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Trading with the enemy in the Great War: the directors of William Jacks and Company in Glasgow

By Dr. Robert S. Shiels

|Preamble|

| In this paper, Robert Shiels, a graduate of the universities of Dundee and Glasgow, and a solicitor in Scotland, considers the politically sensitive circumstances arising at the outbreak of the Great War from existing fleets at sea during the immediate declaration of war. The decision to prosecute, or not to prosecute, for serious criminal charges arising from that trade was problematic, and particularly sensitive as the immediate context concerned indirectly those engaged in high politics. |

A. INTRODUCTION

The criminal prosecution in 1914 of two Glasgow businessmen, Messrs Hetherington and Wilson of William Jacks and Company was for a breach of wartime legislation concerning trade with the enemy. A former Director of the company was Andrew Bonar Law MP. It was a case with difficult legal decisions for the public prosecutor, partly because of the new law and also for the serious political interest in the decision to proceed and the trial in the context of febrile politics to settle on a coalition government for the wartime United Kingdom.

The Great War began on 4 August 1914 and the outbreak of hostilities led immediately to legislation for the new conditions including a statutory prohibition on trading with the enemy. The Royal Proclamation had a degree of immediacy but it became clear that additional powers were needed as *lacunae* were soon found in legislation that had been passed.¹ The law and the immediate promptings of good sense and, separately, political acumen probably brought about an almost immediate reduction in exports. That may be a statement of the obvious but an immediate issue was how quickly that cessation could or should be put into effect when goods were in transit. The initial legislative prohibition on trade with the enemy and associated naval blockade were not unprecedented in wartime but these were fast moving events even

¹ Anonymous, *Trading with the Enemy Legislation*, 105-107.

in that period. There were also legal developments later in the war that led to companies being wound-up.²

The lawyers of the period knew that the initial legislation was to be followed by more, and readers of contemporary legal journals were exhorted to get to grips with the basic law in anticipation of what was almost certain to follow, and did follow.³ From the outbreak of war to 30 April 1915 there were 90 cases of suspected trading with the enemy that had been forwarded to the Director of Public Prosecutions for England and Wales, the Lord Advocate for Scotland and the appropriate authorities for Ireland. Specifically, 15 such cases in Scotland were sent to the Lord Advocate, as national public prosecutor.⁴

One of the most sensitive of the latter cases was that concerning William Jacks and Company in Glasgow.⁵ The seriousness of the possibility of prosecution may be considered from two points. First, a consignment was made of more than 7,000 tons of iron ore by the firm of William Jacks and Company in Glasgow to a German customer. The goods were *en route* at sea at the date at which war was declared. The ship with the iron ore left Canada on 25 July 1914 and it had reached a point just in the English Channel at the date of the declaration of war on 4 August 1914. The goods were delivered to Rotterdam and removed from the ship after the war had been declared. There appears to have been some dispute between the firm of William Jacks and Company in Glasgow and their agents in Rotterdam as to who did what and why it had been done.

Secondly, one of the possible accused, John Richard Kidston Law, generally known as Jack Law, was the brother of Andrew Bonar Law, who was still a Member of Parliament having also in 1911 become Leader in the House of Commons of the Conservative and Unionist Party. At the point that the possibility arose of prosecution by the public prosecutor in Scotland, Bonar Law was Leader of the Opposition in the House of Commons and on 25 May 1915 he became Secretary of State for the Colonies, and less than a decade later he became Prime Minister. Ultimately nothing adverse for Bonar Law came of the whole matter.⁶ Yet, the experience “hardly

² McDermott, *Trading with the Enemy*, 201-219.

³ Anonymous, *Trading with the Enemy Legislation*, 107.

⁴ McDermott, *Trading with the Enemy*, 208.

⁵ McDermott, *Trading with the Enemy*, 209.

