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Edited by R. G. KAKADE, M. A., LL. B., PH. D.,
Assistant Secretary, All-India Civil Liberties Council
Office: Servants of India Society, Poona

Editorial Committee:

Prof. P. M. LIMAYE,
S. G. VAZE,

Member and Joint
Secretary respectively of
the All-India Civil
Liberties Council

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NEGROES' RIGHT TO VOTE BILL TO AFFORD EFFECTIVE PROTECTION

In spite of the adoption of the Fifteenth Amendment as early as 1870 which lays down that "the right of citizens of the United States shall not be denied or abridged by the United States or by any State on account of race, colour, or previous condition of servitude," Negroes are being systematically excluded from the polls in the Southern States, and no measure has yet been designed which can effectively protect their right to vote. Now, however, the Administration has come forward with a bill which is calculated to make the Fifteenth Amendment fully effective and prevent all interference with the voting rights of citizens of the Negro race. At the time of writing, a battle royal is being fought in the Senate over this bill, and the odds are that it will be passed into law and the Negroes' right to vote will at last be secure.

The Southern States used several devices to nullify the Fifteenth Amendment in practice and keep the Negroes off the polls. To-day in these areas only about 25 per cent. of the eligible Negro voters are registered, compared with 62 per cent. of the eligible white voters. The first step taken by the Administration to remedy this state of things was to pass a Civil Rights Act in 1957 which empowered the Federal Government to intervene in defence of Negro voting by bringing injunction suits on behalf of citizens whose voting privileges have been denied instead of, as formerly, leaving it to each aggrieved person to fight his own case in court. But the enactment proved to be largely infructuous, for few Negroes brought their complaints to the Justice Department so that it could move the courts in their behalf. The first case filed under the Act was against the voting registrars in Terrel County in Georgia, in which the Department complained to a Georgia federal court that the registrars had discriminated against qualified Negro voters. In this case, however, in April 1959 the lower court held that the key sections of the Act were unconstitutional, since they permitted law suits against private individuals as well as against state officers, and thereupon the Department appealed to the Supreme Court. On 29th February the Supreme Court in a unanimous decision upheld the validity of the Act. Speaking for the Court, Mr. Justice

Brennan said that the trial judge was in error, though the Court did not express any view on the "ultimate scope" which Congress wished to attach to the 1957 legislation or about its relation to the Constitution when applied in other ways than the procedure followed in the Georgia case. In the judgment it was said:

It is established as a fundamental proposition that every state official, high and low, is bound by the Fourteenth and Fifteenth Amendments. [The "Great Fourteenth Amendment" provides: "No State shall deny to any person within its jurisdiction the equal protection of the laws."] This Court has already made it clear that it follows from this that Congress has the power to provide for the correction of constitutional violations . . . without regard to the presence of other authority in the State.

In a separate opinion, in which he was joined by Mr. Justice Harlan, Mr. Justice Frankfurter said that no "procedural hurdle" now remained to prevent action by the United States Government in protecting Negro rights. The decision puts it beyond doubt that the Federal Government has the constitutional power to force observance of Negroes' voting rights by means of suing the state officials responsible for depriving them of the rights, whether overtly or covertly. But the Government itself realizes that in actual fact the 1957 Act will give little tangible relief to the Negroes.

The Civil Rights Commission created by the Civil Rights Act investigated denials of the voting rights to Negroes in the Deep South. It found (vide p. vi: 5 of the BULLETIN) that "many Negro citizens find it difficult and often impossible to vote," and that Negro registration is kept low by violence, intimidation, subterfuge and dilatory tactics, and to the extent that Negroes were unable to vote on account of the obstructions of state officials, it recommended in September 1959 that these obstructions could best be circumvented by the intervention of federal officials in this business. Its proposal was that when nine Negroes in any district complained of interference with their right to vote, the

Commission should itself be allowed to investigate their allegations, and if the Commission found that the allegations were substantiated the President should appoint federal registrars to register those against whom local voting officials had practised discrimination. If, after registration by the federal registrars, local officials persisted in refusing to let the Negroes vote, the Department of Justice could apply to a federal court for an order compelling the officials to do so. There was of course an outcry against this plan from the Southerners who thought that it would "manacle" the South.

Till the other day this was the only proposal before the Congress intended to thwart the exclusion of eligible Negroes from voting rights. But subsequently the Attorney General put forward an alternative proposal, under which a complaint by one or more citizens of being deprived of voting rights would go to the Justice Department and if the Department found the complaint justified, it would sue under the 1957 Act to require local officials to register the complainant. If the Department won the case, it would ask the federal judge who had tried it to appoint voting referees. The referees would certify to the judge the names of any persons barred from voting and the judge would then issue voting orders. Any state official who interfered with voting by a person found qualified by the referees, would be subject to commitment for contempt of court by a judge without a jury. This is a crucial proviso because of the Southern juries' notorious reluctance to convict in cases of racial discrimination. The referees would have power to subpoena witnesses and documents and administer oaths.

The Administration's referee proposal is believed to have many advantages over the Civil Rights Commission's registrar proposal. The referee plan covers elections at every level: federal, state and local, whereas the other plan does not affect state and local elections, which to a Negro may be more important than a federal election. Besides, in most cases state and federal candidates are listed on the same ballot. In the Senate Rules Committee the Advocate General went so far as to say that the registrar proposal would give Negroes only worthless registration certificates that could not be effectively enforced, whereas under his own plan he claimed that the referees would not only register Negroes but follow through by guarding their rights at the polls and seeing that their votes were counted. It is also felt that the Civil Rights Commission's plan of federal registrars appointed by the President restoring a right denied by state officials would be regarded in the South as an assault on states' rights. On the other hand the Administration's referee plan places protection of voting rights "within the established judicial framework" because it would come into effect after a judicial determination that there had been a violation of voting rights and would not be open to a challenge on legal and constitutional grounds to which the registrar plan which made action dependent

on a determination by the Civil Rights Commission would be liable. Moreover, the referee plan provided for the sanction of contempt proceedings whereas the registrar plan proposed criminal proceedings which were often of little avail. The civil rights groups had feared that under the Attorney General's plan Negroes wishing to be qualified by a voting referee might have to undergo too formalized, too judicial a procedure — with witnesses, cross-examination, etc. and that would prevent many Negroes from even trying to get themselves enlisted. The Attorney General, however, has explained that Negroes would not have to go through any formal adversary proceeding in order to be qualified by a referee. He indicated that the process would be quite short and simple and said that any objections by state officials could be voiced only after the referees act, when they refer to the court.

Thus the Administration's referee plan now holds the field as an amendment to the 1957 Act and if it passes it may be hoped that qualified Negroes will at last cease to be arbitrarily or fraudulently disfranchised by state officials.

