Regd. No. B. 5681

Editorial Committee:
Prof. P. M. LIMAYE,
S. G. VAZE,
Member and Secretary respectively of the All-India Civil Liberties Council

The Indian Civil Liberties Bulletin

[A MONTHLY REVIEW]

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

Annual Subscription : Rs. 5
Per issue : annas 8
including postage

No. 78

March 1956

CANADIAN LAW ABOUT OBSCENITY AND "CRIME COMICS" OR HORROR COMICS

In the Criminal Code of Canada revised in 1954 there is a section (sec. 150) which deals with "offences tending to corrupt morals." The section makes it an offence to publish or distribute obscene matter in general and a horror comic (called here a "crime comic") in particular. This obscenity law (and it applies to crime comics as well) is a substantial improvement in some respects on the Obscene Publications Act 1857 of Britain as interpreted in R. *v.* Hicklin by Sir Alexander Cockburn, who afterwards became the Lord Chief Justice of England. We wish to point out here what the improvement consists in, but we would like first to say about horror comics that in Canada too, as in Britain, it is only pictorial publications that are penalized, for the definition of a "crime comic" adopted in sub-sec. 7, sec. 150, of the Canadian Criminal Code says:

> In this section, "crime comic" means a magazine, periodical or book that exclusively or substantially comprises matter depicting pictorially (a) the commission of crimes, real or fictitious, or (b) events connected with the commission of crimes, real or fictitious, whether occurring before or after the commission of the crime.

The improvement effected by the Canadian law consists in two things: (1) it recognizes that a publication which may be "obscene" if judged by the wide-ranging definition of the term as given in the Hicklin judgment may still have some educational value and may for that reason be for the public good; a publication falling into this category is not treated under the law as obscene; and (2) whether any particular publication is in this class is to be determined on the basis of evidence, the calling of which is specially provided for in the Code. This will become clear from the following sub-sections of sec. 150:

> (3) No person shall be convicted of an offence under this section if he establishes that the public good was served by the acts that are alleged to constitute the offence and that the acts alleged did not extend beyond what served the public good.
>
> (4) For the purposes of this section it is a question of law whether an act served the public good, and whether there is evidence that the act alleged went beyond what served the public good, but it is a question of fact whether the acts did or did not extend beyond what served the public good.

The latter sub-section makes a severance of law and fact, leaving the determination of law, as is but proper, to the judge and the determination of facts to the jury. The important point is that because of these provisions an objective judgment can be secured as to whether any impugned publication has a tendency to corrupt morals, whereas under the British law the judgment is almost purely subjective. These provisions, it should be noted, apply to crime comics as well as to other obscene publications.

"For the Public Good": Stephen's Qualification

The Canadian law of obscenity conforms very closely to Sir Fitz-James Stephen's view as expounded by him in the "Digest of English Criminal Law," first published in 1877, not long after the Hicklin judgment. In this book Sir Fitz-James "was setting out the law," as stated in a pamphlet called "Obscene Publications," which is a collection of articles that appeared in the "Justice of the Peace and Local Government Review" (we owe most of what we say here to this pamphlet), "in a series of short paragraphs, stating positively that which could be drawn explicitly from statutes and cases, and submitting his own views on further points." Sir Fitz-James says:

> A person is justified in exhibiting disgusting objects, in publishing obscene books, . . . drawings, or other representations, if their exhibition or publication is for the public good, as being necessary to religion or science, literature or art, or other objects of general interest, but the justification ceases if the publication is made in such a manner, to such an extent, or under such circumstances, as to exceed what the public good requires in regard to the particular matter published.

The proposition that it is a good defence to show that publication of a book or picture was for the public benefit was indeed mentioned by the recorder of London in the quarter sessions in R. *v.* de Montalk, 23 Cr. App. Rep. 182

(1932). In summing up the case to the jury, the recorder said:

> Although the matter was obscene ... it would be a defence if the thing was done for the public good, because, though I am not sure there has been any case upon it, I accept a submission made by one of the most learned of our Judges, Mr. Justice, Stephen: (A quotation from the "Digest" follows.) Therefore, if you are of opinion that this can be for the public good as an advancement of literature, in my opinion it would be a defence.

It is another matter that in fact the jury found the defendant guilty, and the conviction was confirmed by the Court of Criminal Appeal, without dissenting from the recorder's statement of law.

The "advancement of literature" here spoken of may consist of only acquainting readers with the state of morals in previous periods of history by means of stories which may appear indecent. In a case in 1953 the Books Cash Chemists Ltd. were charged with keeping in their Library two novels alleged to be obscene, one of which was "The Philanderer." The High Bailiff of the Isle of Man expressed the opinion that the books were "not more obscene than many of the well-known books which are written to-day by distinguished authors and accepted practically universally," and in the course of his judgment he quoted Mr. Justice Stephen as having said that the publishing of Aristophanes, Juvenal and many other writers, Greek, Latin, French and English, could not be regarded as a crime, despite their containing obscenity for which it is impossible to offer any excuse," because it is for the public good "that we may be able to form as complete an estimate as possible of their characters and the times in which they lived." Nevertheless, applying the Hicklin test, he ruled that, whether or not the impugned novels had literary merit, there were certain passages tending to deprave and corrupt those whose minds are open to such immoral influence, and reluctantly (as he said) found it his duty to convict, and to impose a nominal fine.

Stephen's Doctrine Applied

In the above two cases the authority of Sir Fitz-James Stephen was directly invoked, though not successfully; but many other cases were decided on the basis of his reasoning in opposition to that of the Hicklin judgment, and the result was successful. As early as 1900, in R. *v.* Thomson, 54 J. P. 457, "The Haptameron" was the subject of a common law indictment, in which the defence counsel described the work as a classic in its original language and also a classic in English, and he said it was not a book against which proceedings ought to have been instituted. The Common Sergeant in his charge to the jury said:

> There are in writings of respectable people sometimes passages of an objectionable nature, which no doubt it would be wrong to destroy, because to students and the people who have to deal with questions of manners and so on such passages are valuable; it is right that students should know the manners of the people they are studying, however gross.

On this summing up the defendant was acquitted. And about this case it is said in "Obscene Publications":

> Since R. *v.* Thomson, more than 50 years ago, the authorities have almost never sought to suppress works that had already become "classical," in English or some other language, and have seldom attacked even modern works that would in a broad sense be regarded as literature, or as a contribution to the sum of knowledge (the exception being the Swidon police attack in 1954 upon Boccaccio).

We should next mention the direction to the Old Bailey jury of Mr. Justice Stable in R. *v.* Warburg, 2 All E. R. 683 (1954), a direction which the author of the above-mentioned pamphlet says "seems likely to be classical." This case was an indictment of the publishers of "The Philandrer" which, as stated above, the High Bailiff of the Isle of Man had reluctantly held in 1953 to be obscene in the Isle. It had already been admitted from the bench that works containing obscene matters may be properly made available in England, since otherwise people should not know how earlier generations of mankind lived and thought. Mr. Justice Stable applied this conception to the present, as he was dealing with a contemporary book. He said, "The book had to be judged on today's standards," and remarked that the jury's verdict would be—

> of importance to authors who created imaginary worlds for our edification and escape, ... of vast importance to the community, ... of great importance in relation to the future of the novel in the civilized world and to the future generations who would only derive the knowlege of how we lived, thought and acted from the contemporary literature of the age in which they were interested. Your verdict will have great bearing on where the line is drawn between liberty and licence. We are not sitting here as judges of taste. We are not here to say whether we think it would be a good thing if books like that were never written. Are we going to say in England that our contemporary litearature is to be measured by what is suitable for a 14-year-old schoolgirl to read?

