Equivalent Citations
1945 AIR CAL 107 . 1943 SCC ONLINE CAL 113 .

Niharendu Dutta Mazumdar, In Re

Calcutta High Court (Jul 14, 1943)

CASE NO.

Crl. Rules Nos. 17 and 18 of 1943 in Misc. Case Nos. 58 and 54 of 1943

JUDGES

Derbyshire, C.J

Mitter

Khundkar, JJ.

SUMMARY

Structured Summary of the Opinion

Factual and Procedural Background

This opinion arises from two connected proceedings in which Rules were issued by the Court calling on various police officers and government officials to show cause why they should not be committed for contempt of Court. The proceedings relate to nine persons (detenues) who had been held under Rule 26 of the Defence of India Rules. After the Federal Court declared Rule 26 invalid, the detenues obtained Rules under section 491 of the Code of Criminal Procedure. A Special Bench heard those Rules and reserved judgment to be delivered on June 3, 1943.

On May 31, 1943 the Court ordered the Chief Secretary to produce the detenues in Court on June 3, 1943 for judgment. When judgment was pronounced on June 3, 1943, the Court ordered the release of the detenues (the majority judgment). At that moment policemen and armed jail guards who had been present left the courtroom on the Court's direction, but lined up in the adjoining corridor. Shortly after the Court rose and the Judges retired for the day, several of the detenues were arrested in the corridor or shortly thereafter. The arrests were carried out by police officers (including Inspector Syed Hasan and Deputy Commissioner Julius Janvrin) and later warrants of commitment under *Regulation III* of 1818 (State Prisoners *Regulation*) and the State Prisoners Act, 1850, were produced by police authorities.

Petitioners challenged the arrests as contempt and as intended to flout the Court's order; they also alleged improper conduct and false statements by police officers (including an allegation that an Assistant Commissioner stated the Chief Justice had given permission

for the arrests). The Crown/respondents relied on commitments under *Regulation III* of 1818 and statutory provisions (including authentication under section 59(2) of the Government of India Act) as lawful authority for arrest.

Legal Issues Presented

1. Whether the arrests of persons immediately after an order of release by the Court (while in or near the Court building) constituted contempt of Court.
2. Whether a warrant of commitment under *Regulation III* of 1818 / the State Prisoners Act, 1850, is a civil process, a criminal process, or a sui generis authority, and what implication that categorisation has for privilege from arrest after release by habeas corpus or a section 491 order.
3. Whether the particular arrests were fraudulent devices to evade or frustrate the Court's order and therefore amount to contempt.
4. Whether the arresting officers had valid warrants (and, specifically, whether warrants existed at the moment of Mr. Niharendu Dutta Mazumdar's arrest).
5. Whether statements attributed to a police officer (that the Chief Justice had given permission for the arrests) amounted to contempt or scandalisation of the Chief Justice.

Arguments of the Parties

Petitioners' Arguments

- An arrest effected in the precincts of the Court, immediately after a release ordered by the Court, is contempt even if made under a warrant.
- Persons released on habeas corpus or under section 491 of the CrPC enjoy a privilege from arrest while going to and from Court and until they reach home; interruption of that privilege is unlawful.
- The arrests were a contrived device to continue detention under another name (*Regulation III*) and therefore were fraudulent and in contempt of the Court.
- Particular allegations: Mr. Niharendu Dutta Mazumdar was roughly seized without any warrant being shown; a police officer (Abdul Gaffur) stated that the Chief Justice had permitted the arrests — a statement that scandalised the Court.

Respondents' (Crown/Police/Government) Arguments

- The arrests were effected under warrants of commitment issued under *Regulation III* of 1818 and the State Prisoners Act of 1850; such warrants (properly authenticated) are lawful authority to arrest anywhere in a Governor's province.
- Arrest under *Regulation III* is not civil process; it is akin to criminal process (or sui generis) and so the privilege that protects against civil process after habeas corpus does

not apply.

- Section 59(2) of the Government of India Act validates orders authenticated in the prescribed manner, and the committal warrants were so authenticated.
- Cited precedent (Ameer Khan and others) to argue that where a lawful commitment already exists, issuing a writ or expecting practical immediate release would be futile — the antecedent lawful authority prevails.
- The police acted under instructions to preserve public order; arrests were effected to carry out lawful commands and not to defy the Court.

Table of Precedents Cited

Precedent	Rule or Principle Cited For	Application by the Court
In re: Douglas (Capt. Douglas)	Distinguishes arrest on civil process (protected after habeas corpus) from arrest on criminal process (not protected); Court may not prevent bona fide criminal process from operating after release.	The Chief Justice and other judges relied on this case to show there is no general exemption from arrest on criminal process within Court precincts and to aid analysis of whether *Regulation III* detentions are civil or criminal in character.
The King v. Chancellor, Masters and Scholars of the University of Cambridge (Dr. Bentley)	Expresses the ancient principle of audi alteram partem — the requirement to hear the other side before depriving rights.	The Court invoked this authority to emphasise the importance of procedures that permit detainees to be informed of grounds for detention and to show cause — contrasted with Rule 26 which lacks such provision.
Cooper v. The Board of Works for the Wandsworth District	Affirms that a person must be given an opportunity to show cause before administrative action affecting rights is taken.	Used to underline the principle that procedural safeguards (informing detainees of grounds and right to be heard) are foundational and that *Regulation III* contains such safeguards whereas Rule 26 did not.
Queen-Empress v. Ameer Khan	Discusses priority of a lawful commitment under *Regulation III* and whether habeas corpus relief is futile	The Court considered the reasoning in Ameer Khan. It accepted the limited principle that a lawful commitment under *Regulation III* may prevail

	when a lawful commitment exists.	over habeas corpus relief, but rejected any broad proposition that an executive commitment justifies a flagrant defiance of a Court's order in contempt proceedings.
Liversidge v. Sir John Anderson (House of Lords)	A high authority on detentions without trial and the executive character of such detentions.	The Court cited it as supporting the proposition that detentions under regulations like *Regulation III* are executive acts (not judicial acts) and therefore must be treated as such in assessing contempt and authority questions.
Blake's case	Addresses privilege from arrest for parties to civil proceedings attending Court — arrest under civil process in court precincts may be prevented.	The Court relied on Blake to clarify that the privilege against arrest after habeas corpus applies to civil process; it used the authority to distinguish civil from criminal or sui generis process (*Regulation III*).
Long's case; Oldfield's case; Wigley's case	Historical authorities on privilege from arrest in or near the Court and on contempt arising from disturbances in court precincts.	The Court examined these old cases and found them of limited application; some related to assaults or to palace privileges and did not support a blanket rule that criminal process could never be executed in Court precincts.
Miller v. Knox (and Viner's Abridgment reference)	Definition and description of contempt: disobedience to the Court or acts opposing or despising the authority, justice or dignity of the Court.	The judges used the principle to frame what kinds of acts amount to contempt and to assess whether the conduct of police officers lowered the Court's authority or dignity.
Tushar Kanti Ghose (case)	Example of a contempt finding for words suggesting improper closeness with the executive ("hobnobbing with the executive") and its capacity for public mischief.	Invoked by judges when considering whether statements attributed to a police officer implying judicial collusion with the executive amounted to contempt or scandalisation; used to measure severity and public impact.

Brich v. Walsh	Illustrates classes of contempt: disobedience of court process, contempt in the face of court, and contumelious treatment of court orders or officers.	Used to support general principles about when acts in the face of a Court may justify committal for contempt.
Taaffe v. Downs (referenced)	Referenced in discussion of historical authorities (quotation context); relates to Almon and libel against the Court.	Mentioned in the context of critical discussion of Almon's case and the limits of applying general statements without factual grounding.

Court's Reasoning and Analysis

The Court proceeded by (i) clarifying legal definitions and statutory provisions; (ii) categorising the legal nature of *Regulation III* commitments; (*iii*) examining the factual sequence and timing of events; and (iv) applying principles of contempt law to the conduct of the officers and government officials.

Key legal definitions and statutory anchors:

- The Court quoted Halsbury and section 46(1) of the Code of Criminal Procedure: arrest requires touching or confining the body, unless there is voluntary submission by word or notion. Section 80 CrPC requires notifying the substance of the arrest warrant and showing it on request.
- *Regulation III* of 1818 (*Bengal* State Prisoners *Regulation*) and the State Prisoners Act of 1850 were examined: the 1850 Act provides that a warrant of commitment under *Regulation III* is sufficient authority for arrest anywhere in the Governor's province and for detention until handed over to the officer named in the warrant.
- The Court considered section 59(2) of the Government of India Act (authentication of orders in the name of the Governor) when assessing the validity of the warrants.

Nature of *Regulation III* commitments:

- The Court held that detentions and arrests under *Regulation III* and the 1850 Act are not classical civil process; the Chief Justice described them as "sui generis" and more akin to criminal process than to civil process. That characterisation influenced whether the privilege from arrest after habeas corpus applied.
- Because *Regulation III* detentions are executive in character (and bear resemblance to criminal process), the general privilege protecting persons from civil process while attending Court does not extend to *Regulation III* arrests.

Whether arrests in and around the Court constitute contempt:

- The Court reviewed authority (including In re Douglas and Blake's case) and concluded there is no absolute rule barring criminal (or *Regulation III*) arrests within Court precincts; the central condemnation arises where arrests are carried out in the face of the Court so as to disturb its proceedings or where they are fraudulent devices to evade the Court's order.

- The judges agreed that acts amounting to deliberate defiance of the Court's order, or fraudulent evasion of it, would constitute contempt; but a lawful arrest under an antecedent valid authority might not, by itself, be contempt.

Factual findings bearing on the arrests (selective, as stated in the opinion):

- Mr. Niharendu Dutt Mazumdar was arrested in the corridor a few yards from the courtroom door shortly after the Court rose. A degree of force was used, and the arresting Inspector did not show a warrant at the time; later the warrants were produced to counsel.

- The other detainees were technically arrested after their names were read out and the warrant was read; in their cases no force was used.

- There was evidence that warrants of commitment under *Regulation III* were in existence on June 3, 1943 and were produced; however, the exact time when Janvrin came into possession of the warrants was contested and disputed in the affidavits.

- There was an allegation that Assistant Commissioner Abdul Gaffur stated to barristers that the police had the permission of the Chief Justice to effect the arrests. The Court found it probable that he made some form of that statement, but assessed the context (excitement, leading questions) in evaluating whether it amounted to contempt.

Assessment of fraud or attempt to frustrate the Court:

- The Court required the petitioners (those supporting the Rule) to satisfy it that the arrests were a fraudulent device to avoid the section 491 order. The majority (as reflected in the Chief Justice and Khundkar, J.) found insufficient evidence to conclude the warrants were mere contrivances to frustrate the order.

- One judge (Mitter, J.) analysed the timing and demeanor of the police, found the warrants likely not to have existed at the time of Mr. Dutta Mazumdar's arrest, and concluded that his arrest (without warrant and with force) amounted to contempt. Mitter, J. also found Janvrin's affidavit evasive and concluded contempt in respect of Janvrin and Syed Hasan. Mitter, J. also treated the statement by Abdul Gaffur as contemptous.

- The judges' factual findings diverged in part; the final collective outcome was governed by the Court's order disposing of the Rules.

Conduct and statements of police officers:

- The Court criticised the manner of Mr. Dutta Mazumdar's arrest (use of unnecessary force and discourtesy) and regretted the lack of courtesy; however, whether such conduct constituted contempt varied among the judges.
- One judge (Mitter, J.) held Janvrin and Syed Hasan guilty of contempt for the arrest of Mr. Dutta Mazumdar; the Chief Justice and another judge did not reach the same conclusion with respect to all officers but condemned the conduct.
- The statement by Abdul Gaffur — that the police had the Chief Justice's permission — was treated seriously. Some judges found the statement to be false and capable of constituting contempt (suggesting improper collusion), while others assessed the comment in light of excitement and found it less blameworthy though inappropriate.

Holding and Implications

Holding: The Court's final order was that **THE RULES ARE DISCHARGED** (i.e., the Rules to show cause for contempt were discharged and the petitions seeking committal were not sustained).

Implications and direct consequences:

- The petitioners did not obtain committal of the police officers or government officials in these proceedings; the Rules for contempt were discharged by the Court.
- Although the Court recorded serious criticism of the manner in which Mr. Niharendu Dutt Mazumdar was handled (force and discourtesy) and of certain statements by police officers, the ultimate procedural relief sought (committal for contempt) was not granted on the materials before the Court.
- The Court noted that it could not order the release of certain detenues (for example, Shib Nath Banerjee) because section 491 of the CrPC places limits on the relief available in the present proceedings; accordingly, petitioners seeking release under these Rules were not necessarily successful even where police conduct was criticised.
- The judges emphasised the procedural and substantive distinction between detention under Rule 26 (Defence of India Rules) and detention under *Regulation III* of 1818/ State Prisoners Act (which contains mechanisms for informing detainees and for representations). The Court expressed the view that Rule 26 omitted safeguards found in *Regulation III* and recommended that this omission be considered by those responsible for legislation.
- No novel binding legal principle overturning existing authorities was announced; the Court applied established authorities to the facts, evaluated the executive nature of *Regulation III* detentions, and identified the narrow circumstances in which contempt might arise from arrests near Court — namely, disturbance of proceedings, fraudulent evasion of Court orders, or deliberate defiance.

