PETITIONER:
SHYAMLAL MOHANLAL

Vs.

RESPONDENT:
STATE OF GUJARAT

DATE OF JUDGMENT:
14/12/1964

BENCH:

ACT:
Code of Criminal Procedure (Act 5 of 1898), s. 94(1)-If applies to accused persons.

HEADNOTE:
The respondent, who was a registered money-lender, was prosecuted for failure to maintain books in accordance with the Money-lenders' Act and Rules made thereunder. An application under s. 94(1) Criminal Procedure Code, was filed before the Magistrate by the prosecution for ordering the respondent to produce certain account books. The Magistrate, relying on Art. 20(3) of the Constitution refused to do so. The State filed a revision before the Sessions Judge, who disagreed with the Magistrate and made a reference to the High Court with a recommendation that the matter be referred back to the Magistrate with suitable directions. The High Court came to the conclusion that s. 94 does not apply to an accused person and agreed with the Magistrate in rejecting the application.. on appeal to the Supreme Court.
Held (Per P. B. Gajendragadkar, C.J., Hidayatullah, Sikri and' Bachawat, JJ.) : The High Court was right in its construction of s. 94, that it does not apply to an accused person. [465 F]
Having regard to the general scheme of the Code and the basic concept of criminal law, the generality of the word "person" used in the section is of no significance. If the legislature were minded to make the section applicable to an accused person, it would have said so in specified words. If the section is construed so as to include an accused person it is likely to lead to grave hardship for the accused and make investigations unfair to him, for, if he refused to produce the document before the police officer, he would be faced with a prosecution under 3. 175, Indian, Penal Code. [462 F-G; 463 C, E-F]
The words "attend and produce" used in the section are inept to cover the Case Of an accused person, especially when the order is issued by a police officer to an accused person in his custody. [464 B]
It cannot be said that the thing or document produced would not be admitted in evidence if an examination it is found to in ate the accused, because, on most occasions the power under the section would be resorted to only when it is likely to incriminate the accused and support the prosecution. [464 F-H]
Even if the construction that the section does not apply to accused' renders s. 96 useless because, no search warrant could be issued for documents known to be in the possession of the accused, still, a.% far as the police officer is

concerned, he can use a. 165 of the Code of Criminal Procedure and order a general search or inspection. [464 H; 465 A]

Satya Kinkar Ray v. Nikhil Chandra Jyotishopodhaya, I.L.R. [1952] 2, Cal. 106, F.B, overruled.

Per Shah, J. (Dissenting) : The words in s. 94(1) are general : they contain no express limitation, nor do they imply any restriction excluding the person accused of an offence from its operation. The scheme of the Code also appears to be consistent with that interpretation. If s. 94(1)

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does not authorise a Magistrate to issue a summons to a person accused of an offence for the production of a document or thing in his possession no warrant may be issued under s. 96(1) to search for a document or thing in his possession. To assume that the police officer in charge of investigation may, in the course of investigation, exercise powers under s.165, which cannot be exercised where the court issues a warrant, would be wholly illogical.[465 A, C;474 A,G]

The use of the words "requiring him to attend and produce it" indicates the nature of the command to be contained in the summons and does not imply that the person to whom the summons is directed must necessarily be possessed of unrestricted freedom to physically attend and produce the document or thing demanded. [467 D-E]

The observations made by the Supreme Court in the State of Bombay v. Kathi Kalu Oghad, [1962] 3 S.C.R. 10, that an accused may be called upon by the court to produce documents in certain circumstances, relate to the power exercisable under s. 94(1) only. [468 B]

The rule of protection against self-incrimination prevailing in the U.K. or as interpreted by courts in the U.S.A. has never been accepted in India. Scattered through the main body of the Statute law of India are provisions which establish that the rule has received no countenance in India. To hold, notwithstanding the apparently wide power conferred, that a person accused of an offence may not in the exercise of the power under s. 94(1) be called upon to produce document or things in his possession, on the assumption that the rule of protection against self-incrimination has been introduced into India is to ignore the history of legislation and judicial interpretation for upwards of 80 years. [469 F-G; 475 E]

It is for the first time by the Constitution, under Art. 20(3), that a limited protection has been conferred upon a person charged with the commission of an offence against self-incrimination by affording him protection against testimonial Compulsion. But apart from this protection there is no reservation which has to be implied in the application of s. 94(1). Refusal to produce a document or thing on the ground that the protection guaranteed by Art. 20(3) would be infringed would be a reasonable excuse for non-production within the meaning of s. 485 of the Procedure Code and such an order in violation of the Article would not be regarded as lawful within the meaning of s. 175, of the Indian Penal Code. But protection against what is called testimonial compulsion under the Article is against proceedings in Court : it does not apply to order,which may be made by a police officer in course of investigation. [475 F;476 A-B, E]

Case law considered.

