

The Indian Civil Liberties Bulletin

[A MONTHLY REVIEW]

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SUPPRESSION OF HORROR COMICS

I.—ALL THE EVILS OF CENSORSHIP

No one will have reason to be sorry if by the Bill which the Government of India intend to enact into law they are able to suppress the abominable publications of which alone we have no doubt they wish to prevent dissemination among the youth of this country, provided the measure hits only those publications at which it is aimed. But it is almost impossible, in a Censorship Bill such as it essentially is, to ensure that the ban imposed thereby will not be extended in fact to publications other than those which the Government have in mind. And in this connection one must never lose sight of the fact that research has not established direct causal relationship, on the assumption of which the Bill has apparently been founded, between the reading of horror comics by young persons and commission of crimes by them. The policy statement of the American Civil Liberties Union on this subject, excerpts from which we gave at p. iii: 273 of the BULLETIN, shows how sharply divided the opinions of experts in the field of child psychology are as to the degree to which crime comics are instrumental in producing juvenile delinquency. In the A. C. L. Union's statement these opinions, pro and con, have been reproduced at length, though we could not reproduce them for want of space, and the curious are requested to go through them for a proper comprehension of the question.

In the next succeeding article in this issue, however, we cite the opinion of a competent social scientist, Dr. Marshall B. Clinard, to the effect that horror comics have at best only a limited influence on the production of juvenile delinquency. His general conclusion is that "delinquency is chiefly a product of personal [face-to-face] contacts," and that comic books may tend to result in "physical activity of a delinquent type" among young persons in some cases, "provided there is a prior pattern of deviant behaviour," and that "it is doubtful that many cases can be found where, even though there was no evidence of prior deviant behaviour, it occurred as a result of such contacts of a secondary nature." This conclusion is confirmed by a study by the American Youth Commission of the attitudes of young people in

Maryland between the ages of 16 and 24 years. The study, published in 1938, under the title of "Youth Tell their own Story," says that "64 per cent. of the boys and 40 per cent. of the girls reported that what they knew about sex was more or less limited to what their friends of their own age had told them." Evidence such as this led Mr. Leo M. Alpert to say in an article on "Censorship of Obscene Literature" in the Harvard Law Journal of November 1938 that it "at least casts doubt upon the assertion that immoral books corrupt and deprave." Similarly, the finding of the survey which the staff of the Research Centre of Human Relations of New York University conducted in view of the growing evil of crime comics in the United States can be summarized in this way: "If children read horror comics and read a lot of other things as well, there was no marked effect by the horror comics. Juvenile delinquency might be associated with those who read nothing but the comics. But that might be as much due to the absence of other influences as to the positive effects of the horror comics themselves."

* * *

It is true that no firm conclusion as to the effect which the reading of comic books produces on young minds is yet available, but in the absence of it what the A. C. L. U. has said on this subject holds good. That is to say:

At this time there has been no showing that the circulation of crime comic books constitutes a clear and present danger with respect to the occurrence, or continuance, of juvenile delinquency. Unless such a danger is shown—and further, the inadequacy of alternative means to combat this evil—there is no justification for cutting into a basic right guaranteed by the U. S. Constitution, a free press unhampered by governmental interference. In view of the anti-delinquency work being carried on by churches and synagogues, schools, social agencies, and civic and community organizations, it can hardly be said that there is insufficient time to combat whatever evils may be presented by crime comic books by means

short of censorship or by legally banning their publications. Unless such time is lacking, then even the fact that some relationship is shown between the increase of juvenile delinquency and the distribution of crime comic books is no justification for their suppression.

This is exactly our position and must be that of all civil liberties bodies which, while recognizing the evil, cannot countenance any measures involving censorship particularly because other wholesome influences as of the home and the school can well be depended upon to cope with the evil. In England it was in fact found that these influences were able to put an end to the evil. When three or four years ago these filthy publications made their appearance in that country in any large quantity, there was such an outcry against them on the part of teachers' and parents' associations that they ceased to circulate. It is true that in spite of this the British Government insisted on having the Horror Comics Act on which our own Bill is moulded, but it should be remembered that apart from the stiff opposition the measure encountered in Parliament, such weighty organs of public opinion as the "Times" and the "Manchester Guardian" continued to criticize it as "unnecessary" in view of the fact that the publications had practically stopped. Similarly, the National Union of Teachers which played such a large part in abolishing the evil, pointed up "the danger of involving the country in a narrow and dangerous censorship threatening vital freedom of thought and expression." In this country too it is our belief that home and school influences will be equally effective, making governmental censorship unnecessary.

* * *

It should not be supposed for a moment that the censorship which the Bill involves is limited to juvenile reading, books intended for children, and therefore not worth worrying too much about. The Bill strikes at all books if they are held to have a tendency to corrupt children or young persons into whose hands they might fall. The censorship is thus all-embracing and because several standard works often contain passages dealing with crime and violence, even they are likely to fall under the ban. Several Members of Parliament pointed this out in course of the debate on the English Bill. Maj. Woodrow Wyatt, for instance, showed that even the Bible might not escape. "It might well be," he remarked, "that the story of David and Goliath in illustrated form in a magazine would put the final picture in his (a boy's) mind of the means by which he could perform his act of violence." He said:

Almost any great work of literature contains in it some act or acts of violence; so there are large ranges of literature which no publisher would dare to illustrate. In fact it would be difficult for the Lambs to write again their "Tales from Shakespeare." We shall not be able to have illustrated versions of

"Macbeth" once the Bill becomes law because of the acts of violence in it which the children might be incited to imitate... What they (the hon'ble Members) are doing is to make it difficult for perfectly reputable publishers to risk anything which is not completely emasculated.

Mr. Wyatt emphasized illustrated versions of these works in his speech because the English Bill was (and the consequent Act is) restricted in its scope to pictorial publications. But our Bill is not so restricted, and the criticism he made would hold good in this country as to the whole range of literature if the Bill passes into law in the form in which it has been brought forward.

* * *

Another cause for alarm in England was that the criterion for obscenity in the the Obscenity Publications Act of 1857, as interpreted, would be extended by the Horror Comics Act to another field, and as the same interpretation of the obscenity law is current in our country our Bill should cause equal concern to us. The 1857 Act was passed in order to prevent the spread of obscene prints and publications as our Bill is intended to prevent the distribution of matter of a repulsive or horrible nature. The author of the Obscene Publications Act, Lord Campbell, expressly stated in Parliament that "the measure was intended to apply exclusively to works written for the single purpose of corrupting the morals of youth, and of a nature calculated to shock the common feelings of decency in any well-regulated mind." The interpretation of the Act came a decade afterwards. In *Regina v. Hicklin* (1868) 3 Q. B. 360, Lord Cockburn, C. J., applied a test for obscenity which enormously broadened the scope of the law. "I think," said he, "the test of obscenity is this—whether the tendency of the matter charged as obscenity is to deprave and corrupt those who are open to such immoral influences, and into whose hands a publication of this sort might fall." A publication is treated as obscene under the Act if it is likely to corrupt the morals of those who are most sensitive to such corruption, and if what Dr. Clinard says in his article referred to above is true, that though horror comics will not ordinarily breed delinquency in those children and adolescents who have already developed delinquent traits by personal contacts, they will probably do so in the case of those who have previously developed these traits, the extension which the Horror Comics Act will cause is obvious. In the *Hicklin* case it was pointed out that unless the motive of the author and the literary merit of the work are taken into consideration, even the works of standard poets from Chaucer to Byron, and classics like "Paradise Lost and Regained," and poems like Lord Byron's "Cain" and Shelley's "Queen Mab" will come under the operation of the law. Lord Cockburn rejected the argument summarily, remarking:

It is not to be said, because there are in many standard and established works objectionable

passages, that therefore the law is not as alleged on the part of the prosecution, namely, that obscene works are the subject-matter of indictment.

That the work may be written for an object both honest and laudable makes no difference; if a work is obscene, it is obscene—regardless of intent. Thus did the Lord Chief Justice formulate a test for obscenity. He said:

Although I quite concur in thinking that the motive of the parties who published this work, however mistaken, was an honest one, yet I cannot suppose but that they had that intention which constitutes the criminality of the act, at any rate that they knew perfectly well that this work must have the tendency which, in point of law, makes it an obscene publication, namely, the tendency to corrupt the minds and morals of those into whose hands it might come.