⁶ Adams, *Bonar Law*, 190-1.

provided the best background for him [Bonar Law] to conduct the delicate negotiations about the form of the [wartime national] coalition".⁷

B. THE COMPANY

Andrew Bonar Law left school to become, through family connections, a clerk at Kidston and Company in Glasgow, a deceptively simple statement of fact that elides an explanation of his birth and upbringing in New Brunswick, Canada, and close family connections with Scotland. As a clerk he received a nominal salary, on the understanding that he would gain a "commercial education" from working there and that would serve him well later as a businessman.⁸ In 1885 the Kidston brothers decided to retire, and agreed to merge the firm with the Clydesdale Bank. Such a merger would have left Bonar Law without a job and with poor career-prospects, but the retiring brothers found him a job with William Jacks, an iron merchant who was pursuing a parliamentary career and subsequently became a Liberal Member of Parliament. Bonar Law in 1902 became a Director of the Clydesdale Bank.⁹ It is known that Bonar Law also had directorships with three other companies, and he inherited substantial sums from relatives.¹⁰

The Kidston brothers lent Bonar Law money to buy a partnership in Jacks' firm, and with William Jacks himself no longer playing an active part in the company, Bonar Law effectively became the managing partner. He turned the firm into one of the most profitable iron merchants in the market. Bonar Law moved into politics and he was returned for a Glasgow constituency at the general election of 1900. He was 42 years old then and he had some difficulty initially in adapting to the pace of Parliament which was somewhat slower than that of the intensely competitive iron market. However, on his election to Parliament in October 1900 he ended his active work at William Jacks and Company and moved to London.¹¹

There were several companies with identical names: Bonar Law seems to have been involved most closely with William Jacks and Company in Glasgow: the firm known as William Jacks and Company in London was an entirely different firm, albeit with identical origins. The Glasgow firm was founded by William Jacks and Bonar Law, while the London firm was founded by William Jacks and Andrew Bonar Law along with J. Gray Buchanan. By 1915, no partner in the firm of William Jacks and Company

⁷ Green, *Andrew Bonar Law*, 728-738, 733.

⁸ Adams, *Bonar Law*, 11.

⁹ Munn, *Clydesdale Bank: The First One Hundred and Fifty Years*, 85.

¹⁰ Adams, *Bonar Law*, 13.

¹¹ Adams, *Bonar Law*, 20.

in Glasgow had any interest direct or indirect in the London firm, and vice versa. On Bonar Law's entry into politics in 1901, he "severed his connection entirely" with both firms, and after the death of William Jacks in 1907 there was no connection even indirectly between the two firms.¹²

C. DECIDING TO PROSECUTE

(1) Preliminary procedure

An important element of criminal procedure in Scotland came to play an unusual part in the decision-making process. Prior to 1898 an accused was not able to give evidence directly in his or her own trial.¹³ The change of law did not dispense with the procedure of providing a declaration on arrest. Thus, when brought before a Sheriff for committal proceedings an accused was asked if he or she wished to 'emit a declaration', that is to say give an explanation of events. By 1915 the decision whether to state any defence or other explanation to be relied on later at trial that procedural point was a matter for an accused with advice from a solicitor.¹⁴ The declaration became evidence in the case and high regard was paid to anything said then, as it was evidence given on oath. It seems a reasonable guess now that with such a discretion the general practice of legal advice to a client may have been to say nothing, which advice may or may not have been acted on depending on the circumstances.¹⁵ The declaration of John Law and another director were eight months after the events of interest to the authorities.

In that judicial declaration dated 1 April 1915 John Law said, and in effect he pre-empted any evidence that he might have given at the trial had he been charged, that he was a Director but that he was only to devote such time as he thought necessary to the business. By an earlier contract of partnership dated 1908 it had been settled that he was not bound to devote his whole time to the business. He asserted in his declaration that he knew nothing in August 1914 of the commercial activity by then of interest to the authorities: "Nothing was said to me about it". He had not seen any

¹² BL/64/D5. There are two letters dated 7 June 1915 and 14 June 1915 in identical terms and both marked 'private and confidential'. The former is apparently typed while the latter seems printed, presumably for wider dissemination within business circles.

¹³ The law was changed by Criminal Evidence Act 1898 (c.36).

¹⁴ Renton and Brown, *Criminal Procedure*, 37-40.

¹⁵ The competence of making such a declaration was abolished by s.35(6A) which was introduced into the Criminal Procedure (Scotland) Act 1995 by s.78(1) of the Criminal Justice (Scotland) Act 2016.

of the relevant letters.¹⁶ Another Director proceeded similarly with a declaration and offered a different, but nevertheless exonerating, explanation.¹⁷

The assertions of John Law have to be seen in the context of that part of the Crown case for which two Prints of Correspondence and a Print of Documents were prepared. In the latter was 'Excerpts from the Contract of Co-partners of William Jacks and Company'.¹⁸ One such except was the fifth term of the agreement which provided that: "The parties shall daily consult with one another, so far as practicable, about the conduct of the firm's business".¹⁹ The document was signed by John Law and four others including the two other Directors who did appear in court as accused.

