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CRIME COMICS AND HORROR STORIES

A. C. L. U.'S POLICY STATEMENT

On a ban being imposed by the Government of India on the import of "horror comics" under the Sea Customs Act, the "Statesman" considered the whole problem in an article which we reproduced at p. iii : 248 in the July number. Now that the Home Minister stated in the Lok Sabha on 9th August in answer to a question that a bill to prohibit production of "horror comics" would shortly be introduced in Parliament, our readers will be interested to have the following extracts from a policy statement submitted by the American Civil Liberties Union to the Senate Judiciary Sub-Committee on Juvenile Delinquency, which is charged with the task of suggesting remedies to check the rising tide of juvenile crime which may to some extent be due to the reading of horror comics by the young.

The American Civil Liberties Union fully realizes that the problem presented by comic books dealing with crime, violence and horror has become alarming, and it believes that every legitimate effort must be made to deal with the causes of juvenile delinquency and to seek its cures. Only, in doing so, it insists that the problem be solved without subverting civil liberties.

Do Comics Breed Delinquency ?

It is generally assumed, the Union says, that the reading of crime comics stimulates children to commit crimes. But experts in the fields of sociology, child psychology, psychiatry and law enforcement are not agreed about this. Indeed, their opinions differ as widely as possible. "Some experts state that crime comic books have the most direct relationship to the occurrence of criminal acts. A second group believes that crime comic books have some importance, but are not the controlling factor. Still a third group asserts that comic books play only a minor role in the development of a juvenile delinquent. A number of specialists feel that comic books do not have the slightest bearing on the problem." In this connexion the Union quotes the opinion, as worthy of serious consideration, of one recognized as an eminent crime authority, viz., Mr. J. Edgar Hoover, Director of the Federal Bureau of Intelligence. After commenting on the fact that certain crime

stories and comics may be dangerous, particularly in the hands of an unstable child, he said in 1950 :

It is doubtful, however, that an appreciable decrease in juvenile delinquency would result if crime comic books of all types were not readily available to children.

Guidance by parents in the reading habits of boys and girls is the best defence against possible addiction to certain horror stories. The love for this type of reading may reveal a lack of balance not only in reading habits but in the child's environment at home, in the school and in the neighbourhood.

Without presuming to judge of the merits of the differing views held by experts on this subject, the Union says :

It is appropriate to say, however, that at this time there has been no showing that the circulation of crime comic books constitutes a clear and present danger with respect to the occurrence, or continuance, of juvenile delinquency. Unless such a danger is shown — and further, the inadequacy of alternative means to combat this evil — there is no justification for cutting into a basic right guaranteed by the U. S. Constitution, a free press unhampered by governmental interference. In view of the anti-delinquency work being carried on by churches and synagogues, schools, social agencies, and civic and community organizations, it can hardly be said that there is insufficient time to combat whatever evils may be presented by crime comic books by means short of censorship or by legally banning their publication. Unless such time is lacking, then even the fact that some relationship is shown between the increase of juvenile delinquency and the distribution of crime comic books is no justification for their suppression.

Forbidding Publication of Crime Comics

After stating its general position in this way, the Union proceeds to examine the solutions proposed. These solutions "run the gamut from legislation forbidding publication of crime comics or banning their sale to

minors to less drastic measures." On the first of these proposals, it remarks that some persons have suggested that, though as a general rule censorship is wrong, it might be proper to censor comic books involving only children's reading, "because the youthful mind has not matured to the level where it can assimilate and wisely evaluate a complex of ideas." Rejecting this argument, the Union says:

First, it is most difficult to limit censorship only to the elimination of misdeeds and horrors to which children should not be exposed. Historical experience has shown that private groups who seek to inculcate their particular point of view are always eager to broaden the scope of banned material and seize on censorship as an ally. Once the wall has been breached, more ground may be lost. Second, if a system of censorship is established for children, it could pave the way for censorship of adult reading material. To institutionalize the censor and his scissors is a real danger. Governmental censorship, even in a limited form, has within it the means of destroying the climate needed to nurture the minds of free men.

However, it is unreal to discuss the problems of censorship of comic books in a context which implies that only children would be affected. There is ample evidence that a large part of the comic book readership is adult. The A. C. L. U. is opposed to the prior censorship of reading material for adults, even if children may obtain access to such material, for we believe that the First Amendment flatly prohibits it. To condone pre-censorship for children is to risk abandonment of all reading material to the censor, since in one way another youngsters are apt to obtain any book at some time. . . . Is it still necessary to set forth the massive historical weight of evidence against prior censorship of books? Have we not yet finally passed this milestone of progress on the road to freedom?

Prohibiting Sale of Comic Books to Children

The Union then proceeds to consider the second solution suggested, viz., that instead of banning crime comic books themselves, legislation should aim at banning distribution of such books to under-age children. The Union does not favour such a proposal because in its opinion it would be unworkable. It says:

There is ample evidence that a prohibition always heightens interest in the banned product, and it can be expected that "bootleg" sales will spring up. . . . In those communities where the law provides that crime comics may not be sold to children under a certain age, each bookseller is faced with the task of determining who is a qualified buyer, and deciding which comic book is outside the pale. This law may be more difficult to administer than the laws forbidding the sale of liquor to minors.

An extreme proposal, which has been incorporated into the law of many states, is an outright ban on

publications devoted principally to criminal news and stories of bloodshed, lust and crime—broad enough to include crime comics. In the A. C. L. U.'s opinion, which has been upheld by the U. S. Supreme Court, such laws cannot meet constitutional standards.

[The case here referred to is *Winters v. New York*, a summary of which is given in the next article.]

What Can Be Done?

After considering some other less objectionable suggestions, the Union concludes by stating what in its opinion the best solution would be. It says:

Probably our best hope lies in the home itself—parental control over the reading habits of their children. A congressman's comment on television programmes that portrayed crimes and violence, "Did you ever think of turning the damn thing off?" suggests that parents sufficiently interested in the proper development of their children should keep a careful watch over their reading material. And as the testimony of child welfare experts attests, an environment which embraces a wide range of interests will make comics less of an attraction to children. This is in line with accepted educational theory and practice which conceives of the child as a whole person, whose total needs must be considered. To those who argue that not every child's home environment can meet his total needs and something must be done to safeguard children who, unfortunately, live in an unwholesome environment, the answer lies in the work of schools, churches and community organizations. The creation of the healthy environment is their challenge.

The A. C. L. U. understands the concern of American parents that their children are being subjected to a barrage of written material that may wield real influence on their impressionable minds. But there is another danger that must be equally considered—the danger of censorship. To suppress books in the absence of a clear and present danger, even offensive comic books, is in violation of the First Amendment. And the weakening of the First Amendment can lead to the undermining of our free institutions, which we want our children and their children to enjoy and respect. True, there may be a risk in allowing the circulation of books—all kinds of books—but risk is an indelible mark of democracy and a society of freedom.

Banning Stories of Crime

A New York Statute

[Reference is made above to the decision of the U. S. Supreme Court in *Winters v. New York*, 333 U. S. 507 (1948), declaring a New York State law invalid because of vagueness. An account of the case is given here from Alison Reppy's "Civil Rights in the United States." Such a law has been enacted in more than twenty American States.]

Winters v. New York involved the constitutionality of a statute proscribing the distribution of a publication

composed principally of criminal news. The petitioner, a New York bookseller, was convicted under a statute making it a misdemeanor to deal in printed matter "devoted to the publication . . . of criminal news, . . . or stories of deeds of bloodshed, lust or crime. . . ." He took an appeal, contending that the statute contravened his right of free speech and press, and that because of its vagueness and indefiniteness it denied him due process of law. In sustaining the conviction, the New York Court of Appeals, realizing an obvious constitutional defect apparent upon the face of the Act, limited its scope by holding it applicable only to publications which, aside from measuring up to the other requirements of the statute, "so massed their collection of pictures of bloodshed and of lust as to become vehicles for inciting violent and depraved crimes against the person," and held that the distribution of the June 1940 issue of the magazine entitled "Headquarters Detective" had violated the statute in that sense. It

followed, therefore, that the constitutionality of that interpretation of the statute, that is, in the sense of massing of the stories of crime, bloodshed and lust, which, standing alone and regarded individually, might not be prohibited without infringing upon the right of freedom of press and speech, was placed in issue. In reversing the conviction by a six to three decision, the Supreme Court, with Justice Reed delivering the opinion, declared the section in question void on the ground of vagueness and indefiniteness. Observing that the phrase "so massed as to incite crime" could become meaningful only by a series of concrete cases, and that since an interpretation appeared to create something in the nature of a new crime, the statute had failed to establish any adequate standard by which a person could determine whether a given publication had violated the statute. Nor had this failure to set a standard been supplied by the interpretation placed upon the statute by the New York Court of Appeals.

