ambiguous. If that is wrong, however, and the definition is ambiguous, it is permissible to refer to the text of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) (Cmnd. 6419) in order to obtain assistance in resolving the ambiguity. Such assistance is, in my view, to be found in Article VII, paragraph 2, of that Convention, which provides:

> "2. The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards 1927 shall cease to have effect between contracting states on their becoming bound and to the extent that they become bound, by this Convention."

The Geneva Protocol of 1923 and the Geneva Convention of 1927 there referred to were earlier international treaties dealing with the recognition of foreign arbitration agreements and the enforcement of foreign arbitral awards respectively. The United Kingdom was a party to both treaties and gave effect to the first by the Arbitration Clauses (Protocol) Act 1924, and to the second by the Arbitration (Foreign Awards) Act 1930, both of which were repealed by, and substantially re-enacted in, the Arbitration Act 1950.

The effect of Article VII, paragraph 2, of the New York Convention is that, upon two or more states which were parties to the Geneva Treaties of 1923 and 1927 becoming parties to the New York Convention, and thereby becoming bound by its provisions, the two earlier treaties shall no longer apply as between such states. If the expression "Convention award" in the Act of 1975 is construed in the way contended for by the appellants, the result of Article VII, paragraph 2, would be to produce a grave lacuna in the reciprocal recognition and enforcement of arbitral awards as between many states. The existence of this lacuna can be illustrated in this way. Suppose that before 1975 states A and B were both parties to the Geneva Treaty of 1927: in that case awards made in state A could be enforced pursuant to that treaty in state B and vice versa. Suppose next that in 1975 both states A and B became parties to the New York Convention. Then, on the appellants' construction of the expression "Convention award," an award made in state A in, say, 1970 could not be enforced as a Convention award in state B because, at the time when such award was made, state A was not yet a party to the New York Convention. At the same time, by reason of Article VII, paragraph 2, of the New York Convention, the award made in state A could not be enforced in state B under the Geneva Treaty of 1927 because that treaty would, on states A and B becoming parties to the New York Convention in 1975, have ceased to have effect as between them. The existence of this lacuna, as between the United Kingdom and other states who were previously parties to the Geneva Treaty of 1927 and have since become parties to the New York Convention, cannot have been intended by the legislature when it passed the Act of 1975. These considerations strongly reinforce the view that the construction of the expression "Convention award" in the Act of 1975 contended for by the appellants is wrong, and the construction contended for by the respondent is right.

My Lords, for the reasons which I have given, I am of the opinion that the decision of the Court of Appeal was right, and that the appeal should accordingly be dismissed with costs.

LORD TEMPLEMAN. My Lords, for the reasons given by my noble and learned friend, Lord Brandon of Oakbrook, I would dismiss this appeal.

Appeal dismissed with costs.

Solicitors: Blakeney's; Charles Russell & Co.

S. H.

[HOUSE OF LORDS]

HOLGATE-MOHAMMED . . . . . APPELLANT

AND

DUKE . . . . . RESPONDENT

[ON APPEAL FROM MOHAMMED-HOLGATE V. DUKE]

1984 Feb. 16; March 29

Lord Diplock, Lord Keith of Kinkel, Lord Bridge of Harwich, Lord Brandon of Oakbrook and Lord Brightman

Arrest—Without warrant—Validity—Suspect arrested for questioning—Reasonable grounds for suspicion of commission of offence—Object of arrest to induce confession—No improper pressure applied—Whether proper exercise of power of arrest—Criminal Law Act 1967 (c. 58), s. 2(4)

A detective constable, exercising his powers under section 2(4) of the Criminal Law Act 1967,[1] arrested the plaintiff on suspicion that she had stolen jewellery and took her to a police station where she was questioned. She was not charged with an offence and was released from detention within six hours of her arrest. The plaintiff brought an action in the county court against the chief constable for damages for wrongful arrest. The judge found that the detective constable had had reasonable grounds to suspect the plaintiff of having committed an arrestable offence and that the period of detention was not excessive but, because the constable had decided not to interview her under caution but to subject her to the greater pressure of arrest and detention so as to induce a confession, there had been a wrongful exercise of

[1] Criminal Law Act 1967, s. 2(4): see post p. 441F.

the power of arrest. The plaintiff was awarded £1,000 damages. The Court of Appeal allowed an appeal by the chief constable.