The potential prosecution case was revised by the Law Officers personally: on 5 April 1915, the Lord Advocate wrote to the Solicitor General for Scotland. He sent on a revised draft indictment and advised that on the evidence he had "reluctantly felt obliged to exclude" one of the draft charges.²⁰ It was also written that: "The declarations mark a new development in the case. I greatly fear we may have to let [John] Law and [the other director] out. Against their sworn testimony we have the provision in the deed of co-partnery – with which it seems to me they deal somewhat disingenuously - and the strong probabilities of the situation".²¹ It was noted that neither John Law nor the other director said they were physically in the rooms constituting the firm's office at the critical period. The indictment for service, as the concluded extent of the Crown case, omitted the name of John Law.

The Crown papers include a precognition, a statement taken in anticipation of his being called to give evidence, from Alexander Muirie, a clerk at the company, on 19 December 1914. In short, he said that in the three years working there he had seen John Law in the office but that Law had had nothing to do with the business of any part of the firm. He said that: "Mr Law is most irregular in his attendance" and he had "never heard him converse with any of his partners in regard to the business nor have I seen him examine the books. He takes no charge in instructing the staff as to what is to be done [...]".²² He thought that John Law was "a sleeping partner".²³

¹⁶ NRS: AD15/15/20: Box 1.

¹⁷ The explanation was that in the course of his business as a steel merchant for the firm he only dealt with steel and the issue for the authorities to investigate was iron ore.

¹⁸ NRS: AD21/9. The document is dated 27 and 28 January 1914.

¹⁹ NRS: AD21/9, 13-15.

²⁰ NRS: AD21/9, 13-15.

²¹ NRS: AD21/9, 13-15.

²² NRS: AD21/9, 13-15.

²³ NRS: AD21/9, 13-15: James Cochran, also a clerk there, gave his precognition (a statement to the public prosecutor of likely evidence) and confirmed the same as Muirie had said.

(2) Opinion of Counsel

Concurrently with prosecutorial preparation, the concern of some future action by the prosecutor was confirmed in details set out in a *Memorial for Counsel*, a statement of the known facts that would be sent to independent counsel for advice as to how the accused or potential accused might proceed. The *Memorial for Counsel* narrated the fact of an attendance at the offices of the firm by the Procurator Fiscal, the local public prosecutor, personally “accompanied by one of his officers” and a Chartered Accountant.²⁴ Further, a warrant was presented that was “signed by the Secretary of State for Scotland” authorising on statutory authority the Procurator Fiscal to examine all books and papers to ascertain whether there had been a breach of the law on trading with the enemy.²⁵ Full co-operation, it was said, was then provided. The Directors wanted to know if an offence had been committed: “it would be a disaster of far-reaching consequences if a prosecution was initiated”.²⁶

Communications between lawyers and their clients have been confidential since the beginning of time and that was certainly the position in 1915 in Scotland.²⁷ On that basis, some deference must be paid to the *Memorial for Counsel* with the papers of Bonar Law, although it only states the facts of the circumstances and must surely have been accompanied with a consultation.²⁸ The document was nevertheless intended to identify the context of a problem for which independent advice was sought.²⁹ A copy of the *Memorial for Counsel* was most likely have been sent to Bonar Law to alert him to the facts on which the problem had arisen. It may be that an Opinion from counsel was obtained in answer to the questions asked but, if one was obtained in writing rather than by oral advice at a meeting, then that does not seem to have been received by or kept by Bonar Law with his other papers.³⁰

The seventeen-page document constituting the *Memorial for Counsel* appears to have been drafted from a close consideration, probably undertaken at fairly short notice, of the business papers then in the office of William Jacks and Company in Glasgow.³¹

²⁴ BL/64/D1, 16. When that event occurred is uncertain as the *Memorial for Counsel* is undated and refers only to the attendance of the Procurator Fiscal and others at “the beginning of last week”.

²⁵ BL/64/D1, 16.

²⁶ BL/64/D1, 16.

²⁷ See Henderson Begg, *A Treatise of the Law of Scotland relating to Law Agents*.

²⁸ BL/64/D1.

²⁹ The recipient of the *Memorial* is not named in the document. The accused Directors at trial were represented by the Dean of the Faculty of Advocate, J.A. Clyde KC. It seems likely that the *Memorial* was sent to him.

³⁰ The *Memorial* and any Opinion in response would of course set out the limits of the issue and a possible line to be taken in response by the accused which would allow Bonar Law to respond.

