H. L. (E.) 1941

JOSEPH CONSTANTINE STEAMSHIP LINE, LD. v. IMPERIAL SMELTING CORPORATION, LD.

cases, but I prefer to leave the question for determination until it comes directly in issue.

For the reasons I have stated I would allow the appeal.

Appeal allowed.

Solicitors for appellants: *Holman, Fenwick & Willan.*

Solicitors for respondents: *Parker, Garrett & Co.*

[HOUSE OF LORDS.]

H. L. (E.)* 1941

Sept. 18, 19, 22; *Nov.* 3.

LIVERSIDGE . . . . . APPELLANT;

AND

SIR JOHN ANDERSON AND ANOTHER . RESPONDENTS.

Emergency legislation—Detention of person—Belief of Secretary of State that person of hostile associations—Cause for belief—Powers of court—Defence (General) Regulations, 1939, reg. 18B.

Where the Secretary of State, acting in good faith under reg. 18B of the Defence (General) Regulations, 1939, makes an order in which he recites that he has reasonable cause to believe a person to be of hostile associations and that by reason thereof it is necessary to exercise control over him and directs that that person be detained, a court of law cannot inquire whether in fact the Secretary of State had reasonable grounds for his belief. The matter is one for the executive discretion of the Secretary of State.

Therefore, in an action by a person detained against the Secretary of State for damages for false imprisonment the court cannot compel the defendant to give particulars of the grounds on which he had reasonable cause to believe the plaintiff to be a person of hostile associations or that by reason of such hostile associations it was necessary to exercise control over the plaintiff. The production by the Secretary of State of an order of detention, made by him and ex facie regular and duly authenticated, constitutes a defence to such an action unless the plaintiff discharges the burden of establishing that the order is invalid:—

So *held*, affirming the decision of the Court of Appeal, Lord Atkin dissenting.

APPEAL from the Court of Appeal affirming an order of the King's Bench Division refusing the appellant's application for particulars of defence in an action by him against the Home Secretary for false imprisonment.

The appellant, who was detained by an order made by the

* *Present:* VISCOUNT MAUGHAM, LORD ATKIN, LORD MACMILLAN, LORD WRIGHT, and LORD ROMER.

respondent, Sir John Anderson, as Home Secretary, on May 26, 1940, under reg. 18B of the Defence (General) Regulations, 1939 (1), claimed by his writ a declaration that his detention in Brixton prison was unlawful. The appellant applied for particulars (*a*) of the grounds on which the respondent had reasonable cause to believe the appellant to be a person of hostile associations and (*b*) of the grounds on which the respondent had reasonable cause to believe that by reason of such hostile associations it was necessary to exercise control over the appellant. Master Moseley refused to make any order and that order was upheld by the judge in chambers, who, however, gave leave to appeal to the Court of Appeal. That court held that the appellant at the present stage was not entitled to any of the particulars he was claiming and the appeal was dismissed, but, having regard to the great importance of the questions arising out of orders for detention under reg. 18B of the Defence (General) Regulations, the appellant was given leave to appeal to this House.

Pritt K.C. and *G. O. Slade* for the appellant. The question is whether the Secretary of State has power under reg. 18B of the Defence Regulations to deprive the appellant of his liberty on the mere allegation that there is reasonable cause to believe certain things about him said to be prejudicial to the interests of the realm. In considering this the court must confine itself to the construction of the regulation, and the Secretary of State must satisfy the court that he had reasonable cause to believe what is alleged against the appellant, namely, hostile associations. In such a case the onus is on the respondent, and

(1) By Defence (General) Regulations, 1939, reg. 18B, para. (1.): "If the Secretary of State has "reasonable cause to believe any "person to be of hostile origin or "associations or to have been "recently concerned in acts pre-"judicial to the public safety or "the defence of the realm or in "the preparation or instigation of "such acts and that by reason "thereof it is necessary to exercise "control over him, he may make "an order against that person "directing that he be detained." By para. (8.): "Any person "detained in pursuance of this "regulation shall be deemed to be "in lawful custody and shall be "detained in such place as may be "authorised by the Secretary of "State and in accordance with "instructions issued by him."

H. L. (E.) 1941 LIVERSIDGE v. SIR JOHN ANDERSON.

it is for the court to say whether on the evidence before it there was or was not reasonable cause to believe certain things alleged against the appellant. [LORD MACMILLAN. The court may in certain cases have to accept the decision of the Home Secretary.] In habeas corpus cases the court has required evidence of the facts and whether a good return has been made or not. The power conferred on the Home Secretary of interfering as he may with the liberty of the subject must be strictly construed, and, in the absence of compelling evidence, is to be construed in favour of the subject: see *Rex* v. *Halliday* (1) and *Eshugbayi Eleko* v. *Officer Administering the Government of Nigeria* (2). [VISCOUNT MAUGHAM. The Secretary of State may alone be in possession of the facts.] The regulations are designed to limit the powers of the Secretary of State. [LORD ROMER. If para. 8 of the regulation does not throw the onus on the appellant, of what use is it?] The Home Secretary must show that he had reasonable grounds for believing what he said he did, and we submit that he has not done so. The order should not be construed as meaning that, if the Home Secretary in his own opinion thinks that there is reasonable cause to act as he did, that is sufficient. When a person is detained against his will, justification for that step must be clearly established: see *Eshugbayi Eleko* v. *Officer Administering the Government of Nigeria* (2) where it was said that "it is the "duty of the courts to investigate the whole of the questions "raised and come to a judicial decision." In *Broughton* v. *Jackson* (3) it was held that in an action for false imprisonment on a criminal charge by a person not being a peace officer, mere belief of guilt is not sufficient justification, but facts must be shown on which the belief was grounded so that the court may judge whether or not the defendant had probable cause for making the arrest. See also *Green* v. *Garbutt* (4) and *Alman* v. *Oppert* (5) where, in an action against directors claiming compensation under the Directors Liability Act, 1890, in respect of alleged untrue statements in the company's

(1) [1917] A. C. 260.
(2) [1931] A. C. 662, 672.
(3) (1852) 18 Q. B. 378.
(4) (1912) 28 Times L. R. 575.
(5) [1901] 2 K. B. 576.

prospectus, the defendants said that they bona fide believed the statements to be true and that they had reasonable grounds for their belief. In any interference with the liberty of the subject punctilious regularity must be observed. In *Cobbett* v. *Grey* (1) it was held that the removal of a person from one part of a prison to another without authority was a trespass. As was said in *Holroyd* v. *Doncaster* (2) "a party who took upon himself "to imprison another was prima facie guilty of a trespass, the "onus of justifying which rested entirely with himself."

Sir Donald Somervell A.-G. and *Valentine Holmes* for the respondent. Reg. 18B provides for orders to be made by the Secretary of State for the detention of certain persons for an undefined period. The appellant was detained by an order which is regular in point of form. If the appellant's contention is right, it will involve the substitution of the view of the court for the opinion of the Home Secretary. The admission or proof of an order ex facie regular as it is in this case is a complete answer to the claim for damages for false imprisonment. The contention on behalf of the appellant that a reasonable cause for the detention as a matter of law must be established is not well founded. We start with a detention under a regulation made by virtue of a statute, and no particular form is prescribed. The ground on which the Home Secretary can act is the fact of hostile associations of the person in question. In *Perryman* v. *Lister* (3) Kelly C.B. said that "what as a "matter of law is reasonable and probable cause for giving a "man into custody upon a charge of felony, or prosecuting a "man for any criminal offence at all, will be found to be a mere "question of opinion, depending entirely upon the view which "the judge may happen to take of the circumstances of each "particular case." That, we submit, is right. Here the Home Secretary had all the facts before him and on these he had reasonable cause to make the order he did. It was for him, and not for the court, to decide on the facts. As was said by Lord Finlay L.C. in *Rex* v. *Halliday* (4), "it seems obvious that no "tribunal for investigating the question whether circumstances

(1) (1849) 4 Ex. 729.
(2) (1826) 3 Bing. 492.
(3) (1868) L. R. 3 Ex. 197, 203.
(4) [1917] A. C. 260, 269.

H. L. (E.) 1941 LIVERSIDGE v. SIR JOHN ANDERSON.

"of suspicion exist warranting some restraint can be imagined "less appropriate than a court of law." No crime is charged. The question is whether there is ground for suspicion that a particular person may be disposed to help the enemy. The duty of deciding this question is thrown by the regulation on the Secretary of State and an advisory committee before whom the person affected can show any grounds why the order may be revoked or varied. If it had been intended that the persons in question could have recourse to the court it would have been quite unnecessary to set up the advisory committee procedure. The language used clearly shows that it is the Home Secretary who is to exercise his judgment. His act is an executive act, and it cannot be canvassed directly or indirectly in court. The responsibility remains with the executive. In *Rex* v. *Leman Street Police Station Inspector* (1) it was held that art. 12 of the Aliens Order, 1919, which empowered the Secretary of State "if he deems it to be conducive to the public good" to make a deportation order against an alien was not ultra vires, and that, in acting under it, the Secretary of State was not a judicial but an executive officer, and was, therefore, not bound to hold an inquiry or give the person against whom he proposed to make a deportation order the opportunity of being heard.

Pritt K.C. in reply. If it had been intended that a detention order should not be impugnable it would have been easy to insert a statement to that effect in the regulation. That was not done. The Home Secretary's powers are, therefore, limited.

The House took time for consideration.

1941. Nov. 3. VISCOUNT MAUGHAM. My Lords, by this appeal the appellant, so far as form is concerned, is seeking merely to have certain particulars from the defendants, the present Secretary of State for Home Affairs and his predecessor in that office, of their defence in an action of false imprisonment. The learned master, the judge in chambers (Tucker J.), and the Court of Appeal (MacKinnon, Luxmoore, and du Parcq L.JJ.) have all held that the appellant is not

(1) [1920] 3 K. B. 72.

entitled to any of the particulars he claims. In such a case this House would not, generally speaking, entertain an appeal, but the circumstances are exceptional. The real object of the application is to raise at this early stage the vital question as to what onus, if any, lies on the respondents as defendants in the action in the circumstances of the case. The appellant is a person who was detained by an order made by Sir John Anderson as Home Secretary on May 26, 1940, under reg. 18B of the Defence (General) Regulations, 1939. The detention has been continued by the present Home Secretary. The validity of that detention has been raised in the action in which the appellant claims damages for false imprisonment, and consequential relief. Such an action used to be described as an action for trespass vi et armis. The general rule of law in these cases is well stated by Abbot C.J., delivering the judgment of the court in *Doswell* v. *Impey* (1). If, he says, persons having a limited authority "do any act *beyond* the "limit of their authority, they thereby subject themselves to "an action of trespass: but if the act done be *within* the limit "of their authority, although it may be done through an "erroneous or mistaken judgment, they are not thereby liable "to such action." The respondents rely on the order for the detention of the appellant above referred to. If it is valid, the action must clearly fail. The appellant, accordingly, seeks to throw on the respondents the burden of justifying the order. It will be convenient shortly to state the pleadings to show how, as a matter of pleading, the question of particulars arises.

The appellant (plaintiff) claimed by his writ dated March 14, 1941, a declaration that his detention in Brixton prison was and is unlawful, and damages for false imprisonment. Paragraph 2 of the statement of claim alleges that the first defendant was, and the second defendant now is, His Majesty's Home Secretary. Paragraphs 3, 4 and 6 of the statement of claim are as follows: "(3.) By a document dated May 26, 1940, and "expressed to be a detention order under reg. 18B of the "Defence (General) Regulations, 1939, the first-named defend- "ant ordered and directed that the plaintiff be detained.

(1) (1823) 1 B. & C. 163, 169.

H. L. (E.) 1941 LIVERSIDGE v. SIR JOHN ANDERSON. Viscount Maugham.

"(4.) In consequence and by reason of the said order and "direction the plaintiff was on or about May 29, 1940, arrested, "and he has since been and still is detained and imprisoned at "H.M. Prison at Brixton. (6.) In the premises the defendants "have and each of them has caused and procured the unlawful "detention and imprisonment of the plaintiff and the second-"named defendant continues and intends to continue the "same." Paragraph 3 of the defence is: "The defendants "admit that the first-named defendant ordered that the "plaintiff should be detained under reg. 18B of the Defence "(General) Regulations, 1939," and para. 5 of the defence is: "None of the allegations contained in para. 6 of the statement of "claim is admitted. Save as above expressly admitted, none of "the allegations contained in the statement of claim is admitted."

It is desirable to state, so far as relevant, the Act of Parliament and the regulations under which the order for detention (or the document purporting to be such an order) was made. By s. 1, sub-s. 1, of the Emergency Powers (Defence) Act, 1939, it was provided that His Majesty by Order in Council "may make such regulations . . . . as appear to him to be "necessary or expedient for securing the public safety, the "defence of the realm, the maintenance of public order and the "efficient prosecution of any war in which His Majesty may "be engaged, and for maintaining supplies and services "essential to the life of the community." By sub-s. 2 it was enacted that "without prejudice to the generality of the "powers conferred by the preceding sub-section, Defence "Regulations may, so far as appears to His Majesty in Council "to be necessary or expedient for any of the purposes mentioned "in that sub-section" make provision for a number of important purposes including regulations "for the detention of "persons whose detention appears to the Secretary of State "to be expedient in the interests of the public safety or the "defence of the realm." The regulations authorized by the Act are clearly of the widest possible character and may affect not only the liberty but also the property of all subjects, with a certain limit as regards authorizing conscription and as to extending the powers of courts-martial (sub-s. 5). The

Emergency Powers (Defence) Act, 1940, gives even greater powers to the Crown. It was under the provisions of the Act of 1939 that the Defence (General) Regulations, 1939, were made, and they have been from time to time amended.

Regulation 18B of the Defence (General) Regulations, 1939, referred to in para. 3 of the statement of claim, and in para. 3 of the defence, is in the following terms: "If the Secretary "of State has reasonable cause to believe any person to be of "hostile origin or associations or to have been recently con- "cerned in acts prejudicial to the public safety or the defence "of the realm or in the preparation or instigation of such acts "and that by reason thereof it is necessary to exercise control "over him, he may make an order against that person directing "that he be detained." That is the material sub-section in the present case.

The regulation continues thus: "(1A.) If the Secretary of "State has reasonable cause to believe any person to have been "or to be a member of, or to have been or to be active in the "furtherance of the objects of, any such organization as is "hereinafter mentioned, and that it is necessary to exercise "control over him, he may make an order against that person "directing that he be detained. The organizations hereinbefore "referred to are any organization as respects which the "Secretary of State is satisfied that either (*a*) the organization "is subject to foreign influence or control, or (*b*) the persons "in control of the organization have or have had associations "with persons concerned in the government of, or sympathies "with the system of government of, any Power with which "His Majesty is at war, and in either case that there is danger "of the utilization of the organization for purposes prejudicial "to the public safety, the defence of the realm, the main- "tenance of public order, the efficient prosecution of any war "in which His Majesty may be engaged, or the maintenance of "supplies or services essential to the life of the community.

"(2.) At any time after an order has been made against any "person under this regulation, the Secretary of State may "direct that the operation of the order be suspended subject "to such conditions: (*a*) prohibiting or restricting the

H. L. (E.) 1941 LIVERSIDGE v. SIR JOHN ANDERSON. Viscount Maugham.

"possession or use by that person of any specified articles; "(*b*) imposing upon him such restrictions as may be specified "in the direction in respect of his employment or business, in "respect of the place of his residence, and in respect of his "association or communication with other persons; (*c*) "requiring him to notify his movements in such manner, at "such times, and to such authority or person as may be so "specified; (*d*) prohibiting him from travelling except in "accordance with permission given to him by such authority "or person as may be so specified, as the Secretary of State "thinks fit; and the Secretary of State may revoke any such "direction if he is satisfied that the person against whom the "order was made has failed to observe any condition so imposed, "or that the operation of the order can no longer remain "suspended without detriment to the public safety or the "defence of the realm.

"(3.) For the 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 an order against him, by a refusal of the Secretary "of State to suspend the operation of such an order, by any "condition attached to a direction given by the Secretary "of State or by the revocation of any such direction, under the "powers conferred by this regulation, may make his objections "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 oppor- "tunity 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.

"(6.) The Secretary of State shall make a report to Parliament at least once in every month as to the action taken under this regulation (including the number of persons detained under orders made thereunder) and as to the number of cases, if any, in which he has declined to follow the advice of any such advisory committee as aforesaid.

"(7.) If any person fails to comply with a condition attached to a direction given by the Secretary of State under para. (2.) of this regulation that person shall, whether or not the direction is revoked in consequence of the failure, be guilty of an offence against this regulation.

"(8.) Any person detained in pursuance of this regulation shall be deemed to be in lawful custody and shall be detained in such place as may be authorized by the Secretary of State and in accordance with instructions issued by him."

