony to its effectiveness. The Act of Congress provides nothing as to the means of acquiring information about the immigrant, and only indicates the nature of that information in the most general manner by the words, "whether (the immigrant) is unable to take care of himself or herself without becoming a public charge" [*cf. s. 2*]. Under the previous Aliens Acts in this country, the principle of prohibition was not so much insisted on, and reliance was placed upon registration and supervision after admission into the country. There was, therefore, nothing in these Acts to correspond to the full and searching information required about and from the alien immigrant that is found in the Act of 1905. But by the Act of 1798, an alien was required to state to the inspector of aliens the reason for his leaving the country whence he came [*Stat. 38 Geo. III. c. 50, s. 2*]. This requisition found no place in subsequent Acts. It is further essential to allow that the medical inspection, as to which nothing was provided either by the previous Aliens Acts in this country or the Act of Congress, 1882, will probably prove informing as to many particulars concerning which there would otherwise be serious difficulty as to obtaining satisfactory evidence. It seems a matter of material interest whether the inquiry whether an immigrant is undesirable or not will be determined on the

preponderance of probabilities, or on the weight of the evidence. The analogy of the inquiry, at all events before the Immigration Board, would appear to be rather to a penal action than to civil proceedings. The difficulty of evidence, on the other hand, would seem to render it almost impossible for the Immigration Board to arrive at certainty in each particular case. But if not, and the Board are bound to proceed according to the weight of the evidence, undesirable aliens would continue to make their way into the country. By the analogy of criminal proceedings, where there is no weight of the evidence, the Immigration Board will virtually have to acquit the alien of being an undesirable immigrant. This objection does not apply to cases where the alien has been previously convicted, this last being a fact it is clearly not impossible to ascertain. But the medical inspection, and the success of the far less stringent Act of Congress, appear to constitute an essential guarantee that, fairly administered, the Aliens Act is bound to prove effective.

It must be at once recognized as highly satisfactory that the very serious difficulty of evidence which exists as to particulars required from an alien landing does not in the slightest degree impair the power of the Secretary of State to make an expulsion order under the Aliens Act, 1905, s. 3. A power is thus recreated *sub modo* which, it has been seen, after having been several times exercised in the reign of Elizabeth, fell into complete desuetude till 1793. Under the earlier Aliens Acts (1793-1818), the power

of the executive to banish an alien from the realm on secret information, and by a clandestine procedure, was rarely exercised, and in a few years was surrendered. In 1848 the power of removing aliens on mere suspicion was again recreated by statute, but was not put in force in a single instance [*Sir Erskine May's Constit. Hist.*, v. 3, *ca.* p. 53, referring to *Parl. Return*, 1850 (688)]. But while, historically speaking, the statutes creating the power of removal of aliens on mere suspicion have proved almost a dead letter, the power of expulsion in the Aliens Act, 1905, ss. 3, 4, which is exercised on a recommendation from the Court by which the alien is convicted and sentenced to imprisonment or fine, has proved efficacious on several occasions within a month of the Act coming into operation. Mr. M. D. Chalmers, Permanent Under Secretary of the Home Office, has addressed the following circular letter to clerks to the justices on the Aliens Act:—

“I am directed by the Secretary of State to draw attention to the provisions of section 3 of the Aliens Act, 1905, in regard to the expulsion of aliens from the United Kingdom, and to the powers which that Act confers upon the Secretary of State and Courts of summary jurisdiction respectively.

“The Secretary of State is empowered to make expulsion orders (*i.e.* orders requiring an alien to leave the United Kingdom) in two classes of cases:—

“(a) In the case of convicted aliens—on a recommendation from the convicting Court ;

“(b) In the case of certain descriptions of undesirable aliens—on a certificate from a Court of summary jurisdiction given after proceedings on complaint.

“(a) Under paragraph (a) of sub-section (1) of the section, the Secretary of State may make an expulsion order in the case of an alien who has been convicted of any felony, misdemeanour, or other offence for which the Court has power to impose imprisonment without the option of a fine, and whose expulsion is recommended by the Court. Offences under paragraph 11 of section 54 of the Metropolitan Police Act, 1839, though not punishable with imprisonment, are also brought within this provision.

“(b) Under paragraph (b) of the same sub-section, the Secretary of State may make an expulsion order in the case of any alien in regard to whom a Court of summary jurisdiction has certified, after proceedings taken for the purpose within twelve months after the alien has last entered the United Kingdom; ‘that the alien—

“(i) has within three months from the time at which proceedings for the certificate are commenced been in receipt of any such parochial relief as disqualifies a person for the Parliamentary franchise,\*

\* This provision seems to require some explanation, as there is something anomalous in the legislature declaring that a man must incur a sentence of banishment because he cannot qualify for a right that he cannot under any circumstances possess at the time. By the Naturalization Act, 1870 [*Stat. 33 & 34 Vict. c. 14*], s. 2, an alien cannot hold any office or any municipal, parliamentary, or other franchise. The view of the Legislature seems to be, as regards this

or been found wandering without ostensible means of subsistence, or been living under insanitary conditions due to overcrowding; or

“(ii) has entered the United Kingdom after the

provision in the Aliens Act, that the alien is a British quasi-subject for the purpose of determining the question whether he can remain in the country. As this seems a necessary assumption, it may be further concluded that, for the purposes of the Aliens Act, an alien falls within the principle of the decision in *Mashiter, Dunn Resp.* (1848), 6 Common Bench, 30.

By the Poor Law Relief Act [*Stat. 54 Geo. III. c. 170, s. 11* (1814)], a person, on proof of inability to pay through poverty, may be excused by magistrates at Petty Sessions from paying any rate or cess. In *Mashiter, Dunn Resp.* [*supra*], the facts were that a person was rated to the poor as the occupier of a house in the borough of Lancaster, but, by consent of the overseers, was duly excused by the justices from paying the rate, on account of his poverty. He was objected to as not being entitled to have his name retained upon the list of freemen, entitled to vote in the election of members to serve in Parliament for the borough of Lancaster, on the ground that he had received parochial relief. It was held that there was a substantial difference between the receipt of parochial relief and the being excused, by reason of inability, from bearing a parochial burthen; and that, therefore, a person who had received relief under the *Stat. 54 Geo. III. c. 170, s. 11*, was not disqualified from being registered as having received parochial relief within the meaning of the Representation of the People Act, 1832 [*Stat. 2 Will. IV. c. 45*], s. 36. The application of this decision to the Aliens Act, 1905, s. 3, sub-s. (1), par. (b) (i), seems to be that a Court of summary jurisdiction cannot issue a certificate of expulsion against an alien who has been excused from paying a poor rate under the *Stat. 54 Geo. III. c. 170, s. 11*, upon proof before the justices of inability through poverty.

While the Aliens Act, s. 3, sub-s. (1), par. (b) (i), makes the receipt of parochial relief by the alien within three months of the date of the complaint the condition of his banishment, a British subject is disqualified for the parliamentary franchise if he has received such relief within twelve months previous to application for registration. But as it seems clear that, for the purposes of this provision in the Aliens Act, the alien is a British quasi-subject, it may be of interest

passing of this Act, and has been sentenced in a foreign country with which there is an extradition treaty for a crime, not being an offence of a political character, which is as respects that country an extradition crime within the meaning of the Extradition Act, 1870.'

"As regards both the above-mentioned classes of cases draft rules prescribing a form of certificate have been prepared under the powers of making Rules of

to point out further that the receipt of medical relief at the expense of the poor rate does not disqualify a British subject from exercising the parliamentary franchise [*Stat. 48 & 49 Vict. c. 46* (1885)]. The "alms" which disqualify a person from exercising the parliamentary franchise need not be parochial alms, but may be alms given from the moneys of a private charitable trust. The rationale of the Stat. 2, Will. IV. c. 45, s. 36, is that a voter must not be so dependent that he is susceptible of manipulation; and therefore moneys received as a matter of right, though they originally were of an eleemosynary character, do not disqualify the recipient from exercising the parliamentary franchise [*Smith v. Hall* (1863), 15 *C. B. (N.S.)* 485]. But when the only claim a person has to the allocation of alms by authorities or trustees is his extreme indigence, he is disqualified within the meaning of the Stat. 2 Will. IV. c. 45, s. 36, from voting at a parliamentary election [*Harrison v. Carter* (1876), 2 *C. P. D.* 26]. The application of this case to the Aliens Act seems sufficiently apt. An alien will be liable to be expelled from the United Kingdom when it is shown on complaint that he has been the recipient of public or private moneys on the ground of his extreme indigence alone. But it may be recalled that the law of Parliament, which was merely declared by the Reform Act, is derived from decisions of Committees delivered prior to 1832, and these are very obscure, and hence it has been said, by very eminent judges, that each case must depend upon its own particular circumstances. At least equal difficulty will attach to the inquiry under the Aliens Act which is to determine whether an alien has received parochial relief disqualifying for the parliamentary franchise, and that, therefore, he is liable to be expelled the United Kingdom.

Court conferred on the Lord Chancellor by section 29 of the Summary Jurisdiction Act, 1879.\* The rules

\* STATUTORY RULES AND ORDERS, 1906.

No. 1.

ALIEN.

THE SUMMARY JURISDICTION (ALIENS) RULES, 1906,  
DATED JANUARY 3, 1906.

1. Proceedings under Section 3 (1) (b) of the Aliens Act, 1905 (relating to the expulsion of pauper aliens, and aliens convicted abroad of extradition crimes), shall be commenced by complaint, and, the provisions of the Summary Jurisdiction Acts with reference to proceedings on complaint shall, in so far as applicable, apply accordingly.

2. The forms in the Schedule hereto, or forms to the like effect, may be used with such variations as circumstances may require for the purposes of the Aliens Act, 1905.

3. These Rules may be cited as the Summary Jurisdiction (Aliens) Rules, 1906.

Dated the 3rd day of January, 1906.

Reid, C.

*Schedule.*

Aliens Act, 1905.

Section 3 (1) (b)

*Complaint.*

In the [County of  
of                   ].

Petty Sessional Division

The                    day of                    one thousand nine hundred  
and                    .

The complaint of *C.D.*, who states that *A.B.*, an alien, who last entered the United Kingdom within twelve months before these proceedings were taken

*either* has within three months from the present date been in receipt of such parochial relief as disqualifies a person for the parliamentary



prescribe that the proceedings under paragraph (b) shall be by way of complaint, and a form of complaint

franchise [or been found wandering without ostensible means of subsistence] [or been living under insanitary conditions due to overcrowding]

or has entered the United Kingdom after the 11th day of August, 1905, and has been sentenced in a foreign country with which there is an extradition treaty for a crime not being an offence of a political character which is as respects that country an extradition crime within the meaning of the Extradition Act, 1870, viz.,

Taken before me,

(L.S.)

Justice of the Peace for the  
[County] aforesaid.

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Aliens Act, 1905.

Sections 3 (1) (a).

*Certificate of Conviction and Recommendation for Expulsion.*

In the [County of \_\_\_\_\_] Petty Sessional Division  
of \_\_\_\_\_].  
Before the Court of [Summary Jurisdiction] sitting at \_\_\_\_\_.  
The \_\_\_\_\_ day of \_\_\_\_\_ one thousand nine hundred  
and \_\_\_\_\_

I [or we] hereby certify

That *A.B.*, to whom the particulars shown in the annexed Schedule relate, having been found by the Court to be an alien, was this day convicted of the offence shown in the said Schedule, being an offence within the meaning of Section 3 (1) (a) of the Aliens Act, 1905; [and was committed to one of His Majesty's prisons, to be kept there for the space of \_\_\_\_\_]:

And that the Court recommended that an Expulsion Order should be made in the case of the said *A.B.*, in addition to the said sentence [or in lieu of sentence].

Justice of the Peace for the  
[County] aforesaid.

(L.S.)

Justice of the Peace for the  
[County] aforesaid.

(L.S.)

is set out in the schedule to the rules. The rules will be finally made and issued in due course.

“It will be observed that by section 7 (5) of the

*Schedule.*

Name

Nationality

Age

Dependents (if any)

Offence

Sentence

Prison to which committed

Police district in which offence was committed

---

Aliens Act, 1905.

Section 3 (1) (b).

*Certificate with view to Expulsion.*

In the [County of \_\_\_\_\_] Petty Sessional Division  
of \_\_\_\_\_].

Before the Court of Summary Jurisdiction sitting at

The \_\_\_\_\_ day of \_\_\_\_\_ one thousand nine hundred  
and \_\_\_\_\_

*C.D.* having made a complaint that *A.B.*, an alien, to whom the particulars shown in the Schedule hereto relate, last entered the United Kingdom within twelve months before the proceedings were taken, and *either* that he has within three months from the time at which proceedings were commenced been in receipt of such parochial relief as disqualifies a person for the parliamentary franchise [*or* been found wandering without ostensible means of subsistence] [*or* been living under insanitary conditions due to overcrowding]

*or* that he has entered the United Kingdom after the 11th day of August, 1905, and has been sentenced in a foreign country with which there is an extradition treaty for a crime not being an offence of a political character which is as respects that country an extradition crime within the meaning of the Extradition Act, 1870, viz.,

On hearing the said complaint I [*or* we], being satisfied that the

Aliens Act the onus of proving that any person is not an alien lies on that person, but it is important that no certificate with a view to expulsion should be given unless the Court is satisfied that the person is an alien and the form of certificate contains a statement that the Court is so satisfied. It is, moreover, of great importance that, in considering his action upon any certificate, the Secretary of State should be in possession of the best and fullest information available in regard to the case, and he will be much obliged if all due efforts can be made towards filling in accurately the details (indicated in the schedules to the certificate) as to nationality, age, dependents, etc.

“Section 7 (3) of the Act provides ‘that any alien in whose case a certificate has been given by a Court, with a view to the making of an expulsion order,

said *A.B.* is an alien, hereby certify that the said *A.B.* last entered the United Kingdom within twelve months before these proceedings were taken, and that he [*here insert the clause of the complaint of which the Court was satisfied*].

Justice of the Peace for the  
[County] aforesaid. (L.S.)

Justice of the Peace for the  
[County] aforesaid. (L.S.)

*Schedule.*

Name

Nationality

Age

Dependents (if any)

Date of last entry into United Kingdom

Facts of complaint certified

Prison to which committed

Police district in which proceedings taken

shall be liable, until the Secretary of State has decided upon his case, to be kept in custody in such manner as the Secretary of State directs, and whilst in that custody shall be deemed to be in legal custody.