³¹ BL/64/D1, e.g., 3, “there is voluminous correspondence between [the commercial agent] and the Memorialists which there has not been time to copy”; BL/64/D1, 9, “It would appear from the

The written language of the *Memorial for Counsel* suggests discussions with the accused.³² These two aspects of the *Memorial for Counsel* suggest strongly that it was the solicitor to the accused Directors or the company who had been instructed to seek definitive advice on their predicament but what was that? It was stated in several ways but ultimately it probably amounted to the same problem. “The question, a very difficult and important one, on which the Memorialists desire the assistance of Counsel, arises in connection with a shipment to Rotterdam”.³³ Further, “[...] the question on which the Memorialists desire advice is as to whether the events which now transpired constitute a breach of the Trading with the Enemy Act 1914”.³⁴ Finally, “The question of course is whether the Memorialists have committed a breach of the proclamation of 5th August and 9th September, under which it is prohibited to supply to or obtain goods from the enemy”.³⁵

The *Memorial for Counsel* does provide some explanation of the events which would have given any counsel some grounds for thought. In describing the “disorganisation” of the journey of the ship, known as the ‘Themis’ and its cargo, around which the legal problem crystallised, it was said:

“The Memorialists, appreciating the difficulty, decided to do everything in their power to prevent the Themis arriving at Rotterdam, not it must be probably admitted on account of possible infringement of the law relating to trading with the enemy, but because they thought it was extremely doubtful if they would get payment”.³⁶

The attempts, explained thereafter, to halt the progress of the ship, or to divert it into a British port were, of course set out in the *Memorial for Counsel* and they were indicative of control of the offending ship by William Jacks and Company as agents of the Canadian company. Such action to divert had been successful for another ship, the ‘Volga’.³⁷

(3) The Decision to Prosecute

correspondence”; BL/64/D1, 10, “At this stage the correspondence between [the commercial agent] and the *Memorialists* became somewhat acrid [...]”; BL/64/D1, 12, “Various letters and telegrams bearing on negotiations [...] follow”; BL/64/D1, 14, “A rather involved interchange of letters and telegrams took place [...]”.

³² BL/64/D1, 8: “The Memorialists had not up to this time really come to any definite conclusion as to the destination of the ore [...]”.

³³ BL/64/D1, 2.

³⁴ BL/64/D1, 9.

³⁵ BL/64/D1, 16.

³⁶ BL/64/D1, 4.

³⁷ BL/64/D1, 4-5.

The decision, in all these particular circumstances, as to who to prosecute was not an easy one. The Procurator Fiscal at Glasgow investigated the allegations and reported the findings to Crown Office at Edinburgh. The Law Officers for Scotland were located there, as were some permanent officials and support staff. The extensive papers following investigation include draft indictments and letters.³⁸ In particular, it should be noted, draft indictments for discussion amongst prosecutors were probably not unusual for difficult cases because the prosecution was working to exceptional time restrictions and not all of the evidence to be relied on had appeared at the same time. Moreover, opinions amongst lawyers may have differed as to the strength of whole cases, or that against individuals.

The final, that is to say undoubtedly the crucial, decision as to proceeding with a prosecution seems to have been taken at a meeting on 24 April 1915 following consultation amongst the Lord Advocate (Robert Munro KC MP)³⁹, the Solicitor General for Scotland (T.B. Morison KC) and the Procurator Fiscal, for Glasgow (James N. Hart).⁴⁰ There can be no suggestion that a Liberal Lord Advocate and a Member of Parliament, and the others at the meeting, did not know that a potential accused was a brother of a fellow Scot and Member of Parliament.

Rather oddly, the fact of such a meeting was confirmed almost a decade later in a letter of 15 October 1924 from a Crown Office official in reply to a letter to the Legal Secretary at Dover House, London.⁴¹ Quite why such a question should be asked then is not clear. By 1924 Andrew Bonar Law was dead and a formal inquiry in a letter between officials cannot be seen as a sign of some sort of improper approach. The decision not to prosecute John Law had meant in effect, on the evidence, that Andrew Bonar Law would not be prosecuted either.

The Crown papers include a *draft* indictment that names as a possible accused, with others, 'John Richard Kidston Law, merchant'.⁴² Also amongst the Crown papers is a Print of Documents for court use as proof of facts.⁴³ Included in the print is 'Excerpts from Contract of Co-partners of William Jacks and Company dated 27 and 28 January 1914'.⁴⁴ Amongst the terms of the contract is: "Fifth: the parties [to the contract] shall

³⁸ NRS: AD15/15/20 (two boxes) and AD 21/9. There is also a full transcript of the four-day trial: AD21/10. The transcript is duplicated at JC36/28.

