arising for decision is whether in the circumstances any prize bounty is payable. This depends upon the proper application of the enactment now in force dealing with this subject, which is sec. 42 of the Naval Prize Act 1864.

I stated generally the history of the grant of prize bounty (or "head money," as it was formerly called) in the case of "*The E* 14," [1917] P. 85. It is necessary to distinguish clearly between prize ships or cargoes and prize bounty. "Prize" is property captured or seized by commissioned or authorised captors at sea or in ports, and is now condemned in favour of the Crown, either in its own right or in its right to droits of Admiralty. "Prize bounty," on the other hand, is a grant made out of public moneys under the authority of the Parliament of this realm as a reward for bravery resulting in success in naval engagements. It may be observed in passing that no such grant is made in these days by any other country in the world. Its amount, and the conditions of its grant, are defined by the Act of our Legislature, and the jurisdiction of this Court to allow it is limited strictly by the Act of Parliament.

As Sir William Scott said in the case of "*La Bellone*," 2 Roscoe 227, 2 Dods 343—"The whole of this subject is the creature of mere positive law. Head money is not property acquired in any manner by the captors, or to be demanded on the ground of any antecedent title. It is a mere voluntary grant of public money, and the grantees must be content to take what is actually given and no more. The Court cannot amplify the grant by constructive analogy, and by so doing take upon itself the double impropriety of imputing blame to the Legislature for a supposed omission, and arrogating to itself the further disposal of public money. By every rule of interpretation that can apply to such a matter, the Court is bound to confine its exposition within the very letter of the statute, if that letter speaks an intelligible language."

Sir William Scott pronounced the decision in "*La Bellone*" in 1818. The statute then in force dealing with prize bounty or "head money," was 45 Geo. III, c. 72, s. 5. The case arose in relation to an enemy ship captured in Port Louis upon the capitulation of the Isle of France after a blockade by the land and sea forces of Great Britain. The question whether prize bounty was payable was raised in friendly proceedings in order to obtain the formal decision of the Prize Court, so that the Treasury, as the custodian of the public funds, might know what it was authorised to do. It was decided by the Court that head money could only be paid where the capture or destruction of enemy ships of war was effected by naval forces only, and that where the capture or destruction was the result of joint action of the armed forces on land and of ships at sea it could not be paid. Sir William Scott said—"The grant, in the whole of its extent, relates to naval capture only. Where it is not purely naval the statute has thought fit to be silent, and it is not for this Court to introduce a different description of service into a grant where it is not."

There is no essential or material difference touching this question between the enactment now in force and that which was applied in the authority quoted. The provisions as to prize bounty contained in the Naval Prize Act of 1864 were enacted when the decision in "*La Bellone*" stood as the last word of the English Prize Court upon the subject. They must be read with reference to the law as then pronounced. The Legislature could, of course, have altered it, but it did not think fit to do so.

In the special circumstances of the present case I think that it is right to mention that the Court is not called upon to consider whether the fact that Japanese forces—military and naval—took part, and a leading part, in the operations, affects the legal question which arises. I decide the case quite apart from that special circumstance.

Even if British forces alone had carried out the engagement or operations which resulted in the destruction of the enemy's ships of war, I pronounce that, as their destruction was not brought about by naval action alone, but was the result of the joint operations of land and naval forces, prize bounty is not payable.

I regret that the law accordingly leaves me no alternative but to disallow the claim and to dismiss the application for the bounty.

The Court dismissed the application.

Counsel for the Claimants—Commander Maxwell Anderson, R.N. Agent—A. Tyler, for Stilwell & Sons, Navy Agents, Solicitor.

Counsel for the Procurator-General—Pearce Higgins. Agent—Treasury Solicitor.

HOUSE OF LORDS.

Tuesday, May 1, 1917

(Before the Lord Chancellor (Lord Finlay), Lords Dunedin, Atkinson, Shaw, and Wrenbury.)

REX *v.* HALLIDAY—*Ex parte* ZADIG.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

War—Statute—Defence of Realm—Internment—Naturalised British Subject Interned under Regulation 14B *Made under the Defence of the Realm (Consolidation) Act* 1914 (5 *Geo. V, cap.* 8), *sec.* 1 (1)—*Validity of the Regulation.*

Section 1 (1) of the Defence of the Realm (Consolidation) Act 1914 empowers His Majesty in Council "during the continuance of the present war to issue regulations for securing the public safety and defence of the realm." Regulation 14B, of date 10th June 1915, provides that "Where, on the recommendation of a competent naval or military authority, . . . it appears to the Secre-

tary of State that for securing the public safety or the defence of the realm it is expedient in view of the hostile origin or associations of any person that he shall be subjected to such obligations and restrictions as are hereinafter mentioned" he may order that person's internment.

Held (*dis.* Lord Shaw) that Regulation 14B was made to secure the public safety and the defence of the realm, and was therefore within the powers conferred by the Defence of the Realm (Consolidation) Act 1914.

Appeal from an order of the Court of Appeal, 1916, 1 K.B. 743, affirming an order of the King's Bench Division discharging a rule *nisi* for a writ of *habeas corpus* granted to the present appellant Arthur Zadig.

The respondent Sir Frederick Loch Halliday was the commandant of a place called the Institution, in Cornwallis Road, Islington, where the appellant was interned pursuant to an order under Regulation 14B made under the Defence of the Realm Consolidation Act 1914 (5 Geo. V, cap. 8).

The *facts* appear from the considered udgments of their Lordships.

LORD CHANCELLOR (FINLAY)—The appellant in this case is a naturalised British subject of German birth who has been interned by an Order made by the Secretary of State under the powers of Regulation 14B, which was made under the Defence of the Realm Consolidation Act 1914.

It was contended on behalf of the appellant that Regulation 14B was not authorised by the Act, and was *ultra vires*.

It is beyond all dispute that Parliament has power to authorise the making of such a regulation. The only question is whether on a true construction of the Act it has done so.

The relevant part of the Act in question (5 Geo. V, cap. 8) is section 1 (1)—"His Majesty in Council has power during the continuance of the present war to issue regulations for securing the public safety and the defence of the realm, and as to the powers and duties for that purpose of the Admiralty and Army Council and of the members of His Majesty's forces and other persons acting in his behalf, and may by such regulations authorise the trial by courts-martial or in the case of minor offences by courts of summary jurisdiction, and punishment of persons committing offences against the regulations, and in particular against any of the provisions of such regulations designed (*a*) to prevent persons communicating with the enemy or obtaining information for that purpose or any purpose calculated to jeopardise the success of the operations of any of His Majesties forces or the forces of his allies or to assist the enemy; or (*b*) to secure the safety of His Majesty's forces and ships and the safety of any means of communication and of railways, ports, and harbours; or (*c*) to prevent the spread of false reports or reports likely to cause disaffection to His Majesty or to interfere with the success of His Majesty's forces by land or sea or to prejudice His Majesty's relations with foreign powers; or (*d*) to secure the navigation of vessels in accordance with directions given by or under the authority of the Admiralty; or (*e*) otherwise to prevent assistance being given to the enemy or the successful prosecution of the war being endangered."

The power conferred on His Majesty is limited to the duration of the war and is to issue regulations for securing the public safety and the defence of the realm. The sub-section goes on to provide that His Majesty may by such regulation authorise the trial and punishment of persons committing offences against the regulations, and especially against regulations designed for any of the purposes enumerated under heads (*a*), (*b*), (*c*), (*d*), and (*e*). These heads comprise the prevention of communication with the enemy, securing the safety of His Majesty's forces and means of communication, and of railways, ports, and harbours, preventing the spread of false rumours, and the prevention of assistance to the enemy and the successful prosecution of the war being in danger.

On the face of it the statute authorises in this sub-section provisions of two kinds —for prevention and for punishment. Any preventive measures, even if they involve some restraint or hardship upon individuals do not partake in any way of the nature of punishment, but are taken by way of precaution to prevent mischief to the State. Anyone who infringes such regulations will become the proper subject of punishment.

The regulation in question made under this Statute is Regulation 14B of the Defence of the Realm Regulations Consolidated. It is as follows—"Where on the recommendation of a competent naval or military authority or of one of the advisory committees hereinafter mentioned it appears to the Secretary of State that for securing the public safety or the defence of the realm it is expedient in view of the hostile origin or associations of any person that he shall be subjected to such obligations and restrictions as are hereinafter mentioned, the Secretary of State may by order require that person forthwith or from time to time either to remain in or to proceed to and reside in such place as may be specified in the order and to comply with such directions as to reporting to the police, restriction of movement, and otherwise as may be specified in the order, or to be interned in such place as may be specified in the order, provided that any such order shall in the case of any person who is not a subject of a state at war with His Majesty include express provision for the due consideration by one of such advisory committees of any representations he may make against the order. If any person in respect of whom any order is made under this regulation fails to comply with any of the provisions of the order he shall be guilty of an offence against these regulations, and any person interned under such order shall be subject to the like restrictions and may be dealt with in like manner as a prisoner of war, except so far as the Secretary of State may

relax such restrictions. The advisory committees for the purposes of this regulation shall be such advisory committees as are appointed for the purpose of advising the Secretary of State with respect to the internment and deportation of aliens, each of such committees being presided over by a person who holds or has held high judicial office. In the application of this regulation to Scotland references to the Secretary for Scotland shall be substituted for references to the Secretary of State. Nothing in this regulation shall be construed to restrict or prejudice the application and effect of Regulation 14, or any power of interning aliens who are subjects of any State at war with His Majesty."

It will be observed that any action of the Secretary of State under this regulation is to be upon the recommendation of a competent naval or military authority, or of an advisory committee. If on such recommendation it appears to the Secretary of State that for securing the public safety or the defence of the realm it is expedient so to do, he may subject any person of hostile origin or associations to certain restrictions, one of which is internment. The order must, however, include provision in the case of any person not being an enemy subject for consideration of any representation, which the person affected may make against the order, by an advisory committee, which is to be presided over by a person who holds or has held high judicial office. The regulation therefore provides means for ascertaining whether any complaint against the justice or necessity of the order is well founded.