“If an alien is imprisoned, on conviction, for a period not less than a month, no special question as to his custody arises, as it is anticipated that before that period expires the question of the expulsion order will have been settled. If an alien is imprisoned for less than a month, or is not imprisoned at all, the Secretary of State’s directions provide that he shall, unless the Court otherwise directs and admits him to bail, be in the custody of the governor of a prison until the orders of the Secretary of State with respect to his expulsion are received. In any case where the alien is to be in custody, a copy of the certificate of the Court is to be given to the officer whose duty it is to convey the alien to prison, and will be sufficient authority for that officer and for the governor of the prison to deal with the alien in accordance with the directions.

“The certificate itself is to be forwarded forthwith to the Home Office by the clerk to the justices. In case an alien does not comply with an expulsion order, and is at any time found within the United Kingdom in contravention of the order, it is provided by section 3 (2) of the Act that he shall be guilty of an offence under the Act—*i.e.* by virtue of the provisions of section 7 (1) he shall be deemed a rogue and vagabond within the meaning of the Vagrancy Act, 1824, and shall be liable to be dealt

with accordingly" [*cf. Text in Law Journal, December 30, 1905, pp. 887, 888*].

Considerable interest attaches to what is a necessary inference from the terms of the Certificate of Conviction and Recommendation for Expulsion [*cf. ante, p. 63, and note*], that an alien who has been convicted of felony, misdemeanour, or other offence for which the Court has power to impose imprisonment without the option of a fine, may be expelled the United Kingdom in lieu of serving his sentence. While, according to Prof. F. de Martens, aliens are required to submit in all cases to the laws imposed upon them in the State where they are sojourning, except where such laws are contrary to treaty [*Traité du Droit Int., t. i. p. 447*], the shipping of known criminals to other countries "is regarded as a violation of the comity which ought to characterize the intercourse of nations, and should be prevented by every proper measure" [*Digest of the International Law of the United States (Wharton), 1886, Washington, vol. 1, p. 50*]. It is to be presumed that, under the Aliens Act, an alien who has been convicted for felony or misdemeanour and then expelled in lieu of his term of imprisonment, will in no case be returned to any country except that of which he is a subject. Any other State would clearly be justified in refusing him, and the attempt to land persons of this description might easily give rise to international complications. It does not seem at all clear what claims an alien convicted of felony or misdemeanour in this country could possibly have upon his native country so as to

entitle him to land on its territories, or that the native country of such an alien might not resent his compulsory return as a violation of comity.

Again, while from the point of view of International Law, there cannot perhaps be advanced any objection to an alien being banished because he has been in receipt of parochial relief disqualifying a person for the franchise, or is in more or less unhappy circumstances, the same cannot be said of such a punishment being annexed to such an act from the view of the Common Law. Even where the words of a statute seem to involve it as a conclusion, the Courts are loth to adopt a construction that involves creating a crime [*per Pollock, C.B., in Attorney-General v. Sillem* (1863), 2 *H. and C.* 431, 517]. But no questions of judicial construction seem likely to arise, as the Aliens Act, 1905, s. 3, sub-s. (1), par. (b) (i), expressly says that it involves banishment for an alien to have been in receipt of any such parochial relief disqualifying for the parliamentary franchise, or to be found wandering without ostensible means of subsistence, or to have been living under insanitary conditions due to overcrowding. While it may gravely be doubted whether such an enactment does not derogate from the Common Law, the same objection clearly does not apply to the prohibitions against landing. To create a crime involving banishment is clearly a different thing from prohibiting a class of persons from entering the country. The succeeding provision in the Aliens Act, 1905, s. 3, sub-s. (2), seems to infringe the maxim, *Nemo bis punitur pro eodem delicto*, since by

it an alien is liable to be expelled because he has previously undergone sentence in another country for an extradition crime. Expulsion or banishment from the country can only be regarded as one of the gravest punishments [*Sir Erskine May's Constit. Hist.*, v. 3, c. xi. p. 53], and there seems something inconsistent in its being annexed to acts which are not crimes at all [*Aliens Act, 1905*, s. 3, sub-s. (1), par. (b) (i)]. The persons who were liable to be expelled by the earlier Aliens Acts were persons who were considered dangerous to the peace of the country. Further, an alien who has, for instance, been in receipt of parochial relief disqualifying for the parliamentary franchise, and against whom a Court of summary jurisdiction has issued a certificate with view to expulsion, must be either remitted to prison or admitted to bail, till his expulsion is decided upon by the Secretary of State, without having committed any offence. It is difficult to regard proceedings for expulsion as a purely administrative act.

But the wording of the Summary Jurisdiction (Aliens) Rules, 1906, dated January 3, 1906, that the provisions of the Summary Jurisdiction Acts with reference to proceedings on complaint shall apply to proceedings to expel pauper aliens, only "in so far as applicable" [*cf. ante*, p. 62], necessitates the conclusion that the proceedings for expulsion are mere administrative acts, like the inspection of immigrants before landing.\*

\* The Aliens Act, 1905, s. 9, sub-s. (2), provides that "Section thirty-three of the Summary Procedure (Scotland) Act, 1864, shall be

In the strict sense of the term a complaint is not applicable to the commencement of proceedings for the expulsion of an alien under the Aliens Act, s. 3, sub-s. 1, par. (b) (i). "A complaint against a person is made when that person is liable by law to have an order made upon by justices for the payment of money, or to do some act which he has refused or neglected to do contrary to law" [*Summary Jurisdiction Procedure, Eighth Edition, by Cecil George Douglas, p. 3*]. But neither the receipt of parochial relief disqualifying for the parliamentary franchise, nor living in insanitary conditions due to overcrowding, are acts contrary to law, and the Aliens Act does not make them so even in the

substituted as respects Scotland for section twenty-nine of the Summary Jurisdiction Act, 1879; and the Lord Chancellor of Ireland may, as respects Ireland, make rules for the purposes of this Act for which rules may be made under section twenty-nine of the Summary Jurisdiction Act, 1879; and all rules so made shall be laid, as soon as may be, before both Houses of Parliament." The Summary Jurisdiction Act [*Stat. 42 & 43 Vict. c. 49*], s. 29, provides—(1) The Lord High Chancellor of Great Britain may from time to time make, and when made, rescind alter and add to, rules in relation to the following matters, or any of them; that is to say, (a) The giving security under this Act, etc. The sub-section relevant to the Aliens Act is the second sub-section, which provides that (2) The Lord Chancellor may, in the exercise of the power given him by this section, annul alter or add to any forms contained in the Summary Jurisdiction Act, 1848, or *any forms relating to summary proceedings contained in any other Act*. (3) Any rule purporting to be made in pursuance of this section shall be laid before both Houses of Parliament as soon as may be after it is made, if Parliament be then sitting, or if not then sitting, within one month after the commencement of the then next session of Parliament, and shall be judicially noticed.



alien, since it does not declare either to be a misdemeanour. While there can be no doubt that the proceedings for the expulsion of an alien is an act of administration, it clearly infringes the principles of the Common Law and Magna Carta, that a person should be liable to be sent to prison without being charged with committing a crime. But nothing less than this is liable to occur in the case of aliens who are found under the circumstances mentioned in s. 3, sub-s. (1), par. (b) (i), till the question of their expulsion is settled by the Secretary of State. An alien who is thus sent to prison would clearly have a better right to bring a writ of habeas corpus than the conditionally disembarked alien who unsuccessfully applied for a writ of habeas corpus in the United States [*Slovitz Case, Parl. Pap., 1887, No. 81*]. An obvious criticism on the Right of Expulsion in the Aliens Act, 1905, is that the Act does not annex any additional punishment to meet the case of wilful defiance of a previous expulsion order against the alien. Additional punishment was invariably provided in the previous Acts for such an offence. In 1815 it was provided that an alien who had disobeyed an expulsion order was liable to be sentenced to death [*Stat. 55 Geo. III. c. 54, s. 36*]. Such a provision is now to be considered merely reminiscent of the time when it was a capital offence to steal bleaching linen, and is quite out of harmony with a century of subsequent legislation. But the far milder Removal of Aliens Act, 1848, s. 2, adopted the early principle, that an additional punishment

should be inflicted in the case of disobedience to an expulsion order. By the Act of 1848 an alien who disobeyed the Order of the Secretary of State to depart this realm, incurred a liability to one month's imprisonment for the first offence, and twelve months for the second or any subsequent offence.

Under the present Act, however often the disobedience were exhibited, the alien would merely incur the same liability each time, that of being sentenced to a term of three months' imprisonment with hard labour as a rogue and vagabond.\*

\* *Cf. Aliens Act, 1905, s. 2, sub-s. (2), and s. 7, sub-s. (1).* The seventh section, sub-section one, provides that if an offence under the Act is committed by any person as an immigrant or alien he shall be deemed a rogue and a vagabond within the meaning of the Vagrancy Act, 1824, and is liable to be dealt with as if the offence were an offence under sect. 4 of that Act. The Vagrancy Act, 1824 [*Stat. 5 Geo. IV. c. 83, s. 4*], after declaring that persons committing certain offences are to be deemed rogues and vagabonds, provides that they are liable, on summary conviction, to be committed to the House of Correction and to be sentenced to three calendar months' hard labour. The distinction between gaols and houses of correction was abolished in 1866 [*Stat. 28 & 29 Vict. c. 126, ss. 4, 5, 6*], and with the transfer to the Crown of all prisons vested in local authorities, the history of this particular place of imprisonment ends, and references to the common gaol or house of correction in statutes are now to be read as references to the prisons appointed for a particular area by the Secretary of State [*Statutory Rules and Orders Revised, vol. v. p. 648*]. The Vagrancy Act, 1824, s. 4, is one of the enactments referred to in the Schedule to the Criminal Evidence Act, 1898, and therefore the wife or husband of an immigrant may be called as a witness either for the prosecution or defence, and without the consent of the person charged, unless the offence against the Aliens Act is committed in Ireland or Scotland, to which the Vagrancy Act, 1824, does not apply [*cf. s. 22, ibid.*]. As the Vagrancy Act does not apply to either Scotland or Ireland, the application of the Aliens Act, 1905, to those parts of the United Kingdom is that any immigrant or alien

The effect of the Rules and Orders issued under the Act, so far as regards the return of aliens to be made by the master, is to supplement the requisition of the Merchant Shipping Act, 1894, s. 336, in a far more effective manner than the repealed provision of the Registration of Aliens Act, 1836, s. 3. The requisitions of the Merchant Shipping Act, s. 336, providing for a list of steerage passengers who immigrate into the United Kingdom from "any port out of Europe and not within the Mediterranean Sea," seem further likely to be practically superseded by the Aliens Act at least as far as regards immigration ports. As the return of alien steerage passengers under the Aliens Act extends to all immigrants of that description, whatever was their port of embarkation, it clearly includes steerage passengers comprised

offending against the Act incurs a liability on conviction to imprisonment for three months with hard labour [*cf. Aliens Act, 1905, s. 7, sub-s. (1), and s. 9, sub-s. (1)*]. It may be worth while to add that, on a subsequent conviction under the Vagrancy Act, 1824, s. 4, a person is liable by special order of quarter sessions to be whipped. The whipping of women was abolished so long ago as 1820 by the Stat. 1 Geo. IV. c. 57. But whipping under order of a Court is a perfectly lawful punishment for misdemeanour in the case of males, whether under sixteen years of age [*Larceny Act, 1861; Malicious Damage Act, 1861; Offences against the Person Act, 1861; and section 4 of the Criminal Law Amendment Act, 1885*] or over that age [*5 & 6 Vict. c. 51, s. 2; Offences against the Person Act, 1861, ss. 21, 46*]. Whipping is unaffected by the Declaration in the Bill of Rights, but in practise it is never now inflicted except on statutory authority, and the amount to be inflicted is in the discretion of the Court. The application of the Vagrancy Act to the Aliens Act seems clearly to induce the view that there is statutory authority, on which a Court of Summary Jurisdiction might act, for inflicting the punishment of whipping on a male alien, at least in some cases, as when he returns to this country after having been expelled.

in the section of the Merchant Shipping Act, which does not distinguish between passengers who are aliens and those who are not. But as regards alien steerage passengers who immigrate into the United Kingdom from "any port out of Europe and not within the Mediterranean Sea," it clearly appears supererogatory for the master to compile lists of persons twice over. The point is of interest as regards the masters of vessels, as non-compliance with the provisions of the Merchant Shipping Act, 1894, s. 336, exposes them to a fine of £50; while non-compliance with the requisitions of the Aliens Act, s. 5, sub-s. (1), will expose them to a fine of £100. The master under the Aliens Act will also be required to make a return as to transmigrants and emigrants. It will be possible under the forms provided to ascertain the identity of persons who arrive in the United Kingdom intending to proceed to the United States. Information will thus be obtained which it was impossible to ascertain under the returns made under the Aliens Registration Act of 1836, s. 3, now repealed by the Aliens Act, s. 10, sub-s. (2).

The increased liability of the master of the vessel constitutes an undoubted feature of the Aliens Act. Under the Aliens Registration Act of 1836, a master of a vessel who failed to specify as to the aliens he had on board, or who made a false declaration, was merely liable to a fine of £20, and a sum of £10 for every alien landed from his vessel whom he had failed to declare [*Ibid.*, *supra*, s. 2].

But now, by the Aliens Act, 1905, s. 1, sub-s. (5) and s. 7, sub-s. (1), a master of a vessel is liable to a fine of £100 if he allows an undesirable immigrant to be landed from his vessel. By s. 5, sub-s. (2), the master of a vessel who fails to make a return as to aliens, or who makes a false return, incurs a liability to the payment of a fine of £100.

Again, by the Aliens Act, 1905, s. 7, sub-s. (4), a master of a vessel is liable on summary conviction to imprisonment for three months with hard labour for any false statement he makes to an immigration officer, medical inspector, Immigration Board, or to the Secretary of State. Under the last Act, the Registration of Aliens Act, 1836, such an offence was either punishable by fine, or by imprisonment for three months without hard labour [*Stat. 6 Will. IV. c. 11, s. 9*]. Even a perfunctory comparison speaks eloquently to the increased stringency of the present Act. Further, if the circumstances that form conditions precedent to the issue of an expulsion order against an alien arise within six months of his landing, the master of the vessel from which he landed is liable to pay to the Secretary of State all expenses incurred in connection with the alien, and is further bound to afford a free passage to the alien and his dependents (if any) to his own country.\*

\* *Aliens Act, 1905, s. 4, sub-s. (2)*. The observations of Sir R. Finlay, A.-G., in the debates on the measure in the House of Commons, show that this provision relates *inter alia* to the case of a conditionally disembarked alien who escapes from the quays or building without examination. The shipowner remains responsible for a

None of the previous Acts imposed a liability of this kind, the reason clearly seeming to be that, in those Acts, reliance was not made merely on prohibitions against landing, but on residence under supervision enforced by the passport system. But it cannot be said that, on a general review, the liability of the shipowner is any greater than under the earliest Aliens Acts, by one at least of which the boat or vessel landing an alien who had not made the declaration required, and who had not produced his passport, was liable to be forfeited [*cf. Stat. Geo. III. c. 50, s. 18 (1798)*].