JUDGMENT:
CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.135-139 of 1963.
Appeals from the judgment and order dated October 11, 1962 of the Gujarat High Court in Criminal Reference Nos. 106 to 113 of 1961.
N. S. Bindra and B. R. G. K. Achar, for the appellant (in all the appeals).
T. V. R. Tatachari, for the respondents (in all the appeals).
The Judgment of Gajendragadkar, C.J., Hidayatullah, Sikri and Bachawat JJ. was delivered by Sikri J. Shah J. delivered a dissenting Opinion.
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Sikri, J. These are appeals by the State of Gujarat against the judgment of the High Court of Gujarat in Criminal References Nos. 106-110 of 1961 (in Criminal Appeals Nos. 135-139 of 1963) and Criminal References Nos. 111-113 of 1961 (in Criminal Appeals Nos. 140-142 of 1963) on a certificate granted by the High Court under Art. 134(1) (c) of the Constitution of India. These raise a common question of law, namely, whether s. 94 of the Criminal Procedure Code applies to an accused person. Facts in one appeal need only be set out to appreciate how the question arose.
The respondent in Criminal Appeal No. 135 of 1963, Shyaralal Mohanlal, is a registered moneylender doing business as moneylender at Umreth. He is required to maintain books according to the provisions of the Moneylenders' Act and the Rules made thereunder. He was prosecuted for failing to maintain the books in accordance with the provisions of the Act and the Rules, in the Court of the Judicial First Class Magistrate, Umreth. The Police Prosecutor in charge of the prosecution presented an application on July 20, 1961, praying that the Court be pleased to order the respondent to produce daily account book and ledger for the Samyat year 2013-2014. It was alleged in the application that the prosecution had already taken inspection of the said books and made copies from them, and that the original books were returned to the accused, and they were in his possession. The learned Magistrate, relying on Art. 20(3) of the Constitution, refused to accede to the prayer on the ground that the accused could not be compelled to produce any document. He followed the decision in Ranchhoddas Khimji Ashere v. Tempton Jehangir(1).
The State filed a revision before the learned Sessions, Judge of Kaira at Nadiad. Basing himself on the decision of this Court in State of Bombay v. Kathi Kalu Oghad (2) he held "that the documents which are sought to be got produced by the prosecution in the case under my consideration can be allowed to be produced by compulsion if they do not contain any personal knowledge of the accused concerned." He felt that it was first necessary to ascertain whether the documents contained any personal statement of the accused person. He concluded that the matter will have to be referred back to the learned Magistrate to ascertain this first and then to decide the matter in the light of the observations made by the majority in Kalu Oghad's (2) case. Accordingly, a reference was made to the High Court with the
(1) 2 Guj. L.R. 415.
(2) [1962] 3 S.C.R. 10.
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recommendation that the matter be referred back to the learned Magistrate with suitable directions. The High Court, agreeing with the Sessions Judge, held that it was

clear from the decision of this Court in Kalu Oghad's(1) case "that if an accused produces a document that would not offend Art. 20(3) of the Constitution unless the document contains statements based on the personal knowledge of the accused." But the High Court went on to consider another question, that being whether the Court had power to compel an accused person to produce a document. The High Court, after reviewing the authorities bearing on this point, came to the conclusion that s. 94 of the Criminal Procedure Code did not apply to an accused person. It accordingly agreed with the Magistrate that the application of the Police Prosecutor be rejected.

Sections 94 and 96 of the Code of Criminal Procedure read follows :

> "94(1). Whenever any Court, or, in any place beyond the limits of the towns of Calcutta and Bombay, any officer in charge of a police-station, considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue. a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.
>
> (2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition, if he causes such document or thing to be produced instead of attending personally to produce the same.
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> (3) Nothing in this section shall be deemed to affect the Indian Evidence Act, 1872, sections 123 and 124, or to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the Postal or Telegraph authorities.
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> 96. (1) Where any Court has reason to believe that a person to whom a summons or order under section 94 or a requisition under section 95, sub-section (1),

(1) [1962] 3 S.C.R. 10.

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> has been or might be addressed, will not or would not produce the document or thing as required by such summons or requisition,
> or where such document or thing is not known to the Court to be in the possession of any person, or where the Court considers that the purpose of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection,
> it may issue a search warrant; and the person to whom such warrant is directed, may search or inspect in accordance therewith and the
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> provisions hereinafter contained.
>
> (2) Nothing herein contained shall authorise any Magistrate other than a District Magistrate or Chief Presidency Magistrate to grant a warrant to search for a document,

parcel or other thing in the custody of the Postal or Telegraph authorities."