On April 29, 1941, the appellant applied to the master in chambers (inter alia) for the following particulars, namely, particulars in writing of the allegation in para. 3 of their defence that the first-named defendant ordered that the plaintiff should be detained under reg. 18B of the Defence (General) Regulations, 1939: (*a*) of the grounds upon which the first-named defendant had reasonable cause to believe the plaintiff to be a person of hostile associations; and (*b*) of the grounds upon which the first-named defendant had reasonable cause to believe that by reason of such hostile associations it was necessary to exercise control over the plaintiff. On May 8, 1941, Master Moseley heard the application and refused to make any order thereon. The appellant appealed from the said refusal and on May 23, 1941, Tucker J., sitting as judge in chambers, dismissed the appeal, but gave the appellant leave to appeal to the Court of Appeal. The appellant appealed to the Court of Appeal and the appeal was heard before MacKinnon, Luxmoore and du Parcq L.JJ. on June 11 and 12, 1941. The judgment of the court was delivered by MacKinnon L.J. It was held by the court that on the detention order being proved or admitted the onus was on the appellant to prove that the order was invalid. It should be mentioned

H. L. (E.) 1941 LIVERSIDGE v. SIR JOHN ANDERSON. Viscount Maugham.

that the good faith of the Secretary of State is not challenged. The judgment proceeded as follows: "Put in another way, "if the plaintiff admits, or it is proved, that the plaintiff was "detained by an order purporting or expressed to be issued "under the regulation, and duly signed as such, the burden "is on the plaintiff, if he is to claim damages for false imprison- "ment, to give evidence showing that the order was invalid. "As the case proceeds at the hearing, as often happens, the "onus of proof may be shifted. If the plaintiff adduces "evidence which goes to show the invalidity of the order, "that might happen. If, upon that happening, the defendants "produced evidence which was embarrassing to the plaintiff, "by way of surprise or novelty, the judge would no doubt "protect him by way of adjournment. Conceivably, in a "proper case, the judge might at that stage make some order "by way of particulars of the allegations of the defendants. "These, however, are but hypothetical considerations as to "possible developments at a later stage of the litigation. "At this stage we are quite clear that the plaintiff is wrong "in his proposition as to the burden of proof inherently resting "upon himself and upon the defendants respectively." On this view it naturally followed that the appellant at the present stage was not entitled to any of the particulars he is claiming, and the appeal was dismissed. Having regard to the great importance of the questions arising out of orders for detention under reg. 18B of the Defence (General) Regulations, the appellant was given leave to appeal to your Lordships' House on July 21, 1941.

The Court of Appeal in October, 1940, had had to consider the true meaning of reg. 18B, para. (1.), in an analogous case entitled *Rex* v. *Secretary of State for Home Affairs. Ex parte Lees* (1). That was an application for a writ of habeas corpus by Mr. Lees who had been detained by an order of the Home Secretary, Sir John Anderson, under reg. 18B. Sir John Anderson in that case had made an affidavit stating that he had received and considered reports and information from persons in responsible positions who were experienced in

(1) [1941] 1 K. B. 72.

investigating matters of the kind under consideration and whose duty it was to report to him confidentially, that he had studied the reports and come to the conclusion that there were clear grounds for believing, and he did in fact believe, that Mr. Lees was a member of such an organization (stating the effect of the affidavit shortly) as is defined in reg. 18B (1A). The Court of Appeal then decided that the court could not act as a court of appeal from the decision of the Secretary of State and that his affidavit proved to the satisfaction of the court that he had reasonable cause to believe, and did honestly believe, the matters in question, and, that being so, the order was validly issued. As I understand the judgment in the *Lees* case it negatived the idea that the court had any power to inquire into the grounds for the belief of the Secretary of State (his good faith not being impugned) or to consider whether there were grounds on which he could reasonably arrive at his belief.

The Court of Appeal in the present case was, therefore, precluded by the previous decision from considering the main point argued before your Lordships, namely, the question whether there were in fact reasonable grounds for the beliefs (*a*) that the appellant was a person of hostile associations and (*b*) that by reason thereof it was necessary to exercise control over him. In this case, however, the Secretary of State who made the order and his successor in office have not made any affidavit in the action, and the appellant, therefore, is entitled to contend, and does contend, that the mere production of an order signed by the Secretary of State is not a sufficient prima facie defence to the action of false imprisonment and that an onus lies on the respondents to give evidence at the trial to prove that Sir John Anderson had reasonable grounds for the belief recited in the order. That order (following the language of the regulation) is in the following terms:

"DEFENCE (GENERAL) REGULATIONS, 1939.

"DETENTION ORDER.

"Whereas I have reasonable cause to believe Jack Perlzweig "alias Robert Liversidge to be a person of hostile associations

H. L. (E.) 1941 LIVERSIDGE v. SIR JOHN ANDERSON. Viscount Maugham.

"and that by reason thereof it is necessary to exercise control "over him: Now, therefore, I, in pursuance of the power "conferred on me by reg. 18B of the Defence (General) "Regulations, 1939, hereby make the following order: I "direct that the above-mentioned Jack Perlzweig alias Robert "Liversidge be detained.

"(Signed) John Anderson,

"One of His Majesty's Principal Secretaries of State."

This point as to the evidence is perhaps not directly relevant on the question of particulars, but it was raised and dealt with in the Court of Appeal, and both sides have desired your Lordships to express your opinion on it. I propose, first, to deal with the important question of the construction of the words in the regulation, "If the Secretary of State has "reasonable cause to believe, etc." that is, the question whether, as the appellant contends, the words require that there must be an external fact as to reasonable cause for the belief, and one, therefore, capable of being challenged in a court of law, or whether, as the respondents contend, the words, in the context in which they are found, point simply to the belief of the Secretary of State founded on his view of there being reasonable cause for the belief which he entertains. Secondly, I shall express my opinion on the question (which strictly speaking would not arise till the trial) whether the order of the Secretary of State is in the circumstances sufficient prima facie proof that the Secretary of State has acted lawfully and that the detention of the appellant was and is accordingly not illegal.

Before dealing with the construction of the regulation, it is desirable to consider how the matter should be approached. The appellant's counsel truly say that the liberty of the subject is involved. They refer in emphatic terms to Magna Carta and the Bill of Rights, and they contend that legislation dealing with the liberty of the subject must be construed, if possible, in favour of the subject and against the Crown. Adopting the language of Lord Finlay L.C. in this House in the case of *Rex* v. *Halliday* (1), I hold that the suggested

(1) [1917] A. C. 260, 270.

rule has "no relevance in dealing with an executive measure "by way of preventing a public danger" when the safety of the state is involved. The language of the Act of 1939 (above cited) shows beyond a doubt that Defence Regulations may be made which must deprive the subject "whose detention "appears to the Secretary of State to be expedient in the "interests of the public safety" of all his liberty of movement while the regulations remain in force. There can plainly be no presumption applicable to a regulation made under this extraordinary power that the liberty of the person in question will not be interfered with, and equally no presumption that the detention must not be made to depend (as the terms of the Act indeed suggest) on the unchallengeable opinion of the Secretary of State. The legislature obviously proceeds on the footing that there may be certain persons against whom no offence is proved nor any charge formulated, but as regards whom it may be expedient to authorize the Secretary of State to make an order for detention. The only safeguards, if they be safeguards, is that detention "appears to the "Secretary of State to be expedient in the interests of the "public safety or the defence of the realm," and that he himself is subject to the control of Parliament. It should be added, that as in *Halliday's* case (1), the power with which we are here concerned is to take preventive measures in the nature of internment which will last only for a limited time : see s. 11 of the Act. There is no charge against the appellant.

My Lords, I think we should approach the construction of reg. 18B of the Defence (General) Regulations without any general presumption as to its meaning except the universal presumption, applicable to Orders in Council and other like instruments, that, if there is a reasonable doubt as to the meaning of the words used, we should prefer a construction which will carry into effect the plain intention of those responsible for the Order in Council rather than one which will defeat that intention. My Lords, I am not disposed to deny that, in the absence of a context, the prima facie meaning of such a phrase as "if A.B. has reasonable cause to believe" a certain circumstance

(1) [1917] A. C. 260.

H. L. (E.) 1941 LIVERSIDGE v. SIR JOHN ANDERSON. Viscount Maugham.

or thing, it should be construed as meaning "if there "is in fact reasonable cause for believing" that thing and if A.B. believes it. But I am quite unable to take the view that the words can only have that meaning. It seems to me reasonably clear that, if the thing to be believed is something which is essentially one within the knowledge of A.B. or one for the exercise of his exclusive discretion, the words might well mean if A.B. acting on what he thinks is reasonable cause (and, of course, acting in good faith) believes the thing in question.

In the present case there are a number of circumstances which tend to support the latter conclusion.

First, reg. 18B, paras. (1.) and (1A), alike require the Secretary of State to have reasonable cause to believe two different things. Taking the first paragraph, he must, in the first place, believe the person (*a*) to be of hostile origin or associations, or (*b*) to have been recently concerned in acts prejudicial to the public safety or the defence of the realm, or (*c*) in the preparation or instigation of such acts, or (*d*) to have been or to be a member of, or (*e*) to be active in the furtherance of the objects of organizations which are carefully defined by reference to the personal decision of the Home Secretary. Any one of these various circumstances is sufficient to satisfy the first fact which the Secretary of State must believe, and I do not doubt that a court could investigate the question whether there were grounds for a reasonable man to believe some at least of those facts if they could be put before the court. But then he must at the same time also believe something very different in its nature, namely, that by reason of the first fact, "it is necessary to exercise "control over" the person in question. To my mind this is so clearly a matter for executive discretion and nothing else that I cannot myself believe that those responsible for the Order in Council could have contemplated for a moment the possibility of the action of the Secretary of State being subject to the discussion, criticism and control of a judge in a court of law. If, then, in the present case the second requisite, as to the grounds on which the Secretary of State

can make his order for detention, is left to his sole discretion without appeal to a court, it necessarily follows that the same is true as to all the facts which he must have reasonable cause to believe.

Secondly, it is admitted that the Home Secretary can act on hearsay and is not required to obtain any legal evidence in such a case, and clearly is not required to summon the person whom he proposes to detain and to hear his objections to the proposed order. Since the Home Secretary is not acting judicially in such a case, it would be strange if his decision could be questioned in a court of law.

Thirdly, and this is of even greater importance, it is obvious that in many cases he will be acting on information of the most confidential character, which could not be communicated to the person detained or disclosed in court without the greatest risk of prejudicing the future efforts of the Secretary of State in this and like matters for the defence of the realm. A very little consideration will show that the power of the court (under s. 6 of the Act) to give directions for the hearing of proceedings in camera would not prevent confidential matters from leaking out, since such matters would become known to the person detained and to a number of other persons. It seems to me impossible for the court to come to a conclusion adverse to the opinion of the Secretary of State in such a matter. It is beyond dispute that he can decline to disclose the information on which he has acted on the ground that to do so would be contrary to the public interest, and that this privilege of the Crown cannot be disputed. It is not ad rem on the question of construction to say in reply to this argument that there are cases in which the Secretary of State could answer the attack on the validity of the order for detention without raising the point of privilege. It is sufficient to say that there must be a large number of cases in which the information on which the Secretary of State is likely to act will be of a very confidential nature. That must have been plain to those responsible in advising His Majesty in regard to the Order in Council, and it constitutes, in my opinion, a very cogent reason for thinking that the words under discussion cannot

H. L. (E.) 1941 LIVERSIDGE v. SIR JOHN ANDERSON. Viscount Maugham.

be read as meaning that the existence of " reasonable cause " is one which may be discussed in a court which has not the power of eliciting the facts which in the opinion of the Secretary of State amount to " reasonable cause."

Fourthly, it is to be noted that the person who is primarily entrusted with these most important duties is one of the principal Secretaries of State, and a member of the government answerable to Parliament for a proper discharge of his duties. I do not think he is at all in the same position, as, for example, a police constable. It is not wholly immaterial to note that the Secretary of State is provided with one or more advisory committees (para. (3.)), and that he has to report to Parliament at least once in every month as to the action taken by him and the orders he has made, and as to the number of cases in which he has declined to follow the advice of the advisory committee (para. (6.)). These provisions seem to point to the fact that the Secretary of State will be answerable to Parliament in carrying out duties of a very important and confidential nature. I have heard no explanation of the circumstance that no express provisions are made in the regulation as to an appeal from the Secretary of State's decision unless it is the fact that no such appeal was intended. It seems to me that, if any such appeal had been thought proper, it would have been to a special tribunal with power to inquire privately into all the reasons for the Secretary's action, but without any obligation to communicate them to the person detained. The objections to an appeal in a case of mere suspicion and in time of war are not far to seek, but, however that may be, an application to the High Court, with power to the judge to review the action of the Secretary of State, seems to be completely inadmissible, and I am unable to see that the words of the regulation in any way justify the conclusion that such a procedure was contemplated.

The main argument for the appellant, apart from the contention as to the principle of construction applicable to a case where the liberty of the subject is concerned which I have already dealt with, is based on the difference of language used as regards the belief of the Secretary of State in different

sections of the regulations, and, indeed, in different parts of reg. 18B. Thus it is pointed out that in several places and in particular in reg. 18B, para. (1A.), the Secretary of State is only required to be "satisfied" of something: see, for example, regs. 2D and 18A, para. (1.). In these cases it is conceded that there is no recourse to the court provided, of course, that the Secretary of State acts in good faith. The different phrase "has reasonable cause to believe" points, it is said, to a different standard and a different meaning. (For examples see regs. 1A, 2C, para. (2.), and 18B.). It is added that the present reg. 18B is not the original regulation, but a new regulation (see St. R. & O. 1939, No. 1681, bearing date November 23) replacing the words in the original clause, which ran thus: "The Secretary of State, if satisfied with "respect to a particular person, that with a view to preventing "him acting in any manner prejudicial to the public safety "or the defence of the realm, it is necessary so to do may" (inter alia) "make an order directing that he be detained." It is apparent that this is an earlier and not very perfect attempt at the present regulation which entirely supersedes it.

These considerations are not without weight, though three observations fall to be made. The first is that Orders in Council making regulations pursuant to an Act of Parliament do not in general receive the same attention and scrutiny as statutes, and it is important to remember that, though they may be annulled, they cannot be amended in either House (see s. 8 of the Act), so that errors in language, if detected, cannot be corrected. There are, of course, no three readings and no committee stage in either House. In my opinion, it would be a mistake to attribute the same force to an alteration of language in an amending Order in Council as in an amending statute. The second observation is that even in statutes changes of words often occur without a change of meaning. The third observation is that the words "has reasonable cause "to believe" are not without a probable meaning. It may well have been thought desirable to draw the attention of the Secretary of State to the fact that in certain cases, and, in particular, in cases in which he was considering the serious

H. L. (E.) 1941 LIVERSIDGE v. SIR JOHN ANDERSON. Viscount Maugham.

step of depriving a person of his liberty for an uncertain period, he must himself have considered whether there was reasonable cause for forming the belief which would justify his action. On the other hand, I suppose he might be "satisfied" of some fact by the report of one of his subordinates in whom he placed complete confidence.

Apart, however, from these considerations, I am of opinion that the arguments above enumerated in favour of the construction for which the Attorney-General contends must greatly outweigh any arguments which your Lordships have heard on the other side and that his construction must prevail. The result is that there is no preliminary question of fact which can be submitted to the courts and that in effect there is no appeal from the decision of the Secretary of State in these matters provided only that he acts in good faith. It follows, and it is not disputed by the appellant's counsel, that on this view the application for particulars must fail.

I can deal much more shortly with the question whether an onus is thrown on the first respondent, the Secretary of State who made the order for detention, to give evidence to show that he had reasonable cause to believe the appellant to be a person of hostile associations and that by reason thereof it was necessary to exercise control over him. The order on its face purports to be made under the regulation and it states that the Secretary of State had reasonable cause to believe the facts in question. In my opinion, the well known presumption omnia esse rite acta applies to this order, and, accordingly, assuming the order to be proved or admitted, it must be taken prima facie, that is until the contrary is proved, to have been properly made and that the requisite as to the belief of the Secretary of State was complied with. It will be noted that on the view I have expressed as to the construction of the regulation it is the personal belief of the Secretary of State that is in question, and that, if the appellant's contention on this point were correct, the same question would arise in the numerous cases where an executive order depends on the Secretary of State or some other public officer being "satisfied" of some fact or circumstance. It has never,

I think, been suggested in such cases that the Secretary of State or public officer must prove that he was so "satisfied" when he made the order. Just as the fact that the act of the Secretary of State acting in a public office is prima facie evidence that he has been duly appointed to his office, so his compliance with the provision of the statute or the Order in Council under which he purported to act must be presumed unless the contrary is proved. There are scores of instances of such presumptions to be found in the books, none I think precisely in point, but many in which the principle was less necessary on the score of public convenience than the present. If an instance is required it may be found in the rule that where local authorities have made a rate under an Act, compliance with the formalities required by that Act will be presumed until the contrary is shown: *Reg.* v. *Reynolds* (1).

