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# The Indian Civil Liberties Bulletin

[ A MONTHLY REVIEW ]

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## Blood Purge in Hungary

A wave of horror, rage and disgust has swept the whole of the non-Communist world on account of the sentence of death passed by a secret court, "in accordance with strictest socialist legalism," on Mr. Imre Nagy, former Premier of Hungary, Mr. Pal Maleter, the military leader of the revolution, and two journalists, and executed before any one knew of the trial. This legalised act of murder alone would not cause such a bitter sense of outrage—because, as has been said, in Hungary "non-stop murdering has been going on for about a year and a half"—if it were not accompanied by the perfidy and cynical brutality that characterized it. Nagy and Maleter were lured into imprisonment by treachery; the solemn pledge given to Nagy that he and his associates could leave the Yugoslav Embassy where they had taken sanctuary and could "proceed freely to their homes" was completely disregarded. As soon as they stepped out of the Embassy, the Soviet soldiers abducted them as if on the Embassy's doorstep. If the Soviet-imposed Hungarian regime could not prevent their seizure and abduction, the regime was at least bound to free them when they were returned to its hands because the regime had given a further pledge that it "does not desire to apply sanctions (against them) for their past activities," and they must have come under the regime's control if the trial took place in Hungary and was conducted by a Hungarian court. The contempt shown in this for the usages of civilized people could only be paralleled by what used to happen in the mediaeval ages. No one of course can ever believe in the absurd legends that were trotted out at the show-trial about the part Nagy and his group played in the armed rising. It is clear that their execution was ordered by the Soviet Government, probably as a stern warning to the East European countries struggling to liberate themselves from the Soviet yoke.

One cannot but be reminded now of the sinister role that India played in the United Nations on this issue, always supporting the Soviet Government's contentions to the extent that a country not openly aligned to the Communist bloc could do. Premier Nehru has expressed distress at the liquidation of men who are aptly described by the U. N's Special Committee on Hungary as

"symbols of the hope of a nation for freedom from foreign domination." But other Governments have been more forthright in their denunciation. For instance, the United States Government said in an official statement:

The Soviet Union, which has pursued a policy of terror toward the peoples of Hungary and of the other dominated countries of Eastern Europe for over twelve years, must bear fundamental responsibility for this latest crime against the Hungarian people and all humanity. The murder of these two Hungarian leaders (Nagy and Maleter), who chose to serve the interests of their nation rather than those of Soviet communism, brings to a tragic culmination the Soviet-Communist betrayal of the Hungarian people. It is the executioners of Imre Nagy and Pal Maleter, and not the executed patriots, who have committed treason against the Hungarian nation. By this act the Soviet Union and the Soviet-imposed regime in Hungary have once more violated every principle of decency and must stand in judgment before the conscience of mankind.

Even the de Gaulle Government of France, not particularly noted for its devotion to democracy, felt constrained to issue an official statement, in which it said:

The execution of Imre Nagy and Gen. Pal Maleter and their companions is an act that nothing could justify.

The secrecy of the trial, the pretence of juridical justification grossly contrary to the facts recognized by a large majority of the member-States of the United Nations, mark a return to the worst Stalinist methods, which had been condemned by the leaders of the U. S. S. R. and the "people's democracies" themselves.

Imre Nagy and his companions have been executed for having tried to give their country a regime in which the people would have had the right to express itself and for having chosen national independence.

The French Government considers that the execution of these courageous and independent men is an event of extreme gravity whose consequences will be profound.

Is the Indian Government inhibited from an equally strong and unambiguous protest by its so-called neutralist policy in international affairs?

## THE RIGHT TO TRAVEL ABROAD

### U. S. SUPREME COURT'S DECISION IN TWO MAJOR CASES

In two major cases the U. S. Supreme Court had occasion for the first time on 16th June to deny the absolute power which the Executive Government asserted it possessed under present law to withhold passports from American citizens wishing to travel abroad and thus to control the freedom of movement of the applicants for passports on the ground of their political beliefs or associations.

Before giving details of the cases we would like to state in brief, first, what the State Department's regulations on the subject are, which the Supreme Court invalidated in its judgment in these cases, and, secondly, what the rulings of the Court of Appeals have been in this respect.

#### 1. — Statutory Provisions

The Constitution of the U. S. A. does not specifically confer power on the Executive Government to control the movement of citizens, but it is claimed that the broad powers which it gives to the federal Government to conduct foreign policy and wage war impliedly include this power, and the Government on numerous occasions has exercised the power and denied passports to persons of doubtful loyalty in implementation of its foreign policy.

Under present law it is a criminal offence for U. S. citizens to travel outside the America without a passport during the existence of a national emergency. Such an emergency has been in effect since 1941. The legislation authorizing issuance of passport provides only that the Secretary of State "may" issue them to citizens under regulations set forth by the President. Presidential regulations empower the Secretary to issue, deny or invalidate passports "in his discretion." Such discretionary authority has in many instances been used by the Secretary of State in denying passports, the only reason vouchsafed to the applicants being that "travel abroad at this time would be contrary to the best interests of the United States." No formal hearing is held when such a decision refusing to grant passports is made; the applicants are not informed with particularity of the reasons on which the decision was based, nor are they furnished with the evidence in the possession of the State Department; and thus they have no opportunity to rebut it or cross-examine adverse witnesses. The applicants' only recourse is to ask for reconsideration of the decision and submit such evidence in writing as they may feel is relevant. The State Department's position is that the matter of granting or withholding passports rests entirely within its discretion and is not subject to court review.

In 1952 the State Department ruled that a passport applicant could be required to file an affidavit "with

respect to present or past membership in the Communist Party." Severe criticism against this policy was expressed by public bodies among which the American Civil Liberties Union was the most notable, and then the department issued a statement in defence of its position. In this statement the department said:

It was decided that, in view of the findings by the (Supreme) Court (in the Dennis case) and the Congress (in the Internal Security Act of 1950),\* it would be inappropriate and inconsistent for the Department to issue a passport to a person if information in its files gave reason to believe that he is knowingly a member of a Communist organization or that his conduct abroad is likely to be contrary to the best interests of the United States. This policy has been followed since February 1951, and, in view of the national emergency proclaimed by President Truman and the conditions existing in various areas of the world, it is believed that it should be closely adhered to.

A passport certifies to foreign governments not only the citizenship and identity of the bearer, but requests them to permit him safely and freely to pass and, in case of need, to give all lawful aid and protection. Possession of the passport indicates the right of the bearer to receive the protection and good offices of American diplomatic and consular officers abroad. The right to receive the protection of this Government is correlative with the obligation to give undivided allegiance to the United States. A person whose activities, either at home or abroad, promote the interests of a foreign country or a political faction therein to the detriment of the United States or of friendly foreign countries should not be the bearer of an American passport.

The department asserted that "passports are refused only on the basis of very clear and definite reports... containing well-authenticated information concerning past and present activities and associations of the applicant," but that "the department cannot violate the

\* In the Dennis case (341 U.S. 494 [1951]), it was found that the Communist Party, to which the defendants belonged, "advocates the theory that there is a duty and necessity to overthrow the Government by force and violence," and that the Party promoted this view not as an abstract doctrine, but "as a policy to be translated into action."