This judgment has remained the fountain of law—both in England and India, where too intent is considered immaterial to the offence. Only last year the "Decameron" was ordered to be destroyed by the Swinton magistrates under the 1857 Act.

* * *

The Horror Comics Bill of England, as introduced and passed, incorporates many words of the Hicklin judgment which have already done so much harm, and this fact aroused much opposition in Parliament. Mr. Roy Jenkins, for instance, said:

The words include tendency but exclude intent, and there is the question of who might see the publication but not the question of who it is designed for or who it is intended should look at it, but merely the persons into whose hands in some casual way it might fall. There we have all the undesirable features of the Hicklin judgment perpetuated in statute form.

Among authors and jurists the feeling of dissatisfaction with the law of obscenity as it exists at present is so great that under the auspices of the Society of Authors Sir Alan Herbert prepared a draft Bill to liberalise the law. The Bill was presented to Parliament too, and the Government is apparently sympathetic to it. But on account of the dissolution of Parliament in the meanwhile further stages could not be gone through. Under this Bill the courts would be required to consider: (1) the intention of the person accused of publishing an obscene libel, and also (2) expert evidence, if any, about its literary or artistic merits. The Bill also contained a provision about horror comics, since public opinion had been greatly worked up about them at the time, but this provision was to operate under the above-mentioned two safeguards which, as the "Economist" said, would have lessened "the danger that such a clause will catch literature which merely reflects a cruel and violent world." Instead, however, of dealing with the whole problem in a comprehensive way, the Government

decided to isolate the problem of crime comics and dealt with it in a separate Bill which did not provide the safeguards suggested by the Society of Authors. And when this Bill came up before Parliament Sir Alan Herbert criticized it in a letter in the "Times" of 21st February on these very grounds, viz., it disregards the intention of the accused person and does not provide for a consideration of the literary or artistic merits of the publication or the admission on these points of expert evidence. Because of these defects he feared that the Bill would become "a new threat to the liberty of publishers, printers, librarians and booksellers." Sir Alan Herbert in the article above referred to concludes: "There is no evidence establishing the need for censorship (of obscene literature); on the whole, evidence points the other way." Our conclusion about the censorship of horror comics cannot be different.

In the above paragraphs we have dealt with the main objection to the Horror Comics Bill, viz., that it is a Censorship Bill. But, even apart from this, the Bill contains numerous defects. It is far more extensive in scope and drastic in effect than the British Act. The British Bill, as introduced, contained certain safeguards, and certain other safeguards were inserted in the Bill in its later stages, all of which are lacking in our Bill. Next month we shall attempt to elaborate this point.

Comic Books and Juvenile Delinquency

Dr. Marshall B. Clinard, Professor of Sociology, who has served as chief of criminal statistics of the United States Bureau of the Census, has considered the effect of motion pictures, radio and comic books on producing juvenile delinquency and has stated in the Annals of the American Academy of Political and Social Sciences (1949) his conclusion that these media have but a limited influence. He has said:

It is conceivable that were all the three media to disappear from our culture, we would still probably have almost as much delinquency. Yet today there is a great wave of public indignation against so-called and misnamed "comic books" for their emphasis on the morbid aspects of life and particularly on their vicious content. It is reported that nearly fifty cities have taken steps to ban objectionable comic books. The same acute public interest was and still is to a less degree centred on the crime stories, on the radio and before that on the motion picture, and if we go still further back, on dime novels.

It is conceivable that overt physical activity of a delinquent type may result (from the radio and the comic book) in some cases, provided there is a prior pattern of deviant behaviour. A realistic appraisal of these forms of entertainment indicates that while there are cases in which they may be important, on the whole their direct influence on the juvenile is almost

nil or serves only to aggravate already existent attitudes and personality traits. Present evidence seems to indicate that the process of acquiring conduct norms, both deviant and conventional, is primarily through intimate associations with others and personal experiences of a face-to-face nature. Delinquents who have already had differential association through companions with deviant norms may be further stimulated by bad motion pictures, by certain radio programmes, or by comic books. It is doubtful that many cases can be found where, even though there was no evidence of prior deviant behaviour, it occurred as a result of such contacts of a secondary nature. Much of this material represents a world of impersonal fantasy rather than having personal reality. Non-delinquents are not likely to succumb to such influences, any more than the average adult readers' attitudes are too greatly changed by editorials in newspapers as compared with the opinions of their friends.

In most cases such preoccupation of the public with the menace of, for example, comic books is to release feelings that something should be done. The public does not wish to face the deeper questions of why juveniles are so interested in such entertainment. . . . The tendency of the public mind in dealing with social difficulties is to take the easiest course. [The question of juvenile delinquency must be studied with reference to the behaviour of the larger social world, in which violation of the law is rampant]. It is obviously impossible to rear law-abiding children in a world where their adult models disobey the law.

[The conclusion is:] while agreeing that delinquency is chiefly a product of personal contacts, the world of secondary relationships can by no means be completely eliminated from an investigation of delinquency. . . . While the relationship seems obvious, there is only limited evidence to indicate that the newspaper, magazines, movies, the radio, comic books and various agencies of moral risk produce delinquency.

Public School Segregation

Two Cases in State Supreme Courts

Last month two cases were taken to the supreme courts of two Southern states in the U. S. A. in appeal against the decisions of district courts by adherents of segregated schools. They were naturally decided in the only way that could be expected, and the fact that the appeals were preferred at all only serves to demonstrate the hostility of the Southerners to the U. S. Supreme Court's ruling of last year to the effect that segregation of pupils in public schools is unconstitutional.

In Texas the desegregation process had but started, 64 out of 2,000 school districts in that state having

announced that they would end segregation this autumn. However, a group of pro-segregationists represented by the Texas Citizens' Council got busy and they brought a test case before a state court with a view to halt the plan of school desegregation. They have the state Constitution and the state law on their side. The Constitution of Texas requires separation of Negro and white students in the public schools of the state, and in order to enforce this constitutional provision the state law forbids the spending of any state money on schools where white and Negro students are mingled. The Citizens Council' sought to stop desegregation by blocking use of public money for integrated schools.

The district judge ruled only in the possible way—that under the decision of the U. S. Supreme Court the law of Texas barring financial help to desegregated schools was void. The Citizens' Council went in appeal to the state supreme court, and this court—naturally enough—affirmed the lower court's judgment, holding that the Constitution and law of Texas requiring racial segregation in public schools were "unconstitutional and void" in virtue of the U. S. Supreme Court's desegregation ruling and that state aid for education could not be denied to mixed schools.

If the decision had been otherwise, it would have meant nothing less than an overruling of the Federal Supreme Court, and nothing is more firmly established in the United States than the supremacy of its Supreme Court over all laws and Constitutions of all the States as well — this is what the nation owes to its first Chief Justice John Marshall. As an observer has said: "Texas is now on notice that its own judiciary will not sanction this particular device to circumvent the mandate of the Supreme Court. It can revert to gradual public school desegregation 'district by district,' which would be in conformity with the Supreme Court decree so long as this is done 'with all deliberate haste.'" Texas might now possibly turn to a proposal broached in some other Southern states. This is to abolish public schools and support with funds a "private" school system in which racial segregation is maintained. One feels confident that this too would be struck down by the Supreme Court, but it is encouraging to notice that the idea has evoked local criticism. "The Raleigh News and Observer" says:

I believe if such a fantastic proposal should be accepted in the South, it would reduce a whole people to levels at which they could not be expected to cope intelligently with this problem or any other. Give us one generation of abandonment of public education and we would all be poor, poor whites together.

The other case was from the state of Florida. Mr. Virgil D. Hawkins, a Negro, who sought admittance to the Law School of the University of Florida, was refused.

admission by the State Board of Control on the ground that he could join another law school in the state, which is a school for Negroes, where equal facilities were available. The Law School of the University restricts its admission to white students. When the case went in appeal to the supreme court of the state, that court ruled on 19th October by a majority that racial segregation in public schools was unconstitutional. It said:

The theory of separate but equal facilities under which the state has developed its educational system has been abolished by the decision of the Supreme Court . . . and we deem it to be our inescapable duty to abide by this decision.

In the cases that came before the U. S. Supreme Court for three or four years before its historic decision of 17th May 1954 declaring all segregation in public schools unconstitutional, the Court gave relief to Negro appellants on the graduate school level, but did so on the ground that the alternative schools available to them did not afford equal facilities, thus seeming to accept the half-century old "separate but equal" doctrine laid down in *Plessy v. Ferguson*, 133 U. S. 537 (1896) in a rail-road case. In *Sweatt v. Painter*, 339 U. S. 629 (1950) the Court expressly reserved decision on the question whether that doctrine should be held inapplicable to public education. Under that doctrine equality of treatment is accorded when the races are provided substantially equal facilities even though these facilities are separate.