Before construing s. 94, it is necessary to recall the background of Art. 20(3) of the Constitution. One of the fundamental canons of the British system of Criminal Jurisprudence and the American Jurisprudence has been that the accused should not be compelled to incriminate himself. This principle "resulted from a feeling of revulsion against the inquisitorial methods adopted and the barbarous sentence, imposed, by the Court of Star Chamber, in the exercise of its criminal jurisdiction. This came to a head in the case of John Lilburn(1) which brought about the abolition of the Star Chamber and the firm recognition of the principle that the accused should not be put on oath and that no evidence should be taken from him. This principle, in course of time, developed into its logical extensions, by way of privilege of witnesses against self-incrimination, when called for giving oral testimony or for production of documents." (M.14. P. Sharma v. Satish Chandra, District Magistrate, Delhi(2)

One of the early extensions of the doctrine was with regard to the production of documents or chattel by an accused in response to a subpoena or other form of legal process. In 1749, Lee C.J. observed in R. v. Purnell (3) : "We know of no instance wherein this Court has granted a rule to inspect books in a criminal prosecution nakedly considered." In Roe v. Harvey,(4) Lord Mansfield observed "that in civil causes the Court will force

(1) 3 State Trials 1315.
(2) [1954] S.C.R. 1077. at p. 1083,
(3) 1 W. Bl. 37.
(4) 4 Buff. 2484.

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parties to produce evidence which may prove against themselves or leave the refusal to do it (after proper notice) as a strong presumption to the jury.... But in a criminal or penal cause the defendant is never forced to produce any evidence though he should hold it in his hands in Court." In Redfern v. Redfern(1) Bowen, L.J., stated : "It is one of the inveterate principles of English Law that a party cannot be compelled to discover that which, if answered, would tend to subject him to any punishment, penalty, forfeiture or ecclesiastical censure."

The Indian Legislature was aware of the above fundamental canon of criminal jurisprudence because in various sections of the Criminal Procedure Code it gives effect to it. For example, in s. 175 it is provided that every person summoned by a Police Officer in a proceeding under S. 174 shall be bound to attend and to answer truly all questions other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture. Section 343 provides that except as provided in ss. 337 and 338, no influence by means of any promise or threat or otherwise shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge. Again, when the accused is examined under S. 342, the accused does not render himself liable to punishment if he refuses to answer any questions put to him. Further, now although the accused is a competent witness, he cannot be called as a witness except on his own request in writing. It is further provided in S. 342A that his ailure to give evidence shall not be made the subject of any comment by any parties or the court or give rise to any presumption against himself or any person charged together with him at the same trial.

It seems to us that in view of this background the Legislature, if it were minded to make s. 94 applicable to an accused person, would have said so in specific words. It is true that the words of S. 94 are wide enough to include an accused person but it is well-recognised that in some cases a limitation may be put on the construction of the wide terms of a statute (vide Craies on Statute Law, p. 177). Again it is a rule as to the limitation of the meaning of general words used in a statute that they are to be, if possible, construed as not to alter the common law (vide Craies on Statute Law, p. 187).

There is one other consideration which is important. Art. 20(3) has been construed by this Court in Kalu Oghad's(2) case to mean that an accused person cannot be compelled to disclose

(1) [1891] P. 139.
(2) [1962] 3 S.C.R. 10.

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documents which are incriminatory and based on his knowledge. Section 94, Criminal Procedure Code, permits the production of all documents including the above mentioned class of documents. If s. 94 is construed to include an accused person, some unfortunate consequences follow. Suppose a police officer and here it is necessary to emphasize that the police officer has the same powers as a Court-directs an accused to attend and produce or produce a document. According to the accused, he cannot be compelled to produce this document under Art. 20(3) of the Constitution. What is he to do ? If he refuses to produce it before the Police Officer, he would be faced with a prosecution under s. 175, Indian Penal Code, and in this prosecution he could not contend that he was not legally bound to produce it because the order to produce is valid order if s. 94 applies to an accused person. This becomes clearer if the language of s. 175 is compared with the language employed in s. 485, Cr. P.C. Under the latter section a reasonable excuse for refusing to produce is a good defence. If he takes the document and objects to its production, there is no machinery provided for the police officer to hold a preliminary enquiry. The Police Officer could well say that on the terms of the section he was not bound to listen to the accused or his counsel. Even if he were minded to listen, would he take evidence and hear arguments to determine whether the production of the document is prohibited by Art. 20(3). At any rate, his decision would be final under the Code for no appeal or revision would lie against his order. Thus it seems to us that if we construe s. 94 to include an accused person, this construction is likely to lead to grave hardship for the accused and make investigation unfair to him.

We may mention that the question about the constitutionality of s. 94(1), Cr. P.C., was not argued before us, because at the end of the hearing on the construction of s. 94 we indicated to the counsel that we were inclined to put a narrow construction on the said section, and so the question about its constitutionality did not arise. In the course of arguments, however, it was suggested by Mr. Bindra that even if S.. 94(1) received a broad construction, it would be open to the Court to take the view that the document or thing required to be produced by the accused would not be admitted in evidence if it was found to incriminate him, and in that sense S. 94(1) would not contravene Art. 20(3). Even so, since we thought that S. 94(1) should receive a narrow construction, we did not require the advocates to pursue the constitutional point any further.

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Keeping the above considerations in mind, let us look at the terms of the section. It will be noticed that the language is general, and prima facie apt to include an accused person. But there are indications that the Legislature did not intend to include an accused person. 'Me words "attend and produce" are rather inept to cover the case of an accused person. It would be an odd procedure for a court to issue a summons to an accused person present in court "to attend and produce a document. It would be still more odd for a police officer to issue a written order to an accused person in his custody to "attend and produce" a ,document.

