A

APPEAL CASES

before

B

THE HOUSE OF LORDS

(English, Irish and Scottish)

and

C

THE JUDICIAL COMMITTEE

of Her Majesty's Most Honourable

PRIVY COUNCIL

D

[HOUSE OF LORDS]

E RAYMOND . . . . . ORIGINAL RESPONDENT AND CROSS-APPELLANT

AND

HONEY . . . . . ORIGINAL APPELLANT AND CROSS-RESPONDENT

F 1982 Jan. 27, 28; March 4

Lord Wilberforce, Lord Elwyn-Jones, Lord Russell of Killowen, Lord Lowry and Lord Bridge of Harwich

Contempt of Court—Prison governor—Prisoner's legal proceedings —Prisoner's communication to solicitor concerning legal proceedings—Governor reading and stopping letter being sent—
G *Governor's subsequent refusal to forward prisoner's application to commit governor for contempt—Whether contempt of court—Prison Rules* 1964 (*S.I.* 1964 *No.* 388), *rr.* 33 (3), 37A (1) (*as amended by Prison (Amendment) Rules* 1972 (*S.I.* 1972 *No.* 1860), *r.* 3, *Prison (Amendment) Rules* 1974 (*S.I.* 1974 *No.* 713), *r.* 3 *and Prison (Amendment) Rules* 1976 (*S.I.* 1976 *No.* 503, *r.* 4))

H The respondent, who was serving a sentence of imprisonment, was engaged in legal proceedings when he wrote a letter to his solicitors. The governor of the prison, having reason to believe that the correspondence contained matters not related to those proceedings, in exercise of his powers

under rules 33 and 37A (1) of the Prison Rules 1964,[1] read the letter and decided that it should not be sent to the solicitor. As a result of that incident the respondent prepared a statement, an unsworn affidavit, a bundle of exhibits and a covering letter for an application for leave to commit the governor and the assistant governor to prison for contempt. He gave the documents to the prison authorities to be forwarded to the Crown Office at the Royal Courts of Justice. The governor stopped those documents being sent to the Crown Office.

On a motion by the respondent to commit the governor for contempt of court, the Divisional Court held that the stopping of the letter did not constitute contempt but that the stopping of the application was a contempt.

On appeal by the governor and cross-appeal by the respondent: —

Held, dismissing the appeal and cross-appeal, that at common law conduct calculated to prejudice a party's access to the courts or to obstruct or interfere with the due course of justice or the lawful process of the courts was a contempt of court; that there was nothing in the Prison Act 1952 that conferred powers to make regulations which would deny, or interfere with, the right of a convicted prisoner to have unimpeded access to the courts, and that, accordingly, whilst the respondent had not established that the stopping of the letter amounted to contempt, the governor's action in stopping the application to the court was clearly such as to deny, albeit temporarily, the respondent's right of access to the court, and, therefore, constituted a contempt (post, pp. 10C–D, G–H, 12H, 13B–C, D–E, 14B–E, E–G, 15D–E, G—16A).

Dicta of Lord Diplock in *Attorney-General* v. *Times Newspapers Ltd.* [1974] A.C. 273, 310, H.L.(E.); Shaw L.J. in *Reg.* v. *Board of Visitors of Hull Prison, Ex parte St. Germain* [1979] Q.B. 425, 455, C.A. and Dickson J. in *Solosky* v. *The Queen* (1979) 105 D.L.R. (3d) 745, 760 applied.

Decision of the Divisional Court of the Queen's Bench Division [1981] Q.B. 874; [1981] 3 W.L.R. 218; [1981] 2 All E.R. 1084 affirmed.

The following cases are referred to in their Lordships' opinions:

Attorney-General v. *Times Newspapers Ltd.* [1974] A.C. 273; [1973] 3 W.L.R. 298; [1973] 3 All E.R. 54, H.L.(E.).

Chester v. *Bateson* [1920] 1 K.B. 829, D.C.

Golder v. *United Kingdom* (1975) 1 E.H.R.R. 524.

Paul (R. & W.) Ltd. v. *The Wheat Commission* [1937] A.C. 139; [1936] 2 All E.R. 1243, H.L.(E.).

Reg. v. *Board of Visitors of Hull Prison, Ex parte St. Germain* [1979] Q.B. 425; [1979] 2 W.L.R. 42; [1979] 1 All E.R. 701, C.A.

Reg. v. *Gray* [1900] 2 Q.B. 36, D.C.

Solosky v. *The Queen* (1979) 105 D.L.R. (3d) 745.

The following additional cases were cited in argument:

Associated Provincial Picture Houses Ltd. v. *Wednesbury Corporation* [1948] 1 K.B. 223; [1947] 2 All E.R. 680, C.A.

B. (J. A.) (An Infant), In re [1965] Ch. 1112; [1965] 3 W.L.R. 253; [1965] 2 All E.R. 168.

[1] Prison Rules 1964, as amended, r. 33 (3): see post, p. 11C–E.
R. 37A (1): see post, p. 11G–H.

A *Danson* v. *Le Capelain and Steele* (1852) 7 Exch. 667.
Hilton v. *United Kingdom* (1978) 3 E.H.R.R. 104.
Kruse v. *Johnson* [1898] 2 Q.B. 91, D.C.
Reg. v. *Secretary of State for Home Affairs, Ex parte Hosenball* [1977] 1 W.L.R. 766; [1977] 3 All E.R. 452, D.C. and C.A.
Silver v. *United Kingdom* (1981) 3 E.H.R.R. 475.
Waugh v. *British Railways Board* [1980] A.C. 521; [1979] 3 W.L.R.
B 150; [1979] 2 All E.R. 1169, H.L.(E.).

