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its own stock to the public,\textsuperscript{15} is a "dealer,"\textsuperscript{16} within the meaning of the Martin Act was not answered by the court.\textsuperscript{17} It should be noted, however, that decisions under the Martin Act have generally tended to favor the public.\textsuperscript{18} The decision in the instant case, explainable on the grounds of statutory construction,\textsuperscript{19} is an apparent, rather than a real deviation from this general policy. This policy, coupled with an opinion handed down by the Attorney General,\textsuperscript{20} convinces the writer that when this question is presented to the Court of Appeals, it will probably be resolved in the affirmative.

B. B.

\textbf{Evidence—Wire-tapping—Statutory Construction.}—Petitioners were convicted of smuggling alcohol largely upon evidence procured by the tapping of their telephone wires by federal officers. Such tapping was done in the face of the Federal Communications Act\textsuperscript{1} which provided that "no person not being authorized by the sender shall intercept any communication and divulge or publish the contents of such intercepted communication to any person; * * *"). On appeal from a judgment affirming the conviction and approving the admission of such evidence, \textit{held}, reversed. The statute renders in-
admissible evidence obtained by wire-tapping, and federal officers are
within the purview of the Act. *Nardone v. United States, — U. S. —, 58 Sup. Ct. 275 (1937).*

The general rule at common law is that evidence procured il-
legally, if not otherwise incompetent, is admissible.² Where no con-
stitutional rights are concerned, the rule is absolute.³ In the United
States there are exceptions at least in cases involving evidence pro-
cured and used in violation of the Fourth ⁴ and Fifth ⁵ Amendments
to the Constitution.

In the case of *Olmstead v. United States* ⁶ defendants were con-
victed of smuggling alcohol. The evidence upon which this convic-
tion was based was obtained through the tapping of telephone wires
by federal officers. In Washington, where the evidence was procured,
there was a statute making wire-tapping a misdemeanor.⁷ In that en-
actment, unlike the Federal Communications Act, above mentioned,
there was no provision as to the disposition of the information obtained
in violation of the Act. It was decided that the tapping of telephone
wires of suspected criminals, off their premises, was not violative of
the Fourth Amendment since there was no entry of the houses or
offices of the criminals, nor any unlawful search or seizure.⁸ Neither,
it was held, was it repugnant to the Fifth Amendment, inasmuch as
the criminals were under no compulsion to engage in telephone con-
vosations.⁹ Therefore, in keeping with the general rule, admission of
evidence obtained through wire-tapping was declared proper, even
though it was a crime in the state in which it was done. At that time
no federal statute applied to such wire-tapping. The question in the

Adams, 176 N. Y. 351, 68 N. E. 636 (1903); 4 Wigmore, Evidence (2d ed.
1923) § 2183. The reason is one of expediency, it being felt that the courts
should not divert attention from principal issues by inquiring into incidental
matters. See People v. Adams, supra, at 358, 68 N. E. at 638 (1903).

³S Jones, Evidence (2d ed. 1926) 2075, n.3.

⁴Weeks v. United States, 232 U. S. 383, 34 Sup. Ct. 341 (1914); Gouled
v. United States, 255 U. S. 298, 41 Sup. Ct. 261 (1921); Amos v. United
States, 255 U. S. 313, 41 Sup. Ct. 366 (1921); cf. People v. Defore, 242 N. Y.
13, 150 N. E. 585 (1926) (wherein it was held that evidence obtained in viola-
tion of Civil Rights Law § 8, substantially the same as the fourth amendment,
was admissible).


⁷"Every person who shall intercept *** a message over any telephone or
telegraph line *** shall be guilty of a misdemeanor". WASH. COMP. STAT.
(Remington, 1922) 2656–18.

⁸"The right of the people to be secure in their persons, houses, papers, and
effects, against unreasonable searches and seizures, shall not be violated ***." U. S. CONST. Art. IV.

This was decided not without a vigorous dissent by four justices who took
exception to so rigid an interpretation of the amendment; cf. State v. Hester,
137 S. C. 145, 134 S. E. 835 (1926) (use of a dictaphone arrangement to obtain
evidence was not an unreasonable search or seizure).

⁹No person *** shall be compelled in any criminal case to be a witness
against himself ***." U. S. CONST. Art. V.
instant case arose under the Federal Communications Act, which changed the common law rule, and the difficulty was as to whether the officers of the Federal Government were within the prohibition of the Act.

Though the rule is stated that general words in a statute do not bind the sovereign enacting it, where its prerogatives are involved, there are exceptions. In this country the rule has been applied to two classes of cases. The first is where the statute would inhibit the exercise of an established sovereign power. The second is where application of the act would be inimical to public safety. The rule seems to be less stringent when a statute operates upon the agents of, rather than the sovereign itself.

It is a principle of statutory construction that the sovereign is included in acts directed against wrong and oppression. Inasmuch

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10 It provides that there shall be no divulgence to any person of information obtained. "To recite the contents of the message in testimony before a court is to divulge the message". Instant case at 276.

