

Regd. No. B. 5681

Editorial Committee :
N. M. JOSHI,
S. G. VAZE,
*Vice-President 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. 62

November 1954

THE PRESS ACT OF 1951 AS VIEWED BY THE PRESS COMMISSION

We could never have imagined that a body of independent-minded persons like the Press Commission could be persuaded, against the unanimous opinion of the entire press and against the opinion of all forward-looking individuals and organizations in the country, to recommend retention of the Press Act of 1951, with all the reactionary amendments subsequently made in it. For a period of twenty years all sections of non-official opinion were clamouring for repeal of the law passed by the alien rulers as a serious infringement of the liberty of the Press, and none values liberty so much as those who have lost it. And yet the Congress party when it assumed power re-enacted this law under a different name, and for a wonder the Press Commission has by a majority vote supported its continuance.

The Commission is at great pains to show, as the Home Minister C. Rajagopalachari was, that the new Press Act is something very different from the old, and that while the earlier Act deprived the Press of its legitimate freedom, the recent one preserves it in all essential respects. But this is a wholly unfounded claim, and the new Act is but a slightly different version of the Act which it has replaced. The All-India Civil Liberties Council made this clear in its resolution passed in October 1951. It said:

Government claim to have made by this Act a "fundamental and all-comprehensive" advance over the 1931 Act. It consists in this: that, whereas under the old Act the executive was empowered as a preliminary step to require the deposit or to order forfeiture of security from an offending publisher or printer though such order was liable to be set aside later by the High Court on a review of all the facts, under the present law a like order can issue from a judicial authority alone. This is an improvement, but only of a procedural nature; for even in the old Act executive action was ultimately subjected to judicial tests.

The only other "improvement" which the Government can claim to have made in the recent Act is the provision of a so-called "jury" of pressmen to assist in deciding (and not to "decide," as the Press Commission mistakenly

says in its report) cases involving offences under the Act. What the Act provides is not a jury but just a body of assessors, for it lays down that "if in any such inquiry the Sessions Judge disagrees with the opinion of the jurors and is of opinion that it is necessary for the ends of justice to submit the case to the High Court," he shall so submit it. If it be said that in the last resort the High Court finally decides, it should be noted that the final deciding authority even in the old Act was the High Court. The very fact that the recent Act was passed in the teeth of the united opposition of the whole Press shows how little value the Government and the Press Commission attach to the opinion of journalists. The hollowness of this claim of the Government was thoroughly exposed by the A. I. C. L. C. in the following words:

Apart from the fact that a jury of such special composition is inherently objectionable, it must be noted that the jury's verdict is not final, as is the case in every country where a jury is provided. In England, for instance, it is the jury which finally decides whether an offence has been committed or not, and this is illustrated by Lord Kenyon's remark in *Rex v. Cuthell* (1799) that "a man may publish anything which twelve of his countrymen think is not blamable." To take the example of a country which has a separate Press law, it is provided in Sweden that the criminal nature of printed matter shall be tried by a jury of nine members and that "the matter shall be considered criminal if at least six jurors concur in that opinion." The introduction of this feature in the Act is thus only a face-saving device intended to give a progressive-looking appearance to what is a thoroughly reactionary and oppressive measure.

The British rulers could at any rate put forward the excuse that there was an emergency in the country which called for such a special law. The critics of the Government did not deny that there was an emergency then but they claimed (and among such critics were Congressmen no less than other groups) that even the emergency did not justify the draconian Act. Now, however, there is no emergency of any kind. The Government itself has

not contended that the situation is critical. In the absence of any such excuse, the Act is clearly gratuitous. The Press Commission has stated the objection of the critics that since no emergency now exists such as that which existed earlier, the Act was wholly void of justification, but it has not cared anywhere in its rambling treatment of the subject to meet the objection.

The most vicious part of the old Act was that it provided for penalties, in the form of exaction of security bonds and their forfeiture, which are unknown to the Press law of any other country in the world, and the present Act reproduces all these security provisions. The Press Laws Inquiry Committee of 1948 expressed itself unable to find any justification for retaining a provision for the demand of security, a provision which "does not exist in the laws of progressive countries," and its conclusion was that the Act should be repealed. Another consideration which led it to urge repeal of the Act was the new status of independence which the country had even by that time attained. It said: "In our judgment, the retention of this Act on the statute book would be an anachronism after the establishment of a democratic State in India. . . . We have no hesitation in recommending its repeal." This consideration did not weigh with the Commission, apparently because of its determination to perform its task free from any political bias or sentiment. But one would have expected that it would be at one with the Press Committee in refusing to lend any countenance to security provisions, which are the core of the Act. If no advanced country has such provisions and it can deal effectively with Press offences without them, should not that be conclusive with the Commission, as with the Committee, in recommending repeal of the Act?

But the Commission has persuaded itself that security provisions after all do not appear particularly obnoxious to publicists in India, and the reason it advances for this strange conclusion is that although no one excepting Provincial Governments is in favour of retention of the Act, no individual or organization that appeared before it for tendering evidence expressed his or its opposition to sec. 108, Cr. P. C., which also authorizes the executive to demand security from the Press as well as from others. One wonders whether the Commission put a specific question to any witness as to whether he supported the application of this section to the Press and received the answer that he did. If it had put the question, it would have found that in all the non-officials' opposition to the Act was implicit their opposition to this section as well, and that they did not expressly oppose sec. 108 only because they never thought of the section. The Press Laws Inquiry Committee itself did not in its inquiry consider the effect of this section on the Press, obviously because it felt certain that the sanction of a demand of security having been denounced by it, no separate treatment of the applicability of sec. 108 to the Press was necessary. The Commission, however, has come to the conclusion that the section is acceptable to the Press,

and then it gravely proceeds to discuss the proposition whether, in order to meet the general demand of the Press that the Press should not be subjected to any special law but should be governed by the ordinary law of the land, the scope of the section should not be widened, and instead of being limited in operation as at present to cases falling under sec. 124A or sec. 153A, I. P. C., or to cases involving intimidation or defamation of Judges, it should not be so enlarged as to include every other kind of "objectionable matter" with which the Press Act deals. "If this is done," the Commission says, "then the law would be applicable both to individuals and to those concerned with the running of newspapers. Thus all would be governed by the same law and there would be no discrimination in respect of the Press!" The levity displayed by the Commission in this part of its report can hardly be outdone.