The order complained of was made by the Home Secretary on the 15th October 1915, and is as follows:—"Whereas, on the recommendation of a competent military authority, appointed under the Defence of the Realm Regulations, it appears to me that, for securing the public safety and the defence of the realm, it is expedient that Arthur Zadig, of No. 56 Portsdown Road, Maida Vale, W., should, in view of his hostile origin and associations, be subjected to such obligations and restrictions as are hereinafter mentioned, I hereby order that the said Arthur Zadig shall be interned in the Institution in Cornwallis Road, Islington, which is now used as a place of internment, and shall be subject to all the rules and conditions applicable to aliens there interned. If within seven days from the date on which this order is served on the said Arthur Zadig he shall submit to me any representations against the provisions of this order, such representations will be referred to the advisory committee appointed for the purpose of advising me with respect to the internment and deportation of aliens and presided over by a Judge of the High Court, and will be duly considered by the committee. If I am satisfied by the report of the said committee that this order may be revoked or varied without injury to the public safety or the defence of the realm, I will revoke or vary the order by a further order in writing under my hand. Failing such revocation or variation this order shall remain in force. —(Signed) JOHN SIMON, one of His Majesty's Principal Secretaries of State.—Whitehall, 15th October 1915."

The truth of the recital that Zadig is a person of hostile origin and associations was not questioned, but it was insisted that Parliament had not conferred the power to make such an order in the interest of the public safety against such persons. The order provides for representations being made against it and for their consideration by an advisory committee presided over by a Judge of the High Court, and states that if the Home Secretary is satisfied by the report of such committee that the order may be revoked or varied without injury to the public safety and the defence of the realm, he will revoke or vary the order.

As I have stated, the power of Parliament to authorise such a proceeding was not and could not be disputed. The only question is as to the construction of the Act.

It was contended (1) that some limitation must be put upon the general words of the statute; (2) that there is no provision for imprisonment without trial; (3) that the provisions made by the Defence of the Realm Act 1915 for the trial of British subjects by a Civil Court with a jury strengthened the contention of the appellant; (4) that general words in a statute could not take away the vested rights of the subject or alter the fundamental law of the constitution; (5) that the statute is in its nature penal, and must be strictly construed; (6) that a construction said to be repugnant to the constitutional traditions of this country could not be adopted.

Reference was made by the appellant's counsel to the history of the various interferences with a right of *habeas corpus* in times of public danger, and it was urged that if it had been intended to interfere with personal liberty this is the course which would have been adopted.

I am unable to accede to any of the arguments urged on behalf of the appellant.

It was not, as I understand the argument, contended that the words of the statute are not in their natural meaning wide enough to authorise such a regulation as regulation 14B, but it was strongly contended that some limitation must be put upon these words, as an unrestricted interpretation might involve extreme consequences, such as, it was suggested, the infliction of the punishment of death without trial.

It appears to me to be a sufficient answer to this argument that it may be necessary in a time of great public danger to intrust great powers to His Majesty in Council and that Parliament may do so, feeling certain that such powers will be reasonably exercised.

The statute in its recital of the objects of the regulations in respect of which particularly punishment may be inflicted throws some light upon the question before the House.

The regulations are to be for preventive purposes as follows—"(*a*) The prevention of communication with the enemy or obtaining information for that purpose or any pur-

pose calculated to jeopardise the operations of His Majesty's forces or those of his allies or to assist the enemy; (*b*) to secure the safety of His Majesty's forces and ships and the safety of any means of communication and of railways, ports, and harbours; (*c*) to prevent the spread of false reports or reports likely to cause disaffection to His Majesty or to interfere with the success of His Majesty's forces or to prejudice His Majesty's relations with foreign Powers; (*e*) otherwise to prevent assistance being given to the enemy or the successful prosecution of the war being endangered."

One of the most obvious means of taking precautions against dangers such as are enumerated is obviously to impose some restriction on the freedom of movement of persons whom there may be any reason to suspect of being disposed to help the enemy. It is to this that reg. 14B is directed. The measure is not punitive but precautionary. It was strongly urged that no such restraint should be imposed except as the result of a judicial inquiry, and, indeed, counsel for the appellant went so far as to contend that no regulation could be made forbidding access to the seashore by suspected persons. It seems obvious 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. 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 by the order thrown upon the Secretary of State, and an advisory committee, presided over by a Judge of the High Court, is provided to bring before him any grounds for thinking that the order may be revoked or varied.

The statute was passed at a time of supreme national danger, which still exists. The danger of espionage and of damage by secret agents to ships, railways, munition works, bridges, &c., had to be guarded against. The restraint imposed may be a necessary measure of precaution, and in the interests of the whole nation it may be regarded as expedient that such an order should be made in suitable cases. This appears to me to be the meaning of the statute. Every reasonable precaution to obviate hardship which is consistent with the object of the regulation appears to have been taken.

It was urged that if the Legislature had intended to interfere with personal liberty it would have provided, as on previous occasions of national danger, for suspension of the rights of the subject as to a writ of *habeas corpus*. The answer is simple. The Legislature has selected another way of achieving the same purposes, probably milder as well as more effectual than those adopted on the occasion of previous wars.

The suggested rule as to construing penal statutes and the provision as to trial of British subjects by jury, made by the Defence of the Realm Act 1915, have no relevance in dealing with an executive measure by way of preventing a public danger.

The application of the present applicant was rejected by the Divisional Court, consisting of five members, and by the Court of Appeal, and in my opinion the present appeal ought to be dismissed.

LORD DUNEDIN—I concur in the opinion just delivered, which exactly expresses the reasons for the view I hold. It is only because I am aware that there is not unanimity among your Lordships that I add a few words.

The only question is as to the construction of the Act of Parliament. The prerogative may have been mentioned incidentally in the course of the argument, but it certainly was not founded on by the Attorney-General.

It is pointed out that the powers, if interpreted as the unanimous judgments of the Courts below interprets them, are drastic and might be abused. That is true. But the fault, if fault there be, lies in the fact that the British Constitution has entrusted to the two Houses of Parliament, subject to the assent of the King, an absolute power untrammelled by any written instrument, obedience to which may be compelled by some judicial body. The danger of abuse is theoretically present—practically, as things exist, it is in my opinion absent.

Were a regulation to be framed, as my noble friend who is to follow me suggests, to intern the Catholics of South Ireland or the Jews of London, the result would, I think, be the speedy repeal of the Act which authorises the regulation.

The preventive measures in the shape of internment of persons likely to assist the enemy may be necessary under the circumstances of a war like the present is really an obvious consideration. Parliament has, in my judgment, in order to secure this and kindred objects, risked the chance of abuse which will always be theoretically present when absolute powers in general terms are delegated to an executive body, and has thought the restriction of the powers to the period of the duration of the war to be a sufficient safeguard.

LORD ATKINSON—I concur. Several of the topics to which the learned counsel for the appellant addressed themselves in the course of their arguments, however interesting historically, had, in my view, little if any relevancy to the question to be decided in this case—such, for instance, as the scope and nature of the legislation passed by the Parliament of England on the several occasions in her history when she was at war. The question for decision in this case is, what the Legislature has done by this Statute of November 1914, not what it did by legislation passed centuries before that date. It may be that so dear to the Legislature of those days was the personal liberty of the subject that it sacrificed or endangered the interest of the State and hampered the nation in its struggle for victory in order to preserve that liberty. For myself I do not at all think it was so. Or it may have been that the circumstances of the time did not need such drastic remedies as do those of the present time. How-

ever 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 and escape from national plunder or enslavement. It is not contended in this case that the personal liberty of the subject can be invaded arbitrarily at the mere whim of the Executive. What is contended is that the Executive has been empowered during the war by legislative enactment to invade that liberty in certain states of fact for paramount objects of State. It was also urged that this Defence of the Realm Consolidation Act of 1914, and the regulations made under it, deprived the subject of his rights under the several Habeas Corpus Acts. That is an entire misconception. The subject retains every right which those statutes confer upon him to have tested and determined in a court of law, by means of a writ of *habeas corpus* addressed to the person in whose custody he may be, the legality of the order or warrant by virtue of which he is given into or kept in that custody. If the Legislature chooses to enact that he can be deprived of his liberty and incarcerated or interned for certain things for which he could not have been heretofore incarcerated or interned, that enactment and the orders made under it, if *intra vires*, do not infringe upon the Habeas Corpus Acts in any way whatever or take away any rights conferred by Magna Charta, for the simple reason that the Act and these orders became part of the law of the land. If it were otherwise, then every statute and every *intra vires* rule or by-law having the force of law creating a new offence for which imprisonment could be inflicted would amount *pro tanto* to a repeal of the Habeas Corpus Acts or Magna Charta quite as much as does this Statute of the 27th November 1914 and the regulations validly made under it. Swinfen Eady, L.J., most correctly points out that the provisions of the Defence of the Realm Consolidation Act of 1914 are of two kinds—punitive and preventive. Sub-section (*a*) of section 1 contemplates and authorises the issue of regulations designed to prevent persons communicating with the enemy or obtaining information for any purpose calculated to jeopardise the success of the forces of His Majesty or his allies or to assist the enemy. Sub-section (*c*) likewise contemplates that the regulations should prevent the spreading of false reports. Two conditions are, however, imposed. First, the regulations can only be issued during the war, and, second, whatever they purport to do must be done for the purpose of securing the public safety and defence of the realm. It by no means follows, however, that if on the face of a regulation it enjoined or required something to be done which could not in any reasonable way aid in securing the public safety and the defence of the realm it would not be *ultra vires* and void. It is not necessary to decide this precise point on the present occasion, but I desire to hold myself free to deal with it when it arises.

