Judgment of the Lords of the Judicial Committee of the Privy Council on the Petition of Lodewyk Johannes De Jager for special leave to appeal to His Majesty in Council from a Judgment and Sentence pronounced by the Special Court constituted by Act No. 14 of 1900 of the Colony of Natal, in the matter of Rex v. Lodewyk Johannes De Jager; delivered the 9th May 1907.

Present at the Hearing :

THE LORD CHANCELLOR.
LORD MACNAGHTEN.
LORD ATKINSON.
SIR ARTHUR WILSON.

[Delivered by the Lord Chancellor.]

The Petitioner Lodewyk Johannes De Jager was adjudged guilty of high treason by the Special Court constituted by Act No. 14 of 1900 of the Colony of Natal, and now seeks special leave to appeal to His Majesty in Council from that Judgment and the sentence which followed. The circumstances and the questions of law raised are fully set out in the Petition and need not be repeated here. Their Lordships have not to consider any facts or features of this case except the points of law upon which Sir Robert Finlay insisted.

It is old law that an alien resident within British territory owes allegiance to the Crown, and may be indicted for high treason, though not a subject. Some authorities affirm that this duty and liability arise from the fact that while

in British territory he receives the King's pro-
tection. Hence Sir R. Finlay argued that when
the protection ceased its counterpart ceased also,
and that as the British forces evacuated Wasch-
bank on the 21st October 1899, the Petitioner
was lawfully entitled to assist the invaders on
and after the 24th October without incurring
the penalty of high treason.

Their Lordships are of opinion that there is
no ground for this contention. The protection
of a State does not cease merely because the
State forces, for strategical or other reasons,
are temporarily withdrawn, so that the enemy
for the time exercises the rights of an army in
occupation. On the contrary, when such terri-
tory reverts to the control of its rightful
Sovereign, wrongs done during the foreign
occupation are cognisable by the ordinary
Courts. The protection of the Sovereign has
not ceased. It is continuous, though the actual
redress of what has been done amiss may be
necessarily postponed until the enemy forces
have been expelled. Their Lordships consider
that the duty of a resident alien is so to act that
the Crown shall not be harmed by reason of
its having admitted him as a resident. He is not
to take advantage of the hospitality extended to
him against the Sovereign who extended it. In
modern times great numbers of aliens reside in
this and in most other countries, and in modern
usage it is regarded as a hardship if they
are compelled to quit, as they rarely are,
even in the event of war between their own
Sovereign and the country where they so reside.
It would be intolerable, and must inevitably end
in a restriction of the international facilities now
universally granted, if, as soon as an enemy made
good his military occupation of a particular
district, those who had till then lived there
peacefully as aliens could with impunity take

up arms for the invaders. A small invading force might thus be swollen into a considerable army, while the risks of transport (which in the case of oversea expeditions are the main risks of invasion), would be entirely evaded by those who, instead of embarking from their own country awaited the expedition under the protection of the country against which it was directed. These considerations would not justify a British Court in deciding any case contrary to the law, but they offer an illustration of consequences which would follow if the law were as the Petitioner maintains. There is no authority which compels their Lordships to arrive at so strange a conclusion. The questions raised are, no doubt, of general importance, but their Lordships, after hearing the arguments of Counsel in support of the Petition, do not consider the case to be attended with doubt, and they will therefore humbly advise His Majesty to dismiss this Petition.

There will be no order as to costs.