

The prosecutor had "no evidence to give except that he believes he" (the accused) "is an enemy alien." The accused said: "I am not a Turk, but a Syrian. . . . I was born and lived under Turkish rule, but I am a Christian; I have no passport; I am not naturalised, and I have not been registered as an alien."

The order in council No. 2194 requires every alien enemy who has no permanent place of residence or abode in Canada to report within 20 days. There was no evidence that the defendant had no such place of residence. He swore, in an affidavit filed on this application, that he has and has had for many years a permanent place of residence in Canada, to the knowledge of the magistrate. This was not disputed; and the respondents admitted that the conviction could not stand as for an offence under order 2194.

It was urged that the defendant should be convicted under order 1908 of the 5th August, 1918, which cancels order 2194, and provides that every alien enemy residing or being in Canada shall, unless previously registered or reported, report within 20 days after the publication in the Canada Gazette. The order in council was published on the 17th August; and every alien enemy (if he did not come under order 2194) had until the 6th September to report, and he was not in default until the end of that day.

The defendant could not be convicted on the 27th August of an offence of which he could not be guilty till the following month.

Order in council No. 1013 of the 30th April, 1918, was invoked; that order prescribes a penalty for every male person, not on active service, "who apparently may be, or is reasonably suspected to be, within class 1 under the Military Service Act, 1917," and who claims exemption, but has not a certificate to exhibit.

There was nothing to shew that the defendant apparently was or was suspected of being in class 1. If the magistrate, seeing the defendant, had certified that he apparently was in class 1, the case might be different; but the magistrate's mind was not directed to such a matter.

The learned Judge had not considered the question whether he had power to amend so as to bring the case within order 1013 of 1908; he was clearly of opinion that, on the evidence, no charge under either could succeed.

The conviction must be granted; and, by reason of facts sworn to by the defendant and not contradicted, the costs of the motion must be paid by the magistrate and prosecutor, and there should be no order of protection.

The whole proceedings were a travesty of justice, and such as should not be tolerated in any civilised community.