While the voting issue is being fought in the biggest ever fight in Congress, a movement against segregation in general has been started by militant Negro youths in various localities. At present the movement has taken the form of student demonstrations against segregated eating facilities. It began on 1st February at Greensboro (North Carolina) when four college students went to a Woolworth store, bought a few articles and sat down at the lunch counter requesting service. In the Deep South the local custom allows Negroes to be served at lunch counters only if they stand. When the Woolworths, following this custom, refused service, the students remained sitting. And now there is a wave of sit-downs to protest against the discrimination. The demonstrations have spread from North Carolina to Virginia, Florida and South Carolina, involving a score of cities. A few demonstrators have been pelted with eggs, sprinkled with itching powder and assaulted. Others have been arrested on trespassing charges. With few exceptions, the students have made no effort to retaliate against their tormentors. They are following the line of Rev. Martin Luther King, who waged an effective boycott against a bus line in Montgomery (Alabama) until a federal court forced it to desegregate. Mr. King said: "The demonstrations reveal that the Negro will no longer accept segregation in any form. He will not be ultimately satisfied with token integration [as in education], for he realizes that token integration is a new form of discrimination covered up with certain niceties and complexities." Some white students have at times joined the demonstrations. The North Carolina Council on Human Relations, an inter-racial group, has lent its support. The Unitarian Fellowship for Social Justice has blessed. There are indications that a

continued refusal to serve Negroes may bring economic retaliation. Many of the participants at a Negro mass meeting in Durban (North Carolina) expressed a willingness to join a boycott of the stores if necessary to

support the students. For stand-up counters, for which the local custom does not prescribe segregation, are carrying on a lively trade with both races, and the boycott, if it materializes, may hit the stores grievously.

KENYA'S CONSTITUTIONAL FRAMEWORK

AS IT EMERGED FROM THE ROUND TABLE CONFERENCE

The qualified yet genuine support which the proposals put forward by the Colonial Secretary, Mr. Iain Macleod, for the constitutional development of Kenya received at the Round Table Conference in London is everywhere regarded as almost a miracle of political compromise and is a tribute to the spirit of good will and accommodation displayed by most of those who took part in the conference. The scheme of reforms in itself is but modest, in view particularly of the breath-taking changes that are taking place all round in Africa, but the momentous character of the comparatively small steps forward that are being taken in Kenya derives from the fact that Mr. Macleod was able to announce that all the groups except one, that of the diehard European settlers, "accepted that the proposals on the Executive and Legislature should be implemented as the next stage in constitutional advance." A scheme agreed to by those who are to put it into effect, even if limited, is of greater advantage in the long run than a far-reaching one which leaves any large sections of the population sullen and resentful. What Kenya needed most after the Mau Mau trouble was something that would command the support of African nationalists and the more liberal European settlers, and Mr. Macleod's scheme for the transitional period is to be commended just because, as he himself said, it promises to "succeed in building a political bridge between Kenya's past and future." If the scheme is worked in the spirit in which it was framed and agreed to, one may confidently hope for an era of smooth and yet rapid progress for this colony towards independence which has been declared to be the ultimate objective of the Government.

Mr. Macleod's proposals, subsequently endorsed by Her Majesty's Government, provide for a Legislative Council of 65 elected members (there will also be a nominated element, whose maximum strength is yet undetermined). Of these 65 elected members 53 will be directly elected on a common roll and the other 12 will be "national members" (the equivalent of "special members" in the present Legislature), elected by the Legislative Council on a system of proportional representation. Of the 53 seats to be filled by direct election, 33 will be open seats (there are none such in the existing Legislature), election to them being based on a fairly wide franchise, similar to that of Tanganyika. To qualify for a vote on the common roll, electors will have to be able to read or write their own language, or to

have reached the age of 40, or to be an office-holder in a wide range of scheduled posts, or to have an annual income of £75. The other 20 seats to be filled by direct election will be reserved for minority communities — 10 for Europeans, 8 for Asians and 2 for Arabs. To ensure that the reserved seats will be filled by true representatives of the minority communities it is provided that communal primary elections will be held and that those who obtain a minimum percentage of votes among their community at these primary elections will alone be allowed to stand for final election through the common roll. There is no such provision in Tanganyika, where the 10 European and 11 Asian out of the total 71 seats, like the 50 African seats, are filled by election on a common voters' roll, which will naturally be predominantly African. But in that country all communities are so accustomed to work together that there was no complaint about Africans exercising a decisive influence on the choice of the European and Asian candidates. In Kenya however, where the common electoral roll is being introduced for the first time, a spirit of multi-racial co-operation is yet to grow up and therefore the safeguard of primary communal elections had to be devised. In the Executive Council which will hereafter be called Council of Ministers, there will be, under the new proposals, 4 officials and unofficials drawn from elected members of the Legislative Council. Of the latter 4 will be Africans, 3 Europeans and 1 Asian.

This scheme of reforms embodies the greatest common measure of agreement among the various groups represented at the conference. Accordingly, every group had to give up a part of its demands, but all made the concessions cheerfully in the interest of building a multi-racial society and here lies the great merit of the scheme. The concession that the African nationalists had to make was large and all honour to them that they could be induced to make it. They had asked for common roll elections on the basis of universal suffrage and for the abolition of both communally elected and specially elected seats. They have succeeded so far as the introduction of a common roll is concerned; but they have to be content with a qualified franchise. However, they recognize that it will be a low-franchise qualification just as in Tanganyika, and they apparently feel that what is good for Mr. Nyerere is good for them — as a beginning. They also recognize that immigrant communities have a claim on the country and have therefore agreed to the reservation of a proportion of

seats for them even under a safeguard for which no need was felt in Tanganyika. The 33 open seats will almost certainly go to Africans; the reserved seats will be ultimately disposed of largely by African votes; and in the matter of the "national" seats, Africans who will be in a majority in the legislature will have a great influence on the type of people who fill those seats. In any case they will be in a substantial majority, so far as the elective seats are concerned. This is not an insignificant gain. Similarly, in the new Cabinet Africans will have a substantial representation, and the status of the Cabinet itself is going to be raised, so that Africans will hereafter be in a strong position to influence policy. The Government is anxious that all the four seats allotted to Africans should be immediately filled by them instead of having to wait till the new Constitution comes into force, and it seems likely that African nationalists will be willing to take up portfolios, though they were unwilling to do so under the existing Constitution.