The Internal Security Act of 1950 provides that no member of a registered Communist organization may apply for or use a passport; it also tightens the restrictions on foreign visitors to the United States and under this provision a number of well-known persons were barred from entry by the denial of visas to them on the ground that they were Communists or Communist adherents.

confidential character of passport files by making public any information contained therein."

### 2. — Judicial Opinions

As there is no express power conferred by the Constitution on Congress to restrict the freedom of movement, so there is no specific guarantee in the Constitution for the right of citizens either to move freely from state to state within the country or to travel abroad. However, the courts have long held that national citizenship of the United States carries with it by necessary implication the right of free movement within the nation, and the privileges and immunities clause of the Fourteenth Amendment gave an added protection to the right inasmuch as the courts held that the right was a privilege of U. S. citizenship within the meaning of that clause. But the right to travel abroad has received very tenuous protection from the courts. Till recently the position was, as a federal court put it, "the issuance and revocation of passports are entirely in the realm of foreign affairs, and as such within the absolute discretion of the Executive Branch of the Government."

It was only in 1951 that a procedural restriction was first placed on the discretionary power of the State Department to refuse passports. A three-judge district court held, in an opinion by Judge Keech, that passport applicants were entitled to some kind of hearing to test charges against them. In June 1955 the Court of Appeals in Washington made important decisions in two cases of passport denials: one concerning Dr. Nathan and the other concerning Mr. Shachtman (vide pp. iii: 245-247 of the BULLETIN). In the former, the procedural safeguard was carried further; as we said then, the court "asserted its power to require an appropriate hearing, and also to pass on the Secretary's decision as to whether such a hearing had been accorded." The latter is more important; in it Judge Fahy held that the right to travel, "a natural right," was part of the "liberty" protected by the Fifth Amendment and that the reasons for denying the right must comport with "due process of law."

### 3. — The Instant Cases

The Supreme Court's decision in the instant two cases marks an important step forward in safeguarding from arbitrary interference the American citizens' inherent right to travel abroad. It overturned the policy latterly being followed in refusing to grant passports to Communists or persons having suspect associations with Communists and it ruled that citizens of the U. S. A. cannot lawfully be denied the right because of their political beliefs or associations.

One case concerned Mr. Rockwell Kent, the well-known artist, and Dr. Walter Briehl, a Los Angeles psychiatrist. These were refused their passports because

the State Department suspected them of Communist connections. They were asked to answer a number of questions — whether they had ever belonged to the Communist Party or had certain associations with it. Both refused to answer the questions or swear that they were not Communists, maintaining that their political associations were irrelevant to their right to passports. The State Department withheld passports from them. Of Mr. Kent it said he was a Communist and had shown "a consistent and prolonged adherence to the Communist Party line." Dr. Briehl's application was refused for similar reasons.

The second case concerned Dr. W. B. Dayton, a physicist, who asked for a passport in order that he might accept an invitation to teach cosmic physics at the Tata Institute of Physics in Bombay. Unlike the appellants in the first case, Dr. Dayton answered the State Department's questions in detail. He swore that he was not and never had been a Communist or a member of any front group, and that he was not going abroad "to engage in any activities which . . . will in any way advance the Communist movement." Nevertheless, the department refused to give him a passport, claiming that from the confidential information in its possession it believed that he had been associated with "various persons suspected of being part of the Rosenberg espionage ring" and because of "his alleged presence at an apartment in New York which was allegedly used for microfilming material obtained for the use of a foreign Government." The department said that the secret evidence, which it could not disclose, had convinced it that his travelling would be "contrary to the best interests of the U. S. A."

The lower courts had rejected the suits of all the three persons, but the Supreme Court now reversed these decisions.

The vote on the decision was 5 to 4, the majority being formed of Chief Justice Warren, and Justices Douglas, Black, Frankfurter and Brannan. Justice Douglas wrote the controlling judgment.

When the cases were being argued, Solicitor General Rankin told the Court that the Government acknowledged that the right to travel (as was decided in the Schachtman case) was one of the rights which belong to American citizenship, but argued that the right was subject to "reasonable limitations" in the interests of national security. The central issue, according to him, was whether the Secretary of State could use his discretion to deny a passport whenever he or his officials decided that the exercise of this personal right would conflict with the larger claims of national interest.

Justice Douglas said, like Judge Fahy three years ago, that "freedom to travel is an important aspect of the citizen's 'liberty'" of which, under the Fifth Amendment, a citizen cannot be deprived "without due process of law." It was a right that had begun to emerge at

least as early as Magna Carta,\* and freedom of movement across frontiers in either direction, and inside frontiers as well, was a deeply ingrained part of the American heritage. Travel, Justice Douglas wrote, may be necessary for a livelihood; "it may be as close to the heart of the individual as the choice of what he eats or wears or reads. Freedom of movement is basic in our scheme of values."

Existing statutes, said Justice Douglas, authorized the Secretary of State to deny passports to only two classes of applicants: (i) those who upon investigation turn out not to be citizens owning allegiance to the United States (who alone may have United States passports); and (ii) those who "are participating in illegal conduct, trying to escape the toils of the law, promoting passport frauds, or otherwise engaging in conduct which would violate the laws of the United States."

The Court held that the relevant sections of the law of 1952, which made a passport necessary if a citizen wished to leave the U. S. A. and gave the Secretary of State discretion in their issue, did not delegate to him the kind of authority he had exercised in denying passports in these cases. He said:

We deal here with beliefs and associations, with ideological matters. We must remember that we are dealing here with citizens who have neither been accused of crimes nor found guilty. They are being denied their freedom of movement solely because of their refusal to be subjected to inquiry on their beliefs or associations.

The Court held Congress had not "in explicit terms" given the Secretary of State authority to deny passports to citizens for refusal to answer questions on alleged Communist beliefs or associations or because of their beliefs or associations. And Justice Douglas plainly hinted that if Congress were to give such authority by a new law, the Court would find such a law unconstitutional. He said:

We deal here with a constitutional right of the citizen, a right which we must assume Congress will be faithful to respect. We would be faced here with important constitutional questions were we to hold that . . . Congress had given the Secretary authority to withhold passports because of their beliefs or associations.

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\* The Magna Carta, which King John signed on 15th June 1215, and which merely gives legal status to the usages and customs long prevalent among the Anglo-Saxons, provided for the concept of freedom of movement. In doing so it emphasized the right to leave England. Sec. 42 says: "It shall be lawful to any person, for the future, to go out of the kingdom and return safely and securely by land or water, saving his allegiance to us, unless it be in time of war, for some short space, for the common good of the kingdom." This right was specifically mentioned in the Great Charter because the barons who forced the King to sign it were aware of the tendency of the monarchs of the period to refuse exit to their subjects and they regarded such practice to be a form of tyranny.

Referring to the circumstance that the persons from whom in this instance the Secretary of State withheld passports were alleged to be Communists or Communist sympathisers, Justice Douglas said:

They may or may not be Communists. But, assuming that they are, the only law Congress has passed expressly curtailing the movement of Communists across our borders has not yet become effective. It would therefore be strange to infer that, pending the effectiveness of that law, the Secretary has silently been granted by Congress the larger, the more pervasive, power to curtail in his discretion the free movement of citizens in order to satisfy himself about their beliefs and associations.