On the plaintiff's appeal:—

Held, (1) that the *Wednesbury* principles were to be applied in determining, for the purpose of founding an action at common law for false imprisonment, whether the discretion conferred upon a constable by section 2(4) of the Act of 1967 to arrest a person without a warrant had been exercised lawfully, namely whether the discretion had been exercised in good faith and whether all irrelevant matters had been excluded from consideration (post, p. 443A–E)

Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [1948] 1 K.B. 223, C.A. applied.

Dictum of Lord Devlin in *Hussien v. Chong Fook Kam* [1970] A.C. 942, 948, P.C. considered.

(2) Dismissing the appeal, that since an arrestable offence had been committed, and the constable had reasonable cause for suspecting the plaintiff to be guilty of the offence, he was entitled to arrest her under section 2(4) of the Act; that the interrogation of a suspect in order to dispel or confirm a reasonable suspicion was a legitimate cause for arrest, so that the fact that the constable, when exercising his discretion to arrest the plaintiff, took into consideration that she might be more likely to confess her guilt if arrested and questioned at the police station was a relevant matter and therefore did not render the exercise of his discretion ultra vires; and that, accordingly, the arrest was not unlawful (post, pp. 441D–E, 442F–G, 445E–G, 446A–D).

Decision of the Court of Appeal [1984] Q.B. 209; [1983] 3 W.L.R. 598; [1983] 3 All E.R. 526 affirmed.

The following cases are referred to in the opinion of Lord Diplock:

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

Christie v. Leachinsky [1947] A.C. 573; [1947] 1 All E.R. 567, H.L.(E.)

Hussien v. Chong Fook Kam [1970] A.C. 942; [1970] 2 W.L.R. 441; [1969] 3 All E.R. 1626, P.C.

Reg. v. Turnbull [1977] Q.B. 224; [1976] 3 W.L.R. 445; [1976] 3 All E.R. 549, C.A.

Wiltshire v. Barrett [1966] 1 Q.B. 312; [1965] 2 W.L.R. 1195; [1965] 2 All E.R. 271, C.A.

The following additional cases were cited in argument:

Dallison v. Caffery [1965] 1 Q.B. 348; [1964] 3 W.L.R. 385; [1964] 2 All E.R. 610, C.A.

Dumbell v. Roberts [1944] 1 All E.R. 326, C.A.

Reg. v. Houghton (1978) 68 Cr.App.R. 197, C.A.

APPEAL from the Court of Appeal.

This was an appeal by the plaintiff, Mariam Holgate-Mohammed, from a decision of the Court of Appeal (Sir John Arnold P. and Latey J.) [1984] Q.B. 209 on 13 July 1983 allowing an appeal by John Duke, the Chief Constable of Hampshire, from an order dated 20 December 1982 made by Judge Hampden Inskip Q.C. sitting at Portsmouth County Court that the plaintiff do recover from the chief constable the sum of £1,000 damages for wrongful arrest.

The Court of Appeal refused the plaintiff leave to appeal. On 8 December 1983, the Appeal Committee of the House of Lords (Lord Fraser of Tullybelton, Lord Scarman and Lord Bridge of Harwich) allowed a petition by the plaintiff for leave to appeal.

The facts are stated in the opinion of Lord Diplock.

Alan Tyrrell Q.C. and *Robin Belben* for the plaintiff. The main issue which arises on this appeal is whether a police constable may lawfully exercise the power of arrest conferred upon him by section 2(4) of the Criminal Law Act 1967 when the sole object of the arrest is to put the suspected person under greater pressure in order to induce a confession.