³⁹ Robert Munro was MP for Wick Burghs (January 1910 to 1918) and, on the abolition of that constituency, for Roxburgh and Selkirk (1918-1922).

⁴⁰ There can be no suggestion that a Liberal Lord Advocate and a Member of Parliament did not know that a potential accused was a brother of a fellow Scot and Member of Parliament.

⁴¹ NRS: AD15/15/20, Box 2.

⁴² NRS: AD 15/15/20, Box 1.

⁴³ NRS: AD 21/9.

⁴⁴ NRS: AD 21/9, 13-15.

daily consult with one another, so far as practicable, about the conduct of the firm's business". The contract is signed by 'John R.K. Law' and also both the future accused, Robert Hetherington and Henry Arnold Wilson.

The Crown papers have the witness statements that form the basis of the decision as to whether, and if so whom, to prosecute. The details in any police witness statements are supplemented by further inquiry by the Procurator Fiscal.⁴⁵ On the face of the witness statements and the documents, the case against John Law, *prima facie*, was one of his being a partner with immediate managerial responsibilities in a company that seemed to have been trading with the enemy in wartime. However, a simple explanation of no involvement at all in managerial responsibilities by John Law, with supporting evidence including that from employees of the firm meant there was no chance of proving any charge against him beyond reasonable doubt.⁴⁶

E. THE TRIAL

A telling contemporary comment was that: "the two Glasgow iron merchants drew a goodly company of spectators daily in the High Court, ladies, as is usual at criminal trials of the more genteel order, being well in evidence".⁴⁷ The trial that started on Friday 18 June 1915 was before Lord Strathclyde and a Jury. In keeping with the Scottish criminal procedure, the indictment was read to the Jury and there were no opening speeches. The indictment contains the charges against the Directors, Robert Hetherington and Henry Wilson. Reference is made in the charges to schedules attached with evidence set out and reproduced there are the various crucial communications between the company in Glasgow and representations in Rotterdam.⁴⁸ The accused were charged in the capacities of "partners of the firm", which seems not to have had limited liability, and that they were carrying out business as iron ore merchants in Glasgow with an office in Duisburg, Germany.

The trial might be considered, first, from the point of view of the Crown as prosecutor. Lord Advocate had overseen the preparations and he had assessed the impossibility of obtaining a conviction when John Law did so little, and probably nothing, for his share of any profits. The Lord Advocate personally conducted the trial.⁴⁹ John Law

⁴⁵ Generally, see Crowther, *The Criminal Precognitions and their value for the Historian*.

⁴⁶ There seem to have been no records of active participation that might have been used to rebut an innocent explanation of inaction.

⁴⁷ Anonymous, (1915).

⁴⁸ For a formal law report, see *HM Advocate v Hetherington and Wilson* (1914-1915) 52 *Scottish Law Reporter* 742, with the indictment reproduced at 743-745.

⁴⁹ The two other prosecutions by then had been conducted by the Solicitor General: *HM Advocate v. Mitchell*, (5 January 1915), and *HM Advocate v. Innes*, (11 January 1915).

was available as a Crown witness and he gave evidence on the first day of the trial, on 14 June 1915.⁵⁰ He confirmed that he was “a native of Canada”.⁵¹ He asserted that he had in practical terms taken no part in the management of the business and, specifically, he had nothing to do with the “cargo in issue”.⁵² He had had little to do with the firm since 1907, “as agreed in the contract of co-partnery”.⁵³ The other director was a steel merchant and a partner in the business but only in regard to the steel business, iron ore was a different department.⁵⁴ Much of the evidence of the transaction in issue seems to have been undisputed, doubtless to the relief of the Crown given the circumstances of war and the difficulties of proof of facts.