APPEAL and CROSS-APPEAL from the Divisional Court of the Queen's Bench Division.

This appeal and cross-appeal were brought with leave of the Divisional Court of the Queen's Bench Division (Ormrod L.J. and Webster J.) on
C April 15, 1981, from its order dated April 7, 1981, whereby the appellant, Colin Peter Honey, was held to be in contempt of court in respect of his decision to stop the respondent, Steven Patrick Raymond, from lodging an application to the High Court to commit the appellant for contempt of court. The Divisional Court dismissed the respondent's application for an order of committal in respect of a letter written to his instructing solicitors in connection with pending legal proceedings.
D The facts are stated in the opinion of Lord Wilberforce.

Simon D. Brown and *Andrew Collins* for the appellant. The appellant accepts: (i) the dictum of Dickson J. in *Solosky* v. *The Queen* (1979) 105 D.L.R. (3d) 745, 760, " . . . a person confined to prison retains all of his civil rights, other than those expressly or impliedly taken from him by law."
E (ii) Obstruction of a party to legal proceedings by breaching the confidentiality of communication between that party and his solicitors may but does not necessarily constitute a contempt. Such conduct can only be categorised as contempt if it is calculated to prejudice that party's unhindered access to the courts or to obstruct or interfere with the due course of justice or the lawful process of the court; and then only if the common law rights of the party in question are not restricted in some material way: *per* Webster J.
F delivering the judgment of the Divisional Court [1981] Q.B. 874, 878F–G. The relevant suggested prejudice, hindrance, etc., must be substantial and not merely transitory or of insignificant effect.

The relevant civil rights are those of freedom of communication which includes communication with the court with a view to instituting proceedings. Those civil rights are restricted in the case of prisoners by the relevant
G legislation. Reliance is placed squarely on the Prison Rules enacted pursuant to section 47 of the Prison Act 1952. It is not contended by the respondent that these rules are in any way ultra vires the enabling power. What is contended and what the Divisional Court held was that they did not embrace the documents sought to be transmitted to the court. The Divisional Court held that these documents could not be regarded as a letter or communication within the relevant Prison Rules.
H The relevant provisions are sections 47 (1) and 52 (1) of the Prison Act 1952; the Prison Rules 1964 (as amended), rule 7 (1) and rules 33 to 37A and Standing Orders 17A (4), 17B. The Standing Orders are within the Rules and the Rules are within the Act. In support of the vires of the

Prison Rules, see *Kruse* v. *Johnson* [1898] 2 Q.B. 91, 97, *per* Lord Russell of Killowen C.J. A

It is necessary in the interests of the maintenance of good order and discipline and of security that certain matters are not permitted to be ventilated by prisoners without safeguards. Thus, for example, it may be that a prisoner wishes to get information out of a prison which is of value to an accomplice who has not been apprehended, to enable the proceeds of crime to be disposed of or to assist in an escape attempt. If documents B sent to a court are exempt from control, such information can be got out of prison. Furthermore, some prisoners are prepared to use any means at their disposal to harass prison staff or police or persons whom they may wish to dissuade from giving evidence against them. The institution of proceedings, whether civil or criminal, which are wholly devoid of merit and which have the object only of causing trouble, is one matter. It is C reasonable in these circumstances to place some conditions upon the right to institute proceedings. This the Standing Orders do. Those Orders are within the Rules and the Rules are within the Act.

The Prison Rules show that Parliament recognised that it was both impossible and undesirable to legislate in detail for the conduct of prisons. So it is that the Rules set out many general aids and provide for matters to be subject to directions of the Secretary of State. Rule 33 is, in so far as D it deals with written matter, concerned with and intended to apply to all documents which a prisoner wishes to send out from a prison to any person or which any person wishes to send into prison to a prisoner. The governor, who is responsible for the security of, and good order and discipline in, his prison, must have the power to read any written material sent in to or out of prison and, if necessary, to control or censor any such material. Rule E 33 (1) gives to the Secretary of State the right to impose restrictions and this is done by means of the Standing Orders. The Rules and Standing Orders represent an explicit fetter on an otherwise free right of citizens to correspond, both generally and with legal advisers, and to institute or carry on proceedings. The right of free access both to a court and to a legal adviser is one which should not be lightly over-ridden. It is therefore F conceded that the court must be entitled to consider any interference with such rights and, in exercise of its supervisory jurisdiction, to declare it unenforceable if satisfied that it was unreasonable. Nevertheless, when weighing, as he must, the need for security and maintenance of good order and discipline in prison against the civil rights of prisoners in connection with litigation, the Secretary of State is and must be the primary arbiter of what is reasonable. And, inasmuch as the Rules grant to the governor a G discretion, he too must decide whether it is in fact in any given case reasonable to stop any particular communication. It is only if satisfied that the Secretary of State or the governor, as the case may be, was acting unreasonably in the sense of *Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corporation* [1948] 1 K.B. 223, that is, in such a way that no reasonable person in his position could have so acted, that the court should make such a declaration. Otherwise, if the governor acts in accordance H with the Rules or Standing Orders, he cannot be guilty of contempt of court, for his interference with the prisoner's access to this court is justifiable.