The compromise solution reached in London became possible only because the leaders of both the minority communities and the Africans took a realistic view of the problems facing them. The Europeans and Asians realized that the future of Kenya ultimately lay with the Africans; that they must come eventually to occupy a preponderant position in all policy-making bodies; and that decisive power will naturally belong to them in a country which is essentially African. All that the minorities could hope for was a breathing space in which they could adjust themselves to the inevitability of an African government. The African nationalists too realized that the immigrant communities which had made Kenya their home had a right to live there and to continue to make their contribution to the progress of the country, and that while it would be right to lop off all the privileges which they might be enjoying, they must be allowed to exercise their full civil rights as citizens of Kenya without being victimized in any way. They further realized that, independence being guaranteed to them, it might be to their advantage in the long run to allow for a short period of time in which they could train themselves in the art of government of which they had no opportunity so far to gain practical experience. Indeed, Dr. Kiano, one of the nationalist leaders who represented Africans at the London Conference, appealed to the Africans after going back to Kenya to view what had happened at the conference as a challenge to them to learn how to run Kenya properly and he gave the assurance that African leaders were fully conscious of the responsibilities that devolved on them and that they would discharge these responsibilities effectively and justly in order to make life in Kenya better for all.

That the accord reached at the London talks may be lasting can be inferred from how the African and European groups view the outcome of the conference. Mr. Ronald Ngala, who led the African delegation at the conference, said :

The British proposals fall short of our expectations but they do represent a big stride forward and the start of a new era. For the first time independence as a political objective for Kenya has been expressed in no uncertain terms, and under the new proposals Africans will be in a majority in the Legislature. European supremacy from which we suffered so long has been smashed and human dignity is assured to all people, regardless of race or colour. I think 3,000,000 Africans will be qualified to vote in the next elections based on a common roll. Although we have come back without an African Chief Minister I think it will not be long before we have one. For the time being we have secured a wide measure of responsible government. I do not see any reason why European farmers should have any fears about the future.

Mr. Tom Mboya, repeating that the proposals fall short of the peoples' expectations, said :

However, I think that the proposed Constitution provides an opportunity for departing from the old system in which the whites had a dominant voice in a Council of Ministers. The "bus" now seems to be pointing in the right direction — towards democracy, majority rule and "one man, one vote." The Africans' demand for a clearly stated policy from the British Government has been met.

Mr. Blundell, leader of the New Kenya Party, said :

The conference was a victory for moderation. One of the greatest things that emerged from the meetings was that we have realized that many African elected members are sincere and moderate men working for the same aims as ourselves. The (white) people of Kenya should understand that independence is a real and tangible thing close in the horizon. The task ahead is not to stir up emotions but to take social and economic steps necessary to make independence successful when it is achieved. When the Africans get their responsibility, they will find that they need our energy, our enterprise and our economic assistance. European farmers are wrong if they believe that they have no future in Kenya. As time goes on, the Africans will find that they cannot do without the European contribution and a major effort will be made to make us stay.

2. — Bill of Rights

After the conference had achieved such a remarkable success in formulating constitutional proposals to which 44 out of the 43 members could provisionally agree, it turned to consider the safeguards for securing a wide range of fundamental rights to the people of Kenya. Deep differences arose between the African-elected members and Mr. Blundell's multi-racial New Kenya Party, the two most important delegations, respecting guarantees against expropriation of property. The

differences appeared irreconcilable and the constitutional proposals also seemed to be in danger of being wrecked on account of these differences. The Colonial Secretary met this situation cleverly by submitting to the conference an outline of the safeguards which, in view of the discussions that had taken place, would he thought represent a fair solution of the whole problem, and instead of asking the members to approve the document he simply asked them to take note of it. Having done so, he brought the proceedings of the conference to a close.

"It is the firm view of Her Majesty's Government," the document said, "that legal provisions are needed in the proposed Constitution, which will be made by Order in Council, to provide for the judicial protection of human rights. In this section of the Constitution Her Majesty's Government further considers it important to include protection for property rights. Only by this means will it be possible to maintain confidence and to encourage development and investment, including the attraction of oversea capital, not only in the immediate future but also in the long term." The document then proceeds to set forth the conditions under which expropriation of private property could be permitted and the safeguards which should be written into the new Constitution.

Before dealing with this contentious subject, however, it would be best to refer to Mr. Macleod's proposal concerning the position of judges. He told the delegates that he regarded it as vitally important to maintain the independence of the judiciary; the appointment of judges must not be a political matter, and they should continue for the time being to be appointed by the Governor in accordance with Her Majesty's instructions. Later in Kenya's constitutional advance it would be necessary to establish a Judicial Service Commission for this purpose. On the desirability of providing for an independent judiciary there was complete agreement. Indeed, the proposal had emanated from Mr. Thurgood Marshall, the famous Negro lawyer from the United States, who had undertaken to draft a Bill of Rights on behalf of the African-elected members. "Time" says: "Knowing that there are no more than five qualified Negro lawyers in Kenya, he suggests that for an unspecified transitional period the Kenya Ministry of Justice shall be run by an appointee of the Colonial Office." He goes further. He says: "To prevent the new Constitution from being arbitrarily and easily amended by an African parliamentary majority, he will require each amendment to gain a three-fourths majority in a nation-wide referendum."

Now, coming back to protection of property, the African delegates accepted the principle that there should be no expropriation without compensation. But they could not agree to what they thought Mr. Blundell was insisting upon, viz., that there should be no expropriation

at all. Such a renunciation of one of the legitimate rights of the government could not, they said, form part of a Bill of Rights. In fact, Mr. Blundell did not deny to the State the right of expropriation; he only sought to limit by constitutional safeguards the purposes for which property could be expropriated. On this point the Colonial Secretary said:

Her Majesty's Government thinks it right to include provisions founded on the principle that there should be no expropriation of property except to fulfil contractual or other legal obligations upon the owner, or for purposes to the benefit of the country (due regard being paid to human needs and individual hardship, confidence and stability, and advantage to the country's economy).

Full and fair compensation should be given to the owner of any property expropriated, together with the right of recourse to courts (including the normal channels of appeal) for the judicial determination of his rights and of the amount of compensation to be paid to him.

The African leaders had expressed the fear that a guarantee against expropriation might result in the perpetuation of the wrongs that they felt had been done to them by the reservation of the so-called White Highlands for European farmers. In order to dispel this fear, Mr. Macleod said:

A legal code enforceably protecting fundamental individual rights against the State would neither invalidate nor enshrine laws now in force in Kenya, but would ensure that in any change they would conform to the fundamental principles required to safeguard individual rights and set the standard by which the Kenya Government would adjust the existing law and practice.

After the conference the African delegates formally presented a statement on their land policy, in which they said:

We shall always uncompromisingly uphold private property rights of any citizen, irrespective of his race or national origin. We shall equally respect and adhere to the property rights of any specific group owning the property jointly or communally. What we want to clarify is that in the so-called White Highlands claims of land-ownership and property rights are in dispute and have been in dispute since the establishment of white settlement in Kenya. . . . The Bill of Rights can only apply in the protection of property rights not in dispute.

