

already been released. This appeal was filed on the 10th of August and it is stated by the Advocate-General of Bombay that the appellant was released on that very day, though it is not quite clear whether the order of release was passed on that date or the appellant was in fact set free on that date. As the appellant is no longer in custody, his learned counsel admits that no order can hereafter be made on the *habeas corpus* application; but he nevertheless asks us to pronounce an opinion on the correctness of the High Court's judgment. We do not see our way to adopt any such course. All that can be done at this stage is to dismiss the appeal on the ground that no order on the application can now be made.

Appeal dismissed.

Agent for the appellant : R. G. Naik.

Agent for the respondent: B. Banerji.

KING EMPEROR *v.* KESHAV TALPADE.

[SIR PATRICK SPENS C. J., SIR SRINIVASA VARADACHARIAR
and SIR MUHAMMAD ZAFRULLA KHAN JJ.]

Federal Court—Practice—Leave to appeal to His Majesty in Council from order arising out of application for writ of habeas corpus—Detenu released during pendency of application for leave to appeal—Incompetency of application.

Where, during the pendency of an application for leave to appeal to His Majesty in Council against an order made in an appeal arising out of a *habeas corpus* application, the detenu was released by the Government on their own initiative: *Held*, that, as there was no longer any pending matter in which leave to appeal could be granted and the original petitioner had no longer any interest in the *habeas corpus* proceedings, leave could not be granted.

APPLICATION for leave to appeal to His Majesty in Council.

This was an application under s. 208(b) of the Government of India Act, 1935, for leave to appeal to His Majesty in Council from the judgments of the Federal Court dated the 22nd April, 1943, and 31st May, 1943, in Federal Court Case No. V of 1943.

1943

*Keshav
Talpada
v.
King
Emperor.*

*Spens
C. J.*

1943
 King
 Emperor
 v.
 Keshav
 Talpade

The facts of this case appear from *Keshav Talpade v. King Emperor* reported *supra*, p. 57.

1943. Nov. 1. *N. P. Engineer, A.-G. of Bombay (M. M. Desai with him)* for the applicant. The case involves a difficult question of law, *viz.*, whether r. 26 of the Defence of India Rules is invalid. My contention is that sub-s. 2 (10) of the Defence of India Act does not limit the powers conferred by sub-s. 1. Sub-section 1 governs the matter. The view that it is controlled by sub-s. 2(10) is not correct.

[Their Lordships pointed out that the fact that the detenu had been released on the 10th August affected the competency of this application].

G. N. Joshi for the opposite party was not called upon.

Nov. 2. The judgment of the Court was delivered by SPENS C. J. This is an application by the Government of Bombay for leave to appeal to His Majesty in Council against an order made by this Court on the 22nd April, 1943, in an appeal arising out of a *habeas corpus* application. It is admitted that the detenu has been released by the Government on their own initiative, notwithstanding the dismissal of the *habeas corpus* application by the High Court. We are of the opinion that there is no longer any pending matter in which leave can be granted to appeal to His Majesty in Council. Moreover, the original petitioner, who has been released by the Government, has no longer any interest in the *habeas corpus* proceeding. In these circumstances, we do not see our way to grant leave merely on the ground that the Government are disposed to question the correctness of some of the grounds on which the order of this Court, dated the 22nd April, 1943, was based, the application is accordingly dismissed.

Application dismissed.

Agent for the applicant: *B. Banerji.*

Agent for the opposite party: *R. G. Naik.*