But in the cases decided by the Court in 1954 the question reserved in *Sweatt v. Painter* was directly presented. The findings in the lower courts were that the Negro and white schools involved had been equalized, or were being equalized, with respect to buildings, curricula, qualifications and salaries of teachers, and other "tangible" factors, and the Supreme Court had to consider whether Negroes could legally be refused admission into schools attended by whites, though equal educational opportunities were available to them nearby. The question was, as the Court itself framed it, "Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other 'tangible' factors may be equal, deprive the children of the minority group of equal educational opportunities?" And the Court answered the question: "We believe it does." The Court said: "To separate them (Negro children) from others of similar age and qualification solely because of their race generated a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." The Court's conclusion therefore was:

In the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal.

The Court thus rejecting the *Plessy v. Ferguson* formula declared that to deny admission to a Negro in any public school was to deprive them of the equal protection of the laws guaranteed by the Fourteenth Amendment.

TAPPING OF TELEPHONE WIRES BY GOVERNMENTAL AGENCIES

The developments of electronic technology have created opportunities, by tapping telephone wires, for people to peer into our private lives and overhear the words we speak in the supposed privacy of our offices and homes. Thus the protection from intrusions by Government officials into the Right to Privacy which the Fourth Amendment was intended to provide by preventing the Government from invading the sanctity of a man's house or his private quarters in a chase for a suspect has become more difficult to secure than ever before. The Fourth Amendment was designed to put a stop to the evils of general warrants and writs of assistance, but, as Justice Brandeis said in the *Olmstead* case infra, "as a means of espionage, writs of assistance and general warrants are but puny instruments of tyranny and oppression when compared with wire-tapping." And the United States has not yet found effective means to counteract this greater evil so that the citizens will be secured the "spiritual freedom" which depends in no small measure upon the preservation of the right to personal privacy. How vulnerable the right has become since the electronic invader came into the field will be apparent from the cases given below about wire-tapping.

The Supreme Court has taken the view in regard to searches and seizures in many cases, of which *Weeks v. United States*, 232 U. S. 383 (1914) is the most prominent, that the Fourth Amendment forbids the introduction of evidence against a person if it is secured by government officers by an unreasonable search and seizure. But in *Olmstead v. United States*, 277 U. S. 438 (1928), the Court refused to apply the principle to evidence obtained by the tapping of telephone wires. In this case involving rum-running the prohibition officers had obtained by wire-tapping evidence which conclusively proved the guilt of the conspirators of whom *Olmstead* was the ringleader, and the question was whether the Fourth Amendment was applicable to wire-tapping. The Court answered the question in the negative, over the dissent of Justices Holmes, Brandeis, Stone and Butler. The majority of the Court found that the seizure outlawed by the Fourth Amendment was that of material things like a person's papers and effects, not of projected voices. Chief Justice Taft, in delivering the opinion of the Court, said:

There was no searching (here). There was no seizure. . . . The reasonable view is that one who installs in his house a telephone instrument with connecting wires

intends to project his voice to those quite outside, and that the wires beyond his house and messages while passing over them are not within the protection of the Fourth Amendment. Here those who intercepted the projected voices were not in the house of either party to the conversation. (There is no violation of the Fourth Amendment) as against a defendant unless there has been an official search and seizure of his person, or such a seizure of his papers or tangible material effects or an actual physical invasion of his house "or curtilage" for the purpose of making a seizure.

Therefore the common law rule is applicable here, viz., that if tendered evidence is pertinent, the method of obtaining it is unimportant. The Court, however, added:

Congress may, of course, protect the secrecy of telephone messages by making them, when intercepted, inadmissible in evidence in federal criminal trials, by direct legislation, and thus depart from the common law of evidence. But the courts may not adopt such a policy by attributing an enlarged and unusual meaning to the Fourth Amendment.

After the decision in the *Olmstead* case several bills were introduced in Congress intended to prohibit tapping of wires to procure evidence, but they failed to pass. However, in the Federal Communications Act of 1934, the main purpose of which was to make the provisions of the Radio Act applicable to telephone messages and transfer the jurisdiction over radio and wire communications to the newly constituted Federal Communications Commission, there was a provision which enabled the Supreme Court to do what in the *Olmstead* case it declared itself to be unable to do "without the sanction of congressional enactment." The Federal Communications Act (section 605) provides:

No person not being authorized by the sender shall intercept any communication and divulge or publish the existence, contents, substance . . . of such intercepted communication to any person.

In *Nardone v. United States*, 802 U.S. 379 (1937), involving the smuggling of liquor, the evidence which constituted a vital part of the prosecution's proof was procured by a federal officer by tapping telephone wires and intercepting messages. In the trying court the evidence was admitted and the accused were convicted. The Circuit Court of Appeals held that the evidence was properly admitted and affirmed the judgment of conviction. The Supreme Court, however, reversed the judgment. The Government's contention was that the section in question was not intended to include federal officers in its prohibition. This section was almost bodily taken from the Radio Act, and it was argued that when the Communications Act was passed federal agents had been, with the knowledge of Congress, tapping wires in aid of detection of crime, and if Congress had intended to outlaw the practice it would have

done so expressly instead of constructively by means of an Act designed merely to bring radio and wire messages under the jurisdiction of a new body. It was urged, therefore, that a construction be put upon "any person" in sec. 605 so as to exclude federal agents. The Court decided the case in accordance with the "plain words" of the law and said "the Act forbids such testimony," i. e., testimony obtained by federal agents by means of intercepting a telephone message. As to the Government's contention that such a construction would hamper and impede the activities of the Government in the detection and punishment of crime, and that Congress could not have intended to bring about such a result, the Court said:

The answer is that the question is one of policy. Congress may have thought it less important that some offenders should go unwhipped of justice than that officers should resort to methods deemed inconsistent with ethical standards and destructive of personal liberty. The same considerations may well have moved Congress to adopt section 605 as evoked the guarantee against practices and procedures violative of privacy, embodied in the Fourth and Fifth Amendments of the Constitution.

The Court's finding thus was that the Government's introduction of transcripts of intercepted interstate messages in the trial of criminal cases constituted a divulgence of their contents contrary to the express terms of the statute, and that such evidence was inadmissible.

The next important case was that of *Weiss v. United States*, 308 U.S. 321 (1940), in which it was held that the prohibition in the statute extended to the interception and divulgence of intrastate as well as interstate messages. In this case intrastate telephone communications were intercepted by federal agents, their contents divulged to certain of the defendants, and, as a result, these defendants confessed and agreed to turn state's evidence. They had been permitted in the trial court to testify to the contents of the messages. The second *Nardone* case that followed, viz. *Nardone v. United States*, 301 U.S. 338 (1940), established the principle that if unlawfully intercepted messages were not themselves put in as evidence but were used to obtain evidence against the senders of messages, such use of the messages and the introduction of the evidence obtained from wire-tap "leads" constitute a violation of the purpose and policy of the statute because it was "a fruit of the poisonous tree." The Court cited *Silverthorne Lumber Co. v. United States*, 251 U.S. 385 (1920), in which it was said about unreasonable searches and seizures: "The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the court, but that it shall not be used at all. . . . The knowledge gained by the Government's own wrong cannot be used by it." So even the derivative use of information obtained by forbidden interceptions was held to be barred. The Court held that the policy of the statute required exclusion not.

merely of the intercepted messages but also of the other evidence acquired through their unlawful use.

After these decisions came a setback. In *Goldstein v. United States*, 316 U. S. 114 (1942), which involved an insurance fraud, some of the conspirators testified for the prosecution after being confronted with the contents of telephone messages which had been obtained by wire-tapping. But in this case the petitioners were not parties to the illegally intercepted messages, as they were in the second *Nardone* case, and the question was whether the sender of messages alone against whom evidence derived from such messages is sought to be introduced has standing to object to the admission of the evidence, or whether one who is prejudiced by the use of the intercepted communication can also raise the objection. The Court decided the question in the negative; it denied standing to anyone who is not himself the victim of the use or disclosure of intercepted messages. In this case the conversations of the convicted men had not been listened to and the intercepted messages had not been used at the trial. The Court held that only a person whose conversations had been listened to can complain; that the rights of an accused person are not violated by the use against him of evidence secured by an illicit interception of communications of which not he, but a third person, is the victim. From this decision Chief Justice Stone and Justices Murphy and Frankfurter dissented. They said:

The rule that evidence obtained by a violation of section 605 is inadmissible is not a remedy for the obedient answer to the Congressional command that society shall not be plagued with such practices as wire-tapping.