I shall not take up your Lordships' time by dealing with the various recent cases relating to these detention orders which were quite properly cited to your Lordships, for the reason that they have all been considered and examined at length by Scott L.J. and Goddard L.J. in the recent case of *Rex* v. *Secretary of State for Home Affairs. Ex parte Greene* (2), and I could not usefully add anything to what they have said.

In my opinion, the present appeal should be dismissed with costs and I move your Lordships accordingly.

LORD ATKIN. My Lords, I have prepared an opinion which is applicable both to this case and to that of *Greene* v. *Secretary of State for Home Affairs* (3).

These cases raise the issue as to the nature and limits of the authority of the Secretary of State to make orders that persons be detained under reg. 18B of the Defence (General) Regulations, 1939. The matter is one of great importance both because the power to make orders is necessary for the defence of the realm, and because the liberty of the subject is seriously infringed, for the order does not purport to be made for the commission of an offence against the criminal

(1) [1893] 2 Q. B. 75.
(2) [1942] 1 K. B. 87.
(3) Post, p. 284.

H. L. (E.) 1941 LIVERSIDGE v. SIR JOHN ANDERSON. Lord Atkin.

law. It is made by an executive minister and not by any kind of judicial officer, it is not made after any inquiry as to facts to which the subject is party, it cannot be reversed on any appeal, and there is no limit to the period for which the detention may last. The material words of the regulation are as follows: "If the Secretary of State has reasonable "cause to believe any person to be of hostile origin or "associations and that by reason thereof it is necessary to "exercise control over him, he may make an order against "that person directing that he be detained." They are simple words and as it appears to me obviously give only a conditional authority to the minister to detain any person without trial, the condition being that he has reasonable cause for the belief which leads to the detention order. The meaning, however, which for the first time was adopted by the Court of Appeal in the *Greene* case and appears to have found favour with some of your Lordships is that there is no condition, for the words "if the Secretary of State has "reasonable cause" merely mean "if the Secretary of State "thinks that he has reasonable cause." The result is that the only implied condition is that the Secretary of State acts in good faith. If he does that—and who could dispute it or disputing it prove the opposite?—the minister has been given complete discretion whether he should detain a subject or not. It is an absolute power which, so far as I know, has never been given before to the executive, and I shall not apologize for taking some time to demonstrate that no such power is in fact given to the minister by the words in question.

It is a curious fact that in both cases in the first emergence of the issues raised no trace of this contention appeared. In the *Liversidge* case the only question raised is in an action for false imprisonment brought by the appellant. Following on a defence setting up detention under an order of the Secretary of State the appellant asked for particulars of the reasonable cause. The only question raised on the summons before the judge in chambers was on the onus of proof, and, as both courts held that the onus was on the appellant to show that there was no reasonable cause, the order for

particulars was refused. It is apparent that if at that time the courts had accepted the present construction no question of onus would have arisen, for no issue as to the actual existence of reasonable cause could arise. In the *Greene* case the application was by summons for a writ of habeas corpus. The Divisional Court took the same view of the onus as was adopted in the *Liversidge* case, and held that in view of the Secretary of State's affidavit in answer to the appellant's evidence the court was not satisfied that there had been no reasonable cause. These matters became irrelevant on the construction adopted by the Court of Appeal on appeal in *Greene's* case. The view there taken was that the words "reasonable cause" cannot "properly be construed as imposing "an objective condition precedent of fact on which a person "detained would be entitled to challenge the grounds for the "Secretary of State's honest belief: in short, that the condition "is subjective not objective." This view of the case at once disposed of any objection to the different grounds adopted by the Divisional Court, and is of such overwhelming importance compared with the issues raised in both cases up to that point that I proceed at once to deal with it, reserving till later what has to be said on the original onus.

It is surely incapable of dispute that the words "if A has "X" constitute a condition the essence of which is the existence of X and the having of it by A. If it is a condition to a right (including a power) granted to A, whenever the right comes into dispute the tribunal whatever it may be that is charged with determining the dispute must ascertain whether the condition is fulfilled. In some cases the issue is one of fact, in others of both fact and law, but in all cases the words indicate an existing something the having of which can be ascertained. And the words do not mean and cannot mean "if A thinks that he has." "If A has a broken ankle" does not mean and cannot mean "if A thinks that he has a broken "ankle." "If A has a right of way" does not mean and cannot mean "if A thinks that he has a right of way." "Reasonable cause" for an action or a belief is just as much a positive fact capable of determination by a third party as is a

H. L. (E.) 1941 LIVERSIDGE v. SIR JOHN ANDERSON. Lord Atkin.

broken ankle or a legal right. If its meaning is the subject of dispute as to legal rights, then ordinarily the reasonableness of the cause, and even the existence of any cause is in our law to be determined by the judge and not by the tribunal of fact if the functions deciding law and fact are divided. Thus having established, as I hope, that the plain and natural meaning of the words "has reasonable cause" imports the existence of a fact or state of facts and not the mere belief by the person challenged that the fact or state of facts existed, I proceed to show that this meaning of the words has been accepted in innumerable legal decisions for many generations, that "reasonable cause" for a belief when the subject of legal dispute has been always treated as an objective fact to be proved by one or other party and to be determined by the appropriate tribunal. I will go further and show that until June or July of this year in connection with this reg. 18B, there never has been any other construction even submitted to the courts in whatever context the words are found.

The power of arrest is confided by the common law both to constables and to private individuals. The constable has power within his district to arrest a person on reasonable suspicion of his having committed a felony. The private individual has power on two conditions: (1.) that a felony has actually been committed; (2.) that there is reasonable and probable cause of suspecting the person arrested. In these cases the grounds for suspicion must be brought before the court, the onus is on the person who arrested to prove the reasonable grounds, and the issue whether the cause is reasonable or not is to be determined by the judge. These propositions will be found in any elementary text book. I will refer to authority that the defendant in an action for false imprisonment based on unlawful arrest is entitled to succeed if he pleads and proves that the imprisonment was legally justifiable: *Allen* v. *Wright* (1); that he must show the cause of suspicion so that the court may judge of the reasonableness: *Mure* v. *Kaye* (2); *Stammers*

(1) (1838) 8 C. & P. 522. (2) (1811) 4 Taunt. 34.

v. *Yearsley* (1); *Haynes* v. *Mewis* (2); that a man directing a constable to act on a suggestion of felony is bound to show probable cause of suspicion: *M'Cloughan* v. *Clayton* (3); that the plea must show reasonable and probable ground of suspicion, i.e., facts which raise a reasonable suspicion, not all the evidence (per Lord Campbell C.J.), and it is for the court to say whether the facts pleaded show reasonable cause (per Wightman J.): *Broughton* v. *Jackson* (4); that it is a good plea that the man was arrested on a reasonable suspicion of felony, but not enough that the suspicion was bona fide: *Sayer* v. *Lichfold* (5); that the civilian defendant must make out a reasonable ground of suspicion and that a felony has actually been committed (per Lord Tenterden C.J.): *Beckwith* v. *Philby* (6); and a more recent affirmation of the same principles in *Wallace* v. *W. H. Smith and Son, Ld.* (7). In all these cases it is obvious that the courts were dealing with an objective fact to be proved before them by the defendant, and that their pronouncements would be nonsense if the inquiry had only been whether the defendant believed that he had reasonable ground.

So much for the constable's power of arrest at common law. He and other persons have also been armed with powers of arrest by statute and in all cases the condition of reasonable cause for suspicion has been enacted. I select a list of thirteen statutes from the valuable work on Police Law by Dr. Moriarty, the late chief constable of Birmingham, 6th ed., pp. 16, seq.

"Aliens Restriction Acts, 1914 and 1919, Aliens Order, 1920, "art. 19: Any person who acts in contravention of this Order "or is reasonably suspected of having so acted may be arrested "without warrant by any constable."

"Diseases of Animals Act, 1894, s. 43: A constable may stop "and detain any person . . . . reasonably suspected of being "engaged in committing an offence against the Act . . . ."

"Army Act, 1881, s. 154: On reasonable suspicion a deserter "or absentee without leave may be arrested without warrant."

(1) (1833) 10 Bing. 35.
(2) (1826) 5 L. J. (O. S.) K. B. 47.
(3) (1816) Holt N. P. 478.
(4) (1852) 21 L. J. (Q. B.) 265, 267, 268.
(5) (1854) 23 L. T. (O. S.) 324.
(6) (1827) 6 B. & C. 635.
(7) [1914] 1 K. B. 595.

H. L. (E.) 1941 LIVERSIDGE v. SIR JOHN ANDERSON. Lord Atkin.

"Children and Young Persons Act, 1933, s. 13: . . . . a "constable may arrest without warrant any person . . . . whom "he has reason to believe has committed an offence if he believes "such person will abscond." Note the two beliefs, one qualified, the other not.

"Criminal Law Amendment Act, 1912, s. 1: A constable may "arrest without warrant any person whom he shall have good "cause to suspect of having committed . . . . any offence . . . ."

"Dangerous Drugs Act, 1920, s. 14: Any constable may "arrest without warrant any person who . . . . is reasonably "suspected by the constable of having committed . . . . an "offence . . . . if he has reasonable ground for believing that "that person will abscond . . . . "

Note by contrast "Firearms Act, 1937, s. 6: . . . . If any "person refuses to give his name or address or is suspected "of giving a false name or address or of intending to abscond "the constable may arrest him without warrant."

"Municipal Corporations Act, 1882, s. 193: A borough "constable may while on duty arrest any idle or disorderly "person . . . . whom he has just cause to suspect of intention "to commit a felony."

"Official Secrets Act, 1911, s. 6: Any person . . . . who is "reasonably suspected of having committed . . . . an offence, "may be arrested without warrant."

"Pawnbrokers Act, 1872, s. 34: A pawnbroker may detain "any person offering in pawn any article which he reasonably "suspects to have been stolen . . . ."

"Penal Servitude Act, 1891, s. 2, sub-s. 1: Any constable "may arrest without warrant any holder of a convict's licence " . . . . whom he reasonably suspects of having committed "any offence."

"Offences against the Person Act, 1861, s. 66, and Malicious "Damage Act, 1861, s. 57: Any constable may arrest without "warrant any person whom he shall find loitering in any "highway . . . . whom he shall have good cause to suspect of "having committed or being about to commit any felony "mentioned in these two Acts."

"Road Traffic Act, 1930, s. 28: A constable may arrest

"without warrant . . . . any person reasonably suspected of "taking . . . . a motor vehicle without the owner's consent . . . ."

Can any person doubt that in respect of these powers given by statute to arrest for suspicion or belief of offences or intentions to commit offences other than felonies the constable is in exactly the same position as in respect of his common law power to arrest on reasonable suspicion of felony, and that there is an "objective" issue in case of dispute to be determined by the court? No other meaning has ever been suggested. The words, moreover, do not relate merely to powers of arrest. In any context in which they are used they give rise to a similar issue of law or fact cognizable by the court. By the Criminal Law Amendment Act, 1924, s. 2: "Reasonable "cause to believe that a girl was of or above the age of sixteen "years shall not be a defence to a charge under ss. 5 or 6 of "the Criminal Law Amendment Act, 1885. Provided that in "the case of a man of twenty-three years of age or under "the presence of reasonable cause to believe that the girl "was over the age of sixteen years shall be a valid defence "on the first occasion on which he is charged with an offence "under this section." It is well settled that the onus of proving reasonable cause for belief is on the accused, and that the section means that the accused had reasonable cause to believe and did believe. It is so much an "objective" fact that in this case reasonable belief is left to the jury. The subjective test would startle any judge versed in trying crimes. Similarly by the Age of Marriage Act, 1929, s. 6, which avoids marriage where either party is under sixteen it is a defence in proceedings under the Criminal Law Amendment Act for the accused to prove that he had reasonable cause to believe that the girl was his wife. A very familiar use of the words is in actions for malicious prosecution where the plaintiff has to establish the absence of reasonable or probable cause in the prosecutor for instituting the prosecution. The relevant facts known to the prosecutor are, if necessary, determined by the jury. The judge determines whether they constitute reasonable cause. The inquiry is "objective," and the cause of action, if established with the essential element of malice, exists

H. L. (E.) 1941 LIVERSIDGE v. SIR JOHN ANDERSON. Lord Atkin.

against any person, rich or poor, powerful or weak, including any member of the executive, whether Secretary of State or not. A further use of the words is to be found in the Directors Liability Act, 1890, s. 3, sub-s. 1 (*a*), by which it is provided that a director of a company is liable for untrue statements unless he proves that he had reasonable ground to believe that they were true.

So far, I have sought to establish that the words in question are not ambiguous, that they have only one plain and natural meaning, that with that meaning the words have been used at common law and in numerous statutes, and that whenever they are used the courts have given them the meaning I suggest, have considered that they give rise to a justiciable issue, and that as to the "subjective" meaning now contended for by the Secretary of State it has never at any time occurred to the minds of counsel or judges that the words are even capable of meaning anything so fantastic.

I will now proceed to show that in the Defence Regulations themselves the persons responsible for the framing of them—may I call them for this purpose the legislators?—have shown themselves to be fully aware of the true meaning of the words, have clearly appreciated the difference between having reasonable cause to believe and believing without any condition as to reasonable cause, and have obviously used the words "reasonable cause" in order to indicate that mere honest belief is not enough. The object is plainly that of the common law and previous statutes to secure some measure of protection for the public by providing a condition which, if necessary, can be examined by the courts. In the first place, when the decision is left to the minister or other executive authority without qualification the words omit the reference to reasonable cause. "If it appears to the Secretary of State that any "person is concerned" etc. (order as to publication, reg. 2C); "A Secretary of State . . . . if it appears to him necessary "may . . . ." (order as to giving information, reg. 6, para. (3.)); "If . . . . it appears to a Secretary of State to "be necessary . . . ." (order as to protected places, reg. 12, para. (1.)); so in regs. 14B, 16A, 18A, 21, 40B, 43B.

The wording is sometimes varied with the same result. "If "the Secretary of State is satisfied" (publication in newspaper, reg. 2D) (articles likely to assist enemy, reg. 4C); "satisfied "that it is necessary or expedient" (prohibition of balloons, reg. 7, para. (2.)); "satisfied . . . . that . . . . it is necessary" (restricting movements of persons: reg. 18A); "satisfied . . . . "that it is subject to foreign influence" (organization subject to foreign influence, 18AA). Similar words occur in regs. 35, para. (1.), 39B, 39C.

In all these cases it is plain that unlimited discretion is given to the Secretary of State, assuming as everyone does that he acts in good faith. Now let us examine the regulations which import the words "reasonable cause," some in reference to the commission of an offence, some to a defence to a charge, and some to the powers given to executive officers to do acts for the protection of the state. There are as many as twenty-three and I take them in numerical order, but it will be obvious to which class they belong. 1 (1.) (*d*): "No person shall make any "defence signal . . . . having reasonable cause to believe that "it is likely to result," etc. 1 (1.) (*e*): "No person shall do "any act . . . . having reasonable cause to believe that it "is likely to mislead," etc. 1A (*a*): "No person shall do any "act having reasonable cause to believe that it will be likely "to interfere," etc. 2C (2.): "It shall be a defence . . . . to "prove that the [alleged offender] had no intent to foment "opposition . . . . and had no reasonable cause to believe "that the matter published was calculated to foment," etc. 4: "No person shall . . . . associate with any other person "having reasonable cause to believe that that other person "is engaged in assisting the enemy." I only pause here to inquire why this belief as to association is objective, as it clearly is, and precisely similar words in reg. 18B used of the Secretary of State are subjective. 7 (3.): "If any person "authorized in writing by a Secretary of State . . . . to act "under this paragraph has reasonable ground to believe that "there is in any premises apparatus," etc., he may authorize a search. 9 (4.): "Whenever any person . . . . finds dead ". . . . a . . . . homing pigeon to which there is attached

H. L. (E.) 1941 LIVERSIDGE v. SIR JOHN ANDERSON. Lord Atkin.

"any article which he has reasonable cause to believe to be "a means," etc. 11 (3.): ". . . . the appropriate officer ". . . . may . . . . search any article which the traveller has "with him . . . . and if the appropriate officer has reasonable "ground for suspecting that the traveller has about his person "any such article," etc., may search him. Could anything be clearer than the distinction between the unlimited power to search an article, and the limited power to search the person? This is made plainer by the express and unconditional power given by 14A (3.): Any constable may search any person entering a protected place. 18 (3.): "The Secretary of State "may make provision by order for securing that . . . . any "person entering the United Kingdom, may—(*a*) if there "is reasonable cause to believe that he has come from any "territory to which this paragraph applies, or " (*b*) if he fails to satisfy the Secretary of State or [authorized person] . . . . as to his identity . . . . be detained. Note that the detention may be by an authorized person. The distinction between the conditions in (*a*) and (*b*) is obvious. I omit for the moment reg. 18B itself, though, as I shall point out, there is a direct indication in the very words of this particular regulation that the well-established meaning is being applied.