The "Guardian" remarks on this point that the Colonial Secretary should make it clear that he does not accept the African-elected members' proviso. It says:

If the statement had said that the Bill of Rights could not be used to protect the occupant of the land which a court of law has adjudged to belong to another, there could be no objection. What would

be wrong would be for an owner to lose its protection merely because another person disputed his right, so that he became liable to be dispossessed of his property, not by judicial process but by executive action.

The Kenya Land Commission of 1934 examined the African claims that, in the Highlands, land in their occupation had been taken from them and given over to European settlers, and the Commission found that these claims were without merit. And the Royal Commission on East Africa, referring to this matter, said in 1955 that it would serve no useful purpose to reopen individual claims, as it would be difficult to assess the evidence at this long distance of time. The "Guardian" adds:

But even if it was possible for a claimant now to reopen his claim judicially, the existence of an unproved claim should not in itself rob the occupant of the safeguards outlined in the White Paper. This point is surely fundamental to the smooth working of the new Constitution.

The White Highlands no longer remain exclusively white. Under the Government's new policy, Africans have been put on equal terms as individuals with men of other races, for any potentially efficient farmer can now buy or lease land in that region regardless of race. It is true that they will not be able at present to occupy more than small blocks of land there, but when they come to have the necessary skill and capital they will be in a position to get much of the land now in the possession of the whites. Nor would it be in the interest of the colony as a whole to bundle out the European farmers, for it would lead, looking at the problem from a realistic point of view, to an economic disaster for Kenya. For the White Highlands "provide four-fifths of the country's agricultural exports, from which almost its whole wealth derives. Their owners or exploiters provide most of the revenue, most of the employment, and almost all the impetus of the economy." The wrong done in the past to Africans cannot be righted by doing a similar wrong now to Europeans. The real remedy is that suggested by Mr. Macleod. The White Paper stresses the need for pushing on with schemes for land development and land settlement "with special reference to helping forward African farming." For this purpose the Government has now offered to make £5 million available in loans and it will seek the co-operation of the International Bank for the purpose. The land hunger of Africans is genuine, but it is only in this way that it can be satisfied.

"Time" reports that Mr. Mboya would like "to split up the idle portions of large estates" in White Highlands, but he would do so without any kind of vindictive expropriation. His position is: "We must treat the land as a national asset, encourage African ownership and co-operatives where necessary. We hope to acquire the land voluntarily — and pay fair value." He is also said to recognize, when "off the platform," "the need for the

good will, the energy and skill of the European settlers, and the necessity to deserve, in order to get, large injections of foreign aid." In spite of all this, we are told, "he opposes specific constitutional guarantees" for the protection of private property. If these views are genuinely held, there is no reason for Mr. Mboya and others of his way of thinking to withhold their support from the Bill of Rights as it is drafted. For it would only inhibit them from doing what on principle they themselves would object to doing.

COMMENTS

The Rape of Tibet

— and Violation of Indian Territory

Sir Olaf Caroe, who was Foreign Secretary to the Government of India from 1939 to 1945, has in the "Guardian" refuted the arguments put forward by the Chinese Premier in his Note of 26th December, 1959, laying claim to a vast stretch of Indian territory across the McMahon Line which represents the frontier between Tibet and India from Bhutan eastwards. The contention of the Chinese is that, so far as they are concerned, they cannot recognize the validity of the line since the then Chinese Government had declined to ratify the Convention in which the line was embodied. The Convention was discussed at a tripartite Conference of Tibet, China and Britain at Simla but was actually agreed to only by Tibet and Britain, the Chinese representative not being a party to it. And China takes the stand that since Britain recognized Chinese suzerainty over Tibet, the Convention as between Tibet and Britain can have no force if China as the suzerain power in Tibet does not agree to it. To this contention Sir O. Caroe's reply is that "in those days China was not in the picture, having no authority in Lhasa from the time of the fall of the Ching (Manchu) dynasty in 1911 to that of the Communist conquest in 1950," and therefore China's acceptance was unnecessary.

If this is so, if China actually exercised no control over Tibet, the question arises whether it was right for the British Government then, and particularly for the Indian Government now, to recognize Chinese suzerainty over Tibet. India, by recognizing this suzerainty because of the Convention, has placed herself in an inescapable dilemma, as the Dalai Lama pointed out some time ago. If she recognizes China as the suzerain power in Tibet, Tibet's signature to the Simla Convention has no meaning, and the McMahon Line must be regarded as drawn unilaterally by Britain and as having no validity. If, on the other hand, Tibet is to be held competent to sign the Convention, she must be regarded as an independent country in external as well as internal affairs. Since India looks upon the McMahon Line as an internationally

recognized frontier, it must confess that it was wrong in treating Tibet as a vassal of China.

This is not a mere debating point. For, as Sir O. Caroe says, all the trouble with China "flows from the rape of Tibet, a peace-loving country." As Mr. G. L. Mehta, former Indian Ambassador to the United States, said in launching Mr. Frank Moraes' new book, "The Revolt in Tibet," because of the rape of Tibet, "Tibet has ceased to be a buffer (between India and China) and might well be a spring-board (for China, the "new and sinister imperialism casting its shadows on Asia"). China has in fact used the subjugated Tibet as a spring-board against India itself. It would have become physically impossible for China, however expansionist its aims may be, to violate India's frontiers if Tibet had continued to remain independent as it was since at least 1911, and it is not quite unreasonable to suppose that if India had got over the superstition that China was Tibet's overlord it would not have been able to do something worthwhile to save Tibet — and eventually India itself — from Chinese depredations.

In any case India could have subsequently enlisted the moral support of the Bandung countries against China who had so blatantly defied the principles affirmed at the Bandung conference. Not only does official India decline to do so, but does everything in its power to discountenance even the unofficial efforts that are being made in this direction. A Communist member referred in the Lok Sabha to the Afro-Asian Convention on Tibet which Mr. Jayaprakash Narayan proposes to hold and asked the Prime Minister as to what he thought about it. Mr. Nehru replied that the Government of India was not happy about the Convention being held on the Indian soil. And in order to show that it was an ill-directed move, he added that the Convention was not likely to solve the problem of Tibet either. An unofficial conference obviously cannot play any substantial role in this matter; it cannot certainly restore to the Tibetans the independence they have lost. But it will at least demonstrate, as Mr. Jayaprakash has said, that the people of the Afro-Asian countries, if not their Governments, are wholly on the side of Tibet and will not let the world forget the tragedy that has overtaken that country. But Mr. Nehru apparently thinks that it would be expedient at any rate for the Indian people to soft-pedal the Tibetan issue so long as China is in occupation of Indian territory, forgetting however that Chinese incursions into India are the direct result of China being allowed to gobble up Tibet.

