

TRADING WITH THE ENEMY.

No. 9 of 1914.

An Act relating to Trading with the Enemy.

[Assented to 23rd October, 1914.]

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1. This Act may be cited as the *Trading with the Enemy Act* Short title. 1914.^(a)

2.—(1.) In this Act, unless the contrary intention appears— Definitions.

“The Comptroller-General” means the Comptroller-General of Customs :

“The present state of war” means the period from the fourth day of August One thousand nine hundred and fourteen, at the hour of eleven o'clock post meridiem reckoned according to Greenwich standard time, until the issue of a proclamation by the Governor-General that the war between His Majesty the King and the German Emperor and between His Majesty the King and the Emperor of Austria King of Hungary has ceased.

(2.) For the purposes of this Act a person shall be deemed to trade with the enemy if he performs or takes part in—

- (a) any act or transaction which is prohibited by or under any proclamation issued by the King and published in the *Gazette*, whether before or after the commencement of this Act,
- (b) any act or transaction which is prohibited by or under any proclamation made by the Governor-General and published in the *Gazette*, or
- (c) any act or transaction which at common law or by statute constitutes trading with the enemy.

3.—(1.) Any person who, during the continuance of the present state of war, trades or has before the commencement of this Act traded with the enemy shall be guilty of an offence. Trading with the enemy.

(2.) An offence against this section may be prosecuted either summarily or upon indictment, but an offender shall not be liable to be punished more than once in respect of the same offence.

(a) This Act has since been amended by Act No. 17, 1914 (*infra*, p. 44). For a copy of this Act as so amended see *infra*, p. 319.

(3.) The punishment for an offence against this section shall be as follows :—

- (a) If the offence is prosecuted summarily—a fine not exceeding Five hundred pounds, or imprisonment for any term not exceeding twelve months, or both ;
- (b) If the offence is prosecuted upon indictment—a fine of any amount, or imprisonment for not more than seven years, or both.

(4.) Any goods or money in relation to which an offence against this section has been committed or which has been used in connexion with such an offence shall be forfeited to the King, and may be seized by any officer of police or person thereto authorized in writing by the Comptroller-General.

(5.) A corporation guilty of an offence against this section shall be liable to the pecuniary penalties thereby provided, and any director, officer, servant, or agent of a corporation who is knowingly concerned in the commission of an offence against this section by the corporation shall be deemed to be guilty of the offence and punishable accordingly by fine or imprisonment or both.

(6.) A prosecution for an offence against this section shall not be instituted without the written consent of the Attorney-General.

Power to inspect
books, &c.

4.—(1.) Where it appears to a Justice of the Peace that an offence has been, or is likely to be, committed by any person, firm, or company against the last preceding section, he may, upon information on oath made by the Comptroller-General or a person thereto authorized by him, by warrant authorize any person named in the warrant—

- (a) to inspect any books or documents belonging to or in the possession or control of the person, firm, or company ; and
- (b) to require any person whom the Comptroller-General believes to be able to give information or produce books or documents respecting the business or trade of the person, firm, or company to give such information or produce such books or documents ; and
- (c) if accompanied by an officer of police or prescribed officer, to search any premises used or believed by the Comptroller-General to be used in connexion with such business or trade.

(2.) Where the Comptroller-General certifies in writing that in relation to any person, firm, or company it is desirable on account of urgency that any or all of the powers contained in paragraphs (a), (b) and (c) of sub-section (1.) of this section should be exercised without prior application to a Justice of the Peace for the issue of a warrant, the Comptroller-General may by writing under his hand authorize any person named in the writing to exercise all or any of the powers contained in the said paragraphs.

(3.) Any person who obstructs or interferes with any person authorized under sub-section (1.) or sub-section (2.) of this section in the exercise of any power conferred upon him in pursuance of this section, or who refuses or fails to produce any book or

document or to give any information when required to do so in pursuance of this section, shall be guilty of an offence.

Penalty: Five hundred pounds or imprisonment for one year, or both.

5. No person shall in any proceeding for an offence against this Act be excused from answering any question or producing any book or document on the ground that the answer or production may criminate or tend to criminate him, but his answer shall not be admissible in evidence against him in any criminal proceeding other than a prosecution for perjury or proceedings under this Act.

Incriminating answer or production of document.

6. Whoever aids, abets, counsels, or procures, or by act or omission is in any way, directly or indirectly, knowingly concerned in or privy to—

Aiding and abetting.

(a) the commission of any offence against this Act ; or

(b) the doing of any act outside Australia which would, if done within Australia, be an offence against this Act,

shall be deemed to have committed the offence and shall be punishable accordingly.

7. For the purposes of this Act evidence of any proclamation issued by the King or by the Governor-General may be given in all Courts by the production of the *Gazette* purporting to contain it.

Evidence of proclamation.

8.—(1.) Where it appears to the Minister for Trade and Customs in reference to any firm or company—

Appointment of controller of firm or company.

(a) that an offence under section three of this Act has been or is likely to be committed in connexion with the trade or business thereof, or

(b) that the control or management thereof has been or is likely to be so affected by the state of war as to prejudice the effective continuance of its trade or business, and that it is in the public interest that the trade or business should continue to be carried on,

the Minister may apply to the High Court for the appointment of a controller of the firm or company, and the High Court shall have power to appoint such a controller for such time and with such powers and subject to such conditions as the Court thinks fit, and the powers so conferred shall be those of a receiver and manager under the laws relating to bankruptcy or insolvency in force in the State in which the firm or company carries on business, with such modifications, restrictions, and extensions as the Court thinks fit, including (if the Court considers it necessary or expedient for the purpose of enabling the controller to borrow money) the power, upon special application made to the Court for that purpose, to create charges on the property of the firm or company in priority to existing charges.

(2.) The Court shall have power to direct how and by whom the costs of any proceedings under this section, and the remuneration charges and expenses of the controller, shall be borne, and shall have power, if it thinks fit, to charge such costs, charges, and expenses on the property of the firm or company in such order of priority in relation to any existing charges thereon as it thinks fit.