" 18BB (1.): The Secretary of State may by order provide "for empowering any regional commissioner who has reasonable "cause to believe any person to be [as specified in reg. 18B] "to direct the detention of that person pending consideration by "the Secretary of State." By 18BB (1A.) a Secretary of State "may similarly empower any regional commissioner who has "reasonable cause to believe that the recent conduct of any "person [within a specified area] indicates . . . . that that person "is likely to assist the enemy" to direct detention of that person.

"18D. If any person upon being questioned by a constable "or a member of His Majesty's Forces . . . . fails to satisfy "him as to his identity or [purposes] the constable or member "of His Majesty's Forces may, if he has reasonable ground to "suspect that that person is about to act in any manner "prejudicial to the public safety or the defence of the realm "arrest him without warrant."

"25 (1.) Where, as respects any premises, it appears to any "officer of police of a rank not lower than that of inspector . . . . "that by reason of the fact . . . . (*d*) that there is reasonable "ground for believing that a source of danger exists on the "premises by reason of the presence thereon of unexploded "ammunition," the inspector may take steps, etc. " (2.) Any "person authorized by a Secretary of State . . . . if satisfied "that . . . . the chattel is contaminated by any lethal gas, "etc.," may take steps including destruction. Note that the limitation as to reasonable cause in respect of premises is not imposed in the case of chattels.

Now I come to a regulation which uses the words reasonable cause, and is clearly subjective.

By 42C (1.) a chief officer of police if authorized by the Secretary of State "may, if he is satisfied in the case of any "premises in his district that there is reasonable cause to believe "that " premises are unlawfully used may close them. By 42C (2.) "any person aggrieved may appeal to a court of "summary jurisdiction and the court shall, if it is satisfied "by the appellant that there is no reasonable cause to believe "the before-mentioned condition, revoke the order." By 42C (3.): "Any constable authorized . . . . by the chief "officer of police . . . . may . . . . search any premises ". . . . which the chief officer of police has reasonable grounds "for suspecting to be premises subject to the regulation." The difference between (1.) and (3.) is obvious.

"56A. Control of Building Operations. (4.) It shall be "a defence for a person . . . . to prove that . . . . he had "reasonable ground for believing that the cost . . . . would "not exceed £500."

"79. Whenever any person finds an article as to which he "has reasonable cause to believe that it has been lost or "abandoned " he shall deliver it to a member of His Majesty's Forces or a constable.

"88A (1.): If a justice of the peace is satisfied by information "on oath that there is reasonable ground for suspecting "[an offence] he may grant a search warrant. (2.) A person "authorized may search every person . . . . whom he has

H. L. (E.) 1941 LIVERSIDGE v. SIR JOHN ANDERSON. Lord Atkin.

"reasonable ground to believe to have recently left . . . . "these premises. (3.) If an officer of police of a rank not "lower than that of superintendent . . . . has reasonable "ground for suspecting" an offence and it is impracticable to get a warrant he may confer a power of search.

"88 B. If . . . . any constable . . . . has reasonable ground "for suspecting that there is to be found in any vehicle . . . . "evidence of the commission of [an offence] he may search the "vehicle . . . . and may seize any article found therein which "he has reasonable ground for believing to be evidence . . . . "

"88 C. Any constable . . . . may arrest without warrant "any person whom he has reasonable ground for suspecting "to have committed" any of the scheduled offences which include any offence against any of the regulations.

"90 (2.): Any person who, knowing or having reasonable "cause to believe that another person is guilty of an offence," assists that person, "shall be guilty of an offence," etc.

"94 (1.): Any article coming into the possession of an "executive authority . . . . which the authority has "reasonable ground for believing to be evidence of the com- "mission of" an offence, may be retained.

I would also draw attention to the power to "use such force "as is reasonably necessary" to enter premises conferred by reg. 89, and also by reg. 23AB (*e*) and 23BA compared with the power to use such force as shall appear to the person to be reasonably necessary in 45 (3.), 45C (3.), 45D (3.) and 46 (5.).

I have pointed out that the words in question have a plain and natural meaning, that that meaning has been invariably given to them in statements of the common law and in statutes, that there has been one invariable construction of them in the courts, and that the Defence Regulations themselves clearly recognize that meaning, using different words where it is intended that the executive officer should have unqualified discretion. I have not so far called attention to the wording of reg. 18B itself which, as I venture to think, establishes within nine lines the distinction which the appellants rely on. "(1A) If the Secretary of State has "reasonable cause to believe any person to have been or to be

"a member of [a certain organization] and that it is necessary "to exercise control over him, he may make" a detention order. The organizations in question are defined as "any "organization as respects which the Secretary of State is "satisfied that either—(*a*) the organization is subject to foreign "influence or control, or (*b*) the persons in control of the "organization have or have had associations with persons "concerned in the government of, or sympathies with the "system of government of, any Power with which His "Majesty is at war." The organizations, therefore, are impugned if the Secretary of State is satisfied as to their nature, but the person is not to be detained unless the Secretary of State has reasonable cause to believe that he is a member. The contrast is all the more marked when the words of 18B (1.) "If the Secretary of State has reasonable cause to believe any "person to be of hostile . . . . associations" are compared with the words of 18B (1A) which I have just quoted and which in substance say as to (*b*) if the Secretary of State is satisfied that the persons in control of the organization have hostile associations. Why the two different expressions should be used if they have the same "subjective" meaning no one was able to explain. I suggest that the obvious intention was to give a safeguard to the individual against arbitrary imprisonment. Finally, if all these considerations failed, if there were a certain ambiguity in the words "has reasonable cause to "believe" the question would be conclusively settled by the fact that the original form of the regulation issued in September, 1939, gave the Secretary of State the complete discretion now contended for: "The Secretary of State if "satisfied, etc." But it was withdrawn and published in November, 1939, in its present form. It is not competent to us to investigate what political reasons necessitated this change, but it is at least probable that it was made because objection had been taken to the arbitrary power and it was seen that Parliament might intervene. What is certain is that the legislators intentionally introduced the well known safeguard by the changed form of words.

If, then, the natural construction of the words indicates

H. L. (E.) 1941 LIVERSIDGE v. SIR JOHN ANDERSON. Lord Atkin.

an objective condition to the power of the minister to detain, whose existence must, therefore, in case of dispute be cognizable by a court of law, what room is there for any other construction? I will deal with the suggested inconvenience to the minister or possible prejudice to the interests of the State later on. I venture to quote the words of the present Lord Chancellor in *Barnard* v. *Gorman* (1), a case turning on the meaning of the word "offender" in a section of the Customs Consolidation Act, 1876. "Our duty in the matter "is plain. We must not give the statutory words a wider "meaning merely because on a narrower construction the "words might leave a loophole for frauds against the revenue. "If on the proper construction of the section that is the result "it is not for judges to attempt to cure it. That is the business "of Parliament." In that case the words were that "the "offender may be either detained or proceeded against by "summons," and the question was whether the word "offender" necessarily connoted that the person detained had in fact committed an offence, or included a person who was reasonably suspected of having committed an offence. Inasmuch as the very words referred to proceeding by summons which necessarily involved an investigation into the guilt or not of the person in question, it was considered by all the members of this House quite clear that the word was capable of both meanings and could not have been used in the same sentence in the narrower meaning for detention and the broader for summons.

The respondents sought to find support in the decision in *Rex* v. *Halliday* (2), in which this House affirmed a decision of the Court of Appeal and of a Divisional Court of which I happened to be a member. In that case the regulation undisputedly gave to a Secretary of State unrestricted power to detain a suspected person, though only on the recommendation of an advisory committee presided over by a judge. The argument for the appellant was that the regulation was ultra vires because, though the words of the Defence of the Realm Act under which that regulation was made were plainly wide enough to enable a regulation to be made giving

(1) [1941] A. C. 384. (2) [1917] A. C. 260.

unrestricted powers, yet they ought to be read with a limitation in favour of liberty. Every judge who dealt with the case, including the noble Lords, refused to limit the natural meaning of the words, pointing out that a state of war would itself tend to confine the construction to the plain meaning of the words and would discourage any attempt to make the words lean in favour of liberty. What that case has to do with the present I cannot see. No one doubts that the Emergency Powers (Defence) Act, 1939, empowers His Majesty in Council to vest any minister with unlimited power over the person and property of the subject. The only question is whether in this regulation His Majesty has done so.

In the present case there is, in the first place, no ambiguity at all, and, in the second place, even if it were open to a judge to consider the question of expediency, what are the suggested grounds which compel him to adopt the hitherto unheard of "subjective" construction? It is said that it could never have been intended to substitute the decision of judges for the decision of the minister, or, as has been said, to give an appeal from the minister to the courts. But no one proposes either a substitution or an appeal. A judge's decision is not substituted for the constable's on the question of unlawful arrest, nor does he sit on appeal from the constable. He has to bear in mind that the constable's authority is limited and that he can only arrest on reasonable suspicion, and the judge has the duty to say whether the conditions of the power are fulfilled. If there are reasonable grounds, the judge has no further duty of deciding whether he would have formed the same belief any more than, if there is reasonable evidence to go to a jury, the judge is concerned with whether he would have come to the same verdict. For instance, the minister may have reasonable grounds on the information before him for believing that a person is of "hostile origin." If so, any ruling by the courts either in an action for false imprisonment or by way of habeas corpus is impossible though it should subsequently be proved beyond doubt that the minister's information was wrong and that the person was of purely British origin. The only remedy for such a mistake is to bring objections before

H. L. (E.) 1941

LIVERSIDGE v. SIR JOHN ANDERSON.

Lord Atkin.

the advisory committee whose advice is not binding, and to make representations to the minister himself.

But it is said that the grounds of belief will or may be confidential matters of public importance and that it is impossible to suppose that the Secretary of State was intended to disclose either his grounds or his information to the court. My Lords, the objection is answered by the very terms of the regulation itself. By paras. 3, 4 and 5 the detained person has the right to make objections to an advisory committee, and it is 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." These grounds and particulars must, of course, be furnished to the chairman by the Secretary of State, for otherwise the chairman has no means of knowledge. What are these grounds and these particulars but the very facts constituting the "reasonable cause" which on the true construction might have to be investigated by the court? I find myself unable to comprehend how it can be compulsory, as it is, to furnish the objector before the committee with the grounds and particulars, and yet impossible in the public interest to furnish the objector with them in court. The supposed difficulty is grossly exaggerated, even if it is not a fantasy. The present case of *Greene* illustrates this. On May 22, 1940, he was detained under an order which recited that the Home Secretary had reasonable cause to believe him to be a person of hostile associations and that by reason thereof it was necessary to exercise control over him. On July 15, 1940, he was served with a document headed "Home Office, "Advisory Committee, 6 Burlington Gardens, W.1. Reasons "for order under Defence Regulation 18B in the case of "Benjamin Greene. The order under Defence Regulation "18 B was made against you for the following reasons. The "Secretary of State has reasonable cause to believe that you "have been recently concerned in acts prejudicial to the public "safety and the defence of the realm and in the preparation and "instigation of such acts and that it is necessary to exercise

"control over you. Particulars." Then follow six paragraphs of particulars referring to his being concerned in the management and control of two named organizations and of the nature of speeches and writings of his, and stating that he was privy to the activities of a named person in the publication of pro-German propaganda in a named periodical, that he was subsequently to the outbreak of war communicating with persons in Germany concerned in the government of Germany, that he was desirous of establishing a national socialist regime in Great Britain with the assistance, if received, of German armed forces, that he freely associated with persons of German nationality who he had reason to believe were agents of the German government, and that there was reasonable cause to believe that he desired and intended to continue the actions aforesaid. It is true that the " reason " given was not that stated in the order, but it is explained that this was a mistake, and the " particulars " are vouched in an affidavit of the Home Secretary as particulars of the original reason of "hostile associations." It is obvious that no important reasons of State prevented the Home Secretary from disclosing the causes of his belief. It is, however, said that the sources of his information may be confidential. I think this in some cases is likely to be so, but I cannot think that this creates any difficulty. The Home Secretary has the right to withhold evidence that he can assure the court is confidential and cannot in the public interest be disclosed. He has in this case and in others sworn affidavits to the effect that the information he acted on was the result of reports and information from persons in responsible positions experienced in investigating matters of this kind and that he accepted their information. Before the era of " subjective " cause, and, indeed, afterwards, the Divisional Court and the Court of Appeal have accepted these affidavits as satisfactory proof of the existence of reasonable cause. This was not a view favoured by the Attorney-General in the present case, for it weakens his case as to public mischief. But, in fact, if the affidavits are supported by statements by or on behalf of the Secretary of State vouching the necessity of withholding the

H. L. (E.) 1941 LIVERSIDGE v. SIR JOHN ANDERSON. Lord Atkin.

names of the witnesses in the public interest, I personally agree with the former decisions and cannot see why, if the courts believe the Home Secretary and accept the substance of the information as constituting reasonable cause, they should not be satisfied that reasonable cause has been shown. The source of the information is merely a question going to the credibility of the person informed, and, no doubt, to the issue of reasonableness. But in police matters it is often withheld, and if, for instance, a constable defending an action for false imprisonment or wrongful arrest were to give in evidence that an informant whom he believed and had proved to be trustworthy had told him that the plaintiff was present at the scene of the felony in incriminating circumstances and the constable was corroborated by his inspector and sergeant but he declined to give the name of the informant, I think it clear that the court might accept the evidence as proving reasonable cause for suspicion. I agree with the Divisional Court, in the case of Greene, in accepting what appears at that time to have been the contention of the Home Secretary that the Home Secretary's affidavit establishes the particulars as constituting reasonable cause. I think that the members of the Court of Appeal, though infected with the " subjective " virus, took the same view. In addition to this, it must be remembered that by s. 6 of the Emergency Powers (Defence) Act, 1939, there is complete power in the court to order proceedings to be heard in camera, and to prohibit the disclosure of any information concerning them. I cannot believe that proceedings for false imprisonment or for a writ of habeas corpus present more difficulties of this kind than does the trial of a spy. Lastly, on this question of expediency I would recall that for months after the regulation came into force this suggested difficulty never presented itself to the minds of the Home Secretary and his advisers, but, on the contrary, in *Rex* v. *Secretary of State for Home Affairs. Ex parte Lees* (1), the Home Secretary, when represented by the present Solicitor-General and the same junior counsel as in this case, frankly accepted the burden of proving reasonable cause.

(1) [1941] 1 K. B. 72.

It was further said that the provision of safeguards in the regulation itself, the resort to the advisory committee, the providing of " grounds " and " particulars," and the right to make representations to the Secretary of State indicate that the original power to detain was unconditional. But how unconvincing this appears. These safeguards are nothing compared with those given to a man arrested by a constable who must at once be brought before a judicial tribunal who investigates the case in public. Yet the constable or anyone else empowered to arrest on reasonable cause is liable to an action if he has exceeded his authority.

What appears to me to be the only argument as to expediency put forward by the respondents which has any weight was that derived from the second point of the powers given—" reasonable cause to believe . . . . that by reason "thereof it is necessary to exercise control over him." Adroitly the Attorney-General dealt with this first. Can it be supposed, he said, that it was intended that the accumulated experience, instinct and knowledge of the minister in coming to a decision on this matter could be replaced by a judgment of a court of law? But first things first. Before this decision is made there has to be a valid belief that the subject was of hostile origin, associations, etc. When once this is established, it is very unlikely that a court would not in most cases accept as reasonable the Home Secretary's decision to detain. But even on this part of the machinery for detention there is ample scope for an independent inquiry. Let us take the case of " hostile "origin." If a man or a woman of hostile origin made the case that he or she had been a loyal subject for thirty or forty years, was a supporter of this country's war effort, and had never taken any part in any hostile activity, would it not be open to the courts to consider whether by reason of the hostile origin it was necessary to control him or her? Could the Home Secretary support a mere order to detain all persons of hostile origin regardless of age, sex or antecedents? Or could he support an order against a subject who had been a member of an organization which the Home Secretary was satisfied

H. L. (E.) 1941 LIVERSIDGE v. SIR JOHN ANDERSON. Lord Atkin.

was now within 1A (*a*) or (*b*) but had ceased to be for years and had genuinely disclaimed any sympathy with its present objects. It must be remembered that at the time of the issue of the regulation organizations of both left and right were under suspicion, and there may well have been good reasons for granting protection to persons who had merely at some time or other been members of them without more.