Setback in Uganda

The Governor of Uganda announced in the Legislative Council on the 22nd of last month the British Government's decisions on the Wild Committee's recommendations about the constitutional advance of that country. It will be recalled (vide p. vi : of the BULLETIN)

that these recommendations were of a sweeping character. The Committee had proposed a democratically elected Legislature and a responsible government composed mainly of African Ministers in 1961. The Government has accepted the principle of a predominantly elected Legislature (direct elections on a common roll basis to be held as early as can be arranged in 1961), but has rejected the main proposal of the Committee, viz., that the majority party should be invited to form the government, the Chief Minister who shoulders this responsibility choosing his own Ministers. The Government is willing to expand the Executive Council so that it will be composed of a majority of non-official members drawn from the elected members of the Legislative Council, but insists that the members would be selected by the Governor and would play an advisory role, saying that the appointment of a Chief Minister "would be premature" at the present time. Thus the main recommendation of the Committee that responsible government should be set up in 1961 has been turned down.

The popular parties in Uganda such as the National Congress, the Uganda Peoples' Union and the Democratic Party are bitterly disappointed at this drastic watering down of the self-government proposal, but in fairness to the British Government it must be admitted that the watering down is not due to its unwillingness to part with power but is due to the internal divisions in Uganda. The Wild Committee had hoped that a popular government, if established immediately, would be able to check the reactionary forces of Buganda and other ancient Kingdoms, who want to preserve as far as possible the powers and privileges that they enjoy. The British Government apparently feels that it is too much to hope that the upsurge of popular feeling for political progress that would follow the establishment of responsible government would be powerful enough — for some time yet — to cope with the traditionalist elements. Buganda — the largest of these kingdoms (with nearly one and a half million people) — is as insistent as ever that Uganda should either adopt a federal system which would allow the Kingdom to retain its present status or permit the Kingdom to secede. Now the rulers of Ankole and Toro (which with Bunyoro have rather less than a million people) have joined the Kabaka in making similar demands. Self-government in its real sense will progress in Uganda only to the extent that these traditionalists are held in check, and the British Government seems to think that it would be better able to restrain the fissiparous tendencies than the leaders of popular parties which are still weak and unorganized. The Government is going to set up a Constitutional Commission to discuss the final shape of Uganda. The Commission would give both the traditionalists and nationalists an opportunity to settle, once and for all, whether the country is to develop as a federal or a unitary State and to define the position of the hereditary rulers in an independent Uganda of the future. But it is more than doubtful that the opposing elements will come to an agreement on this issue that has so far strangled effective constitutional progress in Uganda.

Western Colonialism— and Eastern

Referring to Mr. Khrushchev's fulmination against western colonialism on the occasion of his visit to India, the Assembly of Captive European Nations draws attention to the Soviet Union's own record in the matter of colonialism in East-Central Europe:

Between 1920 and 1941 the Soviet Union incorporated 627 thousand square miles with a population of 73.6 million. This comprises of Ukraine, Georgia, Armenia, Azerbaijan (1920-21); Estonia, Latvia, Lithuania (1941). After World War II the U. S. S. R. forcibly gained control over Albania, Bulgaria, Czechoslovakia, Eastern Germany, Hungary, Poland and Rumania, an area of 392 thousand square miles with a population of 96.4 million.

During the same period, however, 25 African and Asian nations (5,579 thousand square miles, with a population of 717 million) have won full independence from the West; another twenty (4,363 thousand square miles, 74.5 million people) have acquired self-government and are headed towards independence.

EQUALITY IN PUBLIC EMPLOYMENT

Reservation of Promotions

Not Saved by Clause (4) of Article 16

Mr. K. Rangachari who is serving in the lowest grade of a post included in class III of the Railway Service, fearing that he would suffer if effect was given to a circular issued by the General Manager of the Southern Railway on 12th June, 1959, directing reservation of 14 per cent. and 1 per cent. of promotions in favour of Scheduled Castes and Scheduled Tribes respectively, filed a petition in the Madras High Court praying for a writ of prohibition restraining the Southern Railway from enforcing the directive contained in the General Manager's circular. The petitioner's contention was that such reservations for members of the Scheduled Castes and Tribes for promotion from one grade to another was unconstitutional as it offended against Art. 16 of the Constitution guaranteeing "equality of opportunity in matters of public employment."

Mr. Justice P. Rajagopalan on 3rd March allowed the petition. Cl. (1) of Art. 16 guarantees equality of opportunity, and cl. (2) prohibits discrimination, in the matter of public employment, Art. 16 (1) says: "There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State." Art. 16 (2) says: "No citizen shall, on grounds of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or

discriminated against in respect of, any employment or office under the State." In His Lordship's opinion the guarantees embodied in cls. (1) and (2) of Art. 16 applied also to promotions of civil servants from one post to another, when both were included in the same service. Though promotion from one post to another in the same service was not appointment to a service, nor appointment to a post not included in any service, it was appointment to an "office" within the meaning of cls. (1) and (2) of Art. 16. A "post" to which a person was promoted was obviously an "office under the State." His Lordship felt that "employment under the State" was more comprehensive than "appointment to any office under the State." "Employment" denoted continuity of service and did not end with the initial act of appointment of a person to a civil post, whether or not that post was included in a service. In His Lordship's opinion, the statutory expression, "employment" in cls. (1) and (2) of Art. 16 covered the entire period of service of a civil servant. "I am clearly of opinion that promotions are within the ambit of cls. (1) and (2) of Art. 16."

His Lordship next turned to the question whether the reservation of promotions in favour of members of the Scheduled Castes and Tribes ordered by the General Manager of the Southern Railway was protected by cl. (4) of Art. 16, which says: "Nothing in this Article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State." What Art. 16 (4) authorized, observed His Lordship, was reservation of appointments or posts in favour of members of the backward classes. Whether promotions from one grade to another of persons, who did not constitute a separate service by themselves but who were included in class III of the Railway Service, fell within the purview of Art. 16 (4) was the question that remained for consideration.

It should be obvious, His Lordship said, that appointment to a specified service could take place but once in the case of every person. After such an initial appointment to the service, the directions issued from time to time to a given civil servant to fill one or the other of the posts included in that service, would not amount to appointment to a service. It followed that promotion from one post to another, both of which were included in the same service, was neither "appointment to a service" nor "appointment to a post," as those statutory expressions had to be understood. The word "appointment" implied the appointment of a person to something, either to a service or to a post. While Art. 16 (2) applied to all civil posts and all appointments thereto, that is, all offices under the State, Art. 16 (4) was confined only to "appointments to a service" and "appointments to a post." Neither of the statutory

expressions "appointment" and "post" would include within its ambit promotion from one post to another in the same service. "While such promotions are within the scope of the ban against discrimination imposed by Art. 16 (2), they are outside the protection from that ban secured by Art. 16 (4)."