A The House is invited to adopt a cautious approach to the respondent's contention that the Standing Orders are ultra vires because the Secretary of State together with his governors are better able to assess than the courts what regulation is required in the administration of prisons.

The first question for determination is whether the transmission of documents to a court is a "communication" within the ambit of rules 33 (3) to 37A on their proper construction. The Divisional Court held that B a communication to a court was not a "letter" to which rule 33 (3) applies. The group of rules, rules 33 to 37A inclusive under the cross heading "letters and visits," is one entity and is designed to cater generally for all means of communication between the prisoner and the outside world. The appellant does not contend that any other group of rules provides directly or by Standing Order for control of a prisoner's institution of or C participation in proceedings and it would be a surprising lacuna in the scheme of the legislation if control was not in general terms provided for in this group of rules. Common sense suggests that there is a compelling need for control or regulation in regard to applications to the court as there is in respect of other forms of contempt. The language of the Rules, in particular rule 33 (1) (2) (3), is clear and wide and the Divisional Court's conclusion requires an artificial uncovenanted restraint to be imposed on D their apparent width. The Divisional Court's conclusion is wholly unreasoned.

There are several rules within this group of rules which strongly suggests that as a group it envisages control of communication in relation to legal affairs and proceedings generally: see rule 34 (8) and rule 33 (2). The permission of the Secretary of State is expressly required to enable a pri- E soner to communicate in respect of legal proceedings. Rule 37A (4) does not mitigate the bar contained in rule 33 (3) in relation to criminal proceedings or proceedings instigated by the prisoner in person. [Reference was made to Standing Orders, section 17 (5) (6) (10).] This group of rules is apt both in its language and apparent ambit to control the communication between a prisoner and a court direct.

F If the rules are ambiguous, Parliament must be presumed to have legislated in accordance with any conventions it has signed. It is not surprising that Parliament provided for control over the power of a prisoner to bring criminal proceedings at his own whim. Is that control reasonably operated by the Standing Orders and the operation of the governor's discretion? It may be that there is a standing order which is unreasonable within the *Wednesbury* principle [1948] 1 K.B. 223, or there is an unreason- G able exercise of discretion by a governor in a particular case, but if the appellant is wrong, then there is no control over a prisoner's bringing of private prosecutions.

If the appellant's first contention is right then it is necessary to consider three further questions: (1) are the Prison Rules, which ex hypothesi encompass the control of communication between a prisoner and the court, H ultra vires? (2) If they are not ultra vires, are the relevant standing orders ultra vires the Secretary of State's express powers under rule 33 (1) to impose general restrictions on communications? (3) If so, could the governor, in stopping these communications nevertheless have acted lawfully and within the scope of his own discretion reasonably exercised?

As to (1), the language of section 47 (1) of the Prison Act 1952 is an enabling provision which provides ample power to make a rule to regulate matters in regard to communications between a prisoner and the court. If and in so far as the rules are intra vires, then the appellant comes within the dictum in *Solosky* v. *The Queen* (1979) 105 D.L.R. (3d) 745, 760, since the prisoner's common law rights are to that extent limited. Under section 29 (1) of the Criminal Justice Act 1961 the Secretary of State has a discretion whether or not a prisoner should be allowed to attend court to conduct proceedings personally. [Reference was made to Standing Orders 3 (*c*), 8, 9, 10, 11.]

As to (2), it is not surprising (a) that there should be scope under the Rules for control of the institution of criminal proceedings and (b) that they should not be privately prosecuted. There is nothing unreasonable in the *Wednesbury* sense in this regard. Standing Orders 26 (4) (*b*) (ix), 29 (1) and 17A (4) ought not to be struck down as being ultra vires the powers of the Secretary of State under rule 33 (1). If the principle of *Kruse* v. *Johnson* [1898] 2 Q.B. 91 is applied to this field, then the court would have regard to the fact that the Secretary of State is under political constraint and answerable to Parliament for the regulation of prison life. The Secretary of State must be the prime arbiter of what is reasonable. He has the expert advice of the Prison Department of the Home Office to assist him. Accordingly, the court should exercise restraint in deciding whether orders of this nature are ultra vires. The court will proceed on the basis that they will be reasonably and sensibly applied. The fact that they may be unreasonably operated does not suffice to make them ultra vires.

As to (3), the governor could have so exercised his discretion bearing in mind all that was known about this prisoner's relationship with his solicitors on another matter. Even if the governor's conduct in this matter was potentially contemptuous, this is not a case where contempt proceedings would lie.

As to the cross-appeal, the letter clearly falls within the ambit of rule 37A (1). Therefore the Divisional Court [1981] Q.B. 874, 880D–E were inclined to the view (a) that the stopping of the letter came within Standing Order 26 (4), and (b) that the governor's stopping of the letter was not contempt (p. 880E–F). On the evidence, the governor stopped the letter not only because it contained objectionable matter, but because having read it, he considered that it did not relate to the proceedings. His view was not unreasonable on the *Wednesbury* principle [1948] 1 K.B. 223.

Louis Blom-Cooper Q.C. and *Andrew Trollope* for the respondent. There are two main submissions: (1) Prison Rule 33 on its proper construction does not in any way limit a prisoner's right of access to the courts. Once it is conceded, as it has been before this House, that a citizen's uninhibited access to the courts applies to prisoners, it requires the clearest possible statutory language to take away that fundamental right. Neither the Prison Act 1952 nor the Prison Rules expressly or impliedly do so. (2) Standing Orders 5 and 17 (which do purport to interfere with a prisoner's access to the Court) have no legislative authority and to the extent that they indicate restraints, they are not reasonably foreseeable as flowing from Rule 33.