By the Aliens Act, 1905, the master of a ship incurs a liability to a fine if he allows an undesirable alien to land, or if he refuses to give a return passage to an alien against whom an expulsion order has issued [*s. 1, sub.-s. (5); s. 4, sub.-s. (3)*]. The shipowner clearly cannot be liable to any civil proceedings for any of the above actions, as the act of a master who makes a false return as to immigrants under the Act, appears to be in *pari materia* with the act of a master who signs bills of lading for goods not received on board. In the latter case it has been held the shipowners are not liable [*Grant v. Norway, 20 L. J. C. P. 93*]. Again, shipowners are not estopped by the incorrect representations contained in a bill of lading signed by the master [*Cox,*

conditionally disembarked alien, as the permission to conditionally disembark is a derogation from the prohibitory character of the measure introduced in favour of the shipowner [*Times, July 12, 1905, p. 6, col. e*].

*Patterson, and Co. v. Bruce and Co.* (1886), 18 Q. B. D. 147]. But it is clear that as it is a case of liability to criminal proceedings, the general agency of the master of the vessel and the doctrine of estoppel do not affect the shipowner in any proceedings instituted under the above sections of the Aliens Act. A principal is not liable in an action of deceit for the unauthorized and fraudulent act of a servant or agent committed, not for the general or special benefit of the principal, but for the servant's own private ends [*per Lord Bowen (then Bowen, L.J.) in British Mutual Banking Co. v. Charnwood Forest Railway Co.*, 18 Q. B. D. 714, 717]. A fraud cannot be committed for the benefit of a limited company, as a fraud is not a business transaction, and no officer of a company can be even colourably discharging a duty to the company by committing a fraud [*per Lord Brampton in George Whitechurch, Limited v. Cavanagh* (1901), 85 L. T. 349, 356].

But the liability to afford a free passage to an alien and his dependents (if any), and proper accommodation and maintenance during the passage, when he is ordered to be expelled, is a liability that falls upon the shipowner [s. 4, *sub-s.* (2)]. The master in general appears to all the world the agent of the owners in matters relating to the usual employment of the ship, so does he in matters relating . . . to the victualling of the ship [*Abbott on Shipping*, 5th ed., p. 101].

The shipowner clearly incurs liability in the case of the escape of a conditionally disembarked immigrant,

as he may be required by the Secretary of State to give security in the case of immigrants conditionally disembarked [s. 2, sub-s. 2, and Rules, *infra*, p. 98].

The Aliens Act, s. 7, sub-s. (2), provides that "Sections 684, 685, and 686 of the Merchant Shipping Act, 1894 (which relate to the jurisdiction of courts and justices), shall apply with respect to jurisdiction under this Act, as they apply with respect to jurisdiction under that Act, and section 693 of the Merchant Shipping Act, 1894 (which relates to the levying of sums ordered to be paid by distress on a ship), shall apply with respect to any fines of other sums of money to be paid under this Act by the master of a ship as it applies with respect to fines and other sums of money to be paid under that Act." By the Merchant Shipping Act, 1894, s. 684, an offence may be prosecuted either in the place where it was committed, or else in the place where the person complained of may be. By section 685, jurisdiction over ships lying off the coasts is given to the magistrates of courts situate on the coasts. By section 686 of the Merchant Shipping Act, 1894, jurisdiction is given to any court in the dominions of the Crown in the case of offences committed on the high seas which would have had cognizance of the offence if it had been committed on board a British ship within the limits of its ordinary jurisdiction. Finally, the Merchant Shipping Act, 1894, s. 693, provides that where a court, justice of the peace, or magistrate has (*inter alia*) directed either a master of a ship or the owner to pay a fine,



and the direction is disobeyed, the fine is leviable by distress on the ship.

The liability of either the master or owner of the ship under the Aliens Act is of so serious a character that it is plain to demonstration that the operation of the Act of Parliament, like that of the Act of Congress, will be even more obvious at the port of embarkation than at the port of debarkation.

In view of the stringency of the Aliens Act, it is, fortunately, not possible to doubt that it will prove at least as effective as the United States legislation on the subject of immigration.\*

There are two obvious amendments of the Act which are possible without in any way derogating from the Right of Asylum. One is that a nominal poll-tax should be levied on the passenger movement inward to the United Kingdom from the Continent, in order that an immigration fund should be created, as in the United States. Another submitted amendment is that an additional punishment should be provided in the case of an alien who is found in the United Kingdom after he has once been expelled, as was invariably done in previous Acts. The very large powers conferred on the Secretary of State under

\* As to the operation of the Act of Congress in preventing even the embarkation of aliens, cf. the speech of Major Evans-Gordon in the House of Commons, *Times*, May 3, 1905. The hon. member observed that in 1904, 18,691 immigrants were rejected by the United States, but far larger numbers had their passages refused. On account of disease, 6000 intending emigrants to America were rejected at German frontier stations, and 2000 more on the quays.

s. 8 of the Aliens Act, prove that, without any amendment, the Aliens Act could be extended, as the American legislation has recently been, to cabin as well as steerage passengers.

## ADDENDUM TO PAGE 81.

Offence.	Section or sub-section of statute.	Person liable.	Person offending.	Maximum punishment.
Refusing to give information to the master of the ship for the purpose of the return as to aliens	s. 5, sub-s. (2)	Alien	Alien	Three months' imprisonment with hard labour
Giving false information to the master of the ship for the purpose of the return as to aliens	s. 5, sub-s. (2)	Alien	Alien	Three months' imprisonment with hard labour

**TABLE OF PUNISHMENTS AND PENALTIES  
UNDER THE ALIENS ACT, 1905 (5 EDW. VII. C. 13).**

Offence.	Section or sub-section of statute.	Person liable.	Person offending.	Maximum punishment.
Landing, or allowing a person to land, in contravention of Act	s. 1, sub-s. (5)	Immigrant or master of ship	Immigrant or master of ship	Three months' imprisonment with hard labour or £100 fine
Being found in the United Kingdom after an expulsion order has been made by the Secretary of State	s. 3, sub-s. (2)	Alien	Alien	Three months' imprisonment with hard labour
Landing an alien who is subsequently ordered to be expelled within six months of landing	s. 4, sub-s. (2)	Master of ship and master of any ship belonging to same owner	Master of ship	Liability to pay Secretary of State any sums paid in connection with alien, and to convey him and his dependents (if any) free of charge to the country whence he came, with accommodation and maintenance during passage.
Neglecting to give return passage to alien against whom an expulsion order has been made within six months of his landing	s. 4, sub-s. (3)	Master of ship from which alien landed in the first instance	Master of ship from which alien landed in the first instance	Fine of £100

Offence.	Section or sub-section of statute.	Person liable.	Person offending.	Maximum punishment.
Neglecting to make a return giving such particulars with respect to any such passengers who are aliens as may be required for the time being by order of the Secretary of State	s. 5, sub-s. (2)	Master of ship	Master of ship	A fine of £100
Making a false return as to any of the particulars with respect to any such passengers who are aliens as may be required for the time being by order of the Secretary of State	s. 5, sub-s. (2)	Master of ship	Master of ship	A fine of £100
Making, for the purposes of this Act, any false statement or false representation to an immigration officer, medical inspector, Immigration Board, or the Secretary of State	s. 7, sub-s. (4)	Immigrant, master of ship, or other person	Immigrant, master of ship, or other person	Three months' imprisonment with hard labour

# APPENDIX I

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## TEXT OF THE ALIENS ACT, 1905 (STAT. 5 EDW. VII. CH. 13), AND RULES AND ORDERS MADE UNDER THE ACT.

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ALIENS ACT, 1905.

[5 EDW. VII. CH. 13.]

### ARRANGEMENT OF SECTIONS.

#### *Regulation of Alien Immigration.*

Section

1. Power to prevent the landing of undesirable A.D. 1905.  
immigrants.
2. Immigration board and rules.

#### *Expulsion of Undesirable Aliens.*

3. Power of Secretary of State to make an expulsion  
order.
4. Expenses of return of aliens, &c.

#### *General.*

5. Returns as to aliens.
6. Appointment of officers, and expenses.
7. Supplemental provisions.

A. D. 1905. Section

8. Definitions.

9. Application of Act to Scotland and Ireland.

10. Short title and commencement, and repeal.

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*An Act to amend the Law with regard to Aliens.*

[11th August, 1905.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

*Regulation of Alien Immigration.*

Power to prevent the landing of undesirable immigrants.

1.—(1) An immigrant shall not be landed in the United Kingdom from an immigrant ship except at a port at which there is an immigration officer appointed under this Act, and shall not be landed at any such port without the leave of that officer given after an inspection of the immigrants made by him on the ship, or elsewhere if the immigrants are conditionally disembarked for the purpose, in company with a medical inspector, such inspection to be made as soon as practicable, and the immigration officer shall withhold leave in the case of any immigrant who appears to him to be an undesirable immigrant within the meaning of this section.

(2) Where leave to land is so withheld in the case of any immigrant, the master, owner, or agent of the ship, or the immigrant, may appeal to the immigration board of the port, and that board shall, if they are satisfied that leave to land should not be withheld under this

Act, give leave to land, and leave so given shall operate A.D. 1905. as the leave of the immigration officer.

(3) For the purposes of this section an immigrant shall be considered an undesirable immigrant—

(a) if he cannot show that he has in his possession or is in a position to obtain the means of decently supporting himself and his dependents (if any); or

(b) if he is a lunatic or an idiot, or owing to any disease or infirmity appears likely to become a charge upon the rates or otherwise a detriment to the public; or

(c) if he has been sentenced in a foreign country with which there is an extradition treaty for a crime, not being an offence of a political character, which is, as respects that country, an extradition crime within the meaning of the Extradition Act, 1870; or

33 & 34  
Vict. c. 52.

(d) if an expulsion order under this Act has been made in his case;

but, in the case of an immigrant who proves that he is seeking admission to this country solely to avoid prosecution or punishment on religious or political grounds or for an offence of a political character, or persecution, involving danger of imprisonment or danger to life or limb, on account of religious belief, leave to land shall not be refused on the ground merely of want of means, or the probability of his becoming a charge on the rates, nor shall leave to land be withheld in the case of an immigrant who shows to the satisfaction of the immigration officer or board concerned with the case that, having taken his ticket in the United Kingdom and embarked direct therefrom for some other country immediately after a period of residence in the United

A.D. 1905. Kingdom of not less than six months, he has been refused admission in that country and returned direct therefrom to a port in the United Kingdom, and leave to land shall not be refused merely on the ground of want of means to any immigrant who satisfies the immigration officer or board concerned with the case that he was born in the United Kingdom, his father being a British subject.

(4) The Secretary of State may, subject to such conditions as he thinks fit to impose, by order exempt any immigrant ships from the provisions of this section if he is satisfied that a proper system is being maintained for preventing the embarkation of undesirable immigrants on those ships, or if security is given to his satisfaction that undesirable immigrants will not be landed in the United Kingdom from those ships except for the purpose of transit.

Any such order of exemption may be withdrawn at any time at the discretion of the Secretary of State.

(5) Any immigrant who lands, and any master of a ship who allows an immigrant to be landed, in contravention of this section shall be guilty of an offence under this Act, but an immigrant conditionally disembarked shall not be deemed to have landed so long as the conditions are complied with.

Immigration board and rules.

2.—(1) The immigration board for a port shall consist of three persons summoned in accordance with rules made by the Secretary of State under this Act out of a list approved by him for the port comprising fit persons having magisterial, business, or administrative experience.

(2) A Secretary of State may make rules generally with respect to immigration boards and their officers,



and with respect to appeals to those boards, and with A.D. 1905. respect to the conditional disembarkation of immigrants for the purpose of inspection, appeals, or otherwise, and may by those rules amongst other things provide for the summoning and procedure of the board, and for the place of meeting of the board, and for the security to be given by the master of the ship in the case of immigrants conditionally disembarked. Rules made under this section shall provide for notice being given to masters of immigrant ships and immigrants informing them of their right of appeal, and also, where leave to land is withheld in the case of any immigrant by the immigration officer, for notice being given to the immigrant and the master of the immigrant ship of the grounds on which leave has been withheld.

*Expulsion of Undesirable Aliens.*

3.—(1) The Secretary of State may, if he thinks fit, make an order (in this Act referred to as an expulsion order) requiring an alien to leave the United Kingdom within a time fixed by the order, and thereafter to remain out of the United Kingdom—

Power of Secretary of State to make an expulsion order.

- (a) if it is certified to him by any court (including a court of summary jurisdiction) that the alien has been convicted by that court of any felony, or misdemeanour, or other offence for which the court has power to impose imprisonment without the option of a fine, or of an offence under paragraph twenty-two or twenty-three of section three hundred and eighty-one of the Burgh Police (Scotland) Act, 1892, or of an offence as a prostitute under section seventy-two of the Towns Improvement (Ireland) Act, 1854, or paragraph eleven of section fifty-four

55 & 56  
Vict. c. 55.  
17 & 18  
Vict. c.  
103.

A.D. 1905.  
 2 & 3  
 Vict. c. 47.

of the Metropolitan Police Act, 1839, and that the court recommend that an expulsion order should be made in his case, either in addition to or in lieu of his sentence; and

- (b) if it is certified to him by a court of summary jurisdiction after proceedings taken for the purpose within twelve months after the alien has last entered the United Kingdom, in accordance with rules of court made under section twenty-nine of the Summary Jurisdiction Act, 1879, that the alien—

42 & 43  
 Vict. c. 49.

(i) has within three months from the time at which proceedings for the certificate are commenced been in receipt of any such parochial relief as disqualifies a person for the parliamentary franchise, or been found wandering without ostensible means of subsistence, or been living under insanitary conditions due to overcrowding; or

(ii) has entered the United Kingdom after the passing of this Act, and has been sentenced in a foreign country with which there is an extradition treaty for a crime not being an offence of a political character which is as respects that country an extradition crime within the meaning of the Extradition Act, 1870.

(2) If any alien in whose case an expulsion order has been made is at any time found within the United Kingdom in contravention of the order, he shall be guilty of an offence under this Act.

Expenses  
 of return  
 of alien,  
 etc.