Solicitors recorded in the opinion: K.K. Dutt & Co. for the Petitioners; Solicitor to the Province of *Bengal* for the Crown.

JUDGMENT

Derbyshire, C.J:— These are two sets of proceedings in which Rules have been issued by this Court upon the respective Opposite Parties to show cause why they should not be committed for contempt of Court.

2. In the second matter, namely, that of Shibnath Banerjee, the Rule also calls upon the Opposite Parties to show cause why Shibnath Banerjee should not be set at liberty. The two Rules arise out of the same set of circumstances which are as follows: (1) Niharendu Dutta Mazumdar, (2) Shibnath Banerjee, (3) Bejoy Singh Nahar, (4) Debabrata Roy. (5) Narendra Nath Sen Gupta, (6) Birendra Ganguly, (7) Pratul Chandra Ganguly, (8) Nanigopal Mazumdar and (9) Sasanka Sekhar Sanyal whom I will refer to hereafter as the detenues were held in detention under **Rule 26 of the Defence of India Rules**.

3. On April 22nd, 1943, the Federal Court declared Rule 26 to be invalid, having regard to the wording of the section of the Defence of India Act under which the Rule was made.

4. A day or two after April 22nd, 1943, the said detenues obtained a Rule from Sen, J., under sec. 491 of the Code of Criminal Procedure, and on May 7th, 1943, these Rules came on for hearing before a Bench of this Court consisting of Mitter, Khundkar and Sen, JJ. That hearing lasted until May 31st, 1943.

5. At a date before the hearing came on, the Government of India had amended the section of the Defence of India Act under which Rule 26 was made, in such a way as purported to validate Rule 26 as from the date that it was made.

6. On May 31st, 1943, an order was made by the Court that the Chief Secretary to the Government of *Bengal* , Mr. J.R Blair, should produce all the nine detenues before the Court on June 3rd, 1943, when judgment would be given. It was represented to the Court that Sasanka Sekhar Sanyal was ill and the Court directed that he should only be produced if medical opinion was that he was fit to be produced. Another of the detenues, Birendra Ganguly, was in a distant place where it was impossible to produce him in time and the Court apparently dispensed with his production. However, the remainder of the detenues were produced in Court on June 3rd, 1943, when judgment was given.

7. Mitter, J., delivered judgment first, holding that all the detentions were illegal and that the Rules should be made absoute. Khundkar, J., delivered judgment next, holding that the detentions were legal and that the Rules should be discharged. Sen, J., began delivering judgment at about 2-40 p.m and finished somewhere just before 3-30 p.m agreeing, in substance, with Mitter, J. The final order of the Court was in accordance with the judgment of the majority that the said detenues should be released.

8. The detenues had been brought to Court under an armed jail guard, and a strong force of police was stationed both inside the Court room, in the Court building outside the Court

room and also outside the Court building to prevent any demonstration or disturbance of the peace.

9. Before the order for the release of the detenues was made, there was the armed jail guard standing near them and, of course, there were many policemen in uniform and doubtless others not in uniform in the Court. Mitter, J., when be made the order of release specifically said “let the police clear off” and, thereupon, the armed guards and a number of policemen left the Court room. There does not appear to have been any further application made for any of the other policemen, who may have been in the Court room, to go away although Mr. Gupta, Counsel for the detenues, stated to the Court that he did not know whether, having regard to the way things were going on, he would not again move the Court for another habeas corpus order or a Rule for contempt of Court. It then appears that the Judges left the Court room and adjourned for the day. They did not come back to Court. Meanwhile, inside the Court room, the detenues talked with their friends and relatives and apparently some of them had tea which had been brought there. Mr. Niharendu Dutt Mazumdar, one of the detenues, during this time got up from his seat in the Court room, walked to the door and went through it into the corridor outside. There were a number of people in the corridor outside— Mr. Dutt Mazumdar made his way, a matter of a few yards or so along the corridor and was then spoken to by Inspector Syed Hasan, who certainly got hold of one of his arms, if not two. Mr. Dutt Mazumdar said to the Inspector “What do you mean?” and the Inspector said “I arrest you,” whereupon Mr. Mazumdar asked if there was any order. Mr. J.C Gupta, Counsel for Mr. Dutt Mazumdar, by this time got to the place and heard the Inspector say “Never mind about it” or “It does not matter” or some similar words to that effect. Mr. Gupta protested against Mr. Dutt Mazumdar being handled by the Inspector. Thereupon the Inspector, according to Mr. Gupta, handed Mr. Dutt Mazumdar over to two or three sergeants who were present who took him, forcibly Mr. Gupta says, to the Inspector's room which was close by. Mr. Dutt Mazumdar, according to Mr. Gupta, asked to be taken before the Judges, but this was not done although some Counsel not engaged in the case apparently saw Mitter, J., in his Chambers and told him what had happened, whereupon Mitter, J., said that he was functus officio and that that must be a matter for another application. No such application was made on that day. Mr. J.C Gupta also proceeded to Mitter, J., and on hearing what Mitter, J., said to the other Barrister left Mitter, J.'s chambers.

10. At this point of time Mr. Janvrin, Deputy Commissioner of Police, Calcutta, who is of the Special Branch and in charge of the police who were employed in connection with this matter at the Court on that day, had arrived on the scene in the corridor. Mr. J.C Gupta protested to Mr. Janvrin against the manner in which the police had handled Mr. Dutt Mazumdar.

11. Mr. Janvrin's version is that Mr. Dutt Mazumdar was told by Mr. Gupta to go to the Inspector's room which he did voluntarily and that he was not dragged. Thereupon Mr. Gupta and Mr. Janvrin had a conversation. Mr. Gupta says he asked Mr. Janvrin whether he had any warrant for the arrest and, whether he had authority to execute it in the Court premises. Mr. Gupta thereupon accompanied Mr. Janvrin to the Inspector's room where

Mr. Janvrin showed Mr. Gupta a file containing committal orders under *Regulation III* of 1818 signed by Mr. Blair, Chief Secretary to the Government of *Bengal* .

12. Mr. Gupta's version then is that he told Mr. Janvrin that if he wanted to arrest the other detenues in the Court room he, Mr. Gupta, would go and tell them about it. According to Mr. Gupta Mr. Janvrin said he would arrest them inside the Court room and thereupon Mr. Gupta went to the detenues inside the Court room and came back and told Mr. Janvrin that he might go and read out the orders of arrest to them. Mr. Janvrin and the Police Inspector Mr. Shib Chandra Chatterjee then went into the Court room with Mr. Gupta and one copy of the order was read out and the names of the six persons inside the Court room were called out and then, according to Mr. Gupta, those six detenues were arrested and came out with Mr. Janvrin and were taken to the Inspector's room and, subsequently, removed in motor cars which were waiting.

13. Mr. Janvrin's version is that Mr. Gupta said that if he, Mr. Janvrin, would show him the written order under which he was acting he would get his other clients to offer themselves for arrest, that he showed him the file containing the orders of arrest and commitment and that Mr. Gupta then went to the Court room where his clients were taking tea and returned and suggested that he might read the orders out to them. Thereupon Mr. Janvrin said that he went into the Court room with Mr. Gupta and Inspector Shib Chandra Chatterjee, who read out the orders and called out the names. The six detenues then came out of the Court room and Mr. Janvrin, who was at the top of the staircase at the end of the corridor, directed them to go to the Inspector's room which they did. Mr. Janvrin followed them and when they asked him if they were under arrest Mr. Janvrin said “Yes” and they were taken away in the cars.

14. In an earlier part of his affidavit Mr. Janvrin stated that he was instructed by the Commissioner of Police to effect the arrest of the detenues if they were released, and that the arrests were to be made on the verandah outside the Court room, or, if necessary, inside the Court room but after the Judges had left if the released persons refused to come out of the Court room.

15. There is a further allegation that when Assistant Commissioner of Police Abdul Gaffur was asked the same afternoon by two barristers how it was that Mr. Dutt Mazumdar was arrested in the Court precincts he replied that the police had the permission of the Chief Justice.

16. Many of the detenues were men of some position in Calcutta—some of them including Mr. Dutt Mazumdar being members of the Legislative Assembly—and it was obvious that the police expected trouble. There undoubtedly was a considerable amount of excitement outside the Court from 3-30 P.M onwards, and the affidavits must be read in that light.

17. I think the best description of arrest is contained in Halsbury's Laws of England, Second Edition, Vol. 9, page 84 where it says that

“arrest consists of actual seizure or touching of a person's body with a view to his detention. The more pronouncement of the words of arrest is not an arrest unless the

person sought to be arrested submits to the process and goes with the arresting officer."

18. The corresponding provision of the law in India appears to me to be contained in see. 46 (1) of the Code of Criminal Procedure which provides:

"In making an arrest the police officer or other person making the same shall actually touch or confine the body of a person to be arrested, unless there be a submission to the custody by word or notion."

19. Sec. 80 of the Code of Criminal Procedure provides that:

"The Police officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested and, if so required, show him the warrant."

20. I have come to the conclusion that Mr. Dutt Mazumdar was arrested in the corridor outside the Court room a few yards from the Court room door, that a certain amount of force was used by Inspector Syed Hasan, probably more force than was necessary. Inspector Syed Hasan did not show any warrant or authority for the arrest to Mr. Dutt Mazumdar before arrest but Mr. Mazumdar was told of it a little afterwards in the Inspector's room when Mr. Gupta was shown the warrants and committal orders by Mr. Janvrin.

21. As regards the other detenues, I think that technically they were arrested after their names were read out together with the warrants and committal orders by Inspector Shib Chandra Chatterjee, in the Court room—the moment of arrest beginning when they got up in order to follow Mr. Shib Chandra Chatterjee out of the Court. No force whatever was used in their cases.

22. At the time these arrests were effected the Court had risen and was, as Mitter, J., said, functus officio.

23. It has been argued that arrests inside the Court building are improper. I cannot agree with that contention. Persons going to and from the Court upon the business of the Court in connection with litigation are exempt from arrest under civil process, but there is no such exemption in respect of criminal process as the case of In re: Douglas(1), referred to hereafter, shows. If such general exemption were to obtain, the Court building would become a sanctuary for criminals and the administration of justice in them would become impossible. There have been cases where arrests on criminal process have occurred in the Sessions Court when a prisoner had been acquitted and discharged on one charge and re-arrested in the Court, while the Judge is sitting, on another charge. A case occurred sometime back where a litigant in a civil case on the conclusion of his case was arrested as he was leaving the Court room on a criminal charge preferred at Madras.

24. The case of In re: Douglas referred to above, deserves examination. There Capt. Douglas, an officer in the East India Company's military service, was arrested in England as a deserter under the **provisions of sec. 22 of 5 & 6 Vict. c. 12 (the Mutiny Act)** and committed to prison by the Magistrate. Thereafter a Secretary of State directed that he should be sent to India to be handed over to the military authorities in Madras. A writ of

habeas corpus was obtained and the case came before a Court of Queens Bench presided over by Lord Denman who found that the return to the writ was not a sufficient reason for holding Capt. Douglas in custody. The Court held that the prisoner must be discharged. At page 52 the report goes on:

“As Capt. Douglas was about to leave the Court, the Attorney-General moved that he should be committed on a charge of malversation, in an office he had held in India in having unlawfully received the sum of £. 12,800 and that on such charge he should take his trial in this country.

25. Serjeant Kelly: Captain Douglas cannot be detained in this manner. He has been discharged by the Court.

26. Per Curiam: The judgment of the Court must have tome effect. Captain Douglas is free to go where he pleases.

27. Capt. Douglas then left the Court. Immediately after he had left the Court, he was arrested upon a capias issuing out of the office of the the Sheriff of Middlesex, upon a claim for £. 12,800 in virtue of an information filed against him (which information was produced in Court, and was filed the preceding day, Nov. 15) by Her Majesty's Attorney-General. The writ of capias was read and was founded on section 141, of the 33 Geo. 3, c. 52 (it was a warrant to apprehend Capt. Douglas to answer for certain misdemeanours whereof he was impeached).

28. Serjeant Kelly: Moved in the latter part of the day (upon affidavit, stating the circumstances of the arrest etc), that Capt. Dauglas be discharged. It is clear from the terms of this writ, that Capt. Douglas has been arrested under a proceeding by the Attorney-General, to recover penalties to the amount of £. 12,800 and that he has been so arrested, not by virtue of any warrant from this Court, but by virtue of a civil proceeding on the part of |the Plaintiff, to whom he would have to give bail in the amount of the penalties sought to be recovered……. This is therefore to be treated as an arrest upon civil process. If so, the Defendant having appeared upon an application to be discharged, and the Court having decided that he had not been legally in custody, he is entitled to his privilege, redeundo, until he has reached his home. He has been illegally detained by the East India Company, upon a charge, neither of a civil nor criminal nature, but of desertion, a matter to be inquired into by a court-martial. A party brought up on a habeas corpus, [and found not legally to have been in custody cannot be afterwards detained on civil process.

29. But secondly, if the former custody was a criminal custody yet, having been wrongfully procured, the defendant, who had suffered from it, could not again be arrested by those very persons who had originally occasioned the wrongful custody, from which the Court has liberated him. The Court will not permit persons to do an illegal act, in order afterwards, for their own purposes, to be able to do a legal one. The East India Company is within this principle. It is not attempted to be denied, that the former proceeding originated with the company, and the present detention is at their instigation, and has been obviously procured by a mere trick.

