of State to another. In the words of Lord Esher, Master of the Rolls, in *Chatterton v. The Secretary of State* (C.A. 1895) :—

> "It is not competent to a civil court to entertain a suit in respect of the action of an "official of State in making such a communication to another official in the course of his "official duty, or to enquire whether he acted maliciously in making it. The reason is that "it would be injurious to the public interest that such an enquiry should be allowed, because "it would tend to take from an officer of State his freedom of action in an action concerning "the public weal. If an officer of State were liable to an action for defamation in respect of "such a communication as this, actual malice could be alleged to rebut a plea of privilege ; "and it would be necessary that he should be called as a witness to deny that he acted "maliciously. That he should be placed in such a position, and that his conduct should be so "questioned in a Court would clearly be against the public interest and prejudicial to the "independence necessary for the perfomance of his functions as an official of State. Therefore "the law confers on him an absolute privilege in such a case. This doctrine impose a heavy "responsibility on officers of State in the use of the protection afforded them but that it "exists is undoubted."

I hold that I have judicial notice of the fact that the defendant was Governor of the Colony at the time the defamatory words were used and as such, he is an officer of State. From the circumstances disclosed in the statement of claim it also appears to me that the alleged defamatory words already mentioned were used by the defendant in a conversation with the Acting Chief Justice of the Colony, also an officer of State ; that the conversation in question was between two officers of State in the course of their official duty, and therefore that the occasion and the conversation were absolutely privileged and that no action will lie for such conversation.

Under the circumstances, as they appear on the face of the statement of claim, it appears to me that the action is vexatious and must fail if I allow it to proceed, and I therefore dismiss it.

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re RATU SAVANACA RADOMODOMO.
ex parte THE ATTORNEY—GENERAL.

[Civil Jurisdiction (Berkeley, C.J.) February 14, 1902.]

Writ of habeas corpus—rule absolute issued in first instance—rule absolute discharged on application of Attorney-General and rule to show cause issued instead.

Ratu Savanaca Radomodomo was confined to the island of Na Yau by a confining order issued under the Disaffected Natives Ordinance, 1887.[1] Application was made for a writ of habeas corpus and a rule absolute was issued in the first instance without hearing counsel for the Crown. The Attorney-General immediately applied for an order to show cause why the rule absolute should not be discharged and a rule *nisi* issued instead thereof.

HELD.—In the circumstance the proper cause was to discharge the rule absolute and give leave to issue a rule *nisi* for the writ of habeas corpus.

Cases referred to :—

(1) *Ex Parte Mathew Gale the Younger* [1845] 14 L.J.Q.B. 316.

(2) *Re Eggington* [1853] 2 E. and B. 717 ; 118 E.R. 936 ; 23 L.J.M.C. 41 ; 41 Dig. 89.

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[1] *Disaffected Natives Ordinance, Cap.* 90.

(3) *Re Geswood* [1853] 2 E. and B. 952 ; 118 E.R. 1022 ; 23 L.J.M.C. 35 ; 16 Dig. 269.

(4) *Reg. v. Gauz* [1882] 9 Q.B.D. 93.

APPLICATION by the Attorney-General for an order discharging a writ of habeas corpus issued on a rule absolute in the first instance and for a rule *nisi* to be issued instead thereof. The facts are fully set out in the statement of reasons issued by the Chief Justice on 18th February, 1902.

F. O. Edlin for Ratu Savanaca Radomodomo.

BERKELEY, C.J.—On the 3rd February instant I, after hearing Mr. Edlin granted on his application, a rule absolute for a writ of habeas corpus to bring up the body of Ratu Savanaca Radomodomo.