CONTROL OF NEWSPAPER BUSINESS

THE PRESS COMMISSION'S REPORT

Parliament after a three-day debate last month in the lower House gave general support in a resolution to the Press Commission's recommendations which would give the Government power to control most of the commercial aspects of the newspaper business. The resolution is interpreted as a mandate to the Government to introduce legislation to give effect to these recommendations. Particular stress was laid in the debate on the proposals calculated to improve the working conditions of the staffs of newspapers and reducing the evil effects of the competition which medium and smaller newspapers have to face at the hands of the larger ones. Without a doubt these are worthy objectives, and to the extent that legislation will achieve them it will be a gain.

But it is inexplicable why Parliament should concentrate attention on the business operations of the Press to the exclusion of what is certainly more important than these, viz., Freedom of the Press. The Commission has made recommendations on the latter subject too; some of them favourable to Press freedom, others unfavourable. But in the debate members neither urged early implementation of the former nor raised a voice in favour of rejecting the latter. The Commission's recommendations relating to Press freedom will no doubt come before Parliament some day, but we cannot understand why top priority should be given to that part of the report which would extend governmental control over newspapers instead of on that part which would reduce it, making the Press more free than now.

Appointment of a Press Manager endowed with vast powers of search and seizure; establishment of a state trading corporation empowered to take over complete control of imported and domestically produced newsprint

and assume charge of distributing it; and creation by statute of a Press Council which would have authority to "censure anyone guilty of infraction" of newspaper ethics are proposals for the Government's intrusion into a sphere from which it is everywhere thought best that it should keep away. The first proposal is condemned by the "Hindu" in downright terms as nothing less than "the establishment of a permanent bureaucratic inquisition which would be a galling disability to the Press as an industry while it would do irretrievable damage to its independence as a public institution;" and the other two would, as the "Statesman" says, necessitate "closer supervision of the industry," and such supervision "in some future Government's hands may degenerate into abuse."

But the chief complaint one has to make about the Parliamentary debate is that while it focussed attention on one aspect of this large question, viz., the commercial interests of the Press, it neglected altogether the other aspect, viz., freedom to the Press to say what it likes without fear or favour. On this point the "Statesman" has apposite remarks to make. It says:

Reading the debate, some people may also have wondered whether there is not inconsistency between the plethora of legislative and executive restrictions demanded and that fundamental requisite of a Press worth the name, freedom. Must the Press in democratic India be put in leading strings which in other democratic countries would create uproar?

Like the "News Chronicle" of London, the "Times" of New York also is very much "disturbed" by the "increased controls" to which the Indian Press is about to be subjected. It is disturbed because it feels that "any move to restrict freedom of the Press anywhere in the

world is of direct concern to everyone who believes in Freedom of the Press," and says: "If the Press of India has certain failings, neither governmental economic controls nor Government fiat will make it better. They will only throttle it."

Brazil's Code of Newspaper Ethics

In this connection reference may be made to a proposal made in Brazil to set up by statute a so-called Order of Journalists with power to supervise newspaper men and enforce a code of professional ethics. The proposal has its origin in the fact that libellous attacks appear in the Press of that South American country, and the aim is stated to be to raise the standards of newspaper conduct there. The proposed law lays down that membership in the Order of Brazilian Journalists is an indispensable requisite for exercising the profession of journalism. Without such membership no one would be allowed to work as a newspaper man, and the Council of the Order would have power to expel members, thus barring them from all newspaper work. Brazil's lawyers already have such a body, the Order of Advocates, with power to disbar members for unethical conduct. The Order is described as "an organ of selection, discipline and defence" of newspaper men, and it is stated also to be "a federal public service." The proposal has naturally caused alarm among experienced journalists who maintain high standards lest what was distasteful to the Government or to some influential group might be construed unjustly to be "unethical" and the law might be used as a means of curbing legitimate press freedom.

Restrictive Effect of such Codes

One important aspect of professional codes, which generally escapes the attention of the public, must also be considered. Take the instance of the Comic Magazine Association formed in the U. S. A. by comic book publishers, which, in order to forestal legislation prohib-

ing publication of comics devoted to crime, horror and violence, has promulgated a code of principles in regard to comics. The code contains "do's" and "don'ts," and all publishers are expected to adhere to these precepts, thus imposing censorship on themselves in order to escape governmental censorship which they think may soon be coming. This Association is a voluntary organization, unlike the Press Council proposed to be created as a statutory body in India and in Brazil. Nevertheless, the American Civil Liberties Union condemns establishment of associations like the Comic Magazine Association as leading possibly to the imposition of undue restraints. In its policy statement referred to in the opening article in this issue, the Union says on this subject:

Because codes have inevitably had the effect of inhibiting the free expression of ideas, the A. C. L. U. has opposed their establishment among industry members of the mass communication fields. Although a single publisher may prescribe for himself any set of standards he may desire for the publication of material, a different situation exists where a significant segment of industry agrees to abide by a code: *Collective adherence to a single set of principles in a code has the effect of limiting different points of view*, because individual publishers—as well as writers—are fearful of departing from the accepted norm lest they be held up to scorn or attack and suffer economic loss. But the variety of ideas is the lifeblood of a free society. Whatever evil exists in the restraint of competition in our economic life pales into insignificance when compared to the dangers of monopoly or uniformity of ideas. Experience has shown that the restrictive effect of codes goes for beyond their original purpose and intention.

Therefore, while we encourage each individual publisher to develop his own standards of taste and decency in the publication of comic books, we are opposed to the establishing of rigid standards to which all publishers are constrained to adhere.

DUE PROCESS OF LAW IN DEPORTATION CASES

Two months after the Supreme Court decided in the *Pedreiro* case (vide p. iii: 270 of the BULLETIN) that a full judicial review was available in deportation proceedings under the Administrative Procedure Act, instead of the review being limited to the traditional method of a writ of habeas corpus, the Court decided on 31st May last, in the case of *Marcello v. Bonds* (Justices Black, Frankfurter and Douglas dissenting) that the Immigration and Nationality Act of 1952, under which Marcello, a native of Tunis residing in the United States for forty-four years, was deported on account of violation of the narcotic laws, was exempt from the operation of the Administrative Proce-

dure Act in respect of the one particular in which the hearing procedures laid down in the former Act differ from those laid down in the latter Act.

The Japanese Immigrant case (*Yamataya v. Fisher*), 189 U. S. 86 (1903), decided that a resident alien cannot be deported without being accorded a fair hearing in accordance with the due process clause of the Fifth Amendment. This is provided by the Immigration Act, in that it requires that the alien be given (1) reasonable notice of the charges against him, (2) the privilege of being represented by counsel of his own choosing, (3) a reasonable opportunity to be present and to examine evidence and to cross-examine

witnesses, and it provides that (4) the decision as to deportability shall be based upon reasonable, substantial and probative evidence. So far the Immigration Act agrees with the Administrative Procedure Act, which also has like provisions. But the latter Act, unlike the former, makes a clean-cut separation of investigating and prosecuting functions from those of adjudication, whereas the Immigration Act permits the "special inquiry officer" to take the dual role of prosecutor and hearing officer. Nevertheless, it prohibits the "special inquiry officer" from hearing cases which he has taken some part in investigating or prosecuting; and, as an alternative, it permits an additional immigration officer presenting the evidence while the special inquiry officer presides, thus ensuring that the presiding officer shall not undertake the functions of prosecutor.