The book before the jury purported (His Lordship said) to be a picture of contemporary life in New York. The book's theme was the story of a young man obsessed with desire for women. It was not presented as an admirable thing or as a thing to be copied, It was not presented as a thing which brought him happiness or permanent satisfaction, and throughout was heard the note of impending disaster. The literature of the world (he continued) from the earliest days when people could write, so far as we had it today, the sum-total of thought of the human mind—literature sacred and literature profane. Were we to

be reduced to the sort of books that were read to children in the nursery ? The answer to that was "Of course not." A mass of great literature was wholly unsuitable for reading by the adolescent, but that did not mean the publishers were guilty of a criminal offence by making those works available to the general public. And Mr. Justice Stable went on :

> At a time like to-day when ideas, creeds and processes of thought seem to some extent to be in the melting pot and people are bewildered to know in what direction humanity is leading, in what column we propose to march, if we are to understand how life is lived in the United States, for example, in France, Germany, or elsewhere, the contemporary novel of these nations may afford us some guide—it may be the only guide to many.

The publishers were triumphantly acquitted.

Reaction against the Hicklin Judgment

At this point it would be well to take a glance at the Hicklin judgment of 1867 (and this is regarded as controlling in India in the matter of obscene publications and would be regarded as controlling in the matter of horror comics), which held a book to be obscene which was not pornographic in intention or execution, which was not produced for profit, and which was designed to be read by educated adults. The intention of the writer was irrelevant under the Obscene Publications Act (though at common law no one can be held to be guilty of a crime unless not only he has committed some guilty act but also his mind and intention are guilty); whether the work has literary merit or whether it will serve the public good is also irrelevant. If a publication tends to deprave and corrupt those "whose minds are open to such immoral influences," it is to be destroyed ; nothing is safe which, as was strikingly said by the recorder in R. *v.* Hutchinson (1954) "might affect the mind of a callow youth or a girl just budding into womanhood," thus forbidding, in Judge Learned Hand's words employed in United States *v.* Kennerley (1913), "all that which might corrupt the most corruptible" and reducing "our treatment of sex to the standard of a child's library in the interest of a salacious few." As "Obscene Publications" has well put it :

> Upon these premises and such a precedent, no book which could corrupt any person, however susceptible, would ever be safe by reason of its being a work of scholarship produced for instructed and strong-minded persons, or a work of edification, or a work designed to enlighten the public on some serious topic; least of all by reason of its artistic quality, and certainly not when written for the amusement of the reader.

There are persons susceptible to corrupt influence in every society, and is it right that those who are not susceptible should be deprived of the opportunity of reading works which might increase their knowledge or stimulate their intellect ? The danger of *not* making available for public sale to any one books which are unsuitable for those most open to corrupt influences was pointed out in a letter in the "Times" of 27th October 1955 by Lord Russell, Sir Harold Nicholson, Sir Compton MacKenzie, Mr. J. B. Priestley, Mr. H. E. Bates, Mr. Somerset Maugham, and Sir Philip Gibb. They said :

> It is, of course, recognized by all decent authors that certain books of an entirely obscene and filthy kind should be condemned and destroyed.... It would be disastrous to English literature if authors had to write under the shadow of the Old Bailey if they failed to produce works suitable for the teen-ager, and if publishers were forced to reject books which, however serious in intent and however lit by genius, contained passages which might be blue-pencilled by a police sergeant or a common informer.

Calling of Expert Evidence

If the law as expounded by Mr. Justice Stephen is applied (as has been done in some cases) instead of the one as laid down by Chief Justice Cockburn and the other Justices who joined with him in the Hicklin case, many factors such as the intention of the writer, the probable "audience" of the book, its literary or artistic quality, its educational value, and generally the public benefit likely to accrue therefrom become relevant, as they should be but as they are not if the Hicklin judgment is followed. If these are relevant considerations, they are matters of fact on which it should be possible to call expert evidence. The final authority to determine whether these factors are present in the case of a particular publication to such a degree that the publication, though containing indecent passages, deserves not to be classed as obscene is of course the jury in the case of a common law indictment and the magistrates in the case of proceedings under the Obscene Publications Act of 1857. Nevertheless it is but right that the jury and the magistrates should be guided in arriving at their determination by persons who have made a deeper study of such matter or acquired a closer familiarity with the practical reactions of those who are sought to be protected by the obscenity law than the judge or the jury. But the trouble under the present law is that such evidence is held to be incompetent. In "The Well of Loneliness" case (1928) the defence were ready to produce some 40 witnesses, including magistrates and clergy, to state that the book was not obscene. But the Chief Magistrate refused to hear any evidence, saying that the question whether the book was obscene or not was to be determined by the court upon perusal of the book itself and was not a question upon which evidence was admissible. As in this case the Chief Magistrate held himself precluded from hearing the evidence of literary critics, so in the case of D. H. Lawrence's paintings exhibited at the Warren Gallery in 1929, Mr. Mead who tried the case refused to hear art

critics like Mr. Augustus John who was prepared to testify the artistic quality of the pictures. Mr. Mead said: "It is utterly immaterial whether they are works of art. It is a collateral question which I have not to decide. The most splendidly painted picture in the universe might be obscene."

Exclusion of professional evidence in obscenity cases on the literary or artistic quality of a publication or a picture or its capability of serving public good is held by competent critics to be wholly unjustifiable under the English law, for the 1857 Act provides not only that the articles kept for sale or exhibition should be such that "the publication of them would be a misdemeanour," but also that the misdemeanour should be one "proper to be prosecuted as such." It may be that, applying the Hicklin test, a publication may be held to be obscene as suggesting impure or libidinous thoughts and thus its publication may held to be a misdemeanour; but on the other essential ingredient of the offence, viz., that the misdemeanour is proper to be prosecuted, expert evidence ought to be admissible. It is by virtue of this so-called "let out" clause that established classics are pronounced to be out of the pale of the obscenity law in England. The writer of "Obscene Publications" advocated adoption of legislation to establish the right of the court to hear evidence on the question of whether the impugned publication was "proper to be prosecuted." He says: "It would, if enacted, go far to remove a major reproach to English law and would also have the merit of bringing theory [as stated by Sir Fitz-James Stephen] and practice into line, for modern books and pictures as well as for classical literature and art." The Canadian law has already done this, and the need for such reform is even more urgent in India than in England. For we in our country have no such let-out clause in our obscenity law, and inadmissibility of evidence would thus be all the more unjustifiable in obscenity cases in general and in horror comics cases in particular.

Southern States' Fight Against Racial Integration

Segregation in a University

In two Southern states of U. S. A.—Alabama and Louisiana—the whites' fight against racial integration has arrived at a crucial stage.

In Alabama, ever since 1952 a young Negro woman, Miss Autherine Lucy, has been seeking admission to the all-white university of that state. At first she was refused admission, but when she brought an action against the university in a federal district court Judge Grooms ruled that she had been refused admission solely on account of her race and colour, which was contrary to the equal protection clause of the Constitution and permanently enjoined the university from denying her "and others similarly situated the right to enrol in the University of Alabama and pursue courses of study thereat, solely on account of their race or colur." The Court of Appeals and later the Supreme Court reinstated the injunction in appeals by the university.