The writ was taken out on the 5th of February. On the 7th an order was, on behalf of the Attorney-General, granted to show cause why this rule absolute should not be discharged and a rule *nisi* issued instead thereof on the ground, *inter alia*, that the prisoner was confined under the authority of the Administrator of the Government of the Colony acting in pursuance of powers conferred by Ordinance XX of 1887.[1] After hearing the Attorney-General it seemed to me that, as the matter is one in which the Administrator of the Government claims to have acted under an Ordinance of the Legislature of the Colony, which it is claimed, confers upon him unusual and peculiar powers with respect to the confinement of persons of the native Fijian race, for political reasons, and in certain circumstances which are said to exist in this case, I ought not to have made the rule absolute without first giving the Attorney-General an opportunity to show cause against it and therefore I have ordered the rule to be discharged, and have given Mr. Edlin leave to issue a rule *nisi* for a writ of habeas corpus. On that rule being argued the right of the prisoner to be released, or his liability to be detained, can be determined and as I have required the Attorney-General to undertake to accept short notice, which he has done, there need be no delay in determining the rights of the subject in this case. The course which I have taken is similar to that adopted in the case of *Mathew Gale the Younger* reported in 14 L.J.Q.B. at page 316. In that case a habeas corpus had been obtained directed to the keeper of the gaol at Durham commanding him to bring up the body of the prisoner who was in his custody by virtue of a warrant of committal under the Mutiny Act for assisting in concealing a deserter. On a subsequent day the prisoner having been brought up Mr. Justice Wightman on the ground that the Crown was interested in the proceedings, ordered notice of the writ to be given to the Secretary of State for War, remanding the prisoner meanwhile ; and on a later day, Mr. Bramwell moving on an affidavit that notice had been given *inter alia* to the Secretary for War, and no cause shown Mr. Justice Wightman, after hearing objection to the commitment, and being of opinion that it could not be supported, ordered that the prisoner be discharged.

The case now before me is affected by circumstances which are novel, and peculiar, and probably unique ; rendering this case, so far as I know, without direct precedent. But it seems to me that the case of *Mathew Gale the Younger* is authority for the course I have adopted.

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[1] *Disaffected Natives Ordinance*, Cap. 90.

If when the rule is taken out by Mr. Edlin he asks therein, as he will be entitled to do, that in the event of the rule being made absolute the prisoner should be ordered to be discharged without being brought up before the Court he will obtain for his client every possible advantage which could have accrued to him by the rule being made absolute in the first instance. That was the course taken in *Eggington's* case 2 Ellis and Blackburn 717, and in *Geswood's* case 2 Ellis and Blackburn 952. In the former case at page 734 Lord Campbell said " I have repeatedly granted it " (the rule *nisi* for a writ of habeas corpus) " in this form to avoid the necessity for bringing up the party." It is the practice also in extradition cases to issue a rule *nisi* calling upon the Home Secretary, the Metropolitan Police Magistrate, and the foreign Government to show cause why the writ should not issue. That course was followed in the *Queen v. Gauz* 9 Q.B.D. 93 in which case, where a rule absolute for a habeas corpus had in the first instance been granted and the writ of habeas corpus had issued, upon the suggestion of the Attorney-General the matter was argued as if the prisoner's counsel was moving for a rule *nisi* on affidavits, and the Crown showing cause against the rule. It therefore appears that the course I have adopted is the right one.

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re RATU SAVANACA RADOMODOMO.

[Civil Jurisdiction (Berkeley, C.J.) March 14, 1902.]

Disaffected Natives Ordinance 1887[1]—*s.* 2—*confining order—whether subject is entitled to be heard in his defence—whether the order and warrant should show the cause for which they are issued.*

A confining order was issued under s. 2 of the Disaffected Natives Ordinance 1887[1] ordering the confinement of a Fijian native for a period of three years. This was followed by a warrant purporting to be issued under the same Ordinance and the native was accordingly arrested. Neither the order nor the warrant showed on its face the cause for which it was issued. No complaint or charge had been made or laid against the native nor had he been afforded any opportunity to defend himself before the confining order was made. An order to show cause against issue of a writ of habeas corpus was issued to the Attorney-General on behalf of the Crown.

HELD.—(1) It is not competent for the Governor in Council to sentence a man to imprisonment under the Disaffected Natives Ordinance, 1887,[1] without first having given him an opportunity of being heard in his defence.

(2) It is necessary that any order or warrant issued under the Disaffected Natives Ordinance, 1887, should show on its face the cause for which it is issued.

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[1] *Cap.* 90, *Revised Edition, Vol* II, *p.* 908.