In the instant case the alternative procedure was employed, and it was not alleged that the presiding officer performed any investigative or prosecuting functions. To this extent it may be said that the principle of "separation of functions," to introduce which into decisions of administrative agencies was the main purpose of enacting the Administrative Procedure Act, already exists in the Immigration Act. But the latter Act lacks one element which makes for impartiality of administrative determinations that the former Act contains. Whereas sec. 5 (c) of the Administrative Procedure Act forbids hearing officers to conduct hearings if they are "responsible to, or subject to the supervision or direction of, any officer, employee or agent engaged in the performance of investigating or prosecuting functions for any agency," it is expressly provided in sec. 242 (b) of the Immigration Act that the special inquiry officer, although he himself may have taken no part in investigating or prosecuting, is subject to the supervision and control of the supervisory officers of the Immigration Service who perform investigative and prosecutorial functions. This provision of the Immigration Act was attacked by Marcello as denial of due process, because the hearing officer adjudicated the very case against him which the hearing officer's superiors initiated and prosecuted. The petitioner's argument was that requiring him to have his case adjudicated by a subordinate of the prosecutors deprived him of the impartial tribunal which a fair hearing required. The Court held that the contention was without substance in view of "the special considerations applicable to deportation which the Congress may take into account in exercising its particularly broad discretion in immigration matters." The dissenting Justices were unwilling to dismiss the petitioner's due process challenge so lightly. They said:

The idea of letting a prosecutor judge the very case he prosecutes or supervise and control the job of the judge before whom his case is presented is wholly inconsistent with our concepts of justice. . . . It is hard to defend the fairness of a practice that subjects judges to the power and control of prosecutors.

The decision turned on the view one took of the intention of the Congress when it passed the Immigration and Nationality Act in 1952. In the year 1950 the Supreme Court decided in *Wong Yang Sung v. McGrath*, 339 U. S. 33, that deportation proceedings must be conducted as required in sec. 5(c) of the Administrative Procedure Act. [In that case the Court pointed out how "the administrative hearing (was) a perfect exemplification of the practices so unanimously condemned." The initial step in a deportation case is the investigation of an alien by an immigrant inspector. This is followed by issuance of a warrant of arrest and incarceration. The formal hearing follows before the presiding inspector who must not be an official who has investigated the case. "But," says the Court, "the inspector's duties include investigation of like cases; and while he is to-day hearing cases investigated by a colleague, to-morrow his investigation of a case may be heard before the inspector whose case he passes on to-day."] Six months later, in a rider to an Appropriation Act, proceedings directed to the exclusion or expulsion of aliens were specifically exempted from this section, thus undoing the Supreme Court's decision. But this rider was repealed in the 1952 Immigration Act. And the question was whether Congress intended to make sec. 5(c) of the Administrative Procedure Act inapplicable to immigration cases under the Act of 1952. The majority members of the Court held that Congress must be presumed to have so intended. They observed that the Administrative Procedure Act was used as a model in passing the Immigration Act, since so many of the provisions of both the Acts in regard to the giving of a fair hearing to the alien charged with a crime coincide. "But it was intended only as a model, and when in this very particularized adaptation there was a departure from the Administrative Procedure Act, surely it was the intention of the Congress to have the deviation apply and not the general model." Thus they ruled that the 1952 Act was exempted from the hearing provisions of the Administrative Procedure Act.

Justice Black and Frankfurter, on the other hand, held that since in the Immigration Act as passed "there was no language [in the original proposal there was] which 'expressly' superseded or modified [as required by sec. 12 of the Administrative Procedure Act] the binding requirement of sec. 5 (c) of the Administrative Procedure Act," the decision in the *Sung* case, supra, to the effect that deportation hearings were subject to this section, did not stand modified but was in fact restored, after the repeal of the rider in the Appropriation Act, by the Immigration Act. For support of this view they relied mainly on what Senator McCarran and Representative Walter, who were sponsors of both the Administrative Procedure Act and the Immigration Act, had stated in Congress on the Immigration Bill. Mr. Walter, for instance, said on this occasion:

Instead of destroying the Administration Procedure Act, we undo what the Congress did in a deficiency appropriation bill several years ago when it legislated

to overturn a decision of the Supreme Court [in the Sung case], which ruled that the Administrative Procedure Act is applicable in deportation proceedings. We undo that. So here, instead of our destroying the Administrative Procedure Act, we actually see that it is reinstated in every instance. . . . The law, as it was before the House adopted this amendment to an appropriation bill, has been reinstated and that the decision of the Supreme Court in the Sung case will be the law of the land when this code is adopted.

Justice Douglas dissented from the majority decision on another point. Marcello was convicted as long ago as 1938 and sentenced to imprisonment for one year. That was made a ground for his deportation later, because the 1952 immigration law in sec. 241 (a) (11) makes such conviction *at any time* ground for deportation. The petitioner pleaded that his conviction was not ground for deportation at the time he committed the offence and that the retroactive application of the new grounds for deportation in sec. 241 (a) (11) was unconstitutional as an *ex post facto* law. The majority of the Court overruled this objection holding that the prohibition in Art. 1 (9) (3) of the Constitution that "no *ex post facto* law shall be passed" does not apply to deportation [the term "*ex post facto*" law has always been held as embracing only criminal laws, and deportation, though burdensome and severe for the alien, is not a punishment], i. e., deportation may constitutionally be ordered for prior acts, as was laid down for instance in *Harisiadas v. Shaughnessy*, 342 U. S. 580 (1952), in which it was held that the clause forbids *panal* legislation which imposes or increases criminal punishment for conduct lawful previous to its enactment and that deportation is a civil rather than a criminal proceeding, and in *Galvan v. Press*, 347 U. S. 522 (1954), in which it was said that "it has been the unbroken rule of this Court that (the *ex post facto* clause) has no application to deportation." Justice Douglas held that "the Constitution places a ban on all *ex post facto* laws. . . . So far as *ex post facto* laws are concerned, the prohibition is all-inclusive and complete."

COMMENTS

Ambedkar on Untouchables

The Scheduled Castes Federation, of which Dr. Ambedkar is president, passed at a meeting of its working committee on 23rd August a resolution asking for immediate abolition of the seats reserved for these castes in the central and State legislatures and district and local boards throughout the country. The resolution said that the reservation should be done away with even before the next general elections. Dr. Ambedkar, in moving the resolution, observed: "The Federation has fought for the reservation of seats for the Scheduled Castes in the past. But time has come to end such reservation as there is no need for it now."

In another resolution it was said that the committee was convinced that "the present set-up of the village system is based on compulsory co-existence (between caste Hindus and Scheduled Castes), which is at the root of untouchability and the poverty of the untouchables." The resolution called for the end of "this system of co-existence." This could be done, it said, by establishing separate villages for untouchables, who were now "living scattered in different villages under the sovereignty of caste Hindus."

Equal Rights for Women

PAKISTANI WOMEN'S DEMANDS

The Women's Rights Committee of Pakistan, recently set up, has prepared a memorandum and sent it to all members of Pakistan's Constituent Assembly. "Women should not suffer inequality of any kind in the proposed Constitution of Pakistan," says the memorandum. It asks that women should be given the right to vote in all elections on equal terms with men and demands that 15 per cent. of the seats in Provincial Assemblies and 10 per cent. of those in Parliament be reserved for women. Eligibility to public offices and equal pay for equal work are some of the other demands made in the memorandum. Besides this, the memorandum pleads for a proper share of offices being given to women at all levels. And it also asks that women be provided with all internationally accepted safeguards and facilities for women.

Admission of Foreign Missionaries

India's new official policy towards the activities of foreign missionaries in this country is described in the latest Government year book.

In future, the issue of visas to foreign missionaries will be guided by two considerations.

First, no new missionaries will be permitted to enter India either as replacements or additional members of missions, unless Indian missionaries are not available to fill these positions.

Secondly, while the foreign missionaries already in India will be permitted to carry on their present activities, new missionaries will not be welcome if they are to devote themselves entirely to the propagation of the Gospel. They should, in addition, have suitable qualifications as educationists, doctors or social workers to interest themselves in constructive activity.

Ceylon Supreme Court's Ruling

ON THE ADMINISTRATION OF THE CITIZENSHIP ACT

In an appeal to the Supreme Court of Ceylon against the decision of an official denying citizenship to an Indian settler, the Crown Counsel objected that applicants for citizenship under the Citizenship Act had no right of appeal at all, but the Supreme Court overruled the objection and held that applicants for Ceylon citizenship had the right of appeal against the orders of the Deputy

Commissioners for Citizenship Registration. This is a welcome ruling as it affords a remedy, though one doubts how many Indian settlers could avail themselves of it, against what looks like a wholesale rejection of applications for citizenship by Indian applicants, most of whom, as the "Hindu" says, "are estate workers who have given their all to Ceylon, whose ties with India are now most tenuous, and who really desire to live as citizens of Ceylon." "There are in the island about eight and a half lakhs of persons of Indian origin who, by ordinary canons, are entitled to the rights and privileges of Ceylon citizenship, . . . but at the present rate of rejection only one in three thousand applicants has a chance of being accepted." There is now a possibility of some relief being given by the courts against those who have settled for generations in Ceylon being rendered Stateless.