4.—(1) Where an expulsion order is made in the case of any alien, the Secretary of State may, if he thinks fit, pay the whole or any part of the expenses of

or incidental to the departure from the United Kingdom A.D. 1905. and maintenance until departure of the alien and his dependents (if any). —

(2) If an expulsion order is made in the case of any alien (not being an alien who last entered the United Kingdom before the commencement of this Act, or an immigrant in whose case leave to land has been given under this Act) on a certificate given within six months after he has last entered the United Kingdom, the master of the ship in which he has been brought to the United Kingdom and also the master of any ship belonging to the same owner shall be liable to pay to the Secretary of State as a debt due to the Crown any sums paid by the Secretary of State under this section in connexion with the alien, and shall, if required by the Secretary of State, receive the alien and his dependents (if any) on board his ship, and afford them free of charge a passage to the port of embarkation and proper accommodation and maintenance during the passage.

(3) If the master of a ship fails to comply with the provisions of this section as to giving a passage to an alien or his dependents, he shall be guilty of an offence under this Act.

#### *General.*

5.—(1) The master of any ship landing or embarking passengers at any port in the United Kingdom shall furnish to such person and in such manner as the Secretary of State directs a return giving such particulars with respect to any such passengers who are aliens as may be required for the time being by order of the Secretary of State, and any such passenger shall

Returns as to aliens.

A.D. 1905. furnish the master of the ship with any information required by him for the purpose of the return.

(2) If the master of a ship fails to make the return required by this section, or makes a false return, he shall be guilty of an offence under this Act, and if any alien refuses to give information required by the master of the ship for the purpose of the return under this section, or gives any false information for the purpose, he shall be liable on summary conviction to imprisonment for a term not exceeding three months with hard labour.

(3) The Secretary of State may by order exempt from the provisions of this section any special class of passengers or voyages, or any special ships or ports, but any such order may be withdrawn at any time at his discretion.

Appoint-  
ment of  
officers,  
and ex-  
penses.

6.—(1) The Secretary of State shall appoint, at such ports in the United Kingdom as he thinks necessary for the time being, immigration officers and medical inspectors, and may appoint or employ such other officers or persons as may be required for the purposes of immigration boards, or for the purpose of the returns to be given under this Act, or otherwise for carrying this Act into effect, and the salary and remuneration of any officers, inspectors, or persons so appointed or employed, and any expenses otherwise incurred in carrying this Act into effect (including such payment as may be sanctioned by the Treasury for the attendance of any person as a member of an immigration board to hear appeals), shall, up to an amount approved by the Treasury, be paid out of moneys provided by Parliament.

(2) The Secretary of State may arrange with the Commissioners of Customs or any other Government

department or any port sanitary authority for the A.D 1905. appointment or employment of officers of Customs or officers of that department or authority as officers under this Act.

(3) The Secretary of State shall make known, in such manner as he thinks best suited for the purpose, the ports at which immigration officers are for the time being appointed under this Act.

7.—(1) Any person guilty of an offence under this Act shall, if the offence is committed by him as the master of a ship, be liable, on summary conviction, to a fine not exceeding one hundred pounds, and, if the offence is committed by him as an immigrant or alien, be deemed a rogue and vagabond within the meaning of the Vagrancy Act, 1824, and be liable to be dealt with accordingly as if the offence were an offence under section four of that Act. <sup>Supplemental provisions.</sup> 5 Geo. IV. c. 83.

(2) Sections six hundred and eighty-four, six hundred and eighty-five, and six hundred and eighty-six of the Merchant Shipping Act, 1894 (which relate to the jurisdiction of courts and justices), shall apply with respect to jurisdiction under this Act as they apply with respect to jurisdiction under that Act, and section six hundred and ninety-three of the Merchant Shipping Act, 1894 (which relates to the levying of sums ordered to be paid by distress on a ship), shall apply with respect to any fines or other sums of money to be paid under this Act by the master of a ship as it applies with respect to fines and other sums of money to be paid under that Act. <sup>57 & 58 Vict. c. 60.</sup>

(3) Any immigrant who is conditionally disembarked, and any alien in whose case an expulsion order is made, while awaiting the departure of his ship, and whilst being conveyed to the ship, and whilst on board the

A.D. 1905. ship until the ship finally leaves the United Kingdom, and any alien in whose case a certificate has been given by a court, with a view to the making of an expulsion order under this Act, until the Secretary of State has decided upon his case, shall be liable to be kept in custody in such manner as the Secretary of State directs, and whilst in that custody shall be deemed to be in legal custody.

(4) If any immigrant, master of a ship, or other person, for the purposes of this Act, makes any false statement or false representation to an immigration officer, medical inspector, immigration board, or to the Secretary of State, he shall be liable on summary conviction to imprisonment for a term not exceeding three months with hard labour.

(5) If any question arises on any proceedings under this Act, or with reference to anything done or proposed to be done under this Act, whether any person is an alien or not, the onus of proving that that person is not an alien shall lie on that person.

(6) In carrying out the provisions of this Act, due regard shall be had to any treaty, convention, arrangement, or engagement with any foreign country.

Defini-  
tions.

8.—(1) The expression “immigrant” in this Act means an alien steerage passenger who is to be landed in the United Kingdom, but does not include—

(a) Any passenger who shows to the satisfaction of the immigration officer or board concerned with the case that he desires to land in the United Kingdom only for the purpose of proceeding within a reasonable time to some destination out of the United Kingdom; or

(b) Any passengers holding prepaid through tickets to some such destination, if the master or

owner of the ship by which they are brought to the United Kingdom, or by which they are to be taken away from the United Kingdom, gives security to the satisfaction of the Secretary of State that, except for the purposes of transit or under other circumstances approved by the Secretary of State, they will not remain in the United Kingdom, or, having been rejected in another country re-enter the United Kingdom, and that they will be properly maintained and controlled during their transit. A.D. 1905.

(2) The expression "immigrant ship" in this Act means a ship which brings to the United Kingdom more than twenty alien steerage passengers, who are to be landed in the United Kingdom, whether at the same or different ports, or such number of those passengers as may be for the time being fixed by order of the Secretary of State, either generally or as regards any special ships or ports.

(3) The expression "passenger" in this Act includes any person carried on the ship other than the master and persons employed in the working, or service, of the ship, and the expression "steerage passenger" in this Act includes all passengers except such persons as may be declared by the Secretary of State to be cabin passengers by order made either generally or as regards any special ships or ports.

(4) If any question arises under this Act on an appeal to an immigration board whether any ship is an immigrant ship within the meaning of this Act, or whether any person is an immigrant, a passenger, or a steerage passenger, within the meaning of this Act, or whether any offence is an offence of a political character,

A.D. 1905. or whether a crime is an extradition crime, that question shall be referred to the Secretary of State in accordance with rules made under this Act, and the board shall act in accordance with his decision.

(5) The Secretary of State may withdraw or vary any order made by him under this section.

Applica-  
tion of  
Act to  
Scotland  
and  
Ireland.

9.—(1) In the application of this Act to Scotland and Ireland the words “be liable on summary conviction to imprisonment for a term not exceeding three months with hard labour” shall be substituted for the words “be deemed a rogue and vagabond within the meaning of the Vagrancy Act, 1824, and be liable to be dealt with accordingly as if the offence were an offence under section four of that Act.”

27 & 28  
Vict. c. 53.

(2) Section thirty-three of the Summary Procedure (Scotland) Act, 1864, shall be substituted as respects Scotland for section twenty-nine of the Summary Jurisdiction Act, 1879; and the Lord Chancellor of Ireland may, as respects Ireland, make rules for the purposes of this Act for which rules may be made under section twenty-nine of the Summary Jurisdiction Act, 1879; and all rules so made shall be laid, as soon as may be, before both Houses of Parliament.

Short title  
and com-  
mence-  
ment, and  
repeal.  
6 & 7  
Will. IV.  
c. 11.

10.—(1) This Act may be cited as the Aliens Act, 1905, and shall come into operation on the first day of January nineteen hundred and six.

(2) The Registration of Aliens Act, 1836, is hereby repealed.



STATUTORY RULES AND ORDERS, 1905. A.D. 1905.  
No. 1324.

ALIEN.

DIRECTIONS, DATED DECEMBER 4, 1905, OF THE SECRETARY OF STATE FOR THE HOME DEPARTMENT, UNDER THE ALIENS ACT, 1905 (5 EDW. VII. c. 13, SS. 3 & 7 (3) ), AS TO CUSTODY IN CONNECTION WITH EXPULSION ORDERS.

In pursuance of the provisions of Section 7 (3) of the Aliens Act, 1905, I hereby direct, with regard to the Custody of an Alien in respect of whom a Certificate has been given by a Court with a view to his Expulsion from the United Kingdom, that—

1. (1) Where a Court gives a Certificate with a view to the expulsion of an alien, either under Section 3 (1) (b) of the Aliens Act, 1905, or under Section 3 (1) (a) thereof, without imposing a sentence of imprisonment, the alien shall, unless the Court otherwise directs and admits him to bail, stand committed to the prison to which the Court ordinarily commits prisoners until the Orders of the Secretary of State with respect to his expulsion are received.

(2) Where a Court gives a Certificate under Section 3 (1) (a) and imposes a term of imprisonment not exceeding one month, the alien shall, if the Secretary of State has not sooner decided upon his case, be detained in prison until the Orders of the Secretary of State with respect to his expulsion have been received.

- A.D. 1905. 2. In any such case as aforesaid, a copy of the Certificate, signed by the Clerk or other proper officer of the Court giving the Certificate, shall be sufficient authority to the Police to take the alien into custody and convey him to prison, and to the Governor of the prison to receive and detain him until the Orders of the Secretary of State with respect to his expulsion are received.
3. Where any such Certificate is given by a Court, the Certificate shall be forwarded forthwith to the Secretary of State, and a copy of the Certificate, signed by the Clerk or other proper officer of the Court, shall be given to the officer charged with the duty of conveying the alien to prison.

*A. Akers-Douglas,*

One of His Majesty's Principal  
Secretaries of State.

Whitehall,

4th December, 1905.

STATUTORY RULES AND ORDERS, 1905.

No. 1325.

ALIEN.

RULES, DATED DECEMBER 19, 1905, MADE BY THE  
SECRETARY OF STATE FOR THE HOME DEPARTMENT,  
UNDER THE ALIENS ACT, 1905 (5 EDW. VII. C. 13).

In pursuance of the provisions of the Aliens Act, 1905, I hereby make the following Rules, which shall have effect at the ports (hereinafter called Immigration Ports) of

Cardiff, Dover, Folkestone, Grangemouth, Grimsby, Harwich, Hull, Leith, Liverpool, London (including Queenborough), Newhaven, Southampton, and the Tyne Ports (comprising Newcastle, North Shields and South Shields, which are to be deemed to constitute one Port for the purpose of these Rules) at which Immigration Officers and Medical Inspectors have been appointed and Immigration Boards have been established, and at such other ports as may from time to time be designated as Immigration Ports:—

1. Where leave to land is given (otherwise than after an appeal to the Immigration Board), it shall be given by the Immigration Officer to the immigrant, and may be given verbally. A.D. 1905.  
Immigration Ports.  
Leave to land given.

2. Where the Medical Inspector is of opinion that an alien is an undesirable immigrant within the meaning of Section 1 (3) (b) of the Aliens Act, 1905, he shall state his opinion in the Form No. 1 in the Appendix to these Rules, and deliver the Form to the Immigration Officer. Opinion of Medical Inspector

3. Where leave to land is withheld by the Immigration Officer, notice thereof and of the grounds of refusal and of the right of appeal against the refusal shall be given by him to the master of the ship, and to the immigrant, and shall be in the Form No. 2 in the Appendix to these Rules. Leave to land withheld.

4. Where an immigrant or other person entitled to appeal against the refusal of leave to land, desires to appeal, he shall, if practicable, give notice to the Immigration Officer before he leaves the ship or other place of inspection, and such notice may be given verbally; provided that the master, owner, or agent of the ship may (and shall if required by an immigrant) within 24 hours after the refusal of leave to land give Notice of Appeal to Immigration Officer.

A.D. 1905. written notice of appeal either by delivery to the Immigration Officer a notice in the Form No. 3 in the Appendix to these Rules, or by sending a similar notice to the nearest Custom House or Customs Watchhouse.

Notice of Appeal to Immigration Board Clerk. 5. Where the Immigration Officer receives notice of appeal from an immigrant or other person entitled to appeal he shall forthwith send notice to the Immigration Board Clerk. Such notice may be in the Form No. 4 in the Appendix to these Rules.

Procedure with regard to Transmigrants. 6. For the purpose of enabling the Immigration Officer to satisfy himself that any passenger included in a Return of Transmigrants in respect of any immigrant ship is an alien passenger within the meaning of Section 8 (1) (b) of the Aliens Act, 1905, no passenger so included shall, except where the Secretary of State has sanctioned conditional disembarkation for the purpose, be allowed to leave the ship before the Immigration Officer has satisfied himself of the accuracy of that Return.

Con- ditional Disembarkation. 7. Conditional disembarkation of immigrants may be sanctioned by the Secretary of State when he is satisfied that proper provision has been made in a place and under conditions approved by him for the accommodation, maintenance, control, and safe custody of the immigrants so disembarked.

Security for Conditional Disembarkation. 8. Where security is required by the Secretary of State to be given for the conditional disembarkation of immigrants it shall be by bond, and shall be given by the master of the ship unless in any case the owner of a ship has given, to the satisfaction of the Secretary of State, security by bond covering all the ships owned by him arriving at the port or ports where conditional disembarkation has been sanctioned.

9. Where an immigrant should, in the opinion of the

Port Medical Officer of Health or Medical Inspector, be removed from an immigrant ship for treatment or observation at a hospital he shall be conditionally disembarked for the purpose, and shall be liable, before release from the hospital, to inspection for the purposes of the Act.

A.D. 1905.

Con-  
ditional  
Disem-  
barkation  
to a  
Hospital.

10. Where an immigrant, or the master, owner, or agent of a ship, appeals against a refusal of leave to land, the immigrant shall, unless otherwise ordered, be disembarked for the purpose of being brought before an Immigration Board, and shall be dealt with as conditionally disembarked until leave to land has been given or he has been re-embarked for the purpose of leaving the United Kingdom.

Con-  
ditional  
Disem-  
barkation  
for Ap-  
peal.

11. For every Immigration Port there shall be an Immigration Board Clerk.

Immigra-  
tion Board  
Clerk.

12. The Medical Inspector and the Immigration Board Clerk, when unable personally to perform their duties under the Act or these Rules, may act through a duly qualified assistant under such conditions as the Secretary of State may from time to time impose.

Assistants  
to Officers.

13. The duties of the Immigration Board Clerk shall be to act as Clerk to the Immigration Board, and in particular—

Duties of  
Clerk.

- (a) To keep a list of the persons nominated by the Secretary of State for service on the Immigration Board.
- (b) To summon Boards for the purpose of considering any appeals of which he receives notice from the Immigration Officer.
- (c) To attend the meetings of the Boards.
- (d) To take minutes of the proceedings of the Boards, and to furnish such information or returns as the Secretary of State may require.