The latter was thus compelled to grant admission to Miss Lucy, but she had barely attended the classes for three days when a mob of a thousand demonstrators began pelting rocks and eggs at her car in order to prevent her from polluting the university by her presence. This mob violence led the university authorities to suspend Miss Lucy's admission to the classes for her own safety and for the safety of others attending classes. Miss Lucy felt that her suspension was a cunning stratagem adopted by the authorities to dany her admission; and brought a suit asking for her admission within 48 hours, charging that the trustees of the university had "intentionally permitted" the mob action in order to create an atmosphere of "riot and disorder and rebellion" as a "subterfuge" to keep her out. At the time of the suspension even many pro-segregation whites thought that the university should have given police protection to Miss Lucy instead of succumbing so easily to mob rule. The "New York Times" asked: "Is it 'respect for law and order' that is being shown, when the trustees of the university, instead of standing up to this threat, vote to suspend not the instigators of the outrage but the young Negro woman herself?" The court ordered the trustees to show cause why they should not be punished for disobeying its order to admit Miss Lucy. On 29th February Judge Grooms ordered that Miss Lucy be re-admitted to the university by 5th March, saying:

> There are some people who feel that this court should carve out a boundary here in Northern Alabama, mount the battlements and from the ramparts defy the Supreme Court of the United States. That this court will never do.

But within a few hours of the court's order the trustees, instead of ending Miss Lucy's temporary exclusion, resolved to expel her permanently from the university, on the ground that she had alleged that the university officials conspired to allow the situation resulting in the riot, so that she could be excluded from the classes. This charge, however, Miss Lucy had withdrawn in the court.

Segregation on Buses

While this happened in Tuscaloosa, the seat of the Alabama University, in the capital city of the state—Montgomery— far more serious trouble is brewing.

On 1st December last a Negro woman, Mrs. Rosa Parks, boarded a Montgomery bus. The Negro section of the bus in the rear was full, and therefore the driver permitted her and some other Negroes to occupy seats in the front section meant for the whites. But when later more white passengers arrived, the driver asked Mrs. Parks and three other Negroes to give up their seats to them and move to the rear. Mrs. Parks refused. Four days later she was

convicted of violating Alabama's bus segregation law and fined 14 dollars or 14 days in jail.

In protest against Mrs. Parks' arrest and conviction, Negro leaders that very evening organized a boycott of the buses. Next day 90 per cent. of Montgomery's Negroes went to their places of work on foot or in taxis. Sixty-five per cent. of the city's bus passengers before the boycott were Negroes. Since the boycott, buses plied the streets almost empty. So successful was the boycott that the bus lines had soon to raise fares and cut out all routes through the Negro section of the town.

In January a committee of Montgomery's white citizens began meeting with Negro leaders to try to settle the boycott. The Negroes demanded a "first-come-first-served" rule, simillar to that in effect in other Alabama cities including Mobile and Huntsville.

The Montgomery citizens' committee offered the Negroes a compromise under which half the buses could be filled on a first-come basis.

The offer might perhaps have been accepted but for events that happened in the meantime to exacerbate the feelings of the Negroes. Mrs. Parks' attorney, who appealed against her conviction, was declared by the draft board to have lost his right to be exempt from military service to which he was entitled as an assistant pestor. He lost his appeal from this order and Mrs. Parks lost her appeal from her conviction. This enraged Negro leaders so much that they rejected the whites' compromise offer on bus seating.

Passive Resistance Movement

The authorities retaliated by arresting Negro leaders charging them with violating a 1921 Alabama law that bars organized boycotts without a "just cause or legal excuse." One hundred Negroes were arrested on 23rd February including 24 Protestant ministers; the next day more were arrested and among them was Mrs. Parks soon after her coming out of the court house.

The Negro leaders then took another step. They gave up using even taxis to go to their places of work; they decided to walk the streets—to "walk with God." The decision was taken under the inspiration of a pastor of the Baptist Church who headed the negotiating committee that tried unsuccessfully to settle the boycott that was organized on 5th December. More than 2,000 Negroes were present in the Church. Rev. Martin Luther King told the gathering that the protest was not against a single incident but over things that "go deep down into the archives of history." He said:

> We have known humiliation, we have known abusive language, we have been plunged into the abyss of oppression. And we decided to rise up only with the weapon of protest. It is one of the greatest glories of America that we have the right of protest.
>
> There are those who would try to make of this a hate campaign. This is not war between the white and the Negro but a conflict between justice and injustice. This is bigger than the Negro race revolting against the white. We are seeking to improve not the Negro of Montgomery but the whole of Montgomery.
>
> If we are arrested every day, if we are exploited every day, if we are trampled over every day, don't ever let anyone pull you so low as to hate them. We must use the weapon of love. We must have compassion and understanding for those who hate us. We must realize so many people are taught to hate us that they are not totally responsible for their hate. But we stand in life at midnight, we are always on the threshold of a new dawn.

Trials of those arrested for carrying on an illegal boycott will begin on 19th March.

The protest movement has spread to New York and other Northern cities. An emergency meeting of Negro church leaders called for the observance of a "national deliverance day of prayer" with a one-hour mass stoppage of work on 28th March. School children would absent themselves from classes for one hour on that day, and so would others from their allotted work, but firemen, policemen and hospital assistants would be permitted to remain at their posts. In addition to prayer and work stoppege, the Negroes would enter on periods of fasting to dramatise their protest against the wholesale arrests of the men and women who led the bus boycott in Montgomery.

Segregation "Morally Wrong and Sinful"

A tussle is now going on in respect to segregation in Louisiana's Catholic schools. In mid-February a Federal Court invalidated public school segregation laws, and the state legislature promptly began to study legislation by means of which Louisiana could skirt that ban, and it even proposed to extend segregation to parochial schools which number about one-fifth of public schools. Although at present all schools in Louisiana, public and private, operate on a segregated basis, the Archbishop of New Orleans has indicated that the parochial schools will be desegregated, and that integration would come some time after September this year. The new law now contemplated seeks to prevent this. On 19th February a pastoral letter from the Archbishop was read from the pulpits of Louisiana churches. The letter stated that segregation was "morally wrong and sinful." Similarly, an editorial appeared in "Catholic Action of the South," an official Catholic publication, warning Catholics (and there are four Catholic legislators among the supporters of the new law) that they would face automatic excommunication from the church if they "worked for or voted for" laws that would continue to segregate the state's parochial schools. The warning was based on a church law, which lays down: "Those who issue laws . . . contrary to the freedom or rights of the Church [and] those who . . . impede the exercise of ecclesiastical jurisdiction" incur

automatic excommunication. The Governor of the state, commenting on the editorial (for which the Archbishop took full responsibility), said that the legislature should not attempt to interfere with the operation of private schools. When in 1954 a law was passed enabling the state to exercise its police powers to continue segregation, the Catholic schools were excluded from the operation of the law at the request of the Archbishop. An attempt is now being made to include them.

Federal Government Joins in Fight for Desegregation

Another kind of trouble has started at Hoxie, an agricultural town in Arkansas. The school board of the town decided in June last to integrate its schools at once. When the school term started in July 800 white and 26 Negro children went to school together without incident for two weeks, but pro-segregationists were thereafter at work impeding the integration process. They held mass meetings in protest and picketed the schools, as a result of which half the white children stayed out of school. Members of the school board received anonymous threats. The board therefore closed the schools for the term before the scheduled time, but when the next term bagan in October, the schools were still integrated. The board stood by its decision and it went into the federal courts to ask for protection. On 1st November a Federal District Judge issued an injunction forbidding the threatening of school officials and setting up a boycott of the schools for picketing. The schools have since operated on an integrated basis without interference, but the integration foes have appealed against the injunction order to the Federal Court of Appeals. And the Justice Department of the Federal Government has decided to intervene in the case as a "friend of the court." Lawyers regard it as an important test case for future integration efforts in the South.

COMMENTS

Dawn of a New Era in Soviet Russia

The radical re-appraisal to which Soviet policy was subjected at the twentieth Communist Party Congress in Moscow last month, first since Stalin's death, appears to be fraught with great potential significance to the free world. If the changes there adumbrated are not a matter of mere tactics, the Congress decisions may well help in the strengthening of the forces of democracy and of civil liberties all the world over.