Plebiscite in Kashmir

TALK ABOUT IT IS "Treason"

Politicians often shout "treason" at those who propagate views which are highly distasteful to themselves. This happened recently to Khan Abdul Ghaffar Khan who is carrying on propaganda against the Pakistan Government's scheme to merge all West Pakistan provinces and States into one unit. His opposition proceeds from his insistence on his home province of the North-West Frontier being accorded in the new Pakistan Constitution regional autonomy, which he believes will not be possible if the one-unit plan is carried into effect. He explained his position clearly in public meetings. He said he joined the Indian National Congress because the working committee of that body had promised him complete provincial autonomy for the N.-W. F. P. "with a weak centre, which would have given the Frontier people complete independence," and he had told Malik Feroze Khan Noon before partition that he would quit the Congress if this objective could be attained. But now he found that Pathans were being deprived of provincial autonomy under Pakistan, which made him oppose the West Pakistan merger. However, he is now being branded as a traitor because of the expression of such views, and it was left to his brother and comrade, Dr. Khan Sahib, to defend him against such attacks. This is a very piquant situation, for Dr. Khan Sahib, who is now Communications Minister in the Pakistan cabinet and is reported to be Chief Minister designate of the new West Pakistan province is cordially in favour of the one-unit plan. He had to intervene and reason with the supporters of the plan that his brother was as loyal a Pakistani as any one else and that his opposition to the plan of merger did not amount to treason.

It does not matter much if mere politicians with no responsibility whatever raise the cry of treason when they wish to condemn their opponents in scathing terms. But a different situation arises when the government itself

starts doing so, and such a situation has arisen in Kashmir State in respect of the "Plebiscite Front" organized by some associates of Sheikh Abdullah who is held in detention for nearly two years. These associates issued a statement challenging last year's decision of the Constituent Assembly of the State which purported to ratify the State's accession to India.

One would have thought that when both India and Pakistan were committed to the United Nations to the holding of a plebiscite for determining the future of Kashmir (as it was agreed by a treaty between Egypt and Britain that the Sudanese themselves would decide whether the Sudan would fuse with Egypt, enter the Commonwealth or be fully independent), a plea for making early arrangements for self-determination would be allowed in Kashmir. But it appears this is not going to be tolerated there. Mr. G. M. Sadiq, President of the State's Constituent Assembly, promptly dubbed any such propaganda as a "treasonable act." He said that once a sovereign body had taken a decision it was "seditious" to question it and went even so far as to say that the action of the signatories of the pro-plebiscite statement "was now engaging the attention of the State Government."

Bakshi Ghulam Mohammed, the present Prime Minister of Kashmir (he is to be styled "Prime Minister" and not simply "Chief Minister" like the heads of other Indian States), took up this cue and at an Independence Day mass rally declared that those who questioned the right of the Kashmir Constituent Assembly to decide finally on accession to India would be treated as "traitors." Luckily, he has not taken action against the Plebiscite Front as yet.

BIHAR SALES TAX ACT

High Court's Judgment Reversed

Supreme Court's Revised Interpretation of Art. 286

Reversing its earlier decision in the United Motors case (vide p. ii:253 of the BULLETIN), which was arrived at after consultation with the Advocates-General of States in view of the importance of the issues involved, the Supreme Court on 6th September put a new interpretation upon Art. 286 of the Constitution relating to restrictions on imposition of a tax on sale or purchase of goods in an appeal filed by the Bengal Immunity Co. Ltd. against the decision of the Patna High Court rejecting the claim of the Company that, not being a resident of Bihar, it was not liable to pay sales tax under the Bihar Sales Tax Act of 1947. The Supreme Court allowed the appeal and directed the State of Bihar to abstain from imposing sales tax on dealers outside the State till Parliament by law lifted the ban under Art. 286 (2).

The full Bench of the Supreme Court which announced the judgment consisted of the Acting Chief

Justice, Mr. S. R. Das, and Justices Vivian Bose, N. H. Bhagwati, Jagannadha Das, T. L. Venkatarama Iyer, Jaffer Imam and Sinha.

The majority decision was delivered by the Acting Chief Justice on behalf of himself, Mr. Justice Bose and Mr. Justice Imam. Their conclusions were supported by Mr. Justice Bhagwati.

The three other Judges, Mr. Justice Jagannadha Das, Mr. Justice Venkatarama Iyer and Mr. Justice Sinha, gave dissenting judgments.

FACTS OF THE CASE

The facts as contained in the petition are that the appellant company is an incorporated company carrying on the business of manufacturing and selling various sera, vaccines, biological products and medicines. Its registered head office is at Calcutta and its laboratory and factory at Baranagar in the district of 24-Parganas in West Bengal. It is registered as a dealer under the Bengal Finance (Sales Tax) Act. Its products have extensive sales abroad. The company has no agent or office in Bihar. The goods are despatched from Calcutta against orders which are sent to Calcutta by various customers.

On 18th December 1951, the Superintendent of Commercial Taxes, Bihar, issued a notice to the company calling upon it to register itself as a dealer under the Bihar Sales Tax Act and submit returns showing its turnover for the purpose of levying sales tax. Thereafter the appellant company filed a petition in the Patna High Court questioning the right of the Bihar Sales Tax authorities to levy taxes on a dealer outside its jurisdiction. Another contention was that in view of the constitutional prohibition on levying taxes on inter-State trade the Bihar authorities could not impose tax on goods sold by the company to its purchasers in Bihar.

The High Court dismissed the petition (on 12th December 1952) but granted a certificate to appeal to the Supreme Court.

The legal capacity of the State of Bihar to tax these sales was questioned on two main grounds, namely, that the sales ought not to have been taxed having taken place in the course of inter-State trade or commerce, and Parliament not having provided otherwise, all States were debarred from imposing tax on such sales by reason of Art. 286 (2). Secondly, the Bihar Sales Tax Act could have no extra-territorial operation and could not therefore impose tax on such sales by a non-resident seller.

In view of the importance of the issues involved in this appeal notices were issued to the Advocates-General of various States. The States of Madras, U. P., Madhya Pradesh, West Bengal, Orissa, Punjab, PEPSU, Mysore and Rajasthan applied for and obtained leave to intervene in the appeal. Similar leave was applied for by and was granted to the Tata Iron and Steel Company Ltd., and one M. K. Kuriakose. The State of West Bengal, the Tata Iron and Steel Company Ltd. and Mr. M. K. Kuriakose

supported the appellant company while the rest of the interveners opposed the appeal.

Majority Judgment

The Acting Chief Justice observed: "The main controversy in this appeal has centred round the question of construction of Art. 286 of the Constitution. In the judgment under appeal the High Court took the view that sales or purchases in the course of inter-State trade or commerce referred to in Art. 286 (2) must be construed so as to exclude the particular class of sales or purchases described in the Explanation to cl. (a) of Art. 286 (1) forbidding imposition by a State of a tax on sale or purchase which takes place 'outside the State,' and that, therefore, the provisions of the Bihar Sales Tax Act, 1947, in so far as they purported to impose tax on such sales, were not in conflict with Art. 286 (2) as so construed." The Explanation reads: "For the purposes of sub-clause (1), a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State, notwithstanding the fact that under the general law relating to sale of goods the property in the goods has by reason of such sale or purchase passed in another State."

After this decision of the Patna High Court the question came up for consideration before a Constitution Bench of this Court in *The State of Bombay v. The United Motors (India) Ltd.* The majority of that Bench held that Art. 286 (1) (a), read with the Explanation thereto and construed in the light of Art. 301 providing for freedom of trade throughout the territory of India and Art. 304, specifying restrictions on such freedom, prohibited the taxation of sales or purchases involving inter-State elements by all States except the State in which delivery of the goods was so made, the effect of the Explanation being to convert such inter-State transactions into intra-State transactions and to take them out of the operation of cl. (2) of that Article.

