DETENTION FOR INTERROGATION

By G. L. TEH*

[*In this article Mr Teh shows that the police can detain a suspect for the purposes of interrogation without it necessarily becoming unlawful. He examines all the relevant law under three headings: When an unlawful detention can be said to have commenced; the lawfulness or otherwise of detention on a 'holding charge'; and the duration of a lawful detention. In his 'Evaluation' the author discusses the policy of the present law.*]

Criminal investigations would undoubtedly be greatly facilitated if the police were legally entitled to detain suspects at a police station for the purpose of making inquiries. This is specially true where the scene of investigation is some distance away from where the suspect resides or where he has no fixed address and is not readily traced. The suspect's presence at the police station will not only mean that he is immediately available to answer questions. The police may wish to extract a confession from him where they suspect that he is the perpetrator of a crime but they have yet not been able to obtain sufficient evidence to charge. Detention of the suspect at a police station will provide the opportunity for them to obtain proof of their suspicions. Moreover, the suspect's isolation from his friends and relatives makes it easier for the police to apply improper tactics of interrogation in cases where he is recalcitrant. One reason for this is that suspects tend to be more co-operative when interrogations are conducted in a police station atmosphere.[1] They are also likely to plead guilty when kept in the station for some time. Police work would probably be magnified to unmanageable proportions if there were no opportunity to detain suspects for investigation.

That detention for investigation is a widespread practice in criminal investigations is abundantly documented elsewhere.[2] The existence of this practice is largely aided by the general ignorance of persons detained by the police, most of them being under the impression that the police have

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[1] O'Hara, *Fundamentals of Criminal Investigation* (1956) 99-100. See generally, Driver, 'Confessions and the Social Psychology of Coercion' (1968) 82 *Harvard Law Review* 42; Sterling, 'Police Interrogation and the Psychology of Confession' (1965) 14 *Journal of Public Law* 25.

[2] Whitaker, *The Police* (1964) 61 ff.; H. Street, *Freedom, the Individual and the Law* (2nd ed. 1967) 17-9; Campbell and Whitmore, *Freedom in Australia* (1966) 38-40.

the power to detain them for investigation.[3] The police perpetuate such ignorance by pretending that they do have such a power, for example, by an authoritative suggestion to a suspect that he should accompany them to the police station.[4] Moreover, the practice is seldom brought to the attention of a court. Suspects whom the police detain for investigation dare not complain as they are very often guilty of a crime; nor are they in any practical position to complain when they are eventually convicted. It is thus rare for judges to criticize or otherwise disapprove of such practice in the course of a trial of an accused.[5]

Every detention of a person is, however, a deprivation of freedom. It is unlawful unless supported by some legal justification.[6] Arrest and detention by the police is lawful only if it is for the purpose of taking the person arrested before a magistrate to be dealt with according to law, it being for a judicial official and not the police to determine whether a person ought to be deprived of his freedom.[7] The arresting process is only a necessary step to ensure that an arrested person will appear before the judicial official and detention for interrogation is not a lawful justification for depriving a person of his freedom.[8] As Jordan C.J. said in *Bales v. Parmeter*:[9]

> [s]uspicion that a person has committed a crime cannot justify an arrest except for a purpose which that suspicion justifies; and arrest and imprisonment cannot be justified merely for the purpose of asking questions. When a police officer suspects that a crime has been committed, there is no reason why he should not, and every reason why he should, ask questions of any person who seems likely to be able to give any information on the subject, whether he suspects him of having committed it or not, for the purpose of discovering whether his suspicions are well founded, and if so, who is the perpetrator, but he has no authority to arrest or confine any person merely for the purpose of asking him questions.

Detention is also unlawful if its only purpose is to make other investigations to determine whether a charge ought to be made. This is clear from *Bales'* case[10] itself where the court held such detention to be unlawful and actionable. In that case, a woman suspect was arrested at her flat and detained at a police station. She was there subjected to questioning

[3] Holland, 'Police Powers and the Citizen' (1967) 20 *Current Legal Problems* 104, 115.

[4] Brownlie, 'Police Questioning, Custody and Caution' [1960] *Criminal Law Review* 298, 313.

[5] But see, *R. v. Banner* [1970] V.R. 240; *Ludlow v. Burgess* [1971] *Criminal Law Review* 238.

[6] *R. v. Banner* [1970] V.R. 240.

[7] *Hall v. Booth* (1834) 3 N. & M. 316; 40 E.R. 458; United Kingdom Report of the Royal Commission on Police Powers and Procedure (1929) Cmd 3297, para. 153.

[8] *Drymalik v. Feldman* [1966] S.A.S.R. 227, 235. The police practice of making 'round-up' or 'dragnet' arrests is illegal as the motive for such mass arrests is not supported by any lawful justification.

[9] (1935) 35 S.R. (N.S.W.) 182, 188; see also, *D.P.P. v. Head* [1959] A.C. 83, 106 (H.L.).

[10] *Supra.*

by the police in the course of their investigations. They were trying to ascertain whether she was to be charged with the suspected crime. The Supreme Court of New South Wales held that there was no reasonable and probable cause to justify her arrest and that her detention at the police station was wrongful as it was for the purpose of interrogating her and 'making investigations in order to see whether it would be proper or prudent to charge her with the crime'.[11]

A policeman who detains a suspect for the purpose of interrogating him commits the tort of false imprisonment.[12] The detention is also a common law misdemeanour punishable by fine and imprisonment.[13] However, confessional statements obtained from a suspect who has been illegally detained are not thereby rendered inadmissible as the courts have not regarded such illegal police conduct as being sufficient to call for a rejection of otherwise admissible evidence.[14]

Although the police may not in law detain a suspect for interrogation this does not mean that they violate the law each time they secure a suspect's presence at the police station for interrogation. The police may still detain suspects for interrogation without necessarily violating the principle that detention for interrogation is illegal. Three aspects of the law relating to arrest and detention will now be examined to show how this is made possible. The three selected aspects are: the circumstances in which detention commences at law; the practice of detaining suspects on a holding charge; and the time during which an arrested person may be lawfully detained by the police.

WHEN 'DETENTION' COMMENCES

A suspect brought to a police station or who remains at the station whilst inquiries are being made is not necessarily 'detained' in law. Whether he has been so detained depends on the circumstances in which 'detention' is deemed to arise in law. The word has acquired many different shades of meaning in the various contexts in which it has been used, some of which are non-legal in character.[15] It is proposed, therefore, to consider what in law amounts to 'detention' before discussing the circumstances in which police 'detention' commences.

[11] (1935) 35 S.R. (N.S.W.) 182, 190.

[12] *Drymalik v. Feldman* [1966] S.A.S.R. 227; *Dallison v. Caffery* [1965] 1 Q.B. 348; *Tobridge v. Hardy* (1955) 94 C.L.R. 147.

[13] *R. v. Linsberg* (1905) 69 J.P. 107; 1 *Russell on Crime* (12th ed. 1964) 690-1; Archbold, *Pleading, Evidence and Practice in Criminal Cases* (35th ed. 1962) 1113-21; Criminal Code Act 1899 (Qld), s. 355.

[14] *R. v. McDermott* (No. 2) (1947) 47 S.R. (N.S.W.) 407, 409, *per* Jordan C.J.; but see, *R. v. Jeffries* (1946) 47 S.R. (N.S.W.) 284, 288, where the learned judge said that it was a matter of doubt whether confessions obtained in such circumstances would be admissible.

[15] United Kingdom, *Report of the Royal Commission on Police Powers and Procedure* (1929) Cmd 3297, paras. 147, 148; Abrahams, *Police Questioning and the Judges' Rules* (1964) 34.

WHAT CONSTITUTES 'DETENTION' IN LAW

'Detention' is commonly understood by the police to refer to something less than an arrest, thereby generating their belief that the prerequisites of a formal arrest and the ordinary consequences of arrest need not be attended to.[16] No legal significance, however, arises from such a concept. 'Detention' is one single entity in law. It arises whenever a person is deprived of his liberty in circumstances amounting to an arrest and imprisonment—the essence of arrest and imprisonment in tort[17] and criminal law.[18] Once an imprisonment has occurred it is immaterial that the police regard the situation solely as one where the suspect has not been imprisoned or arrested but has been merely 'detained', held in 'custody' or 'invited' to the station to 'assist' them in their inquiries.

This legal concept of detention was applied in the Irish case of *Dunne v. Clinton*,[19] where the police requested the court to determine the legality of the police practice of 'detaining' suspects without making a formal arrest. The plaintiffs were invited by the police to the station where they were detained for about forty hours whilst the police were gathering evidence of a crime which they suspected the plaintiffs had committed. The plaintiffs were not formally arrested nor charged with any crime until their solicitor complained about the 'detention'. Following the complaint, they were charged with breaking and stealing offences and brought before a magistrate. The charges were later dismissed by a District Court and the plaintiffs subsequently sued for damages for false imprisonment. It was contended for the defendant that the detention did not amount to arrest or imprisonment and was, therefore, not unlawful. This was rejected by the Irish High Court on the basis that there was no such legal entity as 'detention' short of an imprisonment. To quote Hanna J.:[20]

> [i]n law there can be no half-way house between the liberty of the subject, unfettered by restraint, and an arrest . . . But a practice has grown up of 'detention', as distinct from arrest. It is, in effect, keeping a suspect in custody, perhaps under as comfortable circumstances as the barracks will permit, without making any definite charge against him, and with the intimation in some form of words or gesture that he is under restraint, and will not be allowed to leave. As, in my opinion, there could be no such thing as notional liberty, this so-called detention amounts to arrest, and the suspect has in law been arrested and in custody during the period of his detention. The expression 'detention' has no justification in law in this connection, and the use of it has in a sense helped to nurture the idea that it is something different from arrest, and that it relieves the guards from the obligation to

[16] See generally, Glanville Williams, 'Requisites of a Valid Arrest' [1954] *Criminal Law Review* 6; *Christie v. Leachinsky* [1947] A.C. 573.

[17] *Winfield on Tort* (8th ed. 1967) 32; *Salmond on the Law of Torts* (13th ed. 1961) 305.

[18] Smith and Hogan, *Criminal Law* (2nd ed. 1969) 271; 1 *Russell on Crime* (12th ed. 1964) 690.

[19] [1930] I.R. 366.

[20] *Ibid.* 372; see also 369 *per* Sullivan P.