In the result, His Lordship held that the reservation to which the circular of the General Manager of the Southern Railway referred was unconstitutional as it offended against the fundamental rights guaranteed by Art. 16 (2) and was not saved by Art. 16 (4) of the Constitution. The petition was allowed and the writ prayed for was issued.

CIVIL PROCEDURE CODE

U. P.'s Amendment of Sec. 42

CONCERNING EXECUTION OF DECREES

One Mr. Karan Chand, who had obtained a decree for Rs. 580 against Mr. Gur Dayal from the Judge of the Small Cause Court, Agra, wanted to execute it by attachment of some immovable property of the judgment debtor. As the Small Cause Court is debarred by order 50 rule 1, C. P. C., from proceeding against immovable property in execution of decrees, Mr. Karan Chand obtained a transfer of his decree to the Court of the Munsif, Agra, and secured from that court an order of attachment against Mr. Gur Dayal's immovable property. The latter however, objected that in view of the amendment of sec. 42, C. P. C., by the State legislature, the Munsif has no jurisdiction to proceed against immovable property. The objection was upheld by the executing court and also in appeal by the Civil Judge. The decree-holder then went to the Allahabad High Court in second appeal.

Mr. Justice S. S. Dhavan, on 22nd February, dismissed the appeal holding that, as a result of the amendment of sec. 42 of the Civil Procedure Code by the U. P. State legislature, a decree of a small cause court cannot be executed against the immovable property of the judgment-debtor at all. After reviewing the various provisions of the C. P. C., His Lordship observed that their combined effect was to debar courts of small causes from decreeing execution against the immovable property of a judgment debtor, and prior to the amendment of sec. 42 of the Code the practice was to transfer a decree passed by a small cause court to another court if the decree-holder wanted to proceed against any immovable property of the judgment-debtor. The old sec. 42 provided that "a court executing a decree sent to it shall have the same power in executing such decree as if it had been passed by itself." Thus, the munsifs' court, to which a decree passed by the court of small causes was transferred, could order execution by attachment of immovable property as if the decree had been passed by itself.

But the U. P. Civil Laws (Reforms and Amendment) Act, 1954, amended sec. 42 substituting for the words "the same power as if it had been passed by itself" the words "the same power as the court which passed the

decree." The result is that an executing court has the same powers in execution as the court which passed the decree—no more or less. It appears to me, therefore, His Lordship remarked, that as the result of the amendment of sec. 42, a decree of a small cause court cannot be executed against immovable property at all—not by that court because of the express prohibition in the Civil Procedure Code and not by another court because of the restrictions imposed by the amended sec. 42. In regard to the suggestion made by the appellant's counsel that the Court should fill up the lacuna which was the result of an oversight, His Lordship said:

I agree with the general principle enunciated by learned counsel that the Court should endeavour to give effect to the real intention of the Legislature as far as possible, but this will apply only when the statute is ambiguous or is capable of two different meanings. But if the meaning is so plain as to leave no room for doubt, the Court has no power to alter it. In this case the words are plain, and it is possible that the Legislature may have decided, while enlarging the powers of the Courts to which decrees are transferred in execution, to restrict them in the case of decrees of Small Causes Courts. The words, "the same powers as the Court which passed the decree," have not been made subject to any exception in favour of decrees of Small Causes Courts. It is not for this Court to speculate about the intention of the legislature when the language of the statute is plain. In such a situation the Court can only draw the attention of the Legislature to the lacuna, if any, which may have crept into a statute by mistake or oversight, but if it proceeds to fill up the lacuna itself by altering the plain meaning of the statute, the Court will be entering the forbidden territory of legislation.

SEC. 144 OF THE CRIMINAL CODE

Socialist's Conviction Set Aside

BY THE ALLAHABAD HIGH COURT

Messrs. Jaswant Singh, Pal Thomas and Om Prakash, Socialist leaders of Farrukhabad, were arrested on the morning of 12th September 1958 for disobedience of an order promulgated by the city magistrate in connection with the food agitation started by the Socialist Party in 1958. The order banned taking out processions and shouting slogans; and the charge against these persons was that they shouted slogans inciting the public to do unlawful acts likely to cause a riot or affray. According to the prosecution, they were arrested then and there by the police. The city magistrate made a complaint against them for their prosecution for disobedience of the order under sec. 188, I. P. C., and they were placed before a magistrate the same day. The magistrate recorded their statements and adjourned the case because they wanted to engage counsel. On 13th September the police also submitted a charge-sheet against them for their prosecution. The prosecution resulted in their conviction and sentence of six months' imprisonment.

An application in revision was filed in the Allahabad High Court and on 18th February last Mr. Justice Desai allowed the application and set aside the conviction. His Lordship said it was argued that the court took

cognizance of the offence against the applicants on a police report, but that was not correct. Cognizance was taken on 12th September, 1958, when there was only a so-called complaint of the city magistrate and no report or charge-sheet by the police before the court. The magistrate's proceeding against the applicants would, therefore, be legal if there was a real complaint before him on 12th September. He had seen the document which purported to be a complaint; it simply recited facts that an order under sec. 144, Cr. P. C., was promulgated and that it was disobeyed in a particular manner by the applicants. It did not contain any allegation that the disobedience caused or tended to cause obstruction, annoyance or injury to any person lawfully employed.

His Lordship said the city magistrate thought that disobedience of the order issued by him under sec. 144, Cr. P. C., was an offence punishable by him under sec. 188, I. P. C., regardless of its consequences or effect and so did not say anything about the consequences or effect of the disobedience in the complaint. In this case the court could have taken cognizance of the offence against the applicants only if it had before it a document stating all the facts constituting the offence of sec. 188, I. P. C., but there was no such document before it. It was, therefore, prohibited from taking cognizance of the offence vide sec. 195 (1), Cr. P. C., and the subsequent proceedings were all null and void.

His Lordship found that the police arrested the applicants for committing the offence of sec. 188, I. P. C. They had no such power. An offence of sec. 188, I. P. C., was not cognizable and the police could not arrest without a warrant. They could arrest under sec. 107 read with sec. 117, Cr. P. C., but in this case they did not purport to have arrested the applicants in exercise of that power.

In the result, the application was allowed and the conviction and sentence of six months' R. I. were set aside.