The second part of the trial to be considered is that of the defence. The accused Henry Wilson said in evidence on his own behalf that he had tried to stop the ship on 3 August 1914 because of the “serious political condition” on that day.⁵⁵ He asserted amongst other things that iron ore was never put on the quay because that was too expensive.⁵⁶ The only reason that had been done was because the ship had not been diverted successfully and when it arrived at Rotterdam a firm there had put the cargo on the quay. He immediately repudiated their action.⁵⁷ The other accused Robert Henderson gave evidence that the ship and cargo had gone into Rotterdam “against our specific instructions, and having got into Rotterdam it was beyond our control.”⁵⁸ He added then that the iron ore was out of their control having been consigned to another firm, but he accepted that they had to do everything they could do to keep it back until they could get some promise of payment.⁵⁹

Lord Strathclyde, in his charge to the Jury, reminded them that the ship and ore had left Canada on 25 July 1914 and that it was in the English Channel when war was declared and he commented that, so far as he could say but it was a matter for the jury, “an honest earnest, well-timed effort was made by William Jacks and Company to prevent the ore reaching the Germans.”⁶⁰ Later: “by the perversity of their Captain their earnest and honest effort was frustrated and as well all know the ore reached

⁵⁰ Andrew Bonar Law had a copy of the *Memorial for the Opinion of Counsel* and also a detailed daily report from *The Glasgow Herald* of Tuesday 15 June 1915 to consider and he also kept the latter: BL/64/4.

⁵¹ NRS: AD21/10, first day transcript (14 June 1915), 74C-D.

⁵² NRS: AD21/10, 75E and p.76C.

⁵³ NRS: AD21/10, 98C.

⁵⁴ NRS: AD21/10, 102C-F.

⁵⁵ NRS: AD21/10, third day transcript (16 June 1915), 397F-398C.

⁵⁶ NRS: AD21/10, 403D-E.

⁵⁷ NRS: AD21/10, 405E.

⁵⁸ NRS: AD21/10, 480D.

⁵⁹ NRS: AD21/10, 480D.

⁶⁰ NRS: AD21/10, final day transcript (18 June 1915), 8E-9D.

Rotterdam.”⁶¹ The Jury was out deliberating for just over an hour and returned with guilty verdicts for both accused and recommended “*the utmost possible leniency in favour of the accused*”.⁶² Each accused was sentenced to six months imprisonment, and each fined £2,000 with a further six months imprisonment if the fine was not paid. It cannot be said with confidence that the suggestion of the Jury was followed by the Court.

F. DISCUSSION

The case of Robert Hetherington and Henry Wilson resulted in a formal law report of the trial because of several points of law that arose. Briefly it may be said that the legal terms were applied with wide definition and strictly.⁶³ More formally, it was held to be the law that if persons resident and carrying on business in Scotland supply goods to an enemy, they are subject to the jurisdiction of the courts of Scotland, no matter in what country such persons or goods may chance to be when the goods are supplied. Further, it was held that the offence of “supplying” goods to the enemy in contravention of the Proclamation and the Acts of 1914 dealing with trading with the enemy, is not affected by any question as to ownership of the goods supplied; and, accordingly, that the offence may be committed even though the persons supplying the goods is not the owner and has no right of disposal, and even though the property of the goods has already vested in the enemy at the date when they are supplied. Finally, it was held also that the offence is not affected by the existence of any contractual obligations to make the supply, or by any conditions as to payments or otherwise adjoined to the supply, or by the relation to the supplier of any intermediary through whom the supply is made.

At that point, mid-1915, and contemporaneously with the William Jacks and Company case was that known as *The Zamora*.⁶⁴ The ship was taking copper and cereal from America to Stockholm and it was intercepted by the Royal Navy. The nominal consignee was a Swedish trading company, but notwithstanding the reputable board of directors, the true purchaser was the Austrian government. The decision of the Prize Court in 1915 was challenged later on the basis that the ultimate destination of the goods was unknown to the shipowners.⁶⁵ The Court held that knowledge of a thing must be imputed to choose who close their mind to it through

⁶¹ NRS: AD21/10, 9A-10B.

⁶² NRS: AD21/10, 24B-D; emphasis added. That charitable view of the jury is not recorded in the formal law report: see *HM Advocate v Hetherington and Wilson*, 748.

⁶³ *HM Advocate v. Hetherington and Wilson* (1915).

⁶⁴ This case is now said to be chiefly of academic interest: Lentin *The Last Political Law Lord*, 60.

⁶⁵ *The Zamora* (No.2) [1921].

‘deliberate blindness’, which wilful ignorance may be through disinterest to learn or because of a desire not to know.⁶⁶ That decision of a court, while not relevant in law to the ship of William Jacks and Company, nevertheless showed the rather strict approach that the authorities in Great Britain took to the commercial trade that seemed to proceed after formal declarations were made.