The "hero cult" and the mystical worship of the leader that came into being after the rise of Stalin to power and the unbroken one-man rule for twenty years ever since, during which time a close ideological control was enforced on all activity in Soviet Russia, were denounced in scathing terms. "We do not need a god, Czar or miracle-worker here," declared Party Secretary Khrushchev. Mr. Suslov, who headed the Party propaganda apparatus under Stalin, remarked that the exaltation of an individual was alien to the Marxist-Leninist principles of "collective leadership," and that such practice had led to "arbitrairness" and to "one-sided and mistaken solutions of problems." He said: "The adherent of the cult of personality attributed the developments of Marxist theory only to individual personalities and depended completely on them. All the rest of the mortals were supposed to assimilate and popularize ths gems created by these individuals." Mr. Mikoyan, First Deputy Premier, spoke of the Stalin regime as a period where the most dangerous "abnormalities and distortions" of the Communist ideal flourished.

This repudiation of dictatorship is a great gain to democracy. It is true that though the men at present in control severely criticized the Stalin regime, there was no criticism of the policy laid down in the main report by the delegates at large, as one would find at all gatherings in democratic countries, and in this respect the Congress of this year was just like that of 1952; only the line, taken by the leaders differred. The same monolithic unity was observable at both Congresses. Yet it may be said that there is none among the present leaders who can make arbitrary decisions and exercise overweening power in the way that Stalin has now publicly been admitted to have done, and it may be taken for granted that at any rate the more repugnant features of the dictatorship then prevalent will not now be observable. If totalitarianism vanishes from Soviet Russia, the vicious ways now adopted by some other countries in dealing with Communists will also be improved. For it is well known that in order to keep Communism out these countries often give the go-bye to due process of law. As Chief justice Earl Warren of the U. S. Supreme Court said recently in "Fortune": "In the present struggle between our world and Communism the temptation to imitate totalitarian security methods is a subtle temptation that must be resisted day by day, for it will be with us as long as totalitarianism itself." But with the advent of democracy in Russia, there need be no such temptation, and the sense of justice of the rulers will assert itself in dealings with men of all political persuasions.

The Congress also disowned some of the ideological and political cliches of the former period, and this constitutes a definite break with the past. It was previously held that it was impossible to establish Communism except by armed revolution and civil war. It is now granted that Communism can be achieved through parliamentary institutions. Similarly, it was a sacred Communist doctrine before that war was inevitable as long as capitalism exists in some countries; but now the doctrine has been given up. In his report Mr. Khrushchev asserted that in the competition between capitalism and socialism the latter was sure to triumph, but added that "this by no means implies that the victory will be reached by armed interventions." The establishment of a new social order in any country is,

he said, the internal affair of its own peoples. It is now conceded that it is possible for capitalist and Commuist States to live together in amity and collaborate with one another is a spirit of good-will. It is only when this "live and let live" principle is adhered to that the plea for peaceful co-existence that is so earnestly put forward by India will be meaningful.

Whatever may be the future political relations between East and West as a result of the drastic revision of dogmas in Soviet Russia, it is a source of comfort to know that in Soviet Russia itself the common man does not now fear State coercion as much as before. A correspondent of the "New York Times," writing about the Congress, says that in publicly disavowing some of these doctrines, which aroused antagonism in non-Communist countries, "the new leadership has insisted that Soviet citizens to-day feel free from arbitrary arrest or accusation. It insists furthermore that the power of the police appears more closely circumscribed to-day than at any time in the history of the Soviet regime." Thus civil liberties will now have a chance in Russia.

Coloured Voters Bill Passed

The South African Parliament on 27th February passed in a joint session the Government's bill for removing 60,000 voters of mixed blood in Cape Province from the same electoral register as white voters. These Coloureds, as they are called, have been on the common roll for more than a hundred years. The Prime Minister declared that this measure was necessary in order to preserve white supremacy in South Africa. He said: "The Coloured voter hangs like the sword of Damocles over Europeans and that sword we shall remove."

He has succeeded in removing the sword only by packing the Senate with 87 additional members of his own party so as to have an assured two-thirds majority in the joint session, as the Constitution requires. The actual vote at the third reading was 174 to 68. The measure is thus not now open to the constitutional challenge in the Appeal Court as the Malan measure was, which was passed by less than two-thirds majority. But the constitutionality will now be attacked on another ground. Mr. Strauss, Leader of the Opposition, has already given notice that he will seek a court test on the ground that the enlarged Senate was not one of the Houses of Parliament, that the joint session was not properly constituted, and that legislation passed with the aid of the Senate was not valid. There is thus a risk that all Acts of Parliament passed at the present session would be invalidated, which obviously would throw the country into legislative turmoil.

States' Sales Tax Laws Validated

In Bengal Immunity Co. Ltd. *v.* the State of Bihar (vide p. iii: 279) and similar other cases (iv: 9 and iv: 27), the Supreme Court held invalid States' laws imposing sales tax on dealers outside the state until Parliament by law lifted the ban on inter-state transactions, as provided by Art. 286 (2). But these laws, declared unconstitutional, were validated by an ordinance, the effect of which was to make inter-state transactions effected between 1st April 1951 and 6th September 1955 (on which date the Supreme Court voided the laws) liable to sales tax by State authorities, notwithstanding the Supreme Court's rulings. The ordinance has now been replaced by a statute, the Sales Tax Laws Validation Act. The reason given by the Finance Minister for legalizing what was pronounced by the highest judicial authority to be an illegality was that if the States that collected the tax (it would amount to some four or five crores of rupees) were to refund it, that would upset the economy of the States. A point of order was raised when the measure came up for discussion in the Lok Sabha that while Parliament might authorize the imposition of sales tax on inter-state trade by the States in future, it could not retrospectively authorize retention of the tax which had been collected without the necessary authority. But the point was overruled, and the bill was passed.

Control of Dramatic Performances

Following the lead of Madras and Pepsu, Andhra also has passed a law prohibiting performances of "objectionable" plays. One who contravenes the law is made punishable with a term of three months in prison and a fine of Rs. 1,000, the owner of the premises in which the play may be staged being also liable to punishment. A special feature of the law is that the ban on such performances may be extended every two months up to an indefinite period. The reason that was given by the deputy Chief Minister for enacting the law was that "objectionable" plays "were being used by certain political parties as a medium to vilify the Government." Commenting on this, the "Times of India" writes:

> If the objection was to the aspersions that might be cast against any members of his Government—including the permanent services— the ordinary law of libel and the more recent Central legislation regarding scurrilous attacks on Ministers and civil servants should be more than adequate. Mr. Reddy may have complaints to make about the Opposition's criticism of his Government's policies through dramatic performances. But it is highly questionable if his grievance, however valid it might be, could be given the shape of punitive legislation so long as the Constitution guarantees freedom of expression. ... The Andhra Government has not provided a good example of its faith in democratic methods in seeking to prohibit the performances of "objectionable" plays. The framework of ordinary law is sufficiently broad to encompass within its prohibitory purview any performance which could be held to be of an obscene, defamatory or scandalous nature.

HABEAS CORPUS PETITIONS

Mr. Thakarey's Detention Held Bad

BY THE BOMBAY HIGH COURT

At the Bombay High Court Chagla C. J. and Dixit J. on 21st February allowed the habeas corpus petition filed on behalf of Mr. K. T. Thakarey, a journalist, against whom a detention order was passed by the Police Commissioner, Bombay, on 13th January last and subsequently approved by the State Governor.