> have the question of the liberty of the suspected person determined by a Peace Commissioner or the Court. If the word 'detention' were deleted from the police vocabulary and the word 'arrest' substituted there would be a clearer understanding as to the obligations upon the guards. If it is necessary or advisable for the investigation of crime that there should be some intermediate period conforming to the present practice, it must be authorised by the Legislature. It is a deprivation of the liberty of the subject, and it is fundamental that that cannot occur in cases such as this, save by the order of a Peace Commissioner or a Court.

Although *Dunne's* case is an Irish decision, the above statement of the law is not confined to Ireland, the legal character of police detention enunciated by the court being the same at common law.

The technical term for the commencement of an imprisonment is 'arrest'.[21] Thus a person is imprisoned if he has been arrested. Conversely, he has been arrested if the circumstances of his 'detention' amount to an imprisonment.[22] An attempt to depart from this relationship between arrest and imprisonment was made by the Ontario Court of Appeal in the recent case of *R. v. Whitfield.*[23] The accused was driving a car when a police officer tried to execute a warrant for his arrest. He refused to stop the car as requested. Before he could drive away, however, the police officer managed to grab his shirt momentarily with both hands through the driver's window, at the same time saying, 'you are under arrest'. The accused was later apprehended, charged and convicted of the offence of escaping from lawful custody contrary to section 125(a) of the Criminal Code. On appeal, the conviction was quashed by the Court of Appeal on the basis that there were several legal categories of detention. Laskin J.A., delivering the judgment of the court, said that 'although custody under s. 125(a) always involves an arrest, an arrest does not always involve custody'.[24] He was of the opinion that the accused had not been 'custodially arrested' and held that the circumstances of the case only

[21] The word 'arrest' is derived from the old French word *arester* which means to stop or to stay something in motion: 1 *Oxford English Dictionary* (1933) 460-1.

[22] This logically follows from the proposition that every imprisonment begins with an arrest. *Contra,* Williams, 'Requisites of a Valid Arrest' [1954] *Criminal Law Review* 6, 13, where the writer said:

> [i]f the suspect is not touched, even though he is surrounded in his house by a cordon of police, he is not arrested: *the surrounding is an imprisonment,* for which an action for false imprisonment would lie if it were not authorised by law; *but it does not amount to an effective arrest* which would make a subsequent escape a crime. (emphasis added)

The above illustration was given to show the need for acquiescence before an arrest could arise by the use of mere words of arrest. It is submitted, however, that acquiescence is not necessary to give rise to an arrest in the above circumstances and that Professor Williams' implied proposition that a person can be imprisoned without being arrested is not in accord with existing authorities. For a discussion of 'stop and search' situations which do not give rise to an arrest, see: Cooper, 'Search, Seize and Question under Federal Revenue Laws' (1971) 45 *Australian Law Journal* 342, 354-5.

[23] [1969] 4 D.L.R. (3d) 306. The court consisted of Gale C.J.O. and Laskin and Jessup JJ.A.

[24] [1969] 4 D.L.R. (3d) 306, 314.

evidenced an 'arrest in symbolical form' or a 'technical arrest' so that when the accused drove away he could not be said to have 'escaped' from the police officer's 'custody'.[25]

The Attorney-General for Ontario appealed to the Supreme Court of Canada where, by a 5-2 decision,[26] the decision of the court below was reversed and the conviction upheld. Judson J., delivering the opinion of the majority decision, categorically rejected the attempted distinction between arrest and custody saying, there is 'no room for what seems to be a new subdivision of 'arrest' into 'custodial' arrest and 'symbolical' or 'technical' arrest. An accused is either arrested or he is not arrested.'[27] Thus the highest judicial tribunal in Canada has confirmed what appears to be a basic common law principle, namely, that arrest is the commencement of 'custody' or imprisonment in law.

If imprisonment is the technical label for detention in law, what then are the essential elements of an imprisonment? For convenience, these may be ascertained from the same concept in the tort of false imprisonment, the elements being the same in the crime of false imprisonment. Generally, an imprisonment in law is the total deprivation of a person's liberty.[28] The place of confinement is immaterial as there is no need for a physical barrier in an imprisonment. As Blackstone said: '[e]very confinement of the person is an imprisonment, whether it be in a common prison, or in a private house, or in the stocks, or even by forcibly detaining one in the public streets.'[29] The application of physical force or even the laying of hands on the person to be detained is not essential to give rise to an imprisonment. This is because an imprisonment 'includes the notion of restraint within some limits defined by a will or power exterior to our own'.[30]

A threat to apply physical force to ensure compliance with a command to go to the police station is sufficient to give rise to an imprisonment. Likewise, an assertion of legal authority gives rise to an imprisonment if the person to be detained submits under the impression that he must comply with it regardless of his wishes.[31] In such situations, the person imprisoned is in the same position as though he were actually locked up in a room. The law does not require him to risk incurring the consequences of violence as would be the case if he were required to resist until subdued.[32]

The above situations are those where the person to be detained is conscious of his detention. There may be cases where all the elements

[25] *Ibid.* 309.
[26] [1970] 7 D.L.R. (3d) 97. The majority judges were Fauteux, Martland, Judson, Ritchie and Pigeon JJ. The two dissenting judges were Spence and Hall JJ.
[27] [1970] 7 D.L.R. (3d) 97, 98.
[28] *Warner v. Riddiford* (1858) 4 C.B. N.S. 180; 140 E.R. 1052, 1059.
[29] 3 *Commentaries* (10th ed. 1787) 127. [30] *Bird v. Jones* (1845) 7 Q.B. 742.
[31] *Wood v. Lane and Cleaton* (1834) 6 Car. & P. 774; 172 E.R. 1458.
[32] T. A. Street, 1 *The Foundations of Legal Liability* (1906) 14; Chaplin, *Handbook of the Law of Torts* (1917) 274-5.

of an imprisonment are present but the person to be detained is unaware of his confinement. For example, a suspected criminal is requested by the police to remain in an interrogation room under some pretext that they require his assistance in their inquiries. Unknown to him, two policemen are stationed outside the room to ensure that he does not leave the room. Although, as will be seen later, the answer is of importance to the police, it is uncertain whether an imprisonment has arisen in such a situation.[33]

The English Court of Appeal in *Meering v. Graham-White Aviation Co. Ltd*[34] held, by a majority, that an imprisonment arose on facts similar to the above hypothetical situation. Atkin L.J. rejected the contention that there could be no imprisonment where a person detained has no knowledge that he has been confined. In a much quoted passage, the judge said:[35]

> [i]t seems to me upon a review of the possibilities of what is meant by imprisonment, that it is perfectly possible for a person to be imprisoned in law without his knowing the fact and appreciating that he is imprisoned . . . I think a person can be imprisoned while he is asleep, while he is in a state of drunkeness, while he is unconscious, and while he is a lunatic.

On the other hand, the Court of Exchequer in *Herring v. Boyle*,[36] nearly a century before held that an infant school boy could not maintain an action for false imprisonment against his school-master for refusing to permit his mother to take him home on demand. There was no evidence that the boy knew of the demand and refusal. As Bolland B. observed, the boy 'may have been willing to stay' in school.[37] *Herring's* case may be taken as authority for the view that a person must know he has been confined before he can be said to have been imprisoned in law.[38] It is in irreconcilable conflict with the decision in *Meering's* case.

Herring's case, however, appears to be based on an unfortunate confusion between the concept of imprisonment on the one hand and the legality of imprisonment on the other.[39] If the essence of an imprisonment is the

[33] Higgins, *Elements of Torts in Australia* (1970) 77-8.

[34] (1920) 122 L.T. 44; Warrington and Atkin L.JJ.; Duke L.J. dissenting.

[35] *Ibid.* 53-4. The other majority judge, Warrington L.J., did not discuss whether knowledge is material. He merely found that the plaintiff was 'no longer a free man' when he came under the control of the detectives: *ibid.* 46. On the other hand, Duke L.J., dissenting, held that the plaintiff's lack of knowledge was conclusive that there was no evidence of an imprisonment for the jury to consider. *Herring's* case, *infra*, was not cited to the court.

[36] (1834) Cromp. M. & R. 377; 149 E.R. 1126. The *ratio decidendi* of the case is not clear: Weir, *A Casebook on Tort* (1967) 242.

[37] *Ibid.* 1127.

[38] See also, *Alderson v. Booth* [1969] 2 Q.B. 216; *cf.* American Law Institute, *Restatement of the Law of Torts* (1958) 2d, s. 42, p. 65 ('there is no liability for intentionally confining another unless the person physically restrained knows of the confinement *or is harmed by it*' (emphasis supplied)). The last clause probably followed suggestions made by Professor W. L. Prosser in 'False Imprisonment: Consciousness of Confinement' (1955) 55 *Columbia Law Review* 847.

[39] For cases where the two elements of false imprisonment were kept distinct, see, *e.g. Warner v. Riddiford* (1858) 4 C.B. N.S. 180, 140 E.R. 1052; *Herd v. Weardale Steel, Coal & Coke Co. Ltd* [1913] 3 K.B. 771; affd [1915] A.C. 67; *Robinson v. Balmain New Ferry Co. Ltd* [1910] A.C. 295.

deprivation of liberty then a person locked in a room has been imprisoned.[40] The question whether a person has been imprisoned has nothing to do with the question whether he consented to the imprisonment. His consent, and hence his knowledge of the confinement, is only relevant if the legality of his imprisonment is in issue. His knowledge of the confinement is material on such an issue because of the principle that a person cannot complain of his imprisonment if he in fact had knowledge of and consented to it.[41] The broad issue in *Herring's* case was whether the alleged imprisonment was actionable and the school boy's knowledge and consent were relevant to this issue. However, the court had first to determine whether an imprisonment had in fact arisen in the sense that there had been a total restraint of the boy's liberty at the material time. Knowledge and consent were immaterial on this question.[42] These two aspects of the action for false imprisonment became blurred when the court proceeded on the basis that a person could not be imprisoned if he consented to his confinement. It was as though consent obliterated the fact of imprisonment.