Preventive justice, as it is styled, which consists in restraining a man from committing a crime he may commit but has not yet committed, or doing some act injurious to members of the community which he may do but has not yet done, is no new thing in the laws of England. For instance, the 34 Edw. III, c. 1, passed in 1360, directs the justices of the peace to "take of all them that be not of good fame where they shall be found sufficient surety and mainprise of their good behaviour towards the King and his people." This jurisdiction is entirely different from that of binding over one person at the instance of another to keep the peace towards that other. If the person required to enter into recognisances under the statute should refuse or omit to do so, he can be committed to prison. This provision of this ancient statute has received a very wide construction even in normal times—*Rex* v. *Justices of Cork*, 15 Cox C.C. 78, 84, 149; *Wise* v. *Dunning*, 1902, 1 K.B. 167. In the same way, a dangerous lunatic may be committed to a lunatic asylum—if at large he might be a danger to the community. One of the most effective ways of preventing a man from communicating with the enemy or doing things such as are mentioned in section 1, sub-sections (*a*) and (*c*) of the statute is to imprison or intern him. In that, as in almost every case where preventive justice is put in force, some suffering and inconvenience may be caused to the suspected person. That is inevitable. But the suffering is, under this statute, inflicted for something much more important than his liberty or convenience—namely, for securing the public safety and defence of the realm. It must not be assumed that the powers conferred upon the executive by this statute will be abused. By the several provisions already referred to every precaution that could, I think, be reasonably taken has been taken to prevent error or abuse. Now in the present case the prosecutor has been interned under an Order of the Secretary of State for the Home Department dated the 15th October 1915. It is headed Order under 14 (*b*) of the Defence of the Realm Regulations. It sets out the fact which is under this section the foundation of his jurisdiction and the main cause of its exercise, namely, that the appellant is of hostile origin and association; and in view of that fact, which is not disputed, it sets out that the Secretary of State, being duly recommended in the manner prescribed, makes an Order that the appellant should be interned for the purpose of securing the public safety and the defence of the realm. The Order thus sets out upon its face all the requirements necessary for its validity if the regulation under which it purports to be made be valid. On that assumption it shows upon its face jurisdiction to make it. The legal validity of this regulation therefore becomes the only question for decision in the case—Is it *intra vires* or *ultra vires* of the statute? Because of the frame and fulness of the Order that question can as regularly and effectively be decided upon the application that the writ should issue as it could upon the return to the writ. For myself I must say that I never could appreciate the con-

tention that statutes invading the liberty of the subject should be construed after one manner and statutes not invading it after another—that certain words should in the first class have a meaning put upon them different from what the same words would have put upon them when used in the second. I think the tribunal whose duty it is to interpret a statute of the one class or the other should endeavour to find out what according to the well-known rules and principles of construction the statute means, and if the meaning be clear apply it in that sense. Should the statute be ambiguous, equally susceptible of two meanings, one leading to an invasion of the liberty of the subject and the other not, it may well be that the latter should be preferred on the ground of the presumed intention of the Legislature not to interfere with it. That is a wholly different matter.

This statute, to which the Royal Assent was given on the 27th November 1914, is framed differently from its immediate predecessor, to which the Royal Assent was given on the 8th August 1914, immediately after the outbreak of the war. The latter merely empowered His Majesty during the war to issue regulations as to the "powers and duties of the Admiralty, Army Council, members of his forces, and other persons acting on his behalf for securing the public safety and defence of the realm," and further provided that by these regulations he might authorise the trial by court-martial and punishment of persons contravening any of these provisions. Section 1, subsection (*a*), is identical with the corresponding sub-section of the latter of the two statutes, save that the words "forces of his allies" are introduced in the latter after the words "His Majesty's forces." Now the only way contemplated in the earlier Act of preventing persons from doing something prohibited by the Regulations or omitting to do something enjoined by them is by trial and punishment before courts-martial. The statute is entirely punitive in that respect. Well, presumably, that was found to be insufficient to secure the safety of the public and the defence of the realm to the extent desired. And accordingly the second statute, though it covers the same ground as the first, goes much beyond the first in its scope, and differs from the first in the methods it authorises for securing the public safety and defence of the realm, inasmuch as it provides that the regulations to be issued may not only deal with the powers and duties of the Admiralty, &c., and with the punishment of offenders against certain of their provisions; but it empowers His Majesty, during the war, to issue regulations for securing directly the public safety and the defence of the realm. These are wide words. They are new words. Some effect must be given to them. They obviously cover preventive methods properly so called, for securing the desired end, as well as those methods which truly are punitive. I do not think it is legitimate to treat them as of no effect, because if effect is given to them the subject may possibly be restricted. And as preventive justice proceeds upon the principle that a person should be restrained from doing something which, if free and unfettered, it is reasonably probable he would do, it must necessarily proceed in all cases to some extent on suspicion or anticipation as distinct from proof. If a person be of hostile origin or association it is, I think, impossible to say that if free and unfettered it would not be reasonably probable that he would communicate with the enemy or obtain information for the purposes mentioned in sub-section (*a*), or spread the false or other reports mentioned in sub-section (*c*), or do some of the other things mentioned in other sub-sections of that section. The public safety and the defence of the realm might be prejudicially affected if he did any of these things. If the Secretary of State, after receiving a recommendation such as in the regulation mentioned, comes to the conclusion that by reason of the hostile origin or association of some person it was expedient for securing the public safety and the defence of the realm that he should be interned or otherwise dealt with in the manner mentioned in regulation 14 (*b*), it would, in my view, be as mischievous as absurd to require that the Minister, though fully warned, should remain quiescent and look on helplessly, waiting for the time when one of the crimes mentioned in section 1 should be committed and the perpetrator, if caught, and if sufficient proof were forthcoming, should be brought to justice and punished. The statute clearly authorises prevention in the widest terms by means other than punitive. I think regulation 14 (*b*), enumerating and authorising some of those means, comes within the scope of that authority. And, as I have already said, I think the precautions already referred to effectually guard against all injustice or abuse in the administration of the regulation. I am therefore clearly of opinion that the appeal fails, that the decision appealed from was right and should be affirmed, and this appeal be dismissed with costs.

LORD SHAW—I reckon this appeal to be in the first class of importance. My opinion differs from that of your Lordships, and this has led me to consider and reconsider the matter with care. The gravity of the issue, and the respect which I entertain for my noble and learned friends here and for the learned Judges of the Courts below, with all of whom I am constrained to differ—these appear to me to demand a statement, fuller than usual, of the grounds of my own position.

I am of opinion that the judgments appealed from are erroneous in law, and that they constitute a suspension and a breach of those fundamental constitutional rights which are protective of British liberty.

The appellant is a naturalised citizen of this country. That is to say, on the one hand he owes submission to, and on the other hand he is entitled to, the protection of our laws. That is the essential pact underlying naturalisation. The war made no difference to this. In fact immediately after its outbreak the Act 4 and 5 Geo. V, c. 17,

reached the statute-book, and section 3 thereof confirms the pact in terms. In the language of that section Arthur Zadig has "to all intents and purposes the status of a natural born British subject." His person was seized, he has been interned—now for over eighteen months—without a trial, and he has just the same title, no more and no less, to challenge such an act of force as any subject of the King. This makes the question not only serious but perfectly general.

The appellant lost his liberty and was interned by reason of a document dated the 15th October 1915, signed by the Home Secretary and denominated an "Order under Regulation 14 (*b*) of the Defence of the Realm Regulations."

[*After reading the Order quoted above by the Lord Chancellor, his Lordship continued*] —This Order stands or falls with the regulation upon which it purports to be founded. The appellant falls within the ambit of its terms—he is of foreign origin. The true question affects the validity of the regulation itself. It is in these terms [*vide the Lord Chancellor's judgment*].

I am clearly of opinion that although bearing to be a regulation this is in truth and essentially not a regulation at all, and that it was *ultra vires* of His Majesty in Council to issue under the guise of a regulation an authorisation for the apprehension, seizure, and internment without trial of any of the lieges. In my view Parliament never sanctioned, either in intention or by reason of the statutory words employed in the Defence of the Realm Acts, such a violent exercise of arbitrary power. It follows that the Order or fiat of the Secretary of State which has already been quoted is also *ultra vires*.

It is to be at once observed that one provision of the regulation can have no application to the case of internment. That provision is that if the person in respect of whom any order is made fails to comply "he shall be guilty of an offence against the Regulations." This is the homage paid to the Act of Parliament. But to a person seized and interned under this Order of internment the language has no application. The appellant has not been guilty of any offence against the regulation. There is nothing for which to try him as an offender against it. No charge is made against him; he may appeal for that in vain. He has complied with the regulation in the sense that he has been its victim. If he had violated it in any particular he would have had his right to trial, but his case is hopeless in that regard, for his person has been seized and detained for something entirely apart from any crime or offence or from anything he has said or done or attempted. The Secretary of State's fiat has gone forth. It is one of proscription—"Where," says regulation 14 (*b*), ". . . it appears to the Secretary of State that for securing the public safety or the defence of the realm it is expedient, in view of the hostile origin or associations of any person," then he may, *inter alia*, issue an order of internment.

The Act of Parliament, as we shall see, does employ the words "for securing the public safety and the defence of the realm," but there is not one word in the Act of Parliament about "hostile origin or associations" of any person, nor indeed about internment.

These are not statutory terms. Parliament might very well have taken the subject of "hostile origin or associations" into its account, and Parliament might very well have considered the subject of internment and dealt with it. Had it done so courts of law would have been bound to comply with any verdict on the subject which it embodied in statute.

Accordingly the first great and broad fact confronting your Lordships in this case is that in a matter so fundamentally affecting the rights of His Majesty's subjects Parliament has given no express sanction for the introduction of that language "hostile origin or associations." And what remains is the argument that Parliament, not expressly dealing with a matter pre-eminently demanding careful delimitation, must be held to have accomplished by implication this far-reaching subversion of our liberties.

To this argument I am respectfully unable to accede. I do not think that the Defence of the Realm Acts can be submitted to such a violent and strained construction.

After the outbreak of war on the 4th August 1914 it is plain from the statute book that Parliament was much engrossed in the subject of national security and defence. And I think it may be expedient to notice that the Act founded on 5 Geo. V, c. 8, is one of a series of four statutes passed in the period August 1914 to March 1915, and to observe that useful light is obtained by looking at them together.