G. THE POLITICS

The initial firm at the centre of the interest of authorities had been founded by William Jacks himself. He had been born near Duns and he had been a shipyard apprentice in Hartlepool and had later worked in Sunderland. His firm was founded in 1880 and it had businesses in central Scotland and North-East England. Jacks was a Member of Parliament for about four years. He was decidedly a man of his time with a determined interest in all things German, at a time when Germany was the economic powerhouse and proceeding with expansionist policies with a major growth of the German navy and a demand for steel and ships.⁶⁷ Jacks later pursued his German literary interests and amongst these, he translated German poetry into English.⁶⁸ He wrote a biography Bismarck.⁶⁹ Later still, there was his biography of the Kaiser himself.⁷⁰ Andrew Bonar Law also had an enthusiasm for German literature and ‘the old German spirit’ of which it was an expression. In early 1914 he had taken one of his sons to Germany to learn its language and literature.⁷¹ However, there were no tirades of abuse directed at Bonar Law from the *Daily Mail* or the *Daily Express*, and “no one expected that they would”.⁷²

Andrew Bonar Law was “possessed of reserves of grit and common sense that were at a premium” and that he was “tactically cautious”.⁷³ Yet, at the time of the trial, he was said to be: “certainly angry and hurt by the false accusations against his brother, and the unfounded rumours that somehow he was part of the scandal”.⁷⁴ In anticipation of some political or public criticism, or both, Bonar Law had prepared a draft of a statement of exculpation, making two points.⁷⁵ That is to say, first, he denied any control in the company since he had given up his partnership when he became an Under Secretary in 1902. Since that date he had had no control over the firm, he had

⁶⁶ *The Zamora* (No.2), per Lord Sumner at 804.

⁶⁷ Hoyer, *Blood and Iron*, 87-90 and 160-161.

⁶⁸ Ephraim, *Nathan the Wise: A dramatic poem in five acts*.

⁶⁹ Jacks, *The Life of Prince Bismarck*.

⁷⁰ Jacks, *The Life of His Majesty William II, German Emperor*.

⁷¹ Wilson *The Downfall of the Liberal Party 1914-1935*, 57 citing the *Liberal Magazine*, October 1914.

⁷² Wilson *The Downfall of the Liberal Party 1914-1935*, 57 citing the *Liberal Magazine*, October 1914.

⁷³ Harris *The Conservatives: A History*, 251.

⁷⁴ Adams, *Bonar Law*, 191.

⁷⁵ BL:64/D/3.

no knowledge of the way in which the business was conducted and he had had no interest in its profits or losses. Bonar Law, intended to say that after he ceased to be a partner, he withdrew the capital which represented his interest in the firm. However, he said that he was:

“allowed to continue the privilege of using the firm as Bankers; that is, I left with them any funds at a fixed rate of interest which I withdrew at any time either for investment or to meet expenses. During the 13 years the amount has varied, entirely to suit my convenience, between what was for me considerable sums and a few hundred pounds”⁷⁶

Secondly, Bonar Law intended also to say that he was close to his brother John and should the charges against the latter be proved then he, Bonar Law, would resign at once from the position that he then held. As John was not prosecuted, such resignation was not necessary and the statement was never made.

There was a question after the trial when Mr Laurence Ginnell MP on 24 June 1915 asked the Prime Minister whether any Member of His Majesty's Government holds, or held until recently, a financial interest in the firm of Jacks and Company, recently convicted of trading with the enemy?⁷⁷ Bonar Law replied, without any attempt to sidestep the issue:

“As this question refers to me, perhaps I may be permitted to answer it myself. I was for many years a member of the firm referred to in the question, and I was still a partner in it when I entered the House of Commons in 1900. For some months afterwards I continued my connection with it, but I came to the conclusion that I had to choose between business and politics, and at the end of the year 1901 I gave up my business, and I gave it up absolutely. Since then—that is for more than thirteen years—I have had no control over the business. I have had no knowledge of the way in which it was conducted, and, although I have from time to time put money on deposit with them at a fixed rate of interest, I have had no share, direct or indirect, in the profits or losses of the firm.”⁷⁸

⁷⁶ BL:64/D/3.

⁷⁷ Hansard HC Deb, 24 June 1915, vol.72, cc. 1332.

⁷⁸ Hansard HC Deb, 24 June 1915, vol.72, cc. 1332-3.