A.D. 1905. (e) In the case of any reference to the Secretary of State under Section 8 (4) of the Aliens Act, 1905, to furnish a report on the question in dispute, accompanied by any statements in writing made by any party to the dispute.

Summons to Immigration Officer. 14. When a notice of appeal has been received by the Immigration Board Clerk he shall, unless a Board has already been summoned by which the appeal can be considered, forthwith summon a Board, to be held, if practicable, not more than 24 hours after receipt of the notice. In calculating the 24 hours, Sundays and Bank Holidays shall be excluded.

The notice summoning a Board may be in the Form No. 5 in the Appendix to these Rules.

Method of Summoning Members of Board. 15. The Clerk shall, so far as practicable, summon every member on the list in turn: provided that, where possible, a Magistrate shall always be a member of the Board.

Place of Meeting of Board. 16. The Boards shall meet at the places appointed by the Secretary of State from time to time for such meetings.

Chairman of Board. 17. The Chairman of a Board shall, where any Magistrate is a Member of the Board, be a Magistrate; and, subject thereto, the Members shall choose the Chairman.

Opinion of Majority to prevail. 18. In the event of any disagreement between the Members of a Board the opinion of the majority shall prevail.

Adjournment. 19. Where a Board is of opinion that it is desirable to make further inquiries before deciding a case, it shall have power to adjourn the hearing.

Notice of Meeting to Immigration 20. Notice of the time and place of every meeting of a Board shall be given to the Immigration Officer by the Clerk, and, if any immigrant whose case is to be

heard by a Board has been rejected on medical grounds, also to the Medical Inspector. The notices may be respectively in Forms Nos. 6 and 7 in the Appendix to these Rules.

21. When the Immigration Officer receives notice of the meeting of a Board, he shall forthwith communicate the time and place thereof to the immigrant concerned, and to any other person who may be an appellant.

22. The Immigration Officer shall attend the meetings of the Boards, and the Medical Inspector, when the case of any immigrant who has been rejected on medical grounds is to be considered, shall also attend unless he receives notice dispensing with his attendance.

23. The immigrant (and the master, owner, or agent of the ship if an appellant), the Immigration Officer and the Medical Inspector, if present, shall be entitled to be heard, and the Board may put such questions to the alien or other appellant, and make such inquiries, if any, as they think fit. No other person shall be entitled to be heard without special leave from the Board. Subject as aforesaid, the procedure of the Board shall be such as the Board may determine.

24. Where a Board confirms the refusal of leave to land, the Clerk shall countersign the copy of the original refusal of leave to land retained by the Immigration Officer, and shall forthwith give notice of the decision of the Board to the master of the ship and to the owner or agent, if an appellant. The notice shall be in the Form No. 8 in the Appendix to these Rules.

25. Where a Board gives leave to land, the Clerk shall mark with the word "Cancelled" and sign the copy of the Immigration Officer's refusal of leave to land retained by the Immigration Officer, and shall forthwith give notice of the decision of the Board to the master of

A.D. 1905.  
Officer  
and  
Medical  
Inspector.

Notice of  
Meeting  
of Board  
to Ap-  
pellant.

Attend-  
ance at  
Board of  
Immigra-  
tion  
Officer  
and

Medical  
Inspector.  
Procedure  
of Board.

Leave to  
land with-  
held by  
Board.

Leave to  
land given  
by Board.

A.D. 1905. the ship and to the owner or agent, if an appellant.  
— The notice shall be in the Form No. 9 in the Appendix to these Rules.

*H. J. Gladstone,*  
One of His Majesty's Principal  
Secretaries of State.

Whitehall,  
19th December, 1905.



ALIENS ACT, 1905.

OPINION OF MEDICAL INSPECTOR.

I am of opinion that the Alien Immigrant named

\_\_\_\_\_ brought to the

United Kingdom in the ship \_\_\_\_\_

is a lunatic or idiot ;  
or  
is suffering from \_\_\_\_\_  
and appears likely on that account to become a charge  
upon the rates, or otherwise a detriment to the public.

Signature of Medical  
Inspector, and  
Date.

APPENDIX.

FORM No. 1.

ALIENS ACT, 1905.

OPINION OF MEDICAL INSPECTOR.

I am of opinion that the Alien Immigrant named

\_\_\_\_\_ brought to the

United Kingdom in the ship \_\_\_\_\_

is a lunatic or idiot ;  
or  
is suffering from \_\_\_\_\_  
and appears likely on that account to become a charge  
upon the rates, or otherwise a detriment to the public.

Signature of Medical  
Inspector, and  
Date.

FORM No. 2.

To be retained by the Immigration Officer.

ALLENS ACT, 1905.

REFUSAL OF LEAVE TO LAND.

Leave to land has been withheld in the case of the Alien Immigrant named \_\_\_\_\_

\_\_\_\_\_ brought to the United Kingdom in the ship \_\_\_\_\_ on the ground that \_\_\_\_\_

he has failed to show that he is a lunatic or idiot; or he is suffering from \_\_\_\_\_ and appears likely to become a charge upon the rates, or otherwise a detriment to the public; or he has been sentenced in \_\_\_\_\_ for the extradition crime of \_\_\_\_\_; or an Expulsion Order has been made against him.

His dependents who have also been refused leave to land are: \_\_\_\_\_

Signature (or Stamp) of Immigration Officer, and Date.

TO THE MASTER.

ALLENS ACT, 1905.

REFUSAL OF LEAVE TO LAND.

Notice is hereby given that leave to land has been withheld in the case of the Alien Immigrant named \_\_\_\_\_

\_\_\_\_\_ brought to the United Kingdom in the ship \_\_\_\_\_ on the ground that \_\_\_\_\_

he has failed to show that he is a lunatic or idiot; or he is suffering from \_\_\_\_\_ and appears likely to become a charge upon the rates, or otherwise a detriment to the public; or he has been sentenced in \_\_\_\_\_ for the extradition crime of \_\_\_\_\_; or an Expulsion Order has been made against him.

His dependents who have also been refused leave to land are: \_\_\_\_\_

Signature (or Stamp) of Immigration Officer, and Date.

Notice is further given that the Master, Owner, or Agent of the Ship and the Immigrant have the right of appeal to the Immigration Board against this refusal. If notice of appeal is not given to the Immigration Officer before he leaves, it must be sent by the Master, Owner, or Agent within 24 hours to the nearest Custom House or Customs Watch-house.

TO THE IMMIGRANT.

ALLENS ACT, 1905.

REFUSAL OF LEAVE TO LAND.

I hereby withhold leave to land from you, an Alien Immigrant named \_\_\_\_\_

\_\_\_\_\_ brought to the United Kingdom in the ship \_\_\_\_\_ on the ground that \_\_\_\_\_

you have failed to show that you are a lunatic or idiot; or you are suffering from \_\_\_\_\_ and appears likely to become a charge upon the rates, or otherwise a detriment to the public; or you have been sentenced in \_\_\_\_\_ for the extradition crime of \_\_\_\_\_; or an Expulsion Order has been made against you.

Your dependents who have also been refused leave to land are: \_\_\_\_\_

Signature (or Stamp) of Immigration Officer, and Date.

Notice is hereby given that you have the right of appeal to the Immigration Board against this refusal. Notice of appeal should be given to the Immigration Officer before he leaves. Failing that, it may be sent, through the Master of the ship, within 24 hours.

Strike out the words which do not apply.

FORM No. 3.

NOTICE OF APPEAL

## ALIENS ACT, 1905.

*To the Immigration Officer.*

Port of \_\_\_\_\_

Date \_\_\_\_\_

I \_\_\_\_\_ the master, or the owner, or the agent of the ship \_\_\_\_\_ hereby give notice that I [or the immigrant (or immigrants) hereinafter named] appeal against your refusal of leave to land in respect of the following Alien Immigrants:—

*Name.**Ground of Appeal.*

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Signed \_\_\_\_\_

*Master, Owner, or Agent.*

FORM No. 4.

NOTICE OF APPEAL TO  
IMMIGRATION BOARD CLERK.

A. (TELEGRAM.)

To \_\_\_\_\_

*Immigration Board Clerk.*

Appeal notified at \_\_\_\_\_ o'clock to-day for \_\_\_\_\_

Aliens brought in ship \_\_\_\_\_ . Medical cases  
number \_\_\_\_\_*Immigration Officer.*

B. (LETTER.)

ALIENS ACT, 1905.

Port of \_\_\_\_\_

Date \_\_\_\_\_

SIR,

I hereby give you notice that leave to land has been withheld in the case of the \_\_\_\_\_ Alien Immigrants named in the Schedule hereto, on the grounds shown therein; and that notice of Appeal has been given, as also shown therein at \_\_\_\_\_ o'clock to-day.

I am, Sir,

Your obedient Servant,

*Immigration Officer.*

*Schedule.*

Name of ship.	Name of alien immigrant.	Ground of refusal.*	Appellant (master, etc., or alien).	—

\* Grounds of refusal to be shown by numbers, as follows:—

- 1 = Want of means.
- 2 = Lunatic or idiot.
- 3 = Disease or infirmity (to be stated).
- 4 = Extradition crime.
- 5 = Expulsion Order.

FORM No. 5.

SUMMONS TO  
IMMIGRATION BOARD.

## A. (TELEGRAM.)

Attendance requested at \_\_\_\_\_ at \_\_\_\_\_  
o'clock \_\_\_\_\_ day, to hear appeals from \_\_\_\_\_  
Alien Immigrants. Please telegraph consent or otherwise.

\_\_\_\_\_  
*Clerk.*

## B. (LETTER.)

## ALIENS ACT, 1905.

Port of \_\_\_\_\_

Date \_\_\_\_\_

SIR,

I hereby give you notice that there are appeals to be heard  
in respect of \_\_\_\_\_ Alien Immigrants; and to request that you  
will attend a meeting of the Immigration Board at \_\_\_\_\_  
at \_\_\_\_\_ o'clock \_\_\_\_\_ day (\_\_\_\_\_ th instant).

I have to request that you will inform me by telegram whether  
you can attend.

I am, Sir,

Your obedient Servant,

\_\_\_\_\_  
*Immigration Board Clerk.*

FORM No. 6.

NOTICE OF BOARD MEETING  
TO IMMIGRATION OFFICER.

A. (TELEGRAM.)

Immigration Board will meet for appeals from ship \_\_\_\_\_  
 at \_\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_\_ day.

Notify Appellants.

---

 Clerk.

B. (LETTER.)

ALIENS ACT, 1905.

Port of \_\_\_\_\_

Date \_\_\_\_\_

Sir,

With reference to your communication of \_\_\_\_\_  
 respecting \_\_\_\_\_ appeals from the ship \_\_\_\_\_  
 against your refusal of leave to land, I have to inform you that an  
 Immigration Board has been summoned and will meet to hear the  
 appeals at \_\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_\_ day ( \_\_\_\_\_ th  
 inst.): and I have to request that you will be good enough to  
 notify the appellants accordingly.

I am,

Yours faithfully,

---

 Clerk.

FORM No. 7.

NOTICE OF BOARD MEETING  
TO MEDICAL INSPECTOR.

A. (TELEGRAM.)

Immigration Board will meet for appeals from ship \_\_\_\_\_  
 against refusals on medical grounds at \_\_\_\_\_ at \_\_\_\_\_ o'clock,  
 \_\_\_\_\_ day.

\_\_\_\_\_  
 Clerk.

B. (LETTER.)

ALIENS ACT, 1905.

Port of \_\_\_\_\_

Date \_\_\_\_\_

SIR,

I have to give you notice that appeals from the refusal of  
 leave to land (which was based on your opinion as Medical  
 Inspector) in the following cases from the ship \_\_\_\_\_  
 will be heard by the Immigration Board at \_\_\_\_\_ at \_\_\_\_\_ o'clock  
 \_\_\_\_\_ day (\_\_\_\_\_ th inst.).

I am,

Yours faithfully,

\_\_\_\_\_  
 Clerk.



FORM No. 8.

REFUSAL OF LEAVE TO LAND  
BY IMMIGRATION BOARD.

ALIENS ACT, 1905.

To the Master [or Owner or Agent] of the Ship \_\_\_\_\_

Port of \_\_\_\_\_

Date \_\_\_\_\_

Notice is hereby given that the Immigration Board has withheld leave to land in respect of the \_\_\_\_\_ Alien Immigrants brought to the United Kingdom in the ship \_\_\_\_\_ who are named below :—

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Clerk.

FORM NO. 9.

LEAVE TO LAND BY  
IMMIGRATION BOARD.

ALIENS ACT, 1905.

To the Master [or Owner or Agent] of the Ship \_\_\_\_\_

Port of \_\_\_\_\_

Date \_\_\_\_\_

Notice is hereby given that the Immigration Board has given leave to land in the case of the \_\_\_\_\_ Alien Immigrants (to whom leave was withheld by the Immigration Officer) brought to the United Kingdom in the ship \_\_\_\_\_ who are named below:—

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Clerk.

STATUTORY RULES AND ORDERS, 1905. A.D. 1905.  
No. 1326.

ALIEN.

ORDERS AND DIRECTIONS OF THE SECRETARY OF STATE  
FOR THE HOME DEPARTMENT, DATED DECEMBER  
19, 1905, UNDER THE ALIENS ACT, 1905 (5 EDW.  
VII. c. 13).

Whereas Section 5 (1) of the Aliens Act, 1905, provides that the master of any ship landing or embarking passengers at any port in the United Kingdom shall furnish to such person and in such manner as the Secretary of State directs a return giving such particulars with regard to any such passengers who are aliens as may be required for the time being by order of the Secretary of State:—

Returns  
of alien  
passen-  
gers (Sec-  
tion 5).

I by this Order direct and require that—

- (1) (a) The master of every ship landing alien passengers at any port in the United Kingdom at which an Immigration Officer has been appointed shall, save as otherwise directed, before allowing any alien passenger to land, furnish to the Immigration Officer or boarding Preventive Officer of Customs the particulars mentioned in the Form of Return marked A in the Appendix to these Orders.
- (b) Where the use of the Form A 2 in the Appendix to these Orders is permitted by the Secretary of State, it shall be sufficient if that Form is produced to the Immigration Officer by every alien passenger

A.D. 1905.

who is not exempt from inspection, and the master shall not be required to attach to the Return A the Immigrants Form A.

(2) The master of every ship landing alien passengers at any port other than as aforesaid shall, immediately on arrival, furnish to the boarding Preventive Officer of Customs the particulars shown in Form B in the Appendix to these Orders.