By 4 and 5 Geo. V, c. 29, it was provided—"1. His Majesty in Council has power during the continuance of the present war to issue regulations as to the powers and duties of the Admiralty and Army Council, and of the members of His Majesty's forces, and other persons acting in his behalf, for securing the public safety and the defence of the realm; and may, by such regulations, authorise the trial by courts-martial and punishment of persons contravening any of the provisions of such regulations designed (*a*) to prevent persons communicating with the enemy or obtaining information for that purpose or any purpose calculated to jeopardise the success of the operations of any of His Majesty's forces or to assist the enemy; or (*b*) to secure the safety of any means of communication, or of railways, docks, or harbours; in like manner as if such persons were subject to military law and had on active service committed an offence under section 5 of the Army Act."

By 4 and 5 Geo. V, c. 63, it was provided—"1. The Defence of the Realm Act 1914 shall have effect as if (*a*) at the end of paragraph (*a*) of section one thereof the following words were inserted, 'or to prevent the spread of reports likely to cause disaffection or alarm'; (*b*) at the end of paragraph (*b*) of section one thereof there were added the following words:—'or of any area which may be proclaimed by the Admiralty or

Army Council to be an area which it is necessary to safeguard in the interests of the training or concentration of any of His Majesty's forces'; (c) at the end of section one there were inserted the following words: —'and may by such regulations also provide for the suspension of any restrictions on the acquisition or user of land, or the exercise of the power of making by-laws, or any other power under the Defence Acts 1842 to 1875, or under the Military Lands Acts 1891 to 1903.'"

The scheme of these statutes was that regulations were to be issued as to the powers and duties of the Admiralty, Army Council, and Armed Services, and of other persons acting for His Majesty for securing the public safety and the defence of the realm. The assumption is that such powers and duties already exist, but that they may be helped, made specific, or, it may be, amplified by regulations. The caution, however, is instantly given as to preserving the rights and liberties of the subject. A trial by court-martial is prescribed and a punishment in respect of contravention of the regulation "in like manner as if such persons were subject to military law" and had offended against section 5 of the Army Act. In short, the object was twofold—(1) to draw up or make clear for the citizen a certain line of duty or course of conduct by the issue of a notification according to which that duty and conduct shall be regulated, and (2) to append the sanction of punishment to disobedience to such regulation.

In no other sense, I am convinced, is "regulation" here meant. In this sense it is intelligible and apt. This is particularly clear in these two first Acts. The repositories of the power were various, extending to the humblest member of "His Majesty's forces." For them, as for the citizen at large, it was important that in the emergency of war their special duties should be named—as to what should be done or should be avoided; failure or disobedience on the part of the citizen to be ranked as an offence, and an offence to be tried in ways prescribed and punishment to follow. It is not very likely—I suggest this very humbly —that either Parliament itself or the repositories of the power—say the soldier or the sailor—would have ever dreamed that, so far at least as these Acts go, they vested these various authorities, high or humble, with power to suspend the liberties of the citizen or visit him at the official's own hand with punishment before he had been convicted as an offender. If any officer of His Majesty's service or other servant of His Majesty had acted in this overbearing and arbitrary manner the law would very quickly have overtaken such a transgression. The word "regulation" or the words "for securing the public safety and the defence of the realm," would have been an ineffective cover to him for such an act of violence.

To take the simplest case—for example, that of a soldier or sailor or other servant of the Crown—it would have been at once seen that not only private liberty but public order would be imperilled if, under the excuse that the violent action of seizure of the person of a citizen for no offence and without either trial or opportunity of trial, though not falling within the ordinary scope of his powers and duties under the law, was yet justified by the words "for the public safety and the defence of the realm." The law and the Government of the day would have sharply stopped such an inversion and invasion of right, and have limited the action of the delinquent officer to the procedure hitherto known to the law or prescribed by the statute itself,

It remains to be seen whether the words as to public safety and defence have any other or larger meaning in the principal Act, 5 Geo. V, c. 8, which bears the title of "An Act to Consolidate and Amend the Defence of the Realm Acts"—those two Acts, namely, to whose provisions I have ventured to call pointed attention. Those Acts are repealed, but their provisions, shifted about, reappear in the consolidation.

Every part of section 1 of the Act appears to me to be relevant to the problem which the House has to solve. I say this expressly, for I think that the controversy was unduly limited to sub-section 1. That sub-section is as follows:—"1 (1) His Majesty in Council has power during the continuance of the present war to issue regulations for securing the public safety and the defence of the realm, and as to the powers and duties for that purpose of the Admiralty and the Army Council and of the members of His Majesty's forces and other persons acting in his behalf; and may by such regulations authorise the trial by courts-martial, or in the case of minor offences by courts of summary jurisdiction, and punishment of persons committing offences against the regulations, and in particular against any of the provisions of such regulations designed—(a) to prevent persons communicating with the enemy or obtaining information for that purpose of any purpose calculated to jeopardise the success of the operations of any of His Majesty's forces or the forces of his allies or to assist the enemy; or (b) to secure the safety of His Majesty's forces and ships and the safety of any means of communication and of railways, ports, and harbours; or (c) to prevent the spread of false reports likely to cause disaffection to His Majesty or to interfere with the success of His Majesty's forces by land or sea or to prejudice His Majesty's relations with foreign Powers; or (d) to secure the navigation of vessels in accordance with directions given by or under the authority of the Admiralty; or (e) otherwise to prevent assistance being given to the enemy or the successful prosecution of the war being endangered."

The provisions of this sub-section will be presently analysed; but sufficient has already been shown to enable the House to affirm that it is a reproduction, with additions, of the earlier short Acts, and that a further enumeration is given of the things for which regulations are designed, and the breach of which will constitute offences.

Sub-sections 2 and 3 deal with the acquisi-

tion or user of land, factories, or workshops required for Government purposes. They will be hereafter alluded to.

Then occur sub-sections 4, 5, and 6. They are in these terms—"(4) For the purpose of the trial of a person for an offence under the regulations by court-martial and the punishment thereof, the person may be proceeded against and dealt with as if he were a person subject to military law and had on active service committed an offence under section 5 of the Army Act: Provided that where it is proved that the offence is committed with the intention of assisting the enemy a person convicted of such an offence by a court-martial shall be liable to suffer death. (5) For the purpose of the trial of a person for an offence under the regulations by a court of summary jurisdiction and the punishment thereof, the offence shall be deemed to have been committed either at the place in which the same actually was committed or in any place in which the offender may be, and the maximum penalty which may be inflicted shall be imprisonment with or without hard labour for a term of six months or a fine of one hundred pounds, or both such imprisonment and fine; section 17 of the Summary Jurisdiction Act 1879, shall not apply to charges of offences against the regulations, but any person aggrieved by a conviction of a court of summary jurisdiction may appeal in England to a court of quarter sessions, and in Scotland under and in terms of the Summary Jurisdiction (Scotland) Acts, and in Ireland in manner provided by the Summary Jurisdiction (Ireland) Acts. (6) The regulations may authorise a court-martial or court of summary jurisdiction, in addition to any other punishment, to order the forfeiture of any goods in respect of which an offence against the regulations has been committed."

It is not too much to say that so far as Parliament was concerned its intentions were directed anxiously to providing for the prompt and correct treatment according to law of the case of offenders against the regulations. Meticulous regard is paid to proceeding under the Act according to justice; provision is carefully made for trial; and while promptitude is desired, it becomes clear beyond doubt that the right of the subject to trial in accordance with the law shall be guarded and preserved.

One other striking feature of the legislation makes this intention on the part of Parliament luminously clear. It is the passing in a few months' time—namely, on the 16th March 1915—of the Amendment Act, 5 Geo. V, c. 34. The trial of offences is again anxiously handled, and in the same spirit—protection of the rights and liberties of the subject, and to make sure of that beyond a doubt. An offence against the regulations may, instead of being tried by court-martial, be tried by a civil court with a jury. Section 1 (2) is of particular importance. It provides—"(2) Where a person, being a British subject but not being a person subject to the Naval Discipline Act or to military law, is alleged to be guilty of an offence against any regulations made under the Defence of the Realm Consolidation Act 1914, he shall be entitled, within six clear days from the time when the general nature of the charge is communicated to him, to claim to be tried by a civil court with a jury instead of being tried by court-martial, and where such a claim is made in manner provided by regulations under the last-mentioned Act the offence shall not be tried by court-martial: Provided that this sub-section shall not apply where the offence is tried before a court of summary jurisdiction: Provided also that before the trial of any person to whom this section applies, and as soon as practicable after arrest, the general nature of the charge shall be communicated to him in writing and notice in writing shall at the same time be given, in a form provided by regulations under the said Act, of his rights under this section."

I ask myself what language could be more significant, more scrupulously regardful of liberty than this, that on demand of the person arrested he may be tried by jury, that as soon as practicable after arrest he is to be informed of the nature of the charge against him and of all his rights under the section. To all which the reply is made, but all that scrupulous regard for liberty and the forms of trial and law are of no avail to any class of His Majesty's subjects against whom a "regulation" of internment has gone forth. If a British citizen be seized under such a fiat, it is not because he has offended against a regulation—not at all. He has therefore no rights to be informed of any charge against him. Charge against him there is none. Trial—he cannot choose its form, his rights are gone without trial, a "regulation" has gone forth against him. He has been "regulated" out of his liberty and out of every protection of the kind. He must be a passive victim.

The few words founded on here and in the Courts below in support of this supereminent and overriding power have accordingly to be examined. Enough has been said to show that if they bear the construction contended for by the Crown they are singularly at variance with that intention to pay scrupulous regard to private right which is so plain from the scheme and language of these defence Acts as a whole.