The law here referred to is the Internal Security Act of 1950, which prohibits issuance of passports to party members if and when a party was required to register with the Subversive Activities Control Board as a "Communist action" group. But no organization has yet registered. Justice Douglas wrote:

Since we start with an exercise by an American citizen of an activity included in constitutional protection, we will not readily infer that Congress gave the Secretary of State unbridled discretion to grant or withhold a passport from a citizen for any substantive reason he may choose,

Justice Clark wrote a dissenting opinion for himself and Justices Burton, Harlan and Whittaker, in which he traced the legislative history of the question and concluded therefrom that the intent of Congress in giving the Secretary of State broad discretion in the issuance of passports had been to enable him to deny passports "to those whose travel abroad would [in his opinion] be contrary to our national security" and that the appellants in these cases had therefore properly been kept from leaving the country. The 1952 Act, he pointed out, was enacted after a state of national emergency had been proclaimed by President Truman, and this state of emergency still existed; "in a wholly realistic sense there is no peace today and there was no peace in 1952." On this point of a national emergency, the majority, while admitting that in war or times of the "greatest imminent danger to public safety" passports had properly been refused, held that no such condition existed at present.

Since no constitutional issues were reached in the consideration of these cases, the Court's opinion can only be regarded at the moment as constituting an advance in procedural safeguards in the matter of the right to freedom of travel. "The decisive result of the Court's ruling is," as the "Manchester Guardian" puts it, "that it sharply limits the power of the Secretary of State, and by extension the power of any official in the Administration, to set himself up as a judge and guardian of the national interest. He can no longer point to his departmental

regulations to justify his discretionary powers. He must base these powers on valid Congressional authority or else they cannot be sustained."

Accepting the judgment, the State Department has announced that it will no longer require passport applicants to answer questions about Communist Party membership and has decided to issue passports to the applicants in these cases and also to others like Mr. Paul Robeson, singer, and Mr. Corliss Lamont, philosopher, who had been denied passports and who have sued.

## The President's Power to Remove

### Officials of Quasi-Judicial Agencies

The Supreme Court of the United States on 30th June held by a unanimous vote that the President's power to remove officials of federal agencies charged with quasi-judicial functions was limited to removal for cause.

This decision was rendered in a case concerning Mr. Myron Weiner, who was appointed by President Truman a member of the War Claims Commission which adjudicated certain war claims but who was dismissed by President Eisenhower in 1953 on the ground that it was "in the national interest" that the agency be staffed "with personnel of my selection." Mr. Weiner's contention that he was wrongfully dismissed was upheld by the Court.

This case closely parallels the case of *Humphrey v. United States*, 295 U. S. 602, decided in 1935. *Humphrey* was a member of the Federal Trade Commission but was dismissed by President Roosevelt for the very reason for which Mr. Weiner was dismissed in the instant case, viz., that the President thought that the work of the commission could most effectively be performed by "personnel of my selection," but disclaiming any reflection upon his services. The Court in that case overruled the President, holding that a President could dismiss only for reasons specified by Congress in the law governing the commission. The Federal Trade Commission Act provided for the removal of commissioners, who were appointed for a fixed term of office, "for inefficiency, neglect of duty, or malfeasance in office." As none of these grounds was assigned, the Court ruled that Mr. *Humphrey's* dismissal was contrary to law.

The Court in this case distinguished between officials whose function was purely administrative and who were merely "an arm or an eye of the executive," and those who were charged with quasi-judicial functions and were required to perform them independently of executive control. The Federal Trade Commission was set up to prevent unfair competition in commerce; it was a body meant to be independent of executive authority, "free to exercise its judgment without the leave or hindrance of any department of the government;" it discharged its functions "as an agency of the judiciary." It could not

therefore be that its members were to "continue in office at the mere will of the President."

Justice Frankfurter, who spoke for the Supreme Court in the instant case, followed the ruling in the *Humphrey* case and held that, though the Act establishing the War Claims Commission did not refer to the power of removal as in the case of the Federal Trade Commission, it must be understood to preclude removal in the absence of cause. Noting that the commission's function was of a judicial character, insulated from Presidential influence in dealing with claims, he said that "one who holds his office only during the pleasure of another cannot be depended upon to maintain an attitude of independence against the latter's will." It must therefore be assumed, he wrote, that "Congress did not wish to have hang over the commission the Damocles sword of removal by the President for no reason other than that he preferred to have on that commission men of his own choosing."

## Individual Rights and Organized Labour

### Supreme Court's Decisions in Two Cases

In two cases involving the right of non-union employees the Supreme Court on 26th May decided by a vote of 6 to 2 that such workers had a right to seek relief in the state law courts instead of having to go to the National Labour Relations Board, established under the Taft-Hartley Act, for relief.

The first of these cases concerned Mr. Paul S. Russell, an employee of a copper company in Alabama state. The labour union in the company struck work in 1951 and threw a picket line around the plant, Mr. Russell tried to go in for work, but the strikers crowded around his car and by threats forced him to turn back. He lost five weeks' pay by being forcibly kept out of his place of work. He brought suit against the union in the Alabama law courts for compensation for lost wages plus punitive damages for the illegal action of the union in preventing him from going to work. (Only limited and peaceful picketing in strike action is permitted under the Taft-Hartley Act.) The suit succeeded.

The other case involved a California marine machinist, Marcos Gonzales, who was expelled from the International Association of Machinists on the ground that he made false and malicious statements about a fellow unionist and was subsequently prevented from getting other employment by the union's hiring hall which controls employment. He too sued in the state courts and the suit succeeded. In both cases state courts made awards not only of lost pay but also of punitive damages.

The unions appealed to the Supreme Court, contending that under the Taft-Hartley Act the National Labour Relations Board was given "exclusive jurisdiction" in all labour-management controversies in inter-state commerce "to the exclusion of the state courts." The overriding authority of the N. L. R. B. has been generally sustained

in the federal courts. The Supreme Court held in the instant cases that a resort to the state courts was not prohibited by the Taft-Hartley Act in the matter of claims for damages raised in both cases which the N. L. R. B. had no power to consider.

Justice Burton wrote the majority opinion in the Russel case and Justice Frankfurter in the Gonzales case. The acts of the unions complained against in both cases were, according to the Taft-Hartley Act, "unfair labour practices"—picketing in such a way as to block the access of a non-union member to a plant in the first case and expelling a union member and then preventing him from obtaining a job through the union's hiring hall. But the question before the Supreme Court was whether under the Act complaints about violation of the federal law could be lodged in the state courts at all or whether the field had been pre-empted by the N. L. R. B.

The authors of the Supreme Court's opinions in both cases noted that the N. L. R. B. was authorized by the Taft-Hartley Act to consider claims for compensation for lost pay, but it had no power to consider claims for damages and concluded that where it was proper that damages should be levied the injured citizens were entitled by common law to assert their claims in the available channels of justice, the state courts. To deny an employee the common law right of action against a union would be to grant the union "a substantial immunity from the consequences of mass picketing or coercion." Mr. Justice Burton said:

An employee's right to recover in the states' courts all damages caused him by the kind of tortious conduct cannot fairly be said to be pre-empted without a clearer declaration of Congress policy. The rights [of the N. L. R. B. and the states] are complementary.