(3) The master of every ship carrying alien passengers out of the United Kingdom to places not in Europe or within the Mediterranean Sea shall furnish, at the same time as he delivers the passenger list for the ship, the particulars shown in Forms C and D respectively in the Appendix to these Orders concerning such of the passengers other than first-class passengers on board the ship as are aliens.

(4) The master of every ship carrying alien passengers out of the United Kingdom to places in Europe or within the Mediterranean Sea shall furnish in such manner as may be directed from time to time the particulars shown in Form E in the Appendix to these Orders concerning such of the passengers on board the ship as are aliens.

Custody  
of immi-  
grant con-  
ditionally  
disem-  
barked.

Whereas Section 7 (3) of the Aliens Act, 1905, provides that any immigrant who is conditionally disembarked shall be liable to be kept in custody in such manner as the Secretary of State directs:—

I hereby direct that any immigrant who is conditionally disembarked for the purpose of inspection, appeal, or otherwise, shall be in the custody of the master of the ship until leave to land has been given, or, if leave is withheld, until he finally leaves the United Kingdom.

Meaning  
of "immi-  
grant  
ship."

Whereas Section 8 (2) of the Aliens Act, 1905, provides that the expression "immigrant ship" means a

ship which brings to the United Kingdom more than twenty alien steerage passengers who are to be landed in the United Kingdom whether at the same or different ports, or such number of those passengers as may be for the time being fixed by Order of the Secretary of State:—

I by this Order fix the number of those passengers at twelve.

Whereas Section 8 (3) of the Aliens Act, 1905, provides that the expression "steerage passenger" includes all passengers except such persons as may be declared by the Secretary of State to be cabin passengers:—

I by this Order declare all such passengers as are entitled to use the cabin, state rooms, or saloons, where the accommodation is superior to that provided in any other part of the ship devoted to the carrying of passengers, to be cabin passengers for the purposes of the said Act.

*H. J. Gladstone,*  
One of His Majesty's Principal  
Secretaries of State.

Whitehall,

19th December, 1905.

A.D. 1905.

—

Meaning  
of "steer-  
age pas-  
senger."

## APPENDIX.

## A. IMMIGRATION PORTS.

## ALIENS ACT, 1905.

To be used for all ships landing Alien Passengers at any Port in the United Kingdom at which an Immigration Officer has been appointed under the Act.

## A RETURN OF ALIEN PASSENGERS.

To be delivered by the master of the ship immediately on arrival, and before any Alien Passenger is allowed to land, to the Immigration Officer or to the boarding Preventive Officer of Customs.

I, the undersigned, Master of \_\_\_\_\_ bound from \_\_\_\_\_ to the Port (or Ports) of \_\_\_\_\_ do, in compliance with the provisions of the Aliens Act, 1905, hereby declare that this return and the forms attached contain a true and full account, to the best of my knowledge, of all Alien Passengers brought in my said ship to be landed at the Port of \_\_\_\_\_

*Signed*

*Master.*

*Signature }  
of Witness }*

*Immigration or Preventive Officer.*

*Date of Arrival*

## PART I.

Total number of Alien Cabin Passengers ... ..           

## PART II.

Total number of exempted Alien 2nd Class  
Passengers ... ..

## A. IMMIGRATION PORTS.

## PART III.

Total number of Alien Transmigrants ... ..

Particulars on Forms attached.           

## PART IV.

Total number of Alien Immigrants ... ..

Particulars on Forms attached.           

*NOTE.—If the master of a ship fails to make this return, or makes a false return, he is liable to a fine not exceeding £100, and if any alien refuses to give information required by the master of the ship for the purpose of this return, or gives any false information for the purpose, he is liable to imprisonment for a term not exceeding three months with hard labour.*

## DIRECTIONS FOR FILLING IN THIS RETURN.

PART I.—“Cabin Passengers” have been defined under the Act to mean “passengers entitled to use the cabins, state-rooms, or saloons, where the accommodation is superior to that provided in any other part of the ship devoted to the carriage of passengers”—that is, first-class passengers. All other alien passengers are under the Act “alien steerage passengers.”

PART II.—Applies only where exemption from inspection has been granted with regard to alien second-class passengers by order of the Secretary of State, and is to contain the total number of second-class passengers (other than transmigrants) so exempted. All transmigrants must be entered under Part III.

PART III.—“Transmigrants” means all alien passengers (other than first-class passengers) who have in their possession pre-paid through tickets, and in respect of whom security has been given that they will proceed to places outside the United Kingdom. The required particulars of each transmigrant must appear on the transmigrant form (No.       ).

PART IV.—Is to contain the total number of all aliens other than those entered under Parts I, II, and III. The particulars of each immigrant must appear on the immigrant form (No.       ).

The transmigrant and immigrant forms (Nos.       ) must be attached to this return before it is delivered to the officer.

## A. IMMIGRATION PORTS.

## ALIENS ACT, 1905.

## TRANSMIGRANTS.

That is, Alien Passengers (other than first-class passengers) who have in their possession prepaid through tickets, and in respect of whom security has been given that they will proceed to places outside the United Kingdom.

No.	Ship's Name Full name.* (Surname first.)	Sex. (All persons over 12 to be entered as M. (Male) or F. (Female); those under 12 as C. (Child).)	Bound to	Date of Sailing		Country or Port of Destination outside United Kingdom.
				Departure from United Kingdom.		
				Port.	Steamship Line.	
1						
2						
3						
4						
5						
6						
7						
8						
9						
0						
1						

\* Every transmigrant, of whatever age, must be entered separately.



A. IMMIGRATION PORTS.

ALIENS ACT, 1905.

IMMIGRANTS.

This form is required for every Alien Passenger except:—

- (a) First-class passengers.
- (b) Transmigrants, that is, alien passengers who have in their possession prepaid through tickets, and in respect of whom security has been given that they will proceed to places outside the United Kingdom.
- (c) Passengers specially exempted by order of the Secretary of State.

NOTE.—*Alien seamen under actual contract to join a ship in British waters are required to answer only questions 1, 3, 6, and 7.*

The answers to the questions must be in English, and if any immigrant makes any false statement in this form he is liable to imprisonment for a term not exceeding three months with hard labour.

Ship's Name . . . Bound to . . . Date of Sailing

*This column to be left blank.*

1. Full name ... .. <i>(Surname first.)</i>	
2. Age and Sex ... ..	
3. Nationality (Country of which citizen or subject).	
4. Names and ages and sex of dependents accompanying (if any). <i>[Dependents shall include wife and children under 21 years of age; all persons over 21 must fill in a separate form.]</i>	
5. Last permanent place of abode ... .. <i>(Address in full.)</i>	
6. Proposed place of abode in United Kingdom ... .. <i>(Address in full.)</i> <i>[Alien seamen under actual contract to join a ship in British waters must insert here the name of the ship they are about to join and the port at which she is lying.]</i>	
7. Occupation ... ..	
8. What means have you in your possession? ... ..	
9. What prospects have you of decently supporting yourself and your dependents (if any) in the United Kingdom? ...	
10. Have you been convicted of any crime? If so, state nature of crime, date, and place of conviction, and sentence ...	
11. Have you ever been expelled from the United Kingdom?	

I understand the above questions, and I have answered them truly.

*Signature of Immigrant*

*If the immigrant is unable to write, the answers to the above questions must be filled in by an embarkation or other agent, or by one of the responsible officers of the ship, who must also attest the immigrant's mark in place of a signature.*

*Immigrant's Mark.*

*Signature, occupation, and address of witness to mark.*

*Date*

## A. 2. IMMIGRATION PORTS.

## ALIENS ACT, 1905.

To be used instead of Immigrant Form (No. ) in such cases as may be permitted by the Secretary of State.

## IMMIGRANTS.

This form is to be delivered to the Immigration Officer by every Alien Passenger except:—

- (a) First-class passengers.
- (b) Transmigrants, that is, alien passengers who have in their possession prepaid through tickets, and in respect of whom security has been given that they will proceed to places outside the United Kingdom.
- (c) Passengers specially exempted by order of the Secretary of State.

The answers to the questions must be in English, and if any immigrant makes any false statement in this form he is liable to imprisonment for a term not exceeding three months with hard labour.

Full name (Surname first.)	Sex (all persons over 12 to be entered as M. (Male) or F. (Female); those under 12 as C. (Child)).	Nationality. (Country of which Citizen or Subject.)	Occupation.	Whether proceeding to a Destination outside United Kingdom.	Whether holding a Return Ticket between Foreign Country and United Kingdom.

B. NON-IMMIGRATION PORTS.

ALIENS ACT, 1905.

To be used for all ships landing Alien Passengers at any Port in the United Kingdom other than a Port at which an Immigration Officer has been appointed under the Act.

A RETURN OF ALIEN PASSENGERS.

To be delivered by the master of the ship immediately on arrival to the boarding Preventive Officer of Customs.

I, the undersigned, Master of \_\_\_\_\_ bound from \_\_\_\_\_ to the Port (or Ports) of \_\_\_\_\_ do, in compliance with the provisions of the Aliens Act, 1905, hereby declare that this return contains a full and true account, to the best of my knowledge, of all Alien Passengers brought in my said ship to be landed at the Port of \_\_\_\_\_

Signed

Master.

Signature of Witness

Preventive Officer.

Date of Arrival

Total number of Alien Passengers ... ..  
(In all parts of the ship.)

NOTE.—If the master of a ship fails to make this return, or makes a false return, he is liable to a fine not exceeding £100, and if any alien refuses to give information required by the master of the ship for the purpose of this return, or gives any false information for the purpose, he is liable to imprisonment for a term not exceeding three months with hard labour.

PARTICULARS OF ALIEN PASSENGERS.

No.	Full Name. (Surname first.)	Sex. (All persons over 12 to be entered as M. (Male) or F. (Female); those under 12 as C. (Child).)	Nationality. (Country of which Citizen or Subject.)	Occupation.	Whether proceeding to a Destination outside the United Kingdom.
1					
2					
3					
4					
5					
6					
7					
8					
9					
0					

C.

## ALIENS ACT, 1905.

To be used, subject to special exemption granted by the Secretary of State, for all ships carrying Alien Transmigrants, as defined below, to destinations not in Europe or within the Mediterranean Sea, and to be delivered by the master of the ship to the Officer of Customs from whom a clearance is demanded.

Port of Embarkation.	Steamship Line.	Ship's Name.	Date of Clearance.

I hereby declare, in compliance with the provisions of the Aliens Act, 1905, that this return contains a full and true account, to the best of my knowledge, of all Alien Transmigrants, as defined below, to be carried on my ship to the Port (or Ports) of

Signed

Master.

Date

## A RETURN OF ALIEN TRANSMIGRANTS.

That is, Alien Passengers (other than first-class passengers) who arrived in the United Kingdom having in their possession prepaid through tickets, and in respect of whom security has been given that they will proceed to places outside the United Kingdom.

Total number of Alien Transmigrants ... ..

NOTE.—If the master fails to make this return, or makes a false return, he is liable to a penalty of £100, and if any alien refuses to give information required by the master for the purpose of this return, or gives any false information for the purpose, he is liable to imprisonment for a term not exceeding three months with hard labour.

## PARTICULARS.

No.	Full Name.* (Surname first.)	Sex. (All persons over 12 to be entered as M. (Male) or F. (Female); those under 12 as C. (Child.)	Arrival in the United Kingdom.	
			Port.	Steamship Line.

\* Every transmigrant, of whatever age, must be entered separately.

D.

## ALIENS ACT, 1905.

To be used, subject to Special Exemption granted by the Secretary of State, for all ships carrying Alien Emigrants, as defined below, to destinations not in Europe or within the Mediterranean Sea, and to be delivered by the Master of the Ship to the Officer of Customs from whom a clearance is demanded.

Port of Embarkation.	Steamship Line.	Ship's Name.	Date of Clearance.

I hereby declare, in compliance with the provisions of the Aliens Act, 1905, that this return contains a full and true account, to the best of my knowledge, of all Alien Emigrants, as defined below, to be carried on my ship to the Port (or Ports) of

Signed

Master.

Date

## A RETURN OF ALIEN EMIGRANTS.

That is, alien passengers exclusive of first-class passengers and of passengers who arrived in the United Kingdom having in their possession prepaid through tickets, and in respect of whom security was given that they would proceed to places outside the United Kingdom.

Total number of Alien Emigrants ... ..

NOTE.—If the master fails to make this return, or makes a false return, he is liable to a penalty of £100, and if any alien refuses to give information required by the master for the purpose of this return, or gives any false information for the purpose, he is liable to imprisonment for a term not exceeding three months with hard labour.

## PARTICULARS.

No.	Full Name.* (Surname first).	Sex. (All persons over 12 to be entered as M. (Male) or F. (Female); those under 12 as C. (Child).)	Nationality. (Country of which Citizen or Subject.)	Last permanent place of abode in United Kingdom. (Address in full.)	Length of Residence in United Kingdom.	Original Port of Arrival in United Kingdom.

\* Every alien emigrant, of whatever age, must be entered separately.

E.

ALIENS ACT, 1905.

To be used, subject to Special Exemption granted by the Secretary of State, for all ships carrying Alien Passengers to places in Europe or within the Mediterranean Sea, and to be delivered in such manner as the Secretary of State may from time to time direct.

Port of Embarkation.	Steamship Line.	Ship's Name.	Date of Sailing.

I hereby declare, in compliance with the provisions of the Aliens Act, 1905, that this return contains a full and true account, to the best of my knowledge, of all Alien Passengers to be carried on my ship to the Port (or Ports) of

*Signed*

*Master.*

*Date*

A RETURN OF ALIEN PASSENGERS.

Total number of Alien Passengers ... ..           

*NOTE.—If the master fails to make this return, or makes a false return, he is liable to a penalty of £100, and if any alien refuses to give information required by the master for the purpose of this return, or gives any false information for the purpose, he is liable to imprisonment for a term not exceeding three months with hard labour.*

PARTICULARS.

No.	Full Name.* (Surname first.)	Sex. (All persons over 12 to be entered as M. (Male) or F. (Female); those under 12 as C. (Child).)	Occupation.	Nationality. (Country of which Citizen or Subject.)	Country of Destination; and whether holding a Through Ticket from a Country outside the United Kingdom.

\* Passengers using different classes of accommodation must be grouped together under separate heads, e.g. "First Class," "Second Class," "Third Class."