No doubt, the result would be the same whether a court decides that no imprisonment has arisen or that, though an imprisonment has arisen, it is not wrongful because of the presence of consent. The failure to keep the two issues apart does, however, lead to the odd result that the person imprisoned has to prove that he did not consent to it.[43] Obviously, he cannot do so if he has no knowledge of the imprisonment. If consent were a defence to an action for false imprisonment, the burden of proving consent would be on the person who caused the imprisonment rather than non-consent being a necessary element of the action itself. The fact that the person imprisoned has no knowledge of his confinement would then be immaterial to his action for false imprisonment.

As will be seen below, however, the existing law relating to a constable's powers of arrest supports the view that there can be no imprisonment unless the person confined has knowledge of his confinement. The circumstances in which an arrest arises by 'invitation' will now be examined to

[40] T. A. Street, 1 *The Foundations of Legal Liability* (1906) 14-5; *cf. Dickenson v. Waters Ltd* (1931) 31 S.R. (N.S.W.) 593; *Burton v. Davies* [1953] Q.S.R. 26.

[41] *Herring's* case, *supra*. The above analysis is also supported by the maxim *nullus liber homo imprisonetur* (no one can consent to be imprisoned): *Clarke's* case, 5 Co. Rep. 63b; 77 E.R. 152.

[42] See Blackstone, 3 *Commentaries* (10th ed. 1787) 127.

[43] Another odd result of the present rule is that a person who consents to his confinement cannot complain even if he has not been given the reason for his confinement, a necessary pre-requisite for a valid arrest: *Christie v. Leachinsky* [1947] A.C. 573. Yet it is a clear rule that a failure to comply with such formality is a cause of action for an otherwise lawful arrest and imprisonment: *R. v. Kulynycz* [1970] 3 All E.R. 881. This is because consent to such an imprisonment is not also consent to a procedural irregularity: see Beale, 'Consent in the Criminal Law' (1894) 8 *Harvard Law Review* 317, 318. If consent were not an integral part of the concept of imprisonment, it would then become clear that a breach of such procedural requirement is a distinct cause of action notwithstanding that imprisonment was consented to.

show the significance of this view. For the sake of convenience, it is proposed to confine discussion to the situation where a suspect is 'invited' to the police station, similar considerations being applicable in cases where a suspect at the station is 'requested' to remain there whilst the police make their inquiries.

CIRCUMSTANCES IN WHICH 'DETENTION' COMMENCES AT LAW: ARREST BY 'INVITATION'

There are two ways in which a suspect may be *formally* arrested, thereby marking the commencement of his imprisonment. In the words of Macarther J. in *Police v. Thomson*:[44]

> an arrest is made if the arresting officer clearly pronounces words of arrest and the person sought to be arrested submits to the process; and alternatively, in the absence of submission, if the arresting officer clearly pronounces words of arrest and formally touches the body of the person sought to be arrested at the same time making it plain to him that he is arrested.[45]

There is, however, a third and *informal* way in which a suspect may be arrested, namely, by inviting him to the police station in circumstances that give him no choice but to go. It is a common practice for the police to resort to this method whenever they wish to bring in a suspect for questioning as this is one way to avoid any possible action for false imprisonment.

The 'invitation' to the station may be by way of making a face-to-face request to the suspect to accompany them to the station or by leaving a note at his home with the suggestion that he should see them at the station.[46] A suspect who goes to the station in compliance with such an 'invitation' is not necessarily arrested. An arrest is only constituted, in the words of Lord Parker C. J. in *Alderson v. Booth*:[47]

> *when any form of words* is used which in the circumstances of the case were calculated to bring to the [suspect's] notice, and did bring to [his] notice, that he was under compulsion and thereafter he submitted to that compulsion.

[44] [1969] N.Z.L.R. 513, 517. See generally, 10 *Halsbury's Laws of England* (3rd ed. 1955) 342.

[45] Submission to the process on the part of the person to be arrested marks the commencement of his arrest and imprisonment. His body need not be touched: *Genner v. Sparks* (1705) 6 Mod. 173, 87 E.R. 928; *Shaaban bin Hussien v. Chong Fook Kam* [1969] 3 All E.R. 1626, 1629. Submission is not essential in the case of the 'touch method' of arrest: *Grainger v. Hill* (1838) 4 Bing., N.C. 212, 132 E.R. 769; *Symes v. Mahon* [1922] S.A.S.R. 447. As Pollock C.B. said in *Sandon v. Jervis and Dain* (1859) 1 E.B. & E. 942, 946, 120 E.R. 760, 762, 'probably the reason which led to the laying down of the law as it stands was that it was thought desirable to avoid unnecessary violence'.

[46] See, *e.g., R. v. Amad* [1962] V.R. 545 (two detectives told the accused the police wanted to see him at the station); *R. v. Thomas* [1970] V.R. 674 (a detective told the accused that he would like him to go to the station to talk about a breaking offence); *R. v. Joyce* [1957] 3 All E.R. 623 (police officers invited the accused to accompany them to the station on the excuse that they needed to take a statement from him).

[47] [1969] 2 Q.B. 216 (emphasis added).

There are thus three elements which must be present before an 'invitation' can give rise to an arrest. First, the police officer making the 'invitation' must have used words which amount to unequivocal words of command to show the suspect that the 'invitation' must be complied with. Second, the command must have been clearly brought to the suspect's notice. Third, the suspect must have gone to the station in submission to the command and not because he went along voluntarily, being completely unaffected by the command.[48]

Whether the command element is present in a given case may be difficult to determine because of the varied circumstances that suspects may be 'invited'. Much depends on the language used, the manner in which the 'invitation' is made, and the surrounding circumstances. Two cases may be contrasted to show the fine distinction that has been made between an 'invitation' that is a command and one that is not. In *Chinn v. Morris,*[49] the defendant, a butcher, gave the plaintiff into a constable's custody on a charge of stealing fat. The constable told the plaintiff that he had to go with him before a magistrate. The plaintiff went along without resisting although the constable had not applied any compulsion on him. Best C.J. held that the plaintiff had been imprisoned; this was on the ground that he would have been compelled to go had he refused to do so.[50]

On the other hand, the Saskatchewan Court of Appeal in *Ferguson v. Jensen; O'Brien v. Jensen,*[51] held, on the facts of the case, that the plaintiffs had not been imprisoned. In the case of the plaintiff Ferguson, he went to a police station in response to a police officer's telephone request. Haultain C.J.S. said that he had a choice open to him for he could have escaped had he wished.[52] The other plaintiff, O'Brien, was told by a police officer on a street, 'you are going to (the station) today'. The plaintiff went along under the impression, from the way the officer spoke to him, that he had to go as otherwise actual physical complusion would have been applied to him. Elwood J.A. held that nothing in the police officer's invitation indicated

[48] Lord Parker C.J.'s formulation of an arrest by invitation is probably an extension of the verbal form of arrest, a judicial recognition that the police practice is to 'invite' rather than to utter clear words of arrest.

[49] (1826) 2 Car. & P. 361; 172 E.R. 163.

[50] The report of the case does not show that he knew any refusal on his part would be met with compulsion.

[51] [1920] 53 D.L.R. 616.

[52] Accord, Newlands J.A. Lamont J.A. held that the plaintiff went to the station voluntarily; this was on the ground that '[i]f he had not gone, he probably would have been arrested. It was to avoid the arrest that he went.' (*Ibid.* 620.) It is submitted that such a premise would support a contrary conclusion. If it were true that the police were in control of the situation so as to allow the plaintiff no choice but to go along to the station, then the fact that he went along to avoid an actual imposition of restraint would clearly be evidence of his submission to the police. All the elements of arrest by invitation would have been present. Another criticism of his judgment is that he proceeded on the basis that the police were in control of the situation, contrary to Haultain C.J.S.'s view that the plaintiff could have escaped if he wished.

that he intended to compel the plaintiff to go.[53] This meant that he would not have been physically compelled had he refused to comply with the invitation. If the police officer had not assumed control over him, it would not have mattered that the plaintiff was under the impression to the contrary. It did not alter the fact that he was actually free to choose whether or not to comply with the invitation.

It should follow that an arrest by invitation arises whenever the police are in the position to execute effective control over a suspect and would have compelled him to go with them if the suspect should choose to go his own way.[54] However, the established rule is that a suspect commanded to go to the station is not arrested unless he has also clearly submitted to the compulsion.[55] Whether his going to the station in response to the 'invitation' amounts to a submission depends on what causes him to go.[56] No arrest arises if he goes of his own volition. On the other hand, if he goes because he feels constrained by the command, there is a submission giving rise to an arrest. In the latter case, it is immaterial that he is also willing to go for various motives of his own.

Whether there has been a submission to a command is again a difficult question to determine, particularly in cases where suspects ambiguously accompany the police to the station. In *Peters v. Stanway*,[57] for instance, the defendant called a police constable to her home and there, in the presence of the plaintiff, a maid-servant, accused her of having stolen some silver spoons. When the defendant asked the constable for advice on what should be done she was told that her only remedy would be to give the plaintiff in his charge and have her taken before a magistrate. The defendant then decided to place the plaintiff in the constable's custody. Thereafter, the plaintiff walked with the constable to a police station. Although there was evidence that she was willing to go to the station to answer the defendant's accusation it was held that she had been imprisoned. This was on the ground that the circumstances indicated that she went along because she felt constrained to do so. Her willingness to answer the accusation was, according to Alderson B., not an expression of a desire to go voluntarily.[58]

Quite apart from the difficulty of determining whether there has been a submission to a command in a given case, the more significant feature of

[53] *Ibid.* 624; *cf.* Haultain C.J.S. who said that the police had not communicated to the plaintiff that he was under arrest: *ibid.* 619.

[54] See *Smith v. R.* (1957) 97 C.L.R. 100, 129; *Shaaban Bin Hussien v. Chong Fook Kam* [1969] 3 All E.R. 1626, 1629; *R. v. Sadler* [1970] 2 All E.R. 12, 17.

[55] 10 *Halsbury's Laws of England* (3rd ed. 1955) 342.

[56] *Peters v. Stanway* (1835) 6 Car. & P. 737; 172 E.R. 1442. *Conn v. David Spencer Ltd* [1930] 1 D.L.R. 805; *Wood v. Lane and Cleaton* (1834) 6 Car. & P. 774; 172 E.R. 1458.

[57] (1835) 6 Car. & P. 737; 172 E.R. 1442.