(1) The Prison Act 1952 is wholly silent on a prisoner's right of access

A to the courts. There is nothing comparable in that Act to restraints placed on Mental Health Act patients: see section 141 of the Mental Health Act 1959, or those placed on vexatious litigants: see section 42 of the Supreme Court Act 1981.

Under section 8 of the Forfeiture Act 1870 (33 & 34 Vict. c. 23) there was a restriction on felons bringing actions for the recovery of property. This provision was repealed by section 70 of the Criminal Justice Act 1948.
B Section 8 of the Prison Act 1952 is the furthest that that Act goes in placing any restriction on a prisoner's redress against wrongs allegedly committed by a prison officer against him. Parliament has from time to time legislated away the civil rights of prisoners: see section 4 of the Representation of the People Act 1969 and section 1 of the Representation of the People Act 1981.

Section 47 of the Prison Act 1952, which is the rule making power,
C authorises the Secretary of State to make rules. In so far as Prison Rule 33 deals with visits and letters, it is intra vires. But the maintenance of discipline and control does not cover documents to be sent to the courts. Section 47 cannot in any way control the court's practice and procedure. It cannot limit the inherent jurisdiction of the court. It is pertinent to refer to the provisions of Standing Order, section 5, order 22 (1) (*b*). The Home Office changed its procedure in view of a decision of the European Court of Human Rights.
D This destroys the argument that the respondent's institution of contempt proceedings is contrary to good order and control of prisons. The courts will not uphold any restriction of access to the courts unless it is expressed by Parliament in the clearest possible language: *Chester* v. *Bateson* [1920] 1 K.B. 829, 833, 836, 837. As to by-laws being ultra vires, see *R. & W. Paul Ltd.* v. *The Wheat Commission* [1937] A.C. 139, 152, 153. *Kruse* v.
E *Johnson* [1898] 2 Q.B. 91, does not assist the appellant at all since (i) the by-law in question hardly constituted a major infringement of a person's liberty and (ii) the by-law possessed the safeguard of being published. But until very recently, the Prison Standing Orders were not published.

Prison Rule 33 does not avail the appellant either to deny a prisoner's ventilation of his grievances to his legal advisers or to deny him access to the courts. Rule 33 deals with letters and visits generally. It is concerned
F with discipline within the prison. Rules 37 and 34 are not contemplating any control by the prison authorities or by the Secretary of State outside the confines of the prison. By rules 33 to 37, Parliament did not intend any fetter whatsoever on a prisoner's access to the courts.

In construing rule 33 (1) it is not permissible to refer to rule 37A, which is of later date. There is nothing in the Rules which inhibits a prisoner's
G right to bring and defend proceedings. Rule 47 (2) discourages false allegations being made against prison officers. As to the " prior ventilation " rule, Rule 33 provides no basis for the prior ventilation rule. Parliament cannot have intended it to prevent access to the courts. Reliance is placed on *Silver* v. *United Kingdom* (1981) 3 E.H.R.R. 475, 501, 517 et seq., for the true ambit and scope of rule 33.

H In conclusion on the first question, since the courts place the greatest stress on a citizen's unhindered rights to the courts, therefore, rules 33 to 37 should be construed accordingly. For example, " person " in rule 33 (2) can hardly be said to include the High Court of Justice.

(2) No reliance in this litigation can be placed at all on the Prison

Standing Orders. At most, the Standing Orders are means by which the Secretary of State gives directions to members of the prison service in pursuant of his powers and theirs in relation to the Prison Act. They are rules of administration to assist in the administration of the Act and cannot even be used as an aid to construction: see *Reg.* v. *Secretary of State for Home Affairs, Ex parte Hosenball* [1977] 1 W.L.R. 766, 767, 774, 780H, 781B, where it was held that the Immigration Rules cannot be used to assist in the construction of the Immigration Act. The Immigration Rules have to be laid before Parliament but this does not apply to the Prison Standing Orders in question here. They cannot have any legislative effect whatsoever. There is no reference at all to standing orders in the Prison Act 1952. The powers of the Secretary of State are given by the Prison Act 1952, ss. 6, 22, 25, 34, 37, 47, 52. This shows that section 47 is concerned purely with internal administration of prisons for otherwise it would not have been necessary for a provision dealing with the removal of a prisoner from prison to court.

Finally, a temporary hindrance of the letter is as much an impediment to a right of access to the courts as is a permanent one. Reliance is placed on *Golder* v. *United Kingdom* (1975) 1 E.H.R.R. 524, 531, para. 26, and *Hilton* v. *United Kingdom* (1978) 3 E.H.R.R. 104, 127, para. 103.

As to the cross-appeal, prison rule 37A (1) expressly preserves to a prisoner the common law right of confidentiality in communications with his advisers. This legal privilege which is essential to the administration of justice applies with equal force to prisoners in defending and prosecuting claims: see *Waugh* v. *British Railways Board* [1980] A.C. 521, 535–536.