Mr. Justice Das observed: "It is quite clear that if this majority view is to prevail the ground urged by learned counsel for the appellant company and strongly supported by the learned Attorney-General appearing for the interveners, the State of West Bengal and Tata Iron and Steel Company Ltd. and by learned counsel for M. K. Kuriakose must fail. It has, accordingly, been pressed upon us that we are not bound by the majority decision in that appeal from Bombay, and that it is still open to us to examine and ascertain for ourselves the true meaning, import and scope of the Article in question. Learned counsel for some of the interveners question our authority to go behind the majority decision."

The majority judgment of the Supreme Court in the instant case held that the earlier decision of the Court in the Bombay appeal was open to review and that the Court was entitled to re-examine Art. 286 in order to

ascertain its true meaning in the light of the present appeal.

The Acting Chief Justice, speaking for the Court, said :

We are definitely of opinion that, until Parliament by law made in exercise of the powers vested in it by cl. (2) provides otherwise, no State can impose or authorize the imposition of any tax on sales or purchases of goods when such sales or purchases take place in the course of inter-State trade or commerce and the majority decision in the State of Bombay v. The United Motors (India) Ltd, in so far as it decides to the contrary cannot be accepted as well founded on principle of authority.

In view of the interpretation we have put upon Art. 286 of the Constitution it must follow that the charging section of the Act read with the relevant definitions cannot operate to tax inter-State sales or purchases and it must be held that as Parliament has not otherwise provided, the Act in so far as it purports to tax sales or purchases that take place in the course of inter-State trade or commerce, is unconstitutional, illegal and void. This being the position, the question arises whether the Act is bad in toto or is bad only in so far as it offends the provisions of Art. 286 as construed above.

It appears to us that the Act imposes tax on subjects divisible in their nature but does not exclude in express terms subjects exempted by the Constitution. In such a situation the Act need not be declared wholly ultra vires and void, for it is feasible to separate taxes levied on authorized subjects from those levied on exempted subjects and to exclude the latter in the assessment of the tax. In these circumstances it is difficult to say that the scheme of taxing inter-State sales forms such an integral part of the entire scheme of taxation on sales or purchases of goods as to be inextricably interwoven with it. There is no reason to presume that had the Bihar Legislature known that the provisions of the Act might be held bad in so far as they imposed or authorized the imposition of a tax on inter-State trade or commerce even though Parliament had not by law provided otherwise, it would, nevertheless, not have passed the rest of the Act.

Mr. Justice Bhagwati, who gave a separate but concurring judgment with the majority, said that as he was party to the earlier majority judgment in the Bombay appeal, he should record his reasons for doing so.

Mr. Justice Bhagwati said that Art. 286 (2) put an absolute restriction on the taxing power of the States where transactions of sale or purchase took place in the course of inter-State trade or commerce, unless and until the ban was lifted by Parliament within the terms thereof. Until such ban was lifted, Mr. Justice Bhagwati said, no

delivery State within the meaning of the Explanation to Article 286 (1) (a), much less the other States, were in a position to impose a tax on transactions of sale or purchase covered by the Explanation.

Dissenting Judgments

Mr. Justice Jagannadha Das, in his dissenting judgment said that there was no ground for reconsideration of the prior decision of the Supreme Court in the Bombay appeal. Agreeing with the earlier decision of the Court, he said that "the consuming State has the power to tax an inside sale which falls within the scope of the Explanation and that the power is not affected by Art. 286 (2)." Art. 286 (2) could not be construed as overriding Art. 286 (1) (a), read with the Explanation, he added.

Mr. Justice Venkatarama Aiyar in his dissenting judgment said that, on a correct interpretation of the Explanation and Art. 286 (2), the State of Bihar had the power to tax goods delivered to purchasers in Bihar. He also held that the Bihar Sales Tax Act, in so far as it authorized the imposition of tax on sales falling within the Explanation to Art. 286 (1) (a), was not bad on the ground that it was extra-territorial in its operation.

Mr. Justice Sinha, agreeing with the minority view, said that "the language of Art. 286 of the Constitution on which the case depends is not felicitous and free from vagueness," with the result that the interpretation of that Article was "not free from doubt and difficulty."

Mr. Justice Sinha said that the previous decision of the Court in the Bombay appeal should hold good and govern the present appeal also. He said the "better view" was that cl. 2 of Art. 286 of the Constitution was subject to Art. 286 (1) (a), read with the Explanation.

Provisions of the Bihar Sales Tax Act

Some of the relevant provisions of the Bihar Sales Tax may be given here. Sec. 4, which is the charging section, states :

Subject to the provisions of secs. 5, 6, 7 and 8 and with effect from the commencement of this Act, every dealer whose gross turnover, during the year immediately preceding the date of such commencement, on sales which have taken place both in and outside Bihar exceeded Rs. 10,000 shall be liable to pay tax under this Act on sales which have taken place in Bihar after the date of such commencement.

To the definition of "sale" in sec. 2 (g) the following Explanation was added in 1951 :

The sale of any goods actually delivered in Bihar as a direct result of such sale for the purpose of consumption in Bihar shall be deemed for the purpose of this Act to have taken place in Bihar, notwithstanding the fact that under the general law relating to sale of goods, the property in the goods has by reason of such sale passed in another State.

Similarly, a new section was added in 1951, which practically reproduces the Explanation set out in Art. 286 (1). This is sec. 33. It reads :

(1) Notwithstanding anything contained in this Act, —

(a) a tax on the sale or purchase of goods shall not be imposed under this Act —

(i) where such sale or purchase takes place outside the State of Bihar ; or

(ii) where such sale or purchase takes place in the course of import of the goods into, or export of the goods out of, the territory of India ;

(iii) a tax on the sale or purchase of any goods shall not, after the 31st day of March 1951, be imposed where such sale or purchase takes place in the course of inter-State trade or commerce except in so far as Parliament may by law otherwise provide.

(2) The Explanation to cl. (1) of Art. 286 of the Constitution shall apply for the interpretation of sub-cl. (i) of cl. (a) of sub-sec. (1).

Patna High Court Ruling

In construing "the general language" of Art. 286 (2) Mr. Justice Ramaswami, speaking for a unanimous court, remarked in the case under appeal :

Let us take a concrete example. A trader sends goods from State A to State B for the purpose of consumption in State B. The contract of sale is effected in State A and title passes in State A ; but goods are actually delivered in State B for consumption in that State. There is movement of goods across the inter-State border, and if the sale takes place at any stage in this movement, Art. 286 (1) (b) of the Constitution would prohibit State B or State A from imposing a tax on the sale. Since the sale has taken place outside the State border, the case would fall under Art. 286 (1) (a) which prohibits State B from taxing such a sale. But the Explanation states that notwithstanding the fact that title has passed and sale has taken place in State A, the sale or purchase should be deemed to have been effected in State B in which the goods have been actually delivered for the purpose of consumption. It follows that State B would have jurisdiction to impose a tax on such sale. It is, therefore, manifest that if Art. 286 (2) is construed in a full and unqualified sense the Explanation to Art. 286 (1) would become nugatory and of no effect. This would be contrary to all canons of sound construction. In order to obviate such a result it is necessary that the two parts of the Article must be read together and the language of the one must be interpreted and, where necessary, be modified by the other.

Applying the principle of construction adopted by the Judicial Committee in *Citizens Insurance Co. of Canada v. Parsons*, 7 App. Cas. 92 (1882), Mr. Justice Ramaswami said :

It is manifest that the phrase "sale or purchase in the course of inter-State trade or commerce" in Art. 286 (2) must be construed so as to exclude the particular class of sales or purchases described in the Explanation to Art. 286 (1).

The Court also held that the Bihar Sales Act did not contravene Art. 304, relating to restrictions on trade between States, because "the statute has manifestly been enacted for the purpose of imposing tax on the sale of goods and not for regulating inter-State or intra-State trade or commerce."

Rejecting the contention that the impugned sections were extra-territorial in operation and therefore invalid, Mr. Justice Ramaswami said :

It is true that the petitioner (Bengal Immunity Co.) is resident of Calcutta. But jurisdiction to tax does not depend upon residence or domicile of the assessee. On the contrary the power of the State to tax extends to all matters properly within the sovereignty of the State. The jurisdiction to tax exists not only in regard to persons or property but also as regards the business done within the State. . . . On the other hand, the fact that the goods are delivered in Bihar for consumption constitutes a sufficient "nexus" or territorial connection which confers jurisdiction upon the Bihar legislature to impose the tax. . . . It is also important to notice that the Explanation to Art. 286 (1) (a) of the Constitution expressly confers upon the State the power to tax sale or purchase of goods which are actually delivered for consumption inside the State.