When a constable exercises his powers of arrest there are certain rules which must be complied with. He must be acting bona fide and the arrested person must be told the reason for the arrest: see *Christie v. Leachinsky* [1947] A.C. 573. The arresting person must use only reasonable force and may not use an unnecessary and unreasonable mode of detaining the suspect. The arrestable offence which the arrested person is suspected of committing must be the same offence for which he is arrested.

The powers of arrest without warrant under section 2(4) of the Act of 1967 are of a discretionary nature but the overall principle that it should be exercised reasonably applies. There is no succinct statement which expresses that thought but it is inconceivable that Parliament could have intended that it be exercised unreasonably: see also *Dallison v. Caffery* [1965] 1 Q.B. 348.

The powers granted by statute may only be exercised lawfully in so far as they are consistent with the objects and policy for which they were granted. The objects and policy of the powers of arrest at common law were to set in motion a judicial inquiry or at least to bring the suspect before a court. The replacement of the common law power of arrest by section 2 of the Act of 1967 did not affect that principle.

There are three steps in the judicial process of getting a suspect before the court. First, reasonable suspicion, second, notification of that suspicion to the suspect and the making of inquiries, and third, getting the suspect before the court. If it is possible to get the suspect before the court without arrest, that is what must be done. It is not proper to arrest merely for the purpose of inquiries: *Reg. v. Houghton* (1978) 68 Cr.App.R. 197.

In the present case the constable did not arrest "for the offence" but for the purpose of inquiries. The constable thought the plaintiff was more likely to confess, if guilty, at the police station, i.e., in custody, than if she were questioned in her own home. That was not a proper reason for arrest. The common law is protective of the personal freedom, privacy and dignity of all citizens: *Christie v. Leachinsky* [1947] A.C. 573, 588.

The position at common law was that there was grave doubt as to whether statements made during interrogation by persons in custody were admissible in court. Pressure can be lawful or unlawful. The mere fact of arrest can be sufficient pressure although it may not be pressure which would exclude a statement from being admissible. Nevertheless that would be pressure to make a statement because the pressure arises out of the situation, namely, being deprived of liberty. Pressure of that sort is not

something that should be encouraged. There must be a reason for that pressure other than to assist the police with their inquiries.

That raises the question whether when it is recognised that pressure should be avoided where possible, it is lawful for a police constable to arrest solely for that purpose. Everything done in the present case could have been done without arrest. The common law has always regarded the liberty of the citizen as paramount and in cases of suspicion of crime, the liberty of the citizen tips the balance.

The liberty of the citizen includes the citizen's freedom from pressure to confess to crime. A constable's powers of arrest must not be extended to arrest for the purpose of placing a suspect under pressure to confess. Such an extension would be inconsistent with the right of a citizen not to incriminate himself and with the limits imposed at common law and by statute upon magistrates in exercising their discretion to issue warrants for arrest and to grant bail. While arrest for the purpose of assisting the police with inquiries is consistent with police powers to interrogate declared by the Judges' Rules, arrest for the purpose of exerting pressure to induce a confession is contrary to the historic purposes of the power of arrest without warrant as defined and limited by the courts over many centuries.

If that submission is wrong and a police constable may lawfully exercise his powers of arrest under section 2(4) of the Act of 1967 with the sole purpose of putting the suspected person under greater pressure to confess, the next issue which arises is whether after having so arrested the suspect, a constable may lawfully detain the suspect for the same purpose.

A distinction must be drawn between the arrest and the period of detention which may follow the arrest. The purposes of effecting an arrest may be different from the purposes of prolonging detention after arrest. In deciding whether to arrest, the constable should, within the limits which may be imposed by the need for immediate decision, have regard to the matters which a magistrate considers in deciding whether to issue a warrant for arrest. If process by summons would be equally effectual no warrant should be issued.