Mr. Thakarey was alleged to have addressed two meetings (one of which was at Shivaji Park on 16th November) in connection with the movement for the establishment of Maharashtra State including Bombay City. At these meetings, it was said, his speeches instigated the audience to commit violence and breach of public order. In the petition it was stated that on 16th November Mr. Thakarey was in hospital and could not have attended and did not attend the meeting on that day. The Police Commissioner admitted in his affidavit that Mr. Thakarey did not address the meeting on 16th November, and said that the month had been wrongly typed for October in the grounds for detention. The Government pleader argued that the typographical error should not be regarded as sufficient to invalidate the detention order.

Allowing the petition, Their Lordships said that there were meetings both on October 16 and November 16. What the detenu had been charged with was that he made inflammatory speeches at the meeting of November 16. It was this charge he was called upon to answer when he made a representation to the Government. He had an effective answer for that. By giving a wrong date, the detenu could not be said to have been given a reasonable opportunity to make a representation.

The Police Commissioner had stated in his affidavit that on account of the inflammatory speeches of the petitioner there was a probability of violence and that in fact several such incidents of violence had taken place in Bombay on 21st November. In view of these incidents, Their Lordships said, the proximity of the meeting of 16th November assumed ominous significance.

The Court had not been told in what circumstance the error came. In the absence of any material, the Court must assume that the material before the Commissioner while making the order was the grounds furnished. What was mentioned in the grounds was that the detenu made inflammatory speeches at a meeting on November 16.

It was on these materials that the Commissioner satisfied himself, as required by the law, as to the necessity of his detention. It could not be said to be a proper satisfaction which could justify the detention. It could not be said that the detaining authority applied his mind to the relevant circumstances, as he must do, before making the order.

The detention order was approved by the Government on 23rd January. Both the Commissioner of Police and the Government were given to understand that the speech was made on 16th November, and it was impossible to hold that the approval given by the Government was one arrived at after consideration of all relevant materials when the material placed before it was admittedly incorrect and contrary to facts.

Their Lordships therefore held that one of the grounds was not correct, the detaining authority did not and could not apply his mind to relevant circumstances as required by law and in any view of the case, the order was not valid for more than 12 days, the approval of the Government not being proper.

Their Lordships therefore held that the detention order was bad and ordered the detenu's release forthwith.

CONTROL OF OPIUM

Ban on Poppy Cultivation

UPHELD BY THE SUPREME COURT

The Constitution Bench of the Supreme Court consisting of Justices Bose, Aiyar, Jagannadha Das, Sinha and Jafar Imam on 17th February dismissed by a majority the petition of Mr. Karam Dass and some other cultivators of poppy in Himachal Pradesh challenging the constitutionality of the orders of the Union Government that they were to cease cultivation of the poppy plant as from 1st October 1954.

The petitioners submitted that cultivation of poppy was carried on in Himachal Pradesh by them and their ancestors from times immemorial and that the total prohibition of the cultivation deprived them of their fundamental right to carry on the occupation and business of poppy cultivation. They did not contest the right of the Government to take adequate measures for the prohibition of opium production from the poppy plant. But they argued that the Government had no right to prohibit the cultivation of poppy. Extraction of opium from the poppy plant and cultivation of poppy (they said) were two distinct matters and the latter could not be prohibited merely because there was a possibility of a misuse of the poppy plant. They were cultivating poppy for the purpose of poppy seed which was used both as a staple food and as spices. The petitioners further submitted that cultivators in other areas of the country were not similarly prohibited and that the prohibition in their case amounted to hostile discrimination and denial of equality before the law.

The Attorney-General, arguing on behalf of the Union Government, said that the only fundamental right of the petitioners was the right to carry on the occupation of cultivation. The ban on the sowing of poppy did not amount to a prohibition of this occupation and was merely a restriction on the cultivation of one particular species of plant. It was a reasonable restiction permitted by the Constitution in the interest of the general public. On the

point that the Government's order did not contemplate a mere restriction but a total prohibition, he said that the reasonable restrictions permitted by the Constitution contemplated even a total prohibition if this was warranted by the circumstances as in this case. And on the point of discrimination, he said this prohibition because of administrative difficulties was being introduced gradually, and therefore no question of discrimination arose in the selection of Himachal Pradesh for the implementation of the scheme of total prohibition everywhere. Opium production was inseparably connected with poppy cultivation and as the Government of India was committed, in accordance with the resolution of the World International Opium Conference in 1953, to prohibition of the consumption of opium in India after 1958-59, it had, as a means of effective control of the manufacture of opium, to prohibit poppy cultivation in the various regions of India and perticularly in Himachal Pradesh.

The Supreme Court considered the process of poppy cultivation and extraction of opium and expressed the view that " in practice it would be most difficult, if not impossible, to allow the cultivation of poppy but prohibit the manufacture of narcotic drugs. " The further argument that the restriction of poppy cultivation in Himachal Pradesh while its growth was allowed in neighbouring States amounted to discrimination was also repelled by the Supreme Court.

In this connection Mr. Justice Sinha stated that " it is now settled law that in order to give effect to the policy of the Government clearly indicated in the statute in question it is open to the executive Government to make a geographical classification so as to apply the law to selected areas with a view ultimately to cover the whole territory for which the law was enacted. "

Their Lordships also found it difficult to agree with the contention that the reasonable restrictions permissible under the Constitution could not be extended to cover total prohibition of a trade or business. They felt that considering the nature of the occupation and the deleterious effects of opium the State should have the power to prohibit the cultivation of poppy so as to stop the production of opium completely. Since any permission to grow poppy seeds inherently carried the possibility of abuse, the State was fully justified in adopting the course it had selected.

Their Lordships did not find much substance in the claim of the petitioners to a fundamental right in a business of this nature and felt reminded of the famous line, " Licence they mean when they cry liberty. "

A dissenting judgment was delivered by Mr. Justice Aiyar. In his view reasonable restriction could not cover total prohibition of poppy cultivation. The Government, he felt, had every right to improve its control and regulation over poppy cultivation so as to stop the manufacture of opium, but it was not necessary to prohibit cultivation in order to achieve these results.

LABOUR APPELLATE TRIBUNAL

Closure of Business

NO COMPENSATION DUE TO WORKERS

The J. K. Hosiery Factory of Kanpur, which was carrying on its business on a continuous loss since 1949 and has been laying off its workmen from time to time, was closed down on 1st September 1953 and discharged its workmen after giving them 14 days' notice. The factory was restarted in October the following year and offered to re-take those workmen who were prepared to serve it on reduced wages. Thereupon two applications were made by workmen to the labour appellate tribunal under sec. 23 of the Industrial Disputes (Appellate Tribunal) Act 1950. This section provides for the punishment of employers who contravene the provisions of sec. 22, which forbids lay-off of workmen without the permission of the appellate tribunal. The tribunal held that the closure of the factory was temporary, and that the termination of the services of workmen on closure amounted to retrenchment, and ordered the factory to pay the workmen 12 days' wages in lieu of notice and compensation equivalent to 15 days' wages for every completed year of service.

The factory presented two writ applications to the Allahabad High Court praying that the appellate tribuual's order be quashed. On 24th February Mr. Justice Desai allowed the petitions and quashed the order. His Lordship said that the appellate tribunal was not justified in holding that the closure of the factory was temporary merely because it lasted less than 14 months. A person closing down a business permanently was not debarred from re-starting it on finding that the circumstances had changed. Sec. 22 of the Act did not apply as it forbade merely discharge and not closure of business. There was nothing to suggest that the intention behind the provision was to curtail the fundamental right to close down a business. If a business was closed down, there could be no employer and if there was no employer, there could be no contravention of the provisions of sec. 22. Discharge within the meaning of that section was dischagre other than discharge arising out of closure of the business.