They also noted the fact that the majority of the Court ignored the last clause of the statute, viz.,

No person having received such intercepted communication or having become acquainted with the contents ... thereof, shall divulge the contents ... or use the same for his own benefit or for the benefit of another not entitled thereto.

The Government had pleaded that this provision of the Act was not intended to reach the use of the contents of the messages by federal officers for obtaining evidence but was meant to prevent "use for the personal advantage or benefit of the user." The majority did not pass on the contention. But the minority pointed out that the *Nardone* case had barred the use of overheard conversations for government officers as well as for private persons, and that the prohibition in the above clause of the statute by Congress of the "use" of overheard evidence was unequivocal and controlling. In another case decided on the same day, viz., *Goldman v. United States*, 316 U. S. 129, federal agents had used a detectophone to listen to a conversation in an adjoining room between persons suspected of crime. The Court held, on the authority of the *Olmstead* case, that such use of a detectophone is not a violation

of the Fourth Amendment. In this case also Chief Justice Stone and Justices Frankfurter and Murphy dissented from the judgment, expressing the view that they agreed with the dissenting opinions of Justice Holmes and the other three Justices in the *Olmstead* case and that the holding in that case should be overruled. Prompted by these decisions, the Justice Department in 1949 drafted a bill to sanction wire-tapping by federal agents as an aid in the detection of crime, but the strength of the anti-wire-tapping forces seemed so considerable as to compel the Department to withdraw the bill.

The problem presented by wire-tapping is this. On one side are the ideals of freedom and individual privacy, a basic right of a free society, and on the other the arguments favouring the use of modern techniques to fight crime and to protect national security. A line of demarcation that enlightened opinion favours on this subject was thus suggested by "The Reporter" in its issue of January 1953:

Wire-tapping and all similar devices human ingenuity may invent must be used under the strictest federal supervision, and then only for the detection of three crimes: treason, sabotage, and espionage. For the detection of all other crimes, no matter how heinous, wire-tapping must be outlawed — and outlawed for good.

COMMENTS

Increased East-West Contacts

Bid at Big Four Foreign Ministers' Conference

Having reached a stalemate on the question of German re-unification and European security and having made but "minuscule progress" on the question of world disarmament, the Big Four foreign ministers' conference at Geneva, as expected (vide p. iii:287), made a bid for increased East-West contacts as affording greater hope for a meeting of minds in this field and as contributing to the preservation of the "Geneva spirit" favourable to further talks on the more difficult questions.

Exchange of Information and Communications

Whereas the Western powers maintain few barriers to the influx of Soviet information or propaganda, the Soviet Union has blacked out all information from the West by jamming Western radio broadcasts and suppressing the circulation of all Western publications. By contrast, Soviet publications circulate freely in Britain and France and can be bought from certain book stalls in the United States. The only significant complaint the Russians could make about the United States practices is that the distribution of Soviet newspapers and magazines mailed directly to individuals in that country is sometimes delayed by inspection in the Post Offices.

The British Foreign Minister, Mr. Harold Macmillan, made on 31st October a plea for the removal of the Soviet barriers to the free flow of the news. He said, somewhat bluntly :

So long as the Soviet peoples are presented with a single official view of our policies and actions, so long as our news from Moscow is carefully edited and controlled, so long as our broadcasts are jammed and our other means of conveying our news and views, our beliefs and aspirations to the Soviet people are so limited as to be almost non-existent, our main problem remains.

The French Foreign Minister, M. Antoine Pinay, spoke in the same sense. He announced :

My Government proposes that we should move towards setting up in our respective capitals information centres to which the citizens of both countries should have free access. It also proposes that newspapers, books and periodicals should be allowed to cross frontiers more freely.

Finally, it demands that our accredited press correspondents in the Soviet Union be enabled to carry out their true mission by being given free access to the normal sources of information.

The U. S. Secretary of State, Mr. John Foster Dulles, in his proposals called for (1) removal of Soviet press and radio censorship and an end to the jamming of Western broadcasts ; (2) exchange of radio broadcasts between the U. S. and Russia ; (3) free circulation of the U. S. sponsored Russian language magazine, "Amerika," in the Soviet Union and free circulation of an official Soviet magazine in the U. S. (Moscow had permitted a limited circulation of "Amerika" for a few years after World War II, but later suppressed even that); and (4) distribution of U. S. films in Russia and reciprocal setting up of information centres.

The Soviet Foreign Minister, Mr. V. M. Molotov, was silent about the free flow of news, obviously because though restrictions even on this branch of East-West contacts have somewhat eased latterly, the Soviet Union is particularly vulnerable on the question of freedom of information and communications.

Exchange of Persons

On the other hand the U. S. is more vulnerable on the stepping up of free exchange of persons because of its McCarran Act, which excludes all members of the Communist Party and its affiliates. While the Attorney General is authorized under the law to waive the exclusion after considering each case, a general agreement on freedom of movement becomes difficult. But Mr. Dulles declared at the conference that his Government had decided to lift immediately all passport restrictions on travel of Americans to Russia and other East European countries. He expressed a hope for the removal of controls on the movement of foreigners in the Soviet Union and declared

that his Government intended to reduce its own controls over Soviet citizens on the basis of reciprocity. Both Mr. Macmillan and M. Pinay called for freedom of movement by the removal of barriers to travel. Mr. Molotov was sympathetic to a stepped-up exchange of individuals.

Exchange of Goods

Improvement was also sought in the economic phase of East-West contacts. While all countries desire increased trade, the Soviet Government insists particularly on the elimination of the Western powers' strategic trade controls in the form of restrictions on shipment to the Soviet bloc of machinery and raw materials that might contribute to war potential.

Mr. Macmillan in his speech denied Russian charges that the embargo on the export of strategic goods to Communist countries was to blame for reduced trade. He declared that the low level of trade was a result of Soviet Government's own trade policies. He said :

Russia has suggested that the root cause of the low level of trade is "our system of strategic controls."

I must confess that I find that argument hard to take seriously. Every nation must have regard to its security. Because our foreign trade is broadly conducted by private individuals we are obliged to have certain governmental controls on certain elements in that trade. I am sure that the Soviet Government, who are the sole traders on their side, are not wholly unmindful of strategic considerations when they decide what they wish to sell to other countries.

Nor do I think that it would assist in relieving tension if it was felt, on either side, that trade was endangering national security. These controls are the result of a lack of confidence and not one of its causes.

My Government are in favour of increased trade with the Soviet Union and we consider that the low level of the present trade to be the natural result of the Soviet Government's own trade policies.

The Soviet Union, both before and since the war, pursued a policy of self-sufficiency, and since the war that system has been extended to include her associates in Eastern Europe. It is this development which has radically altered the character and drastically reduced the volume of East-West trade.

We are most ready to consider sympathetically anything which seems likely to lead to a mutual increase in peaceful trade. Over by far the greater part of the field of East-West trade in peaceful goods there are no restrictions of any kind imposed by Government.

Our system, under which we admit the traditional exports of the Eastern European countries substantially without import restrictions, compares very

favourably with the rigid control over all imports still exercised by the Eastern European countries.

Wide opportunities for increased trade with my country are freely open to Eastern Europe. We shall welcome an indication that in future fuller advantage will be taken of those possibilities. We want this to grow. Interchange of peoples, interchange of goods—these are surest means to increase confidence and understanding.

M. Pinay said France also favoured better trade relations between East and West. He added that strategic goods embargo lists constituted a part of Western security and were in any case only a small portion of the total possible trade.

Mr. Dulles called for an expansion of East-West trade in "peaceful goods" and disclosed that he had already taken steps in Washington to bring about an easing of some restrictions on exports to Soviet bloc countries.

U. N. Commission's Report on Apartheid

PACE APPEARS TO BE SLOWING DOWN

In its third annual report on the apartheid policies of the Union Government of South Africa, the U. N. Commission remarked that the Government's programme of apartheid has during the past year been proceeding extremely slowly. It said:

Despite the declarations of responsible members of the Government in which they invariably profess their explicit and unequivocal adherence to the principles of apartheid and their intention of translating it into reality, nevertheless, the policy of apartheid, so far as it has been possible to observe its operation in law and in practice during the year under review, seems still to be characterized mainly by gradualism and flexibility that had also been the Commission's observation in its first report. Indeed this gradualism seems to have become more marked in recent times: in other words, the pace at which the apartheid programme is being carried into effect has been slowed even further.