These are the words—"His Majesty in Council has power during the continuance of the present war to issue regulations for securing the public safety and the defence of the realm, and as to the powers and duties for that purpose of the Admiralty," &c. A change has occurred in this Consolidation and Amendment Act, not in the important words but in their collocation. The important words referred to are "for securing the public safety and the defence of the realm." In the earlier Acts the regulations were to be "as to the powers and duties of the Admiralty," &c. . . . "for securing the public safety and the defence of the realm." Now the regulations issue direct from the King in Council. It is perfectly plain to me how this occurred. The later details of the section show that regulations as to the powers of officers or individuals might cover ground beyond the

province of those departments or persons. For example the Board of Trade, the Post Office, or the Foreign Office, might well be concerned in or in the carrying out of many of these details. And so the shortest and most comprehensive method was taken, namely, of transferring the general topic dealt with in regulations to the Government of the day, all the rest remaining in substance as before.

It is in my view largely owing to this simple change however, and from the collocation in which the words now stand, that the Courts below have come to their conclusion.

From that conclusion positively stupendous results follow. The words, it is said, are perfectly general—the King in Council is vested with powers to judge of what is for the public safety and the defence of the realm, and to act accordingly. All the rest of those statutes as to trial, intimation, notification of rights—every provision for the legal disposal of the question affecting liberty—all this is on one side, the side of offence against a regulation; on the other side stands this supereminent power of the Government of the day. In the exercise of that power the plainest teachings of history and dictates of justice demand that on the one hand Government power and on the other individual rights—these two—shall face each other as party and party. But it is not so, so it is said; here the Government as a party shall act at its own hand, the subject as a party shall submit and shall not be heard; the Government is at once to be party, judge, and executioner. When, so is the logic of the argument, Parliament took elaborate pains to make a legal course and legal remedy plain to the subject as to all the regulations which were stated in detail, there was one thing which Parliament did not disclose, but left courts of law to imply, namely, that Parliament, all the time and intentionally, left another deadly weapon in the hands of the Government of the day under which the remainder of those very Acts, not to speak of the entire body of the laws of these islands protective of liberty, would be avoided. As occasion served the Government of the day despotic force could be wielded, and that whole fabric of protection be gone. I do not believe Parliament ever intended anything of the kind. We are not in the region of subtlety or obliquity. Holding the views I do of this Parliamentary transaction, and forming these from the language employed, I cannot attribute to the Legislature the intention alleged.

I proceed from the collocation and the manner in which that collocation was achieved to consider the words themselves. There are two views of them. The one favours complete generality; this has been accepted by the Courts, and to that and its importance I have just alluded.

On the contrary, I humbly think it impossible to look at the statute as a whole without seeing that the whole structure must stand together—that the power in the Government to issue regulations is, within the general sphere and purpose of public safety and defence, to prescribe a line of duty and course of action for the citizens so as in this time of emergency to bring their private conduct into co-operation for that general end. This and this alone is what "regulation" means. It constitutes *pro tanto* a code of conduct. In following the code the citizen will be safe; in violating it the citizen will become an offender, and may be charged and tried summarily or by a court-martial or a jury, and as for a felony. This is perfectly simple. It squares with all the rest of the legislation and destroys none of it. It sacrifices no constitutional principle. It introduces nothing of the nature of arbitrary condemnation or punishment. The Acts become a help and guide as well as a warning to the lieges.

I have now described and dealt with the origin and collocation of the important words of the statute falling to be construed, and have stated the construction of these words which appears to my mind to be so plain. But I am called upon both by respect and duty to inquire—and this very anxiously—into that other view of the case which has been upheld by judicial pronouncement. The case is decided not upon specialty but upon principle, and how far reaching that principle is will presently be seen.

It is well to gather up the things about which there can be no dispute. The power to issue regulations for the public safety and for the defence of the realm is vested by the Act in His Majesty in Council. In the course of the discussion this was incidentally alluded to in connection with the Royal Prerogative. It has nothing to do with the Royal Prerogative. If once again, and ever so slightly, that prerogative gets into association with executive acts done apart from clear Parliamentary authority it will be an evil day. That way lies revolution. Do not let the thing which has been done—in my opinion a violent thing—be associated for one moment with, or at any point be said to be supported by, Royal Prerogative. Its validity depends upon the Act of Parliament alone.

The form in modern times of using the Privy Council as the channel of executive for statutory power is measured, and must be measured strictly, by the ambit of the legislative pronouncement; and that channel itself, seeing that under the Constitution His Majesty acts only through His Ministers, is simply the Government of the day. The author of the power is Parliament; the wielder of it is the Government. Whether the Government has exceeded its statutory mandate is a question of *ultra* or *intra vires* such as that which is now being tried. In so far as the mandate has been exceeded there lurk the elements of a transition to arbitrary government and therein of grave constitutional and public danger. The increasing crush of legislative efforts, and the convenience to the Executive of a refuge to the device of Orders in Council, would increase that danger tenfold were the judiciary to approach any such action of the Government in a spirit of compliance rather than of independent scrutiny. That way also would lie public unrest

and public peril. On all this there is no disputing.

This reduces to comparative unimportance those apparent safeguards derived, not from the Act of Parliament, but inserted into the "regulations" themselves. The language of the regulation, for instance, "where it appears to the Secretary of State" and "on the recommendation of a competent naval or military authority" is simply equivalent to a declaration that the delegate to judge and issue is one department of Government, and that will of course act in accord with and on the recommendation of those other departments who are presumably versed in the situation. The Government remains master. And a proviso is made for due consideration by an advisory committee of any representations against the Order, but it was frankly admitted that the Secretary of State is not bound to comply with the advice received. He may do as he likes. Again the Government is master.

As these considerations are revolved the importance of the issue for liberty does not wane. The interpretation put upon this Government power to issue regulations for safety and defence is that of perfect generality. Is this generality limited? it was asked. Yes, replied the Crown; the limitations are two, and two only. In the first place, regulations can only be issued during the war—a limitation in time. In the second place, they can only be issued for the public safety and for the defence of the realm—a limitation of purpose. But who is to judge of that purpose? As to what acts of State are promotive or regardful of that purpose, can a court of law arrest the hand of a responsible executive? Extreme cases may be figured in which personal caprice and not public considerations might be imagined, but in everything from the lighting of a room to the devastation of a province no court of law could dare to set up its judgment on the merits of an issue—a public and political issue—of safety or defence. So that this limitation as a legal limitation is illusory. The only one that remains is that of time. "During the war" the Government has been allowed at its own hand to do anything it likes. "Regulation" covers all. The issue of decrees, arrests, proscription, imprisonment, internment, exile—all are covered comprehensively by the word "regulations." Such an issue is made on grounds which are not in the region of law. Judges are not fitted to interpose on these; a judgment, nay, possibly even a comment, upon them would besmirch the Bench. That course which alone is safe is—leave the domain of public need or claim or advantage to the undisturbed possession of Parliament and its delegates. I accordingly agree that a plea put forward by a subject against a government grounded upon an appeal to courts of law as to public requirements would be unavailing in the region of *ultra vires*. Once the overmastering generality of the principle of regulation be affirmed as has been done all is lost; the law itself is overmastered. The only law remaining is that which the Bench must accept from the mouth of the Government—"Hoc volo, sic jubeo; sit pro ratione voluntas."

I have already suggested that "regulation" means something much more limited—as I think much more reasonable—and certainly more in accordance with the ordinary meaning of the word, than all this. Regulation means, as I have ventured to set forth, the formulation of rules in the interests of public safety or defence—rules of action, behaviour, and conduct—in obedience to which the citizens may co-operate for these ends, and for disobedience to which they may be punished. But the regulation now challenged is not of that character. It is not the formulation of a rule of action, behaviour, or conduct to be obeyed by the citizen, but it is for the summary arrest and detention of his person, grounded, and grounded alone, on the subject's hostile origin or association. The one or the other might, it is to be presumed in the Government's favour, form a motive, a temptation, a spring, all in a region incapable of proof but prolific in suspicion, for something inimical to public safety or defence. The subject may never have dreamed of such inimical conduct; he may be ardently attached to this country's interests and cause, or he may not. Let the power go forth though it may involve the innocent with the guilty, and in such a way that that issue of innocence or guilt can never be determined; let the public end sanctify, as may be the case, this private wrong; the generality of a power to issue a regulation covers the case; it is *intra vires*.

We shall have to consider in a little while how much on this principle of generality—this principle that during the war the Government may do what it likes—how much is repealed. Let us pursue the inquiry as to how much the power embraces. Against regulations in their generality as thus construed nothing can stand. No rights, be they as ancient as Magna Charta, no laws, be they as deep as the foundations of the constitution—all are swept aside by the generality of the power vested in the executive to issue "regulations." *Inter arma silent leges.*

I observe that this is supported by the following argument—that the provisions of the section embrace two parts, prevention and punishment, that these are two separate things, and that what has been done here is prevention and is not punishment. This last may sufficiently surprise those who are subjected to it, but "stone walls do not a prison make." They are being cared for, watched over, prevented, not punished. Very different, and very properly different, from this was the view of Blackstone, Commentaries I, 1—"The confinement of the person in any wise is an imprisonment. So that the keeping a man against his will in a private house, putting him in the stocks, arresting or forcibly detaining him in the street, is an imprisonment."

Further, I am humbly of opinion that the attempted distinction fails, and that in no event could it have the slightest bearing upon the point of construction to be determined.

For it is when, and only when, the section comes to categorise the heads and particulars of public safety and defence to which the regulations might be directed that the word "prevent" occurs. The regulations are for preventing certain things and for securing other things—for preventing (1) communication with the enemy; (2) spreading false reports, &c.; and (3) assisting the enemy; and for securing (1) safety of forces, ships, railways, or harbours; (2) navigation according to Admiralty direction. This is the distinction—if it be a distinction—between preventing and securing. But when punishment is dealt with such a distinction no longer holds; and if there be disobedience to regulation upon all or any one of these heads and particulars, whether for preventing danger or securing safety, then punishment may follow. The statute is careful to prescribe punishment for all. Punishment is not distinguished from either preventing or securing; it applies to disobedience or offence under both the latter heads alike.