## APPENDIX II

### THE RIGHT OF ASYLUM IN "THE LAW OF ENGLAND"

SIR ERSKINE MAY finely observes, "It has been a proud distinction for England to afford an inviolable asylum to men of every rank and condition, seeking refuge on her shores, from persecution and danger in their own lands. England was a sanctuary for the Flemish refugees driven forth by the cruelties of Alva; to the Protestant refugees who fled from the persecutions of Louis XIV.; and to the Catholic nobles and priests who sought refuge from the bloody guillotine of revolutionary France. All exiles from their own country—whether they fled from despotism or democracy,—whether they were kings discrowned, or humble citizens in danger,—have looked to England as their home. Such refugees were safe from the dangers which they had escaped. . . . If guilty of crimes, they were punished; but otherwise enjoyed the full protection of the law" [*Constit. History of Engl., v. 3, c. 11, Liberty of the Subject, p. 50*]. Events at the commencement of the nineteenth century showed that the Right of Asylum is writ in characters of fire on the tablets of our Constitution. At a time when Parliament was enacting laws providing for the removal of aliens that, in the judgment of Sir Erskine May, were equivalent to a suspension of the Habeas Corpus Act, the

Right of Asylum, at a period of great national danger, was signally maintained. On this aspect of the history of the question, Sir Erskine May observes, "During the short peace succeeding the treaty of Amiens, Napoleon, First Consul of the French Republic, demanded that our government should 'remove out of the British dominions all the French princes and their adherents, together with the bishops and other individuals, whose political principles and conduct must necessarily occasion great jealousy to the French Government' [*Mr. Merry to Lord Hawkesbury, June 4, 1802; Parl. Hist., xxx. 1263*].

"To this demand Lord Hawkesbury replied, his Majesty 'certainly expects that all foreigners who may reside within his dominions should not only hold a conduct conformable to the laws of the country, but should abstain from all acts which may be hostile to the government of any country, with which his Majesty may be at peace. As long, however, as they conduct themselves according to these principles, his Majesty would feel it inconsistent with his dignity, with his honour, and with the common laws of hospitality, to deprive them of that protection which individuals, resident in his dominions, can only forfeit by their own misconduct' [*Lord Hawkesbury to Mr. Merry, June 10, 1802*].

"Still more decidedly were these demands reiterated. It was demanded, 1st. That more effectual measures should be adopted for the suppression of seditious publications. 2nd. That certain persons named should be sent out of Jersey. 3rd. 'That the former bishops of Arras and St. Pol de Leon, and all those who, like them, under the pretext of religion, seek to raise disturbances in the interior of France, shall likewise be sent away.' 4th. That Georges and his adherents shall be transported to Canada. 5th. That the princes of the House of Bourbon be recommended



to repair to Warsaw, the residence of the head of their family. 6th. That French emigrants, wearing orders and decorations of the ancient government of France, should be required to leave England. These demands assumed to be based upon a construction of the recent treaty of Amiens ; and effect was expected to be given to them, under the provisions of the Alien Act [*M. Otto to Lord Hawkesbury, August 17, 1802*].

“ These representations were frankly and boldly met. For the repression of seditious writings, our government would entertain no measure but an appeal to the courts of law. Lord Hawkesbury wrote in reply—‘ His Majesty neither can nor will, in consequence of any representation or menace from a foreign power, make any concession which may be in the smallest degree dangerous to the liberty of the press, as secured by the constitution of this country. This liberty is justly dear to every British subject : the constitution admits of no previous restraints upon publications of any description ; but there exist judicatures wholly independent of the executive, capable of taking cognisance of such publications as the law deems to be criminal, and which are bound to inflict the punishment the delinquents may deserve. These judicatures may investigate and punish not only libels against the government and the magistracy of this kingdom, but, as has been repeatedly experienced, of publications defamatory of those in whose hands the administration of foreign governments is placed. Our government neither has, nor wants, any other protection than what the laws of the country afford ; and though they are willing and ready to give to every foreign government all the protection against offences of this nature, which the principles of their laws and constitution will admit, they never can consent to new-model their laws, or to change their constitution, to gratify the wishes

of any foreign power' [*Lord Hawkesbury to Mr. Merry, August 28, 1802; Parl. Hist., xxxvi. 1273*].

"The removal of other French emigrants, and especially of the princes of the House of Bourbon, was refused, and every argument and precedent adduced in support of the demand refuted. The emigrants in Jersey had already removed, of their own accord; and the bishops would be required to leave England if it could be proved that they had been distributing papers on the coast of France, in order to disturb the government; but sufficient proof of this charge must be given. As regards M. Georges, who had been concerned in circulating papers hostile to the government in France, his Majesty agreed to remove him from our European dominions. The king refused to withdraw the rights of hospitality from the French princes, unless it could be proved that they were attempting to disturb the peace between the two countries. He also declined to adopt the harsh measures which had been demanded against refugees who continued to wear French decorations.

"The ground here taken has been since maintained. It is not enough that the presence or acts of a foreigner may be displeasing to a foreign power. If that rule were accepted, where would be the right of asylum? The refugee would be followed by the vengeance of his own government, and driven forth from the home he had chosen, in a free country. On this point, Englishmen have been chivalrously sensitive. Having undertaken to protect the stranger, they have resented any menace to him, as an insult to themselves. Disaffection to the rulers of his own country is natural to a refugee: his banishment attests it. Poles hate Russia: Hungarians and Italians were hostile to Austria: French Royalists spurned the republic and the first empire: Charles X. and Louis Napoleon were

disaffected to Louis-Philippe, King of the French: legitimists and Orleanists alike abhorred the French republic of 1848, and the revived empire of 1852. But all were safe under the broad shield of England. Every political sentiment, every discussion short of libel, enjoyed freedom. Every act not prohibited by law—however distasteful to other states,—was entitled to protection. Nay, more: large numbers of refugees, obnoxious to their own rulers, were maintained by the liberality of the English government” [*Sir Erskine May’s Constit. Hist. of Engl., v. 3, c. xi., Liberty of the Subject, pp. 54-57*].

The trial of the conductors of the *Courier*, in 1799, for a libel upon the Emperor of Russia, affords a singular instance, as conspicuous as it is unfortunate, where the inviolability of the Right of Asylum was so far impugned by a British tribunal as to punish public writers, not for their guilt, but from fear of the displeasure of foreign powers.\*

To the historical instances adduced by Sir Erskine May, where this country has afforded a Right of Asylum to the political refugee, there must be added the case of Louis Napoleon, in 1870, on the fall of the Third Empire, and those of the French Royalists, and the victims of Turkish misgovernment, Russian oppression, and that of the Benedictines and other orders of the Catholic priesthood expelled from France by the Associations Bill [*Ann. Reg. 1901, p. 249*]. The Parliamentary statistics (quoted

\* *Trial of Vint, Ross, and Perry, 27 St. Tr. 627; Starkie’s Law of Libel, ii. 217; Sir Erskine May’s Constit. Hist. of Engl., v. 2, c. ix. p. 332.* At this trial Lord Kenyon said, “When these papers went to Russia, and held up this great sovereign as being a tyrant and ridiculous over Europe, it might tend to his calling for satisfaction as a national affront, if it passed unrepobated by our government and our courts of justice” [*Trial of Vint, Ross, and Perry (1799), 27 St. Tr. cols. 641, 642*].

*infra*, p. 142) show that, during the last few years, more Russians and Poles have sought an asylum in this country than refugees of other nations at any period of our history. At the height of the French Revolution, Burke estimated that ten thousand heads of families had been banished from France [*Corr.*, iii. pp. 392 *et seq.*]. To these must be added thousands of clergy. But of these totals all did not come to this country; and in any case the numbers of the *emigrés* of 1792 must be far below that of the hundred thousand Russians and Poles who have entered the United Kingdom during 1901-4.

It is probably the most important feature of the Aliens Act, the severest Act on the subject of alien immigration, in many respects, that has found a place on the Statute Book for eighty years, that it should contain the most comprehensive declaration of the Right of Asylum that is to be found in the whole range of municipal legislation, not merely in the history of this country, but throughout the civilized world.\*

It is signally characteristic of the constitution and history of this country that an English Statute should declare the Right of Asylum even more fully than International Law [*Pufendorf's Of the Law of Nature and Nations*, bk. iii. c. iii. s. 9; *Vattel's Droit des Gens*, l. i. cxix. s. 231]. From the point of view of comparative legislation, the inquiry of Lord Salisbury's Government in 1887 elicited the truly extraordinary circumstance that none of

\* The Aliens Act, 1905, s. 1, sub-s. (3), says, "In the case of an immigrant who proves that he is seeking admission to this country solely to avoid prosecution or punishment on religious or political grounds or for an offence of a political character, or persecution, involving danger of imprisonment or danger to life or limb, on account of religious belief, leave to land shall not be refused on the ground merely of want of means, or the probability of his becoming a charge on the rates."

the immigration laws of the different European States contain the slightest allusion to the subject.

According to Prof. F. de Martens, the only State in Europe where the Right of Asylum is maintained, at least in the sense it is and has always been maintained by Great Britain, is Switzerland. But the passage in the *Traité du Droit International* [*t. i. p. 449*] merely speaks of "les réfugiés politiques" as being the subjects of the Right of Asylum, and the most conspicuous instances in English history are perhaps those where the right has been also extended, as it is now by the Aliens Act [*s. 1, sub-s. (3)*], to the victims of religious persecution. It therefore seems an implicit inference from this passage of Prof. F. de Marten's great work that the Right of Asylum is given a larger construction in this country than in Switzerland.

The declaration of the Right of Asylum in the Act of Congress regulating Immigration, 1882, which has been compared with the declaration in the Aliens Act [*cf. ante, p. 25*], constitutes the only other instance where a State has enforced by its municipal law the rule of International Law declaring the Right of Asylum. The primary source of the Right of Asylum is undoubtedly International Law. The preamble of the Act of 1798, regulating aliens, alluded to persons who "really seek Refuge and Asylum from oppression and tyranny." This point has been alluded to, and also the circumstance that it forms what appears to be the first mention of the Right of Asylum in the Statute Book [*cf. preamble of Statute 38 Geo. III. c. 50*]. Prior to this date, and long afterwards, no judicial notice was taken of the Right of Asylum, even at trials where it formed the topic of some of the permanent muniments of forensic eloquence. At the trial of Lord George Gordon for a libel on the Queen of France and on the French Ambassador, Buller, J., made no allusion or mention of the Right of Asylum [*Trial of*

*Lord George Gordon* (1787), 22 *St. Tr.* 213, 230]. In *Napper Tandy's* case, where Curran made an allusion to the Right of Asylum which was as eloquent as relevant, the judge who presided made no reference to it [*Cases of James Napper Tandy and H. Morris, Esqs., on an Act of Attainder* (1800), 27 *St. Tr.* 1191, p. 1208, for Curran's denunciation of the Senate of Hamburg for their abandonment of the Right of Asylum, and p. 1243 for Lord Kilwarden's summing-up]. Above all, at the trial of Peltier, when Sir James Mackintosh's speech in defence was "far superior as a composition to be read to any of Erskine's speeches" [cf. *Sir James Fitzjames Stephen's History of the Criminal Law of England*, v. 2, p. 375], though an appeal to the Right of Asylum formed the appropriate topic of the defence, Lord Ellenborough did not attempt to allude to it in his summing-up.\*

\* *Trial of Jean Peltier for a Libel on Napoleon Bonaparte* (1803), 28 *St. Tr.* 529. Mackintosh's speech for the defence occupies 45 columns, i.e. cols. 563-608. His peroration concluded, "If any modern tyrant were, in the drunkenness of his insolence, to hope to overawe an English jury, I trust and I believe that they would tell him, 'Our ancestors braved the bayonets of Cromwell—we bid defiance to yours. Contempsi Catilinae gladios—non pertimescam tuos!'"

"What could be such a tyrant's means of overawing a jury? As long as their country exists, they are girt round with impenetrable armour. Till the destruction of their country no danger can fall upon them for the performance of their duty, and I do trust that there is no Englishman so unworthy of life as to desire to outlive England. But if any of us are condemned to the cruel punishment of surviving our country—if in the inscrutable counsels of Providence, this favoured seat of justice and liberty, this noblest work of human wisdom and virtue, be destined to destruction, which, I shall not be charged with national prejudice for saying, would be the most dangerous wound ever inflicted on civilization; at least let us carry with us into our sad exile the consolation that we ourselves have not violated the rights of hospitality to exiles—that we have not torn

The first judicial declaration of the Right of Asylum, and perhaps the only one, is in an exceedingly eloquent passage of Lord Campbell's summing-up to the jury in *R. v. Bernard*. Lord Campbell told the jury not to be deterred from discharging their duty, "by any apprehension

from the altar the suppliant who claimed protection as the voluntary victim of loyalty and conscience."

The Attorney-General (Spencer Perceval) spoke of this speech as "one of the most splendid displays of eloquence he ever had occasion to hear;" and Lord Ellenborough termed it "eloquence almost unparalleled."

At the date of Peltier's case, the only authority for the Right of Asylum must have been International Law, as the right was not declared by Statute. "But the Law of Nations, according to the decision of our greatest judges, is part of the Law of England" [*Speech of Lord Lyndhurst in the House of Lords, Times, March 5, 1853; Hansard's Parl. Deb., vol. cxxiv. p. 1046*].

In the *Law Quarterly Review* for January, 1906, No. 85, p. 14, Dr. J. Westlake, K.C., in an article intitled "Is International Law a Part of the Law of England?" concludes, after an exhaustive review of the authorities referred to by Lord Lyndhurst, that "The English Courts must enforce rights given by International Law as well as those given by the law of the land in its narrower sense, so far as they fall within their jurisdiction in respect of parties or places, subject to the rules that the king cannot divest or modify private rights by treaty (with the possible exception of treaties of peace or treaties equivalent to those of peace), and that the Courts cannot question acts of State (or, in the present state of authorities, draw consequences from them against the Crown). The International Law meant is that which at the time exists between States, without prejudice to the right and duty of the Courts to assist in developing its acknowledged principles in the same manner in which they assist in developing the principles of the Common Law." But a right which, like the Right of Asylum, is declared by a long and storied line of writers on the Law of Nations, beginning with Grotius, continuing with Pufendorf and Vattel, and concluding with Phillimore and De Martens, can fairly claim to be indubitably a part of International Law as it now exists between States, and therefore to be a right given by International Law which must be enforced by English Courts.

that your verdict will interfere with that asylum which it has been the glory of this country to afford to persecuted foreigners. That is a glory which I hope ever will belong to this country. That asylum, however, remember, amounts to this—that foreigners are at liberty to come to this country and to leave it at their own will and pleasure, and that they cannot be disturbed by the Government of this country so long as they obey our laws; and they are under the same laws as native-born subjects, and if they violate those laws they are liable to be prosecuted and punished in the same manner as native-born subjects.” \*

\* Cf. *Times*, April 19, 1858, and *Ann. Reg.*, 1858, p. 328. At the trial of Bernard, Edwin James, K.C., counsel for the defence, who addressed the jury, Sir Fitzroy Kelly, A.-G., observed, in “a strain of eloquence rarely heard even in courts of justice in this country, thus alluded to the Right of Asylum—‘The great object of the French Government is, if possible, to establish through you, gentlemen of the jury, that an exile is not to be protected in this country. It has been the pride of this country to be, as was said by Cicero of Rome, ‘Regum, populorum, nationum, portus et refugium’” [*Cicero, De Off.* 2. 8, where, however, the words are “*regum, populorum, nationum portus erat et refugium senatus.*” Cicero here is speaking of the Senate, and not the city. But the spirit of the passage is in the sense of Edwin James, K.C.’s, reference, as Cicero goes on to say that “the city was therefore not then the Empress (*Patriocinium verius quam imperium*) so properly as the protectress of the world”].