In deciding whether to prolong detention after arrest, the constable should have regard to matters which the court considers in deciding whether to grant bail under the Bail Act 1976 even though he has a wider discretion conferred by section 43 of the Magistrates' Courts Act 1980. In neither Act is the application of pressure upon a suspected person to confess a proper consideration.

The plaintiff was in custody for approximately six hours and was only interrogated for 35 minutes. The purpose of the detention and that of the arrest were different. The purpose of the arrest was for 35 minutes of interrogation. The rest of the detention was for a different purpose.

For those reasons the order of the Court of Appeal should be reversed and the order of the county court restored.

Robin Belben following on the question whether upon the findings of fact by the circuit judge he was correct in law in finding that the arresting constable had reasonable grounds to suspect that the plaintiff had committed an arrestable offence. That question has to be treated as one of law rather than as one of fact: see *Dumbell v. Roberts* [1944] 1 All E.R.

326, 329. There is a wider duty on an arresting officer than merely assessing the evidence before him. He may have a reasonable suspicion if he has no opportunity to make further inquiries on the spot but it may be an unreasonable suspicion if he does have such an opportunity and does not avail himself of it.

The grounds as found by the circuit judge for suspecting that the plaintiff was guilty of theft were inadequate to amount in law to reasonable suspicion. Therefore on the facts of the present case he should have found that the arresting constable had no reasonable grounds to suspect that the plaintiff had committed an arrestable offence.

J. Barry Mortimer Q.C. and *Robert Beecroft* for the chief constable were not called upon to make submissions.

Their Lordships took time for consideration.

29 March. LORD DIPLOCK. My Lords, this appeal is in a civil action for false imprisonment brought by the appellant, Mrs. Holgate-Mohammed, against the Chief Constable of Hampshire and arising out of her arrest without warrant at her home on 8 May 1980 by an officer of the Hampshire constabulary, Detective Constable Offin, and her subsequent detention in custody at Southsea Police Station for a period of about six hours after which time she was released on police bail under section 38(2) of the Magistrates' Courts Act 1952 (now section 43(3) of the Magistrates' Courts Act 1980). She was later informed by the police that she need not surrender to her bail as no further proceedings would be taken against her.

Your Lordships are not concerned with rights of arrest at common law for it is not disputed that an arrestable offence had been committed, and what Detective Constable Offin was purporting to exercise was the statutory power of arrest without warrant conferred upon him by subsections (4) and (6) of section 2 of the Criminal Law Act 1967. Subsection (6) confers a right of entry on premises by a constable for the purpose of exercising the power of arrest conferred upon him by subsection (4) which reads as follows:

> "(4) Where a constable, with reasonable cause, suspects that an arrestable offence has been committed, he may arrest without warrant anyone whom he, with reasonable cause, suspects to be guilty of the offence."

The word "arrest" in section 2 is a term of art. First, it should be noted that arrest is a continuing act; it starts with the arrester taking a person into his custody, (sc. by action or words restraining him from moving anywhere beyond the arrester's control), and it continues until the person so restrained is either released from custody or, having been brought before a magistrate, is remanded in custody by the magistrate's judicial act. In practice since the creation of organised police forces during the course of the 19th century, an arrested person upon being taken into custody by a constable is brought to a police station and it is there that he is detained until he is either brought before a magistrate or released whether unconditionally or upon police bail. In modern conditions any other way of dealing with an arrested person once he has been taken into

custody would be impracticable; and section 43 of the Magistrates' Courts Act 1980, providing for grant of bail by the police, is drafted on the assumption that this is what will be done.

Strictly speaking, the arrester may change from time to time during a continuous period of custody since the arrester is the person who at any particular time is preventing the arrested person from removing himself from custody; but although this may be important in a case where the initial arrest has been made by a person who is not a constable (a "citizen's arrest"), it is without practical significance in the common case of arrest by a constable and detention in police custody at a police station, since section 48(1) of the Police Act 1964 makes the chief constable of the police area vicariously liable for torts committed by members of the force that he commands in the performance or purported performance of their duties as constables.