I view with apprehension the attitude of judges who on a mere question of construction when face to face with claims involving the liberty of the subject show themselves more executive minded than the executive. Their function is to give words their natural meaning, not, perhaps, in war time leaning towards liberty, but following the dictum of Pollock C.B. in *Bowditch* v. *Balchin* (1), cited with approval by my noble and learned friend Lord Wright in *Barnard* v. *Gorman* (2): "In "a case in which the liberty of the subject is concerned, we "cannot go beyond the natural construction of the statute." In this country, amid the clash of arms, the laws are not silent. They may be changed, but they speak the same language in war as in peace. It has always been one of the pillars of freedom, one of the principles of liberty for which on recent authority we are now fighting, that the judges are no respecters of persons and stand between the subject and any attempted encroachments on his liberty by the executive, alert to see that any coercive action is justified in law. In this case I have listened to arguments which might have been addressed acceptably to the Court of King's Bench in the time of Charles I.

I protest, even if I do it alone, against a strained construction put on words with the effect of giving an uncontrolled power of imprisonment to the minister. To recapitulate: The words have only one meaning. They are used with that meaning in statements of the common law and in statutes. They have never been used in the sense now imputed to them. They are used in the Defence Regulations in the natural meaning, and, when it is intended to express the meaning now imputed to them, different and apt words are used in the regulations

(1) (1850) 5 Ex. 378. (2) [1941] A. C. 378, 393.

generally and in this regulation in particular. Even if it were relevant, which it is not, there is no absurdity or no such degree of public mischief as would lead to a non-natural construction.

I know of only one authority which might justify the suggested method of construction: "'When I use a word,' "Humpty Dumpty said in rather a scornful tone, 'it "'means just what I choose it to mean, neither more nor "'less.' 'The question is,' said Alice, 'whether you can "'make words mean so many different things.' 'The question "'is,' said Humpty Dumpty, 'which is to be master—that's "'all.'" ("Through the Looking Glass," c. vi.) After all this long discussion the question is whether the words "If a "man has" can mean "If a man thinks he has." I am of opinion that they cannot, and that the case should be decided accordingly.

If it be true, as, for the foregoing reasons, I am profoundly convinced it is, that the Home Secretary has not been given an unconditional authority to detain, the true decision in the two cases before us ought not to be difficult to make. In the *Liversidge* case the appellant has delivered a statement of claim averring that he was wrongly imprisoned by the respondent, the Secretary of State. The respondent traverses the wrongful imprisonment and contents himself with the admission that he ordered the appellant to be detained under the regulation. The appellant asked for particulars of his reasonable cause to believe (*a*) as to hostile associations, (*b*) as to necessity to control him. In my opinion, the appellant is not bound to rely on the traverse, though as a matter of pleading that, in my opinion, amounts to a positive allegation of authority to detain for which particulars may be asked. The appellant's right to particulars, however, is based on a much broader ground, a principle which again is one of the pillars of liberty in that in English law every imprisonment is prima facie unlawful and that it is for a person directing imprisonment to justify his act. The only exception is in respect of imprisonment ordered by a judge, who from the nature of his office cannot be sued, and the validity of whose

H. L. (E.) 1941 LIVERSIDGE v. SIR JOHN ANDERSON. Lord Atkin.

judicial decisions cannot in such proceedings as the present be questioned. My noble friend, Lord Macmillan, suggests that under a more exacting system of pleading the appellant would have to aver the absence of reasonable grounds on the part of the Secretary of State. The English system of pleading was exacting enough a hundred years ago, but then and ever since, by reason of the presumption I have stated, the averment in an action against a constable for false imprisonment was in the form adopted in the present case, and the defendant had to plead his justification with particulars: *Holroyd* v. *Doncaster* (1), and the cases cited earlier in this judgment. There is no distinction of persons. The defendant has to justify with particulars, and in my opinion the appellant in this case was clearly right in asking for particulars. If the respondents were able to satisfy the court that they could not give particulars in the public interest, the court would either not order particulars or, if the objection came after the order, would not enforce it. There was no evidence of this kind at the hearing of this summons, and, in my opinion, the appeal ought to be allowed and an order made in the terms of the summons.

In the *Greene* case the circumstances are not the same. It may be that in an application for a writ of habeas corpus the applicant could rely on the presumption against imprisonment and seek to throw the onus without more on the defendant, but in practice he does not do so. He puts material before the court to lead to the conclusion that the imprisonment was unlawful, and that is what the applicant did here. The Secretary of State appears to have been ready to meet the allegation of absence of reasonable cause. He referred to his order, to the particulars given by the advisory committee, which he insists were correct, and he made the affidavit already referred to that he acted on the information of trustworthy informants. His affidavit does not claim privilege in the correct form, but he instructed the Attorney-General on his behalf to claim privilege which in this case, in the absence of any objection to this course by the applicant, must be taken

(1) 3 Bing. 492.

to be sufficient. The Divisional Court were of opinion that, in view of this evidence, the applicant failed to satisfy them that there was an absence of reasonable cause. I have given my reasons for agreeing with them, and I would go further and say that, in view of the particulars, as to which I take it to be proved that the Secretary of State had information which he could reasonably believe, the Secretary of State has established reasonable cause for believing both the hostile associations and the necessity to control.

Of course, if the subjective theory is right and the Secretary of State has indeed unconditional power of imprisonment, it was enough for him to say that he exercised the power. But it seemed to be suggested in argument that, even if the power were conditional, yet it would be a good return by the Secretary of State to say that he had made the order in the terms of the regulation. This seems to me, with respect, to be fantastic. A minister given only a limited authority cannot make for himself a valid return by merely saying I acted as though I had authority. His ipse dixit avails nothing. A constable would make no valid return by saying: "I had reasonable cause for my arrest," or "I served the "criminal at the time with a written notice that I was arresting "him for reasonable suspicion of felony." However, on my view of this, the Secretary of State has made a return sufficient to indicate that the Divisional Court were right in refusing to order the writ to issue. I think that the appeal in this case should be dismissed.

LORD MACMILLAN. My Lords, by common assent at your Lordships' Bar it was agreed that the substantial question in these proceedings relates to the true meaning and effect of certain words contained in reg. 18B, para. 1, of the Defence (General) Regulations, 1939. By that regulation the Secretary of State is empowered to make an order for the detention of any person if he "has reasonable cause to believe" such person "to be of hostile origin or associations or to have "been recently concerned in acts prejudicial to the public "safety or the defence of the realm or in the preparation

H. L. (E.) 1941 LIVERSIDGE v. SIR JOHN ANDERSON. Lord Macmillan.

"or instigation of such acts and that by reason thereof it "is necessary to exercise control over him." Before he exercises the power confided to him of making a detention order against any individual the Secretary of State must have reasonable cause to believe certain things about that individual. Does this mean that the Secretary of State must have such cause of belief regarding the relevant facts as a court of law would hold sufficient to induce belief in the mind of any ordinary reasonable man? Or does it mean that he must have such cause of belief as he himself deems to be reasonable? To require that a cause of belief shall be reasonable necessarily implies a reference to some standard of reasonableness. Is the standard of reasonableness which must be satisfied an impersonal standard independent of the Secretary of State's own mind, or is it the personal standard of what the Secretary of State himself deems reasonable? Between these two readings there is a fundamental difference in legal effect. In the former case the reasonableness of the cause which the Secretary of State had for his belief may, if challenged, be examined by a court of law in order to determine whether he had such cause of belief as would satisfy the ordinary reasonable man, and to enable the court to adjudicate on this question there must be disclosed to it the facts and circumstances which the Secretary of State had before him in arriving at his belief. In the latter case it is for the Secretary of State alone to decide in the forum of his own conscience whether he has a reasonable cause of belief, and he cannot, if he has acted in good faith, be called on to disclose to anyone the facts and circumstances which have induced his belief or to satisfy anyone but himself that these facts and circumstances constituted a reasonable cause of belief.

Before discussing which of these rival views ought to prevail, I must first indicate briefly the form in which the question has come before your Lordships. On May 26, 1940, the respondent, Sir John Anderson, then Secretary of State for Home Affairs, made and signed an order in the following terms:

"DEFENCE (GENERAL) REGULATIONS, 1939.
"DETENTION ORDER.

"Whereas I have reasonable cause to believe Jack Perlzweig "alias Robert Liversidge to be a person of hostile associations "and that by reason thereof it is necessary to exercise control "over him: Now, therefore, I, in pursuance of the power "conferred on me by reg. 18B of the Defence (General) "Regulations, 1939, hereby make the following order: I "direct that the above-mentioned Jack Perlzweig alias Robert "Liversidge be detained.

"(Signed) John Anderson,
"One of His Majesty's Principal
"Secretaries of State."

In virtue of this order the appellant was taken to Brixton Prison where he has since been detained. On March 14, 1941, the appellant issued a writ against the respondent, Sir John Anderson, and also against Mr. Herbert Stanley Morrison, who now in succession holds the office of Secretary of State for Home Affairs. In his statement of claim the appellant made (inter alia) the following allegations: "(3.) By a "document dated May 26, 1940, and expressed to be a "detention order under reg. 18B of the Defence (General) "Regulations, 1939, the first-named defendant ordered and "directed that the plaintiff be detained. (4.) In consequence "and by reason of the said order and direction the plaintiff "was on or about May 29, 1940, arrested and he has since "been and still is detained and imprisoned at H.M. Prison "at Brixton. . . . . (6.) In the premises the defendants have "and each of them has caused and procured the unlawful "detention and imprisonment of the plaintiff and the second-"named defendant continues and intends to continue the "same." The statement concludes by claiming a declaration that the appellant's detention and imprisonment was and is unlawful, damages for false imprisonment, and, against Mr. Morrison, an injunction against the continued detention and imprisonment of the appellant. The respondents lodged a defence admitting that Sir John Anderson ordered that the appellant should be detained under reg. 18B of the

H. L. (E.) 1941 LIVERSIDGE v. SIR JOHN ANDERSON. Lord Macmillan.

Defence (General) Regulations, 1939, but otherwise making no admission. The appellant subsequently applied to the master for an order on the respondents to give particulars "(*a*) of the grounds upon which the first-named defendant "had reasonable cause to believe the plaintiff to be a person "of hostile associations; and (*b*) of the grounds upon which "the first-named defendant had reasonable cause to believe "that by reason of such hostile associations it was necessary "to exercise control over the plaintiff." This application was refused by the master and on appeal successively by Tucker J. and the Court of Appeal.

I cannot refrain from remarking on the economy of the appellant's averments. The action is one of damages for false imprisonment, but the appellant nowhere states categorically that he has been wrongly imprisoned or in what respect the order in consequence and by reason of which he says he has been detained is illegal, irregular or defective. In particular, he does not allege what appears to be his real complaint, that the Secretary of State had no reasonable ground to believe that the appellant was a person of hostile associations and that by reason thereof it was necessary to exercise control over him. Under the more exacting rules of pleading to which I was accustomed in the courts of Scotland the relevancy and sufficiency of the averments which I have above set out would certainly not have escaped criticism. Be that as it may, it is at least abundantly clear that the action is of an exploratory nature. The appellant claims that he is entitled to explore the mind of the Secretary of State in order to find out what was the state of his information, in the hope that when this is revealed it may prove to be such that the court will hold it not to afford a reasonable cause for the belief which the Secretary of State professed to entertain, when judged by the standard of the ordinary reasonable man.

I am thus brought back to the point from which I started, for the answer to the question whether the appellant is entitled to explore the mind of the Secretary of State depends entirely on the true interpretation of the language in which his powers

are conferred on him. For the appellant it was maintained that the words of the regulation were clear and unambiguous. The competency of the Secretary of State to make a detention order was, it was argued, plainly subject to a condition precedent. There must exist in fact reasonable cause for belief in certain things, quite independently of what the Secretary of State himself chose to believe. It was further said that "reasonable cause" was a term of art, frequent and familiar in similar contexts, and always carried with it a reference to an external or impersonal standard.

I do not agree that the critical phrase in the context in which I find it is susceptible only of one meaning, namely that for which the appellant contends. Were it so it would be strange that several learned judges should have found it to possess quite a different meaning. Had the phrase run in impersonal form—"If there is reasonable cause to believe"—there would have been more justification for maintaining that there was no ambiguity, though I should not even so have regarded the matter as beyond question. But the regulation does not so run. It reads: "If the Secretary of State has reasonable "cause to believe . . . ." and thus at once introduces a personal, not an impersonal, requirement.

Holding then, as I do, that the opening words of the regulation are open to interpretation, I now propose to seek what aid I can from the permissible sources of guidance. In the first place, it is important to have in mind that the regulation in question is a war measure. This is not to say that the courts ought to adopt in wartime canons of construction different from those which they follow in peace time. The fact that the nation is at war is no justification for any relaxation of the vigilance of the courts in seeing that the law is duly observed, especially in a matter so fundamental as the liberty of the subject—rather the contrary. But in a time of emergency when the life of the whole nation is at stake it may well be that a regulation for the defence of the realm may quite properly have a meaning which because of its drastic invasion of the liberty of the subject the courts would be slow to attribute to a peace time measure. The

H. L. (E.) 1941 LIVERSIDGE v. SIR JOHN ANDERSON. Lord Macmillan.

purpose of the regulation is to ensure public safety, and it is right so to interpret emergency legislation as to promote rather than to defeat its efficacy for the defence of the realm. That is in accordance with a general rule applicable to the interpretation of all statutes or statutory regulations in peace time as well as in war time.

It is, therefore, proper to consider with what object the regulation was made. This appears clearly from the terms of the empowering statute, the Emergency Powers (Defence) Act, 1939. By s. 1, sub-s. 1, of that Act "His Majesty may "by order in council make such regulations . . . . as appear "to him to be necessary or expedient for securing the public "safety, the defence of the realm, the maintenance of public "order and the efficient prosecution of any war in which "His Majesty may be engaged, and for maintaining supplies "and services essential to the life of the community." The second sub-section in particular authorizes the making of Defence Regulations (inter alia) "for the detention of persons "whose detention appears to the Secretary of State to be "expedient in the interests of the public safety or the defence "of the realm." There could be no clearer evidence of the intention of Parliament to authorize the abrogation in the public interest and at the absolute discretion of the Secretary of State of the ordinary law affecting the liberty of the subject. A perusal of the whole Act and of the subsequent Act of 1940 is sufficient to satisfy any reader of the extraordinary interferences with the citizen's most cherished rights of person and property which, in the view of Parliament, may be necessary and proper in the present grave national danger. In considering the interpretation of the regulation authorizing the Secretary of State to make detention orders I therefore bear in mind that Parliament has expressly contemplated that he should by regulation be empowered to do so at his absolute discretion. I also note as indicative of the abnormal and temporary character of the legislation that it is expressly limited in duration. With its expiry the power of detention will, of course, also come to an end.

In the next place, it is relevant to consider to whom the

emergency power of detention is confided. The statute has authorized it to be conferred on a Secretary of State, one of the high officers of State who, by reason of his position, is entitled to public confidence in his capacity and integrity, who is answerable to Parliament for his conduct in office and who has access to exclusive sources of information. In a question of interpreting the scope of a power it is obvious that a wide discretionary power may more readily be inferred to have been confided to one who has high authority and grave responsibility.

I turn now to the nature of the topics as to which the Secretary of State is under the regulation to have reasonable cause of belief. They fall into two categories. The Secretary of State has to decide (1.) whether the person proposed to be detained is a person of hostile origin or associations or has been recently concerned in certain activities, but he has also to make up his mind (2.) whether by reason thereof it is necessary to exercise control over him. The first of these requirements relates to matters of fact, and it may be that a court of law, if it could have before it all the Secretary of State's information—an important "if"—might be able to say whether such information would to an ordinary reasonable man constitute a reasonable cause of belief. But how could a court of law deal with the question whether there was reasonable cause to believe that it was necessary to exercise control over the person proposed to be detained, which is a matter of opinion and policy, not of fact? A decision on this question can manifestly be taken only by one who has both knowledge and responsibility which no court can share. As Lord Parker said in *The Zamora* (1): "Those who "are responsible for the national security must be the sole "judges of what the national security requires. It would be "obviously undesirable that such matters should be made "the subject of evidence in a court of law or otherwise "discussed in public." I may also quote the words of Lord Finlay L.C. in *Rex* v. *Halliday* (2): "It seems obvious that no "tribunal for investigating the question whether circumstances

(1) [1916] 2 A. C. 77, 107. (2) [1917] A. C. 260, 269.

H. L. (E.) 1941 LIVERSIDGE v. SIR JOHN ANDERSON. Lord Macmillan.

"of suspicion exist warranting some restraint can be imagined "less appropriate than a court of law." The question is one of preventive detention justified by reasonable probability, not of criminal conviction which can only be justified by legal evidence.