The only reason why the Commission has not adopted this alternative is that the Press Act would then become in effect a permanent piece of legislation, and it does not want it to be permanent! In its opinion the Act "is essentially of a temporary nature." But it does not set any limit to its duration. This is only natural, because the present Act is not emergency legislation, as its predecessor was. It has not been enacted with reference to a situation which is of a passing nature. And in any case if the reasoning of the Commission is sound, there is no reason why the Act should not be made permanent. If no Press offences occur, there will be no occasion for using the provisions of the Act, but the Act itself may still remain on the statute book, so that it may be brought into operation when such offences take place, as is the case with the whole of the country's criminal code. The Commission escapes the odious necessity of recommending the Act as a permanent part of the statute book only by leaving it to the Government to determine how long it should last and whether it should ever be repealed.

It would be too much to hope that the Government of India will have the wisdom to repeal the Act in spite of the Commission's recommendation for its retention, but we can only say that the Act must be repealed not only for the sake of preserving the liberty of the Press but also for the sake of preserving the fair name of India in the community of nations.

Right of Property

Proposed Amendment of Art. 31

Under the caption of "Teeth for Art. 31" the "Statesman" of Calcutta wrote in part as follows in its issue of 24th October.

The Central Law Ministry has still not published its proposed amendment of Article 31 of the Constitution. That it should do so without delay seems necessary if reports of the text now current are accurate. According to these, the amendment will enable a wide range of property rights to be extinguished or otherwise interfered with, and

there can be no challenge on the ground of inconsistency with Part III of the Constitution (fundamental rights). One particularly sweeping section of the draft appears to give carte blanche to the legislature to extinguish or modify any rights in property on a mere declaration that the law in question is necessary for the advancement of public welfare or social and economic justice. After that it might have been thought superfluous to descend to details about acquiring estates, buildings and the rest. Presumably, if the safeguard of the fundamental rights is removed there need be no compensation for dispossessed owners. If given any, they cannot question its adequacy.

For some specific purposes mentioned in the draft more can be said than for others. Progress with zamindari abolition in West Bengal requires power over ryots' khas land, at present outside the scope of Article 31-A, inserted at the last amendment of the Constitution. Many people will feel that the law ought not to be tender towards owners of slums. Even so, there should be some compensation for property taken over. The purpose of the omnibus clause conferring power to extinguish or modify any rights of managing agents, managers, managing directors and directors of companies can be guessed: to prevent parts of the new companies law from being declared unconstitutional when enacted. But if there is to be no such constitutional curb on the executive, then drastic regulation of companies, as proposed in the Bill before Parliament, needs to be looked at afresh. The background has changed. It seems undesirable that the Government of India should engage in scene-shifting while the actors are still on the stage. That is not fair to legislators, the public or to interests affected or originally consulted.

The managing agency system has been authoritatively represented as retaining its value as a promoter of economic welfare. The private sector, it has been said, will be given more opportunity in the second Five Year Plan. But this amendment of the Constitution, if it is as reported, will operate as heavy discouragement. It will be a damper on investment. The least that can be done is to make proper provision for compensation. But the Law Ministry's whole proposal is out of keeping with the dynamic progress of the economy hoped for. It should be dropped.

The "Times of India," in its issue of 23th October, wrote as follows on a resolution passed by the fourth session of the Lawyers Conference of the Bombay State protesting against the contemplated amendment of Art. 31 of the Constitution.

The Bombay State Lawyers' Conference has expressed its "grave concern" over certain activities and tendencies of the Central and State Legislatures, and the concern will be shared by the public at large. In the first instance, the Conference condemns the proposed "amendment" of Article 31 of the Constitution, which guarantees the fundamental right of the citizen to hold and enjoy property. The right is elementary, founded upon the democratic doctrine of individualism and private property, and implies that what a man lawfully acquires by rightful means

shall not be arbitrarily taken away from him. Under the Article, no person can be deprived of his property save by authority of law, and no law authorising the compulsory acquisition of any property for public purposes is valid unless it provides for compensation to the owner for being deprived of his property. The Conference in a resolution points out that the "amendment" takes away the jurisdiction of civil courts to determine the quantum of compensation and would make it illusory. Under the guise of public welfare individual rights and liberties are being flagrantly sacrificed to the insatiable appetite of the Moloch of a theoretical "Welfare State"; and Article 31 provides a wholesome check upon the tendency to enact predatory laws designed to aggrandise the State at the expense of the individual.

The Conference also urged the repeal of all enactments by State Legislatures ousting the jurisdiction of civil courts in various matters. This is unquestionably the worst feature of States' legislation during recent years. To deny to the citizen the right to seek redress from courts of law against arbitrary acts of the executive and unconstitutional measures of the Legislature is the very negation of democracy. It is really a new despotism masquerading under the cloak of legalism. With what face can a democratic government make the order or decision of an executive official final and withdraw it from the impartial scrutiny of the law courts? It is against the spirit of a democratic constitution and the entire tradition of the Indian National Congress. With the supine support of a servile majority in the Legislatures, the State Governments have of late enacted lawless laws restricting or absolutely ousting the jurisdiction of civil courts, thereby betraying both an unholy lust for power and a most unhealthy dread of the courts and the Constitution. Unless our State Governments and Legislatures observe scrupulously the basic principles of jurisprudence and the Constitution in the laws and measures which they adopt, there is no genuine rule of law, which is something deeper, nobler and more abiding than the mere expressions of the will of an individual or group of individuals in power.

Laying the foundation stone of the Supreme Court building in New Delhi on 29th October, the President of India said there was "a tendency to lay down provisions in Acts ousting the jurisdiction of courts and leaving it to the executive to determine the meaning of the law so enacted." While this might be necessary in certain circumstances, he was of the opinion that "it should not ordinarily and except in rare cases be resorted to." On the eve of this event, the "Statesman" wrote as follows.

In recent years, it would appear, their (i. e., the judges') fidelity to the trust reposed in them has not been to the liking of some people. At present the State Governments are being consulted by the Centre on a particularly objectionable proposal to oust the courts' jurisdiction in respect of a fundamental right guaranteed by the Constitution. Under the alien regime, laws that prevent

and the courts from intervening, when they thought fit, on the citizen's behalf were categorically condemned in political quarters that now support an amendment of Article 31 having a similar effect. This is not a formal affront to the independence of the Judiciary, but that term is generally held to include possession of wide powers to protect the citizen from an all-powerful Executive. In matters relating to his property he wants open proceedings in court, not secret consultations in secretariats issuing in an arbitrary decree. Of certain dangerous practices wherewith the Executive may affect judicial independence Mr. Patanjali Sastri spoke early this year in Madras. Even now, some State Governments are unaccountably reluctant to separate executive functions from judicial.