Chief Justice Warren and Justice Douglas dissented in both cases. They held that the federal labour legislation had pre-empted the states' powers to assess damages in such cases. The Chief Justice said:

The Federal [Taft-Hartley] Act represents an attempt [by Congress] to balance the competing interests of employee, union and the management. By providing additional remedies the states may upset that balance.

The dissent said that not only would "a multitude of tribunals ... imposing damages have an unfavourable effect on the uniformity the Taft-Hartley Act sought to achieve," but that the financial burden that would thus be cast on unions might be too heavy for them to bear. The Chief Justice said:

There is a very real prospect of staggering punitive damages accumulated through successive actions by parties injured by members who have succumbed to the emotion that frequently accompanies concerted activities during labour unrest,

By reason of vicarious liability for its members' ill-advised conduct on the picket lines, the union is to be subjected to a series of judgments that may, and probably will, reduce it to bankruptcy.

Commenting on these opinions the "New York Times" writes:

Clearly there is a hiatus here that needs to be closed — and it would be better, in the long run, to have it closed by legislation rather than by judicial decisions in specific cases, in the forty-eight separate states. Of course, unions and union members should not be exempted from liability for their torts just because their misdeeds involve labour-management relations. But is it sound public policy to leave open the floodgates of all the state courts to differing interpretations of what are "unfair labour practices" in interstate commerce and of what the penalties should be for pursuing them — as these Supreme Court decisions seem to have done?

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## COMMENTS

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### Detention of Sheikh Abdullah

#### MR. BALDWIN'S LETTER TO THE KASHMIR PREMIER

The Government of India looks upon detentions in Kashmir as a purely domestic matter for the State Government to decide and as one with which no outsider can have any legitimate concern, and accordingly it protested to the Security Council of the U. N., in respect a complaint lodged against Sheikh Abdullah's fresh detention, that the complaint was "a blatant attempt at interference with the internal affairs of Jammu and Kashmir, one of the constituent States of the Indian Union, a member-State of the U. N." But under the United Nations Charter all member-States have pledged themselves to "the promotion of universal respect for and observance of human rights and fundamental freedoms" and one of these basic rights is that "no one shall be subjected to arbitrary arrest, detention or exile." Thus any alleged gross violation of this right ceases to be a merely internal matter for any country and becomes an international problem within the jurisdiction of the United Nations. That is why Sheikh Abdullah's detention has caused much concern in civil liberty groups in all countries. Such concern is expressed in the following letter addressed by Mr. Roger N. Baldwin, Chairman of the International League for the Rights of Man, to the Prime Minister of Kashmir State. He writes to Bakshi Ghulam Mohammed:

Like many others, we have been disturbed by the further detention of Sheikh Mohammed Abdullah after he had been released. Our concern arises from the practice of preventive detention without charges

or trial — a procedure almost universally condemned by advocates of human rights.

We recognize that this old colonial practice still persists in India as it does in a few other countries, and we deplore its application to Kashmir.

Is there not a possibility of following the usual procedure of charges and a court trial so that the public opinion deeply interested in events in Kashmir might be assured of the justice of his confinement — if that should be the outcome ?

It is hardly necessary for me to add that this organization, committed solely to the principles of human rights, has no political interest whatever in the controversy involving the status of Kashmir.

All that we would say about the detention of Sheikh Abdullah is that what we wrote on this subject in the last issue has been fully borne out. We said then that the only reason why the Sheikh was first detained, then released and then detained again without any overt act on his part that has been disclosed could be that he did not change his attitude towards the Kashmir problem, that he did not cease to regard Kashmir's accession to India as temporary to be ratified subsequently by the vote of the Kashmiri population. We are confirmed in this inference by what the Prime Minister of the State said himself. Justifying Sheikh Abdullah's re-arrest, Bakshi Ghulam Mohammed said in Delhi :

The release of Sheikh Abdullah was ordered to judge whether there was any change in his views. But it was found that he persisted in propagating his old views which caused disturbances in Kashmir.

Thus the second detention like the first was because of certain views he holds. It is said that justification for the later detention will be provided via the prosecution of some of his associates. But what is required is that he himself should be prosecuted for any unlawful act he may have committed and that his imprisonment should be ordered by a court of law.

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## NEWS OF CIVIL LIBERTY UNITS

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### Executive Committee of the A.-I. C. L. Council

Mr. N. C. Chatterji, Working President of the All-India Civil Liberties Council, has nominated the following members of the Council to its Executive Committee : Mr. P. R. Das ( President ), Mr. N. C. Chatterji ( Working President ), Messrs. Jayaprakash Narain and Atul Chandra Gupta ( Vice-Presidents ), Mr. Naushir Bharucha, M. P., Mr. Haradatta Sharma, Mr. C. B. Agarwala, Mr. Shri Ram Sharma, M. L. A., Diwan Alakh Dhari, Mr. S. G. Vaze, Dr. R. G. Kakade and Mr. R. V. S. Mani ( Secretary ). Communications in regard to the work of the Council or its Executive Committee should

be addressed to Mr. R. V. S. Mani at B-37, Jangpura Extension, New Delhi.

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### Punjab Civil Liberties Council

A meeting of the Executive Committee of the Punjab Civil Liberties Council ( appointed at the time of the All-India Civil Liberties Conference ) took place at Ambala on 19th May under the chairmanship of its President, Pandit Shri Ram Sharma, M. L. A. The meeting was very well attended.

It decided to prepare a Memorandum on the subject of the Resolutions, adopted at the All-India Civil Liberties Conference, which particularly concern the Punjab and to seek an interview with the Government with a view to discussing these matters. These Resolutions relate to the Punjab Special Powers ( Press ) Act, the Public Safety Act of the State, abuse of power on the part of the police and separation of judicial and executive functions in the State.

It further decided to make earnest efforts to establish District Civil Liberties Unions in all districts where such Unions are not in existence at present.

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## KERALA EDUCATION BILL

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### Supreme Court's Advisory Opinion CERTAIN CLAUSES HELD VIOLATIVE OF THE CONSTITUTION

The Kerala Education Bill, passed by the State Assembly in September 1957, was reserved by the Governor of the State for the consent of the President. As the President entertained doubts regarding the constitutional validity of some of the provisions of the Bill, imposing comprehensive control on the schools in the State which may be granted either recognition or financial aid by the Government, he referred them to the Supreme Court to obtain its advisory opinion under Art. 143 of the Constitution.

A special bench of the Court gave its opinion on 22nd May. The Chief Justice delivered it.

It was argued before the Supreme Court by counsel for the State of Kerala that the Bill was passed to give effect to the Directive Principles of State Policy set out in the Constitution of India in Chapter IV. Art. 45 enjoins the legislatures to endeavour to provide within 10 years from the commencement of the Constitution free and compulsory education for all children until they complete the age of 14 years, and also make effective provisions for the education of the public generally.