As I have indicated, a court of law manifestly could not pronounce on the reasonableness of the Secretary of State's cause of belief unless it were able to place itself in the position of the Secretary of State and were put in possession of all the knowledge both of facts and of policy which he had. But the public interest must, by the nature of things, frequently preclude the Secretary of State from disclosing to a court or to anyone else the facts and reasons which have actuated him. What is to happen then? The appellant says that the court is entitled and has a duty to examine the grounds of the Secretary of State's belief. But the court is also bound to accept a statement by the Secretary of State that he cannot consistently with the public interest divulge these grounds. Here is indeed an impasse. The appellant's solution has the merit of courage, not to say audacity. He says that where the Secretary of State, by declining to disclose his information, has failed, through no fault of his own, to justify the detention, he must be held confessed of having falsely imprisoned the detained person and must be mulcted in damages. It will naturally be in the most dangerous cases, where detention is most essential to the public safety, that the information before the Secretary of State is most likely to be of a confidential character, precluding its disclosure. Yet the court is to be constrained where detention is most justifiable to find the detention unjustified. I decline to accept an interpretation of the regulation which leads to so fantastic a result.

Were the person detained left without any safeguard, this might be an argument against holding that an absolute discretion has been conferred on the Secretary of State, but the argument is the other way when it is found, as it is in this regulation, that elaborate provision is made for the safeguarding of the detained person's interests. I refer to the constitution of advisory committees to which any person aggrieved by a detention order may make representations.

The duty is imposed on the chairman to inform the objector of the grounds on which the detention order has been made and to furnish him with such particulars as are in the chairman's opinion sufficient to enable him to state his case. I say nothing as to the efficacy of this safeguard, for I do not know how it operates in practice, but I emphasize the significance of its presence in the regulation. It suggests that this special procedure was introduced for the very reason that review by the law courts was excluded. Yet here again the paramount concern not to diminish the personal authority and responsibility of the Secretary of State is evidenced by the recognition of his right to decline to follow any advice given to him by an advisory committee. Nevertheless, says the appellant, he must accept the decision of a court of law, however contrary to his own view. I note a further safeguard in the requirement that the Secretary of State must at least every month report to Parliament as to the action taken by him under the regulation (including the number of persons detained under orders made thereunder) and as to the number of cases, if any, in which he has declined to follow the advice of an advisory committee. The regulation concludes with the following provision: "(8.) Any person detained in pursuance "of this regulation shall be deemed to be in lawful custody "and shall be detained in such place as may be authorized by "the Secretary of State and in accordance with instructions "issued by him." I see the force of the point taken by the appellant that this gives protection to the Secretary of State only where a person has been detained "in pursuance of" the regulation and would not protect him where the detention was not warranted by the regulation, but the provision at least exhibits anxiety to afford the Secretary of State the fullest measure of protection when acting within his powers.

I must not omit to notice the appellant's argument founded on the contrast between the opening words of the regulation in conferring the power of detention on the Secretary of State and the words used elsewhere in the regulations when other powers of an admittedly discretionary character are conferred on him and on others. The argument is that where different

H. L. (E.) 1941 LIVERSIDGE v. SIR JOHN ANDERSON. Lord Macmillan.

words are used a different meaning is intended. The argument by contrast is of little assistance in the present instance, for the regulations have observed no uniformity of language. Lord Blackburn, then Blackburn J., once said that you ought "never to change the form of words unless you are going to "change the meaning and it would be as well if those who are "engaged in the preparation of Acts of Parliament would "bear in mind that that is the real principle of construction. "But," he went on to say, "in drawing Acts of Parliament "the legislature, as it would seem, to improve the graces of "the style and to avoid using the same words over and over "again constantly changes them": *Hadley* v. *Perks* (1). The regulations before your Lordships certainly exhibit a remarkable diversity of terminology. Thus I find the following expressions used with relation to various powers confided to various persons: "If it appears to the Secretary of State"; "If the Secretary of State is satisfied"; "If he considers it "necessary"; "Where it is shown to the satisfaction of"; "Where it appears to the proper authority that there is "reason to believe." More intensive study of the regulations would probably disclose further variations in language where there is no substantial difference in meaning and effect. The argument that when the regulations mean different things they use different language and when they mean the same thing they use the same language breaks down, regrettable as this must be to the drafting purist.

But then it is said that the critical words have been introduced by an amendment of the language used in the regulation as originally made, and must be taken to have been altered advisedly. I do not know, and it would not be proper for me to inquire why a change was made, but it may well be that in view of the gravity of this matter of detention it was thought right to adopt more emphatic words by way of admonition to the Secretary of State to make sure of his grounds before he took action. If the regulation had been framed so as to read, as the appellant would read it, "If "the Secretary of State has such cause of belief as a court

(1) (1866) L. R. 1 Q. B. 444, 457.

"of law would hold to be reasonable," I doubt if it would have commended itself as an emergency measure. Courts may differ as to what is reasonable. A judge of first instance might hold the Secretary of State to have been justified in his belief, the Court of Appeal might take another view and this House might have its own view. In a matter at once so vital and so urgent in the interests of national safety, I am unable to accept a reading of the regulation which would prescribe that the Secretary of State may not act in accordance with what commends itself to him as a reasonable cause of belief without incurring the risk that a court of law would disagree with him, and also without the further liability that, should the court do so or if he cannot consistently with his duty disclose to the court the grounds of his belief, he will be mulcted in damages for false imprisonment as having acted outwith his powers.

My Lords, I make no apology for having discussed so fully the various aspects of the question before the House, for it is one of the highest importance. I yield to no one in my recognition of the value of the jealous scrutiny which our courts have always rightly exercised in considering any invasion of the liberty of the subject. But I remind myself, in Lord Atkinson's words, that "however precious the personal liberty "of the subject may be there is something for which it may "well be, to some extent, sacrificed by legal enactment, "namely, national success in the war or escape from national "plunder or enslavement": *Rex* v. *Halliday* (1). The liberty which we so justly extol is itself the gift of the law and as Magna Carta recognizes may by the law be forfeited or abridged. At a time when it is the undoubted law of the land that a citizen may by conscription or requisition be compelled to give up his life and all that he possesses for his country's cause it may well be no matter for surprise that there should be confided to the Secretary of State a discretionary power of enforcing the relatively mild precaution of detention. In the Court of Appeal the question was approached from the point of view of onus, as was not unnatural in view of

(1) [1917] A. C. 260, 271.

H. L. (E.) 1941 LIVERSIDGE v. SIR JOHN ANDERSON. Lord Macmillan.

the form in which the matter came before the court. I have preferred to deal with the substance, but in view of what was said in the Court of Appeal I should add that, in my opinion, the production by the Secretary of State of an order of detention by him ex facie regular and duly authenticated, such as the House has before it in this case, constitutes a peremptory defence to any action of false imprisonment and places on the plaintiff the burden of establishing that the order is unwarranted, defective or otherwise invalid. Counsel for the appellant admitted that if the House should adopt the interpretation of the regulation which I have reached the appeal must be dismissed and I concur in the motion that that be its fate.

LORD WRIGHT. My Lords, this appeal and the appeal which immediately followed it, *Greene* v. *Secretary of State for Home Affairs* (1), have the common feature that each involves an inquiry into the true construction of reg. 18B, one of the Defence Regulations made under the Emergency Powers (Defence) Act, 1939. The argument on construction has primarily turned upon para. 1 of the regulation which is in these terms: "If the Secretary of State has reasonable cause "to believe any person to be of hostile origin or associations "or to have been recently concerned in acts prejudicial to "the public safety or the defence of the realm or in the "preparation or instigation of such acts and that by reason "thereof it is necessary to exercise control over him, he may "make an order against that person directing that he be "detained." The remainder of the regulation will require to be considered in so far as it throws light on the effect of the words just quoted. In the present appeal the appellant has been and is being detained in pursuance or professed pursuance of the regulation under an order made by the first respondent in which he stated that he had reasonable cause to believe the appellant to be a person of hostile associations and that by reason thereof it was necessary to exercise control over him. The appellant brought an action for unlawful imprisonment against the first respondent who originally made

(1) Post, p. 284.

the order during his period of office as Home Secretary and against his successor the second respondent who confirmed and continued it. In form the proceedings under appeal simply involve an application for particulars by the appellant of the grounds upon which the first respondent had reasonable cause to believe the appellant to be a person of hostile associations and to believe that by reason thereof it was necessary to exercise control over him. The application has been refused by the master, by Tucker J., and by the Court of Appeal. The respondents have relied on the order (which was admitted in the statement of claim) as showing on its face the lawful exercise of the powers and duties vested in, or imposed on, them under the regulation, and without more showing a sufficient justification. The appellant has contended that the detention order was not sufficient justification on its face because the validity of such an order depends on proof by the respondents of what according to the arguments of the appellant was a " condition precedent to its validity," namely, that the Home Secretary had reasonable cause to believe the two matters set out in the order and hence that the respondents could not rely on the order as a lawful order unless they could establish by the judgment of the court that they had reasonable grounds for their belief. As this, it was said, was what the respondents had to prove in the action, they were bound to give particulars of their case. The respondents, on the contrary, contended that they were invested with a duty and discretion in their office as ministers such that, if it was exercised in good faith (which was not in question), the interference with the appellant's liberty was lawful and was not subject to the jurisdiction of the court. The discretion of the Home Secretary was, it was said, made final by the words of the statutory regulation. The terms of the regulation made the decision of a court as to the reasonableness in fact of the Home Secretary's belief immaterial. The only relevant question was whether the Secretary had a belief which to his mind was reasonable. In the words which Lord Finlay L.C. in *Rex* v. *Halliday* (1) used in reference to the similar provision

(1) [1917] A. C. 260, 269.

H. L. (E.) 1941 LIVERSIDGE v. SIR JOHN ANDERSON. Lord Wright.

in the corresponding Defence of the Realm Regulations made during the last war, "no tribunal for investigating the question "whether circumstances of suspicion exist warranting some "restraint can be imagined less appropriate than a court of "law." These conflicting contentions raised a question of principle. Counsel on both sides have argued on the substance of the matter, putting aside technical questions of practice and pleading.

What is involved is the liberty of the subject. Your Lordships have had your attention called to the evils of the exercise of arbitrary powers of arrest by the executive and the necessity of subjecting all such powers to judicial control. Your Lordships have been reminded of the great constitutional conflicts in the seventeenth century, which culminated in the famous constitutional charters, the Petition of Right, the Bill of Rights, and the Act of Settlement. These struggles did, indeed, involve the liberty of the subject and its vindication against arbitrary and unlawful power. They sprang (to state it very broadly) from the Stuart theory that the King was King by divine right and that his powers were above the law. Thus a warrant of arrest "per speciale "mandatum Domini Regis" was claimed to be a sufficient justification for detention without trial. But by the end of the seventeenth century the old common law rule of the supremacy of law was restored and substituted for any theory of royal supremacy. All the courts to-day, and not least this House, are as jealous as they have ever been in upholding the liberty of the subject. But that liberty is a liberty confined and controlled by law, whether common law or statute. It is, in Burke's words, a regulated freedom. It is not an abstract or absolute freedom. Parliament is supreme. It can enact extraordinary powers of interfering with personal liberty. If an Act of Parliament, or a statutory regulation, like reg. 18B, which has admittedly the force of a statute, because there is no suggestion that it is ultra vires or outside the Emergency Powers (Defence) Act, under which it was made, is alleged to limit or curtail the liberty of the subject or vest in the executive extraordinary powers of detaining a

subject, the only question is what is the precise extent of the powers given. The answer to that question is only to be found by scrutinizing the language of the enactment in the light of the circumstances and the general policy and object of the measure. I have ventured on these elementary and obvious observations because it seems to have been suggested on behalf of the appellant that this House was being asked to countenance arbitrary, despotic or tyrannous conduct. But in the constitution of this country there are no guaranteed or absolute rights. The safeguard of British liberty is in the good sense of the people and in the system of representative and responsible government which has been evolved. If extraordinary powers are here given, they are given because the emergency is extraordinary and are limited to the period of the emergency.

I confess that, notwithstanding all my prejudices in favour of upholding the liberty of the subject, I have come to a clear conclusion that the courts below were right in refusing the particulars asked for. No reasons were given by the master or Tucker J., but in a later case, *Stuart* v. *Anderson and Morrison* (1), Tucker J. adopted in an action for unlawful imprisonment substantially what I regard as the true construction of reg. 18B. He said in effect that it was clear from the regulation that the decision on this difficult matter was not to be entrusted to one of His Majesty's judges, or to any ad hoc tribunal, but to the Home Secretary alone, and that the court has no jurisdiction to sit as an appellate tribunal on any decision of the Home Secretary, much less has the court power to try any case itself, in order to see if it would have come to the same conclusion as the Home Secretary if the legislature had entrusted the matter to a judge. The judge adds what is obvious, that the court might no doubt be called on to decide questions of bona fides or mistaken identity, if they should ever arise. I may further here refer to the judgment of the Court of Appeal in *Greene's* case (2), the appeal in which follows this appeal. I shall in due course examine that case which raises technical questions on the law

(1) (1941) 165 L. T. 120. (2) [1942] 1 K. B. 87.

H. L. (E.) 1941 LIVERSIDGE v. SIR JOHN ANDERSON. Lord Wright.

or practice applying to proceedings in habeas corpus, but the construction of the regulation is the substantial foundation of that case as well as this. I ought therefore to advert here briefly to what was said on that issue. Scott L.J., who gave the leading judgment, was of opinion that the decision of the Home Secretary was executive, not judicial, and that the regulation made him the final judge of the reasonableness of the causes on which he took action. "The whole regulation," said the Lord Justice (1), "deals with a topic which is necessarily "of a highly confidential character. It invites a decision, "at least as a preliminary to action, by an executive Minister "of the Crown, who occupies a position of utmost confidence; "who has at his disposal much secret information which "ought not to be made public—above all during a war—who "is under a duty to keep that information and its sources "secret; and, finally, who cannot be compelled in any court "to divulge what he considers ought not in the national "interest to be divulged." MacKinnon L.J., who agreed with his brethren, said (2) that power of the Home Secretary to issue a valid order depended on the fulfilment of a condition, the existence of a state of mind in the Home Secretary, that is, that he had reasonable grounds for believing certain facts to exist, and by implication that he honestly entertained that belief. Goddard L.J., I think, also treated the material issue as being what is the Home Secretary's state of mind.

I find support for this view in *Rex* v. *Halliday* (3), a habeas corpus case arising during the last war on a regulation very similar in its general character to reg. 18B. There were differences in the language of the reg. 14B which was the enactment there in question, and the machinery was in some respects different. I am here only concerned with the general principles stated by this House. Their Lordships brushed aside an argument not raised in the present case that the regulation was ultra vires of the statute. Lord Shaw dissented on that point. He did not proceed on any doubt as to the meaning of the regulation, which he held, if valid, vested

(1) [1941] 1 K. B. 87, 98.
(2) Ibid. 108.
(3) [1917] A. C. 260.

according to its terms in the Secretary of State plenary discretion to arrest and detain a subject without trial. On that ground he was of opinion that it was outside the delegated legislative power conferred by the Act because there were no express words in the Act providing for imprisonment without trial. The majority of their Lordships held that the regulation was not ultra vires. Lord Finlay L.C. (1) said that the measure was "not punitive but precautionary." It was directed to taking precautions during the war against the dangers of espionage and sabotage which experience showed to be so serious. "No crime," he said, "is charged. The question "is whether there is ground for suspicion that a particular "person may be disposed to help the enemy. The duty of "deciding this question is by the order thrown upon the "Secretary of State, and an advisory committee presided "over by a judge of the High Court [which was the machinery "under reg. 14B] is provided to bring before him any grounds "for thinking that the order may properly be revoked or "varied." He added that the suggested rule as to construing penal statutes in favour of the liberty of the subject had no reference to a case dealing with an executive measure by way of preventing a public danger. These wise words were concurred in by Lord Dunedin, who added (2) that preventive measures in the shape of internment of persons likely to assist the enemy might obviously be necessary, and Parliament had risked the chance of abuse which is always theoretically present when absolute powers in general terms are delegated to an executive body, thinking that the restriction of the powers to the duration of the war was a sufficient safeguard. "However precious," said Lord Atkinson (3), "the personal "liberty of the subject may be, there is something for which "it may well be, to some extent, sacrificed by legal enactment, "namely, national success in the war or escape from national "plunder or enslavement. It must not be assumed," he said, "that the powers conferred upon the executive by statute "will be abused."

These speeches embody statements of principle very relevant

(1) [1917] A. C. 260, 269. (2) Ibid. 271. (3) Ibid. 271.