By its very terms, rule 37A (1) removes from the operation of rule 33 correspondence relating to legal proceedings. The purpose of the rule is to protect from scrutiny or physical intervention of the prison authorities all matters relating to legal proceedings. There is reason to suppose that it relates to the opening and reading of the letter in question. Once the letter has been opened and read, it is objectively determinable whether it is subject to legal proceedings. Suppose drugs have been found in a prisoner's cell and he writes to his solicitor that this was a frame-up by prison officers A, B and C. Plainly, this relates to legal proceedings. Interference with parties or witnesses is a contempt. If an action is likely to interfere with the administration of justice, that constitutes a contempt. On the evidence here in relation to this letter, there was an interference with the administration of justice. The governor's motive for opening the letter is irrelevant. In *In re B. (J. A.) (An Infant)* [1965] Ch. 1112, 1123, it was held that it was immaterial that the person in question was unharmed by the interference. For the width of contempt in relation to this field, see *Danson* v. *Le Capelain and Steele* (1852) 7 Exch. 667, where it was held that a governor was in contempt in not allowing a process server to serve an order on a prisoner in his custody.

Brown in reply. As to the cross-appeal, it is true that mens rea is unnecessary and even if the course of justice is unimpeded that there may still be a contempt. But if in the circumstances, there was neither an intent to impede the course of justice and in fact there was no actual interference with the course of justice, there was no contempt. That is the underlying reasoning of the Divisional Court in the present case.

A Under prison rule 37A (1) the governor was entitled to open and read the letter and, having read it, to refuse to allow it to be delivered.

As to the appeal, reliance was placed on *Chester* v. *Bateson* [1920] 1 K.B. 829 and *R. & W. Paul Ltd.* v. *The Wheat Commission* [1937] A.C. 139, but in contrast to those cases, it cannot be said that the procedure governing the administration of prisons takes away any right of a prisoner's access to the courts. The relevant provisons merely regulate and delay
B access. The enabling powers in those cases were substantially less apt to control access than section 47 of the Prison Act 1952.

Section 141 of the Mental Health Act 1959 and section 42 of the Supreme Court Act 1981 are of a very different nature and are far more draconian in character. Thus a patient subject to the Mental Health Act is precluded from bringing proceedings as distinct from any delay being placed
C on him taking proceedings.

As to *Silver* v. *United Kingdom*, 3 E.H.R.R. 475, the view of the commission is subject to the decision of the European Court. The decision could not affect the construction or vires of the Prison Rules unless they were ambiguous. *Golder* v. *United Kingdom*, 1 E.H.R.R. 524, 530, para. 25; 537, paras. 39, 40, described a limited right of access which resulted in 1976 in the drafting of the new rule, 37A (4).

D There is nothing in section 22 of the Prison Act 1952 which operates to derogate from the width of the rule-making power contained in section 47. If the appellant is right in his contention that rules 33 to 37A are apt to include all communications by a prisoner with the outside world, then, because of the restricted character of the rights given, in particular, by rule 33 (2), the appellant does not have to rely on the Standing Orders to control
E the institution and carrying on of proceedings by a prisoner, because the governor has a separate discretion conferred upon him under rule 33 (3).

Their Lordships took time for consideration.

March 4. LORD WILBERFORCE. My Lords, this appeal and cross-appeal are brought from the Divisional Court of the Queen's Bench Division which
F in its judgment dated April 7, 1981, (i) held the appellant to be in contempt of court by reason of a decision to stop the respondent from lodging an application to the High Court to commit the appellant for contempt, but (ii) held the appellant not to have been in contempt in respect of stopping a letter written by the respondent to his solicitor on June 26, 1980.

G The appellant was at the material time governor of Albany Prison in the Isle of Wight where the respondent was serving a sentence for theft of some £2 million imposed on October 10, 1978. At the time of his admission to Albany Prison, on March 22, 1980, the respondent was awaiting sentence in respect of convictions at St. Albans Crown Court upon four counts of conspiracy to pervert the course of justice.

H The respondent was also, at the material time, i.e. the first half of 1980, facing committal proceedings at Camberwell Green Magistrates' Court in respect of which he had retained solicitors.

On June 26, 1980, the respondent wrote a letter to his solicitors. The appellant suspecting, and, as the Divisional Court held, having reasonable

cause to suppose, that the letter contained matter not relating to the pending proceedings, caused it to be opened and read. Finding that it included an allegation to the effect that an assistant governor at Albany Prison—a Mr. Bagshaw—had caused to be lost, or to disappear, a book belonging to the respondent, the appellant stopped the letter. I shall examine the evidence as to this matter more closely at a later stage. This action, held not to amount to a contempt, forms the subject matter of the cross-appeal by the respondent.

Thereafter, the respondent prepared an application to the High Court for leave to apply for an order of committal against the appellant under R.S.C., Ord. 52 for contempt of court. This included a statement, a draft affidavit and exhibits, and a covering letter. The appellant stopped this application on the ground that it included an allegation against a prison officer, and that, under the Prison Rules, it could not be forwarded under what is known as the prior ventilation rule—viz. that such allegations must first be investigated in the prison. This action, held to amount to a contempt, forms the subject matter of the appeal by the appellant.

I deal first with the appeal. In considering whether any contempt has been committed by the appellant, there are two basic principles from which to start.

First, any act done which is calculated to obstruct or interfere with the due course of justice, or the lawful process of the courts, is a contempt of court. There are the well known words of Lord Russell of Killowen C.J. in *Reg.* v. *Gray* [1900] 2 Q.B. 36, 40.