How then, I respectfully ask, How then can it be thought possible to construe the section as meaning not only the grant of a power of prevention from doing certain things, which done shall be punishable, but the reserve of some other and supereminent power of prevention, which is distinguished from punishment? There is no such reserve and no such distinction in the Act of Parliament. There might have been, but there is not; and the fact that this is so is a strong confirmation of the view that Parliament never intended the vesting of the Executive with arbitrary power, but gave power to set up a code of conduct and action and to reach the region of punishment when, and only when, that code was broken.

I pursue the consideration of the question how much the principle of generality, thus defended, embraces. Having limited the principle in the matter of time, and there being no other limitation, let us see what Government may do under this head of "Regulation," and start with the one in hand. It is, "in view of the hostile origin or associations" of any person, to intern him without trial or chance of trial—by force, and not by process of law.

But does the principle, or does it not, embrace a power not over liberty alone but also over life? If the public safety and defence warrant the Government under the Act to incarcerate a citizen without trial, do they stop at that, or do they warrant his execution without trial? If there is a power to lock up a person of hostile origin and associations because the Government judges that course to be for public safety and defence, why, on the same principle, and in exercise of the same power, may he not be shot out of hand? I put the point to the learned Attorney-General, and obtained from him no further answer than that the graver result seemed to be perfectly logical. I think it is. The cases are by no means hard to figure in which a Government in a time of unrest, and moved by a sense of duty, assisted, it may be, by a gust of popular fury, might issue a regulation applying, as here, to persons of hostile origin or association, saying, "Let such danger really be ended and done with; let such suspects be shot." The defence would be, I humbly think, exactly that principle, and no other, on which the judgments of the Courts below is founded, namely, that during the war this power to issue regulations is so vast that it covers all acts which, though they subvert the ordinary fundamental and constitutional rights, are in the Government's view directed towards the general aim of public safety or defence.

Under this the Government becomes a Committee of Public Safety. But its powers as such are far more arbitary than those of the most famous Committee of Public Safety known to history. It preserved a form of trial, of evidence, of interrogations. And the very homage which it paid to law discovered the odium of its procedure to the world. But the so-called principle—the principle of prevention, the comprehensive principle—avoids the odium of that brutality of the Terror. The analogy is with a practice more silent, more sinister—with the *lettres de cachet* of Louis Quatorze. No trial—proscription. The victim may be "regulated"—not in his course of conduct or of action, not as to what he should do or avoid doing. He may be regulated to prison or the scaffold. Suppose the appellant had been appointed for execution. Public outcry, public passion, public pity—these I can conceive; but I cannot conceive one argument upon the legal construction of this Act of Parliament that would have been different from the one which is now affirmed by courts of law. It is this last matter with which these are concerned. In my humble opinion the construction is unsound. I think that if Parliament had intended to make this colossal delegation of power it would have done so plainly and courageously, and not under cover of words about regulations for safety and defence. The expansions of such language into the inclusion of such a power appear to me to be unwarrantably strained.

The use of the Government itself as a Committee of Public Safety has its conveniences, has its advantages. So had the Star Chamber. "The Star Chamber," says Maitland, "examining the accused and making no use of the jury, probably succeeded in punishing many crimes which would otherwise have gone unpunished. But that it was a tyrannical court, that it became more and more tyrannical, and under Charles I was guilty of great infamies, is still more indubitable." And then occur his memorable words—"It was a court of politicians enforcing a policy, not a court of judges administering the law."

There is the basic danger. And may I further emphatically observe that that danger is found in an especial degree whenever the law is not the same for all, but the selection of the victim is left to the plenary discretion whether of a tyrant, a committee, a bureaucracy, or any other depository of despotic power. Whoever administers it, this power of selection of a class and power of selection within a class is the negation of

public safety or defence. It is poison to the commonwealth.

For within the range even of one regulation—say to affect "persons of hostile origin or association"—no one can say where the axe will fall. That description applies in all ranks and classes of society. That is why I feel constrained to dissent respectfully from the suggestion that in administering this power over liberty we ought to trust the Government. With a change of Government, even during the war, this very engine may be turned against its own authors. There may be such a change in the extent and lines of such a Government's discretion as to turn the engine against new bodies of citizens, a new selection within the same class, or a new selection of a class. Such zigzags and ups and downs in the region of individual liberty are on this construction possible without even altering the words of an existing regulation, once you are committed to the view that it falls within a delegation, so immense, implied in words from the Act.

And once you have abandoned the line of safety which I have sketched, namely, confining regulations to rules of conduct to be obeyed with safety or punished after trial for the breach—once that is abandoned, how far may you not go? Once a discretion over all things and persons and rights and liberties, so as to secure public safety and defence, what regulations may issue? This one is founded on "hostile origin or associations." It enters the sphere of suspicion, founded not on conduct but on presumed opinions, beliefs, motives, or prepossessions arising from the land from which a person sprang. This is dangerous country—it has its dark reminders. It is the proscription, the arrest of suspects, at the will of men in power vested with a plenary discretion. If the power to issue regulations meant thus to warrant a passage from proof to suspicion and from the sphere of action to the sphere of motive or the mind, let us think how much this involves.

No far-fetched illustrations are needed, for there is something which may and does move the actions of men often far more than origin or association, and that is religion. Under its influence men may cherish beliefs which are very disconcerting to the Government of the day, and hold opinions which the Government may consider dangerous to the safety of the realm. And so, if the principle of this construction of the statute be sound, to what a strange pass have we come? A regulation may issue against Roman Catholics—all, or say, in the south of Ireland, or against Jews—all, or say in the East of London—they may lose their liberty without a trial. During the war that entire chapter of the removal of Catholic and Jewish disabilities, which has made the toleration of Britain famous through the world, may be removed—not because her Parliament has expressly said so, but by a stroke of the pen of a Secretary of State.

Vested with this power of proscription, and permitted to enter the sphere of opinion and belief, they, who alone can judge as to public safety and defence, may reckon a political creed their special care, and if that creed be socialism, pacifism, republicanism, the persons holding such creeds may be regulated out of the way, although never deed was done or word uttered by them that could be charged as a crime. The inmost citadel of our liberties would be thus attacked. For, as Sir Erskine May observes, this is "the greatest of all our liberties—liberty of opinion."

All this, upon analysis, is what the Government through its law officers claim at the Bar of this House, and what is involved in the construction adopted by the Courts below. In my opinion the words of the statute cannot be stretched to bear anything so repugnant to liberty and the law.

I pass now from what the Act says and does to consider what, upon the vast implication given to its few words, it repeals.

I do not think it any mistake to suggest that in substance it repeals the Habeas Corpus Acts, the thirty-first of Charles II or the one hundredth of George III. The Habeas Corpus Acts are, it is true, procedure Acts. In one sense they confer no rights upon the subject, but they provide a means whereby his fundamental rights shall be vindicated, his freedom from arrest except on justifiable legal process shall be secured, and arbitrary attack upon his liberty and life shall be promptly and effectually foiled by law. Formerly in this case the writ of *habeas corpus* was allowed. It is now being tried. But what has been done by the Courts below is to give due formal respect to the procedure of remedy, but to deny the remedy itself by inferring the repeal of those very fundamental rights which the remedy was meant to secure. This is to allow the subjects of the King by law to enter the fortress of their liberties only after that fortress has been by law destroyed.

As will be seen in a moment, it is not that the *habeas corpus* has been repealed; it is not, as in so many trying periods of history, that it has been suspended. There is a repeal and a suspension much more drastic than that. There is a constructive repeal which has, so far as I am aware, no parallel in our annals—a getting behind the *habeas corpus* by an implied but none the less effective repeal of the most famous provisions of Magna Charta itself. It is well settled that once liberation under the writ has been granted "the legality of that discharge could never be brought in question" (*Cox* v. *Hakes*, 15 A.C. 514), but in pronouncing judgment to that effect Lord Halsbury used language which I here adopt on the wider problem now in hand—"Your Lordships are here determining a question which goes very far indeed beyond the merits of any particular case. It is the right of personal freedom in this country which is in debate, and I for one should be very slow to believe, except it was done by express legislation, that the policy of centuries has been suddenly reversed.

I go accordingly at once to the notable thirty-ninth and fortieth chapters of Magna Charta wrung from John in June 1215.

Mr M'Kechnie (p. 376) translates them

thus. His version is of set purpose literal—"XXXIX. No freeman shall be taken or [and] imprisoned or disseised or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or [and] by the law of the land. XL. To no one will we sell, to no one will we refuse or delay right or justice."

The learned author justly observes—"Its object was to prohibit John from resorting to what is whimsically known in Scotland as 'Jeddart' justice. It forbade him for the future to place execution before judgment." And on the words "nec super eum ibimus nec super eum mittemus" he remarks in the same spirit—"Their object was to prevent John from substituting violence for legal process, he must never again attack *per vim et arma* men unjudged and uncondemned."

If there be any who in this time of storm and stress think these chapters useless reading or their lesson out of date I am not of their number. I remember the penetrating judgment of Hallam on that very topic. After citing these chapters of the Charter that great author observes—Middle Ages, ii, 449—"It is obvious that these words interpreted by any honest court of law convey an ample security for the two main rights of civil society. From the era therefore of King John's Charter it must have been a clear principle of our Constitution that no man can be detained in prison without trial. Whether courts of justice framed the writ of *habeas corpus* in conformity to the spirit of this clause, or found it already in their register, it became from that era the right of every subject to demand it. That writ, rendered more actively remedial by the Statute of Charles II, but founded upon the broad basis of Magna Charta, is the principal bulwark of English liberty; and if ever temporary circumstances or the doubtful plea of political necessity shall lead men to look on its denial with apathy, the most distinguishing characteristic of our Constitution will be effaced."

Speaking for myself, and again coming back to the words to be construed—"His Majesty in Council has power during the continuance of the war to issue regulations for securing the public safety and the defence of the realm"—I decline to believe that Parliament ever did or intended to do by these words those stupendous things—to remove "the two main rights of civil society," to repeal "the clear principle of our Constitution that no man can be detained in prison without trial," or to efface "the most distinguishing characteristic of our Constitution."