The argument pressed on us that the "person" referred to in the latter part of s. 94(1) is broad enough to include an accused person does not take into account the fact that the person in the latter part must be identical with the person who can be directed to produce the thing or document, and if the production of the thing or document cannot be ordered against an accused person having regard to the general scheme of the Code and the basic concept of Criminal Law, the Generality of the word "the person" is of no significance.

Mr. Bindra invited our intention to s. 139 of the Evidence Act, which provides that a person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness. But this section has no application to the police officer anti it will be noticed that s. 94 provides for two alternative directions; the first is 'attend and produce and the second 'produce' a document. If a police officer directs him to attend and produce he cannot comply with the direction by causing a document to be produced.

If, after a thing or a document is produced, its admissibility is going to be examined and the document or thing in question is not going to be admitted in evidence if it incriminates the accused person, the order to produce the thing or document would seem to serve no purpose it cannot be overlooked that it is because the document or thing is likely to be relevant and material in supporting'the prosecution case that on most occasions the Power under s. 94(1) would be resorted to, so that on the alternative view which seeks to exclude incriminating documents or things, the working of s. 94(l) would yield no useful result.

It is urged by Mr. Bindra that this construction of s. 94 would render s. 96 useless for no search warrant could be issued to search

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for documents known to be in the possession of the accused. This may be so, but a general search or inspection can still be ordered. As far as the police officer is concerned, he can use S. 165, Criminal Procedure Code.

It is not necessary to review all the cases cited before us. It will be sufficient if we deal with the Full Bench decision of the Calcutta High Court in Satya Kinkar Ray v. Nikhil Chandra Jyotishopadhya(1), for the earlier cases are reviewed in it. Three main considerations prevailed with the High Court : First, that giving s.94 its ordinary grammatical construction it must be held that it applies to accused persons as well as to others; secondly, that there is no inconsistency between s. 94 and other provisions of the Code, and thirdly, that this construction would not make, the section ultra vires because calling upon an accused person to produce a document is not compelling the accused to give evidence against himself. Regarding the

first Iwo reasons, we may point out that these reasons do not conclude the matter. The High Court did not advert to the importance of the words "attend and produce" in s. 94, or the background of Art. 20(3). The third reason is inconsistent with the decision of this Court in M. P. Sharma v. Satish Chandra(4), and the learned Chief Justice might well have arrived at a different result if he had come to the conclusion that to call an accused person to produce a document does amount to compelling him to give evidence against himself.

We may mention that the construction which we have put on s. 94 was also placed in Ishwar Chandra Ghoshal v. The Emperor(1), Bajrangi Gope v. Emperor(4), and Rai Chandra Chakravati v. Hare Kishore Chakravarti(5).

Therefore, agreeing with the High Court, we hold that s. 94, on its true construction, does not apply to an accused person. The result is that the appeal is dismissed.

It is not necessary to give facts in the other appeals because nothing turns on them. As stated above, the same question arises in them. The other appeals also fail and are dismissed.

We would like to express our appreciation of the assistance which Mr. Tatachari gave us in this case as amicus curise.

Shah, J. The question which falls to be determined in these appeals is whether in exercise of the power under s. 94(1) of the Code of Criminal Procedure a Court has authority to summon

(1) [1952] I.L.R. 2 Cal. 1066
(2) [1954] S.C.R. 1077.
(3) 12 C.W.N. l016.
(4) I.L.R. 38 Cal. 304.
(5) 9 I.C. 564.

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a person accused of an offence before it to produce a document or a thing in his possession. The words of the clause are general: they contain no express limitation, nor do they imply any restriction excluding the person accused of an offence from its operation. In terms the section authorises any Court, or any officer in charge of a police-station, to issue a summons or written order to the person in whose possession or power such document or thing is believed to be, requiring such person to attend and produce it, at the time and place indicated in the summons or order. The scheme of the Code also appears to be consistent with that interpretation. Chapter VI of the Code deals with process to compel appearance. A Court may under s. 68 issue a summons for the attendance of any person, whether a witness or accused of an offence (vide Forms Nos. 1 and 31 : Sch. V). Section 75 and the succeeding sections deal with the issue of warrants of arrest of witnesses and persons accused of offences. Chapter VII of the Code deals with process to compel the production of documents and other movable property and to compel appearance of the persons wrongfully confined, and general provisions relating to searches. Section 94 confers on a Court power to issue summons and on a police officer to make an order to any person demanding production of a document or thing believed to be in the possession of that person. Indisputably the person referred to in sub-s. (2) of S. 94 is the same person who is summoned or ordered to produce a document or thing. Sections 96 to 99 deal with warrants to search for documents or things. 'Me first paragraph of s. 96 authorises the issue of a search warrant in respect of a place belonging to any person whether he be a witness or an accused person. The inter-relation between S. 94 and the first paragraph of