[58] *Ibid.* 1443.

the submission requirement is that a suspect 'invited' to a police station must first *know* that he is under compulsion to comply with the 'invitation'. In the absence of such knowledge, his going to the station cannot be a result of submission to the compulsion asserted by the police—he cannot submit to something he is unaware of. The significance of the presence or otherwise of such knowledge may be seen in *R. v. Jones, Ex parte Moore.*[59] In that case, police officers went to the home of a person suspected of being involved in a theft. Instead of formally arresting him, they invited him to attend at a police station. When he was at the station, a police sergeant purported to make an order admitting him to bail. This was on the basis that he was under arrest when he accompanied the police officers to the station. The Court of Appeal quashed the order on the ground that he had never been arrested. There was no evidence that he knew he was under compulsion when he was escorted to the station. He could not, therefore, have submitted to police custody.

The result in *Jones'* case would have been the same if the police officers had *deliberately concealed* from the suspect the fact that his liberty had been restrained. It would be one way in which the police may secure a suspect's presence at the station for interrogation without necessarily bringing about an imprisonment. Concealment of the fact that the suspect is under restraint should not be difficult as the facts in *Jones'* case are not extraordinary; a suspect 'invited' to the police station is often under the impression that he is free to go his own way any time he pleases when in fact he would have been actually restrained from leaving if he had tried to do so.

Another way in which the police may bring in a suspect for interrogation is by inviting him to the station with words clearly *indicating to him that he is not obliged to go with them.* This is one consequence of the command as a prerequisite for an arrest by invitation. Thus in *Cant v. Parsons,*[60] Lord Lyndhurst C.B. held that the plaintiff in that case had not been arrested and imprisoned as there was no command. The defendant had asked a police constable to take the plaintiff and another person into custody on a charge of embezzlement and swindling. The constable was reluctant to do so but he told all of them that 'if they would be so good as to go with him he would take the advice of his superior'. The plaintiff was thus given a clear choice whether or not to go so that his going to the station could not give rise to an arrest and imprisonment in such circumstances.

The plaintiff in *Cant's* case was not only willing to go to the station; he had also clearly elected to go even though he had been told that he could choose not to. This meant that even if there had been a command, it would be unlikely that he had submitted to it. Suspects in his position are usually

[59] [1965] *Criminal Law Review* 222. See also, *Campbell v. Tormey* [1969] 1 All E.R. 961, 966-7.
[60] (1834) 6 Car. & P. 504; 172 E.R. 1339.

willing to oblige with police requests.[61] This means that the police will again have little difficulty in getting suspects to the station for interrogation. The fact that difficulties may arise in a given case as to whether there has been a command or a submission can only help to perpetuate such police subterfuge in getting suspects to the station.

DETENTION ON A 'HOLDING CHARGE'

Another way in which suspects may be brought to the police station to facilitate criminal investigations is the use of a subterfuge commonly referred to as a 'holding charge'. This is the practice whereby a suspect is arrested for some minor offence, for example, a vagrancy charge, so that, whilst he is being remanded in custody on that charge, the police may interrogate him on a more serious crime of which they suspect him.[62] This practice has been described as a 'first-rate procedure'.[63] There are good reasons for this view too. The police may not have sufficient evidence to enable them to arrest the suspect on the major crime they are investigating. Arresting him on some minor charge, however, ensures that he is safely under lock and key for a while whilst they pursue their inquiries on the major crime. Even if they could have arrested him on the major crime they may not wish to do so. This is because the Judges' Rules would prohibit them from interrogating him on the charge for which he is held in custody.[64] Interrogation on some other crime than that for which a suspect is held in police custody is neither prohibited by the Judges' Rules nor disapproved of by judges.[65] However, the practice has either been condemned or disapproved of in several quarters. Thus in the Canadian case of *R. v. Dick,*[66] where the accused was held on a vagrancy charge to facilitate police investigations of a murder, Robertson C.J.O. observed:[67]

> [i]t seems to me to be an abuse of the process of the criminal law to use the purely formal charge of a trifling offence upon which there is no real intention to proceed, as a cover for putting the person charged under arrest, and obtaining from that person incriminating statements, not in relation to the charge laid . . . but in relation to a more serious and altogether different offence.

[61] See Glasbeek and Prentice, 'The Criminal Suspect's Illusory Right of Silence in the British Commonwealth' (1968) 53 *Cornell Law Review* 473, 479.

[62] United Kingdom, *Report of the Royal Commission on Police Powers and Procedure* (1929) Cmd 3297, paras 159-60.

[63] United Kingdom, *Hearings of the Royal Commission on Police Powers and Procedure* (1929) Minutes of Evidence, Question 1191, *per* the Director of Public Prosecutions.

[64] Judges' Rules 1918 (Eng.), Rule 3; Chief Commissioner's Standing Orders (Vic.) O. 634, r. 3. *Cf.* 1964 Revised Judges Rules (Eng.) which do not prohibit custodial interrogation.

[65] *R. v. Buchan* [1964] 1 All E.R. 502; *Baldock v. Douglas* (1954) 56 W.A.L.R. 82; *R. v. Bailey* [1958] S.A.S.R. 301.

[66] [1947] 2 D.L.R. 213.

[67] *Ibid.* 225 (The court excluded in evidence statements elicited from the accused after he had been cautioned on only the holding charge *(semble)* and interrogated on the murder.).

The propriety or otherwise of such practice is, however, a different matter altogether from the question whether it is illegal or not. Surprisingly, the exact legal status of the practice has not been authoritatively determined. It may be that the difficulty of proving that a holding charge is made for an ulterior motive discourages any potential complainant from drawing judicial attention to the legal character of the practice.

The much-cited case of *Christie v. Leachinsky*[68] contains a pronouncement by Scott L.J. in the Court of Appeal on the legal status of the practice. After an exhaustive examination of a constable's powers of arrest, the judge said:[69]

> [i]t follows from what I have said that the practice, if there be one, . . . of arresting a supposed murderer, for instance, on a minor charge, as a means of preventing his escape from justice at a time when the police suspect, but have not sufficient clues to constitute reasonable and probable cause for arresting the suspect for the suspected crime, is in my opinion *illegal,* and gives the person arrested a cause of action for false imprisonment. In practice the police would, as a rule, incur no liability for substantial damages, except where anticipatory suspicions prove ill-founded, but it is important for the sake of the great principle of the liberty of the subject, that the illegality of the practice should be widely known to judges, to the legal profession, to the police and to the public.

One would have thought that this is an unambiguous declaration that the practice is illegal. Lord du Parcq, in the House of Lords, however, questioned the correctness of the above passage in the following terms:[70]

> I think that the observations of the learned lord justice as to the impropriety of arresting on a minor charge a man suspected of murder may be understood in a sense which the lord justice cannot, I think, have intended them to bear. If all that the lord justice means is that the police have no right to arrest a man suspected of murder on a minor charge solely in order to prevent his escape, and with no belief in or reasonable suspicion of his guilt on that minor charge, then I think that his opinion is plainly right. If, however, his words are to be taken to mean that it is wrong to arrest such a suspect on a minor charge, itself of such a nature as to justify arrest without a warrant, of which the police believe him to be guilty, when their real or principal motive is to prevent his escape from justice, and that in such a case arrest and detention on the minor charge would constitute false imprisonment, I must say, with great respect, that this seems to me to be a highly questionable proposition.

Although the above judicial utterances are strictly *obiter,* there appears, status of the practice, Lord Simonds, in the same case, said that it could not be 'wrongful to arrest and detain a man upon a charge, of which he is reasonably suspected, with a view to further investigation of a second charge

[68] [1946] 1 K.B. 124 (C.A.); [1947] A.C. 573 (H.L.).
[69] [1946] 1 K.B. 124, 135 (emphasis added).
[70] [1947] A.C. 573, 604-5.

upon which information is incomplete'.[71] His explanation was that the police should be given a wide discretion in such matters if they were to preserve the peace and bring criminals to justice.[72]

Although the above judicial utterances are strictly *obiter,* there appears, on principle, no reason why the holding charge should be illegal. A policeman is justified in detaining a suspect who has been validly arrested and charged with an offence.[73] The fact that the offence is only a minor one should be immaterial. Nor should it make any difference in law that the holding charge is a subterfuge to facilitate investigations into a major crime.[74] It is true that the person arrested may be later charged with a different and more serious crime. However, so long as he is informed of the new charge, it is clear law that an initial charge supporting an arrest and detention need not necessarily be the charge ultimately found in the indictment. In fact, as Lord Simonds said in *Christie's* case, 'it is not an essential condition of lawful arrest that the constable should at the time of arrest formulate any charge at all'.[75] The holding charge remains no less legal notwithstanding that the person arrested is later indicted on a different charge.

The only legal limitation on the practice is that the holding charge must be valid. If the arrest and detention is not supported by a lawful justification it will not avail the police to show that there was in fact another valid ground to support the arrest and detention. This was the whole basis upon which the arresting officer in *Christie's* case was held liable in damages for false imprisonment. In that case, the plaintiff was arrested without a warrant on a charge of 'unlawful possession' of a bale of cloth. The two arresting police officers purported to act under section 513 of the Liverpool Corporation Act 1921 which authorized an arrest only if the name and address of the person to be arrested were not known or ascertainable. The plaintiff was arrested at his place of business even though his name and address were known to the officers. In the circumstances, the arrest was not authorized by that section. The defendant, one of the arresting officers, attempted to justify the arrest on the ground that, at the time of the arrest, he reasonably suspected the plaintiff of having committed a larceny. This defence was accepted at the trial but rejected by the Court of Appeal and the House of Lords on the ground that the plaintiff had not been informed of the true reason for his arrest. Although the suspicion of felony would

[71] *Ibid.* 593.

[72] *Ibid.* See also, Stable J. at the trial, cited by Viscount Simon without comment: *ibid.* 584. The trial judge, however, proceeded on the erroneous basis that the holding charge need not be valid so long as there was some other valid basis for arrest, albeit uncommunicated to the suspect.

[73] The duration of detention is a different matter, see *infra.*

[74] Campbell and Whitmore, *Freedom in Australia* (1966) 38.

[75] [1947] A.C. 573, 593.

have been a justification for the arrest, the failure to communicate to the plaintiff this ground for the arrest rendered the arrest illegal.[76]

At first sight a significant restriction appears to have been imposed on the practice when the House of Lords in *Christie's* case made it quite clear that the police must disclose the ground of arrest to the suspect to be arrested. This is especially true in cases where the police would like to detain suspects for interrogation but have no minor charge to support arrest and detention. The 'reason why' requirement in *Christie's* case would prevent any arrest if their investigations on the major crime have not reached a state whereby they may arrest without warrant on reasonable suspicion of the crime being committed. However, as *Christie's* case and cases subsequent to it have shown, the 'reason why' requirement provides no real obstacle to the practice.