In *Darnel's* case Coke's great argument had embraced the famous propositions—"(1) No man can be imprisoned upon will and pleasure of any but a bondman or villein. (2) If a freeman of England might be imprisoned at the will and pleasure of the King or by his command he were in worse case even than a villein . . . and (3) A freeman imprisoned without cause is civilly dead." And in commenting on the case so staid an author as Broom delivers himself (Constitutional Law, 223) thus—"This great constitutional remedy [the writ of *habeas corpus*] rests upon the common law declared by Magna Charta and the statutes which affirm it; rests likewise on specific enactments, ensuring its efficiency, extending its applicability, and rendering more firm and durable the liberties of the people. The right to claim it cannot be suspended even for one hour by any means short of an Act of Parliament."

How hollow and worthless to the appellant is the concession of a trial of his writ of *habeas corpus* when the basis of his possible liberation is constructively denied. The method is not unknown to English history, but history in darker times—the method of despotism, the tyrannical fiat of the King in Council, and compliance to that as law.

It brings back to mind the constitutional struggle of 1628 and the very language of the Petition of Right—"And whereas," says chapter ii, "alsoe by the statute called the 'Great Charter of the Liberties of England,' it is declared and enacted that no freeman may be taken or imprisoned or be disseised of his freehold or liberties or his free customs or be outlawed or exiled or in any manner destroyed but by the lawful judgment of his peeres or by the law of the land. . . . Nevertheless [chap. v] against the tenor of the said statutes, and other the good lawes and statutes of your realme to that end provided, divers of your subjects have of late been imprisoned without any cause shewed; and when for their deliverance they were brought before your justices by your Majesty's writtes of *habeas corpus*, there to undergoe and receive as the court should order, and their keepers commanded to certifie the causes of their detayner, no cause was certified but that they were detained by your Majesty's speciall command certified by the Lords of your Privie Councell, and yet were returned backe to severall prisons without being charged with anything to which they might make answere according to the lawe. They do [chap. 8] therefore humblie pray your Most Excellent Majestie . . . that no freeman in any such manner as is before mentioned be imprisoned or detained." The grant of this petition was wrung from Charles I, and it entered the statutes of the realm. And this too, this second charter of liberty, has been borne to the ground by the tremendous sweep of an implied repeal.

The list need not be enlarged; it would include the Bill of Rights itself.

But I will venture to cite one Scottish Act which ranks deservedly high as a charter of fundamental liberties and a security against prolonged incarceration without being brought to trial. It is the Act of 1701. It was entitled "An Act for Preventing Wrongful Imprisonment and against Undue Delay in Trials."

Scotland had been greatly exercised over the excesses of arbitrary power of the later Stuarts, and liberty and life had been ruthlessly sacrificed to arbitrary power. It had no Magna Charta, no Habeas Corpus Act, but it had a loosely defined system of making application for liberation grounded on

the right to be duly and properly charged, and to be tried with reasonable promptitude. By the Act of 1701—not to enter into details—it was provided that a person incarcerated could run his letters, the effect being to charge all concerned, both prosecutor and courts of law, that tried he must be within sixty days, and if not so tried he must be set free. A further period of forty days was allowed in which new criminal letters could run. Should that period expire without the trial having been conducted and actually brought to a verdict, then on the one hundred and first day the subject was free, and free for ever, from the charge. Magistrates or gaolers who dared to detain him were guilty of wrongous imprisonment and for them punishment was prescribed. The Act has always been a prized constitutional possession of the Scottish people. This case is English, but for aught I know there may have been in Scotland similar cases; persons may have been interned there as here for a period of eighteen months under a fiat of the Secretary of State. And I presume that that arbitrary act would be defended under the same argument that constitutional rights and liberties however fundamental and however prized are all under eclipse because a regulation for public safety and defence has been expounded and construed to mean a repeal of, *inter alia*, the Act of 1701. I repeat that I think this brief expression in the recent Act will not bear this extraordinary strain.

Nor do I overstate the value attached to the statute even by the most learned authors. Burnet (Treatise on Various Branches of the Criminal Law) is loud in the praise of the Act. In his commentary on it he says—"The objects indeed of this statute are of the first importance to the security and happiness of every individual of the community, inasmuch as the injury of unjust and illegal confinement, while it is often the most difficult to guard against, is in its nature the most oppressive and the most likely to be resorted to by an arbitrary Government." He re-echoes the words of Blackstone, saying that the Act of 1701 may justly be termed the Magna Charta of Scotland. And he sums up his eulogy by observing that the Act "may justly be considered as more favourable to the subject than the boasted Habeas Corpus Act of England." No one will accuse Baron Hume of having been the enemy of vigorous government. But even he says, apropos of the great statute—"It is obvious that by its very constitution every court of criminal justice must have the power of correcting the greatest and most dangerous of all abuses of the forms of law, that of the protracted imprisonment of the accused, untried, perhaps not intended ever to be tried (the very case that is now before your Lordships' House)—nay, it may be, not informed of the charge against him or the name of the accuser." How strangely in Hume's ears would have sounded the argument that a law had been passed giving power to the King in Council to issue regulations for public safety and defence, and that this meant the repeal of the great Act itself and the reintroduction into our Constitution and our jurisprudence of "the greatest and most dangerous of all abuses of the forms of law."

I pass from the subject of repeal to the further proposition that what has been done on the implication supposed is alien to the practice of the Constitution. On many occasions in this island has the attention of the Legislature been called to the subject of exceptional legislation in view of foreign attack, political unrest, or civil war. And the mode of dealing has been frank, firm, and open, namely, a temporary suspension of the Habeas Corpus Act. When the authority of the King in Council was stretched out to interfere with liberty or life and to undermine the securities thereof in Magna Charta and the Habeas Corpus Acts public unrest might grow, even a dynasty might accelerate its own ruin, but Parliament would reassert itself and sharply bring the peril to an end. But when Parliament itself devoted its energies to the task it took it up in no casual manner and left its action in no form so covert that the Bench had to expand inferentially its meaning.

Blackstone is quite clear upon the practice of the Constitution. He (I, 1) searchingly treats the cases both of liberty and life as tests, both and equally, of one and the same principle, the very principle which is under scrutiny in the present case. "To bereave a man of life, or by violence to confiscate his estate without accusation or trial would be so gross and notorious an act of despotism as must at once convey the alarm of tyranny throughout the whole kingdom, but confinement of the person by secretly hurrying him to gaol, where his sufferings are unknown or forgotten, is a less public, a less striking, and therefore a more dangerous form of arbitrary government. And yet sometimes when the State is in real danger this may be a necessary measure. But the happiness of our Constitution is that it is not left to the executive power to determine when the danger is so great as to render this expedient, for it is the Parliament only or legislative power that whenever it sees proper can authorise the Crown by suspending the Habeas Corpus Act for a short and limited time to imprison suspected persons without giving any reasons for doing so."

It would take too long to enumerate the instances in English history in which this course has been followed. No instance was advanced in argument when the method was not adopted but the end reached by other means. But I will venture to recount one striking case in the close of the eighteenth century — interesting because the cases of England and Scotland were each distinctively treated, and in both the constitutional rights guaranteed by statute were recognised and temporary suspension and repeal were accomplished, overt and express.

Every real mind in Europe was stirred by the events of 1789 to 1793, and the execution of Louis Seize and his Queen in the latter

year may have precipitated parliamentary action here. But it was careful action. In 1794 the Act 34 Geo. III was passed. It proceeded upon the preamble — "Whereas a traitorous and detestable conspiracy has been formed for subverting the existing laws and Constitution and for introducing the system of anarchy and confusion which has so fatally obtained in France." It enacted for England that persons that are or shall be in prison by a warrant of the King and six Privy Councillors, or by warrant of a Secretary, for treason or treasonable practices may be detained "without bail or mainprize" till the 1st February 1795, and no judge should release them, "any law or statute to the contrary notwithstanding." This was plain language. It followed constitutional practice. For some months and in defined cases the Constitution was suspended.

How was Scotland dealt with? In 1707 the Union of the Parliaments had been effected, but the great Act of the Scotch Parliament in 1701 was now, in 1794, fully and separately recognised. It was enacted that the Act made in Scotland in the year of our Lord 1701 "in so far as the same may be construed to relate to cases of treason and suspicion of treason be suspended" until the same fixed date, viz., the 1st February 1795, and then the following notable proviso follows, viz. — "Provided always that from and after the said 1st February 1795 the said persons so committed shall have the benefit and advantage of all laws and statutes in any way relating to or providing for the liberty of the subjects of this realm, and that this present Act shall continue until the said 1st February 1795, and no longer."

That is an ordinary and a fair sample of our constitutional practice, and of the express, the watchful, the clearly limited, and the scrupulously careful handling of our fundamental liberties whenever these are meant to be affected. Judged in the light of that practice the wide and entirely inferential construction of words about regulations for safety and defence which has been adopted by the Courts below seem to be the last resort of interpretation and to be strikingly condemned.

And before I leave the topic I may observe, as bearing on the intention of the Legislature, that where in this very Act of 1914 suspension or repeal or a transaction of that nature was truly meant Parliament knew perfectly well how to accomplish its object and did so. By the second sub-section of the very section 1 which is under construction it is provided that "any such regulations may provide for the suspension of any restrictions on the acquisition or user of land" and the Defence and other Acts, and may supersede any enactments, &c., as to pilotage. It is to my mind inconceivable that Parliament, expressly suspending and repealing certain laws about property or pilotage, should have refrained from doing so, if it had meant to do so, in the infinitely weightier matters of the law, and left this suspension and repeal of these to be implied. I do not think on ordinary principles of interpretation such a thing as this vast suspension and repeal can be inferred by law.

The House is in possession of my construction of the words giving power to the Government to make regulations. That construction is simple. It does violence to no language. Under it regulations play their useful and their helpful part. It is entirely consistent with the rest of the Act. It operates no repeal of any statutes of the realm. It leads to no startling or absurd results and to no upheaval of constitutional right.