Supreme Court's Earlier Judgment

In the Bombay case, *State of Bombay v. United Motors Ltd.*, considering the effect of Art. 286 (2) on the taxability of inter-State sales or purchases of the kind envisaged by the Explanation to cl. (1) (a), the then Chief Justice, Mr. Patanjali Sastri, said :

We are of opinion that the operation of cl. (2) stands excluded as a result of the legal fiction enacted in the Explanation, and the State in which the goods are actually delivered for consumption can impose tax on inter-State sales or purchases. The effect of the Explanation in regard to inter-State dealings is, in our view, to invest what, in truth, is an inter-State transaction with an intra-State character in relation to the State of delivery, and cl. (2) can, therefore, have no application. It is true that the legal fiction is to operate "for the purposes of sub-cl. (a) of cl. (1)," but that means merely that the Explanation is designed to explain the meaning of the expression "outside the State" in cl. (1) (a). When once, however, it is determined with the aid of the fictional test that a particular sale or purchase has taken place within the taxing State, it follows, as a corollary, that the transaction loses its inter-State character and falls outside

the purview of cl. (2), not because the definition in the Explanation is used for the purpose of cl. (2), but because such sale or purchase becomes in the eye of the law a purely local transaction.

We are therefore of the opinion that Art. 286 (1) (a) read with the Explanation prohibits taxation of sales or purchases involving inter-State elements by all States except the State in which the goods are delivered for the purpose of consumption therein in the wider sense explained above. The latter State is left free to tax such sales or purchases, which power it derives not by virtue of the Explanation but under Art. 246 (3) read with Entry 54 of List II (in the Seventh Schedule).

RAJASTHAN JUDICIAL SERVICE

Machinery for Recruitment HIGH COURT'S DIRECTIVE

The integration of the judicial service of the covenanting States of Rajasthan and the choice of personnel and determination of seniority in the integrated service by the Rajasthan Government were declared invalid on 6th September by the Rajasthan High Court on the ground that they had not been done in accordance with the provisions of the Constitution.

Mr. Amar Singh, District and Sessions Judge in the former Bikaner State, had filed an application under Art. 226 of the Constitution. In the provisional postings made on an ad hoc basis in the Government order dated May 25, 1950, the petitioner was provisionally posted as Civil and Additional Sessions Judge of Jhunjhunu. In the scheme framed later by the Government, the integrated service was divided into three groups: Group A—District and Sessions Judges; Group B—Civil and Additional Sessions Judges; and Group C—Civil Judges and Munsiffs. The petitioner was placed in the third group and ranked 18th in the seniority list. This he considered as a reduction in rank and filed the present petition in the High Court on April 3, 1954.

It was contended on his behalf that under Art. 309 of the Constitution the power to make rules regulating the recruitment to and conditions of service in the public services of the State vested in the Rajpramukh as no provision in that behalf had been made by or under an Act of the appropriate legislature. Further, under Art. 320 (3) it was obligatory to consult the State Public Service Commission on methods of recruitment and the principles to be followed in making appointments to the civil service and in making promotions and transfers.

The scheme framed by the Government, the applicant said, was submitted to the Chief Minister for "approval" and to the Rajpramukh for "perusal," which meant that it was not framed or approved by the Rajpramukh. He was asked only to see it without expressing approval or disapproval. There was no averment, much less proof, that the rules notified on August 23, 1950, were framed by

the Rajpramukh in consultation with the State Public Service Commission and the High Court, which was a pre-requisite to the appointment of people to the judicial service.

Pronouncing judgment, Mr. Justice K. L. Bapna and Mr. Justice J. S. Ranawat, declared that the appointments of District Judges, Senior Civil and Additional Sessions Judges and Civil Judges and Munsiffs, notified by the notification of April 23, 1951, could not be upheld as they were contrary to the provisions of Arts. 234 and 233 (relating to appointments of district judges and other judges) read with Art. 236 of the Constitution (giving a definition of "district judge"). They could only be deemed to be on an ad hoc basis until machinery was created by the Government for recruitment and appointment according to the provisions of the Constitution. Their Lordships, however, held that the invalidity of their recruitment did not affect the jurisdiction exercised by them. There was a clear declaration of the creation of a judicial service in Rajasthan and it was not really the recruitment but integration of the judicial services of the covenanting States which was questioned.

In the result, the petition was allowed, the postings made by the notification dated April 23, 1951, including that of the petitioner as Civil Judge, were declared to be on an ad hoc basis and a directive was issued to the Government to set up machinery according to the provisions of the Constitution for the first recruitment to the Rajasthan judicial service.

TRADE UNIONS AND FUNDAMENTAL RIGHTS

A Trade Union Not a "Citizen".

ENTITLED TO FUNDAMENTAL RIGHTS

The Small Causes Judge of Gorakhpur ruled (24th August) that a trade union cannot file a suit for safeguarding the fundamental rights of its members.

The ruling has been given in a judgment in an important case filed by the North Eastern Railway Staff Welfare Union, through its secretary, against the Government of India and the General Manager of the Railway.

The case arose out of the dismissal of two office-bearers of the Union, which, the Union alleged, amounted to infringement of their fundamental rights guaranteed under the Constitution.

The court, in its judgment, held that there seemed to be no doubt that the Union was, by reason of its being a trade union registered under the Trade Union Act, a juristic person who could sue or be sued in its own name, but the question was as to whether the Union was competent in law to bring a suit not only for securing or protecting its own rights but also a suit, wherein the relief claimed was dependent on the determination of fundamental rights guaranteed under the Constitution of India.

The court held that the Union could not be termed "a citizen" entitled to the fundamental rights guaranteed to a citizen by Art. 19 of the Constitution of India and could not, therefore, bring a suit for safeguarding such rights, nor could it bring such a suit on behalf of others who happened to be its members.

"The Union," said the court, "cannot be said to be a guardian of its members for securing to them their Fundamental Rights."

It was alleged that certain leaflets and pamphlets were issued by the Union under the signatures of two office-bearers of the Union to vindicate their grievances.

These leaflets had criticised the "blind and barren policy of the Railway Ministry" and compared the N. E. Railway coaches to "diseased dancing girls draped in waste cosmetics."

In one pamphlet it was said, "Nero fiddles while Rome burns."

It referred to the Indian Railway Centenary Exhibition as a "centenary of torture and exploitation of third class passengers and railway employees."

LABOUR APPELLATE TRIBUNAL

Retrenchment of Workmen

An important decision relating to the nature of the jurisdiction which is exercised by the High Court in issuing writs under Art. 226 of the Constitution was given by the Chief Justice and Mr. Justice Desai at the Bombay High Court on 24th August.

On May 27, Ruston and Hornsby (India) Ltd., which had a factory in Bombay, applied to the Labour Appellate Tribunal for retrenchment of 142 workers on the ground that they had built a new factory at Chinchwad near Poona, and were closing its factory in Bombay. The Tribunal granted permission, but this order was quashed by the High Court on June 30.

The Company again applied to the Tribunal to further consider their application for retrenchment of the workers, this time offering to employ workers that might be retrenched in the Chinchwad factory, and the Tribunal granted permission to retrench 126 workers.

One of the workers challenged this order, the main contention being that once an order had been quashed by the High Court on a writ of certiorari, all proceedings connected with the application on which the Tribunal had made its order came to an end.

In dismissing the petition, Their Lordships said that a writ of certiorari enabled a superior court to correct the orders and decisions of inferior courts and tribunals discharging judicial functions.

The High Court, however, exercised a limited jurisdiction in that it interfered only when an inferior court made an order without jurisdiction or when that court refused to exercise jurisdiction vested in it in law, or where there was an error of law patent on the record.

Thus, Their Lordships added, the writ of certiorari corrected the errors in jurisdiction or in law of inferior courts and tribunals.

It was, however, well established that the superior court did not act as a court of appeal. If, therefore, an order of a tribunal, as in the present instance, was quashed by the High Court, that tribunal was left free to pass any proper order in the light of the decision of the High Court.

If, on the other hand, the High Court refused to interfere with the order of the tribunal and dismissed the petition challenging that order, then the order of the inferior court or the Tribunal became final.

Continuing, Their Lordships referred to Art. 227 which gave the High Court powers of superintendence over all courts, and said that under this Article, the High Court had power not only to quash orders of inferior courts and tribunals, but to pass substantive orders in place of the orders quashed.