s. 96(1) strongly indicates that the power to issue a search warrant under paragraph one of s. 96(1) is conditional upon the person, who it is apprehended will not or would not produce a thing or document, being compellable to produce it in pursuance of a summons under s. 94(1). If under S. 94(1) a summons cannot be issued against a person accused of an offence. a search warrant under s. 96(1) paragraph 1 can evidently not be issued in respect of a document or thing in his possession. The second and the third paragraphs of s. 96(1) confer power to issue general warrants. The generality of the terms of S. 98 which enable specified Magistrates to issue warrants to search places used for certain purposes also indicates that the power may be exercised in respect of any place whether it is occupied by an accused person or not. The terms of s. 103 which provide for the procedure for search of any place apply to,
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the search of the house of a person accused of an offence or any other person.
Raju, J., against whose judgment these appeals are filed, opined that S. 94(1) confers no power to issue a summons against an accused person to produce a document or thing in his possession principally on two grounds : (i) that Chapters XX to XXIII of the Code do not authorise the issue of a summons or a warrant against a person accused of an offence, and (ii) that a direction to attend and produce a document or thing cannot appropriately be made against the person accused. The first ground has no validity and has not been relied upon before us for good reasons.
The scheme of the Code clearly discloses that the provisions of Chapters VI and VII which fall in Part III entitled "General provisions' are applicable to the trial of cases under Chapters XX to XXIII. Specific provisions with regard to the issue of a summons or warrant to secure attendance of witnesses and accused and production of documents and things are not found in Chapters XX to XXIII because they are already made in Chapters VI & VII. Again the use of the words "requiring him to attend and produce it" indicates the nature of the command to be contained in the summons and does not imply that the person to whom the summons is directed must necessarily be possessed of unrestricted freedom to physically attend and produce the document or thing demanded.
In cases decided by the High Courts of Calcutta and Madras, it appears to have been uniformly held that the word "person" in s. 94(1) includes a person accused of an offence : vide S. Kondareddi and another v. Emperor(1); Bissar Misser v., Emperor(3); and Satya Kinkar Ray v. Nikhil Chandra Jyotishopadhaya(3). The observations in Ishwar Chandra Ghoshal v. The Emperor (4) to the contrary in dealing with a conviction for an offence under S. 175 Indian Penal Code for failing to comply with an order under S. 94(1) suffer from the infirmity that the Court had not the assistance of counsel for the State. This Court also has expressed the same view in The State of Bombay v. Kathi Kulu Oghad and others("). Sinha, C.J., delivering the judgment of the majority of the Court observed :

> "The accused may have documentary evidence in his possession which may throw some light on the con-
> (1) I.L.R. 37 Mad. 112. (2) I.L.R. 41 Cal. 261. (3) I.L. R. [1951] 2 Cal. 106. (4) 12 C.W.N. 1016.
> (5) [1962] 3 S.C.R. 10.
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> troversy. If it is a document which is not his statement conveying his personal knowledge relating to the charge against him, he may be called upon by the Court to produce that document in accordance with the provisions of S. 139 of the Evidence Act, * * * *

The learned Chief Justice did not expressly refer to the source of the power, but apart from s. 94(1) of the Code of Criminal Procedure there is no other provision which enables a Magistrate to summon a person to produce a document or thing in his possession. The observations made by the Court therefore only relate to the power exercisable under S. 94(1).

Mr. Tatachari says that since it is a fundamental principle of the common law of England which has been adopted in our Criminal jurisprudence, that a person accused of an offence shall not be compelled to discover documents or objects which incriminate himself, a reservation that the expression "person" does not include a person charged with the commission i.e. of an offence though not expressed is implicit in S. 94(1). But the hypothesis that our Legislature has accepted wholly or even partially the rule of protection against self-incrimination is based on no solid foundation.

In 'Phipson on Evidence, 10th Edn. p. 264 Paragraph 611, the limit of the principle of protection against self-incrimination as applicable in the United Kingdom and the policy thereof are set out thus :

> "No witness, whether party or stranger is, except in the cases hereinafter mentioned, compellable to answer any question or to produce any document the tendency of which is to expose the witness (or the wife or husband of the witness), to any criminal charge, penalty or forfeiture. * * * "
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> In Paragraph 612 it is stated :
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> "The privilege is based on the policy of encouraging persons to come forward with evidence in courts of justice, by protecting them, as far as possible, from injury, or needless, annoyance, in consequence of so doing. "

At common law a person accused of an offence enjoyed in general no immunity from answering upon oath as to charges made against him, on the contrary such answers formed an essential feature of all the older modes of trial, from the Saxon ordeal.,

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Norman combat, compurgation or wager of law. Later on, a reaction against the tyranny of the Star Chamber and High Commission Courts set in and the rule became general that no one shall be bound to criminate himself in any court or at any stage of any trial. The privilege was initially claimed only by the defendants, but was later conceded to witnesses also. The witness was thereby protected both from answering questions, and producing documents. In the case of, crimes, protection was accorded to questions as to the witness's presence at a duel, or his commission of bigamy, libel, or maintenance; in the case of penalties, as to pound breach, or fraudulent removal of goods by a tenant. and in the case of forfeiture, as to breach of covenant to take beer from a particular brewery or to insure against fire or not to sub-let without licence. (See Phlipson Paragraph 613)..

