CHAPTER 21.

An Act to make further provision for the trial and punishment of treachery. [23rd May 1940.]

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 :—

Death penalty for treachery.

1. If, with intent to help the enemy, any person does, or attempts or conspires with any other person to do, any act which is designed or likely to give assistance to the naval, military or air operations of the enemy, to impede such operations of His Majesty's forces, or to endanger life, he shall be guilty of felony and shall on conviction suffer death.

Prosecution, trial and punishment of offences.

2.—(1) Subject as hereinafter provided, persons charged with offences against this Act shall be prosecuted upon indictment, and if convicted shall be dealt with in like manner as persons convicted on indictment of murder :

Provided that—

(*a*) the provisions of the Naval Discipline Act, the Army Act, and the Air Force Act, relating to offences punishable by ordinary law shall, in relation to persons subject to those Acts, apply to offences against this Act, and the provisions of those Acts specified in the first

column of the Schedule to this Act shall have effect subject to the amendments specified in the second column of that Schedule:

(*b*) any enemy alien may, if the Attorney-General so directs, be prosecuted for an offence against this Act before a court martial, and upon such a direction being given with respect to an enemy alien the Army Act shall apply for the purpose of his custody, trial, sentence, and punishment as if he were, and had been at the time when the offence is alleged to have been committed, a person subject to military law:

(*c*) if upon representations made to him, it appears to the Secretary of State that any person sentenced to death after being convicted on indictment of an offence against this Act was, at the time of the commission of the offence, a member of the armed forces of the Crown or of the armed forces of any foreign power, including an enemy power, the Secretary of State may direct that, instead of being dealt with in like manner as a person sentenced to death after being convicted on indictment of murder, he shall be dealt with under the Naval Discipline Act, the Army Act, or the Air Force Act, or in the case of a person not subject to those Acts under whichever of those Acts the Secretary of State considers to be appropriate, in like manner as a person upon whom sentence of death by shooting has been passed by a court martial.

(2) No prosecution in respect of any offence against this Act shall be instituted, otherwise than by way of proceedings for a trial by court martial, except by, or with the consent of, the Attorney-General:

Provided that this subsection shall not prevent the arrest, or the issue or the execution of a warrant for the arrest, of any person in respect of any offence, or the remanding, in custody or on bail, of any person charged with such an offence, notwithstanding that the consent of the Attorney-General to the institution of a prosecution for the offence has not been obtained.

(3) Where in accordance with the provisions of proviso (*b*) to subsection (1) of this section a direction is given by the Attorney-General for the trial by court martial of any person charged with an offence against this Act, that person, if not in military custody, may be transferred to military custody in accordance with such directions as may be given by the Secretary of State, and the Secretary of State may by order provide for discharging or varying any order which may have been made by a justice of the peace as to the remand or committal for trial of that person.

Joinder of charges and place of trial of offences.

3.—(1) Notwithstanding any rule of law or practice, charges for any offences, except treason, may be joined with a charge for any offence against this Act in the same indictment or charge-sheet, if those charges are founded on the same facts, or form, or are a part of, a series of offences of the same or a similar character.

(2) Where any person is charged with an offence against this Act before a court martial and charges for other offences are joined in the same charge-sheet in accordance with the provisions of the last foregoing subsection, the court shall have jurisdiction to try and to punish the person charged with those offences notwithstanding that they may be offences for which that person would not otherwise be triable by court martial, and the Naval Discipline Act, the Army Act and the Air Force Act shall apply in relation thereto accordingly.

(3) A person charged with an offence against this Act who is in the United Kingdom may, whether or not the offence was committed in the United Kingdom or in any British ship or aircraft, be taken in custody to any county or place in the United Kingdom, and may be proceeded against, indicted, tried and punished in any county or place in the United Kingdom, as if the offence had been committed in that county or place, and for all purposes incidental to or consequential on the trial or punishment of the offence it shall be deemed to have been committed in that county or place:

Provided that nothing in this subsection shall be construed as preventing the trial of any person by court martial in any place in which he could apart from this subsection be so tried.

Extent of Act.

4. This Act shall apply to anything done—

(*a*) by a British subject elsewhere than in a Dominion, India, Burma, or Southern Rhodesia;

(*b*) by any person subject to the Naval Discipline Act, to military law or to the Air Force Act, in any place whatsoever; or

(*c*) by any person in the United Kingdom, or in any British ship or aircraft, not being a Dominion ship or aircraft.

Interpretation.

5.—(1) In this Act the following expressions have the meanings hereby respectively assigned to them, that is to say—

22 & 23 Geo. 5. c. 4.

"Dominion" means any Dominion within the meaning of the Statute of Westminster, 1931, except Newfoundland, and includes any territory administered by His Majesty's Government in a Dominion;

"Dominion ship or aircraft" means a British ship or aircraft registered in a Dominion, not being a ship or aircraft for the time being placed at the disposal of, or chartered by or on behalf of, His Majesty's Government in the United Kingdom;

"Enemy" means the enemy in any war in which His Majesty may be engaged;

"Enemy alien" means a person who possesses the nationality of a state at war with His Majesty, not being either a British subject or a person certified by a Secretary of State to be a British protected person.

(2) For the purposes of this Act, any ship or aircraft registered in India, Burma, or Southern Rhodesia, not being a ship or aircraft for the time being placed at the disposal of, or chartered by or on behalf of, His Majesty's Government in the United Kingdom, shall be treated as if it were a Dominion ship or aircraft.

(3) The functions of the Attorney-General under this Act may, in the event of a vacancy in the office or in the event of the Attorney-General being unable to act owing to illness or absence, be exercised by the Solicitor-General.

Duration.

6. No person shall be guilty of an offence under this Act by reason of anything done after such day as His Majesty may by Order in Council declare to be the date on which the emergency which was the occasion of the passing of this Act came to an end.

Application to Scotland and to Northern Ireland.

7.—(1) In the application of this Act to Scotland, section two shall have effect as if for the reference in subsection (1) thereof to the Attorney-General there were substituted a reference to the Lord Advocate, and as if subsection (2) and subsection (3) thereof were omitted.

(2) This Act shall in its application to Northern Ireland have effect as if for references therein to the Attorney-General there were substituted references to the Attorney-General for Northern Ireland, and as if for the reference therein to the Solicitor-General there were substituted a reference to the deputy appointed under section two of the Office of Attorney-General Act (Northern Ireland), 1923, to act as Attorney-General for Northern Ireland.

Short title.

8. This Act may be cited as the Treachery Act, 1940.

Section 2.

SCHEDULE.

AMENDMENTS TO THE NAVAL DISCIPLINE ACT, ARMY ACT, AND AIR FORCE ACT.

The Naval Discipline Act.

Section forty-five of the Naval Discipline Act.	After the word "death" there shall be inserted the following paragraph :— "If he shall be guilty of an offence under the Treachery Act, 1940, he shall suffer death:"

The Army Act and the Air Force Act.

Section forty-one of the Army Act and of the Air Force Act.	After paragraph (2) there shall be inserted the following paragraph :— "(2A) If he is convicted of an offence under the Treachery Act, 1940, be liable to suffer death; and"
Section fifty-seven of the Army Act and of the Air Force Act.	In subsection (1) and in subsection (2) after the word "murder" there shall be inserted the words "or for an offence under the Treachery Act, 1940."

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