Since 1900, the force of this principle has in no way been diminished. In *Attorney-General* v. *Times Newspapers Ltd.* [1974] A.C. 273, Lord Diplock, with whom Lord Simon of Glaisdale agreed, clearly stated that to inhibit suitors from availing themselves of their constitutional right to have their legal rights and obligations ascertained and enforced by courts of law, could amount to contempt of court (p. 310): whether the particular action there involved had that effect is immaterial to the present case. The principle has been strongly affirmed by the European Court of Human Rights in the case of *Golder* v. *United Kingdom* (1975) 1 E.H.R.R. 524. The court there decided that access to a court was a right protected by article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and, while not expressly ruling upon the compatibility with the Convention of rules 33, 34 and 37 of the Prison Rules 1964 (as to which see below), and while accepting that the right might be subject to limitations, applied this ruling to a convicted United Kingdom prisoner, who (inter alia) wished to direct proceedings against a member of the prison staff, and to a hindrance of a temporary character.

Secondly, under English law, a convicted prisoner, in spite of his imprisonment, retains all civil rights which are not taken away expressly or by necessary implication: see *Reg.* v. *Board of Visitors of Hull Prison, Ex parte St. Germain* [1979] Q.B. 425, 455 and *Solosky* v. *The Queen* (1979) 105 D.L.R. (3d) 745, 760, Canadian Supreme Court, *per* Dickson J.

These two principles are not disputed by the appellant. The question is to what extent (if any) the respondent's rights were taken away, or affected by, the Prison Rules 1964 or by Standing Orders made by the Secretary of State.

A The statutory authority to make rules is conferred by the Prison Act 1952 (as amended), section 47. This reads as follows:

"Rules for the management of prisons, remand centres, detention centres and Borstal institutions.

"(1) The Secretary of State may make rules for the regulation and management of prisons, remand centres, detention centres and Borstal institutions respectively, and for the classification, treatment, B employment, discipline and control of persons required to be detained therein. (2) Rules made under this section shall make provision for ensuring that a person who is charged with any offence under the rules shall be given a proper opportunity of presenting his case."

Subsections (3) and (4) are not material. The relevant rules for the purposes of the present appeal and cross-appeal are rules 33, 34, 37 and 37A. C

"Rule 33: Letters and visits generally.

"(1) The Secretary of State may, with a view to securing discipline and good order or the prevention of crime or in the interests of any persons, impose restrictions, either generally or in a particular case, upon the communications to be permitted between a prisoner and other persons. (2) Except as provided by statute or these rules, a prisoner D shall not be permitted to communicate with any outside person, or that person with him, without the leave of the Secretary of State. (3) Except as provided by these rules, every letter or communication to or from a prisoner may"—substituted for "shall" in 1974—"be read or examined by the governor or an officer deputed by him, and the governor may, at his discretion, stop any letter or communication on E the ground that its contents are objectionable or that it is of inordinate length."

Paragraphs (4) to (6) deal with visits.

"Rule 34: Personal letters and visits." Paragraphs (1)–(7) deal with personal letters and visits. "(8) A prisoner shall not be entitled under this rule to communicate with any person in connection with any legal F or other business, or with any person other than a relative or friend, except with the leave of the Secretary of State."

Paragraph (9) is not material.

"Rule 37: Legal advisers.

"(1) The legal adviser of a prisoner in any legal proceedings, civil or criminal, to which the prisoner is a party shall be afforded reasonable G facilities for interviewing him in connection with those proceedings, and may do so out of hearing but in the sight of an officer. (2) A prisoner's legal adviser may, with the leave of the Secretary of State, interview the prisoner in connection with any other legal business in the sight and hearing of an officer.

"Rule 37A: Further facilities in connection with legal proceedings.

H "(1) A prisoner who is a party to any legal proceedings may correspond with his legal adviser in connection with the proceedings and unless the governor has reason to suppose that any such correspondence contains matter not relating to the proceedings it shall not be read or stopped under rule 33 (3) of these rules."

Paragraphs (2) and (3) are not material.

> " (4) Subject to any directions of the Secretary of State, a prisoner may correspond with a solicitor for the purpose of obtaining legal advice concerning any cause of action in relation to which the prisoner may become a party to civil proceedings or for the purpose of instructing the solicitor to issue such proceedings."

This paragraph was inserted after the decision of the European Court of Human Rights in *Golder's* case, 1 E.H.R.R. 524.

The rules, in addition, confer powers upon the Secretary of State to make Standing Orders. These powers have been exercised as regards prisoners' correspondence, and in particular with regard to complaints against officers.

" Standing Order 26 (4) (b) (ix):

> " The following matter may not be included in an outgoing letter: . . . (ix) Allegations against officers.

" Standing Order 29 (1):

> " When a prisoner makes an allegation against an officer in a letter, the letter will be stopped and the governor informed. The governor will then explain to the prisoner the correct procedure to follow in making a complaint against an officer."

The correct procedure is in fact for the prisoner to make a formal complaint with a view to an internal investigation. A prisoner may pursue his complaint through the courts only after there has been an investigation of this kind.

With regard to the institution and carrying on of legal proceedings by prisoners, Standing Order 17A (4) provides:

> " Subject to Orders 5 to 11 below an inmate will be permitted to institute civil proceedings (including an application for an order of certiorari, mandamus or prohibition), or may instruct a solicitor to do so on his behalf, provided that he has first sought the advice of a solicitor about the institution of such proceedings. If the inmate wishes to institute proceedings in person, either without seeking advice or after receiving it, Orders 10 and 11 below will apply."