In *Christie's* case itself, the House of Lords said that the requirement is a matter of substance.[77] Technical or precise language need not be used. Thus where the charge is based on some statutory offence, the police need not specify the relevant section of the statute or even tell him the elements of the offence. All that is required is that the arrested person be told the *act* for which he is arrested.[78] This is probably because the essence of the rule is that he must know why his freedom has been interfered with.[79] If he has been told that the arrest is for some act of his then the 'reason why' requirement has been satisfied—he is deemed to know why. For example, the police need only tell him that they are arresting him for having stabbed or killed another person. They need not specify whether the arrest is for wounding, murder or manslaughter. There is in fact no need to formulate any charge at all.[80]

The 'reason why' requirement was complied with in *Christie's* case when the plaintiff was told, at the time of his arrest, that he was being arrested on a charge of 'unlawful possession' of a bale of cloth. This holding charge would have been valid but for the fact that the police purported to arrest the plaintiff under powers of arrest conferred by the Liverpool Corporation Act 1921 which did not arise in the circumstances.[81] The situation may well

[76] There are two reasons for the principle that a person to be arrested with or without a warrant has to be told of the reason for his arrest. First, everyone is entitled to resist any curtailment of his liberty unless there is some lawful justification for such curtailment: [1947] A.C. 573, 601 (*per* Lord du Parcq). Second, the person arrested, when told the reason for his arrest, may be able to take steps to clear himself from suspicion at the earliest moment and thus regain his freedom: [1947] A.C. 573, 588 (*per* Viscount Simon).

[77] [1947] A.C. 573, 587 (*per* Viscount Simon); 604 (*per* Lord du Parcq).

[78] *Ibid.* 593.

[79] *Gelberg v. Miller* [1961] 1 All E.R. 291, 296 (H.L.); *cf. R. v. Heavey* (1966) 84 W.N. (Pt. 1) (N.S.W.) 248.

[80] [1947] A.C. 573, 593 (*per* Lord Simonds).

[81] But see, Holland, 'Police Powers and the Citizen' (1967) 20 *Current Legal Problems* 104, 114, where the writer observed as follows: 'the facts of *Christie v. Leachinsky* would seem to belie this interpretation. L. was told he was being

be different if the police officers had clearly invoked their common law powers of arrest.

Gelberg v. Miller[82] is a recent case which shows how easily the 'reason why' requirement can be complied with. The appellant parked his car in a restricted street, an offence within regulations 3 and 15 of the London (Waiting and Loading) (Restriction) Regulations, 1958. Police officers thrice requested him to remove the car but he refused to do so on each occasion. When they told him that they would remove it, the appellant took the rotor arm from the distributor mechanism to prevent the car from being moved. The appellant also refused to supply the officers with his name and address when twice requested to do so. The respondent then arrested him. The reason given for the arrest was that he had obstructed the appellant in the execution of his duty in refusing to remove his car and refusing his name and address. The Court of Appeal held that the 'reason why' requirement had been complied with as, in the circumstances, the appellant knew or had been told the essential facts. Delivering the judgment of the Court, Lord Parker C.J. said:[83]

> [t]o my mind, it is clear that the respondent, by saying that he was arresting the appellant for refusing to move his motor car, was informing the appellant of a fact which, in all the circumstances, amounted to a wilful obstruction of the highway by leaving his car in that position. It seems to me to matter not that the respondent also coupled with that the refusal to give the name and address or the allegation of obstructing him in the execution of his duty. May I test it in this way: Supposing that the respondent had said nothing but had just arrested the appellant, could it really be said that the appellant did not know all the facts constituting an alleged wilful obstruction of the highway without having that particular charge made against him at the time? In my judgment, what the appellant knew and what he was told was ample to fulfil the obligation as to what should be done at the time of an arrest without warrant.

The facts constituting an offence in *Gelberg's* case were known to the person to be arrested so that that case is really no different from one where he is caught 'red-handed'. In such a situation the 'reason why' requirement is either superfluous or easily satisfied; Lord Parker C.J. went further when he suggested that an arrested person need not be told the reason for his arrest. The significance of this is that there will be quite a large class of cases whereby suspects may be validly arrested without being

arrested for the offence of unlawful possession under the Liverpool Corporation Act of 1921 . . . The actual offence of which the police suspected him was larceny. He was held entitled to recover damages. This suggests that merely to tell him that he was suspected of an offence concerning dishonest possession of specified goods would not be sufficient.' It is submitted that the writer failed to see the ground on which the holding charge was held invalid, viz., the lack of arrest powers under the Act. It was a necessary condition precedent to an invocation of the Statutory power of arrest that the name and address of the plaintiff were unknown or unascertainable.

[82] [1961] 1 All E.R. 291.

[83] *Ibid.* 297.

told the reason for his arrest. The 'reason why' requirement would certainly not be of any hindrance to the practice of detaining suspects on a holding charge in such cases.

Where, however, the arrest is to take place some time after the crime has been committed or where the person to be arrested has commited more than one offence, the 'reason why' requirement must be complied with as otherwise he will not know why he has been arrested. Thus in *R. v. Kulynycz*,[84] the police had reasonable grounds to suspect that the appellant was 'pushing' drugs at a place called King's Lynn. He was arrested at Cambridge at the request of the police at King's Lynn. However, the police officer who arrested him falsely told him that a warrant had been issued for his arrest at King's Lynn 'on suspicion of offences committed there'. He was not told of the nature of the offences nor was he told of any act that might constitute an offence. It was only when he was brought to the police station at Cambridge that he was told, by another police officer, that he was arrested 'in connection with possible drug offences'. Later in the same evening, police officers from King's Lynn who came to Cambridge to take him there, told him that he had been arrested 'on suspicion of handling stolen drugs'. When he was brought before the committing justices at King's Lynn he was charged with unauthorized possession of drugs, contrary to the Drugs (Prevention of Misuse) Act 1964.

The appellant had committed drug offences at King's Lynn and he must have known the acts constituting the offences committed there. However, he might also have committed other types of offences there and it would not be sufficient for the police to tell him that the arrest was 'on suspicion of offences committed there'. The Court of Appeal therefore thought that the 'reason why' requirement had not been observed and the initial arrest was wrongful. On the other hand, the Court held that the arrest became valid when the appellant was told at the police station that he had been brought there 'in connection with possible drug offences'. The Court was satisfied that 'he was told all that he was entitled to know' within the 'reason why' requirement.[85] It was immaterial, the Court further held, that a specific charge was laid only when the appellant was brought to the police station at King's Lynn and that the charge was later amended.[86] The holding charge would have been a good device right from the beginning if the police officer who arrested the appellant had been more careful in describing the reason for arrest. The police officer at the Cambridge police station showed how the 'reason why' requirement could have been easily complied with even in such cases.

The practice of detaining suspects on a holding charge is thus largely unaffected by the 'reason why' requirement because of the ease with which

[84] [1970] 3 All E.R. 881.
[85] *Ibid.* 884; see also, *Wheatley v. Lodge* [1971] 1 W.L.R. 29.
[86] [1970] 3 All E.R. 881, 884.

it may be complied. The practice is also aided by the rule that no specific charge, or any charge at all, need be formulated until the time of indictment. The police may only have suspicious circumstances to rely on at the time of an arrest and they may be unacquainted with sufficent evidence to charge a suspect with some specific crime. However, so long as they know the facts constituting some crime they may validly arrest him in order to secure more information from him whilst he is held in their custody.[87] The precise charge may then be laid if there is sufficient evidence to support a conviction. If they find that the person arrested is not the man they want or if there is no further evidence to support a definite charge, they may then release him with impunity.[88] The fact remains that the detention is not in consequence rendered unlawful.

DURATION OF LAWFUL 'DETENTION'

A suspect who has been validly arrested must be taken before a magistrate who will then deal with him according to law. This does not mean that the arresting officer must immediately bring him before the magistrate; the common law allows a period of delay between his arrest and subsequent appearance before the magistrate during which detention is deemed lawful. As will be seen below, this limited delay in effect provides *opportunity* for the police to detain suspects for interrogation. The detention retains its lawful character so long as the police do not extend its duration beyond the bounds of what is legally permissible. Obviously, the extent of the opportunity to interrogate suspects depends on the duration of this period. What this duration is, in turn, depends on whether the situation is governed by the common law or by a special after-arrest procedure prescribed by statute. This is because, as a general rule, statutes authorising arrest and detention outline what should be done with a person apprehended under the authority of the relevant statute. The common law position will now be discussed, followed by a discussion of the general position governed by statutes.

THE COMMON LAW POSITION

At common law, a lawful detention by the police does not cease to be lawful so long as any delay in taking the person arrested before a magistrate[89] is not 'unreasonable' in the circumstances of the case.[90] Like most

[87] But see, Crimes Act 1958 s. 458, (as amended by the recent Crimes (Powers of Arrest) Act 1972 s. 458(1)(a) which in effect provides that, in certain situations contemplated by the amendment Act, the power to arrest provided in the Act does not arise unless arrest is believed to be necessary to ensure an offender's presence in court, to preserve public order, to prevent further offences being committed, or for the safety of the public or of the offender.

[88] *Jobling v. Blacktown Municipal Council* [1969] 1 N.S.W.R. 129, 135.

[89] He may also be taken before a senior police officer: *John Lewis & Co. Ltd v. Tims* [1952] A.C. 676.

[90] *Supra.* Although the case itself concerned citizen's powers of arrest and detention, the judges, in their exposition of the law, made no distinction between

principles the extent of which is evaluated by the test of reasonableness, what may or may not be a reasonable delay depends largely on the facts of each case. What has been decided in each case to be reasonable or unreasonable delay cannot be relied on as precedent for a given case. Early cases on the same question are less useful for, as Diplock L.J. said in *Dallison v. Caffery*:[91]

> [w]hat is reasonable changes as society and the organisation for the enforcement of the criminal law evolves. What was reasonable in connection with arrest and detention in the days of the parish constable, the stocks and lock-up, and the justice sitting in his own justice room before there was an organised police force, prison system, or courts of summary jurisdiction, is not the same as what is reasonable today. Eighteenth- and early nineteenth-century authorities are illustrative of what was reasonable in the social conditions then existing. They lay down no detailed rules of law as to what is reasonable conduct in the very different social conditions of today.