His Lordship said if, on the other hand, sec. 22 forbade the discharge of workmen even after closing down the business, it must be held to be an unreasonable restriction on the fundamental right to close down a business. Reasonable restrictions upon the rights conferred by Art. 19(1) (f) and (g) could be imposed only in the interests of the general public. It was unreasonable to require an employer to continue the business even though it was causing loss to him, or to retain in service his workmen on payment even though he could take no work from them. It was true that sec. 22 did not impose an absolute bar but imposed a bar in the absence of permission in writing of the appellate tribunal. But there was no justification for requiring an employer even to

approach an appellate tribunal for permission to close down his business or to discharge workmen. The right given to the appellate tribunal to grant or refuse permission was wholly uncontrolled; no principles had been laid down for its guidance in the matter.

Turning to the appellate tribunal's finding that the discharged workmen should be paid compensation on the principle embodied in sec. 25 F of the Act (though the section was added after closure of the factory) and cl. 20 (a) of the standing orders, Mr. Justice Desai said that sec. 25 F did not govern the case because it had no retrospective effect. It was also illogical to grant any compensation. The workmen did not suffer by closure of the business on account of which they might deserve some compensation. They did not lose anything which they were not liable to lose. If it was the fundamental right of the applicant to close down the business, it meant that the workmen were always liable to be discharged on the business being closed.

It had been found by the appellate tribunal itself that the workmen were not laid-off by the applicant with effect from 1st September, 1953. Therefore, whatever compensation they would be entitled to under the standing orders for a lay-off could not be claimed by them when the business was closed down. Closure due to strikes was provided for in the standing orders, but not closure due to giving up its business. The only rule of the standing orders that would apply to the discharge of the workmen was rule 20 under which a workman could be discharged on 14 days' notice. The workmen had 14 days' notice in the present case. They were, therefore, not entitled to any compensation at all.

Since His Lordship found that sec. 22 did not apply to the facts of this case, he held that the appellate tribunal had no jurisdiction to pass any order. If the workmen thought that they had been laid-off and were entitled to be reinstated on the business being restarted, they should have taken proceedings under the Industrial Disputes Act. An appellate tribunal had no original jurisdiction except as provided in sec. 25.

BOMBAY TENANCY ACT

Termination of Protected Tenancy

INTERPRETATION OF SEC. 34 (2) (c)

Chagla C. J. and Dixit J. gave on 13th February a ruling on the construction to be put on sec. 34 (2) (c) of the Bombay Tenancy and Agricultural Lands Act in an appeal filed by a tenant against the order of the Mamlatdar in favour of the landlord. This section confers the right upon a landlord to determine the tenancy of a protected tenant if the former requires the land for personal cultivation provided "the income by the cultivation of such land will be the main source of the income of the landlord for his maintenance."

In March 1952 the landlord Govind Janardan Mahale gave notice to his tenant, Peeru Narayan Naik, to vacate the land as he wanted it for his bona fide personal cultivation. The Mamlatdar of Ankola passed an order for the eviction of the tenant on the ground that the landlord required the income from the land, as without it he would not be able to maintain himself at all. This order of eviction was upheld by the Prant Officer and the Revenue Tribunal. The tenant, therefore, applied to the High Court.

It was urged on behalf of the tenant that unless it was found that the landlord's income from the land would be more than his income from other sources, the landlord would not be entitled to the possession of the land under a tenancy, since the income from the land would not in that case be the "main source" of his income.

In Their Lordships' opinion, the better and fairer interpretation of sec. 34(2) (c) was that the Court should consider the income which would be derived from the land and should satisfy itself that the landlord needed the whole of it or the bulk of it for his maintenance, and in that case the income from the land became the main source for his maintenance.

If the Court came to the conclusion that the landlord had other sources of income from which he could maintain himself or that the landlord did not need most of the income from his land for his maintenance, then the Court would conclude that the income from the land did not constitute the main source.

Since the Mamlatdar had not gone into the necessary figures in order to determine what was the income from the land and what was the income of the landlord from other sources Their Lordships referred back this matter to the Mamlatdar to ascertain those figures.

GUN LICENCE CANCELLED

Cancellation Order Illegal

NO REASONS GIVEN

Mr. Justice Chaturvedi at the Allahabad High Court allowed on 27th February the writ petition of Mr. Mor Mukut Agarwal and quashed the order of the district magistrate of Etah cancelling a gun license given to Mr. Agarwal, holding that no reasons for the cancellation of the license had been given. It appeared that the cancellation order was a sequel to a quarrel between the petitioner and his tenant Mr. Basdeo Singh, who was a zamindari abolition naib tahsildar. The latter was said to have fallen into arrear in the payment of rent. A suit was filed for the recovery of rent, which was decreed by the small causes judge on 13th November 1954. According to the naib tahsildar, the petitioner assaulted or attempted to assault him on 18th August 1954 and a report of the incident was made in the police station. On a report received by the sub-divisional magistrate, he suggested the cancellation of the petitioner's licence in a report to

the district magistrate. The district magistrate obtained the petitioner's explanation and ordered an inquiry by the sub-divisional officer. The latter examined some witnesses and in his report said that the petitioner had once threatened the chowkidar of the naib tahsildar with a gun and had also threatened the naib tahsildar. The district magistrate thereupon cancelled the licence on 26th April 1955, and ordered the sub-divisional officer to ascertain if the naib tahsildar had been paying his rent regularly. An appeal filed by the petitioner with the commissioner was dismissed on 6th July 1955.

It was argued for the petitioner that the order of the district magistrate did not either give any reasons for cancellation of the licence, nor had he anywhere said that he considered it necessary to cancel the licence for the security of public peace, as required by sec. 18 of the Arms Act. His Lordship said that this criticism appeared to be justified and the order, therefore, must be held to be illegal. Even the commissioner did not say that the licence was properly cancelled, because it was necessary to do so in the interests of public security. Stress was laid on the fact that it was a Government servant who was assaulted and not a private individual, but he did not think any undue importance could be attached to this fact. There was, therefore, no finding by any responsible officer that it was necessary to cancel the licence for the security of public peace.

His Lordship set aside the cancellation order of the district magistrate and the appellate order of the commissioner as illegal and said that if the petitioner would make an application for the renewal of his licence, it would be open to the district magistrate to consider the application on its merits and decide it according to law.

EMPLOYEES STATE INSURANCE ACT

Lay-Off Compensation is Not Wages

BOMBAY HIGH COURT'S RULING

In connection with the compensation for lay-off paid by the Nutan Mills, Ahmedabad, to the Employees State Insurance Corporation, a reference was made to the Bombay High Court for decision of the question whether lay-off compensation paid to an employee under sec. 25(c) of the Industrial Disputes Act is "wages" as defined in sec. 2(22) of the Employees State Insurance Act, 1948 On 29th November Chagla C. J. and Dixit J. gave an important ruling in answering the reference.

In their judgment Their Lordships said that what they had to consider was whether in the case of an employee being laid-off, there was still a subsisting contract of employment between the employer and the employee, or whether during the period of lay-off the contract of employment, although not at an end was not a subsisting and effective contract. In other words, the question was whether, on the employee being laid off, the relationship of master and servant continued and the mutual rights and obligations which flowed from such relationship also continued.

After considering the scheme of the Act and the cases in point, Their Lordships came to the conclusion that under the standing orders which were binding on the parties the employee was not entitled to any wages at all, and that the relationship of master and servant did not continue during the period of lay-off.

The provisions of the Act also made it clear that there was no relationship of master and servant during the period of the lay-off. During the period of the lay-off, the employer had no right to dictate to the employee that he should present himself at his office, nor was there any obligation on the employee to do so.