Standing Orders 5 to 11 again require " prior ventilation " of complaints against the Home Office or the prison staff.

In the light of these provisions, I proceed to consider the subject matter of the appeal—viz. the stopping by the appellant of the respondent's application to the High Court. It was argued by the appellant that this application was not a " communication " within the meaning of rule 33 (3): that rule confers a discretion upon the governor to stop any " communication " on the ground that its contents are objectionable or that it is of inordinate length. The Divisional Court accepted this argument.

For my part I prefer to deal with this point on broader grounds. In my opinion, there is nothing in the Prison Act 1952 that confers power to make regulations which would deny, or interfere with, the right of the respondent, as a prisoner, to have unimpeded access to a court. Section

A 47, which has already been quoted, is a section concerned with the regulation and management of prisons and, in my opinion, is quite insufficient to authorise hindrance or interference with so basic a right. The regulations themselves must be interpreted accordingly, otherwise they would be ultra vires. So interpreted, I am unable to conclude that either rule 34 (8)—which is expressed in very general terms—or rule 37A (4), whether taken by themselves or in conjunction with Standing Orders, is in any way B sufficiently clear to justify the hindrance which took place. The standing orders, if they have any legislative force at all, cannot confer any greater powers than the regulations, which, as stated, must themselves be construed in accordance with the statutory power to make them.

The action of the appellant was clearly such as to deny, albeit temporarily, the respondent's right of access to the court and, on the principle C above stated, constituted a contempt.

I agree, therefore, as to the appeal, with the conclusion of the Divisional Court and with the manner in which it dealt with this contempt.

I now turn to the cross-appeal, continuing to refer to Mr. Raymond as the respondent and to Mr. Honey as the appellant. The relevant facts require fuller statement. The letter in question, dated June 26, 1980, written D by the respondent to his solicitors was caused to be opened and read, on the ground that the appellant had grounds to suppose that it contained matter not relating to the proceedings with which the letter was mainly concerned, viz. those at Camberwell Green Magistrates' Court. The Divisional Court held, and in my opinion were entitled to hold, that the appellants did have reasonable cause so to suppose. What is in question is the stopping of the letter. Whether the appellant was entitled to stop it, under E the rules or Standing Orders, may be open to doubt: the Divisional Court was inclined to the view that he was so entitled. I do not, however, think it necessary to decide this question, because in any event I do not consider that the respondent made good his contention that any contempt was committed. The evidence on this point is admittedly not wholly clear. The appellant's affidavit contains this passage:

F > "I told the applicant (i.e. the respondent) that he could rewrite the letter omitting the allegation of theft against Mr. Bagshaw and in any event he was to my knowledge due to be visited by his solicitor within the next few days and he could in the course of such interview have explained whatever may have been relevant in connection with his defence."

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Whether the respondent's solicitor did visit him in the course of the next few days is not stated.

The respondent himself filed a lengthy affidavit complaining about the opening of his letter and of what the appellant said to him in justification of this action. However, he does not provide evidence as to what followed, H or deal directly with the appellant's affidavit, or assert in clear terms that he was not able to communicate with his solicitor about his defence to the Camberwell proceedings.

The Divisional Court [1981] Q.B. 874, 880 accepted the appellant's evidence according to its terms and concluded:

"In these circumstances, whether or not the respondent was entitled to stop the letter, we are satisfied that his conduct was not conduct calculated to obstruct or interfere with the due course of justice or the lawful process of the courts and that it was not therefore a contempt of court."

Although I could have wished for more precise evidence on this issue, it was for the respondent to make out his case and for the Divisional Court to reach a conclusion on such evidence as it had. I am not prepared to say that their conclusion was unjustified.

In the event I would also dismiss the cross-appeal.

LORD ELWYN-JONES. My Lords, I have had the opportunity of reading in advance the speech of my noble and learned friend, Lord Wilberforce. I agree with it and, for the reasons which he gives, I too would dismiss the appeal and the cross-appeal.

LORD RUSSELL OF KILLOWEN. My Lords, I have had the opportunity of reading in advance the speech delivered by my noble and learned friend on the Woolsack. I find myself in complete agreement with his opinion that both the appeal and the cross-appeal fail and with his reasons for that opinion.

LORD LOWRY. My Lords, I have had the advantage of reading in draft the speeches of my noble and learned friends, Lord Wilberforce and Lord Bridge of Harwich. I respectfully agree with them and, for the reasons given by my noble and learned friends, I too, would dismiss the appeal and the cross-appeal.

LORD BRIDGE OF HARWICH. My Lords, I shall refer to the parties to this appeal and cross-appeal, for convenience, as the governor and the prisoner.

I gratefully adopt the summary of the facts set out in the speech of my noble and learned friend, Lord Wilberforce, and his statement of the two basic principles to be applied; first, that any act done which is calculated to obstruct or interfere with the due course of justice, or the lawful process of the courts, is a contempt of court; secondly, that a convicted prisoner, in spite of his imprisonment, retains all civil rights which are not taken away expressly or by necessary implication. To these I would add a third principle, equally basic, that a citizen's right to unimpeded access to the courts can only be taken away by express enactment: *Chester* v. *Bateson* [1920] 1 K.B. 829; *R. & W. Paul Ltd.* v. *The Wheat Commission* [1937] A.C. 139.