“How true that has been of this country! We have had exiled kings here, an exiled priesthood, an exiled nobility; we have had the Emperor of the French an exile here, plotting against the throne of Louis Philippe, and now his object is to destroy that very asylum which afforded a refuge to himself. Will you allow the laws of England to be perverted for such a purpose? I trust that you will hesitate long before you do so, and that you will see doubts enough in this case which will compel you to say that the crime charged in the indictment has not been proved against the prisoner. I need not remind you that it has been of the greatest advantage to this country that her free shores have been open to exiles from other lands. The



The Right of Asylum could not, with the slightest consistency, have been invoked to shield the authors of the *attentat*, and the debates in Parliament, and the action of the Swiss Government, show that this was the view taken at the time. Sir Erskine May observes, "There are acts, indeed, which the laws could only have tolerated by an oversight; and in this category was that of conspiracy to assassinate the sovereign of a friendly state. The horrible conspiracy of Orsini, in 1858, had been plotted in England. Not countermined by espionage, nor checked by jealous restraints on personal liberty, it had been matured in safety; and its more overt acts had afterwards escaped the vigilance of the police in France. The crime execrated: but how could its secret conception have been prevented? So far our laws were blameless" [*Constit. Hist. of Engl.*, v. 3, c. xi. pp. 57, 58]. At the trial of Bernard for being accessory before the fact to the murder of one of the Garde de Paris, killed by the bombs thrown by the associates of Orsini and Gomez, Edwin James, K.C., in a passage of great eloquence, invoked the Right of Asylum on behalf of his client. But the defence advanced was that Bernard was no party to the *attentat*, but that his action in this country was to be, as far as the charge was concerned, explained on the ground that he intended to contribute to some great political *émeute* in Italy against Austrian dominion. The issue of the trial can only be construed as showing that the jury gave credence to this account; and

requisitions of Philip II. of Spain led to an insurrection in the Netherlands, and conduced to the more firm establishment of Protestantism in this country; the revocation of the Edict of Nantes drove to our shores the Saurins, the Romillys, and the Laboucheres, who have shed a lustre on this country. Will you, then, at the bidding of a neighbouring despot, destroy the asylum which aliens have hitherto enjoyed? No; I am satisfied that you will not" [*Times*, April 17, 1858].

therefore Bernard's trial cannot in any sense justify the conclusion that the Right of Asylum can be invoked in favour of assassination.

The events arising out of Orsini's attempt upon the life of Napoleon III. led naturally to many eloquent references to the Right of Asylum in Parliament. The Earl of Derby, in a speech which Earl Granville characterized as one of extraordinary eloquence, observed, "For, my lords, with all my desire to maintain inviolable now and for ever, under all circumstances, that right of asylum to refugees which it is the pride of this country to afford, without distinction of cause, or principles, or of opinion, I do say that it is an intolerable grievance that persons who owe their life and safety to the protection which we afford them should basely and ungratefully reward this country for the shelter and asylum it gives them by a course of conduct, by publications, by instigations to crime which may have a most dangerous tendency towards embroiling England with one of its most faithful and also one of its firmest allies" [Times, *March 2, 1858*]. If the eloquent passage in which, in this same speech, Lord Derby denounced assassination, be read with the above, it may be considered as the most correct, as well as the most eloquent enunciation of the Right of Asylum in the English language. The Right of Asylum by the Law of England does not extend, as has been seen, to anarchists [*per Cave, J., In re Meunier* (1894), 2 *Q. B.* 415, 419], while, in a similar spirit, Vattel, from the point of view of International Law, observes that "poisoners and assassins, and incendiaries by profession, may be exterminated wherever they are seized" [*Droit des Gens, l. i. c. xix. p. 109, Chitty's Transl.*]. It seems clearly to confirm the view that International Law is the original source of the Right of Asylum, that in 1858, when the right was so eloquently apostrophized in the House of

Lords, and on the Bench, and by the Bar, it was not, in fact, consecrated by any statute. Though it was declared by the salvo in the Extradition Act [*Stat. 33 & 34 Vict. c. 52, s. 3, sub-s.(1)*], it can only now be truly said to have been consecrated in the Aliens Act [*cf. the Times, July 18, 1905*, where the report of the debate on the measure as amended shows that the comprehensiveness of the declaration of the Right of Asylum in the Act is due to a Government amendment in the clause as originally framed].

## APPENDIX III

### STATISTICS FROM PARLIAMENTARY PAPERS ON ALIEN IMMIGRATION FOR THE LAST DECADE INTO THE UNITED KINGDOM

THE following appear to be material facts and figures relating to alien immigration that have not been already mentioned [*Parl. Pap. relating to Emigration and Immigration, 1904, Part I.*]. They are compiled by the Board of Trade, and are obtained from lists supplied by the masters of vessels to the chief officers of Customs at various ports under the Registration of Aliens Act, 1836 [*Stat. 6 Will. IV. c. 11, s. 20, repealed by the Aliens Act, 1905, s. 10, sub-s. 2*], and from lists supplied under the Merchant Shipping Act, 1894. By this last Act, s. 336, masters of vessels bringing steerage passengers to the British Islands from any port out of Europe, and not within the Mediterranean Sea, shall within twenty-four hours after arrival, deliver to the emigration officer at the port of arrival a list of the steerage passengers, giving their names, age, and calling and the port at which they embarked, and a list of births and deaths on board. The master of the vessel is liable to a penalty of £50 if he either delivers a false list, or neglects to present a list.

The figures thus obtained and collected in the Parliamentary Papers issued by the Board of Trade are no doubt

correct, and are evidently compiled with the utmost care and arranged with the most consummate skill. But as an estimate of immigrants intending to settle, it seems admitted that the balance of the inward over the outward passenger movement between the United Kingdom and European countries is unreliable, because the inward movement comprises large numbers who are *en route* to America. In introducing the Aliens Bill, Mr. Akers-Douglas pointed out that, in 1904, the balance of the inward passenger movement over the outward from the United Kingdom to European ports was 82,000. But he proceeded to concede that it could not be inferred that that number had definitely settled in the country, and according to the Board of Trade Paper, it seems that 7697 persons out of the 82,845 were since definitely ascertained to have gone to the United States. In a later speech on the Aliens Bill, Mr. Akers-Douglas observed that it was impossible to get accurate figures of aliens leaving the country. While the figures of the Board of Trade were quite accurate as to the number of aliens coming into this country, there was nothing to show how far those that come in are those that go out. Further, the balance of the passenger movement is not relevant to a measure which, like the Aliens Act, 1905, deals with undesirable aliens only, though it would be relevant to a Bill aimed at aliens [Times, May 3, 1905]. It seems, on the other hand, clear that the number of aliens coming into the country is of at least general interest, in view of possible future legislation. Alien Acts have exhibited little finality in the past, and by International Law there is a clear right to keep multitudes of aliens out [Pufendorf's *Of the Law of Nature and Nations*, bk. iii. c. iii. s. 9; Vattel's *Droit des Gens*, l. ii. c. ix. s. 125; and cf. Lord Herschell's very decided expression of opinion in *Musgrove v. Chun Tecong Toy* (1891), L. R. App. Cas. 272,

277]. It cannot but be regarded as of the highest significance that the social, economic, and industrial conditions prevailing in the United Kingdom at this day are specifically those which Pufendorf, and with him Vattel, consider render it obligatory on a nation to exclude a multitude of aliens. The speech of the Bishop of London on the Aliens Bill is of the highest importance in connection with this aspect of the alien question [Times, August 4, 1905]. The question may easily demand the attention of the Legislature at no distant date as far as London is concerned. During the last three years 104,652 Russian Poles have entered the United Kingdom, and 77 per cent. of these are in London.

The fact that the numbers of Russians and Poles who immigrate into the United Kingdom may fairly be described as amounting to "multitudes," recalls the fact that Pufendorf, from the point of view of theory, seems clearly to limit the Right of Asylum to small numbers. From the point of view of the usage of the Right of Asylum, it is nearly equally difficult to see how a whole tide of immigrants, pouring into this country in increasing numbers every year, can claim to be the proper objects of the Right of Asylum. It is impossible to cite a more apt historical instance in which this country has conferred the Right of Asylum, than that of the Catholic nobles and priests who sought refuge from the bloody guillotine of revolutionary France. Yet at the height of the First French Revolution, in December, 1792, it appeared that only 8000 French political refugees had emigrated to England [*Parl. Hist.*, xxx. 147]. But this number does not constitute a moiety of the Russians and Poles annually pouring into this country.

In 1902 the number of aliens who received Poor Law Relief in London was 3234; in 1903 it was 3681; and in 1904 it was 4162. Four hundred Jews, apparently

of the very poorest class, come to London from Hamburg every week. Liverpool suffers from what seems an even aggravated form of the involuntary consignment of large bodies of foreign immigrants. Aliens refused admission to American ports return to that port. In 1902, there were 350 of these returned immigrants, and in 1904 there were 1198 [*Speech of Mr. Akers-Douglas in the House of Commons on the Aliens Bill, Times, May 3, 1905*]. From the point of view of International Law, and in view of the conditions of life in our great cities, and the clearly undesirable character of rejected immigrants, it is interesting to recollect that Pufendorf says that it is dangerous and even disgraceful to admit aliens if there are objections to their integrity or character [*Of the Law of Nature and Nations, bk. iii. c. iii. s. 9*].

TABLE TAKEN FROM PARLIAMENTARY PAPERS RELATING TO EMIGRATION AND IMMIGRATION, 1904, PART I. P. 18. TABLE I. B.

Year.	Summary of Passenger Movement between the United Kingdom and European Countries.		
	Outward.	Inward.	Balance Inward.
1895	493,946	522,449	28,503
1896	479,913	518,869	38,956
1897	569,150	587,000	17,850
1898	590,226	620,123	29,897
1899	609,570	666,230	56,660
1900	669,292	748,725	79,433
1901	613,843	702,555	88,712
1902	636,311	773,624	137,313
1903	699,901	814,441	114,540
1904	718,560	802,949	84,389

TABLE TAKEN FROM PARLIAMENTARY PAPERS RELATING TO EMIGRATION AND IMMIGRATION, 1904, PART II. P. 44. TABLE VI.

A comparative statement of the Nationality of the Aliens (exclusive of seamen) who arrived in the United Kingdom from Continental Ports, and were not described in the Alien Lists obtained under Stat. 6 Will. IV. c. 11, s. 2, as *en route* to other countries.

Nationalities.	1904.	1903.	1902.	1901.	1900.	1899.	1898.	1897.	1896.	1895.
Russians and Poles . . .	46,095	30,046	28,511	20,914	25,633	20,266	15,248	14,775	12,773	10,294
Norwegians, Swedes, Danes . . .	4,827	4,702	5,028	4,725	5,796	5,695	4,775	4,617	4,437	3,700
Germans . . . . .	7,084	7,502	6,965	6,730	5,799	5,926	5,886	5,496	5,557	5,665
Dutch . . . . .	4,082	3,761	2,456	2,199	2,171	2,105	1,820	1,468	1,517	1,281
French . . . . .	6,564	6,495	6,637	5,816	4,821	4,861	4,367	4,477	3,948	3,849
Austro-Hungarians . . . . .	2,199	4,005	3,144	2,342	3,074	2,548	1,941	1,306	1,246	865
Italians . . . . .	6,300	7,045	7,734	7,185	7,707	5,553	4,224	4,061	3,448	2,738
Roumanians . . . . .	513	565	1,282	1,162	3,216	3,930	2,524	2,651	2,522	2,226
Other Nationalities . . . . .	5,181	5,047	4,714	4,351	4,288					
Total of all Nationalities . . . . .	82,845	69,168	66,471	55,464	62,505	50,884	40,785	38,851	35,448	30,528



PARLIAMENTARY PAPERS RELATING TO EMIGRATION AND IMMIGRATION, 1904,  
PART II. P. 89.

Compiled from the Alien Lists received by the Customs under the Stat. 6 Will. IV. c. 11, s. 2  
(repealed by Aliens Act, 1905, s. 10, sub-s. 2).

Ports of Arrival of Alien Immigration.	Aliens described on Alien Lists as <i>en route</i> for other countries.	Aliens not so described, whether seamen or others, adults or children.	Total for 1904.	Total in 1903.
London . . . . .	2,005	49,551	51,556	38,477
Grimsby . . . . .	31,372	9,748	41,120	33,971
Hull . . . . .	50,927	5,601	56,528	78,802
Hartlepool, West . . . . .	3	269	272	277
Tyne Ports . . . . .	3,016	5,496	8,512	12,274
Leith and Grangemouth . . . . .	2,639	3,432	6,131	7,037
Newhaven . . . . .	78	14,838	14,916	14,446
Dover . . . . .	—	1,690	1,690	2,186
Southampton . . . . .	2,664	783	3,447	5,784
Harwich . . . . .	6,272	842	7,114	10,235
Other Ports . . . . .	242	3,458	3,700	3,702
	99,278	95,708	194,986	207,191

Mr. Akers-Douglas stated in the House of Commons that the ports selected by the Government as immigration ports are those to which this traffic chiefly comes, as shown by the Board of Trade return, p. 39 [*cf. supra*]. As regards Ireland, the Home Secretary indicated that the immigration machinery will probably have to be established at Queenstown or Londonderry [*Times, July 18, 1905*].

On July 10, 1905, on the motion that the House go into Committee to consider the voting of moneys for the administration of the Act to amend the law with regard to aliens, Mr. Akers-Douglas observed that the Home Office had made a very careful estimate of the expenses that would be incurred under the Bill, and the figure arrived at was £24,000 per annum. That estimate was made up by allowing £3000 for the Port of London, £2000 for each of the other eleven ports at which it was proposed to set up the machinery required by the Bill, and £1000 for the new central staff at the Home Office. It is clear that the Act will effect a considerable saving of public money. Mr. Gerald Balfour stated in the House that the cost of Poor Law Relief to alien paupers in the year 1903-4 was £29,000 [*Times, July 18, 1905*]. But in addition to the cost of maintaining alien paupers, there must be reckoned the expenses of prosecuting and maintaining 4774 aliens in our gaols.

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