30. Sir F. Pollock (Attorney General), Contra.— The defendant was not arrested until after he had quitted the hall in which the Court sat. But it is quite clear he has been arrested on criminal process* * *.

Lord. Denman, C.J:— A person who is unlawfully detained and set at liberty by this Court, upon application by habeas corpus, is undoubtedly privileged from arrest on civil process; and the question really is, whether or not the arrest that has taken place is an arrest on civil process. The distinction between the two modes of proceeding is of infinite importance; and it is undoubtedly also important to the public, that mere privileges should give way to the necessity of enforcing the criminal law. There was an observation pressed very properly upon the Court, pointing out that when a person has been arrested improperly, and is discharged, he has a right to return to his home unmolested by civil process, but that that home itself could be no protection to an individual charged with crime; as even there the law will invade the outer door of that home for the purpose of securing the individual so charged. Therefore the question is, whether this is a civil process, and simply that question; and although there are penalties to be recovered, and large forfeitures take place to the Crown in case of the grave offence being committed which is denounced by the Act of Parliament in question, I think it perfectly clear that this is a proceeding for a misdemeanour; that it is a criminal case,— that is, a case that sounds in crime, and leads to punishment and that this, therefore, is not to be considered a civil process. The present arrest, therefore, is not at all forbidden by the ordinary duty which Courts owe to themselves of protecting individuals whom they declare to be improperly restrained of their liberty, and to whom they restore that liberty. There has been much said upon the nature of this proceeding; but I apprehend, that even if a warrant had been issued, and had been placed in the hands of the Sheriff after the moment when this gentleman had left the Court, and was out of that precinct which is protected of itself from everything like personal violence, that even then we should be bound to say, that no privilege could protect him from such arrest, being really and bona fide on criminal process."

31. Later on the Chief Justice said: "Undoubtedly, if we found that that custody, which is called criminal, was merely set on foot for the purpose of giving a plaintiff an opportunity of detaining the person afterwards, in that case we should say the plaintiff could not avail himself of any fraudulent proceeding of that kind. But this is a case wholly different. The charge that was made against the prisoner was for one offence, and the charge that is now preferred against him is altogether for another; and there is not the least ground for supporting that the Crown, in the nature of a plaintiff, has issued the former process for the sake of laying hold of his person, and thus acquiring an opportunity of detaining him under the subsequent process. I think, therefore, there is no ground at all for saying that this arrest is unlawful. It is an arrest to which the privilege contended for never has extended, and could not be permitted to extend by any operation of the principles of the common law."

32. It is here necessary to consider the legal position of these detenues when they were discharged. They were, each of them, free to go as they pleased to their homes—free from arrest on civil process; but not free from arrest on criminal process. The freedom from

arrest on civil process is a privilege which has been established by long usage and decisions. Does that extend to freedom from arrest under the provisions of *Regulation III* of 1818? *Regulation III* of 1818 is entitled "The *Bengal* State Prisoners *Regulation* ." The preamble sets out that

"Whereas for reasons of State… and the security of the British dominions from foreign hostility and from internal commotion occasionally render it necessary to place under personal restraint individuals against whom there may not be sufficient ground to institute any judicial proceeding, or when such proceeding may not be adopted to the nature of the once, or may for other reasons be unadvisable or improper; and whereas it is fit that, in every case of the nature herein referred to, the determination to be taken should proceed immediately from the authority of the Government."

"2. First.— When the reasons stated in the preamble of this *Regulation* (may seem to the Government) to require that an individual should be placed under personal restraint, without any immediate view to ulterior proceedings of a judicial nature (a warrant of commitment shall be issued by the Government) to the officer in whose custody such person is to be placed.

Second.— The warrant of commitment shall be in that one of the forms set out in the Appendix to this *Regulation* which is appropriate to the case.

33. Third.— The warrant of commitment shall, in relation to a person to be confined for reasons connected with defence, external affairs or the discharge of the functions of the Crown in] its relations with Indian States, be sufficient authority for his detention in any fortress, jail or other place in any Governor's Province or Chief Commissioner's Province, and in relation to any person to be confined for reasons connected with the maintenance of public order in a Province shall be sufficient authority for his detention in any fortress, jail or other place in that Province.

34. Then follow other provisions which are not necessary to set out.

35. The form of commitment in the Appendix to *Regulation III* of 1818 has been followed in the present case. It is in these terms:—

Government of *Bengal* ,

Home Department (Political)

June 3, 1943.

The Superintendent, Presidency Jail, Calcutta, Whereas the Governor for good and sufficient reasons, being reasons connected with the maintenance of public order, has seen fit to determine that Shibnath Banerjee, M.L.A shall be placed under personal restraint at the Presidency Jail. Calcutta, you are hereby required and commanded, in pursuance of that determination, to receive the person above-named into your custody, and to deal with him in conformity with the orders of the Government and the provisions of the *Bengal* State Prisoners *Regulation* , 1818.

By Order of the Governor

Sd. J.R Blair,

Chief Secretary to the Government of Bangal.

36. The authority to arrest under *Regulation III* of 1818 is given, by the State Prisoners Act of 1850 which states:

"The warrant of commitment of any State prisoner under the *Bengal* State Prisoners *Regulation* of 1818 may, if it is issued by virtue of the powers' conferred by that *Regulation* on Provincial Governments be directed to…the officer in charge of any jail anywhere within the province in question; but any such warrant issued under that *Regulation* whatever the powers by virtue of which it is issued, shall be sufficient authority for the arrest of the State prisoner anywhere in any Governor's Province and for his detention until he can be handed over to the officer to whom the warrant is directed."

37. It has been contended by Counsel in support of the Rule that the Governor was absent from Calcutta on or about June 3rd, and that the warrant of commitment set out above was not his work, but really the work of the Chief Secretary to the Government of *Bengal* , Mr. Blair, and the Additional Secretary, Mr. Porter, the latter being the person who signed the previous order of detention under Rule 26.

38. The Advocate-General for the Respondents has drawn attention to **sec. 59 (2) of the Government of India Act** which provides as follows:

"Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner specified in the rules to be made by the Governor and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made and executed by the Governor."

39. The order in question was authenticated in the usual way in which orders in the name of the Governor are authenticated, namely, by the Chief Secretary or Additional Secretary to Government. We have thus to take it that the warrant of committal under *Regulation III* was executed by the Governor under his powers under *Regulation III* of 1818, and by virtue of the State Prisoners Act of 1850 recited above, that is authority for the arrest of a state prisoner anywhere in *Bengal* .

40. The question is—does it authorise the arrest of the detenues in the manner and at the time and place in which the arrest was made? The Court which made the order of release had risen and adjourned for the day and the Court room would, in the ordinary way, be given over to the clerks of the Court to clear up and later to the Court-keeper's staff for the purpose of cleaning. The Court was, as Mitter, J., remarked when visited in his chambers by a Barrister and Mr. J.C Gupta, Counsel for the detenues, functus officio. The police would have been entitled to arrest anyone on criminal process in that Court room at any time after the Court had risen — to take an extreme case, at midnight, — without the permission of the Chief Justice. They must not, however, create a disturbance so as to disturb any other work of the Courts that may be going on. There is no evidence that they

did so disturb the work of any other Court. In a similar way, subject to similar reservations, the police were entitled to effect an arrest under a criminal process in the corridor.

41. The arrests in question were certainly not made pursuant to any civil process, nor were they made pursuant to any recognised criminal process. The arrests and detention under *Regulation III* of 1818 are neither civil process nor criminal process. If it were necessary for me to decide what it was I should hold that it was something sui generis, more akin to criminal process than civil process, because it is a restraint on the freedom of the subject imposed by the State purporting to be for the safety of the State, which is one of the chief features of arrest on criminal process. Moreover, it bears some resemblance to the procedure outlined under sec. 107 (3) of the Code of Criminal Procedure. However, that is not necessary to decide since the Act of 1850 provides that the warrant of commitment shall be sufficient authority for the arrest of the State prisoners anywhere in a Governor's province.

42. That provision, and in particular the words “anywhere in a Governor's province” however is subject to the exceptions and qualifications laid down in Denman, C.J's judgment. It must not be in the face of the Court so as to create a disturbance of the Court's business and it must not be a fraudulent proceeding for evading the order of the Court which is made in habeas corpus proceedings or proceedings under sec. 491 of the Code of Criminal Procedure, analogous to habeas corpus proceedings. The arrests were not made in the face of the Court and were not done so as to disturb the business of the Courts.

43. The remaining question is — were the arrests a fraudulent proceeding to avoid or frustrate the order of the Court? Counsel in support of the Rule has pointed out that the decision to arrest the detenues under *Regulation III* of 1818 was made even before the order of release under sec. 491 was made. In a similar way the information on which Capt. Douglas was arrested was taken out the day before he was brought before the Queen's Bench by habeas corpus proceedings and yet the arrest was upheld. It was stated in the affidavit of Mrs. Shibnath Banerjee that she had seen Mr. Shibnath Banerjee, one of the detenues, eight days after his return to prison. He was in the same jail as before and apparently kept under the same conditions. It must be pointed out however, that the detenues are certainly entitled to more rights and privileges under the present custody than they were under the former since they are now entitled to adequate allowances for themselves and their families according to their rank in life and are entitled to opportunities for presenting to the authorities their case against detention. Opportunities for presenting their case against detention do not exist and are not provided for under Rule 26 although they are provided for under *Regulation III* of 1818. We have to decide whether the arrests were a fraudulent proceeding to get round and flout the orders of the Court given under sec. 491 in which case there would be, as Lord Denman pointed out, a contempt of the Court. It is for those in support of the Rule to satisfy the Court that that is so.

44. Mrs. Shibnath Banerjee in her affidavit states:

“Your petitioner believes that the respondents A.E Farter and J.R Blair anticipated that the

said detenues might be released on that day and so authorised the police-officers including the respondent Janvrin and the respondent Shib Chandra Chatterjee to act in the aforesaid manner in order to openly defy the Court."

45. In paragraph 29 she submits that

"from the acts and conduct of the respondents the conclusion is irresistible that it was a vindicative act on the part of the respondents concerned calculated to bring the authority and dignity of the Court into contempt and to disgrace it in the eyes of the public by a defiant disregard of the order of the Court without the slightest excuse or justification."

46. The order of release was made upon consideration of the circumstances under which the order for detention under Rule 26 had been made and also upon consideration whether Rule 26, having regard to the Ordinance amending **sec. 2 (2) (x) of the Defence of India Act,** was legal. The facts upon which the order of detention under Rule 26 was grounded have never been disclosed. Indeed, there is no **provision in Rule 26 of the Defence of Indian Act** for their disclosure. No challenge has here been made as to the validity of *Regulation III* of 1818 and no evidence was produced showing the grounds on which the order is based. We are left to gather as best we can from the surrounding circumstances whether this is a fraudulent proceeding to get round the order of the Court and flout the Court, the onus being on those who support the Rule. Those who support the Rule are in the same position as indeed are we, since the grounds of detention in each case are not revealed. There is a presumption under **sec. 114 of the Evidence Act** that official acts are done with regularity. But that is a presumption only and is rebuttable. It may be that the grounds of detention are the same as in the former case, but as there was no evidence of or any decision on the grounds of detention in the former case, but only a decision on the validity of the order of detention and the provision of law under which it was made, we are not precluded from thinking that the grounds for the order of detention in the second case may be as are stated in the warrant of committal "good and sufficient reasons connected with the maintenance of public order." On the other hand they may not be. Since by the provisions of sec. 491 of the Code of Criminal Procedure the Court is precluded from enquiring into whether a person is illegally or improperly detained in custody under the provisions of *Regulation III* of 1818 under the State Prisoners Act of 1850, I am unable to see how we can be the judges of whether there are good and sufficient reasons connected with the maintenance of public order for detaining these persons under ***Regulation III* and the Act of 1850.** I do, however, note that the times are abnormal in that there is a formidable enemy on our borders and that there has been grave disorder in India, although not a great deal comparatively in *Bengal* . It is possible in the circumstances that the arrests were made for good and sufficient reasons connected with the maintenance of public order.

47. There are one or two other circumstances which have some bearing on the question as to whether there was an intention to flout the Court. One is that when the Court ordered the Chief Secretary, Mr. J.R Blair, to produce the detenues before it, the Court's order was obeyed. The second is that when the Court ordered, in the words of Mitter, J., "the police to clear off," they did so. The burden is upon those who support the Rule to convince the

Court that there was a fraudulent intention to get round and flout the authority of the Court. On the materials before me, I am unable to come to the conclusion that the arrests were ordered as part of a fraudulent proceeding intended to flout the Court or its order. I am unable to conclude that there was in that respect any contempt. That disposes of the case against Mr. Blair and Mr. Porter.

48. Next as regards the making of the arrests:

49. It has been suggested that Mr. Dutt Mazumdar was arrested without there being any warrant of commitment to justify it. Mr. Janvrin in his affidavit says he got the warrant on June 3rd, but does not state the time of the day. There were seven warrants of commitment and seven warrants of arrest all signed by Mr. Blair. Those could not be made out and signed in a few minutes. Moreover they had to come from the Secretariat nearly half a mile away. As it had been decided the day before to re-arrest the detenues, if released, and as it was uncertain at what time of the day the Court would finish its judgments and perhaps order their release, it seems likely that the warrants were signed early in the day in readiness for what might happen.