Therefore, it was necessary to bear in mind that whenever a case of interference with a decision of the Labour Appellate Tribunal came before the High Court, Their Lordships had to see whether they were acting in exercise of jurisdiction in respect of a high prerogative writ (under Art. 226) or were acting under Art. 227.

So far as the present case was concerned, Their Lordships said that after hearing the first petition the High Court issued a writ of certiorari and quashed the order of the Labour Appellate Tribunal.

But the High Court had passed no substantive order and therefore it was clear that the Bench which quashed the order had intended that the Labour Appellate Tribunal should finally dispose of the application of the Company.

Their Lordships held that the Labour Appellate Tribunal was competent to hear the application of the Company and dispose of the same.

On the question of merits, Their Lordships held that the Tribunal was right in giving permission to retrench 126 workers as the latter had refused the company's offer of employment at the Chinchwad factory. That offer, Their Lordships said, was fair and the workers were not justified in rejecting it.

In the result, the petition was dismissed.

HABEAS CORPUS PETITION

Public Order and Public Tranquillity

At the Rajasthan High Court (Jaipur Branch) Bapana and Ranawat JJ. on 10th September 1953 allowed 14 habeas corpus petitions filed by Mr. Umraomal and others and ordered all the petitioners to be set at liberty. All the petitions involved similar questions of fact and law and were therefore dealt with in one judgment.

The district magistrate of Jaipur on 31st August 1953 ordered Mr. Umraomal and 13 other persons to be detained in jail for one month, alleging that they were "indulging

in activities highly prejudicial to the maintenance of public order and tranquillity" under sec. 3 of the Preventive Detention Act. Sec. 3 (1) (ii) authorizes detention of persons for "the maintenance of public order," but the district magistrate added "tranquillity" after "public order" as a further reason for detention. "The maintenance of public tranquillity," Their Lordships said, "cannot furnish any valid ground for detention." (Though the Government later modified the order by striking out the words "and tranquillity," the Court held that such modification of the purposes of detention was not permissible under sec. 13 of the Act, as it would mean the Government substituting its own satisfaction for that of the district magistrate who made the order of detention, and decided the cases on the basis of the original order in which two reasons for detention were given, "one of which was not contemplated under the Act.")

Examining the grounds of detention supplied to the detenus (they were identical in all cases), Their Lordships said: "The first three grounds do not at all involve any allegation that the persons sought to be detained acted in any manner to disturb any sort of public tranquillity." The fourth and last ground was that the detenus' "activities are prejudicial to the maintenance of public order, peace and tranquillity and normal life in the city of Jaipur." This ground, Their Lordships said, "gives away the entire argument" of the Advocate-General (who had said that "public tranquillity" was used in the same sense as "public order"); it is obvious that the breach of the peace and public tranquillity cannot here be construed as synonymous with the maintenance of public order referred to in the Preventive Detention Act."

In addition to the above four grounds supplied to the detenus after their detention, some fresh grounds were supplied to them four days afterwards. They charged them with coercion, intimidation and instigation to use violence. The grounds originally supplied had not made any such allegations. In regard to the additional grounds Their Lordships said:

As held by Their Lordships of the Supreme Court in the State of Bombay *v. Atmaram* (A. I. R. 1951 S. C. 157), if the later communication contains facts leading to a conclusion which is outside the grounds first supplied, the same cannot be looked into as supporting the order of detention, and therefore these grounds are new grounds. These grounds at best include actions prejudicial to the maintenance of public tranquillity and possibly prejudicial to the maintenance of public order, but if both grounds were in the mind of the district magistrate the order would still be illegal as it cannot be said which of the grounds operated on the mind of the district magistrate to pass the order which he did.

Then the Court addressed itself to the point that the detention order itself mentioned one month as the period of detention and observed that this was not permissible. Their Lordships said: "The fixation of the period of

detention comes in after the matter has been scrutinized by the Advisory Board. The fixation of the period of detention by the district magistrate is therefore not permitted by any of the provisions of the Act and as held in *Makhan Singh Taraikka v. the State of Punjab* (A. I. R. 1952 S. C. 27), such a direction would tend to prejudice the detenu's case when it is placed before an Advisory Board." In the modification of the order by the Government the words "for a period of one month" were deleted, but in this respect also the Court held that this kind of modification was not contemplated under sec. 13 of the Act. Their Lordships said:

Modification means maintenance of the order with slight changes. This would not include an attempt at validation of the order which was illegal at its inception. If the order is otherwise valid in itself then it may be modified in other particulars. The orders of detention passed by the district magistrate on the aforesaid detenus are therefore illegal.

NOTES

Passport for Paul Robeson

JUDGE REFUSES TO ORDER STATE DEPARTMENT TO ISSUE ONE

On 16th August a federal District Court rejected an application by Mr. Paul Robeson, the famous singer, for an order requiring the State Department to grant him a passport forthwith. Judge Burnita Mathews held that Mr. Robeson must go through the administrative procedures of the department's passport division and could not challenge the legality of the regulations under which a passport had been refused until he had exhausted all available administrative remedies. She said that she could not find that the Secretary of State had abused his discretion or had acted arbitrarily in the case so far. The decision generally was interpreted to mean that Mr. Robeson must file a non-Communist affidavit as a pre-requisite to a State Department hearing on his passport application.

In the State Department's submission, Mr. Robeson was not denied a passport, but he failed to get it because he did not comply with the procedures necessary for obtaining one, specifically by refusing to sign an affidavit stating whether or not he is or was a Communist, and it is pointed out by the State Department that there is no incompatibility between the decision in the instant case and the Appeals Court's decisions in the cases of Dr. Nathan and Max Shachtman (vide pp. iii: 245-6) when in the latter case the concept "of the natural right to travel," which could only be curtailed by the due process of law, was expressed. For both Dr. Nathan and Mr. Shachtman did sign the affidavit required, and it is said, there is no true parallel between these cases and that of Mr. Robeson, since the Appeals Court in its opinion did not challenge the discretionary power of the Secretary of State but only its "arbitrary exercise." If and when Mr. Robeson signs

the affidavit, the State Department says, he may request a hearing if a passport is still denied him, but by refusing to sign he disqualifies himself for consideration.

Mr. Robeson's lawyer declared that if Judge Matthew's order required an oath of non-membership in the Communist Party, Mr. Robeson would not sign it but would go on appeal to the Supreme Court, and it seems very probable that the legality of such a requirement would be thus tested.

From 1922 till 1950 Mr. Robeson travelled abroad on many occasions and experienced no difficulty in obtaining the State Department's authorization to visit foreign countries. But on 1st August 1950 the Secretary of State revoked a passport then valid. Mr. Robeson was informed that this had been done because the State Department considered his travel abroad "would be contrary to the best interests of the United States." Mr. Robeson has been accused of membership in the Communist Party and various activities in support of the Communist movement, and he has been continuously waging a passport fight for the last five years, which it appeared would have a successful end after the Nathan and Shachtman cases.

Compulsory Testimony Act BEING PUT IN FORCE

The Compulsory Testimony Act passed by the American Congress last year (see p. iii: 148 of the BULLETIN) is being put in force. Under this Act if witnesses summoned before grand juries or courts, who have previously been granted immunity from prosecution (so as to make the clause in the Fifth Amendment against self-incrimination inoperative), refuse to answer questions put to them about espionage and other subversive activities, they can be cited for contempt and sentenced to imprisonment for two years and a half.

One, Edward J. Fitzgerald, who held important Government posts during World War II and who was named by Elizabeth Bentley as a Governmental link in the war-time espionage chain forged in the United States on behalf of Russia, was summoned before a federal grand jury inquiring into war-time espionage activities. He was asked to divulge information known to him about such activities, being offered immunity from prosecution. Fitzgerald, however, refused to accept immunity, saying that Congress had exceeded its powers in enacting an "individual amnesty" law, and declined to answer questions about espionage.

He was cited for contempt and Federal Judge Walsh on 18th August imposed a penalty of six months' imprisonment.