The Court observed that although legislation may be passed to give effect to the Directive Principles of the Constitution, nonetheless it must subserve and not override the fundamental rights conferred by the provisions of the Articles contained in Part III of the Constitution. "There is nothing to prevent the State from discharging that solemn obligation [ of providing free and compulsory

education ] through Government and aided schools, and Art. 45 does not require that obligation to be discharged at the expense of the minority communities."

The Court was asked to state whether, in its opinion, any provisions of the Bill offend Art. 14 of the Constitution guaranteeing equal protection before law. It was urged by the Attorney-General that cl. 3 (5), which the Court ruled, brought all new schools within the ambit of the Bill, gave the Government an unguided power capable of being exercised "with an evil eye and an unequal hand." The Court rejected this contention, considering only the legal aspects of it, on the view that the title and the preamble of the Bill laid down the general policy, which was further reinforced by more detailed statements in the other clauses of the Bill. The Court, therefore, expressed the opinion that the charge of unconstitutionality founded on Art. 14 could not be sustained.

It was contended by the State of Kerala that, in order to constitute a minority which may claim educational rights guaranteed under the Constitution, persons must numerically be a minority in any particular region in which an educational institution in question is or is intended to be situated. The Court, however, did not accept this view as it amounted to putting too narrow a construction on the words used in the Bill. But it said it was unnecessary to express a final opinion on this question because, since the bill extended to the whole of Kerala State, the minority should be determined by reference to the whole population of the State. By this test, Christians, Muslims and Anglo-Indians would certainly be minorities in the State of Kerala.

So far as the Anglo-Indian community was concerned, Art. 337 had promised to it continuance of the grants it received in 1948, subject to certain diminutions, for ten years. The imposition, by provisions of the Bill, of stringent terms as fresh or additional conditions precedent to the payment of these grants would therefore, the Court said, infringe the Community's right under Art. 337.

The Court then considered the question of ordinary grants to educational institutions conducted by minority communities including the Anglo-Indian community. Without such grants from the State no educational institution could in these days be maintained in a state of efficiency. The Bill no doubt contemplated the granting of aid to educational institutions, but it imposed stringent conditions in certain respects on the making of the grants. The State of course was justified in prescribing reasonable regulations to ensure the excellence of the institutions to be aided and the Court opined that the provisions of cls. 7 (2) and (4) to (9), 10, 12 (1) to (3) and (5), relating to the management of aided schools, might easily be regarded as reasonable regulations or conditions for the grant of aid. Cl. 9 providing for payment of salaries directly to teachers by the Government, cl. 11

providing for the appointment of teachers from a panel prepared by the Public Service Commission, and cl. 12(4) which lays down that no teacher can be dismissed without the previous sanction of the Government, the Court said, were "serious inroads on the right of administration [ guaranteed by Art. 31 (1) of the Constitution ] and appeared perilously near violating that right." But considering that these provisions applied to all educational institutions and were designed to give protection to ill-paid teachers, the Court said, "we are prepared, as at present advised, to treat these clauses as permissible regulations," which the State may impose on the minorities as a condition of granting aid to their educational institutions.

However, the case was different with cls. 14 and 15. The Court said :

We find it impossible to support cls. 14 and 15 of the Bill ( which give power to the Government to take over management of schools and acquire any category of schools ) as mere regulations. The provisions of these clauses may be totally destructive of rights under Art. 30 (1) [ which says : " All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice " ]. It is true that the right to aid is not implicit in Art. 30 (1), but provisions of these clauses, if submitted to, on account of their actual compulsion as conditions of aid, may easily be violative of Art. 30 (1). In our opinion sub-cl. (3) of cl. 8 and cls. 9, 10, 11, 12 and 13, being merely regulatory, do not offend Art. 30(1), but provisions of sub-cl. (5) of cl. 3 [ which says : " After the commencement of this Act, the establishment of a new school or the opening of a higher class in any private school shall be subject to the provisions of this Act and the rules made thereunder " ], by making aided educational institutions subject to cls. 14 and 15 as conditions for grant of aid, do offend Art. 30 (1) of the Constitution.

In regard to educational institutions of minorities which sought only recognition but no aid from the State, the Court observed that there was no such thing as a fundamental right to recognition of schools by the State, but to deny recognition except upon terms tantamount to surrender of the minorities' constitutional right of administration of educational institutions of their choice is in truth and effect to deprive the minorities of their rights under Art. 30 (1). " The legislative power is subject to fundamental rights and the legislature cannot indirectly take away or abridge fundamental rights which it could not do directly, and yet that will be the result if the said bill containing any offending clauses becomes law." Relying upon earlier decisions of the Supreme Court that validity of any law must be decided with respect to the real intent and effect of legislation rather than to its form



the Court held that there can be no question of loss of a fundamental right merely by non-exercise of it.

The Court said that by cl. 19 of the Bill all the sub-clauses of cl. 7 except (1) and (3), as well as cls. 10 and 20, had been made applicable to recognized schools. They were prepared to accept all these provisions except cl. 20 as permissible regulations, but it was difficult to treat cl. 20 as merely regulatory. That clause peremptorily required that no fees should be charged in the primary classes. The imposition of such restriction against the collection of fees from any pupil of the primary classes as a condition for recognition would in effect make it impossible for an educational institution established by a minority community being carried on. Cl. 20, which had been extended by cl. 3 (5) to schools newly-established by a minority community, was violative of Art. 30 (1).

The Court was of the opinion that cl. 33 of the Bill which excluded the jurisdiction of courts in regard to issue of temporary injunctions in respect of matters covered by the Bill must be construed, as counsel for the State had conceded, as a provision subject to the overriding effect of Art. 226, which gives power to High Courts to issue certain writs, and, therefore, constitutional.

In a dissenting opinion Mr. Justice Venkatarama Aiyar expressed the view that, except for cls. 14 and 15, the provisions of the Bill did not offend Art. 30 (1) of the Constitution. The true scope of the right conferred under that Article, he said, was that religious and linguistic minorities had a right to establish and maintain their own educational institutions without any interference or hindrance from the State, and that right was not in fringed by cl. 20 of the Bill. The right which the minorities now claimed was something more. He said:

They want not merely freedom to manage their own affairs but they demand that the State should actively intervene and give to their educational institutions the imprimatur of State recognition. That, in my opinion, is not within Art. 30 (1).

The true intention of that Article is to equip minorities with a shield whereby they could defend themselves against attacks by majorities, religious or linguistic, and not to arm them with a sword whereby they could compel the majority to grant concessions.

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## LAW OF SEDITION

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### Sec. 124-A Held Void

#### As Violative of the Right to Freedom of Speech

One Mr. Ramanand Tiwari on 29th May 1954 delivered a speech to an audience of about 200 persons, mostly villagers. He gave vent to many complaints against the Government and in the course of his

speech said: "Labourers of U. P. had now organized themselves. Now they will not beg for pity but will take up cudgels and surround the Ministry and warn it that if it did not concede their demands it would be overthrown. If it was thought desirable that cultivators and labourers should rule the country, every young person must learn the use of swords, guns, pistols, batons and spirit bottles because without a fight the present Government would not surrender. Governments have not been overthrown without the use of batons. Cultivators and labourers should form associations and raise an army. If they wanted a Government like the Chinese Government, they should raise an army of volunteers and train them in the use of guns and pistols."