In July, 1955, at the end of the Parliamentary session, the objective appeared almost as far away as one year before. Another noteworthy point is that the Government apparently recognizes more or less explicitly and discreetly that complete territorial separation might well be a theoretical objective unattainable in practice.

At the rate at which the Government is promoting each day a fuller measure of apartheid, it may well take many years before the theories of the new apartheid bear even a modest resemblance to actual fact. By then, the succession of generations, white and black, will have changed the course of events.

The South African Government is the only Government in the world which believes that it can

carry out such a fabulous experiment successfully. South Africa is the only country in the British Commonwealth which does not accept universal suffrage, even as an objective to be achieved gradually in the distant future. South Africa is the only country in Africa where the natives are not represented by their own kind in any legislative or consultative assembly. South Africa is the only country in the world where the natives are rigorously excluded from certain categories of employment by the legislation of a minority intent on reserving them for itself.

Appearing before the General Assembly's Political Committee on 25th October, the Chairman of the Commission, Dr. Herman Santa Cruz of Chile, said that the racial policies of the Union Government apparently stemmed from a fear of the whites that they would be "smothered" by the coloured majority, and that the United Nations' action was the best guarantee that the white minority will not be so smothered. He said:

The law of juridical rule and moral strength represented by the U. N. have acted and will continue to act in favour of minorities. U. N. action in this field constitutes a supreme guarantee for minority groups, particularly those of ethnic origin, pending the elimination of the anti-human doctrine that comes to us from the past.

Violence, he warned, "may be the dramatic consequence of any failure of this occasion." "There is evidence," he said, "of the powerfully rooted feelings of peoples which, if not satisfied, may seek solution in violence and political strife. U. N. is the only means of ensuring that the threat of violence will give place to peaceful co-operation and friendly settlement."

Mr. Awari Khalidy of Iraq spoke in the same sense in the Committee. He said:

I know of no territory in the world now that is not demanding progress to equality and justice. This awakening is the death-knell of colonialism.

When a native of a backward territory sees and hears of better things, he begins to ask for them. What will happen when the 8½ million coloured persons in South Africa begin to ask for them? Where will the two million whites be? Let them not delude themselves that airplanes and machine-guns will be the answer.

The South African delegate boycotted the debate on the ground that it constitutes U. N. intervention in a domestic matter.

HABEAS CORPUS PETITIONS

Prosecution First and Detention Afterwards

Thakur Prasad Bania and four others were detained under orders of the district magistrate of Saran on 17th October last year. The orders were approved by the Government of Bihar and subsequently confirmed

presumably after the consideration thereof by the Advisory Board. The detainees filed petitions with the Supreme Court for a writ of habeas corpus. Some of the complaints against the detained persons were that they disobeyed a prohibitory order banning processions in the town of Siwan on the Dasara day and caused disturbances, and that they indulged in rioting arising out of the disobedience.

One of the grounds on which the petitioners challenged the detention orders was that a prosecution was launched against them on these charges and a proceeding under sec. 107, Cr. P. C., was also started against them in view of the alleged disturbances, and that while these two proceedings were in the initial stages, the Government passed detention orders and thereafter withdrew the above-mentioned two criminal proceedings against them. The contention of the petitioners was that a detention order passed under these circumstances was an interference with the normal course of justice and "ipso facto mala fide."

Mr. Justice Jagannadha Das heard the petitions. In his judgment on 13th August 1955 he said on this point:

Observations of this Court and some of the High Courts have been brought to my notice which suggest that where the grounds on which a detention order is based are also the subject-matter of criminal prosecution, the order of detention may amount to a breach of the statutory powers. But no case has laid down so far that such an order is necessarily mala fide. Courts have treated such a circumstance as calling for scrutiny as to the bona fides of the detention order but have held that the question of mala fides has got to be decided as one of fact with reference to all the circumstances of an individual case.

But in this case there being other complaints also on which the detention orders were based, the Court did not think it necessary "to base the decision on such view." His Lordship said: "In a proper case that question may have to be dealt with fully by this Court."

His Lordship saw no force in the other contentions of the petitioners and dismissed the petitions.

SEC. 144, CRIMINAL PROCEDURE CODE

Banning of Punjab State Slogan

MASTER TARA SINGH'S PETITION DISMISSED

Master Tara Singh's revision petition against his conviction for defiance of the Amritsar District Magistrate's order under section 144, Cr. P. C., banning linguistic slogans, was dismissed on 14th October by Mr. Justice Falshaw of the Punjab High Court.

He had been sentenced under section 188, I.P.C., by the trial magistrate to four months' rigorous imprisonment and a fine of Rs. 400 or in default to further imprisonment of a month and a half. On appeal the Sessions Judge, Amritsar, reduced the sentence to the term already undergone and remitted the fine.

His Lordship observed that it was no use proceeding with this matter as the accused had already undergone the sentence. Mr. Harbans Singh Gujral, counsel for the accused, submitted that the conviction of his client still stood and that the petitioner wanted to vindicate his position and have it determined whether all sufferings that he and about 10,000 Sikhs had undergone in the Akali morcha were due to the fault of the petitioner or that of the authorities. Counsel maintained that if the District Magistrate's order was held to be bad even his client would be entitled to sue the Punjab Government for damages.

His Lordship dismissed the petition and observed that politicians did not mind such convictions. His Lordship added that the points which counsel wanted to urge would be gone into in some other cases where the accused was actually undergoing imprisonment. His Lordship remarked that the petitioner could bring a suit if he liked and all points could be gone into in that suit.

RECOVERY OF INCOME-TAX

Sec. 46 (2) of Income-Tax Act Challenged

SUPREME COURT UPHOLDS THE SECTION

The Constitution Bench of the Supreme Court on 14th October held that sec. 46 (2) of the Indian Income-Tax Act, which invests a collector, under a certificate by an income-tax officer, with the powers of civil court for the purpose of the recovery of the income-tax, was a valid piece of legislation.

The validity of the section was challenged in a writ petition filed on behalf of Mr. Govindji Deoji Halal, who was arrested and ordered to be sent to a civil jail on a warrant of arrest issued by the Collector of Bombay under the Bombay City Land Revenue Act, 1876, for the recovery of the income-tax amount assessed on him. Mr. Halal having failed to pay the assessed amount of tax, the income-tax officer issued to the Additional Collector of Bombay a recovery certificate under sec. 46 (2) of the Income-Tax Act, who thereupon attached the tenancy rights in the premises by a warrant of attachment and sold the property. The sale proceeds were, however, not sufficient to satisfy the assessed tax. The Collector, therefore, on 7th June 1955 issued a notice under sec. 13 of the Bombay City Land Revenue Act, to show cause why he, the assessee, should not be apprehended and confined to civil jail in satisfaction of the certified demand of the income-tax. The contentions put forward on behalf of the assessee not being considered satisfactory, he was arrested on 1st July.

Under sec. 46 (2) of the Income-Tax Act, an income-tax officer can forward to a collector a certificate specifying the amount of arrears due from an assessee, and the collector thereafter proceeds to recover the arrears as if they were arrears of land revenue.

The main contention raised in the petition was that sec. 46 (2) of the Income-Tax Act authorized the collectors

in different States to adopt different coercive processes for recovery of income-tax and this amounted to a violation of the equal protection clause of the Constitution. Income-tax being a subject with respect to which the Union alone could make a law and the recovery of it being a Union responsibility, the machinery for the recovery of income-tax should be framed, it was argued, on an uniform all-India basis. But the machinery in fact differed from State to State so that defaulters were treated differently in different States. Thus, sec. 46 (2) which sanctioned such discrimination was clearly violative of Art. 14 of the Constitution and thus void.

The procedure for the recovery of arrears of land revenue, which a collector can adopt for the recovery of arrears of income-tax, and especially the penal provisions, vary from State to State and in some cases, within a State itself.