The employee would be entitled to go and serve another master, and the only result of his doing so would be that he would not be entitled to receive compensation. It was entirely a matter of his option whether the employee should present himself at the office of his employer and claim compensation or earn wages elsewhere. Therefore, the situation was very clear that during the period of the lay-off, the employee was no longer the servant or workman of his employer.

That relationship was suspended and could only be revived when he was reinstated under the terms of the contract. The contract of employment itself had not come to an end because a certain obligation remained upon employer and a certain right still was in employee, namely, the obligation to reinstate and the right to be reinstated.

In the result, Their Lordships held that the lay-off compensation paid to an employee was not "wages" under the State Insurance Act.

BOMBAY LAND REQUISITION ACT

"Reasonable" Restrictions in Art. 19 (5)

BOMBAY HIGH COURT'S DECISION

Mr. Pratap Pandurang Pitale complained in the Bombay High Court that he was a tenant of a flat in Neelam Mansion in Bombay; that in his flat a close friend of his father died in October 1950; and that although he continued to be a tenant of the flat, the Bombay Government made a declaration that the premises had become vacant since October 1950 and proceeded to requisition the premises under the provisions of the Bombay Land Requisition Act, 1948. He urged that sec. 6 (4) of the Act confers powers of requisition only in cases in which the premises had become vacant and that the proviso to that section which enacts that the declaration made by Government that the premises were vacant is conclusive evidence enables Government to make a declaration to that effect irrespective of whether the premises are in fact vacant or not; and thus the restriction imposed on the right of the

tenant to enjoy property guaranteed under Art. 19(1)(f) was unreasonable, whereas under Act. 19 (5) such restrictions have to be reasonable. The petitioner therefore prayed for a writ for preventing the Government from enforcing its requisition order.

Tendulkar J. dismissed the petition on 27th January 1954. Referring in his judgment to the Supreme Court's decision in Dwarkadas *v.* Sholapur Spinning and Weaving Co., A. I. R. 1954 S. C. 119, he quoted the observation of Mr. Justice Mahajan that Arts. 19 and 31 "deal with two different subjects and one has no direct relation with the other." His Lordship held that since requisition was included within the term "acquisition," no question arose "of considering whether any restrictions placed on the enjoyment of property are reasonable restrictions, as Art. 19(5) does not come into play and Art. 19 (1) (f) does not apply to the facts of the case." Then he went on to say:

> The result, therefore, is that whether or not the petitioner was in fact a tenant, Government being clothed with authority to declare that there was a vacancy, and having so declared, the declaration is conclusive evidence of that fact, and no court can go behind it.

GOVERNMENT SERVANTS' CONDUCT RULES

Bar Against Candidature at Elections

Chakravarti C. J. and Lahiri J. of the Calcutta High Court on 17th March 1955 allowed the appeal filed by Mr. Mohamed Saraftullah Sarkar against the decision of the trial Judge who had set aside the election of the appellant to the Doulatabad Union Board held on 22nd February 1953 on the ground that the latter, being a whole-time Government servant as a Union Agricultural Assistant was disqualified, under Rule 23 of the Government Servants' Conduct Rules of 1926, from offering himself as a candidate for election to the Union Board.

The Chief Justice, who delivered the opinion of the Court, expressed himself unable to subscribe to the view of the trial Judge that "the Government Servants' Conduct Rules, 1926, have the force of law and that their effect is to create in the case of Government servants a disqualification for elections named in the Rule, which include local bodies," in spite of the fact that in the Bengal Village Self-Government Act the holding of a post under the Government was not mentioned as one of the disqualifications for election. His Lordship said:

> In my opinion, the Government Servants' Conduct Rules are only rules of internal discipline, operating within the sphere of Government service and limited in their operation to that sphere. They specify certain acts which can be done by Government servants only in a certain way and other acts which may not be done by them at all, consistently with the conduct they are required to maintain as Government servants.
>
> Further the rules cannot and do not go. They cannot and do not create a legal disability in Government servants to do effectively the acts forbidden by the rules if they are competent to do them, whatever the consequences of transgressions in this regard may be to their career as Government servants.
>
> While a Government servant, offering himself for election to one of the bodies mentioned in Rule 23, may bring upon himself disciplinary action, which may go as far as dismissal [and the appellant was actually dismissed], the consequence cannot also be that his election will be involved or that the validity of his election will be affected by the breach. The disqualification imposed by Rule 23 is of the nature of a personal bar which can be overstepped only at the Government servant's peril as regards his membership of a service under the Government. It is not and cannot be an absolute disqualification in the nature of ineligibility.

The order made by the trial Judge was set aside.

SEC. 145 (4), CRIMINAL PROCEDURE CODE

"Magistrate Must Give Reasons"

ALLAHABAD HIGH COURT'S DECISION

Two references, namely Jaipal *v.* Dukhi Singh and others and Banshi and others *v.* Hari Singh and others had been referred to a Division Bench of the Allahabad High Court for deciding the following question: "Whether the order of a magistrate under sec. 145 (4) Cr. P. C. which did not give any reasons for the order could not be upheld because the learned magistrate chose to make the order in Form 22 of Schedule V appended to the Code of Criminal Procedure."

Their Lordships Mr. Justice Mukerji and Mr. Justice James in answering the main question referred to above said on 18th November that the order of a magistrate under section 145 (4) Cr. P. C., which did not give any reasons for the order, could not be upheld because the magistrate chose to make the order in Form 22 of Schedule V of the Code of Criminal Procedure.

Their Lordships said that in proceedings under sec. 145 (4) Cr. P. C. the magistrate must briefly discuss the evidence and give his reasons for arriving at the decision that he did. Further, the mere filling up of Form 22 was totally insufficient for the purpose of that sub-section. Consequently the orders of the magistrates of Fatehpur and Meerut were in violation of the law and could not be approved. Accordingly, both the references were accepted, the orders of the two magistrates set aside and the cases remanded to them for disposal according to law as laid down in the foregoing opinion.

ESSENTIAL SUPPLIES ACT

Ban on Vegetable Oil Products

HELD ULTRA VIRES OF THE CONSTITUTION

Five merchants dealing in vegetable oil products were prosecuted in Ahmedabad for stocking vegetable oil products in contravention of the notification issued by the Vegetable Oil Products Controller in October 1954 under sec. 3 of the Essential Supplies (Temporary Powers) Act 1946 prohibiting manufacture of vegetable oil products " having the flavour or colour of pure ghee." Mr. A. N. Bhatt, First Judicial Magistrate of Ahmedabad, on 22nd December acquitted the merchants, holding that the notification was ultra vires of the powers conferred on the Central Government by the Act.

In his judgment the Magistrate observed that it seemed that the Controller restricted the manufacture only to see that a vegetable oil product was not sold as pure ghee. He said :

> But unfortunately the legislature has not given these powers to the Central Government. The order of the Controller is neither for maintaining nor for increasing supplies, nor for securing equitable distribution, nor for ensuring fair prices of the vegetable oil products.
>
> The powers which the executive can exercise are the powers expressly conferred upon it or which are derived by necessary implication from the provisions of the Act. There is nothing in sub-secs. (1) and (2) of the Essential Supplies (Temporary Powers) Act which confers powers on the Central Government to control the quality of the vegetable product. In my view, therefore, the Controller had no power to control the manufacture of vegetable oil prducts by issuing the notification dated 21–10–50. It is ultra vires of the powers conferred upon him by the Central Government as the Central Government has got no such power under sec. 3 of the Act.