Secondly, it should be noted that the mere act of taking a person into custody does not constitute an "arrest" unless that person knows, either at the time when he is first taken into custody or as soon thereafter as it is reasonably practicable to inform him, upon what charge or on suspicion of what crime he is being arrested: *Christie v. Leachinsky* [1947] A.C. 573. In the instant case, however, there is no suggestion that Mrs. Holgate-Mohammed, when she was arrested at her home by Detective Constable Offin, was not fully informed by him of the offence, burglary of jewellery at a house at which she was residing in December 1979, which he suspected her of having committed. Very shortly after the burglary some of the jewellery had been sold to a jeweller in Portsmouth; but it was not until more than four months later, at the end of April 1980, that the victim of the burglary recognised her jewellery in the shop-window and informed the police of this. The jeweller's description of the vendor was thought by the victim to resemble that of her former lodger, Mrs. Holgate-Mohammed, and she so informed Detective Constable Offin who had accompanied her to the jeweller's shop.

Section 2(4) makes it a condition precedent to a constable's having any power lawfully to arrest a person without warrant, that he should have reasonable cause to suspect that person to be guilty of the arrestable offence in respect of which the arrest is being made. Whether he had reasonable cause is a question of fact for the court to determine. The circuit judge in the county court by whom Mrs. Holgate-Mohammed's action for false imprisonment was heard at first instance and who had the advantage of hearing and seeing the witnesses, held that Detective Constable Offin did have reasonable cause for suspecting her to be guilty of the crime of burglary. The Court of Appeal, who had the advantage of examining either a transcript or a note of the oral evidence, came to the same conclusion. Your Lordships have enjoyed neither of these advantages. The only facts that were available to this House are such fragments as can be garnered from the judgments below. Your Lordships are thus faced upon this issue with concurrent findings of fact with which there is no material that could possibly justify interference.

There are likewise concurrent findings of fact of the courts below that the duration of Mrs. Holgate-Mohammed's detention at Southsea Police Station was, in the circumstances of which your Lordships are not fully

apprised, not unreasonable. With the findings on this issue, too, this House in my view is in no position to interfere.

So the condition precedent to Detective Constable Offin's power to take the appellant into custody and the power of the other constables at Southsea Police Station to detain her in custody was fulfilled; and, since the wording of the subsection under which he acted is "*may* arrest without warrant," this left him with an executive discretion whether to arrest her or not. Since this is an executive discretion expressly conferred by statute upon a public officer, the constable making the arrest, the lawfulness of the way in which he has exercised it in a particular case cannot be questioned in any court of law except upon those principles laid down by Lord Greene M.R. in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* [1948] 1 K.B. 223, that have become too familiar to call for repetitious citation. The *Wednesbury* principles, as they are usually referred to, are applicable to determining the lawfulness of the exercise of the statutory discretion of a constable under section 2(4) of the Criminal Law Act 1967, not only in proceedings for judicial review but also for the purpose of founding a cause of action at common law for damages for that species of trespass to the person known as false imprisonment, for which the action in the instant case is brought.

The first of the *Wednesbury* principles is that the discretion must be exercised in good faith. The judge in the county court expressly found that Detective Constable Offin in effecting the initial arrest acted in good faith. He thought that he was making a proper use of his power of arrest. So his exercise of that power by arresting Mrs. Holgate-Mohammed was lawful, unless it can be shown to have been "unreasonable" under *Wednesbury* principles, of which the principle that is germane to the instant case is: "He [sc. the exerciser of the discretion] must exclude from his consideration matters which are irrelevant to what he has to consider."