Thus, the Collector of Bombay, in the City of Bombay, has to proceed under sec. 13 of the Bombay City Land Revenue Act under which he may order the defaulter to be detained for a period longer than six months, whereas the defaulter, in other parts of Bombay State, has to be prosecuted under sec. 157 of the Bombay Land Revenue Code and cannot be detained for more than the period limited by the Code of Civil Procedure. Under the Madras State wilful default or fraudulent conduct is required for arrest and detention, and even so no woman can be imprisoned, and in West Bengal the period of imprisonment cannot exceed six months. The Punjab enactment provides that the period of detention cannot exceed one month, whereas in Uttar Pradesh the period is limited to 15 days and certain persons, such as taluqdars and women, are altogether exempted from imprisonment. In Assam there can be no imprisonment at all.

The judgment, delivered by the Acting Chief Justice, Mr. S. R. Das, held that the discrimination complained of was not unconstitutional for the simple reason that the impugned law was based on a territorial classification having a reasonable nexus of correlation between that basis of classification and the object sought to be achieved by the Act. His Lordship said :

In the present case, classification has been made Statewise and it is clear that, in the matter of payment of public demands of the State, the people of different States are not similarly situated and their own States have imposed on them such coercive processes as the circumstances and needs of each State require. The law impugned before us has only adopted, for its own purpose, the same coercive procedure as is devised by the States for their own purposes which are closely akin or similar to the purpose of the Union.

To deny this power to the Union on the constitutional grounds would lead us to hold that no new offence created by law can be made triable according

to the procedure laid down in the Code of Criminal Procedure, for the Code sanctions different modes of trials in different areas.

If in the matter of recovery of arrears of land revenue, defaulters could not complain of a denial of equal protection of the laws on grounds of differences in the modes of recovery prevailing in different States, the Acting Chief Justice asked, could it be said to be unreasonable for the Union to adopt, for the recovery of its public demands from defaulters in any State, the same mode of recovery prevailing in that State ?

His Lordship said that the people of each State were familiar with and used to the coercive processes which that State found it necessary to impose on its own people for the recovery of a public demand. Therefore, there could be no objection to their being subject to the same processes for the recovery of a public demand of the Union.

The judgment also held that sec. 13 of the Bombay City Land Revenue Act, as it now stood, could not be assailed as repugnant to Art. 14 of the Constitution.

Mr. Justice N. Chandrasekhara Aiyar, in a separate but concurring judgment, said that he had to agree with the main decision "rather reluctantly." He said :

We must be in a position to postulate some reasonable basis for the differentiation and we cannot get away from this necessity by vague references to the wisdom of the legislature or by indulging in pure speculation as to what might have been at the back of its mind. Speaking broadly, for the enforcement of the levy of a Central tax like the income-tax, there should be uniformity of procedure and identity of consequences from non-payment. The machinery for recovery might be different between the several States but the defaulting assesses must be put on the same footing as regards the penalties.

Are we to assume that people in Madras are more amenable and generally ready and willing to pay as compared with those in Bombay who are a tenacious lot and must be subjected to a longer process of detentive coercion ? Are the taluqdars in U. P. exempt from arrest because of possible political repercussions if such influential persons are subjected to such treatment ?

He, however, agreed that the law as it now stood could be supported on the grounds mentioned in main judgment.

The Court dismissed the petition.

NATIONALIZATION OF ROAD TRANSPORT

Motor Vehicles Act of C. P.

VALIDITY OF A LAW PREVIOUSLY RENDERED VOID

A point of constitutional law that was not mooted when the Supreme Court in *Shagir Ahmed v. the State of U. P.* (see. p. iii : 175 of the BULLETIN) issued a writ of

mandamus restraining the U. P. Government from enforcing the provisions of the State's Road Transport Act was decided by the Court on 29th September while disposing of the writ petitions of Messrs. Bhikaji Narayan Dhakras and four other stage carriage operators of Madhya Pradesh challenging the validity of the C. P. and Berar Motor Vehicles (Amendment) Act 1947 which, like the U. P. Act, permits the State Government to take over the entire transport business.

The petitioners carrying on business as stage coach operators for a considerable number of years found themselves out of business on account of the policy of nationalization of the road transport business adopted by the State Government by the 1947 Act.

Under this Act the Government is empowered not only to regulate or control the fares and freights on stage coaches but also to take up the entire motor transport business in the province and run it in competition with and even to the exclusion of all motor transport operators. The notification declaring the intention of the State to take over the bus routes to the exclusion of all other transport operators was published on 4th February last. At the time the notification was issued, such a State monopoly in road transport was constitutional by virtue of the First Amendment of the Constitution made in 1951 which, by expressly adding in cl. (6) the provision that "nothing in Art. 19 (1) (g) [relating to the carrying on of any occupation, trade or business] shall affect the operation of any existing law in so far as it relates to . . . the carrying on by the State . . . of any trade, business, industry or service to the exclusion, complete or partial, of citizens or otherwise." In Shagir Ahmed's case it was conceded that the validity of the U. P. Act, which in this respect was similar to the impugned C. P. and Berar Act, was not to be decided by applying the provisions of the amended cl. (6) of Art. 19. And the Supreme Court in that case held that the legislation in question violated the fundamental right of the appellants under Art. 19 (1) (g) and was not protected by cl. (6) of the Article as it stood at the time of the enactment and was thus void under Art. 13. The question that was raised in the instant case was what effect the amended cl. (6) of Art. 19, which was not made retrospective in operation, had on the C. P. and Berar Act of 1947.

The contention of the respondents was that although the Act, on the authority of Shagir Ahmed's case, became on and from the 26th January 1950 (the commencement of the Constitution) void, as against the citizens to the extent of its inconsistency with the provisions of Art. 19 (1) (g), nevertheless, after the 16th June 1951 when cl. (6) was amended by the Constitution Amendment Act, the 1947 Act ceased to be inconsistent with the fundamental right guaranteed by Art. 19 (1) (g) read with the amended cl. (6) of that Article, because that clause, as it now stands, permits the creation by law of State monopoly in respect, inter alia, of motor transport business and it be-

came operative again even as against the citizens. The petitioners, on the other hand, contended that the law having become void for unconstitutionality was dead and could not be vitalised by a subsequent amendment of the Constitution removing the constitutional objection, unless it was re-enacted, and reference was made to Prof. Cooley's work on Constitutional Limitations, which was cited by the Supreme Court itself in Shagir Ahmed's case as saying: "A statute void for constitutionality is dead and cannot be vitalised by a subsequent amendment of the Constitution removing the constitutional objection but must be re-enacted."

The specific question of the effect of the amended cl. (6) of Art. 19 on laws passed before the amendment was made was not raised in Shagir Ahmed's case and the Supreme Court therefore considered it in relation to the instant case. Construing Art. 13 in its application to the statute before the Court, Mr. Justice S. R. Das, Acting Chief Justice, said for a unanimous Court:

Art. 13 (1) had the effect of nullifying or rendering the existing law which had become inconsistent with Art. 19 (1) (g), read with cl. (6) as it then stood ineffectual, nugatory and devoid of any legal force or binding effect only with respect to the exercise of the fundamental right on and after the date of the commencement of the Constitution. Therefore, between the 26th January 1950 and the 16th June 1951 the impugned Act could not stand in the way of the exercise of the fundamental right of a citizen under Art. 19 (1) (g). The true position is that the impugned law became, as it were, eclipsed, for the time being, by the fundamental right. The effect of the Constitution (First Amendment) Act, 1951 was to remove the shadow and to make the impugned Act free from all blemish or infirmity.

Turning to views of American jurists like Cooley which the Court had quoted in Shagir Ahmed's case, His Lordship said:

The American authorities refer only to post-Constitution laws which were inconsistent with the provisions of the Constitution. Such laws never came to life but were still-born as it were. The American authorities, therefore, cannot fully apply to pre-Constitution laws which were perfectly valid before the Constitution. But apart from this distinction between pre-Constitution and post-Constitution laws, on which however we need not rest our decision, it must be held that these American authorities can have no application to our Constitution.