In India, as in Britain and the U. S. A., the judiciary has a constitutional role no less important than that of the legislative and executive branches of Government. The British Constitution of Locke's time may not have embodied quite the system of checks and balances that others thought he saw in it, but very definite and powerful checks are an integral part of free democracy, above all in times when Governments' lust for power appears insatiable. It would be appropriate if in these formative years the Executive in India, at the Centre and in the States, always gave unmistakable indications that it accepted this well understood doctrine.

COMMENTS

Some Fallacies of Indian Government Refuted by India's Delegate at U. N.

The Indian delegate's speech in the U. N. General Assembly's Social Committee on fundamental human rights on 2nd November contained an indirect rebuttal of the arguments which the Government of India's spokesmen often use in defending reactionary provisions of our own Constitution relating to fundamental rights and in resisting progressive amendments designed to widen these rights and remove unnecessary limitations on them.

One such argument is that India has only recently adopted a democratic Constitution, that democracy is not yet a part of her being as is the case with countries long accustomed to democratic ways, and that therefore the Indian people cannot be given as much individual freedom as people of some other countries enjoy. A Constitution can but reflect, it is said, the habits of the mass of the people for which it is framed; what may be suitable for England, for instance, cannot immediately be applied wholesale to India at the present time, though the restrictions now required by the conditions obtaining here may gradually be lifted as the Indian people also get accustomed to democracy.

The fallacy of this reasoning in so far as fundamental rights are concerned was implicit in what Prof. C. P. Mathew, representing India, said in the U. N. Social Committee when he pleaded for extending the Covenant on

Human Rights to colonial territories and trust areas. He said there was justification for limiting economic and social rights in backward countries, for the extent of such rights necessarily depended on the economic resources and capacity of the nation in which they are to be enforced. But it was otherwise with civil and political rights. They ought to be the same for all nations at whatever stage of civilization they might happen to be. Civil rights required for their safeguarding only a civilized government, irrespective of the development which the people under it might have attained. Mr. Mathew said: "Good government is a sufficient condition for civil rights."

This was of course a necessary part of India's plea at the U. N. For, if it were conceded that civil and political rights too, like economic and social rights, have to be adapted to the existing conditions of the people, imperialist powers would get the handle they desire to deny rights like freedom of person and of speech to the countries dominated by them. Thus a plea for extension of such rights even to colonies, some of which are admittedly backward, necessarily implies that these rights are of such a nature that they must be regarded as common to the whole of humanity. Having in the name of India put forward such a plea at New York, how can the Government of India argue here, as its Home Minister did while enacting the Preventive Detention Act: "It is no use Acharya Narendra Dev telling us that in England personal liberty of citizens is never interfered with in peacetime and that it should not be interfered with here. The English example is inapplicable in our conditions. We have not arrived at that stage in our growth of democracy yet."

The other argument often advanced in defence of too wide restrictions on fundamental rights is that such restrictions are included in the draft of the U. N. Covenant on Human Rights. The fact that Freedom of the Person is entirely unguarded and Freedom of Expression is severely limited in the draft appears to our reactionaries to be a sort of charter for abolishing these rights in our own Constitution. But Prof. Mathews had occasion to tell the Social Committee that the U. N. Covenant does not contain the best of provisions for assuring human rights, but it contains only such provisions as are widely acceptable. He very truly said that the Covenant on civic and political rights represented "the highest decree of agreement which could be reached in the Human Rights Commission and might well represent the highest common factor of agreement in the United Nations and in the international community." The limitation even of civil rights in the U. N. Covenant was inevitable because the Covenant, being a voluntary pact voluntarily agreed to by all the nations of the world, both freedom-loving and authoritarian, even a highly defective Covenant was thought by some nations to be better than no Covenant at all. But a Covenant framed in such conditions could be no model for a progressive country; indeed, the United

States is so utterly dissatisfied with the present draft that it has stated in advance that it is not going to be a party to the Covenant unless it were radically improved. That acceptability by a large number of countries is the criterion which is applied to the Covenant was demonstrated at this very meeting of the Social Committee by the representative of Norway who said that though Norway left to itself would like to see the Covenant extended to colonial areas, as proposed by India, would have to vote against the proposal if any appreciable number of countries opposed it. The representative said: "The main task now is to arrive at a formula acceptable to the greatest number of member States. Therefore, if the inclusion of an Article on self-determination would prevent a large number of States from ratifying the Covenant, Norway would vote for deleting this Article.

Thus, the Government of India is deprived of the support it sought to derive from either of its arguments in favour of reaction.

Continued Detentions in Kashmir

Pakistan has recently been undergoing a number of upsets, but the most recent of these has happily brought into the Central Cabinet Dr. Khan, who with his elder brother, Badshah Khan, was subjected to detention for years, and this has been followed by the lifting of the ban on the Red Shirts. This very important gain for civil liberties in Pakistan brings to one's mind the continued detention in Kashmir State, ever since August of last year, of Sheikh Abdullah and his numerous associates on charges very similar to those for which the Red Shirt leaders suffered long incarceration in the neighbouring country.

Indications are that Sheikh Abdullah and other co-detainees will not be either released from detention or brought to trial at an early date by the Government in control. The National Conference of the State, which corresponds to the Congress party in India, endorsed the detentions at a recent session, without any effort to justify them. In this situation we would again draw the attention of the reader to the law of detention which is in force in the State.

Under this law Advisory Boards have been set up to consider the cases of detenus, and provision is made for setting at liberty those detenus in whose case the Boards may report that there does not seem to be any good cause for keeping them in detention. This is also the law in India, but the benefit of the investigating machinery of the Advisory Boards is in Kashmir State available only to detenus charged with minor offences like putting the State's essential supplies out of gear. Political detenus are in a different case altogether. They are not placed before an Advisory Board, authorized to give a binding verdict. They are not even furnished with a statement of reasons for their detention and thus wholly lack the means of making any representation

against the detention which could be examined by an independent authority. The law lays down that if a person be detained for infringing the security of the State, or even for disturbing public order, he need not be provided with the grounds of detention, "as it would be against the public interest to communicate to him the grounds on which the detention order has been made." The cases of such political detenus are reviewed every six months by the Government itself in consultation with an Adviser, whose advice, even if it should be that the detention should no longer continue, may be turned down by the Government. The only limit on the Government's power to detain in such cases is that detention of this sort can last only for five years — at a time, i. e., it is subject to continuance when the present Act is renewed.