In the United States of America where the immunity against self-incrimination is constitutional, the Fifth Amendment provides :
"No person .... shall be compelled in any criminal case. to be a witness against himself."
By judicial interpretation the rule has received a much wider application. The privilege is held to apply to witnesses as well as parties in proceedings civil and criminal : it covers documentary evidence and oral evidence, and extends to all disclosures including answers which by themselves support a criminal conviction, or furnish a link in the chain of evidence, and to production of chattel sought by legal process.
The rule of protection against self-incrimination prevailing in the United Kingdom, or as interpreted by Courts in the United States of America has never been accepted in India. Scattered through the main body of the statute law of India are provisions, which establish beyond doubt that the rule has received no countenance in India. Section 132 of the Evidence Act enacts in no, uncertain terms that a witness shall not be excused from answering any questions as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind. This provision runs directly contrary to the protection against self-incrimination as understood in the common law in the United Kingdom.
Statutory provisions have also been made which compel a person to produce information or evidence in proceedings which
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may involve imposition of penalties against him, e.g., under S. 45-G & s. 45-L of the Banking Companies Act, 1949 as amended by Act 52 of 1953 provision has been made for public examination of persons against whom an inquiry is made. Provisions are also made under s. 140 of the Indian Companies Act, 1913, s. 240 of the Companies Act, 1956, s. 19(2) of the Foreign Exchange Regulations, s. 171-A of the Sea Customs Act 8 of 1878, s. 54-A of the Calcutta Police Act, s. 10 of the Medicinal & Toilet Preparation Act 11 of 1955, s. 8 of the Official Secrets Act 19 of 1923, s. 27 of the Petroleum Act 30 of 1934, S. 7 of the Public Gambling Act 3 of 1867, s. 95(1) of the Representation of the People Act 43 of 1951 to mention only a few--compelling persons to furnish information which may be incriminatory or expose them to penalties. Provisions have also been made under diverse statutes compelling a person including an accused to supply evidence against himself. For instance, by s. 73 of the Evidence Act, the Court is authorised in order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, to direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person. It has been held that this power extends to calling upon an accused person to give his writing in Court and make it available for comparison by an expert : King Emperor v. Tun Hlaing(l) and Zahuri Sahu v. King Emperor(2).
Section 4 of the Identification of Prisoners Act, 1920, obliges a person arrested in connection with an offence punishable with rigorous imprisonment, if so required by a

police officer to give his measurements. Section 5 of the Act authorises a Magistrate for the purposes of any investigation or proceeding under the Code ,of Criminal Procedure, 1898, to order any _person to be produced or to attend at any time for his measurements or photograph to be taken, by a police officer. Similarly under S. 129-A of the Bombay Prohibition Act, 1949, the Prohibition Officer is authorised to have a person suspected to be intoxicated, medically examined and have his blood tested for determining the percentage of alcohol therein. Offer of resistance to production of his body or the collection of blood may be overcome by all means reasonably necessary to secure the production of such person or the examination of his body or the collection of blood necessary for the test. Section 16 of the Arms Act II of 1878 requires a

(1) [1923] 1 tan. 759, F.B.

(2) [1927] 6 Pat. 623.

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person possessing arms, ammunition or military stores, when such possession has become unlawful to deposit the same at the nearest police station, and s. 32 of that Act requires all person possessing arms of which a census is directed by the Central Government to furnish to the person empowered such information as he requires. There are also provisions in the Motor Vehicles Act 4 of 1939 like ss. 8 7 (1) & (2), 88 and 89 which require a person to furnish information even about his own complicity in the commission of an offence. It is unnecessary to multiply instances of statutory provisions which impose a duty to give information even if the giving of information may involve the person giving information to incriminate himself. These provisions are, prima facie, inconsistent with the protection against self-incrimination as recognised under the common law of the United Kingdom or in the constitutional protection conferred by the Fifth Amendment of the American Constitution.

The Evidence Act and the Code of Criminal Procedure were enacted at a time when the primary aim of the Government was to maintain law and order. The Legislature was merely a branch of the executive government, and was not in the very nature of things concerned with the liberty of the individual. It would therefore be difficult to assume that the rulers of the time incorporated in the Indian system of law every principle of the English common law concerning individual liberties which was developed after a grim fight in the United Kingdom. In the matter of incorporation of the rule of protection against self-incrimination, both authority and legislative practice appear to be against such incorporation.