The draft for the statement has written on the back a list of years from 1903 to 1914 and sums of money against each year, all under the heading of “At credit with W J & Co”.⁷⁹ The lowest sum, in 1907, is £590 and the highest, in 1912, is £14,352.⁸⁰

These financial arrangements were entirely a personal matter for Bonar Law. It is odd perhaps that a Director of the Clydesdale Bank, which had a London branch, would prefer such a pragmatic arrangement with a former firm such as he made at the time of his political appointment.⁸¹ Moreover, the solicitor to the firm of William Jacks and Company of Glasgow seems to have been George H. Robb, solicitor.⁸² In central Glasgow, the offices of the firm of William Jacks and Company were at Royal Bank Place, which is entered from Buchanan Street, Glasgow and within a very few minutes’ walk of the solicitor’s office, both near to the Bothwell Street branch of the Clydesdale Bank.⁸³

H. CONCLUDING REMARKS

The whole of the preliminary proceedings and the trial took place during the acutely and politically sensitive period of 1915 when there was the serious problem with munition supplies, ‘the shell crisis’, and the resignation of Admiral Fisher, the First Sea Lord over priorities for the war. These events added to the strain of wartime politics, not least for Bonar Law who had extreme difficulty in keeping his followers in check.⁸⁴ The political struggle to settle on a Coalition Government in 1915, in early stage of a war for which the outcome was by no means certain then, was surely acerbated to some degree for Bonar Law, with the uncertainty about the future of his brother.⁸⁵

It has been said that while Bonar Law was “much troubled by this humiliating affair, there is no evidence to suggest that Bonar Law’s behaviour in his negotiations with Asquith in 1915 was affected by it”.⁸⁶ It may be that both historians of this era of high politics are correct: until the decision was taken on 24 April 1915 to use John Law as a witness, rather than prosecute him, then there must have been a *real prospect* of

⁷⁹ BLP:64/D/4.

⁸⁰ In modern times, these might be seen on a purchasing power calculator as £62,870 and £1,431,000, respectively: <https://www.measuringworth.com/calculators/ppoweruk/> [07/05/2021].

⁸¹ The Clydesdale Bank also had a branch at 30 Lombard Street, London: Munn, *Clydesdale Bank*, 112-113.

⁸² Mr Robb has been described as ‘general counsel’ to the firm: Adams, *Bonar Law*, 405, fn. 95. He was a solicitor in Scotland and a partner in G.H. Robb & Crosbie, solicitors, 30 George Square, Glasgow: *The Scottish Law List and Legal Directory 1915*, 294.

⁸³ Adams, *Bonar Law*, 13; Munn, *Clydesdale Bank*, 332.

⁸⁴ Powell *British Politics, 1910-35*, 64-65.

⁸⁵ Pugh, *Asquith, Bonar Law and the First Coalition*, 813-836.

⁸⁶ Adams, *Bonar Law*, 191. Another historian with experience of high office has suggested otherwise: Roy Jenkins, *Asquith*, 369-370 and cited by Adams, *Bonar Law*, 405 fn.97.

acute embarrassment for Bonar Law should his brother be indicted for a criminal trial on the sensitive charges of trading with the enemy. By the crucial events of the first fortnight of May 1915, and especially on Monday 17 May when Bonar Law set in motion events that led to the Coalition, John Law would have been advised of his change of status.⁸⁷

There was no evidence in the prosecution papers of any impropriety by Bonar Law around the issue of trading with the enemy. There was, however, an awkward set of circumstances due to the failure of Bonar Law to disassociate himself more explicitly, and publicly, from the firm where he and his relatives had made their living for years. In that important regard, his “acute political instincts” were in truth have been tested by such failure.⁸⁸ John Law appears to have been truly ignorant about the detail of the business of the firm did.

The Lord Advocate had to decide the questions associated with prosecution, as he was entitled to do, and did do, on the evidence. The decision was not difficult as Bonar Law had in law severed his managerial or directorial links with the firm of William Jacks in Glasgow, and by 1914 he had no part as the *controlling mind* of the company. With the result, however, the two accused directors who were held to have traded with the enemy in contravention of very recent legislation, and sent to prison *and* also fined heavily, might well have had a grievance at the outcome.

⁸⁷ Pugh, *Asquith, Bonar Law and the First Coalition*, 827.

⁸⁸ Coalter, *Andrew Bonar Law: Politics and Leadership, 1911-15*, 22. The sharp issue of attempting to stop existing trade with Germany in the autumn of 1914 was not unique: Lord Haldane had faced the same problem at the Foreign Office: Campbell and McLauchlan, *Haldane*, 59.

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