INDUSTRIAL DISPUTES ACT

Bonus Award Against the Express Papers SET ASIDE BY THE SUPREME COURT

The Supreme Court on 2nd March allowed the appeal of the management of the Express Newspapers (Private) Ltd. and set aside the award of the Industrial Tribunal, Madras, whereby the workers of the appellants had been granted one-fourth of the total monthly emoluments of each employee by way of bonus.

The tribunal's award was given consequent upon the reference of an industrial dispute between the management and the workmen to it by the Government of Madras in July, 1957. The only point which survived for determination in the present appeal was the fixation of the quantum of bonus for 1955-56.

The management's contention was that there was no available surplus to justify grant of any bonus for the year in question and, therefore, the Full Bench Formula did not apply.

The tribunal scrutinised the accounts of the appellants and arrived at the conclusion that there was some scope for granting a certain amount by way of bonus to the workmen. The workmen had claimed three months' wages by way of bonus for the relevant year.

The appellants' main contention in the present appeal was that the tribunal was in error in not allowing

deduction for income-tax payable by them while working out the Full Bench Formula.

Mr. Justice K. N. Wanchoo, who delivered the judgment of the Court, observed that after consideration of the material facts they had arrived at the conclusion that the balance of Rs. 60,275 was available as surplus, while the judgment of the tribunal required about Rs. 60,000 to be paid to the workmen by way of bonus. If this were allowed, the entire available surplus would be exhausted.

Besides, the Court had to take into account the fact that the appellant had put by some amount to meet the Journalist Gratuity Scheme. In these circumstances it was, therefore, only proper to hold that there was no scope for the grant of any bonus to the workmen for the year in question.

The Supreme Court did not agree with the tribunal that no income-tax deductions be allowed to the appellants and accordingly allowed the sum of Rs. 52,878 under this head.

Reinstatement of Retrenched Workers

"LAST COME, FIRST GO" PRINCIPLE NOT OBSERVED

The Supreme Court dismissed on 1st March the appeal by the Swadesamitran Ltd., Madras, against its workmen and affirmed the view that an Industrial Tribunal would have jurisdiction to interfere with an order of retrenchment made by the management when it found that the principle of "last come, first go" had not been observed, although a case for retrenchment had been made out.

The appellants effected retrenchment of 39 workmen in May, 1951. The dispute arising out of the demand of the workmen for reinstatement of the discharged hands was referred to the Industrial Tribunal, Madras. The tribunal held that the management had made out a case for retrenchment of 39 persons, but in selecting the persons it had failed to observe the principle of "last come, first go" with regard to 14 workmen. The tribunal accordingly directed that these 14 persons should be reinstated, but made no direction with regard to the remaining workmen, who had been retrenched.

Both parties appealed to the Labour Appellate Tribunal. The Appellate Tribunal agreed with the lower tribunal that the retrenchment was bona fide but the management had failed to follow the principle of "last come, first go" and had not given any satisfactory explanation for the departure from the normal rule. In the circumstances it upheld the reinstatement of the 14 workmen, and also directed payment of half month's wages for each year of service as compensation to the remaining.

In the appeal before the Supreme Court it was argued by the counsel for the appellant that once a tribunal came to the conclusion that the retrenchment was bona fide, it was for the management to decide the persons who should be discharged. It was submitted that since the tribunals had accepted the bona fides of the management, they exceeded their jurisdiction in interfering with the order of the management.

The Supreme Court rejected this argument and stated that in a dispute regarding the propriety of retrenchment the tribunal had to examine first whether there was any justification in effecting the proposed retrenchment, and secondly whether it had been carried out properly. In the present case the Court found that the tribunals had

come to the conclusion that although the management had made out its bona fides, the actual retrenchment had not been effected in accordance with the well-established principle of "last come, first go."

In this connexion the Supreme Court stated that whenever the principle of "last come, first go" is departed from, the employer must satisfy the tribunal that the departure was justified; otherwise it would be open to the tribunal to treat such retrenchment as an unfair labour practice and give relief to the workmen.

Action against Workmen

ORDER UPHeld BY THE SUPREME COURT

The order of the management of Messrs. Caltex (India) dismissing 20 workmen and suspending one for insubordination and staging a stay-in strike was upheld by the Supreme Court by a judgment delivered on 11th February.

During the pendency of an industrial dispute between the management of Messrs. Caltex (India) and its workmen, the latter asked the management for payment of some advance bonus. On the refusal of the management to accede to this demand, the workmen staged a stay-in strike and refused to obey the orders of their officers to resume work or leave the premises.

The management charge-sheeted some of the workmen and applied to the Tribunal under sec. 33 of the Industrial Disputes Act to dismiss 20 of the workmen concerned in the strike and suspend one for four days. The Industrial Tribunal and the Labour Appellate Tribunal declined to grant the permission asked for by the management on the ground that the punishment was too severe. The Company thereupon preferred an appeal to the Supreme Court.

The Supreme Court held that the Tribunals had erred in not granting the permission asked for and their orders must be set aside. The Court, however, noted the offer of the management to retain the workmen in employment subject to being granted permission to impose a token punishment of three days' suspension, and the undertaking by the workmen not to raise an industrial dispute on the other demands. The Court gave permission to the company as prayed for.

WORKMEN'S COMPENSATION ACT

Claim for Compensation Allowed

A workman, Shambhu Dutt, who had lost a finger as a result of an accident which occurred during the course of his employment, filed an application for compensation against his employer, Jagdish Prasad, in respect of the injury he had sustained. The employer pleaded in defence before the additional district magistrate, Meerut, functioning as Commissioner under the Workmen's Compensation Act, that the injury was caused because Shambhu Dutt was under the influence of drink at the time and, in that state, disobeyed his express orders, and instead of stopping the machine, started repairing it while the engine was still running; thus as a direct result of his own conduct his finger was cut off. The parties led evidence. The Commissioner believed the testimony of Dr. R. S. Goel that Shambhu Dutt was very much under the influence of drink when he

examined him. In his judgment he said that "in view of the evidence of the doctor and also in view of the fact that no other medical practitioner has been produced in his support by the applicant, I have no option but to hold that the applicant was under the influence of drink at the time of accident which directly caused the same." Consequently he dismissed the claim under sec. 3 (b) (i) of the Workmen's Compensation Act, which provides that an employer shall not be liable in respect of any injury caused by an accident which is directly attributable to the workmen having been under the influence of drink or drugs at the time of the injury.