Feeling in India — outside Congress circles — is very uneasy on account of these detentions, and expression was given to it in Jammu on 7th November when the Socialist Party's Conference in a resolution protested against "the curtailment of civil liberties" in the State and demanded "the release or trial of political detenus and immediate general elections." The reader will recall that Mr. Jayaprakash Narayan as President of the last All-India Civil Liberties Conference strongly condemned Kashmir detentions in April this year.

Liberty of the Press

In a resolution passed at its Bombay session, the Indian Federation of Working Journalists expressed its "complete agreement" with the note of dissent on Press laws added by four members of the Press Commission and stated that Art. 19 (2) of the Constitution should be amended on the lines suggested in the note; that the Press (Objectionable Matters) Act should be allowed to lapse; that the scheme of the Criminal Procedure Code in regard to defamation should not be disturbed and defamation should continue to be an offence against an individual and there should be no discrimination in procedure as between a public servant and a private citizen.

HABEAS CORPUS PETITIONS

Some of the Grounds Too Vague ADVISORY BOARD DOES NOT OUST COURT'S JURISDICTION

Prem Dutt Paliwal was detained on 27th May 1953. His case was referred to an Advisory Board, which reported that there was sufficient cause for his detention. Thereupon the Governor of the U. P. on 6th August passed an order directing that Prem Dutt continue to be detained for a period of one year. After all this had taken place, the detainee preferred a habeas corpus petition to the Allahabad High Court on 21st October challenging the validity of his detention on the score that the grounds of detention supplied to him were vague and indefinite and

did not disclose sufficient particulars to enable him to make an effective representation to the authorities.

Moothan J. and Sapru J. allowed the petition (29th October 1953), holding that three of the twelve grounds communicated to the petitioner were too vague. In none of these grounds (in which the petitioner was charged with planning to have the houses of mill-owners looted, intimidating the non-union labour and organizing illegal strikes) was any date or time mentioned. "In the case of the (last) ground, in which it is alleged that the petitioner organized two illegal strikes, not only is there no mention of the date but no particulars are given as to the place or places where the alleged strikes are said to have occurred, nor of the persons against whom they are alleged to have been directed." Thus these grounds were pronounced by Their Lordships to be "in terms which are too vague to enable the petitioner to make an adequate representation."

His Lordship Mr. Justice Sapru said: "This is a case in which possibly good grounds of detention have been mixed up with vague, indefinite and bad grounds," but it has been laid down by the Supreme Court in *Ram Krishan Bhardwaj v. State of Delhi* (A. I. R. 1953 S. C. 318) that each of the grounds must be clear and definite, and that if even one of the grounds was vague it would infringe the constitutional safeguard provided in Art. 22 (5) of the Constitution. Patanjali Sastri C. J. said in this case:

Preventive detention is a serious invasion of personal liberty and such meagre safeguards as the Constitution has provided against the improper exercise of the power must be jealously watched and enforced by the Court. In this case, the petitioner has the right, under Art. 22 (5) as interpreted by this Court by a majority, to be furnished with particulars of the grounds of his detention "sufficient to enable him to make a representation which on being considered may give relief to him." We are of opinion that this constitutional requirement must be satisfied with respect to each of grounds communicated to the person detained, subject of course to a claim of privilege under cl. (6) of Art. 22.

But the fact that the petitioner presented his habeas corpus petition after the Advisory Board had considered his case and made an adverse report thereon gave an opportunity to the Government to plead that even if the petitioner's detention was originally illegal, it ceased to be so when the Advisory Board had given its opinion in favour of the detention, and that the validity of the detention could not thereafter be challenged in a court of law. This contention was rejected by the Court. His Lordship Mr. Justice Sapru said:

The Advisory Board has been constituted as a safeguard against a possible misuse of the power of preventive detention. The Advisory Board is not a judicial body: it does not follow strict judicial procedure; it is in fact in the nature of a body charged with the responsibility of advising the executive Government

in regard to cases of preventive detention where it is intended that such detention shall last for more than three months. I cannot therefore accept the contention that we have any concern with the proceedings of the Advisory Board. The fact that the Constitution has provided an Advisory Board for advising on cases of preventive detention does not mean that the right of this Court to grant a writ of habeas corpus in cases where the initial arrest in the opinion of this Court was illegal or improper has been taken away.

Similarly, His Lordship Mr. Justice Moothan said:

(The opinion of the Advisory Board) cannot therefore, in my view, operate to oust the jurisdiction of this Court to determine whether the grounds upon which the petitioner was detained satisfied the requirements of the law.

Officer Acted Beyond His Jurisdiction

DETENU ORDERED TO BE RELEASED

Ghulam Nabi Jan, who had been detained under sec. 3 of the Public Security Act of Jammu and Kashmir, was subsequently transferred, under orders of the Deputy Prime Minister, from Koti Bagh sub-jail in Srinagar to Udhampur sub-jail. A habeas corpus petition was filed by the detenu in the Jammu and Kashmir High Court, challenging the validity of both the initial detention order and the later transfer order.

Kilam and Shahmiri JJ. on 28th July last year allowed the petition and ordered the detenu to be released. The Court held that although the Superintendent of Police, Srinagar, under whose order the detention was effected had certainly been vested with power to make an order for detention, he had no power, even when directed by the Deputy Prime Minister to do so, to transfer the detenu to Udhampur, which was not within his jurisdiction. It was contended on behalf of the Government that although the detenu was admitted in the sub-jail at Udhampur in pursuance of the original order of detention passed by the Superintendent of Police, Srinagar, the officer was in fact acting under the orders of the Deputy Prime Minister, who was certainly competent to transfer detenus from one place to another. Kilam J., who delivered the Court's judgment, admitted that sec. 38 A of the Public Security Act gives authority to the Government to delegate the powers which it possesses under the Act to any of its officers, but added that the Act nowhere provides for the Government transferring a detenu from one place to another. No doubt a notification was issued saying that the Deputy Minister was authorized under sec. 3 (2) of the Act to transfer detenus from one jail to another. But His Lordship was of the opinion that the section gave no such power. He said:

Nowhere has in this subsection been any power given to the Government to transfer a detenu from one place of custody to another. The committal to custody has in all cases to be made by the officer who has effected

or directed the arrest of the detenu and, therefore, the notification by which powers of transfer are deemed to have been delegated to the Hon'ble Home and Deputy Prime Minister is ultra vires of sub-sec. (2) of sec. 3 of the Public Security Act and sec. 38A of the same Act.