In every one of these particulars it appears to be in accord with those principles of the interpretation of statutes which are embedded in our law and are unquestionable.

Differing as I unfortunately and respectfully do from your Lordships, it would not be right that I should fail to add that the expanded construction adopted by the Courts below appears to me in every one of these particulars to be inconsistent with those principles of interpretation which have been long recognised. It is, I humbly think, not simple, but strained. It is repugnant to the rest of the Act. It operates repeal of statute on an important and vast scale. It leads to startling and absurd results and to an upheaval of constitutional right.

My reasons and exposition on each of these topics are before the House. I do not think the application of legal doctrine to them is doubtful. To that I come, taking them in their order.

In the first place, I strongly protest against the view of the Courts below of the words of the Act being taken as a literal view. The appellant has been (1) interned, (2) without a trial, (3) because he is of hostile origin or associations. Parliament never said in words any one of those things. They are and are alone inferences—inferences from the delegation of a power—a power to make regulations for safety and defence. As to what may be done under such a power may be matter of far-reaching inference or wide and deep speculation, but these things do not touch the literal rule, the rule as to grammatical and ordinary sense of the actual words employed in the Act itself—the rule of Lord Wensleydale in *Gray* v. *Pearson*, 1857, 6 H.L.C. 106. That rule does not go far in any case of difficulty, but in so far as it may be held to have a bearing on this case it lends conspicuous force to the observation that if Parliament had really meant to sanction internment without trial for the cause assigned it could have said so without the slightest difficulty, and not left a point which I think is so fundamental to be reached by inference.

I may add that, holding as I do that Parliament never intended to construct an instrument of violent and arbitrary power, but to do a much more helpful and reasonable thing, I should have come to the same conclusion even though the language had been much more plain and definite than it is. To adopt the familiar language of Lord Selborne in the *Caledonian Railway* v. *North British Railway Company*, 6 A.C.

at p. 122—"The more literal construction ought not to prevail . . . it is opposed to the intentions of the Legislature, as apparent by the statute; and if the words are sufficiently flexible to admit of some other construction by which that intention will be better effectuated." I refer also on this head to the judgment of Jessel, M.R., and James, L.J., in *ex parte Walton; re Levy*, 17 Ch.D. 746.

I turn from literal construction—which is not this case—to ask whether the construction of inference or implication is consistent with or repugnant to the rest of the Act? So consistent is the interpretation which I have ventured to put upon them—namely, that regulations are the formulation of rules for the citizen's action and conduct, in obedience to which he shall be safe and in disobedience to which he shall on trial be punished, that all the rest of the Act fits in with this and makes the requisite provisions in great detail for crime and punishment accordingly. So repugnant to the interpretation finding favour in the Courts below, the interpretation that a power to issue regulations for safety and defence covers every power over the citizens which the Government may judge expedient for the object in view, that the entire remainder of the Act becomes surplusage. For everything could have been done by regulation. And indeed it does not stop there. For nine-tenths of the labours of Parliament are surplusage, all are covered by the same principle, all could be covered by "regulations." This construction humbly appears to me to be opposed to legal principle. Two constructions are available—one of harmony and consistency, the other of overriding and repugnancy. In my view, in all such cases it is reasonable and according to law that the former be preferred.

Upon the last point—namely, that the construction upheld implies a repeal of the ancient liberties and right of our people and of statutes both north and south of the Tweed which have been their protection in the enjoyment of these, your Lordships have already had a statement of my views. No repeal like this, or in this manner, at once so sweeping and so covert, has ever been accomplished in the modern history of this island. That Parliament should have entertained such an intention of repeal I do not believe; that it would have recoiled from putting such an intention of repeal into words, I can well understand. The law on such a subject is beyond doubt or question. Such an intention is the very last resort of a court of construction.

Your Lordships have already heard my citation from Blackstone. It holds the field. It still represents, in my opinion, both the law of the land and the practice of the Constitution. Both may have been revolutionised by the stupendous repeal implied from the words of this Act. I do not think there is any such repeal, either in word, in implication, or in intention.

In the latest edition of Maxwell on Statutes, p. 268, I find the law exactly as I view it stated thus—"Repeal by implication is not favoured. A sufficient Act ought not to be held to be repealed by implication without some strong reason. It is a reasonable presumption that the Legislature did not intend to keep really contradictory enactments in the statute book, or, on the other hand, to effect so important a measure as the repeal of a law without expressing an intention to do so. Such an interpretation therefore is not to be adopted unless it be inevitable. Any reasonable construction which offers an escape from it is more likely to be in consonance with the real intention."

The construction I have ventured to propose appears to me to be not unreasonable, but to square with every familiar and accustomed canon. I think that the judgment of the Courts below is erroneous, and is fraught with grave legal and constitutional danger. In my opinion the appeal should be allowed, the regulation challenged should be declared *ultra vires*, and the appellant should be set at liberty.

LORD WRENBURY—The question is whether Regulation 14 (*b*) under the Defence of the Realm Consolidation Act 1914 (5 Geo. V, c. 8) is *ultra vires*. I turn to the Act at once to see what upon its terms are the characteristics—the scope, the purpose, the limits, and the character—of the regulations which the Act allows. I shall then go on to inquire whether the regulation in question falls within them.

Section 1 (1) of the Act of 1914 is an empowering section. It gives power to His Majesty in Council within a limit of time—"during the continuance of the present war"—to issue regulations for a defined purpose—"for securing the public safety and the defence of the realm." It goes on to provide that the regulations may contain provisions "as to the powers and duties for that purpose" of certain stated administrative bodies and persons. It adds that the regulations may authorise the trial in defined ways and the punishment of persons committing offences against the regulations, and in particular against any of the provisions of regulations designed to prevent certain acts or secure certain results described under five heads (*a*) to (*e*).

This is a section (1) empowering the issue of regulations for a defined purpose; (2) providing machinery for effectuating the purpose; (3) adding means for enforcing the purpose; and (4) stating in heads (*a*) to (*e*) particular instances of acts to be prevented and results to be secured. Thus Nos. (2), (3), and (4) are subsidiary provisions for illustrating and effectuating the dominant purpose No. 1.

This Act repealed and consolidated with amendments two previous Acts—namely, 4 and 5 Geo. V, c. 29, and 4 and 5 Geo. V, c. 63. For the present purpose the first material observation upon these is that the Consolidating Act altered the sequence of the language and enlarged in a material particular the effect of the Acts which it repealed. The Act 4 and 5 Geo. V, c 29, did not commence as does the Act now in force with the dominant words giving authority "to issue regulations for securing the public

safety and the defence of the realm." It commenced by authorising regulations "as to the powers and duties [of defined bodies and persons] for securing the public safety and the defence of the realm." Upon the latter words a contention might have been open that the authority was only to make regulations controlling existing powers and duties. That contention is not open upon the words of the present Act. There is a plain authority to issue regulations for a purpose. Those are the initial and dominating words.

A second material observation is that the Act now in force extended the particular instances which in the former Act were two only, namely, (*a*) and (*b*), by enlarging (*b*) and adding three more, (*c*), (*d*) and (*e*). The additions enlarge by way of illustration, if it were needed, the field over which the regulations may extend. For all these (*a*) to (*e*) may be included in the regulations. The statute says so.

So far I am satisfied—provisionally, at any rate—that the word "regulations" in this statute does not connote something in the nature of a by-law or a rule of procedure or administration, but something much greater. The "regulation" may create an offence, *e.g.*, obtaining information such as mentioned in sub-clause (*a*), and may fix the punishment for it. This is enactive.

Looking further into the statute I find this view of the nature of a "regulation" confirmed in a manner beyond possibility of dispute. A "regulation" may affect a previously existing statute. For under section 1 (2) a "regulation" may provide for the suspension of restrictions imposed by existing statutory enactments. Again, under section 1 (6) a "regulation" may order the forfeiture of goods.

There is room for difference of opinion whether what I may call legislation by devolution is expedient; whether a statute ought not to be self-contained; whether it is desirable that a statute should provide that regulations made by a defined authority or in a defined matter shall themselves have the effect of a statute. But I think it clear that this statute has conferred upon His Majesty in Council power to issue regulations which, when issued, will take effect as if they were contained in the statute.

The appellants, however, argue that an authority "to issue regulations for securing the public safety and the defence of the realm" does not authorise preventive detention, which is, they say, imprisonment without trial. They contend that there must be express words where the liberty of the subject is to be affected, that the general words of this statute are not enough. I find no ground upon which this contention can be supported. For instance, the statute says in so many words that a regulation may prevent persons communicating with the enemy—sub-clause (*a*). What is the man to be tried for before he is so prevented? The very purpose is not to punish him for having done something, but to intercept him before he does it and to prevent him from doing it. What limit does the statute place upon the steps that may be taken so as to prevent him? There is no limit. No doubt every statutory authority must be exercised honestly. There is, I conceive, no other limit upon the acts that the regulations may authorise to achieve the defined object.

These being the provisions of the statute, Regulation 14 (*b*) is one which provides that where, on the recommendation of a defined authority, "it appears to the Secretary of State that for securing the public safety or the defence of the realm it is expedient, in view of the hostile origin or associations of any person" to intern him he may be interned. The appellant is interned under an order made under that regulation. He says the result is that the Habeas Corpus Act is in substance suspended when it has not been suspended in fact. This is a complete misapprehension. If his case were that he had neither hostile origin nor associations he could have his writ of *habeas corpus* on the ground that that was so, and if he established the fact he would be discharged. The application before your Lordships is for a writ of *habeas corpus*, and the ground advanced is that Regulation 14 (*b*) is *ultra vires*. If that were established he would be discharged. The Habeas Corpus Act is in full force, but this statute and the regulations made under it have provided machinery for achieving in a way other than that of suspending the Habeas Corpus Act the preventive detention of persons who are not alleged to have committed any offence, but whom it is desired to prevent from committing one. The regulation is, in my judgment, one within the authority given by the Act. The contention that it is *ultra vires* fails. It results that this appeal should be dismissed, with costs.

Their Lordships dismissed the appeal.

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