Section 47 of the Prison Act 1952 and the relevant rules made thereunder are set out in the speech of my noble and learned friend, Lord Wilberforce, and I need not repeat them. The crucial rule is rule 33 (2). This forbids a prisoner "to communicate with any outside person" save as permitted by statute or the rules or by leave of the Secretary of State. Read in the context of rule 34 (8) and rule 37, as a matter of construction of the rules independently of the statutory power under which they were

A made, I find it impossible to exclude from the ambit of the prohibition communications between a prisoner and the courts. Indeed, I think the rules, in their original form, which did not include rule 37 (A), were intended to give the Secretary of State an absolute discretion whether or not to allow a prisoner to institute legal proceedings.

It will be observed that rule 37 (1), which gives the only unfettered right of communication in connection with legal proceedings in the original B rules, is available only to a prisoner who is already a party to the proceedings. Rule 37 (A) (4) was added by amendment after the decision of the European Court of Human Rights in *Golder* v. *United Kingdom* (1975) 1 E.H.R.R. 524. Presumably the " directions of the Secretary of State " to which the rights given by this paragraph are subject, contemplate regulation rather than prohibition of the communications in question. But this sub-C rule applies only to communications with, and the institution of proceedings through, a solicitor. Moreover, Standing Orders set out an elaborate procedure designed to discourage a prisoner from instituting proceedings in person and impliedly assume that he requires the leave of the Secretary of State to do so, which the Secretary of State has an absolute discretion to give or withhold.

D The only statutory provision relied on as empowering the Secretary of State to make rules imposing such fetters on a prisoner's access to the courts as the rules, as I read them, purport to impose, is the power in section 47 of the Prison Act 1952 to make rules for the " discipline and control " of prisoners. This rule-making power is manifestly insufficient for such a purpose and it follows that the rules, to the extent that they would fetter a prisoner's right of access to the courts, and in particular his E right to institute proceedings in person, are ultra vires. On this ground the governor's appeal against the decision of the Divisional Court that he was in contempt of court in stopping the prisoner's application to the court must fail.

The prisoner's cross-appeal relates to the earlier stopping of a letter to his solicitor in connection with the pending application to Camberwell F Green Magistrates' Court to commit him for trial for offences alleged to have been committed while in prison. It is conceded that the governor had reason to suppose that the letter contained matter not relating to the pending proceedings which justified him in opening and reading the letter under rule 37 (A) (1). However, once the letter was opened, it was clear that the whole letter, including the allegation against Mr. Bagshaw which G the governor found objectionable, did " relate to the proceedings " in that the prisoner was saying, however misguidedly, that the allegation against Mr. Bagshaw was to be put forward as part of his defence and he intended that Mr. Bagshaw and a senior police officer should be called as witnesses in this connection. It follows that the letter fell within the immunity conferred by rule 37 (A) (1) and could not properly be stopped under rule 33 (3). No doubt the unjustified stopping of a communication between a H prisoner and his solicitor is capable of amounting to a contempt of court. But it was for the prisoner to show that it did so. As my noble and learned friend Lord Wilberforce has pointed out, the evidence fails to establish that the stopping of the letter to the solicitor effectively impeded the

prisoner in giving to his solicitor whatever instructions he wished as to the conduct of his defence in the Camberwell Green Magistrates' Court.

For these reasons I would dismiss both the appeal and the cross-appeal.

Appeal dismissed.
Cross-appeal dismissed.

Solicitors: *Hallinan Blackburn Gittings & Co.; Treasury Solicitor.*

J. A. G.

[PRIVY COUNCIL]

HARON BIN MOHAMMED ZAID . . . . . APPELLANT

AND

CENTRAL SECURITIES (HOLDINGS) BHD. . . RESPONDENT

[APPEAL FROM THE FEDERAL COURT OF MALAYSIA]

1982 Feb. 24, 25; March 1; April 26

Lord Wilberforce, Lord Simon of Glaisdale, Lord Keith of Kinkel, Lord Bridge of Harwich and Sir William Douglas

Malaysia—Federal Court—Appeal to—High Court judge granting defendant leave to enter final judgment against third party—Federal Court's practice of treating order as final—Whether necessary to obtain leave to appeal—Courts of Judicature Act 1964, *s.* 68 (2)

A company, the original vendor, sold 1,400,000 shares in a public company to the defendant who subsequently sold them on to the plaintiff. After the sale to the plaintiff there appeared a defect in the memorandum of transfer by which on the first sale the original vendor had purported to transfer 523,278 of the shares to the defendant. The plaintiff brought proceedings against the defendant claiming the purchase price of the shares not delivered and damages. The defendant issued a third party notice against the original vendor. By summons the original vendor applied to the High Court to set aside the third party notice, the defendant applied for leave to enter final judgment against the third party or, alternatively, for third party directions and the plaintiff applied for leave to enter final judgment against the defendant. The applications were made to the judge in chambers and adjourned into court by consent. The judge dismissed the application to set aside the third party notice, he gave the plaintiff leave to enter judgment against the defendant and gave judgment for the defendant against the original vendor as third party. The original vendor appealed to the Federal Court. The defendant moved the court to dismiss the appeal for failure to obtain leave to appeal from either the High Court or Federal Court as required for interlocutory appeals by section 68 (2) of the Courts of Judicature