As an analogy His Lordship pointed out how in the case of *Bashan Mader v. Emperor* (A.I.R. 1949 Bom. 37), the Bombay High Court held that the order of the district magistrate of Sholapur detaining the petitioner in the Yeravda Jail in Poona was "without justification," and how, in order to remove this lacuna in the structure of the Preventive Detention Act, the Government of India took steps to amend the Act giving it power, in sec. 4, specifically to remove a detenu from one place of detention to another. But the Kashmir Act gave no such power. Referring to the argument advanced on behalf of the State that the Government, "being the fountain-head of all powers," can order the transfer of a detenu from one place to another, though the law on the subject did not say so, His Lordship said:

We find considerable difficulty in agreeing to this proposition advanced by the learned Assistant Advocate General, we suppose, in sheer dismay. He must know that the Government can exercise only those powers which have been delegated to it by the Legislature. Governments have no inherent power of their own. They have to execute the wishes of the Legislature which in fact has the sovereign authority. If the Legislature does not in specific words authorize the Government to take a certain action against a person who is dealt with under some law, the power to take such action cannot be presumed without a clear provision of law.

Then it was contended that if a provision of law is susceptible to two interpretations, that should be adopted as correct which does not negative the working of the Act. His Lordship rejected this contention as inapplicable in such cases. He said:

This might be a principle applicable in civil cases, but not so in cases where a person has been deprived of his personal liberty without trial. Two constructions of a provision of law would mean that the provision of law is of doubtful meaning. The benefit of doubt must always go to the person on whose liberty an inroad has been made without trial. According to *Narayan Singh v. State of Punjab* (A. I. R. 1952 S. C. 106), the procedure established by law must be strictly followed and must not be departed from to the disadvantage of a person deprived of personal liberty.

For the foregoing reasons we find that the detention of Ghulam Nabi Jan, detenu, is both improper and invalid.

Detention of a Person Already in Custody

ORDER OF DETENTION HELD ILLEGAL

The district magistrate of Cachar passed an order of detention against Abdul Aziz on 10th February 1952, on the ground that when he was arrested by the Cachar police on 17th August 1951 he was delivering a secret document containing information regarding dispositions and movements of Indian armed forces in Cachar district to a spy ring formed at a time when the "zehad cry" against India was gaining momentum in Pakistan to undermine the security of India.

It was conceded on behalf of the Assam Government that Abdul Aziz was arrested in 1951 in connection with an offence under the Official Secrets Act and that he was from that date in jail as an under-trial prisoner till 18th April 1952; that is to say, he was ordered to be detained while he was still in custody.

Thadani, C. J. of the Assam High Court, allowed the habeas corpus petition of Abdul Aziz (12th November, 1953), saying:

This Court has repeatedly held that when a person is in custody and is therefore already prevented from acting in a manner prejudicial to the security of the State, it cannot be said that the satisfaction of the State, as required by sec. 3, Preventive Detention Act, is real. . . . The order of detention passed on 10th February 1952 lacks the reality of satisfaction required by sec. 3 of the Act.

SECS. 178 AND 179, LAND REVENUE CODE

Gross Violation of Natural Justice

BOMBAY HIGH COURT'S STRICTURES

Mr. Girdhar Tulshiram Khadke had failed to pay income-tax, which he was assessed in the sum of Rs. 6,066, and the Collector of East Khandesh was asked to recover the amount as arrears of land revenue. Accordingly, his land admeasuring 12 acres was sold by public auction for Rs. 6,070 on 5th November 1951, the upset price being fixed at Rs. 6,000. Feeling aggrieved by the sale of the land for a paltry amount, when according to the Circle Inspector's statement the value of the land was Rs. 22,000 to Rs. 24,000, he applied to the District Deputy Collector, Jalgaon, to set aside the sale, but his application was rejected and the sale was confirmed. His appeal to the Collector of East Khandesh was dismissed and the subsequent appeal to the Revenue Tribunal was also dismissed.

Thereupon he filed a petition in the Bombay High Court under Art. 226 of the Constitution against the Revenue Tribunal, the Collector of East Khandesh and the District Deputy Collector, Jalgaon. The Chief Justice and Mr. Justice Tendolkar heard the petition, and on 29th October allowed the petition, passing severe strictures on the manner in which the case was handled at every level below. Their Lordships said :

This is a gross case in which every canon of propriety has been violated by the authorities which have been invested with judicial functions by law. It is not merely a case of violation of canons of propriety, but the errors committed really violate the rules of natural justice and have caused serious prejudice to the petitioner.

In giving judgment, Their Lordships referred to secs. 178 and 179 of the Land Revenue Code and said that the whole object of these two sections was that in the first place an opportunity should be given to the person whose property was sold to challenge the sale on the grounds mentioned in sec. 178 and what was more important was that the Collector was required to look after the interest of the person whose property had been sold even though he might not make an application to set aside the sale.

It could not be disputed that the Collector was constituted as a judicial tribunal under sec. 178 to hear and dispose of this application. In this case the application was made to the Deputy Collector under sec. 10. On this application the petitioner was not heard at all and the sale was confirmed.

A serious allegation had been made by the petitioner that he and his bidders were told that the auction would not take place on November 5, 1951, and as a result they went away. This allegation if proved would be a material irregularity to set aside the sale and yet no opportunity was given to the petitioner to prove this allegation. The Deputy Collector only called upon the Mamlatdar to give an explanation.

The Mamlatdar who made the report was not the same Mamlatdar who issued the proclamation and conducted the sale, but a new Mamlatdar who did not know of his own knowledge the facts.

The Deputy Collector called for this report behind the back of the petitioner, did not supply a copy to the petitioner and did not give an opportunity to the petitioner to refute the statement made in the report and still held that the allegations of the petitioner were not established.