H. L. (E.) 1941 LIVERSIDGE v. SIR JOHN ANDERSON. Lord Wright.

to the present case, and, notwithstanding differences in the particular enactments, furnish an important and direct precedent for the conferring of powers to exercise preventive detention on his own responsibility on the Home Secretary, and, subject to theoretical exceptions not relevant here, ousting the jurisdiction of the court. In ordinary administrative measures, the legislative practice of substituting for the jurisdiction of the court that of a specially constituted tribunal is well established and increasingly frequent, particularly since the decision of this House in *Local Government Board* v. *Arlidge* (1). The case dealt with closing orders under the Housing and Town Planning Act, 1909. Lord Haldane L.C. (2) pointed out that in regard to these administrative orders "the jurisdiction, both as regards original "applications and as regards appeals, was in England transferred "from courts of justice to the local authority and the Local "Government Board, both of them administrative bodies." It is true that the personal liberty of the subject was there not affected, but only his liberty to do what he likes with his own. But the principle is the same. Parliament excludes the jurisdiction of the courts and substitutes in the one case a specially constituted administrative body, in a case like the present the Secretary of State. In no case are ordinary legal rights to be affected unless and then only to the extent that Parliament has enacted to the contrary. In reg. 18B the Home Secretary is expressly empowered to make a detention order in the circumstances specified. What are these circumstances? They are a belief or mental state of the minister. Except for the word "reasonable," which I shall later discuss, there is no reference to anything but his personal belief, because I think that actual belief is implied by the words "has reasonable cause "to believe." His belief is something personal to himself. The reasonable cause can only be material in so far as it is an element present to his mind which determines his own belief. The "cause to believe" is part of the content of his mind. The matters specified, except hostile origin and, perhaps, hostile associations, are matters of opinion or

(1) [1915] A. C. 120. (2) Ibid. 132.

judgment, not matters of fact. It is essentially a matter of expert and instructed conclusion or suspicion whether or not the acts in which the subject has been concerned were such as to be prejudicial to the public safety or defence of the realm; even more obviously is the belief or decision that by reason thereof it is necessary to exercise control over him a matter of executive discretion. It is clear that the control is preventive, not punitive, and that the action is not judicial, but executive.

The regulation places on the Secretary a public duty and trust of the gravest national importance. As I understand the regulation, it is a duty which he must discharge on his own responsibility to the utmost of his ability, weighing, on the one hand, the suspect's right to personal liberty, and, on the other hand, the safety of the State in the dire national peril in which during this war it has stood and stands. All the circumstances of national safety to which this House adverted in *Rex* v. *Halliday* (1) are present in this war, only with vastly increased urgency and gravity, because German methods for effecting the poisonous infiltration among British or allied subjects of their purposes and schemes have been immensely more subtle and ingenious than in the last war. Even a judge may be allowed to take notice of the import of words like Fifth Columnists and Quislings and the like. It is the duty of the Secretary to check these underground and insidious activities of the enemy and their consequences, whether they result in sabotage or in anti-British propaganda or in weakening the national effort and endurance. In reg. 14B, during the last war, the minister could only act on the recommendation of a competent naval or military authority or of the advisory committee. There was, it seems, an external condition in that respect. In reg. 18B that pre-condition is absent. The Secretary must now act on his own responsibility if he has reasonable cause to believe, that is, believes that he has in his own mind what he thinks is reasonable cause. If that is his mental state, the duty to act in the national interest attaches. That is a higher duty than the duty to regard the liberty of the subject. I cannot see any ground for holding

(1) [1917] A. C. 260.

H. L. (E.) 1941 LIVERSIDGE v. SIR JOHN ANDERSON. Lord Wright.

that the performance of that duty is to be subject to the decision of a judge, who cannot possibly have the full information on which the minister has acted or appreciate the full importance in the national interest of what the information discloses. In these cases full legal evidence or proof is impossible, even if the Secretary does not claim that disclosure is against the public interest, a claim which must necessarily be made in practically every case, and a claim which a judge necessarily has to admit. To a large extent the sources of information must be secret. Espionage must be met by counter-espionage. Even to refuse the disclosure may give dangerous hints to the enemy. A hearing in camera is, no doubt, permissible (in particular under s. 6 of the Emergency Powers (Defence) Act, 1939), but a hearing in camera, if the public called for full disclosure, would not satisfy the public conscience, and in matters of this delicacy leakage must inevitably take place. Counsel on both sides refused to accept the suggestion that at a trial where the issue was whether the Secretary was justified in making his order, the judge might say at some early stage that he was satisfied by what he had heard and stop the case, treating the onus as being on the defendant and hold that it was discharged. That, it seems to me, would be the travesty of a trial. I can imagine the counsel for the plaintiff insisting that the case should be fully tried, that he was entitled to cross-examine the Secretary on a matter personal to himself, that part evidence might be edited and selected, that the judge could not decide the case unless he had all the evidence, and that the defendant (on whom the appellants allege rests the burden of justifying the detention) must fail in his defence if he refuses to disclose material evidence, even on the ground that to disclose it is against the national interest. In any case, neither the appellant nor the respondent was satisfied with the half-way house. However, on the construction of the regulation which I accept, the question does not arise. These and other like considerations make Lord Finlay's observation which I quoted above, that no tribunal could be imagined less appropriate than a court of law for deciding these questions, at least as

applicable to reg. 18B as it was to reg. 14B under the earlier statute. I might go further and say that the court is not merely an inappropriate tribunal, but one the jurisdiction of which is unworkable and even illusory in these cases. In my judgment, a court of law could not have before it the information on which the Secretary acts, still less the background of statecraft and national policy which is what must determine the action which he takes on it.

I am confirmed in the opinion that the matter is one for executive discretion by other provisions in the regulation, in particular, those relating to the advisory committee or committees which are to be appointed under para. 3 of the regulation by the Secretary of State, which are to hear objections to or in respect of any order made under the regulation. Under para. 4 the Secretary is to give the person against whom the order is made the earliest possible opportunity of making representations to him in respect of the order and inform him of his right to make objections before the committee. The chairman of the committee is to inform the objector of the grounds (which I think means grounds of a general nature, such as hostile origin or associations) and also give him such particulars as in the opinion of the chairman are sufficient to enable him to present his case. It is said on behalf of the appellant that such provisions are no substitute for a trial before an independent judge and that the committees are chosen by the Secretary and that the Secretary may decline to attend to their advice. This is true enough, but they go to show that the regulation is dealing with an executive discretion, in the exercise of which the discretion of the minister is final. They seem to me to be inconsistent with the idea that recourse to a court of law by way of appeal against or justification of the order was open. Indeed, if that had been contemplated I think that there must have been express words giving it. These provisions seem to me to be a substitute for a trial in court of the issues, no doubt inadequate in one sense, but as effective as the circumstances admit. I particularly rely in support of my conclusion on the circumstance that the Secretary is entitled to decline

H. L. (E.) 1941 LIVERSIDGE v. SIR JOHN ANDERSON. Lord Wright.

to follow the recommendation or advice of the committee. The responsibility is his alone.

But against all these arguments the appellant relies on the use of the word " reasonable " as qualifying the " cause to " believe." It is said that " reasonable " necessarily implies an external standard to be applied by someone other than the Secretary, namely, by a judge. I cannot accept that contention, which seems to me to subordinate the whole substance of the enactment to a single word which itself is ambiguous and inconclusive. The word " reasonable " does indeed imply instructed and intelligent care and deliberation, the choice of the course which reason dictates. But the choice is not necessarily that of an outsider. If I am right in my view of the effect of the regulation, the choice can only be the choice of the minister. All the word " reasonable," then, means is that the minister must not lightly or arbitrarily invade the liberty of the subject. He must be reasonably satisfied before he acts, but it is still his decision and not the decision of anyone else. If in ordinary affairs I say that I reasonably believe in the truth of certain facts or in the propriety of certain conduct, I am prima facie adopting as my reason my own judgment. If I mean to refer to some external yardstick I should in general naturally say so expressly unless the contrary was clear from other circumstances. " Reasonable " connotes a quality or characteristic. Who is to decide on reasonableness is a different matter which depends on the circumstances. This disposes to my mind of the argument strenuously urged on the basis of a number of decisions in which it has been held that " reasonable " necessarily in every case imports what is reasonable in the judgment of a judge or a jury. That may be so when the particular conduct is properly subject to review in a court of law. When it comes before a court of law the party impugned cannot be judge in his own cause. Thus, the shopwalker who takes the protesting woman customer into the manager's office as a suspected thief cannot, when he or the store is sued for false imprisonment, simply say as a sufficient answer that he thought he had reasonable cause. On that issue the judge must decide. This is equally

true in a case of malicious prosecution : *Herniman* v. *Smith* (1). And when a lascivious youth under twenty-three years old is charged with having carnal knowledge of a girl under sixteen, it is not for him but for the jury to decide if he had reasonable grounds for his belief that she was not under sixteen : *Rex* v. *Banks* (2), *Rex* v. *Forde* (3). Again, it is for the court to decide if a director sued under the Directors Liability Act (or the corresponding section of the present Companies Act) for untrue statements in a prospectus can establish his defence which he cannot do by simply showing that he thought he had reasonable grounds for believing them to be true : *Alman* v. *Oppert* (4). That is the very question in dispute which the court is required to decide. Similarly the blackmailer is not the person to judge that he had reasonable cause for the demand : *Thorne* v. *Motor Trade Association* (5). Another class of illustrations of the same principle is found in the numerous statutes giving to constables a power of arresting without warrant, by words like " reasonably suspects," or " has reasonable," or " good," " cause to suspect." A collection of these is to be found in the second (Hailsham) edition of Halsbury's Laws of England, vol. ix., pages 72 to 94. In the present emergency regulations similar powers to arrest are given by similar words. Clearly in those cases the constable is not to be judge in his own cause.

I need not multiply citations or give further illustrations of what is so familiar in our law and has been for many, many years, but the whole basis in these cases is that the jurisdiction of the court is invoked to decide a triable issue within its legal competence. What is reasonable in the particular case is then determined by what the court or the jury thinks reasonable. On the view that I have formed that there is under reg. 18B no triable issue as to reasonableness for the court, these authorities cease to be of any value. As the administrative plenary discretion is vested in the Home

(1) [1938] A. C. 305.
(2) [1916] 2 K. B. 621.
(3) [1923] 2 K. B. 400.
(4) [1901] 2 K. B. 576.
(5) [1937] A. C. 797.

H. L. (E.) 1941 LIVERSIDGE v. SIR JOHN ANDERSON. Lord Wright.

Secretary, it is for him to decide whether he has reasonable grounds and act accordingly. No outsider's decision is invoked, nor is the issue within the competence of any court. The legislature must vest the emergency discretion in someone, and I have explained my opinion that the Secretary of State has been chosen as being the only appropriate person. He alone can have the materials for exercising the discretion. Like other discretions it must involve some latitude of choice. There is no hard and fast issue of fact, such as there is in the trial of a specific charge on indictment. In our modern system of government the Home Secretary, though he is not in these matters amenable to the court, and though impeachment has been obsolete for over a century, still is generally responsible to Parliament quite independently of his duty under reg. 18B, para. 6, to report to Parliament at least once a month as to the action he has taken, including the number of persons detained and the number of cases each month in which he has declined to follow the advice of the committee, which is some check, though it may be said that this is not a very effective check, because he is not required to give the names of those detained. But, if the sense of the country was outraged by the system or practice of making detention orders, or, indeed, by any particular order, it could make itself sufficiently felt in the Press and in Parliament to put an end to any abuse and Parliament can always amend the regulation.

It was, however, contended on behalf of the appellant that a different construction must be adopted by reason of comparing the language of reg. 18B in its present form with its language when it was originally made on November 23, 1939 (St. R. & O., No. 1681). Counsel for the appellant knew English law too well to contend that they were entitled to refer to what passed in debate in the House of Commons or the House of Lords. That is clearly inadmissible, if, indeed, anything relevant was said on the point in Parliament about which I know nothing. In *Local Government Board* v. *Arlidge* (1), Lord Haldane L.C. said, in reference to a conflict of opinion whether guidance was to be found in the analogy of procedure in a court of law: "Which

(1) [1915] A. C. 130.

"of these opinions was right can only be determined by "referring to the language of the legislature. Here, as in "other cases, we have simply to construe that language and "to abstain from guessing at what Parliament had in its "mind, excepting as far as the language enables us to do "so." In *Assam Railways and Trading Co., Ld.* v. *Inland Revenue Commissioners* (1) it was observed, "It is clear "that the language of a minister of the Crown in proposing "in Parliament a measure which eventually becomes "law is inadmissible." But an earlier measure which is superseded by the measure in question may be referred to as a historical fact and as giving information as to some evil or defect which was being remedied. The point which was emphasized by the appellant in this appeal was that the language used in the earlier form of the regulation was different in that it omitted the word "reasonable." The clause was: "The Secretary of State, if satisfied with respect to any "particular person that with a view to preventing him from "acting in any manner prejudicial to the public safety or the "defence of the realm it is necessary to do so may make an "order." It is, as I apprehend, not contested that under this earlier form of the regulation the matter was left to the discretion of the Secretary, but it was contended that the change from "if satisfied" to "if he has reasonable cause "to believe" made all the difference and converted the plenary power of the Secretary into a power the exercise of which was subject to the judgment of a court of law. Such, it was said, was the compelling force of the word "reasonable" that by itself it overrode every consideration, however peremptory, and that it inexorably excluded the idea of a merely executive discretion and introduced the opinion of a court instead. I have already rejected that construction of the actual language in the present form of the regulation. The actual language is the acid test, and I see no ground for attaching so much weight to so slight a difference in words. "Satisfied" must mean "reasonably satisfied." It cannot import an arbitrary or irrational state of being satisfied. I find the distinction

(1) [1935] A. C. 445, 458.

H. L. (E.) 1941 LIVERSIDGE v. SIR JOHN ANDERSON. Lord Wright.

between "reasonably satisfied" and "has reasonable cause "to believe" too tenuous. The original reg. 18B was very much slighter and shorter in all respects. That is at once apparent by comparing the words I have quoted from it with the words of the later edition of the regulation. There was nothing in the former corresponding to paras. 4, 5 and 6 of the latter, which are obviously important safeguards for the objector. I do not find in the later edition any indication of evils to be cured, but, if defects are to be remedied, it was to be done by extending the Home Secretary's power on the one hand, and on the other enlarging the specified safeguards of the subject. It does not in terms provide for review by the court.

In my opinion, if it was ever intended to make so drastic a change in the whole scheme as to make the Home Secretary's grounds of belief examinable by a judge, it should and would have been enacted by express words. I attach little importance in this context to the question whether the words used are "satisfied" or "has reasonable cause to believe." For instance, both phrases seem to be used indifferently in para. 1A of reg. 18B which was added on May 22, 1940. Nor can I derive any light from comparing or contrasting the use in different places of these regulations of phrases like "it appears," "is satisfied," "has reasonable cause." This collection of regulations is more like a fasciculus of different enactments, many made at different dates, than a single statute. Even in the same statute the same word may be used in different senses at different places, as was recently held by this House in *Barnard* v. *Gorman* (1). It is also old and familiar law that words which in one statute are given a particular meaning are not necessarily to be construed when they are found in another statute as having the same meaning. This principle of construction is discussed in *Cox* v. *Hakes* (2), especially by Lord Halsbury L.C. (3). The present form of reg. 18B is different in material particulars from the original form, and must be construed as it stands. I think the correct construction is that which I have put on it.

(1) [1941] A. C. 378, 384.
(2) (1890) 15 App. Cas. 506.
(3) Ibid. 516, 517.

Finally the principles applied by this House in *Rex* v. *Halliday* (1) are, in my judgment, equally applicable to reg. 18B.

I must shortly deal with two minor matters that have been adverted to. In the first place, para. 8 of the regulation does not, in my opinion, render lawful a detention which is, apart from para. 8, unlawful and unwarranted by the Secretary's powers. It is inserted to settle possible doubts as to prison law and practice. The other matter for comment is the decision in *Eshugbayi Eleko* v. *Officer Administering the Government of Nigeria* (2), where the government claimed to exercise certain powers, including deportation, against the appellant. The appellant applied for a writ of habeas corpus, on the ground that the ordinance relied on gave by express terms the powers it contained only against one who was a native chief, and who had been deposed, and where there was a native custom requiring him to leave the area, whereas actually not one of these facts was present in the case. It was held in effect that the powers given by the ordinance were limited to a case in which these facts existed. It was a question of the extent of the authority given by the ordinance. That depended on specific facts, capable of proof or disproof in a court of law, and unless these facts existed, there was no room for executive discretion. This authority has, in my opinion, no bearing in the present case, as I construe the powers and duties given by the regulation. There are also obvious differences between the ordinary administrative ordinance there in question and an emergency power created to meet the necessities of the war and limited in its operation to the period of the war. The powers cease with the emergency. But that period still continues and, it being assumed that the onus is on the respondents in this action of unlawful imprisonment, the onus is sufficiently discharged, in my opinion, by the fact of the order having been made by a competent authority within the ambit of the powers entrusted to him and being regular on its face.