What is 'reasonable' delay, however, is not a matter of caprice. A working criterion is, as Lord Porter in *John Lewis & Co. Ltd v. Tims*[92] said, whether the police have brought the arrested person before a magistrate 'as speedily as is reasonably possible'. Obviously the surrounding circumstances must be taken into account so as not to beg the question whether there has been any violation, in a given case, of the principle that an arrested person must be brought before a magistrate without unreasonable delay. The time, the speed taken, and the route chosen to bring the arrested person before a magistrate will be obvious factors to be taken into account.

The time taken, as Lord Porter said in *Tims*' case, should be 'as short as is reasonably practicable'.[93] The length of time taken is, again, neither here nor there unless it is weighed with surrounding circumstances of the case, for example, a delay of three days may be regarded as reasonable when regard is had to the distance from the place of arrest to the place where a magistrate is available, the route taken, and the speed of the progress. On the other hand, a delay of three hours may be unreasonable when examined in the light of such surrounding circumstances. Thus in *Re Leary; Ex parte Evers*,[94] Maxwell J. held that a three hour delay in bringing an arrested person before a magistrate was unreasonable. This was because the arresting police officer could have brought him before a magistrate who was available at the police station at all material times.[95]

the powers of a citizen and those of common law constables: see *ibid.* 680, 692; see also, [1951] 2 K.B. 459, 468 (C.A.).

[91] [1965] 1 Q.B. 348, 370.
[92] [1952] A.C. 676, 691.
[93] *Ibid.* 692.
[94] (1945) 62 W.N. (N.S.W.) 146, 148.
[95] The court said that an alternative ground for its decision was that the arrest was only for purposes of questioning and was thus at all material times illegal (*ibid.* 149).

Another important consideration is the arresting officer's motive for delaying the process of bringing an arrested person before a magistrate. Any delay will be held 'unreasonable' if it is for the purpose of interrogation.[96] Likewise, if the delay is to enable the police to collect further evidence of guilt by other means of investigation. This was the ground upon which a validly executed arrest in *Wright v. Court*[97] was held to have become subsequently unlawful. In that case, the plaintiff was arrested and detained by the defendants for three days before he was brought before a magistrate. In an action for false imprisonment by the plaintiff, counsel for the defendants contended that the delay was not unreasonable as it was for the purpose of informing the prosecutor of the arrest and to enable him 'to procure the necessary evidence, and collect the necessary witnesses' to prove the crime alleged against the plaintiff. The court, nevertheless, held that the detention became unlawful when prolonged beyond a reasonable time. The delay resulting from the time spent in collecting evidence of the alleged crime was held to be 'unreasonable'.[98] As Lord Porter said in *Tims'* case with reference to such motive for delay:[99]

> [t]hose who arrest must be persuaded of the guilt of the accused; they cannot bolster up their assurance or the strength of the case by seeking further evidence and detaining the man arrested meanwhile or taking him to some spot where they can or may find further evidence.

Although a period of delay for purposes of interrogation is unlawful *per se,* courts usually prefer to label it as an 'unreasonable delay'. Perhaps this approach is taken in the belief that the police should not be unduly hampered in their often difficult task of combating crime.[1] The *opportunity* for interrogation would indeed be quite limited if any period of detention for investigation following a valid arrest were strictly prohibited. The present criterion adopted by the courts, on the other hand, enables a court to decide that a given period of delay is not unlawful even though it has been, albeit inconspicuously, prolonged to facilitate interrogation. The result is, as a commentator observed, 'a given period of detention is more likely to be regarded as reasonable if the suspect is guilty than if he is innocent'.[2]

The present approach adopted by the courts, whatever may be the true reason, has led to the thesis that the common law impliedly authorizes the police to detain an arrested person for investigation provided that the pro-

[96] *Bales v. Parmeter* (1935) 35 S.R. (N.S.W.) 182; *Drymalik v. Feldman* [1966] S.A.S.R. 227; *R. v. Banner* [1970] V.R. 240.

[97] (1825) 4 B. & C. 597; 107 E.R. 1182.

[98] The court, however, pointed out that the *magistrate* might have been justified in ordering the plaintiff's detention until witnesses could be brought but said that no such order had been made in this case.

[99] [1952] A.C. 676, 691; see also, *ibid.* 692 *per* Lord Morton.

[1] See *R. v. Voisin* [1918] 1 K.B. 531; *R. v. Jeffries* (1946) 47 S.R. (N.S.W.) 284, 313 (*per* Street J.); *R. v. McDermott* (No. 2) (1947) 47 S.R. (N.S.W.) 407.

[2] C. Williams [1959] *Criminal Law Review* 79, 80.

cess of taking him before a magistrate has not been unreasonably delayed.[3] This thesis is based on two premises. First, it is said that the common law implicitly recognises 'a process of inquiry and questioning' in the period between arrest and the appearance of the arrested person before a magistrate. Second, section 38 of the Magistrates' Courts Act 1952 (Eng.) is seen to have the effect of recognizing that the police have a discretion to detain an arrested person 'whilst inquiries are being made'.

Both premises are, it is submitted, hardly tenable. If the first proposition means that the common law authorizes the police to prolong a lawful detention for a reasonable period of time *for purposes of interrogation* then it is, subject to the discussion below, contrary to established authorities. On the other hand, if it only means that the common law authorizes them to interrogate the arrested person *whilst* he is still in custody, the proposition is neither here nor there and, more importantly, ignores the fact that the English Judges' Rules of 1918 prohibit the interrogation of suspects in custody.[4] The second premise is based on a tortuous construction of section 38 of the Magistrates' Courts Act 1952 (Eng.). That section merely empowers certain senior police officers to act as justices of the peace for the purpose of deciding whether or not to grant bail to a person arrested without a warrant. For the purpose, they are implicitly authorized to question him. It is a different thing altogether from saying that the section impliedly recognizes detention for questioning.

The thesis, however, has now the support of the Court of Appeal in *Dallison v. Caffery*.[5] The facts of that case were as follows: the plaintiff was held in custody at a police station in London on the ground that he was 'wanted for an offence at Dunstable'. The defendant and another police constable later arrived from Dunstable to take him there. Before he was taken to Dunstable, some thirty-four miles away, the plaintiff was first taken to his home in London. They did not go into the flat as the plaintiff's wife was then out. Thereafter, he was taken to his place of work where the two constables made inquiries relating to the plaintiff. He was then taken back to his flat where they went in and conducted a search of the premises. Finally, the party went back to the London police station from where they left by car to Dunstable. The journey to Dunstable took one hour and ten minutes but the detour in London occupied about two hours and twenty minutes. At Dunstable, the plaintiff was put on an identification parade and then detained in custody at the police station. He was brought before a magistrate only on the following morning. The plaintiff was subsequently acquitted of the crime charged against him and he sued the defendant, *inter alia*, for false imprisonment. One issue before the Court of Appeal was whether the defendant, on the essential facts as outlined above, had

[3] *Ibid.*; see also, Jackson, *Enforcing the Law* (1966) 63.
[4] *Supra* n. 64.
[5] [1965] 1 Q.B. 348.

acted with unreasonable delay in taking the plaintiff before a magistrate. The Court held that the delay before the journey to Dunstable was not unreasonable.

The judgments of the Court were delivered by Lord Denning M.R. and Diplock L.J.[6] The Master of the Rolls said that a constable, as compared with a private person who makes an arrest, has a greater power to detain arrested persons.[7] He then set out in the following passage what, in his opinion, may be done by the police after they have made an arrest without a warrant:[8]

> [w]hen a constable has taken into custody a person reasonably suspected of felony, he can do what is reasonable to investigate the matter, and to see whether the suspicions are supported or not by further evidence. He can, for instance, take the person suspected to his own house to see whether any of the stolen property is there; else it may be removed and valuable evidence lost. He can take the person suspected to the place where he says he was working, for there he may find persons to confirm or refute his alibi. The constable can put him up on an identification parade to see if he is picked out by the witnesses. So long as such measures are taken reasonably, they are an important adjunct to the administration of justice. By which I mean, of course, justice not only to the man himself but also to the community at large.

Diplock L.J. rejected a contention by counsel for the plaintiff to the effect that the defendant was not entitled to take the plaintiff around for the purpose of obtaining evidence but should have taken him by a direct route to Dunstable. The judge then said that the only question was 'whether the defendant acted reasonably'.[9] In his opinion, the defendant had. The considerations that he took into account in arriving at his conclusion may be seen in the following passage:[10]

> [i]t cannot be credibly suggested that Dallison would have been brought before a magistrate's court or bailed by the police at Dunstable one moment earlier if he had been taken direct to Dunstable. This, of course, is a relevant consideration. Seeing that he was protesting his innocence, it was in Dallison's own interest, and it was, in part at least, at his request, that he was taken to his place of work to see if his alibi was verifiable, for had it been credibly confirmed, he would have been released. He suffered no harm by being taken to his own house, and it was in his own interest, if he was innocent, that the search of his house, which he knew would have negative results, should take place without delay and in his presence. Furthermore, the defendant as a police officer had a duty to seek to recover the proceeds of the theft and for that purpose to search the house of the suspected thief as soon as possible.

[6] The third judge Danckwerts L.J., agreed with Lord Denning's judgment. (*semble*).

[7] [1965] 1 Q.B. 348, 366; see also, *ibid.* 370 (*per* Diplock L.J.).

[8] *Ibid.* 367.

[9] *Ibid.* 374.

[10] *Ibid.*

The significance of *Dallison's* case is that the English Court of Appeal has set a new standard for what had hitherto been regarded as the common law limit to what the police may do with respect to the detention of arrested persons. As seen above, the established rule before *Dallison's* case was that any period of detention for interrogation or investigation directed at collecting or checking evidence, for instance, would be unlawful. Such period of delay in bringing the arrested person before a magistrate would be labelled 'unreasonable'. The Court of Appeal now says that the police have the power to detain an arrested person for the purpose of verifying their suspicions, preserving whatever evidence they have to support their charge, and securing further evidence in the course of such investigation.[11] The time of detention expended on such a course of action will not be regarded as an unreasonable delay if the police have 'acted reasonably'. This probably means that the police will not have acted unreasonably if their investigations are not capriciously or otherwise excessively undertaken. They will have sufficient opportunity to interrogate arrested persons under this new standard of reasonableness.