In Their Lordships' opinion there could not be a worse way for a judicial tribunal to act than the manner in which the District Deputy Collector had done in this case.

Their Lordships were told that the rules framed did not provide for fixing a date for the hearing and that in practice no hearing was given to an applicant who made an application to set aside the sale. In Their Lordships'

opinion the sooner the practice was altered the better. It was totally opposed to all principles of natural justice.

Their Lordships, therefore, held that the decision of the Deputy Collector was no decision at all. But there was something much worse to come. The Collector, who was the appellate authority from the decision of the Deputy Collector, called for a report from the Mamlatdar regarding the fixation of the upset price of Rs. 6,000 in the proclamation for sale. The report of the Mamlatdar showed that the price of Rs. 6,000 was fixed not on the basis of what the panchas had estimated but on the basis of the statistics furnished by the Circle Inspector. If the Circle Inspector's statistics were accepted then it was quite clear that the Mamlatdar had made a serious mistake in fixing the price of the land at Rs. 6,000.

In Their Lordships' opinion it was extremely improper on the part of the Collector to call for an explanation from the Mamlatdar when the matter was pending before the Deputy Collector. But what was more amazing was that the Collector sent a memo. to the Deputy Collector stating that there appeared to be no reason to set aside the sale and the Prant Officer was, therefore, requested to confirm the sale.

Here there was the amazing spectacle of the Appellate Court (the Collector) directing the trial Court as to how it should decide the case. The Collector obviously thought that he had the right to tell the trial court how it should decide the matter.

Under the circumstances it was impossible to suggest first that the petitioner ever had a fair trial before the Deputy Collector or that the Deputy Collector discharged his judicial function under the statute. He was merely a mouthpiece of the Collector, merely carrying out the orders of the Collector and the decision that he came to was never his own decision. It also followed that when the Collector heard the appeal from the decision of the Deputy Collector, it was just a farce.

The petitioner next appealed to the Revenue Tribunal. The Revenue Tribunal was the final judicial tribunal to decide matters arising under the Land Revenue Code. Its decisions were final and could not be challenged ordinarily by suits. Their Lordships had occasion to say in the past, and they again repeated, that the high position this Tribunal occupied in the State of Bombay required and demanded that it should realise that it must discharge its judicial functions to give complete satisfaction to the parties that appeared before it.

When the appeal in the present case was preferred before the Revenue Tribunal, the official member took the matter in his own hands and he wrote a letter to the Collector asking him to explain how he came to dismiss the appeal and to give an explanation on various other points. The Collector submitted a long statement. This

reply sent by the Collector was not known to the petitioner.

The Collector in dismissing the appeal had written no judgment and so when the matter went to the Revenue Tribunal, the official member in effect asked the Collector to write a judgment. The petitioner was never called upon to rebut the arguments advanced by the Collector.

The official member then wrote to the President and the other non-official members that the auction sale held by the Mamlatdar and confirmed by the Prant Officer was in order and the appeal be summarily dismissed. Both the President and the non-official members agreed with this extraordinary request made by the official member.

Their Lordships were pained to note that whatever might have been the attitude of the official member, the two non-official members, both lawyers of experience, should have concurred in a procedure which was flagrantly opposed to the first principles of natural justice. It never struck the non-official members to inquire into what right the official member had to call for a report from the Collector behind their backs. The non-official members were not even curious to ask the official member whether the poor petitioner had been given an opportunity to deal with the statement of the Collector, on the strength of which, without the petitioner being heard, his appeal was summarily dismissed.

In Their Lordships' opinion it is never a proper way to decide cases or appeals without hearing a party or his advocate. If the Tribunal had taken the trouble to have a proper hearing from the petitioner, it would not have taken the decision which it did containing erroneous statements of facts.

In the result Their Lordships set aside the order of the Revenue Tribunal, the order of the Collector and the order of the Deputy Collector, and directed the latter to hear the application of the petitioner under sec. 178, to fix a date for the hearing, to give the petitioner every opportunity of calling such evidence as he wished to adduce, and to supply to the petitioner copies of any documents on which the Deputy Collector might rely in coming to his conclusion.

Their Lordships particularly directed the Deputy Collector to take into consideration, in deciding the question of the upset price, the statistics prepared by the Circle Inspector and the petitioner's allegation that he was prevented from bringing bidders to the auction.

EVASION OF INCOME TAX

Another Section of 1947 Act Held Invalid

AS CONTRAVENING GUARANTEE OF EQUALITY

The Constitution Bench of the Supreme Court on 21st October held that sec. 5 (1) of the Taxation on Income

(Investigation Commission) Act 1947, under which the Central Government had referred a number of cases of income-tax evasion for investigation by the Commission, was ultra vires of the Constitution as being discriminatory in character. The Chief Justice, Mr. Mahajan, delivered the judgment of the Court, and their Lordships S. R. Das, Ghulam Hasan, N. H. Bhagwati and Venkatarama Aiyer concurred with it.

This unanimous judgment was given in the petitions of Meenakshi Mills Ltd. (Madurai), Rajendra Mills Ltd. (Salem), Saroj Mills Ltd. (Singanallur) and Mr. Tiagarajan Chettiar.

Sec. 5 (1) of the Taxation on Income (Investigation Commission) Act, 1947, empowered the Central Government to make a reference by June 30, 1948, to the Commission for investigation and report of any cases wherein it had prima facie reason for believing that a person had to a substantial extent evaded payment of taxation on income. The date for making the reference was further extended upto September 1, 1948, and subsequent legislation extended the life of the Commission to December 1955.

The Supreme Court by an earlier judgment (vide p. iii: 106 of the BULLETIN) had held that sec. 5 (4) of the Taxation on Income Act, 1947, which empowered the Investigation Commission to report to the Central Government cases of tax evasion found during the course of an investigation of another assessee, was void, being discriminatory.

The decision in the present case, taken with the decision in an earlier case declaring sec. 5 (4) of the Act invalid, will have the effect that the Investigation Commission can no longer continue investigation of any cases pending before it. For under the Act, two categories of cases could be referred to the Commission, namely, those falling under sec. 5 (1) and under sec. 5 (4) of the Act.