As Lord Devlin, speaking for the Judicial Committee of the Privy Council in *Hussien v. Chong Fook Kam* [1970] A.C. 942, 948, said:

> "Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking: 'I suspect but I cannot prove.' Suspicion arises at or near the starting-point of an investigation of which the obtaining of prima facie proof is the end. When such proof has been obtained, the police case is complete; it is ready for trial and passes on to its next stage . . ."

i.e. bringing the suspect before a magistrates' court upon a charge of a criminal offence. The other side of the same coin is where the investigation, although diligently pursued, fails to produce prima facie proof which, as Lord Devlin in the same case also pointed out (p. 949), must be in the form of evidence that would be admissible in a court of law. When the police have reached the conclusion that prima facie proof of the arrested person's guilt is unlikely to be discovered by further inquiries of him or of other potential witnesses, it is their duty to release him from custody unconditionally: *Wiltshire v. Barrett* [1966] 1 Q.B. 312.

Detective Constable Offin and, no doubt, those other officers of the Hampshire Police who had been concerned in the inquiries into the burglary that had been committed in December 1979, were well aware

that their case against Mrs. Holgate-Mohammed depended upon whether the jeweller would be able to identify on an identification parade, a customer whom he had seen only once, and that for a comparatively brief period five months before; and would be able to justify his identification in such a manner as would instill in a jury that high degree of confidence in his not having been mistaken that is called for by the guidance given in *Reg. v. Turnbull* [1977] Q.B. 224. Detective Constable Offin and his fellow police officers concerned in the inquiries thought (with obvious justification) that even if the jeweller were to succeed in picking out Mrs. Holgate-Mohammed on a properly conducted identification parade, such evidence would be too weak to justify convicting her of committing the crime of burglary in December 1979. In these circumstances, if she had in fact committed the offence of which there were reasonable grounds at the time of her arrest for suspecting her to be guilty, the only kind of admissible evidence probative of her guilt that would be likely to be procurable would be a confession obtained from Mrs. Holgate-Mohammed herself.

Detective Constable Offin thought that she would be more likely to confess to what he had reasonable cause to believe to be the truth, if she were arrested and taken for questioning to the police station. In other words, the reason why Detective Constable Offin arrested her was that he held the honest opinion that the police inquiries were more likely to be fruitful in clearing up the case if Mrs. Holgate-Mohammed were compelled to go to the police station to be questioned there. It is relevant to add that officers who had been concerned, as Detective Constable Offin had not, in the original investigations in December 1979 would have been available, and there would be facilities for recording any statements that Mrs. Holgate-Mohammed decided to make.

The circuit judge, however, described Detective Constable Offin's reason for making the arrest in somewhat emotive phraseology (for which I have myself supplied the emphasis) as being "to subject her to the *greater stress and pressure* involved in arrest and deprivation of liberty in the belief that if she was going to confess she was more likely to do so in a state of arrest." Yet despite his use of the expressions "stress" and "pressure," the judge went on to find that the questioning to which Mrs. Holgate-Mohammed was subjected at the police station was conducted with complete propriety. "There was not," he said, "any suggestion of verbal bullying at the police station or anything approaching it." Indeed, it would appear that Mrs. Holgate-Mohammed's solicitor, who had been sent for at her request, was present for part of the time at least and made no complaint of the arrest or the nature of the questioning or the length of time for which she was being detained.

So, applying *Wednesbury* principles, the question of law to be decided by your Lordships may be identified as this: "Was it a matter that Detective Constable Offin should have excluded from his consideration as irrelevant to the exercise of his statutory power of arrest, that there was a greater likelihood (as he believed) that Mrs. Holgate-Mohammed would respond truthfully to questions about her connection with or knowledge of the burglary, if she were questioned under arrest at the police station, than if, without arresting her, questions were put to her by Detective

Constable Offin at her own home from which she could peremptorily order him to depart at any moment, since his right of entry under section 2(6) of the Criminal Law Act 1967, was dependent on his intention to arrest her?"