Coming back to the effect of Art. 19 (6) as amended on laws which, passed before the date of the 1951 amendment, were void, His Lordship said:

All laws, existing or future, which are inconsistent with the provisions of Part III of our Constitution are, by the express provision of Art. 13, rendered void

to the extent of such inconsistency. Such laws were not dead for all purposes. They existed for the purposes of pre-Constitution rights and liabilities and they remained operative, even after the Constitution, as against non-citizens. It is only as against the citizens that they remained in a dormant or moribund condition. In our judgment, after the amendment of cl. (6) of Art. 19 on the 18th June 1951, the impugned Act ceased to be unconstitutional and became revived and enforceable against citizens as well as against non-citizens. It is true that as the amended cl. (6) was not made retrospective the impugned Act could have no operation as against citizens, between the 26th January 1950 and the 18th June 1951 and no rights and obligations could be founded on the provisions of the impugned Act during the said period, whereas the amended cl. (2) [which relates to the savings in regard to freedom of expression] by reason of its being expressly made retrospective had effect even during that period. But after the amendment of cl. (6) the impugned Act immediately became fully operative even as against the citizens. The notification declaring the intention of the State to take over the bus routes to the exclusion of all other motor transport operators was published on the 4th February 1955 when it was perfectly constitutional for the State to do so. In our judgment the contentions put forward by the respondents as to the effect of the Constitution (First Amendment) Act 1951 are well-founded and the objections urged against them by the petitioners are untenable and must be negatived.

The petitioners then urged another objection to the constitutionality of the Act, viz., that they were deprived of their property, namely, the right to ply motor vehicles for gain, which is an interest in a commercial undertaking, and therefore the impugned Act was in conflict with the provisions of Art. 31 of the Constitution; and that as in Shagir Ahmed's case the Court held the U. P. Act to be inconsistent with Art. 31, so it should also hold the impugned Act to be inconsistent with that Article and thus void. His Lordship pointed to the Constitution (Fourth Amendment) Act, which provides that "where a law does not provide for the transfer of ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property." But the petitioners further contended, as they did with regard to the First Amendment of the Constitution, that the Fourth Amendment, which came into force on the 27th April 1955 and which also was not retrospective, could have no application to the present case. His Lordship said on this point :

It is quite true that the impugned Act became inconsistent with Art. 31 as soon as the Constitution came into force on the 26th January 1950 and continued to be so inconsistent right up to the 27th April 1955 and, therefore, under Art. 13 (1) became void "to the extent of such inconsistency." Nevertheless, that inconsistency was removed on and from the 27th April 1955 by the Constitution (Fourth Amendment) Act, 1955. The present writ petitions were filed on the 27th May 1955, exactly a month after the Constitution (Fourth Amendment) Act 1955 came into force, and, on a parity of reasoning hereinbefore mentioned, the petitioners cannot be permitted to challenge the constitutionality of the impugned Act on and from the 27th April 1955 and this objection also cannot prevail.

In the result the Court dismissed the petitions.

MADHAYA PRADESH SALES TAX ACT

Supreme Court Allows Mandamus Petition

GOVERNMENT RESTRAINED FROM IMPOSING TAX

The Supreme Court on 12th October, granting a writ petition of Messrs. Mohanlal Hargovind Das, bidi merchants from Jabalpur, restrained the Madhya Pradesh Government from enforcing the Central Provinces and Berar Sales Tax Act, 1947, against them.

The petitioners import tobacco from the State of Bombay in large quantities, roll it into bidis and export the bidis to dealers in other States who then sell them to other dealers and consumers in those States. The sales tax authorities in the State of Madhya Pradesh required the firm under threat of criminal prosecution to file a statement of return of the total tobacco purchased by it out of Madhya Pradesh with a view to assess and levy purchase tax on it. The firm filed two returns under protest and then made this petition for a writ of mandamus on the ground that imposition of tax in the circumstances was in contravention of Art. 286 (i) (a), inasmuch as the tobacco purchased by it was for the purpose of making bidis exported outside Madhya Pradesh and never intended for use as raw material for the making of bidis for the purpose of consumption in Madhya Pradesh.

The Court held that as a result of the import of tobacco by the petitioners from Bombay merchants there was of necessity the movement of goods across the border. The tobacco supplied to the petitioners moved from the State of Bombay to the State of Madhya Pradesh and "these transactions were, therefore, in the course of inter-State trade or commerce." The Court rejected the contention put forward on behalf of the Madhya Pradesh State that since the Bombay State firms which supplied tobacco to the petitioners were themselves registered as dealers under the Madhya Pradesh State Act the transactions between two dealer

registered in the State constituted purely internal sales of goods and were thus not subject to the ban imposed under Art. 286 (2). The Court observed that under the Act whoever comes within the definition of dealer given in sec. 2(c) as carrying on the business of supplying goods in Madhya Pradesh has, under pain of penalty, to register himself as a dealer. Merely because he got himself so registered to avoid the penalty which could otherwise be visited upon him by the State it cannot be said that whatever transactions he entered into with other dealers in the State of Madhya Pradesh were internal sales or purchases irrespective of the fact that the transactions involved movement of goods across the border and were clearly transactions of sale of goods in the course of inter-State trade or commerce. "What one has to look at," said the Court, "is the real nature of the transactions and not the outside form." Their Lordships remarked that they were convinced that the transactions sought to be taxed by the Madhya Pradesh authorities were transactions in the course of inter-State trade or commerce. Therefore, not only were the Bombay State firms which supplied tobacco to the petitioners exempt from the liability to pay tax on these transactions but the petitioners themselves.

It was contended on behalf of the State Government that the petitioners, when making purchases of tobacco from firms in the State of Bombay, had made declarations in the form required by Rule 26 (2) to the effect that the tobacco was purchased for use as raw material for making bidis for sale by actual delivery in Madhya Pradesh for the purpose of consumption in that State, and therefore, under sec. 4 (6) of the Act, the petitioners made themselves liable, by exporting bidis to other States and thus utilising the tobacco for a different purpose, to pay the purchase tax on the purchase price of that quantity of tobacco which was used contrary to the declaration. The Court rejected this contention too. Their Lordships said:

Whatever steps the State of Madhya Pradesh may be able to take in regard to non-compliance with the terms of the declarations by the petitioners, we are clearly of opinion that the State of Madhya Pradesh is restrained from imposing any tax on the transactions of purchase or sale which take place in the course of inter-State trade or commerce and no question of liability of the petitioners by virtue of such declarations survives because even initially Shri Shah Chhaganlal Ugarchand, Nipani, and Shri Maniklal Chunanlal, Baroda (suppliers of tobacco to the petitioners), were not liable to pay any tax on these transactions nor could any such liability for tax be transferred to the petitioners by virtue of such declarations. If, therefore, there was no basis for any such liability, the declarations by themselves cannot create any new liability and the petitioners cannot be held liable to tax even by the operation of sec. 4 (6) of the Act, the very basis of the liability sought to be imposed therein having disappeared.

In the result the Madhya Pradesh State Government was restrained from enforcing the provisions of the Sales Tax Act against the petitioners and from imposing a tax in respect of the transactions in question.

SUSPENSION OF MUNICIPALITY

Order Quashed by High Court

Mr. Justice C. P. Bhutt of the Nagpur High Court on 18th October quashed an order of the Madhya Pradesh State Government for suspension of the Municipality of Bhatapara and appointing an executive officer to administer its affairs. The Court's order was passed on a mandamus petition filed by Mr. Sheo Lal Mehta, the elected president of the Municipality against the Government's order.

The elections to the Bhatapara Municipality were held in May 1952. In January 1955 the Government framed five charges against the administration and called upon the Municipality to give a reply. This reply was given and, holding it to be unsatisfactory, the Government appointed an Executive Officer on 5th May last, and directed him to perform all the duties of the President, the Vice-President, the Secretary and the Committee for a period of 18 months.

The charges against the Committee were that it had allowed the arrears to mount up; that it did not take steps to dispose of audit objections; that it had failed to appoint an efficient Secretary; and that it had bought a tractor at a higher rate when a lower tender was submitted.

In its explanation which was prepared by the President, Mr. Mehta, the Committee pointed out that the tahasildar to whom a partial list of defaulters had been sent had not taken any action on it. Also a large amount of the arrears was a legacy from the old Committee. Most of the audit objections were about the regime of the preceding body.

Regarding the appointment of a Secretary, the reply of Mr. Mehta said that here also the Government had stood in the way by not sanctioning a better pay scale and had not passed any orders on an earlier resolution of the Committee dismissing the then Secretary on grounds of incompetence.

Regarding the purchase of the tractor, the reply pointed out that the difference between the two tenders was only Rs. 1509, the two offers being of Rs. 20,937 and of Rs. 19,428 respectively. The higher-priced tractor was of more horse power and its tanker had a bigger capacity, so it was purchased.

In his judgment Mr. Justice Bhutt said:

In the instant case, the explanation of the Committee showed that it was not itself guilty of any acts of commission or omission and was trying its best to clear the mess left by the preceding Committee. On the other matters also the explanation appears to be satisfactory.