He was prosecuted for sedition under sec. 124-A, I. P. C., before the sessions judge of Basti. Mr. Ramanand admitted having made the speech but denied some of the words. He also challenged the constitutionality of the section. The judge found that the speech was made and that sec. 124-A imposed reasonable restrictions on the freedom of speech in the interests of public order and security of the State. Accordingly, he convicted the accused and sentenced him to imprisonment for three years.

Mr. Ramanand appealed to the Allahabad High Court and a full bench of the High Court consisting of Desai, Beg and Gurtu JJ. on 16th May allowed the appeal, each Judge delivering a separate judgment.

The question before Their Lordships was whether sec. 124-A, I. P. C., was inconsistent with the right of freedom of speech guaranteed under Art. 19 (1) (a) of the Constitution, subject to the imposition under Art. 19 (2) of reasonable restrictions on the exercise of the right in the interests of the security of the State, public order, etc. Mr. Justice Desai said:

Sec. 124-A, I. P. C., punished any persons (subject to exceptions mentioned in the Explanations) who, by words spoken or written, brought or bring into hatred and contempt, or excited or attempted to excite disaffection towards the Government established by law. Disaffection included disloyalty and all feelings of enmity.

His Lordship remarked that the speech made by the appellant certainly contained an incitement to violence and public disorder; in any case, it contained a threat to public disorder. But the question was not whether the restriction on the particular speech made by the appellant was in the interests of public order or not, but whether the restriction imposed on any speech exciting a feeling of hatred, etc., was in the interests of public order.

Dealing with sec. 124-A, His Lordship said that the offence made punishable under the section did not require an intention to incite to violence or public disorder. Not only this, but it also did not require any outbreak of violence or an apprehension of it as a consequence of the

speech. The contention advanced on behalf of the State, that every speech made punishable under sec. 124-A involved a threat to public order, must be rejected as unwarranted. There would have been no necessity for insisting upon an intention to incite to violence, in an English law, if such a speech had an inherent tendency to incite to violence, because everybody was presumed to intend the natural and probable consequences of his act.

Mr. Justice Desai said that even a speech that did not give rise to any apprehension of public disorder was made punishable under sec. 124-A. Danger to public order was not an ingredient of the offence. Consequently, the restriction imposed upon the right to freedom of speech by the section could not be said to be in the interests of public order. A restriction imposed on certain speeches would be in the interest of public order but not that imposed on other speeches, such as those which did not contain a threat to public order. There was nothing whatsoever in the section to distinguish between the two classes of speeches.

His Lordship said that neither exciting a feeling of hatred, nor exciting a feeling of contempt nor exciting a feeling of disaffection towards the Government, necessarily involved a threat to public order and, therefore, neither a restriction on a speech exciting a feeling of hatred, nor one on a speech exciting a feeling of contempt, nor one on a speech exciting a feeling of disaffection towards the Government could be said to be in the interests of public order.

The result was, His Lordship said, that the provisions of sec. 124-A became void on the enforcement of the Constitution.

Mr. Justice Beg in a concurring judgment said that what made the section vulnerable was the fact that it made the mere creation of bad feelings towards the Government an offence and that the section was not saved by the reservations contained in Art. 19 (2).

Mr. Justice Gurtu said that the section must be invalidated because it was capable of striking at the very root of the Constitution, which was free speech, subject to control under Art. 19 (2).

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## IMMORAL TRAFFIC IN WOMEN

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### Two Sections Prima Facie Unconstitutional "UNREASONABLE RESTRICTIONS" IMPOSED

Husana Bai and Shyama Bai, two prostitutes of Allahabad, filed a writ petition in the Allahabad High Court challenging the validity of the Suppression of Immoral Traffic in Women and Girls Act (passed by Parliament in 1956 in order to implement the 1950 international convention on the subject) on the ground that it violated the fundamental right conferred by Art. 19 (1) (g) to carry on their profession.

Mr. Justice Jagdish Sahai heard the petition. In his judgment delivered on 26th May, he observed that the citizen's right to practise any profession was subject to the State's right to impose reasonable restrictions, in the interests of the general public, on the exercise of that right; and that the only question was whether the restrictions imposed by the Act were reasonable or otherwise. His tentative conclusion was that secs. 20 and 4 (a) imposed unreasonable restrictions.

Sec. 20 of the Act provides that a magistrate, on receiving information that any woman or girl residing in or frequenting any place within the local limits of his jurisdiction as a prostitute, may issue a notice to such woman requiring her to appear before him and show cause why she should not be required to remove herself from the place and be prohibited from re-entering it.

Sec. 4 (a) relates to punishment for living on the earnings of prostitution.

Dealing with sec. 20 of the Act, His Lordship said that there was no doubt that very wide powers had been given to a magistrate to remove any woman or girl, who was a prostitute, from any place within the limits of his jurisdiction, if he considered that it was necessary to do so in the interest of the general public and prohibit her from entering it again.

The Judge observed that there was nothing in the section to guide a magistrate in deciding which prostitute was to be removed outside his jurisdiction and which was not to be removed; there was no classification at all in the Act. The Act gave a magistrate discretionary power not to be exercised upon a consideration of the circumstance of the case, but a naked and arbitrary power to remove a prostitute from his jurisdiction and to prohibit her from re-entering it. An Act which gave uncontrolled authority to discriminate could not but be hit by Art. 14 of the Constitution," His Lordship said.

Similarly, His Lordship observed, there was some substance in the contention that the section was hit by Art. 19 (1) (g) of the Constitution. There was no period fixed in the section for which a person could be removed and prohibited from re-entering. Under the provisions of this section a person could be removed for all time and could be prohibited from re-entering for all time. The result of an order removing a prostitute from a city or area where she was carrying on her profession or trade and prohibiting her from re-entering the same for an indefinite period or for all time would lead to her not being able to carry on her profession or trade. It would, therefore, result in a denial of the fundamental right guaranteed under Art. 19 (1) (g). Besides, the power to remove or prohibit re-entry had no reasonable relation to the object in view, i. e., the suppression of traffic in persons and of the exploitation by others. His Lordship further held tentatively that sec. 20 also infringed cls. (d) and (e) of Art. 19 (1), which provided that all citizens should have the right to move freely throughout the

territory of India and to reside and settle in any part of the territory of India.

His Lordship also accepted, tentatively, the contention that sec. 4 (a) was unconstitutional. He said in our country members of a family lived together. There would be hundreds of prostitutes whose parents or other family members lived with them, though they might not be economically dependent upon them and might not be in any manner encouraging, aiding or abetting them in carrying on their profession or trade. In the absence of there being any evidence that they were either living on the income of the prostitutes with whom they were living or were encouraging, aiding or abetting them towards prostitution, it would be extremely risky to draw any presumption as contemplated by the sub-section.

His Lordship, however, refrained from expressing a final opinion on these points because "the other side" had not been placed before the Court; "it is only proper," he said, "that before a provision of a Central Act is held unconstitutional, notice must go not only to the respondents (the Union Government, the State Government and district authorities) but also to the Attorney-General of India."