NOTES

Illegally Obtained Evidence

ITS USE IN STATE CRIMINAL CASES

The Fourth Amendment to the Federal Constitution prohibits unreasonable searches and seizures and so do the local constitutions of most of the states in U. S. A. But while in federal courts the admissibility of evidence obtained by such searches and seizures is outlawed, this exclusionary rule is not uniformly observed in the states. Indeed in a majority of the states introduction of illegally obtained evidence is allowed, the theory being that a police official who obtained evidence by illegal means could be punished for his illegal acts, but the fruits of those acts should be available against criminals. In these states all evidence regardless of its source is held to be admissible in criminal cases because of the belief that detection of crime will be rendered difficult if circumscribed by constitutional guarantees.

California is one of the states where, although its constitution bans illegal searches, till recently any evidence against a defendant in a criminal case was admissible in the trial against him, whether it was legally or illegally obtained. But the supreme court of that state ruled by a 4 to 3 opinion in the case of People *v.* Cahan that evidence obtained by the police by illegal means must be excluded from criminal trials. The decision has created a great deal of stir among law enforcement officials who believe that the shackles which it has placed on their war on crime would make their work extremely difficult.

Charles H. Cahan and fifteen other persons were charged with conspiring to engage in horse-race bookmaking in violation of California's Penal Code. A police officer entered the house and placed a listening device under a chest of drawers. On the basis of evidence thus obtained Cahan was found guilty in the trial court. But the supreme court of the state reversed the conviction. Police " bugging ", it was claimed by the state, could be no bar to conviction. In its judgment the court said :

> The forcible entries and seizures were candidly admitted by the various officers.... Thus, without fear of criminal punishment or other discipline, law enforcement officers, sworn to support the Constitution of the United States and the Constitution of California, frankly admit their deliberate, flagrant acts in violation of both Constitutions and the laws enacted thereunder. It is clearly apparent from their testimony that they casually regarded such acts as nothing more than the performance of their ordinary duties for which the city employs and pays them.

The argument often used against adoption of the exclusionary rule is that the criminal goes free because the constable has blundered and " society is deprived of its remedy against one law-breaker because he has been pursued by another." The court rejected this argument, saying :

> When as in the present case, the very purpose of an illegal search and seizure is to get evidence to introduce at a trial, the success of the lawless venture depends entirely on the court's lending its aid by allowing the evidence to be introduced. ... Granted that the adoption of the exclusionary rule will not prevent all illegal searches and seizures, it will discourage them. Police officers and prosecuting officials are primarily interested in convicting criminals. Given the exclusionary rule and a choice between securing evidence by legal rather than illegal means, officers will be impelled to obey the law themselves since not to do so will jeopardize their objectives.
>
> (An occasional criminal) does not go free because the constable blundered, but because the Constitutions prohibit securing the evidence against him. Their very provisions contemplate that it is preferable that some criminals go free than that the right of privac of all the people be set at naught.

Mr. Stephen Mark, a former Superior Court judge, has described this decision as "a landmark of progress in California's constitutional history." He says:

> Essential though law and order may be, ominous though the inroads of crime may be, respect for our American legacy compels us to shelter the individual from an overzealous law enforcement agency.
>
> In our democracy we have had a skilled professional army, but never have we relaxed civilian control over it. Similarly we have a skilled professional police force, but it must be the servant of the people, never their master. Only in a totalitarian state are police beyond the reach of the law. Perhaps law enforcement may be more deadly certain in that climate, but our founding fathers sacrificed efficiency for liberty. It was a wise choice.

The Attorney General of California, recently addressing a meeting of lawyers, attacked wire-tapping as a "shotgun" approach to law enforcement.

Libel of Political Leaders

U. S. COURT OF APPEAL'S DECISION

Mr. Albert Levitt, a former federal judge, in 1951 wired to the Committee on Un-American Activities, which under Senator Joseph McCarthy is investigating cases of persons suspected to be connected with "subversive organizations," that he had "irrefutable evidence" proving that Mr. McCarthy himself was a member of such organizations. The text of this telegram was published in Los Angeles' metropolitan newspapers, and Mr. Gerald L. K. Smith, in his monthly magazine "Cross and the Flag" called Mr. Levitt's charges "an obvious concoction, a lie from the whole cloth," and "a ruthless dagger dripping the blood of character assassination." Thereupon Mr. Levitt brought a libel action against Mr. Smith, and the trial court, finding Mr. Smith guilty, awarded him $750 damages.

The Southern California branch of the American Civil Liberties Union filed an amicus curie brief in the Court of Appeals in Los Angeles supporting the right-winger Smith, on the plea that his remarks were protected by the guarantee of freedom of the press in the First Amendment. The brief said: "Political controversy may properly inspire excitement, and punishment therefore should be withheld in the absence of an imminent and substantial evil." It asked that Mr. Smith's statement be examined in the light of the First Amendment "to assure protection of dissenters whose convictions are expressed in sincere, albeit corrugated, language."

The Court of Appeals reversed the decision. Circuit Judge James Alger Fee, who wrote the decision, pointed out that Joseph McCarthy was a United States Senator and Levitt has been many times a candidate for public office. The "Cross and the Flag," it was noted, is a publication which has discussed the fitness and availability of persons for public office in the past. The Court said:

> Political figures are the subject of discussion. It would go far to limit that public enlightenment in regard to public personalities if the courts should hold that attack and defense of such figures cannot be made in the press. He who seizes the sword, may be wounded by a sword. When Levitt published an attack in a newspaper, he laid himself open to reprisals.

Postal Censorship

The Postmaster General of the United States recently issued an order denying to "Confidential," a bi-monthly magazine purporting to give the "inside" story on events and people of prominence, the right to use the mails until each issue was approved by the Post Office. The American Civil Liberties Union denounced this "unbridled censorship," saying:

> We offer no comment on the content of the articles published in "Confidential" or the kind of journalism it represents. However, as long as the First Amendment is to have meaning and force with respect to the distribution of printed material, the Post Office has no right to pre-censor. If a publication has violated a law, then it should be properly charged and its case heard in a court of law. Under our democratic system, we do not rely on individual government administrators to decide what material should be read by the public.

Loyalty Oath in Illinois

A Loyalty Oath Act has been passed in the state of Illinois. Two previous attempts to pass such a law were foiled by the Governor's veto—once in 1951 when Mr. Adlai Stevenson was Governor and later in 1953 when Mr. Stevenson's successor also vetoed the bill. The bill now passed by the legislature and signed by the Governor is not as stringent and dangerous as the previous ones, but still it requires an oath of all state employees for swearing membership in "subversive" organizations, and thus in effect it presumes guilt before signing. As the A. C. L. U.'s "Civil Liberties" says, "This type of oath was common in 17th century England, and subsequent opposition to such heresy tests is embodied in the Bill of Rights and most state constitutions. The Illinois constitution specifically states that no 'oath, declaration or test' other than the unobjectionable oath to support the constitution' shall be required as a qualification 'to hold public office. On these grounds the A. C. L. U.'s Illinois Division, which campaigned long and hard against the previous bills, has started a constitutionality test of the present law on behalf of Mrs. Shirley Lens, a Chicago public school teacher.

Oath Declared Unconstitutional

Under California's constitutional amendment passed in 1952 and under the law adopted to implement the amendment churches have to sign a loyalty test oath before being granted tax exemption. The test has been held by a County Judge, in the case of the First Methodist Church of San Leandro, to violate the First Amendment to the Federal Constitution. The Judge decided the case on free speech grounds and cited Supreme Court rulings that freedom of speech could be suppressed only where there is a "clear and present danger to the Government." He concluded: "I find no such 'clear and present danger' in this case."

Printed by Mr. K. G. Sharangpani at the Aryabhushan Press, 915/1 Shivajinagar, Poona 4, and published by Mr. R. G. Kakade, M. A., LL. B., Ph. D., at the Servants of India Society, Poona 4.