It should be noted that the change is limited to evidence procured by such wire-tapping as is within the scope of the act. Admissibility of evidence procured in violation of other laws is unaffected.

11 1 BL. COMM. *262; 1 KENT. COMM. *460; BLACK, INTERPRETATION OF LAWS (1896) § 54.

In the Magdalen College Case (11 Co. [K. B.] 66b, 77 Eng. Reprints 1235), one of the earliest cases upholding the rule, were stated three exceptions. They were said to exist when the statute was passed for eleemosynary, religious or educational purposes (71b); or where it was designed for the suppression of wrong (72a); or where the will of a founder or donor would otherwise be rendered ineffectual (73a).

As to the applicability of statutes to the sovereign where prerogatives are conferred, rather than abridged, see BLACK, INTERPRETATION OF LAWS § 54; also Perry v. Eames, 8 App. Cases 360 (1883).

12 Dollar Savings Bank v. United States, 19 Wall. 227, 22 L. ed. 80 (U. S. 1874) (a statute prescribing, and thereby limiting remedies did not apply to the government in a suit to collect taxes); United States v. Herron, 20 Wall. 251, 22 L. ed. 275 (1874) (debts due the United States were not barred by a debtor's discharge in bankruptcy). See comprehensive collation of cases in 22 L. ed. 385, 386.

13 Farley v. New York, 152 N. Y. 222, 46 N. E. 506 (1897) (a statute setting a speed limit of five miles an hour would not be applied to fire apparatus going to a fire); State v. Burton, 41 R. I. 303, 103 Atl. 962 (1918) (military operations, in time of war, exempt from motor vehicle laws); Washington v. Gorham, 110 Wash. 330, 188 Pac. 457 (1920) (sheriff, in line of duty, exempt from speed limitations).


15 BLACK, INTERPRETATION OF LAWS § 54; "** the King shall not be exempted by construction of law out of the general words of acts made to suppress wrong, because he is the fountain of justice and common right, and the King being God's lieutenant cannot do a wrong, _Solum Rex hoc non potest facere, quod non potest instin te agere: ** **.

Lord Coke, in the Magdalen College Case. 11 Co. [K. B.] 66b, 72a (1615).
as wire-tapping has long been regarded as a reprehensible practice,\textsuperscript{17} the principle, in this case, seems to have been justly applied.\textsuperscript{18}

A. W.

Husband and Wife—Trusts—Dower—Decedent Estate Law Section 18 Construed.—Ferdinand Straus, three days prior to his death on July 1, 1934, after making his last will, executed a trust agreement wherein he transferred all his real and personal property, reserving the income for life, right to revoke the trust at will, and full control of the trustees. Upon his death, the property was to pass to one other than his wife.\textsuperscript{1} The widow has challenged the validity of the transfer to the trustees. Held, the husband’s conveyance to the trustees, reserving the income, power of revocation and right to control the trustees was illusory and void as to the rights of the surviving spouse under the Decedent Estate Law Sections 18 and 83.\textsuperscript{2} Newman v. Dore, 275 N. Y. 371, 9 N. E. (2d) 966 (1937).

Prior to September 1, 1930, a wife was endowed of a life estate in one-third of the real property of which her deceased husband was benefically seized during coverture.\textsuperscript{3} While the husband was still alive, dower was an inchoate right, a mere contingent claim and not an estate in land,\textsuperscript{4} yet, it was a subsisting interest which was fully


\textsuperscript{12} As to effect upon intrastate communications, see Edit., N. Y. L. J., Dec. 29, 1937.

\textsuperscript{1} The deceased could not have effectively cut off his wife by a testamentary disposition, nor by dying intestate seized of the property in question. If the agreement effectively divested the settlor of title, then the decedent left no estate and the widow receives nothing.

\textsuperscript{2} N. Y. Dec. Est. Law § 18. “Where a testator dies after August 31, 1930, and leaves a will thereafter executed and leaves surviving a husband or wife, a personal right of election is given to the surviving spouse to take his or her share of the estate as in intestacy, subject to the limitations, conditions and exceptions contained in this section. * * *” See also Decedent Estate Law §§ 82, 83.

\textsuperscript{3} N. Y. Real Prop. Law § 190. “When the parties intermarried prior to the first day of September, 1930, a widow shall be endowed of the third part of all lands whereof her husband was prior to the first day of September, 1930, seized of an estate of inheritance, at any time during the marriage. Except as hereinbefore provided, after the 31st day of August, 1930, no inchoate right of dower shall be possessed by a wife during coverture, and no widow shall be endowed in any lands whereof her husband became seized of an estate of inheritance.”

\textsuperscript{4} Witthaus v. Schack, 105 N. Y. 332, 11 N. E. 649 (1887); Moore v. City of N. Y., 8 N. Y. 110 (1853).