It is yet too early to fully appraise the impact of the *Dallison* decision on the law of arrest in England and Australia. Several features of that case, however, suggest that its new standard of post-arrest procedure may not be commendable to other courts. First, the view that a police constable at common law has greater powers of imprisonment than private arrestors is not supported by authority.[12] Diplock L.J. himself recognised that Lord du Parcq had suggested in *Christie's* case that a constable's common law powers of detention are no different from those of private arrestors.[13] Second, in so far as the Court of Appeal in *Dallison's* case held that the police may detain an arrested person to facilitate investigations, it has done so in the face of established authorities.[14] Third, the suggestion that it is in the interest of an arrested person that he be taken to various

[11] The proposition was based on the view that a police constable has greater powers of detention than private arrestors (*ibid.* 366, 370) and that policy considerations for the early rule have changed with the times (*ibid.* 370).

[12] Lord Denning M.R. did not rely on any authority for the proposition. Diplock L.J., on the other hand, said that it was '[e]xplicit in the early authorities cited by Lord Porter in *Lewis (John) & Co. Ltd v. Tims* and implicit in the actual decision in that case': [1965] 1 Q.B. 348, 371. It is submitted that neither the early authorities cited within *Tims'* case nor the decision in that case itself supports such a view. The early authorities merely established that the common law required an arrested person to be brought before a magistrate, not forthwith, but within a reasonable time. The focus of attention was on the length of time that an arrested person could be detained before being brought before a magistrate. For this purpose, no distinction was drawn between the powers of arrest of private persons and those of constables. *Tims'* case merely shows, first, that a constable has the power to receive privately arrested persons into custody and, second, that police officers are, in certain circumstances, empowered by statute to act as justices of the peace to decide whether an arrested person should be bailed or held in custody: [1952] A.C. 676, 684, 690. The decision itself reinforces the common law rule that an arrested person should be brought before a magistrate as soon as possible, whether the arrest is made by a constable or by a private person.

[13] [1947] A.C. 573, 602. [14] *Supra.*

places to enable the police to check their evidence is not borne out by the facts in *Dallison's* case itself. Diplock L.J. suggested that such investigations might dispel the suspicion initially cast on the person arrested so that he could secure his immediate release if he turned out to be innocent.[15] This was not in fact the result when the police found that the plaintiff had a good alibi and when they had searched his home and could not find anything to indicate guilt. It is certainly not in the interest of an arrested person, especially if guilty, that he should be available for on-the-spot police interrogation in any place that they may go to make their investigations.[16] Fourth, whilst it may be true that the police should have the opportunity to preserve whatever evidence they have to support their suspicions of the guilt of a person arrested, there is no need, for this purpose, to take him around whilst they do so. Moreover, detention for the purpose of checking suspicions or obtaining further evidence is not the same thing as detention whilst efforts are made to preserve evidence. The latter is unobjectionable; the former is illegal but for the Court of Appeal's decision in *Dallison's* case.

The recent Victorian case of *R. v. Banner*[17] is an indication that the new standard of reasonable delay in *Dallison's* case may not be wholly adopted in the Australian States. In that case, the accused was detained for interrogation by detectives in a police station. He was there intermittently interrogated for about fifteen hours before he confessed to a killing. They then took him to the place where he had left the victim's body. After they had taken him to various other spots where he had thrown away the victim's articles of clothing, the detectives took him back to the station. He was there attended to by a police surgeon and then detained at a motel room for the night. The next morning, he was taken back to the station where a full confession was recorded from him. In the afternoon of the same day, they took him to a place where he was asked to indicate to them the spot where he had strangled the victim. This was followed by a detour to the place where he had buried the shirt he wore on the night of the strangulation. There he was asked to indicate the exact spot where the shirt had been buried. They charged him with murder after the parties had returned to the station. It was only after the following morning that he was brought before a magistrate.

The Supreme Court of Victoria pointed out that, although the accused's first confession rendered lawful what had begun as an unlawful detention, the period of detention between the first confession and the time when the

[15] [1969] 1 Q.B. 348, 374; see also, *ibid.* 367-9 (*per* Lord Denning M.R.).

[16] When confronted with clues and other evidence of guilt, a suspected person tends to offer explanations which in most circumstances often incriminate rather than exculpate him: see *Smith v. R.* (1957) 97 C.L.R. 100; *R. v. Banner* [1970] V.R. 240; *McDermott v. R.* (1948) 76 C.L.R. 501.

[17] [1970] V.R. 240.

accused was brought before a magistrate, totalling nearly fifty hours, was an unreasonable delay.[18] The Court conceded that the trip to recover the victim's body might have been a reasonable delay. It said, however, that the delay after their return to the station was unreasonable and rendered the detention unlawful.[19] In particular, the Court pointed out that there could be no doubt about the 'reasonableness or propriety' of the detectives' conduct in delaying the process of taking the accused before a magistrate for the purpose of getting the accused fit for a lengthy recording of his confession.[20] The Court referred to the new standard set up by the Court of Appeal in *Dallison's* case but distinguished that case on the ground that the arrested person there appeared to have been taken before a magistrate within reasonable time.[21] Whether a new standard of reasonableness in *Dallison's* case will be followed by Australian courts is thus yet to be seen.[22]

THE STATUTE LAW POSITION

In cases where a police officer invokes statutory powers of arrest and detention, the duration of lawful detention depends on what the relevant statute says about how an arrested person should be brought before a magistrate. Although such statutes confer powers of post-arrest detention on the police in a variety of ways, they may be broadly characterized into two types. The first type is one where the relevant provision clearly contemplates a period of delay between arrest and appearance before a magistrate. Statutes of the second type are those which require arrested persons to be taken 'forthwith' before a magistrate and do not authorize any delay. As will be seen shortly, however, a court may construe these statutes on the basis that some delay is permissible.

Statutes of the first type may implicitly authorize a reasonable period of delay before the arrested person is brought before a magistrate. For example, section 460 (1) of the Crimes Act 1958[23] (as amended by the Crimes (Powers of Arrest) Act 1972) requires arrested persons to be brought before a magistrate 'as soon as practicable' after the arrest.[24] This section clearly contemplates a period of lawful detention before the arrested

[18] *Ibid.* 249.

[19] *Ibid.* 250. The observations were made by the Court in course of considering issues of evidence raised by the accused in an appeal from his trial before Mr Justice McInerney.

[20] *Ibid.*

[21] *Ibid.*

[22] See also, *Drymalik v. Feldman* [1966] S.A.S.R. 227, 233, where *Dallison's* case was referred to but distinguished on the ground that the detention in *Drymalik's* case was governed by a statute (*semble*).

[23] This provision replaces Justices Act 1958, s. 39, repealed by the Crimes (Powers of Arrest) Act 1972.

[24] See also, Justices Act 1959 (Tas.), s. 34(1); Melbourne and Metropolitan Tramways Act 1958, s. 119 (officers, and persons called upon to assist them may 'detain' a person arrested under the authority of this section 'until he can conveniently be taken before a justice or until he is lawfully discharged'); *etc. cf.* Melbourne Harbour Trust Act 1958, s. 167, which uses the words 'seize and detain . . . and convey . . . with all convenient despatch before some justice'.

person is taken to a magistrate. What duration of delay is permissible under such a statutory provision depends on the construction given to the phrase 'as soon as practicable'. Generally, this is to be determined by the same considerations as to whether a given period of delay is 'reasonable' at common law.[25]

Another variety of such a statute is the Police Act 1892-1967 (W.A.) where, by section 42, it is provided that a police officer may arrest any person who comes within that section and 'shall detain any person so apprehended in custody, until he can be brought before a Justice'.[26] The section not only expressly empowers detention by an arresting officer; it is also wide enough to authorize a period of detention the duration of which is not necessarily limited to physical barriers such as the distance between the place of arrest and the location of a justice. Under this section, the police may, for instance, take the arrested person to the places that the plaintiff in *Dallison's* case was taken to.

Sometimes a statute authorizing arrest may not indicate whether it also authorizes a period of delay before the arrested person is brought before a magistrate.[27] Clearly such statutes should be read as though the common law principle providing for a reasonable period of lawful delay will apply to arrests authorized by such statutes. This is on the principle that an act of Parliament is presumed not to have changed the common law unless it has done so clearly. Thus in *Clarke v. Bailey*[28] Davidson J. said that the effect of a provision of this type with which he had to deal, was 'merely to reinforce the common law principle'.[29] In that case, a constable arrested the plaintiff and took him to a nearby hotel to be searched. It was held that the delay in taking the plaintiff to a justice after the arrest (as required by section 352 of the Crimes Act 1900 (N.S.W.) as amended by the Crimes (Amendment) Act 1924) was unreasonable and thereby rendered that period of detention unlawful.

Although statutes contemplating a period of post-arrest detention may have specified the duration of detention in different ways so as to bring about possibly different periods of lawful detention in each case, there is a common maximum period applicable to every arrest without a warrant.[30]

[25] *Lewis (John) & Co. Ltd v. Tims, supra.*

[26] See also, Municipal Tramways Trust Act 1935 (S.A.), s. 90 which empowers employees of the Municipal Tramways Trust to arrest and detain any person contravening certain provisions in the Act 'until he can be conveniently taken before a justice, or until he is lawfully discharged'; Police Act 1892-1967 (W.A.), ss. 43, 44 and 49.

[27] Police Act 1892-1967 (W.A.), ss. 44-5; Crimes Act 1900 (N.S.W.) as amended by Crimes (Amendment) Act 1924 (N.S.W.), s. 352(2)(a); Melbourne & Metropolitan Tramways Act 1958, s. 120(2).

[28] (1933) 33 S.R. (N.S.W.) 303.

[29] *Ibid.* 309; cf. *Dunne v. Clinton* [1930] I.R. 366, 373.

[30] This probably also applies to arrests without a warrant at common law: see Abrahams, *Police Questioning and the Judges' Rules* (1964) 36.