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## PUNJAB LAND ACT, 1957

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### High Court Holds Land Law Invalid

Consolidation proceedings were being taken in some villages in Hoshiarpur district under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. A writ petition was filed in the Punjab High Court by Mr. Kehr Singh and some other quasi-permanent allottees against the proceedings, contending that under certain illegal and void executive instructions they were not being recognized as owners and that it was sought to decrease the value and area of land which had been allotted to them.

Mr. Justice Bishan Narain allowed the petition, holding that under the Act the rights of quasi-permanent allottees could not be diminished without payment of compensation. The Judge further held that the executive instructions of 9th February 1952 and 18th February 1953 had no legal force and must be ignored by the consolidation authorities.

The State Government filed a letters patent appeal against this judgment before a division bench of the High Court and entered the Punjab Consolidation of Land Proceedings (Validation) Act 1957 in order to overcome the effect of the decision of Mr. Justice Bishan Narain. In the appeal it was contended on behalf of the State that the provisions of the impugned Act fully covered the case and that the matter decided was covered by the new enactment.

The division bench referred the question of constitutionality to a full bench. One of the grounds urged was that the impugned Act was hit by Art. 14 of the Constitu-

tion inasmuch as it discriminated between various classes of holders in the same consolidation and in the same estate. Another contention was that the impugned Act only applied to lands regarding which consolidation schemes were published before 1st January 1956 while the lands regarding which schemes were published after that date were not within the scope of the Act.

On 12th May a full bench consisting of the Chief Justice Mr. Bhandari, Mr. Justice Tek Chand and Mr. Justice Grover held the 1957 Act to be unconstitutional and invalid. Their Lordships observed that it might be said that the object sought to be achieved by the Act was to validate executive instructions which were issued previously and declared as having no legal force. But the classification was arbitrary and unreasonable and thus the Act violated Art. 14 of the Constitution. Their Lordships also remarked that the statute was not saved by Art. 31-A.

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## JURISDICTION OF HIGH COURTS

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### Findings of Fact in Second Appeal SUPREME COURT SETS ASIDE HIGH COURT JUDGEMENT

Mr. Justice Subba Rao of the Supreme Court by a judgment delivered on 19th May set aside the judgment of the High Court of Madras and restored the decision of the trial court on the view that the High Court had exceeded its jurisdiction in interfering with the findings of fact in a second appeal.

After referring to the dictum of the Judicial Committee that "there is no jurisdiction to entertain a second appeal on the ground of erroneous finding of fact, however gross the error may seem to be," Mr. Justice Subba Rao remarked that "some learned judges of High Courts are disposing of second appeals as if they were first appeals. This introduces, apart from the fact that the High Court assumes and exercises a jurisdiction which it does not possess, a gambling element in the litigation and confusion in the mind of the litigant public."

In the present case the plaintiff who was the deity Sri Pattabhiramaswami of Narasaraopet, brought a suit for possession of certain lands dedicated to it and for recovery of profits from the defendants. Having considered the entire evidence, the learned subordinate judge held that the plaintiff had title to the suit land, and was also entitled to the future mense profits. On appeal the district judge came to the same conclusion as the subordinate judge.

The defendants preferred a second appeal to the High Court at Madras and the learned judge of the High Court, after considering the entire evidence as he would do in a first appeal, arrived at findings of fact contrary to those of the trial court and accordingly reversed the judgment and decree of the lower appellate court.

The Supreme Court felt that the High Court had reversed the judgment of the lower court merely because it had taken a different view of the evidence, but this was not permissible in a second appeal. "We have, therefore, no alternative but to set aside the decree of the High Court on the simple ground that the learned judge of the High Court had no jurisdiction to interfere in second appeal with the findings of fact, given by the first appellate court." The appeal was accordingly allowed.

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## REPRESENTATION OF THE PEOPLE ACT

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### Acceptance of a Bribe

#### NOT A CORRUPT PRACTICE UNDER THE ACT

In a case arising out of the election petition filed for a declaration that the election of Mr. S. B. Adityan in March 1957 to the Madras Legislative Assembly from Sathankulam, the Supreme Court had to pass on whether in connection with the sums of money alleged to have been paid by Mr. Adityan and his election agent to two candidates for election from the constituency in order to induce them to drop out of the election, allegations of corrupt practice were made out against the candidates. A division bench of the Supreme Court on 20th May held that under the Representation of the People Act, 1951, only the giving of a bribe amounted to a corrupt practice, and not its acceptance, as an inducement to withdraw from an election contest. The Court stated that corrupt practices were enumerated in sec. 123 of the Act, and the section covered within its purview only the making of a gift or the giving of a bribe. In the opinion of the Court this interpretation was supported by the fact that the legislature had deleted sec. 124 of the Act, under which the receipt of a gift was mentioned as a corrupt practice.

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## NOTES

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### Principle of Watkins Case Followed

#### QUESTIONS NOT "PERTINENT" TO INQUIRY

Mr. Harry Sacher, who was defence counsel in the 1949 trial of eleven top Communist leaders in New York and was held in contempt of court for "harassing and defiant court-room tactics" at this trial and convicted, was on 19th May last declared by the Supreme Court to be not guilty of contempt of Congress, following in this case the principle of the Watkins case of June last year.

Mr. Sacher was summoned in 1955 as a witness by a sub-committee of the Senate Internal Security Committee during an inquiry into the behaviour of the notorious Matusow, who, after giving evidence against numerous Communists, had subsequently recanted his testimony. In the inquiry Mr. Sacher was asked three questions about his own membership, past or present, in the Communist Party, which he declined to answer, saying among other

things that the questions were not pertinent to the inquiry. He was indicted and convicted.

In June last year the Supreme Court sent the case back to the Court of Appeals "for consideration in the light of Watkins v. United States." But the Court of Appeals affirmed the conviction in January. Mr. Sacher then, for a second time, petitioned the Supreme Court to hear his case, and the Court granted the petition and decided the case itself—in favour of Mr. Sacher—by a vote of 6 to 2. The majority said the questions at issue related to matters "not clearly pertinent to the subject on which the sub-committee conducting the hearing had been authorized to take testimony." Since the pertinency had not been made plain to Mr. Sacher, the Court held, the conviction could not stand. The decision was made without oral argument, and one of the points on which Justice Clark based his dissent was that the Government was not given a chance to present oral argument on the pertinency of the questions Mr. Sacher had refused to answer. Justice Harlan, in his concurring judgment, answered this point. He said that only "scrutiny of the record, not oral argument, could shed light on whether the questions were pertinent, and therefore prompt disposition of the case was sound."

### Dismissals of Military Employees

#### ORDERS SET ASIDE BY COURT OF APPEALS

As a result of the Senate inquiry into the charge that the Signal Corps laboratories at Monmouth were rife with Communists and sympathisers with Communism, the Army in 1953 suspended 33 employees on security grounds. Of these 27 were restored to their jobs and the remaining six had on 19th June their orders of dismissal set aside by the Court of Appeals.

They had been charged with Communist associations of various kinds. They had hearings at which the Government produced no witnesses, relying instead on confidential informants. After these initial hearings their cases went to a Security Review Board. The Secretary of the Army ordered their dismissals, stating that their employment had been found "not clearly consistent with the interests of national security."