The petitioners in the present case had challenged the provisions of sec. 5 (1) on the ground that they contravened the guarantee of equal protection of the laws enacted in Art. 14 of the Constitution. But on the promulgation, on account of the decision in the earlier case, of Ordinance No. 8 of 1954, which was later made into an Act of Parliament, the petitioners were enabled to impugn sec. 5 (1) on another ground also. By the Act of Parliament passed at the time a sub-section was added to sec. 34 of the Indian Income-Tax Act, by which the income-tax officer was authorized, if he had reasons to believe in the case of any assessee that income for any year between 1939 and 1946 had escaped assessment, to serve notice under sec. 22 (5) and start proceedings under the Act. Thus the income-tax officer was given power to deal with cases of the type investigated by the Commission under sec. 5 (1) and 5 (2) of the Act of 1947. The petitioners, therefore, because of this change in law, could

take an additional objection to the continuance of proceedings by the Commission in their cases. Their contention was that the amended sec. 34 of the Indian Income Tax Act was comprehensive in its scope and all persons that were dealt with under sec. 5 (1) of the Act of 1947 had been brought within its ambit, and that being so, there was no basis left for giving them discriminatory or special treatment different from those who were similarly situated, and who were to be dealt with under sec. 34 of the Indian Income-Tax Act as amended. It was said that, assuming (but without admitting) that sec. 5 (1) of the Act of 1947 was based on a rational classification and was not hit by Art. 14 of the Constitution, it had now, because of the amendment in sec. 34 of the Indian Income-Tax Act, become void, as the classification which saved it from the mischief of Art. 14, if at all, had become ineffective, its distinctive characteristics having disappeared, and that the persons falling within the class defined in sec. 5 (1) of the 1947 Act now belonged to the same class as was dealt with by sec. 34 of Indian Income-Tax Act.

The Court accepted this contention, the Chief Justice saying :

All these persons can now well ask the question : "Why are we being dealt with by the discriminatory and drastic procedure of the Act of 1947 when those similarly situated as ourselves can be dealt with by the income-tax officer under the amended provisions of sec. 34 of the Act?"

In our judgment no satisfactory answer can be returned to this query because the field on which the amended sec. 34 operates now includes the strip of territory which previously was occupied by sec. 5 (1) of the Act of 1947, and two substantially different laws of procedure, one being more prejudicial to the assessee than the other, cannot be allowed to operate on the same field in view of the guarantee of Article 14 of the Constitution " (equality before law) .

We are of the opinion that assuming the provisions of sec. 5 (1) of the Act of 1947 could be saved from the mischief of Article 14 of the Constitution on the basis of a valid classification, that defence is no longer available in support of it after the introduction of the new sub-section in sec. 34 of the Income-Tax Act, which sub-section is intended to deal with the same class of persons dealt with by sec. 5 (1) of the impugned Act.

In other words, the Chief Justice observed, substantial tax-dodgers or war-profiteers who, were alleged to have formed a definite class and whose cases, according to the Attorney General, needed special treatment at the hands of the Commission, now clearly came within sec. 34 of the Indian Income-Tax Act. That being so, the only basis for giving them differential treatment, namely, that they formed a distinct class by themselves, had completely disappeared,

with the result that continuance of discriminatory treatment to them came within the mischief of Art. 14 of the Constitution and had thus to be relieved against. "Therefore proceedings before the Investigation Commission (which have not yet been completed) can no longer be continued under the procedure of the impugned Act."

The Court, allowing the petitions, ordered a writ to be issued against the Commission prohibiting it from proceeding further with the cases of the four petitioners.

APPEAL AGAINST AN ACQUITTAL

Principles Disregarded

Ramjanam Singh, a police sub-inspector, who was then in charge of Dinapore police station in Bihar, made an investigation into dacoity charges against Sitaram Dusadh. It was alleged against him that during this investigation he demanded and accepted Rs. 100 as a bribe for dropping the proceedings. He was consequently prosecuted under sec. 161, I. P. C., read with sec. 5 of the Prevention of Corruption Act 1947.

The trying magistrate, disbelieving the story about the demand of a bribe, reached the conclusion that currency notes were planted on the sub-inspector and acquitted him. On appeal the Patna High Court reversed the acquittal and convicted and sentenced him to one year's rigorous imprisonment. He was given special leave to appeal to the Supreme Court, and on 2nd November the Supreme Court set aside the conviction and sentence of the High Court. Mr. Justice Vivian Bose, who delivered the judgment of the Court, said :

What really seems to have weighed the scales in the High Court against the appellant is the fact that the learned judges felt they could not disbelieve the three official witnesses. But they have not weighed the fact that there is such a thing as over-zealousness even in responsible officials.

In our opinion the High Court has not displaced the conclusion of the trying magistrate that this is a case of a careful conspiracy against the appellant in which the notes were planted on him and in which the three Government officials have been misled and duped by Sitaram Dusadh and Hiralal Parnat (a prosecution witness) and that their zeal, outrunning their discretion, led them to draw on their imagination for events which they believed must have occurred and thus induced them to touch up their stories just enough to make what they honestly believed to have been fact foolproof in the witness box.

This is not to say that we hold this to be a fact because that is not our function. We are only deciding whether the High Court has given true effect to the principles which must guide a court in an appeal against an acquittal. In our opinion, the reasons given by the High Court are not enough to justify the setting aside of the acquittal.

Mr. Justice Bose added that the fact that one court had doubted or disbelieved the evidence strengthened the case of the accused. "It behoves the High Court in such cases to furnish strong reasons why the benefit of doubt should not go where it has already been placed in the lower court."

GENERAL CLAUSES ACT

Applicability of Sec. 6

SUPREME COURT'S RULING

One Mehar Singh, an East Punjab refugee, filed a claim in regard to property left in Pakistan, under sec. 4 of Ordinance No. 7 of 1948, which makes provisions for the registration of land claims of the East Punjab refugees. It was alleged that he had filed a false claim by stating that he had lands measuring 104 kanals situated in Minawali (East Punjab) while he had none. He was consequently prosecuted for a contravention of the Ordinance, which made any false information in regard to a claim punishable. But the prosecution was started in 1950 under sec. 7 of Act No. 12 of 1948, which repealed the Ordinance but re-enacted all the provisions of the repealed Ordinance. The trial magistrate convicted him and sentenced him to imprisonment till the rising of the court and a fine of Rs. 120. The district magistrate of Jullundur considered the sentence inadequate and referred the case to the East Punjab High Court for enhancement of the sentence.

