

exactly follows (with one or two exceptions of little or no importance), the existing law which depends upon the old Act of 25 Ed. III. 1350 (Stat. 5), ch. 2, and on the judicial construction put upon that Act—a construction well explained, in the opinion of the late Willes, J., in the case of *Mulcahy v. The Queen* (1868), L.R. 3 H.L. 306.

The essence of the offence of treason lies in the violation of the duty of allegiance owing to the State. The duty of allegiance is a duty which is due not only by the State's own subjects, but also by an alien residing within its territory and receiving the protection of its laws; and this is so whether the State to which the alien belongs be at peace with the Sovereign of the State where he resides or not. (See Broom's Common Law, 1875, 5th ed., pages 877, 878, and 9 Hal's., page 450.)

The principal heads of high treason, as contained in the Act of 25 Ed. III. 1350 (Stat. 5), ch. 2, are (a) imagining or compassing the King's death, (b) levying war against the King, and (c) adhering to the King's enemies, there being no express provision for any act of violence against the King's person which did not display an intention to kill him, and nothing about attempting to imprison or depose the King, *conspiracies* or *attempts* to levy war, or disturbances, however violent, which did not reach the point of levying war, although there was a proviso (afterwards repealed by 1 Henry IV. 1399, ch. 10), that Parliament, in its judicial capacity, might, upon the conviction of any person for a political offence, hold that it amounted to high treason, though not specified in the Act. (See 2 Stephens' History of Criminal Law, pages 243, 249, 250, 253.)

After the Act of Edward III., many Acts were, from time to time, passed for the purpose of adding new treasons, but nearly all of these Acts were either *temporary* or have, in one way or another, long since expired, and they exercised little or no *permanent* influence on the law of treason as contained in the old statute with the wide constructions upon its provisions by learned Judges and commentators, whose interpretations have received, in later Imperial legislation (30 Geo. III. 1790, ch. 6, and 11-12 Vict. 1848, ch. 12), full statutory recognition and authority.

The Statute of Treasons of Edward III., taken literally, was too narrow to afford complete protection to the King's person, power and authority; but the Judges in their decisions, and various writers, in their comments upon the subject, held "that to imagine the King's death means to intend anything whatever which, under any circumstances, may possibly have a tendency, however remote, to expose the King to personal danger, or to the forcible deprivation of any part of the authority incidental to his office (2 Stephens' History of the Criminal Law, pages 263, 268).

The mere intention of compassing the King's death seems to have constituted the substantive offence or *corpus delicti* in this kind of treason; thus shewing an apparent exception to the general doctrine that a person's bare intention is not punishable. But, although an overt act was not essential to the abstract crime, it was always held essential to the offender's conviction. The compassing or imagining the death was considered as the treason, and the overt acts were looked upon as the means employed for executing the