My Lords, there is inevitably the potentiality of conflict between the public interest in preserving the liberty of the individual and the public interest in the detection of crime and the bringing to justice of those who commit it. The members of the organised police forces of the country have, since the mid-19th century, been charged with the duty of taking the first steps to promote the latter public interest by inquiring into suspected offences with a view to identifying the perpetrators of them and of obtaining sufficient evidence admissible in a court of law against the persons they suspect of being the perpetrators as would justify charging them with the relevant offence before a magistrates' court with a view to their committal for trial for it.

The compromise which English common and statutory law has evolved for the accommodation of the two rival public interests while these first steps are being taken by the police is two-fold:

(1) no person may be arrested without warrant (i.e. without the intervention of a judicial process) unless the constable arresting him has reasonable cause to suspect him to be guilty of an arrestable offence; and arrest, as is emphasised in the Judges' Rules themselves, is the only means by which a person can be compelled against his will to come to or remain in any police station.

(2) a suspect so arrested and detained in custody must be brought before a magistrates' court as soon as practicable, generally within 24 hours, otherwise, save in a serious case, he must be released on bail (Magistrates' Courts Act 1980, section 43(1) and (4)).

That arrest for the purpose of using the period of detention to dispel or confirm the reasonable suspicion by questioning the suspect or seeking further evidence with his assistance was said by the Royal Commission on Criminal Procedure in England and Wales (1981) (Cmnd. 8092) at paragraph 3.66 "to be well established as one of the primary purposes of detention upon arrest." That is a fact that will be within the knowledge of those of your Lordships with judicial experience of trying criminal cases; even as long ago as I last did so, more than 20 years before the Royal Commission's Report. It is a practice which has been given implicit recognition in rule 1 of successive editions of the Judges' Rules, since they were first issued in 1912. Furthermore, parliamentary recognition that making inquiries of a suspect in order to dispel or confirm the reasonable suspicion is a legitimate cause for arrest and detention at a police station was implicit in section 38(2) of the Magistrates' Courts Act 1952 which is now reproduced in section 43(3) of the Magistrates' Courts Act 1980, with immaterial amendments consequent on the passing of the Bail Act 1976. That subsection, so far as is relevant for present purposes, reads:

> "(3) Where, on a person's being taken into custody for an offence without a warrant, it appears to any such officer as aforesaid [sc. a police officer not below the rank of inspector, *or the police officer in charge of the police station to which the person is brought*] that the inquiry into the case cannot be completed forthwith, he may grant him

bail in accordance with the Bail Act 1976 subject to a duty to appear at such a police station and at such a time as the officer appoints unless he previously receives a notice in writing from the officer in charge of that police station that his attendance is not required; . . ."

So whether or not to arrest Mrs. Holgate-Mohammed and bring her to the police station in order to facilitate the inquiry into the case of the December burglary was a decision that it lay within the discretion of Detective Constable Offin to take.

In my opinion the error of law made by the circuit judge in the instant case was that, having found that Detective Constable Offin had reasonable cause for suspecting Mrs. Holgate-Mohammed to be guilty of the burglary committed in December 1979 to which he rightly applied an objective test of reasonableness, the judge failed to recognise that lawfulness of the arrest and detention based on that suspicion did not depend upon the judge's own view as to whether the arrest was reasonable or not, but upon whether Detective Constable Offin's action in arresting her was an exercise of discretion that was ultra vires under *Wednesbury* principles because he took into consideration an irrelevant matter. For the reasons that I have given and in agreement with the Court of Appeal, I do not think that in the circumstances Detective Constable Offin or any other police officers of the Hampshire Police acted unlawfully in the way in which they exercised their discretion.

I would dismiss this appeal.

LORD KEITH OF KINKEL. My Lords, I have had the benefit of reading in draft the speech of my noble and learned friend, Lord Diplock. I agree with it, and for the reasons he gives I too would dismiss the appeal.