In this connection it is pertinent to point out that the provisions relating to the production of documents were for the first time introduced in the Code of Criminal Procedure by Act 10 of 1872. These special provisions were presumably thought necessary to be introduced because of the severe criticism made by the Calcutta High Court of the Collector and Magistrate of a District in Bengal in Queen v. Syud Hossain Ali Chowdry(1). It was intended thereby to state in words which were clear the extent of powers which were conferred upon criminal courts and police officers in respect of search of documents or other things. The history of the provisions relating to orders for production and searches is set out in In re Ahmed Mahomed(2) by Ghose, J., at pp. 137-138. After observing that the "party" referred to in S. 365 (which invested a Magistrate with power to issue a summons

(1) I.L.R. 15 Cal. 110.

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to produce documents) "might be, as it is obvious, either the accused himself, or a third party and the Legislature in 1872. thought it right to lay it down in clear terms that any I party may be compelled to produce documents for the purpose of any investigation or Judicial proceedings, the learned Judge quoted from the record of the speech of the Lieutenant Governor a passage, of which the following is material :

> "The prevailing ideas on the subject of criminal law had been somewhat affected by the English law; and the departures from the rules of the English law which the Committee recommended were founded on this ground, that many of the prominent parts of the English law were based on political considerations, the object of those familiar rules of criminal law being not to bring the criminal to justice, but to protect the people from a tyrannical Government, * * *. Not only were those provisions now unnecessary in England, but they were especially out of place in a country where it was not pretended that the subject enjoyed * * liberty * * *, and it was not intended to introduce rules into the criminal law which were designed with the object of securing the liberties of the people. That being so * * they might fairly get rid of some of the rules, the "object of which was to secure for the people that jealous protection which the English law gave to the accused. It seemed * * that they were not bound to protect the criminal according to any Code of fair play, but that their object should be to get at the truth, and anything which would tend to elicit the truth was regarded by the Committee to be desirable for the interests of the accused if he was innocent, for those of the public if he was guilty. * * * * for instance, * * did not See why they should not get a man to criminate himself if they could; why they should not do all which they could to get the truth from him; why they should not cross-question him, and adopt every other means, short of absolute torture to get at the truth. * *"

In construing the words used by the Legislature, speeches on the floor of the Legislature are inadmissible. I do not refer to the speech for the purpose of interpreting the words used by the Legislature, but to ascertain the historical setting in which the statute which is parent to s. 94(1) came to be enacted. The judgment of the High Court of Calcutta, was followed by the somewhat
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violent reaction of the executive expressed through the head of the Government, and enactment of the statute which prima facie reflected the sentiments expressed. It appears that the Legislature of the time, which was nothing but the executive sitting in a solemn chamber-set its face against the rule against self-incrimination being introduced in the law of India.

Opinion has for a long time been divided on the question whether the principle of self-incrimination which prevailed in the United Kingdom the reason of the original source of

the rule having disappeared tends to defeat justice. On the one hand it is claimed that the protection of an accused against self-incrimination promotes active investigation from external sources to find out the truth and proof of alleged or suspected crime. It is claimed that the privilege in its application to witnesses as regards oral testimony and production of documents affords to them in general a freedom to come forward to furnish evidence in courts and be of help in elucidating the truth in a case, with materials known to them or in their possession. On the one hand, there are strong advocates of the view that this rule has an undesirable effect on the larger social interest of detection of crime, and a doctrinaire adherence thereto confronts the State with overwhelming difficulties. It is said that it is a protector only of the criminal I am not concerned to enter upon a discussion of the relative merits of these competing theories. The Court's function is strictly to ascertain the law and to administer it. A rule continuing to remain on the statute book whatever the reason, which induced the Legislature to introduce it at the inception, may not be discarded by the Courts, even if it be inconsistent with notions of a later date : the remedy lies with the Legislature to, modify it and not with the Courts.
There is one more ground which must be taken into considera-tion. The interpretation suggested by Mr. Tatachari interferes with the smooth working of the scheme of the related provisions of the Code of Criminal Procedure. Section 94, prima facie, authorises a Magistrate or a police officer for the purposes of any investigation, inquiry, trial or other proceeding to call upon any person in whose possession or power a document or thing is believed to be, to direct him to attend and produce it at the time and placer stated in the summons or order. Paragraph 1 of s. 96(1) provides that where any Court has reason to believe that a person to whom a summons or order under s. 94 has been or might be addressed, will not produce the document or thing as required by such summons or requisition, the Court may issue a search warrant.
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If S. 94(1) does not authorise a Magistrate to issue a summons to a person accused of an offence for the production of a document or thing in his possession, evidently in exercise of the powers under S. 9 6 (1) no warrant may be issued to search for a document or thing in his possession. Paragraphs 2 and 3 are undoubtedly not related to s. 94(1). But under paragraph 2 a Court may issue a search warrant where the document or thing is not known to the Court to be in the possession of any person; if it is known to be in the possession of any person paragraph 2 cannot be resorted to. Again, if the interpretation of the first paragraph that a search warrant cannot issue for a thing or document in the possession of a person accused be correct, issue of a general warrant under the third paragraph which may authorise the search of a place occupied by the accused or to which he had access would in substance amount to circumventing the restriction implicit in paragraph one.
Nature of the power reserved to investigating officers by s. 165 of the Code of Criminal Procedure must also be considered. That section authorises a police officer in charge of an investigation having reasonable grounds for believing that anything necessary for purposes of an investigation into any offence which he is authorised to investigate may be found in any place within the limits of the police station, and that such thing cannot be otherwise obtained without undue delay, to record in writing the