I agree with the decision of the courts below and am of opinion that the appeal should be dismissed.

(1) [1917] A. C. 260, (2) [1931] A. C. 662.

H. L. (E.) 1941

LIVERSIDGE v. SIR JOHN ANDERSON.

Lord Romer.

LORD ROMER. My Lords, the decision of this appeal must, as it seems to me, turn ultimately upon the true meaning of a few words in para. 1 of reg. 18B of the Defence (General) Regulations made under the Emergency Powers (Defence) Acts, 1939 and 1940. The clause is as follows: "If the "Secretary of State has reasonable cause to believe any person "to be of hostile origin or associations or to have been recently "concerned in acts prejudicial to the public safety or the "defence of the realm or in the preparation or instigation of "such acts and that by reason thereof it is necessary to exercise "control over him, he may make an order against that person "directing that he be detained."

The question of construction arising under the regulation is this. Before an order can be made by the Secretary of State is it necessary that there should in fact exist reasonable grounds for his belief, or is it sufficient that there are grounds for his belief that appear to him to be reasonable? The form in which that question is brought before your Lordships for decision in the present case is somewhat unusual. The appellant is a gentleman who, ever since May 29, 1940, has been detained in Brixton Prison by reason of an order dated May 26 and purporting to have been made under the regulation by Sir John Anderson when Home Secretary. The order is prefaced by a recital as follows: "Whereas I have reasonable "cause to believe Jack Perlzweig alias Robert Liversidge to be "a person of hostile associations and that by reason thereof "it is necessary to exercise control over him." On March 14, 1941, the appellant began this action as plaintiff against Sir John Anderson as the first defendant and Mr. Morrison (who had succeeded Sir John as Home Secretary on October 4, 1940) as second defendant, claiming as against both defendants damages for false imprisonment and as against Mr. Morrison an injunction restraining him from continuing the imprisonment of the appellant. In due course the appellant delivered his statement of claim. In it he stated that Sir John Anderson had by a "document" dated May 26, 1940, and "expressed" to be a detention order under the regulation ordered and directed him to be detained. He then alleged that in

consequence and by reason of the said order and direction he had been and still was detained and imprisoned and that since October 4, 1940, his detention and imprisonment had been continued by Mr. Morrison who refused to release him. He concluded his allegations as follows (para. 6): "In the "premises the defendants have and each of them has caused "and procured the unlawful detention and imprisonment of "the plaintiff and the second named defendant continues and "intends to continue the same." It is to be observed that inasmuch as the appellant is plainly alleging that he is detained in consequence and by reason of the order of Sir John Anderson given by the document expressed to be an order under the regulation, his assertion that his detention was and is unlawful must necessarily mean that the document was not a valid order. He does not, however, state in what respect the document is invalid and on that pleading it would have been open to him to attack it upon several grounds, as, for example, that the regulation was ultra vires, or that Sir John did not honestly believe that the appellant was of hostile associations and that by reason thereof it was necessary to exercise control over him, or that, if Sir John did so believe, there did not exist in fact any reasonable grounds for such belief. It might indeed have been the appellant's case, for all that appears to the contrary on the statement of claim, that he was attacking the validity of the order on the ground of non-compliance by the Home Secretary or the chairman of the advisory committee with the duty imposed on them respectively by cl. 4 and 5 of reg. 18B. In these circumstances the respondents might reasonably have applied for particulars of the alleged invalidity of the order. They did not do so, however, and delivered their defence which contained among others the following paragraphs: "(3.) The defendants admit that the first named "defendant ordered that the plaintiff should be detained under "reg. 18B of the Defence (General) Regulations, 1939. (5.) "None of the allegations contained in para. 6 of the statement "of claim is admitted . . . ."

Thereupon the appellant issued a somewhat remarkable summons. He asked by it that para. 3 of the defence should

H. L. (E.) 1941 LIVERSIDGE v. SIR JOHN ANDERSON. Lord Romer.

be struck out on the grounds that it purported to admit something that was not pleaded in the statement of claim. He asked alternatively that the respondents should be ordered to give the following particulars of such para. (*a*) of the grounds on which Sir John Anderson had reasonable cause to believe the appellant to be a person of hostile associations and (*b*) of the grounds on which Sir John Anderson had reasonable cause to believe that by reason of such hostile associations it was necessary to exercise control over the appellant. But para. 3 of the defence contained no allegation, express or implied, that Sir John Anderson believed the appellant to be a person of hostile associations or believed that by reason of his hostile associations it was necessary to exercise control over him. The paragraph merely contained an admission that Sir John Anderson had ordered the appellant to be detained under reg. 18B. Nor was there any ground that I can see for striking it out. The master very properly dismissed the summons, and the appeal against his order was dismissed by Tucker J. The appellant then appealed to the Court of Appeal. Before that court the appellant abandoned his claim to have para. 3 of the defence struck out, but he obtained leave to amend his summons by asking that the particulars should in the alternative be given under para. 5 of the defence. There was some sort of justification for seeking this alternative relief inasmuch as the refusal to admit that the detention of the appellant was unlawful impliedly asserted that it was lawful, and, accordingly, that there were in fact reasonable grounds for the belief of the Home Secretary recited in the order, assuming that, according to the true construction of the regulation, the existence in fact of such reasonable grounds was essential to the validity of the order. On the pleadings as they stood, however, there was nothing to indicate that the appellant was attacking the validity of the order on the want of such reasonable grounds, and, if he were not, the existence or non-existence of those grounds was not an issue in the action. But the appellant's summons might, perhaps, be regarded as serving the double purpose of giving particulars of his statement of claim, and of asking for particulars of the defence. The

Court of Appeal must, I think, have so regarded it, for they proceeded on the footing that the existence or non-existence in fact of such reasonable grounds was put in issue by the pleadings and merely addressed their minds to the question whether on the trial of that issue the onus of proof would lie on the appellant or on the respondents. The court decided that it would lie on the appellant and dismissed the appeal solely upon that ground.

My Lords, it is, I think, apt to lead to confusion if the question be regarded as one of onus. The appellant having been detained by or by the direction of the respondents, the onus of justifying the detention clearly lies on them. The real question to be decided is how that onus is to be discharged. Is it discharged by production of the order purporting to be made by Sir John Anderson under the regulation, or must the respondents prove in addition that the order was justified in the circumstances? The Court of Appeal decided that mere production of the order was (in the first instance at any rate) sufficient. "If at the trial," said MacKinnon L.J., "the "plaintiff merely proved that he was detained in prison by "an order of the first defendant and nothing more, and if the "defendants then proved that he was detained by an order "issued pursuant to the regulation and signed by the first "defendant . . . . and if that was the whole of the evidence "we think there must be judgment for the defendants."

If the Court of Appeal were right in thinking that mere production of the order and proof of the signature of Sir John Anderson would sufficiently discharge for the time being the onus that lay on the respondents of justifying the detention, the appellant's application for particulars at this early stage of the action was rightly dismissed. But even if the view entertained by the Court of Appeal as to the production of the order be accepted, it would merely result in postponing to a later date the decision of the crucial question in the case. For it is obvious that at the trial the appellant would not be content with merely proving that he was detained in prison. He would assuredly call some evidence in support of his case that he was not a person of hostile associations, and thereupon,

H. L. (E.) 1941 LIVERSIDGE v. SIR JOHN ANDERSON. Lord Romer.

as the Court of Appeal foresaw, the respondents might, on one construction of the regulation, have to call rebutting evidence, and the further trial might even have to be postponed if such evidence proved embarrassing to the appellant by way of surprise or novelty. "Conceivably," added MacKinnon L.J., "in a proper case, the judge might at that stage make some "order by way of particulars of the allegations of the "defendants." Sooner or later, therefore, and in some form or another, the question would have to be decided whether the respondents could be compelled to disclose the grounds on which the belief of Sir John Anderson was founded, in other words, the question whether before an order can be made under the regulation there must exist in fact reasonable grounds for the belief of the Home Secretary on which the order is founded or whether it is sufficient that he bona fide believes that there are such grounds. If the latter construction is to prevail, no order for particulars such as the appellant seeks in this case can be made. For, if at the trial the Home Secretary gives rebutting evidence to the effect that, in his opinion, there were reasonable grounds for his belief, his statement, being merely a statement as to his opinion, must necessarily have to be accepted unless it can be shown that he was not acting in good faith, and the onus of showing this would lie upon the appellant. The materials on which the Home Secretary founded his opinion would be wholly irrelevant and could not be inquired into by a court of law. The question what is the proper construction of the regulation, a question that does not appear to have been discussed in the Court of Appeal, is, therefore, one of considerable importance: for the considerations to which I have just referred will apply to the case of every person who is detained by an order made under the regulation, whether he seeks to question the validity of the order by an action for false imprisonment or by an application for a writ of habeas corpus.

My Lords, that this question is not only of importance but is also one of considerable difficulty appears sufficiently from the fact that it has given rise to a difference of opinion among your Lordships. But after giving the

matter my most earnest consideration I have come to the clear conclusion that the construction for which the respondents are contending must be accepted. The arguments in favour of the other construction addressed to this House as well by the counsel for the appellants in the present case as by the counsel for the appellants in the case of *Greene* v. *Secretary of State for Home Affairs* (1) are undoubtedly of considerable force, but to accede to them would, or might in certain cases, lead to a result that neither Parliament nor the framers of the regulation could by any possibility have intended. Take, for instance, the case of a person against whom an order for detention has been made because the Secretary of State believes him to have been recently concerned in acts prejudicial to the public safety or the defence of the realm. If that person brings an action for false imprisonment or moves for a writ of habeas corpus the Secretary of State may be placed in the dilemma of having to make public information the disclosure of which may imperil the security of this country or of having to refuse to disclose it with the result that the person detained, who may be a dangerous "Fifth "Columnist," will be released and set at liberty to continue his traitorous activities. For, if the question whether the Secretary of State had reasonable grounds for the belief on which his order was founded is one for a court of law to determine, it is plain that the court must be placed in full possession of all the relevant facts, and if some of those facts are withheld from it, even though it be by reason of public policy, it will have no option but to say that no reasonable grounds for his belief have been shown to exist, and the release of the detained person will follow as a matter of course. The Emergency Powers (Defence) Act, 1939, and the regulation will in that particular case have failed to remedy the mischief against which they were designed. What that mischief was sufficiently appears from s. 1, sub-s. 1, of the Act. So far as is material for the present purpose, it is in these terms: "His Majesty may by Order in Council make such regulations

(1) Post, p. 284.

H. L. (E.) 1941 LIVERSIDGE v. SIR JOHN ANDERSON. Lord Romer.

"as appear to him to be necessary or expedient for securing "the public safety, the defence of the realm . . . . and the "efficient prosecution of any war in which His Majesty may be "engaged." Moreover, Part I. of the regulations made in pursuance of the section, in which Part regulation 18B is to be found, is entitled " Provisions for the Security of the State." It was, indeed, said on behalf of the appellant in *Greene's* case that where an Act of Parliament is capable of more than one construction, the courts will adopt that construction which is the least likely to lead to an invasion of the liberty of the subject. That in general is a very salutary rule, but we are dealing here with an Act passed and regulations made under it in times of a great national emergency, and in view of this circumstance and of the objects which that Act and those regulations so plainly had in view, the courts should, in my opinion, prefer that construction which is the least likely to imperil the safety of this country. In this connection it is not inapposite to quote the following passage from the speech of Lord Atkinson in *Rex* v. *Halliday* (1): " However precious the personal liberty of the subject may "be, there is something for which it may well be, to some "extent, sacrificed by legal enactment, namely, national "success in the war or escape from national plunder or "enslavement."

It was urged on behalf of the appellant that there is no reason to fear that the Secretary of State will ever find himself placed in the dilemma to which I have referred, inasmuch as the trial of an action for false imprisonment or the proceedings in habeas corpus can always be heard in camera. So they can, but I am not at all impressed by this argument. Where the information in the possession of the Secretary of State is of such a nature that this country might be seriously prejudiced if it came to the ears of the enemy, the serious risk of leakage would inevitably deter him from disclosing it. A man who is willing to risk his liberty and his life in maintaining a traitorous intercourse with the enemy is not likely to be deterred from passing on such information

(1) [1917] A. C. 260, 271.

by the penalties attaching to a disclosure of what has taken place at proceedings in camera.

It was strongly urged on behalf of the appellant that the expression "if he has reasonable cause to believe" and similar expressions are well known to English law which has consistently regarded them as postulating the existence in fact of reasonable grounds for belief. I will assume that this is so, but the context and circumstances in which they are used may force one to the conclusion that even the most familiar words and expressions are used in other than their ordinary meaning, and this is the case here. For the person who is to have reasonable cause to believe is not some minor official holding a subordinate position. He is the Secretary of State. The acts, moreover, concerning which the belief is to be entertained are not some infractions of our municipal law committed in times of peace. They are (among others) acts prejudicial to the public safety or the defence of the realm committed in a time of grave national danger and of such a nature that "by reason thereof" it is necessary to exercise control over the person suspected of committing them. Whether or not the acts of some individual appear to be of this description is a question of which the Secretary of State must plainly be a better judge than any court of law can be. "It "seems obvious" said Lord Finlay L.C. in *Rex* v. *Halliday* (1), "that no tribunal for investigating the question whether "circumstances of suspicion exist warranting some restraint "can be imagined less appropriate than a court of law." I respectfully agree. I cannot believe that the legislature or the framers of the regulation ever intended to constitute the courts of this country the ultimate judges of the matters in question. On the contrary, there are to be found in the language both of the statute and the regulation indications that the final determination of all such matters was to lie with the Secretary of State alone. By s. 1, sub-s. 2, of the Act, for instance, it is provided among other things that regulations may be made for the detention of persons whose detention "appears to the Secretary of State to be expedient

(1) [1917] A. C. 260, 269.

H. L. (E.) 1941

LIVERSIDGE v. SIR JOHN ANDERSON.

Lord Romer.

"in the interests of the public safety or the defence of the "realm." It does not, of course, follow that, because there was authority given to clothe the Secretary of State with this wide discretionary power, the regulation has in fact done so. But the sub-section indicates the views of the legislature as to the powers that ought to be given him to secure the safety of the realm and it is not unreasonable to suppose that the framers of the regulation desired to give full effect to these views. It is, moreover, to be observed in this connection that whereas paras. 3, 4 and 5 of reg. 18B provide for the setting up of one or more advisory committees to whom a person aggrieved by the making of an order against him can make his objections, it is made plain by para. 6 that the Secretary of State need not follow the advice given by any such committee. It is also to be noticed that the words of para. 1 are not "if there *is* reasonable cause to believe," but, "if "the Secretary of State *has* reasonable cause to believe." It is, of course, true, as has been said by my noble and learned friend Lord Atkin, that the words "if a man has a broken "ankle" do not and cannot mean "if he thinks he has a broken "ankle," but the regulation is not dealing with the state of a man's body. It is dealing with the state of man's belief, in other words with the state of his thoughts. The words "if a man has a belief that a certain thing exists" necessarily mean "if he thinks that the thing exists," and the word "has" may well have been used in the regulation to indicate that it is throughout concerned with the impression that is created on the mind of the Secretary of State and not with the impression they may produce on a court of law. Not only is the belief to be his. The estimate of the reasonableness of the causes that have induced such belief is also to be his and his alone.

The attention of your Lordships was very properly drawn by way of contrast to the language used in some of the other regulations, such, for instance, as the first para. of reg. 2C, as showing that when it was intended to leave a decision to the unfettered discretion of the Secretary of State the regulations did so in plain terms. There would be more force in this

argument if all the regulations were contained in one Act of Parliament or in a set of regulations all framed at one time, though, in view of the fact that different language is frequently employed in the regulations to express the same thing, I should not even in that case have been greatly impressed by it. But the regulations and even some of the clauses in the same regulation came into existence at different times and for all that I know to the contrary were the product of different hands. In these circumstances it is impossible to infer that a difference in the language used in two regulations necessarily indicates an intention to express two different meanings.

My Lords, for these reasons I would dismiss this appeal.

LORD ATKIN. Mr. Holmes, nothing has been said so far about costs. This is a matter of very general importance, and I think the majority of their Lordships—I am a third party in this respect—are rather of opinion that it is not a case in which costs should be asked for.

Holmes for the respondents. If your Lordship pleases; of course, in those circumstances I should not dream of asking for them on behalf of the Home Secretary. I do not know, my Lords, whether I ought to say that I did notice that my Lord Maugham's speech ended by proposing the motion that the appeal should be dismissed with costs. Possibly that had escaped your Lordship's notice; but perhaps that can be rectified.

LORD ATKIN. It had not escaped my notice, and that is the reason I put the question to you.

Holmes. If your Lordship pleases.

Appeal dismissed.

Solicitors for appellant: *Buckeridge & Braune.*
Solicitor for respondents: *Treasury Solicitor.*