50. Mr. Janvrin showed the warrants to Mr. Gupta after his return from visiting Mitter, J. That visit would take about five minutes. How long after that it was that Mr. Gupta spoke to Mr. Janvrin a second time, it is, difficult to say, but it was not long. My own view is that Mr. Janvrin had the warrants when Mr. Mazumdar was arrested, since he produced them soon afterwards. I am certainly of opinion that the warrants were in existence, whether Mr. Janvrin had them in his possession or not, when Mr. Dutt Mazumdar was arrested— else how could Mr. Janvrin show them to Mr. Gupta so soon afterwards?

51. The Police were in charge of Mr. Janvrin, the Deputy Commissioner; theirs was not the decision to arrest, they were there to carry out the arrests ordered to be made. As far as Mr. Janvrin was concerned, when the police were ordered to clear off, he together with the armed guard and several police-men left the Court. I can find no ground for saying that either Mr. Janvrin or the police generally acted in contempt of the Court.

52. I will, however, deal with the allegations against the Assistant Commissioner, Khan Sahib Abdul Gaffur. It is stated in affidavits that during conversations in the corridor immediately after the arrests the Khan Sahib said that the Chief Justice had given permission for the arrests to be made. I think probably in some form or other he did say that. There was a great deal of excitement however at the time and the inference that I draw from the affidavits of the two barristers is that questions were asked of the Khan Sahib and he may, in answer to those questions, possibly leading questions, have said that the Chief Justice had given the permission. It is said that such a statement would lead the public at large to believe that the Chief Justice was favouring the police. I have already said, when the Rule was granted, that such a statement was never made by me in any form. It was not necessary that I should be asked to give permission to the police to do what in the circumstances they were permitted by law to do, and what in fact they were directed to do. They were doing their duty and they did it without showing any contempt to the Court. The main question raised in this Rule was whether the arrests of these detenues under the

Regulation was contempt of this Court and the words of the police officer in the excitement of the moment as the result of questions put to him did not in my view constitute contempt. He would be well advised though in future to confine his answer to questions to what is strictly within his knowledge.

53. As regards the Police Inspector Syed Hasan, although he was entitled to effect an arrest at the time and place that he did, in my view he showed discourtesy to Mr. Dutt Mazumdar who was a member of the Legislative Assembly although he had been and subsequently became a detenue, and used more force than was necessary. This was not an arrest under the provisions of the Code of Criminal Procedure, so that the Inspector was not bound to show the warrant to Mr. Dutt Mazumdar before arresting him. But he ought, in common courtesy, before seizing him, to have told him that he was under arrest and by what authority he was being arrested and to have asked him to come with him instead of seizing him by the arms and applying force to him in order to effect his re-moval. I can only regret that due courtesy was not shown to Mr. Dutt Mazumdar and that premature and possibly unnecessary force was applied. That, however, is not contempt of Court and is a matter for adjustment between Mr. Dutt Mazumdar and those who arrested him.

54. There is one matter to which I must draw attention. During the hearing it emerged that *Regulation III* contains provisions which enable the detenue to be told what are the grounds on which he is detained and further provisions enabling that detenue to show cause why he should not be detained. I enquired from the Advocate-General whether there was any similar **provision in Rule 26 of the Defence of India Rules.** He told me, and as far as my research goes his answer is correct, that there is no corresponding provision either for informing the detenue of the grounds of his detention or for enabling him to show cause against it in the **Defence of India Act or Rules. Under sec. 16 of the Defence of India Act** no order made thereunder shall be challenged in any Court. As the result of a legal accident Rule 26 has been challenged and declared invalid by the Federal Court. That declaration of invalidity enabled this Court to examine some, if not all, of the circumstances relating to the detention of these detenues. In the ordinary way these detentions do not come before the Court. It was a surprise to me when I found that there was no provision under Rule 26 to inform the detenue of the grounds on which he was detained and no provision for his being allowed to show cause against his detention.

55. There is a very old principle of law which is expressed by the Latin maxim audi alteram partem which means “hear the other side.” So long ago as 1724 the Court of King's Bench had occasion to deal with that maxim. That was in the case of The King v. Chancellor, Masters and Scholars of the University of Cambridge(2), where the University of Cambridge deprived Dr. Richard Bentley, a famous scholar, of his academical degrees without giving him first an opportunity of being heard. The Court of King's Bench laid down the principle that he could not be deprived of those rights without the opportunity of being heard in his defence and they did so in language which was emphatic but quaint. That case was followed in 1863 in **Cooper v. The Board of Works** for the Wandsworth District(3). There the Wandsworth Local Board under the powers which it had under the Metropolis **Local Management Act of 1885** pulled down a house belonging to Mr.

Cooper on the ground that it was built in contravention of the law, but before doing so gave him no opportunity of showing cause why the house should not be pulled down. The Court held that Cooper ought to have been given an opportunity to show cause before the house was pulled down and, followed and approved of what was said in the case of Dr. Bentley and even recited some of the quaint language.

56. In *Regulation III* which was passed in 1818 there is a provision for enabling the detenue to be told what are the grounds for his detention and for enabling him to show cause against it. That same principle of audi alteram partem was followed by the Legislature in this country in 1818.

57. In 1940 under the **Emergency Powers Act of 1939** passed in England on the outbreak of the War, *Regulation* 18B was made providing for the detention of certain persons who were not brought to trial. **Rule 26 of the Defence of India Rules** appears to be based upon *Regulation* 18B. *Regulation* 18B follows the principle I have referred to, because it gives those detained an opportunity of having the grounds for their detention stated and showing cause against it. *Regulation* 18B (3) provides:

"For purposes of this *Regulation* there shall be one or more advisory committees consisting of persons appointed by the Secretary of State; and any person aggrieved by the making of any order against him, by a refusal of the Secretary of State to suspend the operation of such an order by any condition attached…. may make his objection to such a committee."

"(4) It shall be the duty of the Secretary of State to secure that any person against whom an order is made under this *Regulation* shall be afforded the earliest practicable opportunity of making to the Secretary of State representations in writing with respect thereto and that he shall be informed of his right, whether or not such representations are made, to make his objections to such an advisory committee as aforesaid.

"(5) Any meeting of an advisory committee held to consider such objections as aforesaid shall be presided over by a Chairman nominated by the Secretary of State and it shall be the duty of the Chairman to inform the objector of the grounds on which the order has been made against him and to furnish him with such particulars as are in the opinion of the Chairman sufficient to enable him to present his case."

58. Provisions similar to that are completely omitted from **Rule 26 of the Defence of India Rules**. I draw attention to this matter in the hope that those responsible for this legislation may consider it. In my opinion all the Rules should be discharged.

Rules Nos. 17 and 18 of 1943.

Mitter, J.:— Nine Rules had been issued on Mr. A.E Porter, Additional Secretary to the Government of *Bengal* and others under sec. 491 of the Code of Criminal Procedure to show cause why nine persons detained in the different jails of *Bengal* under orders passed under **Rule 26 of the Defence of India Act** should not be released on the ground that their detentions were illegal. Two of the persons so detained were Mr. Niharendu Dutt

Mozumdar, M.L.A and Mr. Shib Nath Bannerjee, also an M.L.A Those Rules were issued after the Federal Court had declared in Talpade's case that Rule 26 was ultra vires the powers given by **cl. (x) of sub-sec. (2) of sec. 2 of the Defence of India Act of 1939. Before the Rules** were heard an Ordinance XIV of 1943 was promulgated by the Governor-General under the powers given by sec. 72 of the Ninth Schedule of the Government of India Act, which purported to validate with retrospective effect the said Rule. Those Rules were heard by a Special Bench of this Court consisting of Khundkar and Sen, JJ. and myself. The hearing lasted for over three weeks and was concluded on the 31st May, 1943, when judgment was reserved. On that date the Court intimated that judgment would be delivered on the 3rd June. An order was (also made for the production of eight of the persons so detained, including Mr. Niharendu Dutta Mozumdar and Shib Nath Banerjee in Court on the 3rd June at 11 O'clock in the forenoon. With regard to the ninth man who was ill at the time the order was that he was to be produced if he was in a fit state of health. This order was duly communicated to the Chief Secretary to the Government of *Bengal* on the 31st May. On the 3rd June seven persons, including Mr. Niharendu Dutta Mozumdar and Mr. Shib Nath Bannerjee were produced in Court. A sufficient explanation was given by the Government for the non-production of the eighth man. The Judges of the Special Bench were divided in opinion, the majority holding that Ordinance XIV of 1943 was utra vires the powers of the Governor-General, and even if it was intra vires the material conditions required for a detention under **Rule 26 of the Defence of India Rules** had not been fulfilled. In accordance with the opinion of the majority the order of the Court was that the nine persons be forthwith released. As there were indications at the time of the pronouncement of the order for release that the seven persons who had been produced in Court would still be kept under restraint in spite of the order for release, the policemen (and there were quite a large number) who were in the Court room were directed to leave the Court room, so that free movement of the said seven persons may not be interfered with. That direction was obeyed and the police men and the jail guards went out of the Court room. The policemen, however, just stepped outside into the adjoining corridor, which is the passage to the Court room and lined themselves up. Soon after the pronouncement of the order for release my learned brothers and I left the Court room at about 3-40 p.m The other Courts were then sitting. It is the common case that within a few minutes thereafter, but within the Court hours (that is before 4 O'clock) and when other Courts were still sitting, Mr. Niharendu Dutta Mozumdar stepped out of the Court room accompanied by his Advocate Mr. J.C Gupta. He was immediately arrested in the corridor by an Inspector of Police, Syed Hasan, who was standing there but was not in uniform. He was taken into the Inspector's room in the Court building which is at a short distance from the place where he was arrested. Mr. Shib Nath Bannerjee and the remaining five persons who were still in the Court room were arrested later on, but after Court hours and when all the Judges had risen. Whether they were arrested in the Court room itself or just outside is a disputed question but in the view I am taking is not a material one. Julius Janvrin, Deputy Commissioner of Police, Special Branch, was admittedly in charge of the police force. He was sitting by the side of the Standing Counsel at the time of the delivery of the judgment but left the Court room with the police, when just before pronouncing the

order of the Court for release I ordered the policemen to go out of the Court room. He admits that he received on the 2nd June, 1943, instructions from his superior officer, the Commissioner of Police, to see to the maintenance of order and to arrest the detenues in case they were released by the Court.

59. The first Rule has been obtained by Miss. Mira Dutta Gupta. It is a Rule on Syed Hasan, Abdul Ghafar, Edwin James Brewer and Julius Janvrin, all policemen, to show cause why they should not be committed for contempt of Court.

60. The alleged contempt of Syed Hasan, Brewer and Janvrin has relation to the arrest of Mr. Niharendu Dutta Mozumdar. The substance of the contempt of Abdul Ghafar is alleged scandalisation of the Hon'ble the Chief Justice.

61. The second Rule has been obtained by Mrs. Shib Nath Bannerjee. The Rule is in two parts:

(1) Why Mr. Shib Nath Bannerjee should not be released, and

(2) Why Mr. Blair, the Chief Secretary to the Government of *Bengal* , Mr. Porter, the Additional Secretary to the Government of *Bengal* , Julius Janvrin, Shib Chandra Chatterjee (an Inspector of Police) and Charles Luke, the Superintendent of the Presidency Jail, should not be committed for contempt of Court. This Rule has relation to the arrest and detention of Mr. Shib Nath Bannerjee.

62. It is unnecessary at this stage to deal in detail with the affidavits- in- answer. It is sufficient to state that it has been stated therein that both Mr. Niharendu Dutta Mozumdar and Mr. Shib Nath Bannerjee were arrested on the 3rd June and are being kept in detention, as on that date warrants of commitment had been issued against them by the Government under *Regulation III* of 1818. The true copy of the warrants have been set out in the affidavit of Janvrin and the originals were produced for our inspection. The warrants purport to be by order of H.E the Governor and are authenticated in the manner required by the rules framed under **sec. 59 (2) of the Government of India Act**.

63. So far as the matter of contempt is concerned, there are certain common questions of fact and law which I will now consider. The following points have been discussed as pure questions of law, in view of the fact that facts bearing on the said points are admitted:

(1) that no person can be arrested in the Court room or within the precincts, of the Court while the Court is sitting. An arrest of a person re leased by the order of the Court at such a place while the Court is sitting is contempt;

(2) that a person released in pursuance of a writ of habeas corpus or by an order passed under sec. 491 of the Criminal Procedure Code cannot be arrested even outside the precincts of the Court and even on the public high way till he reaches home. If he is arrested before he reaches home, the arrest itself would be illegal.

64. In urging these two ponits the learned Advocates appearing for the Petitioners contend that it would be contempt of Court, even if the arrest is under a valid warrant.

65. The learned Advocate-General who has appeared to show cause has controverted both these propositions. He has gone further and has argued that a warrant of commitment issued under *Regulation III* of 1818 gives authority to a person to defy to our face an order for release passed under sec. 491, Criminal Procedure Code. I will deal with these points first. I may at once say that I cannot accept the extreme contention of the learned Advocate- General, but at the same time I cannot accept the contentions of the learned Advocates appearing for the Petitioners on the aforesaid two points in its relation to the facts of this case. I am prepared to accept the contention that a warrant of commitment under *Regulation III* of 1818 would give authority to arrest a person after he regains his liberty in pursuance of an order of release passed under sec. 491 of the Code of Criminal Procedure, but for considering the question of contempt of Court other factors, which I will indicate later on, would have to be taken into consideration.