This period is twenty-four hours from the time of arrest. For example, section 460 of the Crimes Act 1958 and recently amended, after providing that arrested persons should be brought before a justice or magistrate's court 'as soon as practicable' following their arrest, says:[31]

> [i]f it is not practicable without inconvenience to bring a person arrested before a justice or magistrate's court forthwith after he is so taken into custody a member of the police force of or above the rank of sergeant or for the time being in charge of a police station—(a) shall inquire into the case; and (b) may, and if it is not practicable to bring the person arrested before a justice or magistrate's court within twenty-four hours after he is taken into custody shall, discharge the person . . .

This provision empowers the nominated class of police officers to act as justices of the peace for purposes, *inter alia,* of determining whether an arrested person should be released on bail or should continue to be detained in custody. It requires them, however, to release him where the detention has been for twenty-four hours.

An exception is made to this twenty-four hour maximum period of police detention in 'any case where the offence appears to such member of the police force to be of a serious nature'.[32] Although an expedient provision when account is taken of the many everyday situations of arrest that it contemplates, the criterion for release is vague and subjective. Whether a given offence is of a serious nature depends on who the individual police officer is and where, as in this case, his decision is not the subject-matter for review by a justice,[33] the provision in effect means that arrested persons will not be protected by the twenty-four hour limit in most cases where the police would like them to be detained for a much longer period.[34] The police will thus have the opportunity to detain them for a possibly longer period than under the no less vague requirement at common law that there should be no 'unreasonable' delay before suspects are brought before a magistrate.[35]

In the case of statutes of the second type, *viz,* those using words such as 'forthwith' or 'immediately',[36] there is some authority to the effect that the

[31] See also, Justices Act 1959 (Tas.), s. 34(2); Justices Act 1902-1957 (W.A.), s. 64. It appears that the twenty-four hour rule does not apply to the other Australian States: see Justices Act 1886-1965 (Qld), s. 69A; Justices Act 1902-1957 (N.S.W.), ss. 45(1), 53(1); *Re Leary, Ex parte Evers, supra.*; Justices Act 1921-1936 (S.A.), ss. 143-4.

[32] S. 460(6) of the Act.

[33] See Justices (Bail and Appeals) Act 1970, s. 2, which appears to have been implicitly repealed by the new Act of 1972.

[34] For a better criterion as to when arrested persons should be released, see Thomas, 'Police Powers: Arrest: A General View' [1966] *Criminal Law Review* 639, 659.

[35] But see Crimes Act 1958, s. 458 as amended by the Crimes (Powers of Arrest) Act 1972, s. 458(3).

[36] See, *e.g.,* Police Act 1892-1967 (W.A.), s. 26; cf. statutes using the phrase 'without delay': Criminal Code Act 1924 (Tas.), s. 303(1); Police Offences Act 1935 (Tas.), s. 56(1).

duration of lawful detention is relatively limited. Thus, in the early case of *Morris v. Wise,*[37] Byles J. held that a police constable acted illegally when he took an arrested person to his home, some half a mile out of the way to a police station. The decision was on the ground that the statute authorizing arrest required an arrested person to be taken 'forthwith' before a magistrate; the detour to the police constable's home could not therefore have been in observance of that statutory requirement. As the Supreme Court of South Australia said in *Drymalik v. Feldman*:[38]

> [w]here the arrest is in the exercise of a power conferred by such a statute, the conditions stipulated by the statute must be observed. If the statute says that the person arrested is to be taken 'forthwith' before a justice, then the word 'forthwith' is not to be construed as importing no more than the common law obligation.

It would appear, therefore, that an arrested person must be taken immediately before a magistrate in cases governed by such statutes. Delays caused by such activities as subjecting the arrested person to an identification parade would not be allowed whether permissible at common law or not.

However, *Drymalik's* case itself shows that judges may take a less restricted view of such statutory provisions. The appellants were police officers who, in pursuance of section 75 of the Police Offences Act 1953-61 (S.A.), arrested the respondent on a charge of intimidating a Crown witness. They then took him to a police station and interrogated him on the charge. When the interrogation concluded, they took him to the C.I.B. headquarters some six miles away. There he remained in an interrogation room until he was taken before a magistrate and charged. The time taken between the arrest and the charge occupied some three hours. Following a subsequent dismissal of the charge against him, the respondent sued the appellants for, *inter alia,* false imprisonment. This was on the ground that they had unlawfully delayed in taking him before a magistrate in that the three hour delay was contrary to section 78 (1) of the Police Offences Act 1953-61 (S.A.) which required arrested persons to be taken 'forthwith' before a police officer in charge of the nearest police station.

The Supreme Court held that the three hour period of detention was not justified in law. This was on the ground that the 'forthwith' provision in the statute did not authorize the police to detain the respondent for interrogation. The Court, however, went on to observe that the detention would have been lawful if it had not been for purposes of interrogation and if the respondent had been taken before the magistrate 'without unnecessary delay'.[39] This would suggest that courts may construe statutory provisions

[37] (1860) 2 F. & F. 51; 175 E.R. 955. [38] [1966] S.A.S.R. 227, 233.
[39] *Ibid.* 235.

of the 'forthwith' type in such a way that they do not necessarily require the police to make all haste to bring an arrested person before a magistrate; the police are only required to ensure that any period of delay is not for purposes of interrogation or in any way unreasonable.[40]

The common law period of lawful detention is thus not significantly different from that governed by statutes of the 'forthwith' type. It would only be so if the common law allows detention for investigation as suggested as *Dallison's* case, in which event the police would have little difficulty in conducting their investigations satisfactorily. This applies to situations of arrest and detention authorized by statutes which are construed to follow the common law rule. Even if the common law does not authorize detention for investigation, the period of lawful detention, both in common law and in statutes of the 'forthwith' type, probable includes the time expended on such activities as putting the suspect on identification parades, submitting him to a medical examination, recording any statements that he may volunteer to make, and, of course, the time taken to bring him before a magistrate. Delays of this type will not render detention unlawful if the police have also acted reasonably.[41] The time period between the arrest and appearance before a magistrate is not governed by the twenty-four hour maximum detention in cases where the police regard the crime as one of a 'serious nature'. Obviously, there will be opportunity for the police to interrogate the arrested person during this period of lawful detention.

AN EVALUATION

It has been suggested that illegal police detention is widespread because the existing law of arrest and detention is outdated and too restrictive to enable the police to combat crimes effectively.[42] It has been said, for example, that criminal investigations will be greatly impeded if, under the present law, the police ceased to rely on various subterfuges to take suspects in for interrogation, as by pretending that they have the authority to detain or by holding them on trifling charges.[43] Probably such view has been of some influence when judges, from time to time, failed to expose police illegalities evident in cases appearing before them.[44] The decision in *Dallison's* case is perhaps judicial legislation in favour of giving the police wider powers of detention.

Whether there is a case for regularising illegal police practices has, however, to be made out. In the meantime, it must be remembered that there

[40] See *Watson v. Cade* (1971) 45 A.L.J.R. 449, 450.
[41] *Tims'* case, *supra.*
[42] Sargant, 'Police Powers: A General View' [1966] *Criminal Law Review* 583; Thomas, 'Police Powers: Arrest: A General View' [1966] *Criminal Law Review* 639.
[43] Whitaker, *The Police* (1964) 61; see also Wright, 'Arrest: A Comment' [1966] *Criminal Law Review* 669, 670; Note, (1964) 37 *Australian Law Journal* 306, 307.
[44] *R. v. Bodsworth* [1968] 2 N.S.W.R. 132; *R. v. Robison* [1969] 1 N.S.W.R. 229; *R. v. Evans* [1962] S.A.S.R. 303; *R. v. Thomas* [1970] V.R. 674.

is opportunity to detain suspects for interrogation even within the existing framework of the law of arrest. As suggested in this article, the police may secure a suspect's presence at the station by clearly requesting him to co-operate with them or by hiding the fact that he has been detained by them. *Dunne v. Clinton*[45] may have emphasised that the police have no power to 'detain' a suspect short of arresting him and that there is no half-way house between arrest and freedom. The fact remains, however, that suspects may still be legally taken to police stations without being arrested or detained. They may be kept there for interrogation notwithstanding the fundamental principle at common law that a person may not be detained for such a purpose. The police may, moreover, arrest a suspect on some minor charge to facilitate their investigations on the crime they are really investigating. Even if such minor charges are not readily available in the circumstances they may still arrest him if they know sufficient facts of any crime involving the suspect. They may then investigate the case and formulate their charge with the 'assistance' of the suspect at the station. They only need to keep such detention within a 'reasonable' time.

It may be that even such opportunities to detain for investigation are nevertheless inadequate when regard is had to the public interest in curbing crimes. What must also be taken into account, however, is the fact that a suspect 'detained' for investigation is in a very vulnerable position.[46] He is not only unprotected by the legal limitations on police detention and restrictions on police interrogation of persons in custody; the secrecy of custodial interrogation also places him in a defenceless position where he has only his word against those of his detainers as to what transpired at the interrogation room.[47] The evils of custodial interrogation have been brought to the surface from time to time.[48] Until such time as when these evils have been contained, however, the courts should continue to criticize and condemn whenever it has come to their attention that the police have detained suspects for interrogation. Were it otherwise, the quality of criminal justice would be in danger of falling into disrepute.[49]

[45] [1930] I.R. 366.

[46] Sargant, *Battle for the Mind: A Physiology of Conversion and Brain-Washing* (1957) 178-9, 187; *R. v. Amad* [1962] V.R. 545, 548; Reik, *The Compulsion to Confess* (1966) 266 ff.

[47] *R. v. Amad, supra,* 550; *R. v. Von Aspern* [1964] V.R. 91, 92; *Smith v. R.* (1957) 97 C.L.R. 100, 110-1, 140; *R. v. Langley* [1957] S.A.S.R. 122, 123-4.

[48] Announcement, *per* Mann C.J. Vic. Sup. Ct. [1936] A.L.R. (C.N.) 519; *R. v. Rogerson* (1870) 9 S.C.R. (N.S.W.) 234, 237; *R. v. Knight and Thayre* (1905) 20 Cox C.C. 711; *Ah Hoy v. Hough* (1912) 14 W.A.L.R. 214; *R. v. Jagelman* (1871) 10 S.C.R. (N.S.W.) 63.

[49] Niederhoffer, *Behind the Shield: The Police in Urban Society* (1967) 92; *R. v. Lee* [1950] V.L.R. 413, 431; Howland, Book Review (1924) 38 *Harvard Law Review* 135, 137.