Aggrieved by this decision, Shambhu Dutt went in appeal to the Allahabad High Court, and on 24th February Mr. Justice Dhavan allowed the appeal and set aside the order of the Commissioner. In respect of Dr. Goel's evidence His Lordship observed that Dr. Goel described the workman's condition when he was brought before him some time after the accident. His testimony must therefore be discarded as hearsay on the question of the workman's condition at the time of the accident or before it. There was no other evidence to prove that Shambhu Dutt was drunk at that time except the testimony of the employer and his two witnesses, all of whom were disbelieved by the Commissioner. The employer's evidence having been disbelieved and Dr. Goel's evidence being inadmissible as hearsay, there was no evidence before the Commissioner to justify his finding that the workman was in a state of drunkenness when the accident happened. His Lordship said:

If in a claim under sec. 3 of the Workmen's Compensation Act a workman proves that the injury resulting in his total or partial disablement was caused by an accident occurring in the course of his employment, the workman establishes a case for compensation, and the onus shifts to the employer to prove facts which would bring the case under the proviso to that section and disentitle the workman to any compensation.

ABOLITION OF JAGIRS

Vindhya Pradesh Act 1952

VALIDITY UPHeld BY SUPREME COURT

A Constitution Bench of the Supreme Court on 24th February upheld the validity of the Vindhya Pradesh Abolition of Jagirs and Land Reforms Act of 1952.

The State Legislature of former Vindhya Pradesh enacted the Act with the object of enabling the State to resume jagir lands. The provisions of the Act enabled the State Government to resume jagir lands after issuing a notification and paying compensation in accordance with the principles of computation set out in the Act. The validity of the Act was challenged by 71 writ petitions filed before the Judicial Commissioner.

The Judicial Commissioner upheld the validity of the Act except for secs. 22 (1) and 37 and cl. of the Schedule to the Act. Sec. 22 (1) provides that a jagirdar shall be allotted all "sir and khudkasht" land which he was cultivating personally for a continuous period of three years immediately preceding the date of resumption. Sec. 37 ousts the jurisdiction of the Civil Courts with regard to matters under the Act, and cl. 4 (E) relates to the method of computation of the net income of the jagir for the purposes of compensation.

Sec. 22 (1) was struck down by the Judicial Commissioner on the view that it was a colourable piece of legislation and the State Legislature had no jurisdiction to enact it. With regard to sec. 37, the Judicial Commissioner held that as sec. 9 of the Code of Civil Procedure enacted that all civil matters would be within the jurisdiction of the Civil Courts the State Legislature could not enact a provision whereby some civil matters were taken out of the jurisdiction of the Courts. The Commissioner further felt that cl. 4 (E) was invalid as it deprived the petitioners of their proprietary rights without giving them any compensation.

Appeals from this decision were made both by the State of Vindhya Pradesh and by the jagirdars.

The Supreme Court examined the scheme of the Act and held that sec. 22 (1) was merely enacted to carry out the intention of the Act and was within the competence of the State Legislature. It also found that there was no conflict between the provisions of sec. 9 of the Civil Procedure Code and sec. 37 of the impugned Act. The Court rejected the view of the Commissioner regarding cl. 4(E) and held that it did not violate any provision of the Constitution.

In consequence the appeal by the jagirdars challenging the validity of the Act was dismissed and the appeals by the State of Vindhya Pradesh against Mr. Mordhwaj Singh and others were allowed. Mr. Justice Wanchoo delivered the judgment of the Court.

TERMINAL CHARGES

Ry. Tribunal's Order Set Aside

NO JURISDICTION TO GO INTO TERMINAL CHARGES

The Railway Rates Tribunal has no jurisdiction under the Indian Railways Act to investigate the reasonableness of the total charges payable in respect of goods traffic carried by a Railway as fixed by the Railway administration on the basis of terminal charges fixed by the Central Government.

This ruling was given by the Supreme Court on 7th February in the appeal by the S. S. Light Railway Co. Ltd. against the Upper Doab Sugar Mills Ltd. and another challenging the direction of the Railway Rates Tribunal lowering the rate of terminal charges levied by the Railway on the respondents' goods. The appeal by the Railway was accordingly allowed by a judgment delivered by Mr. Justice Das Gupta and the decision of the Tribunal was set aside.

The respondent is engaged in the manufacture of sugar, and the raw material used in the manufacture of sugar is brought by railway to the mill. In October 1953, the total charges payable by the mills for transport rose as a result of the levy of a terminal charge by the Railway. The respondent filed a complaint before the Railway Rates Tribunal, which took the view that the Railway was not performing any terminal service and directed that the terminal charge should be reduced. The Railway administration preferred the appeal in the Supreme Court.

The Supreme Court examined the meaning of the terms "terminal charge" and rates for carriage, and

observed that terminal charges were in respect of the provision of facilities after the normal point of carriage by rail. In the present case the Court found that in fact the haulage of the loaded wagons to the siding from Shamli station was a terminal service by the Railway to the respondent. The Court also examined the argument whether a terminal charge could be levied only when the terminal service was used or even if it was not used but only provided.

In this connexion the Supreme Court held that irrespective of the fact of the actual use by any particular consignee of the station, sidings and other facilities "terminal charges" are leviable by reason of the mere fact that these things have been provided by the Railways. It also held that the additional charge by the Railway was a terminal charge. Accordingly, the Tribunal had no jurisdiction to investigate the reasonableness or otherwise of the same and had no jurisdiction to reduce them.

CRIMINAL PROCEDURE CODE

High Courts' Appellate Powers

SUPREME COURT RULING

The Supreme Court held on 26th February that once a criminal appeal is admitted for hearing the Court has no power to direct that it shall be heard only on the point of sentence and not on the other points. It was considering the appellate powers of the High Court under the Code of Criminal Procedure.

In the appeal preferred by Rabari Ghela Jadav against the State of Bombay from the judgment of the Bombay High Court upholding his sentence of life imprisonment, the appellant raised the question whether a High Court when admitting an appeal in a criminal case could limit the issues which could be raised before the Court. In the present case the appellant had been convicted of culpable homicide not amounting to murder by the Court of Sessions, and in admitting his appeal the High Court directed that it would hear the matter only on the question of sentence.

The Supreme Court examined the provisions of secs. 421 and 422, Cr. P. C., governing appeals and observed that under the Code the High Court was given powers to dismiss an appeal summarily, or alternatively to admit it and give notice to the parties and to the State. The Court felt that once an appeal was not dismissed summarily then the High Court must proceed to hear the full appeal and it had no power to dismiss it summarily in part and hear the remaining issues.

It was accordingly held by the Supreme Court that "the form of the order admitting the appeal in the present case was invalid and the appellant could have insisted that since the appeal had not been summarily dismissed, the High Court should hear his appeal on merits." As this had not been done by the High Court, the Supreme Court itself examined the evidence in the case and felt that the guilt of the accused had been established. The appeal was, accordingly, dismissed.