66. For supporting his contention the learned Advocate- General has relied upon the concluding portion of the Judgment of Norman, J., in Ameer Khan's case(4).

67. The observations of Norman, J., is as follows:

“Therefore as the Superintendent of the Jail at Alipora holds the prisoner trader warrant in writing of the Governor in Council (Warrant of commitment under *Regulation III* of 1818), it is clear that such order must prevail as against the command of any writ which this Court has power to issue. It appears to me, therefore, that I ought not to issue a writ which it would be the duty of the Superintendent of the jail to disobey.”

68. I can only agree with those observations with substantial qualifications in dealing with the question of contempt. In that case no question of contempt arose. The facts were as follows:— Ameer Khan was taken into custody in 1869 under a warrant of commitment Issued under *Regulation III* of 1818 not by the Governor-General in Council, who only could at that time issue such a warrant, but by a warrant issued by the Lieutenant-Governor of *Bengal* . The original detention was therefore illegal. But before the application for habeas corpus was made the Governor- General in Council had issued a warrant of commitment under *Regulation III* of 1818. The Crown intervened before the Rule was issued. The application was refused by Norman, J. On appeal his order was confirmed by Phear and Markby, JJ., who did not however adopt the observations of Norman, J., which I have quoted above. In my judgment Markby, J., put the matter on the correct basis. His reasons were that as at the time of the application for a writ of habeas corpus it appeared that Ameer Khan was being lawfully detained, it would ba a futile thing to issue a Rule on the Crown, for on the production of Ameer Khan in Court in pursuance of the Rule he would have to be remanded to custody again as his detention was then lawful. In any event as the case of Ameer Khan was not at all concerned with contempt proceedings, the observations made by Norman, J., cannot in my judgment be legitimately used to furnish an answer to proceedings in contempt drawn up on the basis of a flagrant insult to the authority of a Court of Record, which would be the case if the warrant for commitment under *Regulation III* of 1818 is dangled by the person holding it at the face of the Judge ordering the release with the observation that he would not obey the order.

69. At one time of his argument the learned Advocate-General relied upon an observation of Phear, J., in the same case at page 476 of the report. There the learned Judge was meeting an argument directed against the validity of two Acts passed by the Governor-General in Council, namely Act XXXIV of 1850 (which in a way confirmed the detention-provisions of *Regulation III* of 1818) and Act *III* of 1858 (which extended its operation to Calcutta). He said that those two Acts of the Indian Legislature were not ultra vires, as the real effect of those Acts was that they created and made lawful a new cause of imprisonment, and constituted the Governor-General in Council "a Court endowed with the fullest discretion to adjudicate such a course, and with power to imprison therefore during pleasure." The argument of the learned Advocate-General was that as a warrant of commitment issued by the Governor-General or by the Governor of a Province under *Regulation III* of 1818 amounts to a decision of a Court, there can be no con tempt of Court if a person having authority to arrest a person on the basis of such a warrant, were to say to the face of the Judges of this Court that he would not release the person ordered to be released by them under sec. 491 of the Criminal Procedure Code, for it would be the case of an order of one Court being met by the order of another competent Court. In fairness to the learned Advocate-General I should mention that he drew our attention to the dissenting observations made by Couch, C.J, in the course of his judgment in connection with another proceeding against the same person, **Ameer Khan. [Queen-Empress v. Ameer Khan**(5)]. Even apart from the strong dissent express ed by Couch, C.J, I would have had no hesitation in holding that the afore said observation made by Phear, J., is bad law. A detention under *Regulation III* of 1818 or detentions without trial under similar provisions of law would be purely executive acts, and for this proposition there is the weighty authority of the **House of Lords [Liversidge v. Sir John Anderson**(6)]. I cannot accordingly accept the extreme contention of the learned Advocate-General.

70. For supporting the first contention Mr. Ghose appearing for Miss Mira Dutta Gupta has cited before us a number of old decisions of the English Courts. There is also a passage at page 190 of Oswald on Contempt. (3rd Edition), which at first sight would seem to support his contention. That passage runs thus:

"It was held in an early case that not only Sergeants-at-Law but all other persona whatsoever are free from arrest so long as they are in view of any of the Courts at Westminister, or if near the Courts, though out of view, lest any disturbance may be occasioned to the Courts. A person cannot be arrested in the King's presence nor in the King's Court of justice while the Justices are sitting."

71. The cases relied upon by him are Long's case(7), Oldfield's case(8), Wigley's case(9) and Blake's case(10). Long's case was decided in the reign of King Charles II. There an officer of the Court arrested a man in the Palace Yard. He was committed to the Fleet "that he might learn to know the distance." No other fact appears from the report. We are left in the dark as to whether the man was arrested on civil or criminal process. Further it seems that at the time when that case was decided the Palace Yard, where the man was arrested, was a part of the King's palace of West-minister which was then His Majesty's residence, and it may be that the case proceeded upon the basis of privilege attaching to the King's

palace. I cannot therefore regard that case to be an authority that a man cannot be arrested under a criminal process within the precincts of the High Court. Wigley's case was a case of assault committed in the lobby of the Court. The man committing the assault was committed for contempt of Court by Coleridge, J. No reasons are given in the judgment, Oldfield's case was also a case of assault in the precincts of the Court. The man committing the assault was not committed as at the time the assault was committed the Court was not sitting. No reason is given in the judgment. The cases of assaults, in my judgment, can be justified only on the ground that the disturbance caused by assaults or riots in the Court room or within the precincts of the Court would obstruct the administration of justice, as any trial or hearing would thereby be materially disturbed or hindered. That reason may apply to arrest under a lawful process in the Court room when the Judge is sitting but would not apply when an arrest is made outside the Court room, but within the precincts of the Court in circumstances which would not interfere with the Court's business. The passage in Oswald on Contempt, which I have quoted above, may refer to arrest in the Court room itself and not to arrests outside, in places which can be considered to be precincts of the Court. If the passage contemplates arrests within the precincts of the Court also, I am not, as at present advised, prepared to follow it, as no authority has been cited by Oswald which would give support to that proposition. I cannot accordingly accept the first contention of Mr. Ghosh.

72. For supporting his second contention both Mr. Ghosh and Mr. Chatterjee have relied upon Blake's case. There Blake was arrested under a civil process. A writ of habeas corpus was issued and he was released on the finding that the process under which he was arrested and kept under detention was an irregular one. After his re lease he was re-arrested outside the Court room, but within the precincts of the Court, under another civil process which was found to be a regular one. A Rule issued for his release was made absolute. Lord Denman, C.J, in passing the order for release rested it on the ground that the case came ‘within the principle whereby parties to a suit, for the sake of public justice, are protected from arrest in coming to, attending upon, and returning from Court.’ It is therefore necessary to determine exactly the scope of that Rule on which Lord Denman relied, and the real nature of a habeas corpus proceeding.

73. In the matter of Captain Douglas, after the release of Captain Douglas on a writ of habeas corpus he was arrested outside the Court room but within the precincts of the Court, by the Sheriff on a charge of misdemeanour. On a motion for his discharge the same learned Judge, Lord Denman, C.J, decided against him. He held that the privilege from arrest while coming to, attending upon, or departing from Court exists when the arrest is under a civil process but does not extend to an arrest under a criminal process. As I understand the law, a party to a criminal proceeding enjoys no privilege for arrest or re-arrest, wherever the arrest takes place. A man who has been acquitted on a criminal charge enjoys no such privilege. He can be arrested immediately upon another criminal charge within the precincts of the Court after his acquittal. I am reserving my opinion as to whether he can in an emergency be arrested in the Court room itself while the Judge is sitting. But a party to a civil proceeding, and the same privilege is enjoyed by witnesses

also, is privileged from arrest under a civil process on his way from his home to the Court premises, in the Court premises, and on his way back till he reaches home. A habeas corpus proceeding (and a proceeding under sec. 491 of the Criminal Procedure Code is of the same nature) is in essence a civil proceeding, for it is concerned with the private right of a citizen, namely, the right of personal liberty. The true nature of a proceeding by habeas corpus, whether civil or criminal, should be determined by its object, which is not to punish, but to give relief from a civil wrong. It is the remedy which the law gives for the enforcement of the civil right of personal liberty. (Spelling on Injunction and other Extraordinary Remedies, Vol. 2, pages 978 and 987-988, 2nd Edition). The general observations in Blake's case on which Mr. Ghosh has relied must be taken with facts of that case. It does not mean that an order for release made on a writ of habeas corpus implies that the person released must be allowed to reach his home. It means that he cannot be arrested on a civil process on his way home after his release on a writ of habeas corpus, as a proceeding under that writ is in essence a civil proceeding.

74. This leads us to the question as to whether a warrant of commitment under *Regulation III* is a civil process. The matter has been dealt with in some detail by my Lord the Chief Justice. I agree with his reasons and conclusions. I may add that it is not a civil process for the reason that the essence of a civil process is that it is set in motion at the instance of a private person for the enforcement of his rights against another private person. For these reasons I hold that the arrest of a person under a warrant issued under *Regulation III* of 1818 in the Court room when the Court is not sitting or within the precincts of the Court even when the Court is sitting would not by itself constitute contempt.

75. The second Rule issued at the Instance of Mrs. Shib Nath Bannerjee is concerned with the arrest of her husband in the Court room but after Court hours. The arrest was in pursuance of a warrant issued under *Regulation III* of 1818. The warrant was in existence then. In fact it was read out by the Inspector of Police to Mr. Shib Nath Banerjee at the time of his arrest. On the conclusion on the points of law indicated above the act of arrest cannot amount to contempt, unless it can be established by the Petitioner that the issue of such a warrant was a mere device by which the order of this Court for release was intended to be circumvented. I agree with the conclusion of my Lord the Chief Justice, to the effect that there isn't sufficient evidence which would lead us to the conclusion that the issuing of the warrants of commitment under *Regulation III* was a mere device. The averment in Mrs, Shib Nath Banerjee's affidavit that the warrants under that *Regulation* were mere contrivances is based on statements of facts based on information and belief.

76. A statement made on information is really hearsay and that on belief is in effect opinion. It is only in interlocutory applications that statements on information or belief are admitted in evidence, because of the special provisions of the Civil Procedure Code (Or. 19, r. 3) [**Legal Remembrancer of *Bengal* v. Motilal Ghosh** (11)]. The only relevant statement, which is from knowledge, is that contained in paragraph 34 of her affidavit. It is a statement which has not been denied. The circumstances may raise a strong suspicion that the original detentions under **Rule 26 of the Defence of India Rules** “were intended to be continued only under another name, but as in a contempt proceedings the evidence

must be clear I cannot hold that an appeal to Regulations *III* was made as a device to frustrate the order of release. In this view of the matter it is not necessary to consider the precise effect of **sec. 59 (2) of the Government of India Act**, but I may state that nothing has been said in the argument of the learned Advocate-General which would induce me to modify the views I have expressed in my judgment in the proceedings under sec. 491 of the Criminal Procedure Code made on behalf of these nine persons; I accordingly hold that there is no case against Mr. Blair, Mr. Porter, Shib Nath Chatterjee and Luke. On this finding also we cannot direct the release of the detenue Shib Nath Banerjee. The last paragraph of sec. 491 of the Criminal Procedure Code also stands in the way of granting that prayer. I therefore agree that the second Rule so far as it concerns the persons named above should be discharged. Julius Janvrin also is not guilty of contempt for the acts he did or directed in connection with arrest of Mr. Shib Nath Banerjee.

77. I will now consider the merits of the rule issued at the instance of Miss. Mira Dutta Gupta. That rule concerns the arrest of Mr. Niharendu Dutta Mazumdar. He was arrested before 4 o'clock, shortly after the order of release had been passed. There are two versions of the place where he was arrested, the manner of his arrest and what followed his arrest. The version given by Miss. Mira Dutta is that as soon as Mr. Dutta Mozumdar came out of the Court room into the adjoining corridor accompanied by his Advocate Mr. J.C Gupta, Syed Hasan suddenly pounced upon him from behind without any word of warning and forcibly grabbed him by the folds of his upper garment. Mr. Dutta Mazumdar who was taken aback said “what do you mean?”. The answer was “I arrest you”. Mr. Dutta Mozumdar then asked for the authority, but the answer from Syed Hasan was “never mind about it”. Thereafter on the direction of Syed Hasan two Sergeants caught hold of him and dragged him to the Inspector's room. Syed Hasan's version is that he did not use any force, but simply followed Mr. Dutta Mozumdar when he came out of the Court room and when he was about to cross the bridge he touched his elbow, He and Mr. Gupta turned round. He asked Mr. Dutta Mozumdar to come to the Inspector's room. Thereupon he declined and demanded his authority. On being told that he was under arrest he went to the Inspector's room. I will deal with other parts of his affidavit in another connection. It is quite apparent that he is trying to shift the place of arrest to a place at some distance from the exit of the Court room, and attempting to establish the fact that no force was used in effecting the arrest. He admits that Mr. J.C Gupta was then accompanying Mr. Dutta Mozumdar. One significant fact is that he does not say that he never uttered the words “Never mind about it” or words to that effect. Janvrin was not admittedly at the place of the arrest but though near it, has chosen not to give his version of the matter.