grounds of his belief and specify in such writing, the thing for which search is to be made, and to search, or cause search to be made, for such thing in any place within the limits of such station. Section 94(1) authorises a police officer-to pass a written order for the production of any document or thing from any person in whose possession or power the document or thing is believed to be. If S. 94(1) does not extend to the issue of an order against an accused person by a police officer, would the police officer in charge of the investigation, be entitled to search for a thing or document in any place occupied by the accused or to which he has access for such document or thing ? To assume that the police officer in charge of the investigation may in the course of investigation exercise power which cannot be exercised when the Court issues a search warrant would be wholly illogical. To deny to the investigating officer the power to search for a document or thing in the possession of a person accused is to make the investigation in many cases a farce. Again, if it be held that a Court has under the third paragraph of S. 96(1) power to issue a general search warrant, exercise of the power would make a violent infringement of the protection against self-incrimination, as understood in the United Kingdom, because
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the Courts in that country frowned upon the issue of a general warrant for search ,of a document or thing : Entick v.Carrington (1).
On a review of these considerations, in my view the rule of protection against self-incrimination as understood in the 'United Kingdom has not been accepted in India. It does not apply to civil proceedings or to proceedings which involve imposition of penalties or forfeitures. By express enactments witnesses at trials are not to be excused from answering questions as to any relevant matter in issue on the ground that the answer may incriminate such witness or expose him to a penalty. It is open to the State to call for information which may incriminate the person giving information and under certain statutes an obligation is imposed upon a person even if he stands in danger of being subsequently arraigned as accused, to give information in respect of a transaction with which he is concerned. Provision has been made requiring a person accused of an offence to give his handwriting, thumb marks, finger impressions, to allow measurements and photographs to be taken, and to be compelled to submit himself to examination by experts in medical science. To hold, notwithstanding the apparently wide power conferred, that a person accused of an offence may not in exercise of the power under s. 94(1) be called upon to produce documents or things in his possession, on the assumption that the rule of protection against self-incrimination has been introduced in our country, is to ignore the history of legislation and judicial interpretation for upwards of eighty years.
It was for the first time by the Constitution under Art. 20(3), that a limited protection has been conferred upon a person charged with the commission of an offence against self-incrimination by affording him protection against testimonial compulsion. The fact that in certain provisions like ss. 161, 175, 342 and 343 of the Code of Criminal Procedure limited protection in the matter of answering questions which might tend to incriminate or expose him to a criminal charge or to penalty or forfeiture has been grant-ed. may indicate that in the interpretation of other provisions of the Code, an assumption that the protection against self-incrimination was implicit has no place.

Failure to comply with an order under s. 94 of the Code of Criminal Procedure may undoubtedly expose a person to penal action under s. 485 of the Code, and he may be prosecuted under s. 175 of the Indian Penal Code. In my judgment, refusal to produce a document or thing on the ground that the protection

(1) 19 Howell, St. Tr. 1029.

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guaranteed by Art. 20(3) would since the enactment of the Constitution be infringed thereby would be a reasonable excuse for non-production within the meaning of s. 485 of the Code of Criminal Procedure, and an order which is in violation of Art. 20(3) requiring the person to produce a document would not be regarded as lawful within the meaning of s. 175 of the Indian Penal Code. But, apart from the protection conferred by Art. 20(3), there is no reservation which has to be implied in the application of s. 94(1).

1 must mention that in this case, we are not invited to decide whether s. 94(1) infringes the guarantee of Art. 20(3) of the Constitution. That question has not been argued before us, and I express no opinion thereon. Whether in a given case the guarantee of protection against testimonial compulsion under Art. 20(3) is infringed by an order of a Court acting in exercise of power conferred by s. 94(1) must depend upon the nature of the document ordered to be produced. If by summoning a person who is accused before the Court to produce documents or things he is compelled to be a witness against himself, the summons and all proceedings taken thereon by order of the Court will be void. This protection must undoubtedly be made effective, but within the sphere delimited by the judgment of this Court in Kathi Kalu Oghad's case(2). It needs however to be affirmed that the protection against what is called testimonial compulsion under Art. 20(3) is against proceedings in Court : it does not apply to orders which may be made by a police officer in the course of investigation. The Court cannot therefore be called upon to consider whether the action of a police officer calling upon a person charged with the commission of an offence to produce a document or thing in his possession infringes the guarantee under Art. 20(3) of the Constitution.

In my view the appeals should be allowed and the reference made by the Sessions Judge should be accepted.

ORDER

In accordance with the Opinion of the Majority these Appeals are dismissed.

(1) [1962] 3 S.C.R. 10.

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