LORD BRIDGE OF HARWICH. My Lords, for the reasons given in the speech of my noble and learned friend, Lord Diplock, with which I agree, I would dismiss this appeal.

LORD BRANDON OF OAKBROOK. My Lords, I have had the advantage of reading in draft the speech prepared by my noble and learned friend, Lord Diplock. I agree with it, and for the reasons which he gives I would dismiss the appeal.

LORD BRIGHTMAN. My Lords, I would dismiss this appeal for the reasons given by my noble and learned friend, Lord Diplock.

Appeal dismissed with costs out of legal aid fund.
The Law Society to have four weeks to object.

Solicitors: Lovell Son & Pitfield for H. F. E. Mathews, Portsmouth; Theodore Goddard & Co. for R. A. Leyland, Winchester.

S. H.

[HOUSE OF LORDS]

REGINA . . . . RESPONDENT

AND

AYRES . . . . APPELLANT

1984 Jan. 31; Feb. 1; 16

Lord Fraser of Tullybelton, Lord Scarman, Lord Bridge of Harwich, Lord Brandon of Oakbrook and Lord Templeman

Crime—Conspiracy—Conspiracy to defraud—Indictment charging common law conspiracy to defraud—Evidence supporting statutory conspiracy to obtain property by deception—Whether common law conspiracy properly charged—Whether indictment defective—Whether amounting to miscarriage of justice—Criminal Law Act 1977 (c. 45), ss. 1(1), 5(2)

Crime—Court of Appeal—Proviso to section 2(1) of Act—Defective indictment—Charge of common law conspiracy instead of conspiracy to obtain property by deception—Whether conviction amounting to miscarriage of justice—Criminal Appeal Act 1968 (c. 19), s. 2(1)

Applied. R. v. Tonner [1985] 1 W.L.R. 344, C.A.

Applied. R. v. Hollinshead [1985] 2 W.L.R. 761, C.A.

Applied. R. v. Lloyd [1985] 3 W.L.R. 30, C.A.

Considered. R. v. Hollinshead [1985] 3 W.L.R. 159, H.L.(E.)

Applied. R. v. Lloyd [1985] Q.B. 829, C.A.

Considered. R. v. Hollinshead [1985] A.C. 975, C.A. and H.L.(E.)

… 1027, Mann J. and C.A.

Considered. R. v. Cooke [1986] 3 W.L.R. 327, H.L.(E.)

Considered. R. v. Cooke [1986] A.C. 909, H.L.(E.)

Section 1(1) of the Criminal Law Act 1977 provides:

"Subject to the following provisions of this Part of this Act, if a person agrees with any other person or persons that a course of conduct shall be pursued which will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement if the agreement is carried out in accordance with their intentions, he is guilty of conspiracy to commit the offence or offences in question."

Section 5 provides:

"(1) Subject to the following provisions of this section, the offence of conspiracy at common law is hereby abolished. (2) Subsection (1) above shall not affect the offence of conspiracy at common law so far as relates to conspiracy to defraud, and section 1 above shall not apply in any case where the agreement in question amounts to a conspiracy to defraud at common law."

The defendant was charged upon indictment with the common law offence of conspiracy to defraud, the particulars of the offence being that he had conspired with his co-defendant and other persons to obtain money from an insurance company by falsely claiming that a lorry and its contents had been stolen while in transit. He was convicted and appealed on the ground, inter alia, that he was improperly charged with common law conspiracy to defraud when the charge should have been conspiracy to obtain property by deception contrary to section 1(1) of the Criminal Law Act 1977. The Court of Appeal held, dismissing the appeal, that on the wording of section 5(2) of the Act the defendant was properly charged with conspiracy to defraud.

On the defendant's appeal:—

Held, (1) that upon the true construction of the Act of 1977 common law conspiracy to defraud and statutory conspiracy contrary to section 1 were mutually exclusive offences; that "conspiracy to defraud" within the meaning of section 5(2) was limited to those exceptional fraudulent agreements which, if