78. Mr. J.C Gupta has filed an affidavit which corroborates, substantially the statements made by Miss. Mira Dutta Gupta. Her version is also supported by the affidavits filed by Mr. Jyotish Chandra Maitra, by Mr. Manindra Bannerjee, both Barristers- at- law, Mrs. Amita Dutta Mozumdar, and Sakti Charan Mitter, a clerk of Mr. Meyer, another barrister. In this state of the evidence I decline to believe what Syed Hasan has said and must hold that

(1) the arrest took place just outside the eastern door of the Court room at about 3-45 p.m

or so;;

(2) that Syed Hasan suddenly pounced upon Mr. Dutta Mozumdar from behind and used unnecessary force,

(3) when asked about his authority to arrest, declined to furnish the information but simply said “Never mind about it” and

(4) at his direction two Sergeants caught hold of Mr. Dutta Mozumdar and forcibly dragged him into the inspector's room.

79. I will leave out for the present the part played by Abdul Gaffur, for his alleged contempt rests upon another set of facts. I will state what followed afterwards and my conclusions thereon.

80. According to version of Syed Hasan and Janvrin, Mr. J.C Gupta had a talk with the latter shortly after Mr. Dutta Mozumdar's arrest and before Mr. Gupta went to see me in my chamber. Mr. Gupta has given a different version. I cannot rely upon the version given by Syed Hasan. He has lied, as I have already said, on an important matter, I will show later on that Janvrin's affidavit is unsatisfactory. His affidavit is evasive and it shows an attempt on his part to hide material facts. There is nothing in the affidavit of Mr. J.C Gupta which would induce me to discard any portion thereof. In fact the learned Advocate-General has not chosen to comment on any portion of the said affidavit. That respectful attitude assumed by the learned Advocate-General towards Mr. Gupta can not be attributed to the fact that Mr. Gupta is also a member of the same profession, for the learned Advocate-General did not feel oppressed by any sense of delicacy when he charged (and I may observe without any justification) two other barristers, Mr. Josho Prokash Mitter and Mr. Girija Gupta Bhaya, Advocates of position, not only with false statements, but also for manufacturing false evidence. I accordingly give preference to the version of Mr. J.C Gupta, where it differs from the versions given by Syed Hasan or Janvrin. Relying on Mr. Gupta's affidavit I have arrived at the following findings:

(1) that shortly after the arrest of Mr. Dutta Mozumdar Mr. Gupta saw me in my chamber (that was a few minutes after four o'clock according to my recollection),

(2) that Mr. Gupta did not meet Janvrin, nor had he any talk with him before he saw me in my chamber,

(3) that after returning from my chamber he spent some time in answering queries of several persons as to what the judge had said, and in pacifying an excited crowd who had been shocked to see the rough manner in which Mr. Dutta Mozumdar had been handled in the immediate precincts of the, Court room.

(4) that thereafter he met Janvrin, when the latter took him to the inspector's room and for the first time showed him the file containing warrants under *Regulation III* of 1818. This was just a short time before the arrest of the other six persons including Mr. Shib Nath Banerjee in the Court room.

81. The time when Janvrin showed the warrants to Mr. Gupta is important. In paragraph 7 Janvrin states that Mr. Gupta met him while Mr. Dutta Mozumdar was still in the corridor. I cannot believe that statement. The opening lines of paragraph 8 is that Mr. Gupta "returned after a while", and told him that if he would show him any written order under which he was acting, he would offer his other clients for arrest. Mr. Gupta denies that he ever made such an offer. In the said sentence Janvrin is obviously hinting at Mr. Gupta's return from my chamber. He wants to give an impression by the words used in the opening of paragraph 8 that Mr. Gupta saw the warrants under *Regulation III* almost immediately after his return from my chamber. From the affidavit of Mr. Gupta it appears that there was a considerable interval of time between his return from my chamber and the time when he was shown those warrants. That Mr. Gupta's version on the point is true is in a way admitted by Janvrin in the last portion of paragraph 8 of his affidavit. That portion suggests that Mr. Gupta was shown those warrants just before Janvrin, and Shib Nath Chatterjee went into the Court room to arrest the other six persons. Janvrin admits that these six persons were then having tea. There was a huge crowd in Court on that date. At the time of the arrest of Mr. Dutta Mozumdar that crowd had not dispersed. The crowd was there when Mr. Dutta Mozumdar was arrested. The manner of his arrest raised excitement and resentment. The crowd saw Mr. Gupta leaving the place to see the Judges and awaited his return. The six persons could not have been supplied with tea in the Court room till after a considerable interval of time had elapsed after Mr. Dutta Mozumdar's arrest. These facts lead to the irresistible inference that the warrants issued under *Regulation III* were shown to Mr. Gupta after a considerable interval of time had elapsed after Mr. Dutta Mozumdar's arrest. It would not be a speculation if that interval be taken to be an hour or so. There was thus sufficient time for the preparation and issue of those warrants after the arrest of Mr. Dutta Mozumdar.

82. In paragraph 3 of his affidavit Janvrin has stated that on the 2nd June, 1943, he was instructed by the Commissioner of Police to arrest the detenues if they were released, in the veranda outside the Court room, and if necessary inside the Court room but after the Judges had left. In his affidavit he gives details of the disposition of the Police force placed under him on the 3rd June. He had entrusted the duty of arrest to plain clothes officers of the Special. Branch. Syed Hasan was one of such officers. In his affidavit Syed Hasan says that he got orders from Janvrin on the 3rd June that the detenues should not be allowed to contact with the public, but should be taken to the Inspector's room on their release and only if they refused to go there they were to be arrested. The statement that they were not to be arrested in the first instance is undoubtedly false. It is against Janvrin's statement. It has been made to meet the Petitioner's case as to the manner in which he made the arrest of Mr. Dutta Mozumdar. One thing, however, is clear from this statement, that he was not to allow the detenues to come in contact with the public after their release. The statement cannot refer to the conditions before their release, for before their release they were not to be and actually were not in charge of the police but of the jail guards who had brought them from jail. It is admittedly the case that no warrant was shown either to Mr. Dutta Mozumdar or to Mr. Gupta at the time the former was arrested. Nothing was said at that time about warrants under *Regulation III* . When asked about his authority to arrest he

gave reply, “never mind about it”, which shows that he had not then in his possession the warrants of arrest which were issued to the Commissioner of Police on the 3rd June, 1943. The original warrant of arrest which concerned Mr. Dutta Mozumdar was shown to us by the learned Advocate- General. It was of the same form as the copy which has been annexed as Exhibit A to the affidavit of Janvrin filed in the other rule. His reply also shows that he had not been told by Janvrin about the existence of such a warrant. It is unthinkable that the warrant, if it had been issued then, would not have been handed over by Janvrin, to the person to whom he had entrusted the duty to arrest—or that the man would not” be told beforehand the nature of authority by which he was being empowered to arrest. The petitioner has made the definite case that the warrants under *Regulation III* were not in existence at the time of Mr. Dutta Mozumdar's arrest. Janvrin could have definitely refuted that case by making a clear and unambiguous statement about the time of the day when he got those warrants. Instead of making a clear statement he makes a vague statement in paragraph 5 of his affidavit that he got those warrants on the 3rd June, 1943. Certainly he had them on the 3rd June, just before the arrest of Mr. Shib Nath Banerjee and the other five, for they were shown to Mr. J.C Gupta about that time, but the question is whether he had them in his possession before that time. This evasive statement confirms what I infer from the other circumstances, which I have detailed above, that the warrants under *Regulation III* of 1818 against Mr. Dutta Mozumdar and others has not been issued, at the time of Mr. Dutta Mozumdar's arrest. He was arrested simply because the Commissioner of Police had on the 2nd June instructed Janvrin to arrest all the detenues immediately on their release. The arrest of Mr. Dutta Mozumdar accordingly constitutes contempt as there was no legal warrant for his arrest at the time and those concerned with his arrest are liable to commitment. It is no answer to the charge of contempt that the police officer who directed the arrest or who actually arrested him had to act on the orders of his superior officer. That fact can be taken into consideration only for determining the punishment to be meted.

83. I have already found that Mr. Dutta Mozumdar was arrested immediately after he stepped out of the Court room at a place very near the eastern door of the Court room. He was arrested a few minutes after we rose. Just before the order of release was passed, because the policemen present in the Court room showed such a degree of alertness which indicated that they would close up on the detenues immediately after the order of release, I directed the policemen present in the Court room to move outside. That order was obeyed. The obedience to that order cannot lead to the only inference that all the policemen had, irrespective of their instructions, the genuine desire to obey all lawful orders of the Court. They had to move out, for otherwise they would have been guilty of contempt in the face of the Court and there would have been no scope of inventing explanations. The description of the proceedings in Court as Tamasha by Janvrin, a statement which has not been denied by him, showed which way the wind was blowing. To say the least, it is the height of impudence on his part to describe proceedings of this Court in that manner and that itself constitutes contempt. I cannot gather words strong enough to express my disapproval of his conduct. After the policemen went out of the Court room accompanied by Janvrin, they lined up at the corridor and close to the exits from the Court room. This

has been stated in paragraph 13 of the petition of Miss. Mira Dutta Gupta and has not been denied. Syed Hasan admits that Janvrin's instructions were that the detenues on their release were not to come in contact with the public. I accordingly hold that so far as Mr. Dutta Mozumdar is concerned, he was not freed from constraint. So far as the other six persons are concerned, they enjoyed liberty for a short time but there was only a parody of liberty in the case of Mr. Dutta Mozumdar. Even if the warrant for his arrest had been issued at the time he was arrested, the Court's order cannot be said to have been obeyed. In the connected Rule I have given my reasons for repelling the extreme contention of the learned Advocate- General that it would have not been contempt even if on the pronouncement of the order of release the policemen were to fling the warrants issued under *Regulation III* of 1818 at our face and say that they would not carry out the order of release. What has been done in the case of Mr. Dutta Mozumdar virtually amounts to the flouting the order of release, though not exactly in that dramatic fashion. There cannot be any doubt in my mind that the acting was such as would convey to the mind of the public that the power of the police is supreme. The remark of Syed Hasan to the effect “never mind about it” would only confirm that belief. It would convey the idea “never mind the High Court's order, I arrest you and would not deign to give you the authority under which I am arresting you, for do you not know that I am a police officer?” There cannot be any doubt that the manner in which Mr. Dutta Mozumdar was arrested would calculate to affect the dignity of the Court. While I am of opinion that Judges should not be over-sensitive of their personal dignity, they must always be jealous of the dignity of the Court and nothing savouring of contempt must be allowed to pass unnoticed, uncensured or unpunished. This leads me to consider the question raised by the Advocate- General as to whether an act calculated to affect the dignity of the Court is contempt. He has given a bold answer in the negative. He has admitted that words spoken or acts done which are calculated to affect the authority of the Court is contempt, but: says that authority does not mean or include dignity. For that purpose he has referred us to the following passage of Wilmot, C.J's undelivered judgment in. King v, Almon(12) as quoted at pages 240 and 241 of Tushar Kanti Ghose's case(13).

“The word ‘authority’ is frequently used to express both the right of declaring the law, which is properly called jurisdiction, and of enforcing obedience to it, in which sense it is equivalent to power. Bat by the word “authority” I do not mean coercive power of the Judges, but the deference and respect which is paid to them and their acts, from an opinion of their justice and integrity…. It is not imperium; it is not the coercive power of the Court; but it is homage and obedience rendered to the Court from the opinion of the qualities of the Judges who compose it; it is a confidence in their wisdom and integrity, that the power they have is applied for the purpose for which it is deposited in their hands.”

84. Relying on this passage the learned Advocate- General contends that apart from the case where an order of the Court is defied, it would be contempt only if the wisdom or integrity of a Judge is attacked, for such an attack would shake the confidence of the public and so would hamper the administration of justice. In fact he argued that no words spoken, nothing written and no act done would be contempt, if its tendency is not to obstruct the

administration of justice. I cannot accept that contention. The aforesaid passage does not mean what the Ad- vocate- Geneval says. The other passages in Wilmot, C.J.s judgment would demolish the argument. Besides, these observations and some others made in that judgment must be considered with facts of that case which was a case of libelling the Chief Justice. Such a case is punished for contempt, because the libel against a Judge tends to shake public confidence in him and so may have the effect of interfering with the administration of justice.

85. Courts have not attempted to define contempt in all its aspects. It is not possible, nor expedient to give a catalogue of acts which would amount to contempt and those which would not. But certain general principles have been laid down which must always be kept in view. In Miller v. Knox(14), Williams, J., in tendering advice to the House of Lords approved the following passage in Viner's Abridgment. Contempt consists of

“a disobedience to the Court, or an opposing or a despising the authority, justice or dignity thereof. It commonly consists in a party's doing otherwise than he is enjoined to do, or not doing what is commanded or required, by the process, order or decree of the Court.”

86. Blackstone gives a more exhaustive enumeration of acts which would amount to contempt (Vol. IV page 285), and winds up by saying that “anything, in short, that demonstrates a gross want of that regard and respect” for the Court would be contempt, for that is so necessary for the maintenance of its authority.