The most serious charge was No. 3 (purchase of a tractor at a higher rate). But on the explanation no

blemish seems to attach to the Committee. The price of the tractor purchased by the Committee was only a little over the lowest tender for a tractor with a considerably lower horse power and capacity. Clearly this does not indicate any favoritism, nor does it show a bad bargain.

In these circumstances, it was the duty of the Government to devote serious consideration to the matter and to adduce reasons which prima facie justified its action in superseding the Committee. The Government's final order only reiterated the charges without even an attempt at elucidation of the grounds on which they were based. This was not a due compliance of the statutory provisions.

NOTES

Secrecy of the Jury Room

Threatened by Installation of Recording Devices

The University of Chicago planned, after a series of articles had appeared in a newspaper in a town in Kansas State relating alleged instances of how lawyers had deceived juries (and thus promoted injustices), to make a survey of the manner in which juries arrive at their verdicts: whether solid evidence and reasoned argument influence the opinions of the jurors or whether they are swayed by court-room pyrotechnics. On the suggestion of a lawyer, the University thought that the best way to conduct such a sociological inquiry of the extent to which attorneys' arguments and judges' charges enable juries to arrive at sound verdicts was to plant hidden microphones in some jury rooms and taperecord the deliberations, and on the basis of information so received to devise means, if necessary, for effecting an improvement in the jury system. Accordingly, last year the University employed a team of researchers to record, by installing recording devices unknown to the jurors, the deliberations of juries in five civil cases in a circuit court, and this was done, curiously enough, with the permission of the judge and with the approval of attorneys for both sides, as an experiment in sociology capable of yielding valuable results about the functioning of the jury system.

These facts came out in the hearings of the Senate Internal Security sub-committee and have provoked a violent outburst against this incursion into the privacy of the jury room. The Chicago University representative defended this "jury bugging" because it was carried out with the consent of the judge and all the attorneys engaged in the cases and because they thought that no harm could possibly come to the litigants. But other witnesses were indignant. The Attorney General denounced the project in severe terms as an invasion of jury privacy. And, after the hearings, the chairman of the sub-committee, who is a Democrat, and another Senator, a Republican, announced their intention to bring down legislation providing severe

punishment for any invasion of the secrecy of the jury room "for the purpose of eaves-dropping or recording a jury's deliberation."

It is true that nowhere in the U. S. A. Constitution is it set down in so many words that the privacy of the jury room is an inviolate part of the Anglo-American system of justice. But the guarantee of total privacy has been taken as implicit. Indeed in some states in the U. S. the present law recognizes mere communication with a jury even during a deliberation as presumption of improper influencing of a jury verdict. As the Assistant Attorney General, who in an address to the American Bar Association, scathingly condemned the practice followed by the Chicago University, said, in the courts, when the jury is about to retire in charge of the bailiff, the officer is sworn or instructed by the judge to "protect the privacy of their [the jurors'] deliberations on this case and . . . promptly report to the court any deviations from their complete privacy until they have reached a verdict."

This oath or instruction "is merely declaratory of what lawyers and judges under the English and American systems of law have taken for granted for hundreds of years." He further said that in a criminal case in Washington the defendant employed fourteen detectives to keep surveillance on the jurors at all times when they were at large, fearing an attempt would be made to tamper with them. It was conceded that the detectives never approached or communicated with a juror in any way. The Supreme Court held that the mere act of shadowing the jurors violated their right of total privacy, individually and collectively, and also was a contempt of court. "If that be true, how much more true is it of this process of recording the most intimate comments of the jury about the conduct of the case, about the witnesses, probably about the lawyers, certainly about the litigants, and possibly even about the judge?" As a test of this principle, it makes no difference whether the secret recording of jury deliberations was in a criminal or civil case.

The American Civil Liberties Union in a statement issued on the subject has protested strongly against the experiment initiated under the auspices of the University of Chicago. While appreciating the object of the lawyers and social scientists who have sponsored the experiment, viz., "to bring greater understanding to the functioning of our legal institutions," the statement observes that the practice now followed might well be "the beginning of a public policy limiting the secrecy of the jury room and thus derogating from the basic fundamental right of a jury trial." It says:

If the techniques used in the conduct of their study might adversely affect the proper functioning of our judicial system, particularly in those aspects affecting personal rights, they cannot be condoned, no matter what ultimate value resulting findings might have in the improvement of our system.

The right to jury trial is a right immemorial to free men. Upon it rests much of our Anglo-American traditions. In the independence of our judiciary lies the hope always for ultimate justice. And in turn, the heart of this all-important independence is the jury system. The right to a jury is an essential guarantee insuring this independence.

It is essential that we keep completely private what transpires in a jury room during the deliberative stage.

Any act which tends to establish even a climate injurious to the preservation of a particular right guaranteed by our Constitution must be challenged.

Dismissal for Refusal to Answer Questions CONCERNING MEMBERSHIP OF THE COMMUNIST PARTY

Dr. Henry C. Steinmetz, Professor of Psychology at San Deigo State College in Southern California, was dismissed in 1954 for violation of what is commonly known as the Luckel Act, which requires every public employee, when called upon to do so, to answer under oath questions pertaining to "knowing membership" of any organization advocating violent overthrow. Dr. Steinmetz answered one of the three questions put to him, but did not answer the other two, and for this he lost the job which he had held since 1930. He then filed a petition in the supreme court of the state for a writ compelling his reinstatement in the teaching post from which he had been discharged.

The supreme court dismissed the petition by a 6 to 1 decision. The majority judgment pointed out that the dismissal of Dr. Steinmetz was upheld "not because of membership in a proscribed organization but because of his refusal to answer questions as to whether or not he held membership in (specifically) the Communist Party." The dissenting judge in his judgment has brought out the fact that Dr. Steinmetz answered the question:

Have you at any time since 10th September 1948 been a member of the Communist Party when *to your knowledge* it advocated the forceful or violent overthrow of the United States?

He answered this question with a "No," and the judge says, agreeing with the petitioner, that the answer constituted also an answer to the other unanswered questions, in one of which the question the petitioner did answer was repeated without reference to his knowledge of the Communist Party activities.

The judge on this point of scilicet cited the U. S. Supreme Court's unanimous decision in *Wieman v. Updegraff* (15th December 1952), which held invalid an

Oklahoma statute requiring public employees to take an oath regarding their membership in certain proscribed organizations. The Court's opinion in this case was that the due process clause of the Fourteenth Amendment is violated by a statute which, in barring disloyal individuals from state employment by requiring employees to swear that they have not been members of certain organizations, does not make the employees' knowledge of the nature and purpose of such organizations at the time of membership a factor. The Court said:

Under the Oklahoma Act, the fact of association alone determines disloyalty and disqualification (for employment); it matters not whether association existed innocently or knowingly... Indiscriminate classification of innocent with knowing activity must fall as an assertion of arbitrary power. The oath offends due process.

But the dissenting judge in the instant case took wider ground. He maintained that the Luckel Act "is unconstitutional because it denies to public employees the fundamental rights and liberties guaranteed to them by the Fifth Amendment to the Constitution of the United States and Art. I. 13 of the California Constitution... The majority opinion disregards the trespass into constitutionally protected territory beyond the limits of basic constitutional rights of the citizenry."

Church-State Separation

In our last issue, at p. iv: 14, we referred to the ruling by the Attorney General of Illinois as to what separation between Church and State to be deduced from the freedom of religion and establishment of religion clauses of the First Amendment to the Federal Constitution implies. Now California's Attorney General has given a similar ruling on a corresponding section of the state Constitution which provides that "the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be guaranteed in the state." He held that the Bible might be used for reference, literary, historical or other purposes but might not be read in public school classes for religious purposes. Reading the sacred writings of the Christian religion in public school class rooms would constitute, he said, a governmental preference in favour of Christianity, thus denying to other religions the absolute impartiality commanded by the Constitution. Bible reading would also violate the Fourteenth Amendment to the Federal Constitution, he maintained, because "the class rooms would be used for religious instruction and the force of the public school would be used to promote that instruction." The opinion also barred religious prayers from the school curriculum, because recitation of such prayers in the schools would be a constant reminder to atheist or agnostic children of "the conflict between home and school, and might well be a disruptive element which would weaken the moral influence of parent and teacher alike." The Attorney General also ruled that "voluntary student religious associations may hold their meetings on a school campus, provided there is no endorsement of such associations by the school authorities, and provided there is no interference with the regular educational programme of the school."