The Court held that the Army had violated its own regulations which required that the employees discharged as security risks be given the "findings" of security hearing boards. It disagreed with the Government's contention that the above statement by the Secretary of the Army was sufficient to meet the regulations. Judge Washington, who wrote the Court's opinion, said:

It is clear to us that the use of the word "findings" contemplates something more than a mere conclusory statement notifying the employee that he is a security risk. These "findings" are intended to give the employee information that he may use in seeking further consideration by the Security Review Board or by the Secretary of the Army.

**National Association for the Advancement of  
Coloured Peoples  
REQUIREMENT TO DISCLOSE LIST OF MEMBERS  
STRUCK DOWN**

The N. A. A. C. P., which is bringing suits to end school segregation and which has carried most of the legal burden of pushing for compliance with the Supreme Court's 1954 decision holding school segregation unconstitutional, was required by the state of Alabama to disclose the names of its members in order to restrict any financial help it may give to Negro plaintiffs in lawsuits. But the Supreme Court on 30th June ruled unanimously that such compulsory disclosure was unconstitutional.

Alabama first tried to apply its corporation law to the N. A. A. C. P. requiring out-of-state corporations doing business in the state to register. This is a standard corporation law which does not require the disclosure of members' names. The Association contended that this law did not apply to it because it was a non-profit organization. The state then sought a temporary injunction forbidding the Association to operate in Alabama because of its failure to register. An Alabama judge granted the injunction though at that stage the Association offered to comply with the law and to register. He also ordered the Association, in response to the state's request, to produce several of its records, including the membership lists. The Association produced everything else, and also the names of its office-bearers, but refused to disclose the names of its rank and file members. At that point the N. A. A. C. P. was fined \$100,000 for contempt. The state's supreme court refused to admit a petition for certiorari as in its view certiorari was a wrong method of review in this case.

The matter then went to the U. S. Supreme Court. Though ordinarily this Court does not review a state court's decision if based on a procedural ruling, it found that in this case the decision was "without any fair or substantial support" in state law and thus entertained the appeal. The Court held that Alabama had trespassed upon one of the "fundamental freedoms" guaranteed by the due process clauses of the Fourteenth Amendment — namely, the "freedom to engage in association for the advancement of beliefs and ideas." Justice Harlan, who gave the Court's finding, wrote:

Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs.

Petitioner [the N. A. A. C. P.] has made an uncontroverted showing that on past occasions revelation of the identity of its rank and file members has exposed these members to economic reprisal, loss of employment, threat of physical coercion and other manifestations of public hostility.

The case now goes back to the Alabama courts, but the decision is regarded as a major victory for the

N. A. A. C. P. against the determined campaign of harassment that is being conducted by Alabama and other Southern States against the Association.

**Sale of Homes on a Whites-Only Basis  
OVERTURNED BY A CALIFORNIA COURT**

Judge Oakley of the Superior Court of California held on 28th June that there could be no racial discrimination in the sale of houses built in California with the financial help of the Federal Housing Administration. The judgment would go some way in preventing the concentration of Negroes in ghetto sections of communities through barriers to the buying of homes in white localities. Negroes are in law free to buy homes anywhere that they can persuade the owner to sell, but practically they are excluded from buying brand-new homes financed by the federal Administration and are forced to rely on private financing which usually carries rates of interest 50 per cent. greater than the Administration's terms.

In the instant case in which one Mr. Ming was the plaintiff, Judge Oakley ruled that private builders who availed themselves of federal support in financing were required to follow in the states the same principles of non-discrimination governing federal activities. Besides, he said, since in California the principle of equal rights for Negroes applied to marriage, education, recreation and public housing, "there would seem to be no basis for denying its application to the acquisition of real property."

**Civil Liberty in Communist China**

Mr. A. L. Wirin, a Californian attorney, said to be the first American to visit Communist China with a valid passport since the Chinese revolution of 1949, thus gives his impressions of the state of civil liberty as he found it after his tour in that country.

There is no freedom of speech or press in Communist China for political opponents of the Communist Party.

There are only three newspapers in China: one an official state paper; the other two are sponsored by the Communist Party.

Foreigners as well as the Chinese are "unduly restricted" in their freedom to travel. Foreigners must secure a police permit to travel from one city to another for even one day, and the Chinese must obtain a permit for any trip of more than three days.

The rights of a defendant in a criminal case are practically nil; a criminal code is only now in the process of formulation, and no one knows what constitutes a violation of the law.

"Rightists" are regarded as "enemies of the people" and include persons who challenge the basic principles of socialism and who urge that the Communist Party cease being the dominant party in China.

There are no elections in China, and the village peasant or city worker is not given an opportunity to vote.

China admittedly does not have democracy. The Chinese Government characterizes its system as "democratic dictatorship," which means dictatorship over "enemies of the people."

#### State of Civil Liberties in S. Africa

In its "Survey of Race Relations in South Africa 1956-57" the Institute of Race Relations shows that race relations have deteriorated during the year, and the liberty of all citizens — white, coloured and black — has been further curtailed by legislation. For instance :

Access to churches, schools hospitals, clubs, places of entertainment and refreshment are all curtailed under the Native Laws Amendment Act and the Group Areas Amendment Act.

The Group Areas Amendment Act also limits the right to own property.

The Separate Universities Bill threatens to complete the undermining of academic freedom begun by the Bantu Education Act.

Job reservation limits the right to work.

The Nursing Act threatens to place African nurses outside the international pale.

A smaller pamphlet entitled "The Assault on our Liberties" by the Institute's President, Mr. Donald Molteno, Q. C., has just been issued ( price 2/6 ) It may be summarised as under.

Legislation since 1948 has progressively encroached on the historic liberties of South Africans usually in the name of apartheid ( though the same tendency was observable previously ). Africans have always been the greatest sufferers, but many whites would be shocked to discover how largely they are today at the mercy of administrative government.

Before 1948 the Africans had already been deprived of freedom of movement, residence, property, personal privacy, occupation, and equality before the law, Asians had already lost their freedom of movement and of property.

Since 1948, legislation has narrowed still further the civil liberties of the African and Asian groups. It has also encroached increasingly upon that of the Coloured and European groups.

All racial groups have been deprived of property rights by the Group Areas Act, of freedom of vocation and employment by the Industrial Conciliation Act of 1956, of personal freedom as well as privacy of person, home and correspondence by the Suppression of Communism and Criminal Laws Amendment Act of 1953, and of freedom of assembly and association by the Native Laws Amendment Act 1957 and other Acts.

Freedom of thought, conscience and religion are gravely menaced by the Native Laws Amendment Act, which contains the notorious "church clause," by the Bantu Education Act, the Separate Universities Bill and by the Suppression of Communism Act.

The latter also places freedom of speech and press at the mercy of Cabinet Ministers, who have additional powers under the Criminal Laws Amendment Act of 1953. Freedom of movement has been curtailed for all groups under the Departure from the Union Regulation Act of 1955.

The abolition of habeas corpus for Africans was achieved by the Natives ( Prohibition of Interdicts ) Act. An African can now, under the amended Native Administration Act, be banished from his home by the executive without a hearing, and confined to any area, however small. There is complete power here to institute a system of concentration camps, in which individuals would be confined indefinitely without trial.

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