87. The passage quoted by the learned Advocate-General from Wilmot, C.J's judgment in Almon's case, taken along with a passage immediately following to which the learned Advocate- General made no reference, makes it quite clear that that learned Judge considered an act which had the effect of affecting the deference and respect due to the Judges by reason of their office would be contempt. He first gives the reason (wisdom and integrity) which supports that deference and respect and then says that respect and deference paid to the Judges “is a great auxiliary of their power”. That learned Judge also said that if contumelious treatment of a process of Court is contempt, more so would be a contumelious treatment of an order of the Court. For the reasons given above I hold that Janvrin and Syed Hasan were guilty of contempt.

88. So far as Sergeant Brewer is concerned, he dragged Mr. Dutta Mozumdar to the Inspector's room at the direction of Syed Hasan. He had not been entrusted with any duty in connection with the arrests, and probably was not at the place when the arrest was made. I consider that the contempt so far as he is concerned is too technical and so ought to be overlooked.

89. I now come to the case of Abdul Ghaffur. In her affidavit in support of her petition Miss. Mira Dutta Gupta stated that that officer had given out that the arrest was made in the Court precincts with the permission of the Hon'ble the Chief Justice. That petition was moved in Court on the 8th June, 1943, when a Rule was issued. A statement has been made from the Bar that at that time the Court asked the Advocate appearing for her to put in as many affidavits as could be had to corroborate her statement on that point. In pursuance of

that request two barristers- at- law, Mr. Girija Gupta Bhaya and Mr. J.P Mitter swore affidavits on the 16th June following. In those affidavits they say that as soon as they came out of the Court room they met Abdul Ghaffur, whom they know from before in the corridor just outsider the Court room. On their enquiry Adul Ghaffur told them that the arrest was made there as the police had the permission of the Hon'ble the Chief Justice. They met Mr. N.K Basu, Advocate, on their way to the Bar Library and told him what Abdul Ghaffur had said and later on communicated the matter to their Barrister friends in the Bar Library, including the Advocate-General and the Standing Counsel. Abdul Ghaffur in his affidavit denies having, made that statement. He admits meeting the said two gentlemen, but says that the meeting place was not in the corridor but in the passage leading to the Inspector's room which is behind the staircase. It seems to me that the last-mentioned statement is false. The place of meeting would naturally be in the passage leading to the Court room where the two gentlemen had come out after listening to the judgments of the Court.

90. After Mr. Ghosh had placed the affidavits he tendered all the persons who had sworn affidavits in support of his client's case for cross- examination. The learned Advocate-General did not however choose to cross- examine any one of them. In the course of his argument he however contended that the statements made by those two gentlemen were false and Abdul Ghaffur's version was correct. He even went to the length of suggesting that those two gentlemen was conscious of the fact that their statements were so improbable that no Court would believe them, so they introduced the name of Mr. N.K Basu, of the Standing Counsel and of himself. He, however, did not deny the fact as to whether Mr. J.P Mitter had spoken of the incident to him immediately after. On that point he was silent. These gentlemen filed affidavits by reason of the general request from the Court. I do not wish to discuss the matter further. All I say is that I believe these two gentlemen and that the attack on their credit was neither merited nor justified. The statement made by Abdul Ghaffur to those two gentlemen constitutes contempt of the same type as was considered in the case of Tushar Kanti Ghosh where this Court on its own motion took notice of the contempt and meted out punishment. That statement made by Abdul Ghaffur is false. Even if no permission of the Hon'ble the Chief Justice for arresting in the precincts of the Court was necessary, the implication of the statement, which clearly suggests, if I may use the expression used in Tushar Kanti Ghose's case “hobnobbing with the executive” is not taken away. It constitutes contempt.

91. As my learned colleagues are of a different opinion regarding Janvrin, Syed Hasan and Abdul Ghaffur, it is unnecessary for me to consider the question of punishment, but I cannot help observing that the attitude maintained by them does not seem to me to be proper. They are public servants whose duties require them to be in the service of law. No regret was expressed by them either in their affidavits nor by the Advocates appearing for them, even on behalf of Syed Hasan after all of us had expressed our views in the course of the argument that he had acted in an unseemly way in arresting Mr. Dutta Mozumdar and had used force when no force was necessary.

Khundkar, J.:— As regards Miscellaneous Case No. 54, which arises out of the Rule

obtained by Mrs. Shibnath Banerjee, I agree with My Lord the Chief Justice and my learned brother Mitter, J., that this Rule should be discharged, and as I concur in the reasons for so holding which are contained in the judgments just delivered, it is unnecessary for me to add anything to what has been stated therein regarding this Rule.

92. As regards Miscellaneous Case No. 58 of 1943, to which the Rule obtained Miss Mira Dutta Gupta has given rise, I am, after anxious consideration, of the opinion that this Rule also should be discharged. Questions of law common to both the cases have been argued with considerable ability by Mr. Chatterjee and Mr. Ghosh, and some of the submissions made by learned counsel in Miscellaneous Case No. 58 of 1943 have found favour with my learned brother Mitter, J. As I am constrained to differ from the view which he has formed with respect to a few of the points which were argued, I state, with deference, my reasons for so doing.

93. The case against Mr. Deputy Commissioner Janvrin is said to rest on the same foundation as the case against Inspector Syed Hasan. It was contended that as Mr. Janvrin ordered the Inspector to arrest Mr. Dutta Majumdar, and that as he stood by while the arrest was being made, he must accept liability for the legal consequences of the Inspector's action. I shall examine here what is thus represented as being the common case against the Deputy Commissioner and the Inspector. Mr. Janvrin in his affidavit affirms that he did not actually see Mr. Dutta Majumdar being arrested, but he does not deny that the arrest was effected by his authority. In paragraph 6 there is this admission: “The police officers entrusted with the duties of arrest were the plain clothes men of the Special Branch staff”. Inspector Hasan is admittedly a member of this staff, and Mr. Janvrin was admittedly in charge of the police arrangements made in the High Court on that day.

94. The arrest of Mr. Dutta Majumdar is said to constitute contempt for the following reasons:—

Firstly, it amounted to disobedience of the Court's order for his release.

Secondly, the manner in which the arrest was effected by Inspector Hasan was calculated to lower the authority of the Court.

Thirdly, at the moment of the arrest, no warrant of commitment under *Regulation III* of 1818 was in existence.

95. In submitting that the arrest of Mr. Dutta Mojumdar amounted to a disobedience of the Court's order for his release, learned Counsel maintained that this gentleman was never in fact released from custody at all. I do not think this contention is borne out by the facts. The sequence of events was as follows:— My learned brother Mitter, J., said that the police were to “clear off”. The members of the police force who were in the Court room left the Court room, and the Judges retired. Mr. Dutta Mojumdar then went through the door into the corridor, and walked a few paces along it when inspector Hasan came up to him, and according to the petitioner laid hands on him. The police obeyed the order to leave the room, before the Court adjourned, and Mr. Dutta Mojumdar was not taken into custody until he, after the rising of the Court, emerged from the Court room into the

corridor. In answer to the argument that this transitory freedom which Mr. Dutta Mojumder enjoyed was no freedom, the learned Advocate-General argued, that even assuming it was not a substantial instalment of liberty, what had happened was that the custody which the Court had declared unlawful and from which it had ordered the detenue to be released, had given way, but had been followed by another custody which was lawful, because for the second custody there existed a lawful authority which was antecedent to the order for release, to wit, a warrant of commitment under *Regulation III* of 1818. For the purposes of this argument it was assumed that such a warrant was in existence at the time. The learned Advocate-General's submission was that, although under ordinary circumstances, a failure to give effect to the order of the Court would amount to contempt on the general ground of its being a defiance of the Court's authority, no offence of defiance or disobedience could ever be contained in an act which was itself done in obedience to lawful command. If there be other lawful authority for an arrest at the time and in the place when and where it is effected, the authority of the Court cannot ever be affronted by the making of the arrest. To assert the contrary would be to misapprehend the Court's true position, for the Court is there to see that the law is carried out, not to impede its carrying out. My Lord the Chief Justice and my learned brother Mitter, J., have both held that the warrant of commitment under *Regulation III* of 1818 was lawful authority for this arrest, and that arrest under that warrant was arrest by lawful process akin to criminal process. Into those questions therefore, I need not go. But the learned Advocate-General's contention also was, that the order of the Court for the release of the detenues whose cases it had adjudicated upon could not be construed as meaning or implying that they were to be set at liberty, notwithstanding the existence of any other lawful command whatever by which their liberty was constrained. The order for release dissolved the detention under **Rule 26 of the Defence of India Rules**, it did not destroy the commitments under *Regulation III* of 1818. The learned Advocate- General relied upon Ameer Khan's case not because that case afforded a complete answer to all the arguments by which the case of contempt was sought to be supported, but only in order to fortify his contention that the liberty to which the Court's order entitled the detenues, stood abrogated by their commitment under the *Regulation* , and that the Court's order, in the circumstances in which it came to be made, could not prevail over the commitment already commanded by the Governor of the Province. In the appeal which was taken from the decision of Norman, J., in Ameer Khan's case, Phear, J. and Markby, J., upheld that decision, and Markby, J., stated that as Ameer Khan's detention was lawful by reason of a commitment under *Regulation III* of 1818, to issue a writ of habeas corpus for his release would be a futile thing. What Markby, J., clearly meant was that the antecedent order for Ameer Khan's detention under the *Regulation* would override his claim to liberty under Habeas Corpus.

96. In the case of Captain Archibald Douglas the circumstances of which have been described by my Lord the Chief Justice, the capias upon which Captain Douglas was held to have been lawfully arrested was issued in virtue of an information which had been filed in Court on the day preceding that on which the Court ordered the Captain to be released. The argument that he should again be released was not founded on the proposition that the arrest constituted a disobedience of the Court's order for release, but on the contention that

Douglas was exempt from the process by which the arrest was effected on the ground of privilege attaching to a party who has been brought up upon a habeas corpus. Even that contention was unanimously negatived by Lord Denman and Williams, Coleridge and Wrightman, JJ., who constituted the Court.

97. In my judgment the arrest of Mr. Dutta Mojumdar very soon after an order for his release was made by the Court, cannot in itself amount to contempt. It was however, insisted that the precipitancy of the arrest, and its execution in the corridor of the Court constituted a flaunting by the arresting officers of their commission in the sight of the Court. This it is contended was a flagrant affront deliberately offered to the dignity of the Court. Here I think there may be some danger of a confusion of thought. An arrest carried out in obedience to lawful command, in a place covered by that command, is one thing. It must not be forgotten that an arrest in pursuance of a warrant of commitment under *Regulation III* may be effected anywhere. A gratuitious insult to the Court is another thing. An act in itself lawful can be carried out in a manner which is offensive. But where the act does not in itself constitute contempt, we must be careful to distinguish the act from circumstances connected with the manner of its performance which are not necessary to the act hut are adventitious or extrinsic to it. What is really reprobated in the argument here is the incidence or bearing of time and place on the arrest, and not the arrest itself. It is necessary therefore to refer again to what actually took place. The police had left the Court room under the eyes of the Judges and in obedience to their orders. The Court had risen for the day, and the Judges had retired. Mr. Dutta Majumder had gone out of the Court room, and was walking along the corridar outside. It was then that he was arrested. It cannot be denied that the purpose of the arrest was to carry out a duty laid by lawful command on the arresting officer, and therefore it calls for some exercise of imagination to visualise such an arrest, in the circumstances just mentioned, as a flaunting of the arresting officer's authority in sight of the Court. I do not think there is any authority for holding that the principles of contempt would extend so far.

98. In Capt. Douglas's case it appears from the report at p. 52 that the events surrounding the Captain's arrest bore a striking similarity to what occurred here:—

Kelly— Captain Douglas cannot be detained in his manner. He has been discharged by the Court.

Per Curiam—‘The Judgment of the Court must have some effect. Capt. Douglas is free to go where he pleases.’

“Capt. Douglas then left the Court. Immediately after he had left the Court, he was arrested upon a capias, baiting oat of the office of the Sheriff of Middlesex”.

99. In the present case the Court said the police were to “clear off”: The police did clear out, the Court adjourned, and Mr. Dutta Mojumdar was arrested outside the Court shortly afterwards. The rule that arrest in the Court precincts constitutes contempt rests on another foundation—disturbance or interruption of the Court's proceedings. The principle of the cases in which it arose is indicated in the judgments of My Lord the Chief Justice and my

learned brother Mitter, J., and I need say nothing further regarding that aspect of the case. But of one thing I am quite satisfied here, that it cannot in any fairness be said that the place of the arrest or the time of the arrest were deliberately selected only to insult the Court. The sufficient answer to this would be that the Court was not there.

100. Quite distinct from this question of insult, however, is the second point above indicated, viz: that the manner in which Inspector Hasan acted when arresting Mr. Dutta Majumdar was calculated to lower the authority of the Court.

