

court preferred to base its decision on the second—which in our view is much more doubtful. It held Liebmann to be a prisoner of war; and, of course, there is abundant authority that a prisoner of war, whether enemy or neutral, cannot apply for a writ of habeas corpus: *Three Spanish Sailors Case* (1779), 2 Wm. Bl. 1324. But how can a civilian (other than a spy) be regarded as a "prisoner of war." The idea seems a contradiction in terms. Both judges, however, found to the apparent difficulty an ingenious answer. They took judicial notice of the changes in modern warfare, especially as waged by Germany. They concluded from their survey of these changes that civilians residing in a hostile country are of great belligerent value to their national sovereign by sending information of enemy movements, by signalling, and by promoting strikes, disturbances, and unrest in the civilian population. These are military functions, and when the Executive Government chooses to arrest any alien enemy on the ground that he is performing these military functions, the court cannot inquire into the correctness or bona fides of its action. In other words, they applied to this case the well-known plea, "Act of State," upheld in *Salaman v. Indian Secretary* (1906) 1 K.B. 613, where the Court of Appeal held that it had no jurisdiction to question acts of the Indian Government confiscating the private property of a native ruler in a protected State, provided the Government represented such confiscation to be an arbitrary act of executive authority against that ruler in his capacity as a foreigner; and lucidly analyzed in *Hemchand Dorchand v. Azam Sakarlal Chhotamlal* (1906) A.C. 217. The detention of an interned alien converts him into a prisoner of war, and is an "Act of State" into which no court has jurisdiction to inquire. But it may be suggested that, notwithstanding Germany's military excesses and barbarity, the judgments give a somewhat bold extension to the doctrine of judicial notice. What is the real evidence against Liebmann, and others like him, who have been practically English for many years?

On the third point argued for the Crown, the alleged right of the Executive Government to arrest and detain on grounds of