The High Court, however, on 7th August 1953, set aside the conviction and sentence, holding that since the Ordinance, under which the offence was said to have been committed, had been repealed, there could be no prosecution for contravention of it, in the absence of a provision in the subsequent Act to continue the criminal liability after the Ordinance came to an end. The High Court, in coming to this conclusion, expressed the view that sec. 6 of the General Clauses Act could be attracted only when an act or regulation was repealed simpliciter, but not when, as in the present case, the repeal was followed by re-enactment. The repealing Act reproduced the provisions of the Ordinance in their entirety, but it nowhere provided that offences committed when the Ordinance was in force could be punished after its repeal.

The State of the Punjab preferred an appeal against this decision to the Supreme Court, invoking the provi-

sions of sec. 6 of the General Clauses Act, which, laying down the effect of the repeal of an enactment, says that "where this Act or any Central Act or regulation made after the commencement of this Act repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not affect" any right incurred, any penalty committed or any investigation under any enactment so repealed. The Supreme Court on 22nd October allowed the State Government's appeal and set aside the High Court's judgment. Mr. Justice B. K. Mukherjee, who delivered the judgment of the Court, said that, in their opinion, the approach of the High Court was not correct. Whenever there was a repeal of an enactment, the consequences laid down in sec. 6 of the General Clauses Act would follow unless, as the section itself said, a different intention appeared. Therefore, they could not subscribe to the broad proposition that sec. 6 was ruled out when there was repeal of an enactment followed by fresh legislation. Mr. Justice Mukherjee said:

Sec. 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law and the mere absence of a saving clause is by itself not material.

The judgment then examined the provisions of Act No. 12 to ascertain whether it intended the discontinuance of liabilities incurred under the Ordinance and came to the conclusion that it did not. His Lordship said:

The provisions of secs. 4, 7 and 8 of the Act make it apparent that it was not the intention of the Legislature that the rights and liabilities in respect of claims filed under the Ordinance shall be extinguished on the passing of the Act, and this is sufficient for holding that the present case would attract the operation of sec. 6 of the General Clauses Act.

It may be pointed out that sec. 11 of the Act is somewhat clumsily worded and it does not make use of expressions which are generally used in saving clauses appended to repealing statutes, but as has been said above the point for our consideration is whether the Act evinces an intention which is inconsistent with the continuance of rights and liabilities accrued or incurred under the Ordinance and in our opinion the question has to be answered in the negative.

In the result the Court directed that the sentence already passed upon the respondent by the trying magistrate should stand.

NOTES

Vacillating Decisions of the Supreme Court In Search and Seizure Cases

The vacillating course of the U. S. Supreme Court decisions in regard to search and seizure cases, particularly in regard to the admissibility or otherwise of illegally seized evidence in criminal cases, has led to a great deal of confusion, and this was strikingly revealed by the differing judgments delivered by different Justices in *Irvine v. California*, decided on 8th February last.

Patrick E. Irvine was prosecuted in a California court on a charge of horse-race bookmaking and was convicted on evidence which included the defendant's incriminating statements obtained by the police by surreptitiously entering his home and placing a concealed microphone therein. The question was whether the conviction should be sustained or reversed.

In *Weeks v. United States*, 232 U. S. 383 (1914), the Supreme Court laid down the principle that illegally obtained evidence must not be admitted in federal trials, but this federal rule of exclusion was expressly held inapplicable in *Wolf v. Colorado*, 338 U. S. 25 (1949), in state trials unless the states themselves adopted the rule, and in fact two-thirds of the states accept illegally obtained evidence in state prosecutions for state crimes. But in *Rochin v. California*, 342 U. S. 165 (1952), the Supreme Court appeared to follow a different course. It did not extend the exclusionary rule to state trials—it did not consider that matter—but in view of the aggravating conduct of the police in that case it felt constrained to set aside the conviction. In this case "stomach pumping" was resorted to in order to obtain morphine capsules which were later used as evidence to secure conviction. The Court held that the methods employed by the police were offensive to prevailing notions of fairness in the conduct of prosecutions and for that reason invalidated the conviction as contrary to the due process clause.

In the instant case too the conduct of the police was revolting, and the Court divided only on the question whether the *Rochin* precedent should be followed in reversing the conviction. How in the present case the police who strongly suspected Irvine was guilty of illegal bookmaking but were without proof of it obtained evidence may be thus stated. While Irvine and his wife were absent from their home, they got a locksmith to go there and make a door key.

With this key they made entry into the home, again in the absence of occupants, and installed a concealed microphone in the hall, placing some men in a neighbouring garage to which wires were strung to listen to any conversation that the Irvines might have. Later the police again made surreptitious entry and moved the microphone first in the bedroom and then in the bedroom closet. Thus, for a month continuously, the police overheard incriminating statements and used these statements in obtaining a conviction. That these methods were shocking is obvious. Even the five Justices, who upheld Irvine's conviction, shared this opinion. They said: "That officers of the law will break and enter a home, secrete (an amplifying and recording device) even in the bedroom, and listen to the conversation of the occupants for over a month would be almost incredible if it were not admitted. Few police measures have come to our attention that more flagrantly, deliberately, and persistently violated the fundamental principle declared by the Fourth Amendment."

But because the Fourth Amendment's principle is a restriction on the federal Government and the *Wolf* decision declined to make it available in the states, the Supreme Court did not hold in the present case that the use of illegally obtained evidence invalidated the conviction. Nor did the majority Justices agree to bring this case under the sway of the *Rochin* decision, the reason being, according to them, that the element of physical coercion, violence and brutality that was present in the stomach pump case was absent here, which was a case, apart from its other extremely bad features, merely a case of "trespass to property plus eavesdropping."

Justice Frankfurter, who was himself responsible for the *Wolf* decision, and Justice Burton were for treating this case on the lines of the *Rochin* case. Justice Clark said: "Had I been here in 1949 when *Wolf* was decided, I would have applied the doctrine of *Weeks v. United States*." And as *Wolf* remained the law it must be respected. *Rochin* could not be followed, for that would make for much uncertainty and unpredictability. He therefore followed *Wolf* "with great reluctance." Justices Black and Douglas on the other hand have long held that the exclusionary rule must be applied in state as well as federal trials and had no hesitation in giving the opinion that the conviction must be set aside.

Thus in this case the conviction was affirmed by the Supreme Court by a vote of 5 to 4.