101. Before I go further, I would like to say something about this officer's behaviour towards Mr. Dutta Mojumdar, The Inspector has denied the allegations of rudeness and aggression made against him, but formidably arrayed against his denial are an imposing number of affidavits to which we may freely refer. The Court has to decide this question of fact on the preponderance of the materials before it. It is the word of one against the word of many, and no one was cross-examined. There seems to be little room for doubt that the Inspector laid hands on Mr. Dutta Mojumdar, and when asked by the latter the meaning of the affront, answered rudely, “never you mind” or words to that effect. There was no justification for such conduct. Mr. Dutta Mojumdar was not an escaping criminal. He is a gentleman of education and social position, a member of the Bar, a member of the Legislative Assembly of the Province, who finds himself under constraint on account of his political views and activities. To treat him as Inspector Hasan did was unwarrantable. But apart from the courtesy due to Mr. Dutta Majumdar's station in life, the conduct of the Inspector merits the disapproval of the Court for a reason that is broader based. It has often been justly remarked that the police in this country are prone to forget that they are the servants of the State and not its autocrats. Acts of churlishness and truculence on the part of individual police officers towards members of the public are unfortunately not of infrequent occurrence, and they do not enhance the reputation of the police as guardians of law and order. Such conduct calls for ah expression of the Court's severest displeasure whenever it is brought to its notice.

102. This however is a different thing from saying that the affronts offered to Mr. Dutta Mojumdar by the Inspector constituted a contempt of Court on his part as well as on that of his superior officer, Mr. Janvrin. The proposition that the boorish treatment bestowed upon Mr. Dutta Majumdar was contumacious of the Court rests upon the assertion that its arrogant character had the tendency of lowering the dignity of the Court in the public estimation. The haste with which the arrest was effected and the place where it was carried out were referred to in this connection, but those are matters with which I have already dealt.

103. The point I have to consider here whether, assuming there was some degree of physical violence in the arrest, that circumstance, coupled with the brusque words “never you mind” with which Mr. Dutta Mojumdar's demand for an explanation was summarily dismissed, would be injurious to the dignity and therefore the authority of the Court. The learned Advocate-General has, in reply to this argument, contended that the impression which an act may create in the public mind is not the test of contumacy. The real test is the

reason for the act. The reason here was the order for the arrest. This involves the doctrine that mere impressions in the public mind are too transitory and variable to afford a standard for judging contempt of Court, and appearances are often misleading when one is searching for the underlying substance of a justifiable issue. On the face of it this view is plausible. But I think one must, in the first instance, look for what is meant by the expression “lowering the dignity of the Court”. The Court's dignity is a precious and delicate thing, and a disturbance of its balance may have far-reaching consequences to the administration of justice. Public confidence in the ability of the Court to administer justice must be maintained, and the public estimation of the Court's authority, power, and dignity, though not the only factor in securing that confidence, is an important one nevertheless.

104. In Oswald's book on Contempt of Court it is stated that contempt “in the legal acceptation of the term, primarily signifies disrespect to that which is entitled to legal regard”. “Insolence to the Judge by insulting words or conduct”, says this author, constituted contempt. In Halsbury's Laws of England, Vol. 7, the matter is presented thus: —

“It is not from any exaggerated notion of the dignity of individuals that insults to judges are not allowed, but because there is imposed upon the Court the duty of preventing brevi manu any attempt to interfere with the administration of Justice.”

105. In Viner's Abridgement, title Contempt A, referred to in Miller v. Knox contempt is described as

“a disobedience to the Court or an opposing or a despising the authority, justice or dignity thereof. It commonly consists in a party's doing otherwise than he is enjoined to do, or not doing what he is commanded or required, by the process, order, or decree of the Court”

106. In Brich v. Walsh(15) one class of cases in which Courts of Equity exercised the authority of committing for contempt was thus described:—

“When the Court which issues the attachment has awarded come process, given some judgment, made some legal order or done some act which the party against whom it issues, or others on whom it is binding have either neglected to obey contumaciously refused to submit to, incited others to defeat by artifice or force, or treated with terms of contumely or disrespect in the face of the Court, or of its minister charged with the execution of its acts.”

107. Almon's case to which reference has been made by my learned brother Mitter, J., was a case of libel upon the Court of King's Bench Division by publication of a pamphlet which attacked that Court and the Chief Justice, Lord Mansfield, and charged them with having introduced a method of proceeding to deprive the subject of the benefit of Habeas Corpus. Wilmot, J., drew up an opinion on the case, which was never delivered in Court, because the proceedings were dropped. The opinion was published after his death, and it has been frequently referred to with approval and respect. It was not followed by Fletcher, J., in Taaffe v. Downs(16) (Note) who expressed his view of it in a passage quoted by Mukerji, J., in Tushar Kanti Ghose's case.

"The hasty and warm ebullition of a mind fraught with arbitrary notions, irritated and excited by a severe attack upon the whole Court, especially upon his venerated and adored Chief Justice, and the very reverse of what is called a considered, digested and ulterior opinion."

108. Although I have reproduced the quo- tation, I do not think it is of any particular importance in the present case, because as already just indicated, Almon's case was concerned with a libel on the Court, and not with any other act which tended to undermine its authority.

109. I have no doubt that, if the police had refused to obey the order to leave the Court room, that would have been contempt. I have no doubt that if the arrest of Mr. Dutta Majumder had been carried out when, and where it was, without lawful authority, the Court just having ordered his release, that also would have been contempt. But I cannot gather from any decision which has been brought to my notice that the affronts put upon Mr. Dutta Majumdar, should in the circumstances of this case, be regarded as an insult to the Court; or that it undermined the authority of the Court, by lowering the dignity of the Court in the public estimation. The last mentioned conclusion can be distilled from judicial decisions only by the discursive application of general words which enshrine the principle, that acts which are subversive of the Court's authority or which otherwise display a tendency to undermine public confidence in the administration of justice, amount to contempt.

110. I come now to the third point argued in the case against Mr. Janvrin and Inspector Hasan, which was that no warrant of commitment under *Regulation III* was in existence when Mr. Dutta Mojumdar was arrested. The onus of shewing this is on the petitioner. These warrants are dated the 3rd June, 19.43, the day of the arrest. In paragraph 3 of his affidavit Mr. Janvrin speaks of the orders he received from the Commissioner of Police on the 2nd June, and in that paragraph he says that he was instructed to effect the arrest of the security prisoners if they were released. It is pointed out that the warrant for his arrest was not shown to Mr. Dutta Majumdar when he was arrested. The fact that Inspector Hasan said nothing about a warrant is referred to. The events which took place between the arrest and the production of the warrants for Mr. J.C Gupta's inspection are dwelt on. Arguing by inference from all these circumstances the conclusion is sought to be reached that the warrants under *Regulation III* were brought into existence after Mr. Dutta Majumdar had been arrested. My learned brother Mitter, J., has been persuaded to accept this conclusion. After giving the matter anxious consideration, I find myself with the greatest deference to my learned brother, unable to agree. These warrants, seven in number, were drawn up and signed in the Secretariat Buildings. If they were not in existence when Mr. Dutta Majumder was arrested, it is unlikely in the extreme that Mr. Janvrin would have been in possession of them when Mr. Gupta spoke to him. Pondering Mr. J.C Gupta's affidavit with the utmost care I cannot see how, as suggested, an hour must have elapsed between the time when Mr. Dutta Majumdar was arrested and the moment when the file containing the warrants was shewn to Mr. Gupta. Mr. Gupta went to my learned brother Mitter, J's chamber when Mr. Dutta Majumdar was arrested. The chamber is not far away. He

returned from there almost immediately. He spoke to some persons and then met Mr. Janvrin and was shewn the warrants. The argument advanced necessarily involves the assertion that the warrants were prepared in the Secretariat Offices and delivered to Mr. Janvrin in less time than it took for the events just indicated to happen. Official business takes time to transact. Its routine is elaborate and its march unhurried. The warrants, seven in number, would require to be drawn up or at least filled in. They would have to be signed; their reference numbers or other marks would have had to be entered in some register; they would have had to be placed in a cover, and handed to a messenger who would require to be instructed as to the person to whom they were to be delivered and the place at which he would be found. The messenger would have had to cover the distance which separates the Secretariat Buildings from the High Court. Arrived here he would have had to find Mr. Janvrin in a crowd of people who were standing about in the corridors between the Sessions Court room and the Inspector's room. The warrants, it is asserted, were not in existence when Mr. Dutta Majumdar was arrested, yet when Mr. J.C Gupta came to Janvrin, the latter produced them from a file with what would look like the dexterity of a conjurer producing rabbits from a hat. It is an argument I am unable to accept.

111. The case against Assistant Commissioner Khan Saheb Abdul Gaffur remains to be considered. The affidavit of Mr. Girija Gupta Bhaya contains this statement:—

“I came out of the Court room accompanied by Mr. J.P Mitter, Barrister-at-Law and met Mr Ghafur, Assistant Commissioner whom we both knew. In the corridor just outside the Court room I enquired from Mr. Ghafur how Dutta Majamder could be arrested in the Court precincts whereupon the said Mr. Ghafur said that the police had the permission of the Chief Justice. Mr. Mitter was with me when the said Mr. Ghafur said so.

Thereupon Mr. Mitter and I returned to the Bar Library and on the way near the Advocates' Library we met Mr. N.K Basu, advocate, and Mr. Mitter said to Mr. Basu, “Have yon heard that the Chief Justice has permitted arrest of these men in the Court? Can he do that?” Mr. Basu smiled and said, ‘I reserve my judgment.’.

After I came back to the Bar Library, I spoke to the Standing Counsel amongst other friends about what I bad been told by Mr. Ghafur.”

112. The affidavit of Mr. Jasho Prokash Mitter contains the following statement:—

“I came out of the Court room with Mr. Gupta and met in the corridor Mr. Ghafur, Assistant Commissioner of Police, whom both of us knew. Mr. Gupta enquired from him how it was that Dutta Majamder had been arrested in the Court precincts, whereupon Mr. Ghafur informed Mr. Gupta that the Police had the permission of the Chief Justice. I returned to the Bar Library Club accompanied by Mr. Gupta. On the way I met Mr. N.K Basu and asked him if he had heard that the Chief Justice had permitted the arrest of these persons in the Court precincts and whether the learned Chief Justice could do so. Mr. Basu smiled and said, ‘I reserve my judgment.’ On returning to the Bar Library Club I spoke about it to Mr. S.M Bose, Advocate-General.”

113. Now if the statement imputed to Khan Saheb Abdul Ghaffur, that the Chief Justice had accorded permission for the arrest of Mr. Dutta Majumdar is contempt by reason of its being a slander of the Chief Justice, then, as the learned Advocate-General remarked, the repetition of this statement would amount to a publication of the slander. But in my opinion, good sense requires that the matter should not be looked at in vacuo. Excitement was probably running high, and what it would be unpardonable to repeat under normal circumstances might very well be overlooked when uttered in a mood of excitability at a time when public curiosity was in a ferment. I think we may safely acquit these gentlemen of any intention to defame the Chief Justice. But if a technical publication of slander may be condoned in the cases of two barrisers learned in the law, I cannot see how we can for that slander punish a police officer who must be less acquainted with the lore of defamation and contempt. After all did this officer intend to be disrespectful? This is not the case of one who says in words that have been measured and weighed and deliberately selected that the Chief Justice has become a creature of the executive. These were the words of an excited person who had had no time to consider the legal implications of an answer he was making to the question of another excited person. Surely the Court is not expected to visit with punishment every unguarded impromtu utterance which may possibly contain an innuendo which is defamatory of the Court or of a Judge. I say “possibly”, for can we be sure, in all the circumstances, that the statement “that the police had the permission of the Chief Justice” carried the implication that the Chief Justice was subservient to the executive? I do not find it difficult to think of more than one construction quite innocuous which these words might bear. The Khan Saheb, who had nothing to do with the arrests, might very well have heard that the permission of the Chief Justice had been obtained for the unusual policing precautions taken in the High Court building on that day. He would have known at the same time that the Deputy Commissioner in charge of the police party had authority to arrest the security prisoners. A slipshod association of ideas and carelessly chosen words might have led him to say something which gave Mr. Gupta Bhaya and Mr. Mitter the impression which they seem to have received. This I think is quite probable, and I am therefore not prepared to say that the statement attributed to this officer was within the mischief of a contempt which consists of a slander on the Court or on a Judge.

114. In Tushar Kanti Ghose's case Mukerji, J., gave careful consideration to the alternative meanings of the word “hobnobbing” before accepting the view that “hobnobbing with the executive” meant “mixing freely in a cringing spirit with a view to curry favour” with the executive. Reading that case as a whole, there can be little doubt that the Court unanimously found that the article complained of was a calculated and deliberate contempt, and as the Chief Justice said, “capable of great public mischief”.

115. That case bears little parallel to the case alleged here either as regards the intention of the delinquent, or the consequences to the administration of (justice of the words which were employed.

116. The basic principles of libel have been set out in many well-known text books on that subject, but few surpass in clarity and simplicity of expression the now ancient work

entitled “The Law of Libel” by Holt. I would like to quote the passage with which the author concluded his chapter on libels against Courts of Justice:—

“It is necessary, as we have shewn, that Courts of justice should have power to punish for contempts: but it is a power which has its justification in necessity alone, and should rarely be exercised, and never but in those oases where the necessity is plain.”

117. In Miscellaneous Case No. 58 the complaint against Sergeant Brewer was not developed, and I do not think it necessary therefore to say anything about it.

118. As already stated at the beginning of my judgment, I am of the opinion, that both rules should be discharged.

The Court: These Rules are discharged.

Solicitors: K.K Dutt & Co. for the Petitioners; Solicitor to the Province of *Bengal* for the Crown.

P.C