This is a second contempt case under the Act. The first was that of William Ludwiz Ullsman, former Government economist, who too was given a six-month term by a District Court. Like Fitzgerald, Ullsman also was charged by Elizabeth Bentley that he was a member of an

espionage ring, and having refused to answer these charges was tried for contempt. The case was taken to the Court of Appeals, which, in upholding the District Court order, recommended review by the Supreme Court. The constitutional validity of the Compulsory Testimony Act will thus be passed upon by the highest tribunal. The Emergency Civil Liberties Committee, which has filed a friend-of-the-court brief with the Supreme Court in this first test case, urges two points in its brief: (1) "The Compulsory Testimony Act of 1954 violates the constitutional prohibition of the Fifth Amendment against requiring a person in a criminal case to be a witness against himself;" and (2) "The immunity law does not provide full immunity to the political dissenter at a time when the political heretic is faced with social and economic penalties unprecedented in the history of our country."

A Bantu Refused a Passport

TO COMPLETE HIS EDUCATION IN THE UNITED STATES

A bright Bantu pupil of St. Peter's School in Johannesburg, Stephen Ramasodi, was awarded a handsome scholarship by the Kent School in Connecticut maintained by the same church that maintains St. Peter's School, so that he might complete his education in the United States. His father naturally decided that Stephen should avail himself of this lifetime chance. But the South African Government determined otherwise. The police refused to issue the certificate of character to him, and the Department of the Interior would not grant him a passport without this certificate. When the offer of scholarship thus was about to fall through on account of difficulties created by the Union Government, the headmaster of St. Peter's School informed the authorities that he would have to give the facts to the press and the public. This stung the Minister of Native Affairs, who controls all African education under the Bantu Education Act, into immediate action. He replied that he would not be intimidated by persons whom he took to be agitators, and meantime the Department of the Interior stated that the passport had been refused on the ground that it would have endangered Stephen's future to send "a lad of such tender years" to the U. S. A. where he might not be able to adapt himself to the new surroundings. But the Rev. Trevor Huddleston, the Anglican priest in charge of St. Peter's School said: "The real reason is that the Nationalist Government does not want Stephen to imbibe any ideas which might make him feel that all humans have equal rights."

Dr. Alan Paton, himself a South-African born, cites this incident as revealing the true meaning of apartheid. He says:

Americans are often told that apartheid means the creation of separate racial societies, all pursuing their own ways of life, all enjoying the impartial benevolence of the State, all proceeding, unimpeded, to their several destinies. This rosy view omits the darker

implications of apartheid. The myth of racially separate societies existing harmoniously side by side is exposed. This harmony can only be achieved when all of these societies are subservient to one dominant society—that of Afrikaner nationalism. It is not justice that is being pursued by our Government but domination.

A professor of sociology has expressed the meaning of apartheid pithily in the following words :

Before God, says Paul, there is neither Jew nor Greek. But before man, says the Afrikaner, there is Boer and Bantu, and they must be kept apart.

Free Exchange of Persons and Ideas

PLEA TO BE MADE BY U. S. A. IN OCTOBER

Realizing that it might be difficult to achieve any very significant success in solving intricate political problems like German reunification, European security or world disarmament, the United States Government is going to try, it appears, at the October meeting of the Big Four foreign ministers to persuade the Soviet Government to remove or at least loosen the Iron Curtain. Time for such an intensive effort, the Eisenhower Administration feels, is particularly opportune in view of relaxation of Soviet restrictions that is now observable on freedom of communications. The objectives of the United States programme in this connexion include :

(i) Elimination of barriers to free travel by ordinary persons between countries and within countries.

(ii) Removal of impediments to free reception of international radio broadcasts.

(iii) Lifting of barriers to free entry and access to newspapers, magazines and other publications.

(iv) Freedom of access to news and news sources and a lifting of censorship.

The conciliatory relations between East and West established at the summit conference of the Big Four has already led the Soviet Government to adopt a constructive approach to the lowering of barriers in regard to (i). It is not only giving freer access to the Soviet Union by foreigners, but (what is even more important) to the outer world by Soviet citizens. Substantial travel barriers still exist, but it may be expected that the Soviet Union will gradually lift them. It is recognized in the United States that if the Soviets remove the Iron Curtain in this respect, giving foreigners free access to the Soviet Union and freedom to Soviet citizens to visit foreign lands, the United States for its part must ease its own far milder restrictions which add up to a Red Tape Curtain. The "New York Times" says on this point :

With the Soviet Iron Curtain melting a little at least, we should take advantage of the improved atmosphere to get rid of such red tape requirements as contradict our official position. If we are in favour of free international exchange of persons and ideas, let's act accordingly.

Encouraged by the signs of a favourable atmosphere in regard to (i), viz., that the Soviet gates seem to be ajar for Soviet and other people to pass through them, the United States Government wishes to make an earnest attempt to have the barriers removed or lowered in respect of other items. In regard to (ii), it is pointed out that it is the normal practice of Moscow to jam Western broadcasts by Soviet interfering transmitters. In fact for years

there is a regular war of the air waves in Moscow between the Voice of America and Radio Moscow. The funniest instance of this was that when the Deputy Minister of Agriculture of the U. S. S. R. who headed the Soviet farm delegation gave a broadcast report of his tour of the United States through the Voice of America, even that broadcast could not pierce the Iron Curtain, possibly because in this talk the Soviet official indicated that among the modifications in Soviet agricultural methods which he hoped would be brought about would be included efforts to give the Russian farmer a greater profit incentive. The Soviet jamming programme is, of course, in violation of international agreements governing radio communications. Soviet action to end the jamming programme would be one of the most positive actions towards lowering the barriers on international communications.

So far as (iii), viz., free circulation of publications and printed materials is concerned, this, too, it is felt, would be a major change on the part of Moscow. No American magazines, newspapers or books are permitted to be sold anywhere in the Soviet Union. Such publications are received by the big reference libraries, but access to them is permitted only to scholars who had special permission.

With regard to (iv) or free access to news and news sources and censorship, it is felt that the Soviet has been moving towards better conditions steadily since the death of Stalin and, particularly, in recent months. However, the censorship, while much lighter, continues and the severe State Secrets Act, which virtually forbids Soviet civil servants to give any information whatever to foreign correspondents, is still on the statute book even if obviously not under such active enforcement.

Promotion of Friendship among Nations

INGULCATED IN SOVIET PAPERS

The United States finds that the new foreign line taken by the Soviet Union in the Geneva spirit is a source of great encouragement in pressing for such proposals. An indication of this is afforded by Soviet papers inculcating in the people promotion of friendship among nations and respect for their peoples regardless of their social systems. It is noted that a Communist youth paper recently lauded a spirit of broad internationalism and condemned narrow patriotism. It wrote :

Love for one's homeland and people does not prevent patriots from having a respectful attitude towards other papers and to stand for peace and friendship with peoples of other nations. Real patriotism is incompatible with national narrow-mindedness. Can one consider as a real patriot someone who praises everything of his own simply because it is his own and deprecates everything foreign simply because it belongs to another country? This is not patriotism, but the most profound national narrowness and narrow-mindedness.

In another paper a writer, giving his impressions of a recent tour of the United States, said :

No, one can make no mistake, America is not McCarthy. America is the honest hard-working people seeking to live in peace and friendship with all people.

Another paper declared that propagating the ideas of internationalism and friendship among peoples was "one of the most important ideological tasks of party organizations."

Again, the need is often emphasized of studying and adopting the methods, techniques and products of foreign countries whenever they are better than Soviet counterparts. A study of American farm practices by a Soviet delegation is an illustration of this aspect of Russia's new policy. The youth paper referred to above said :

Some of our engineering and technical workers and some scientists entirely ignored the development of foreign technology and excluded themselves from studying and widely applying foreign experience. A real patriot would not do this.

"The Fund for the Republic"

PROMOTING THE CAUSE OF PERSONAL FREEDOM

This Fund set up as an independent organization by the trustees of the Ford Foundation shows much valuable work to its credit in the first report now published. Its main purpose is to advance an understanding of civil liberties at a time when "the misunderstanding of civil liberties, the indifference to them and the violations of them" are such "as to give cause for alarm." Communism being now regarded as an enemy, it has appeared to the authorities, the report observes, "that the peril to the country could be dealt with only by methods that drastically departed from those which have characterized Anglo-American jurisprudence." It says :

The range of suspected persons has been enormously extended by resort to guilt by association. The evidence offered to show that a man is a danger to American institutions has often been farcically remote. The treatment accorded suspected persons in Congressional investigations and administrative hearings has not always been that contemplated by the Sixth Amendment (guaranteeing the right to a speedy trial by an impartial jury in all criminal prosecutions).

A kind of continuous propaganda and social pressure has been kept up that has tended to suppress conscientious non-conformity. Political advantage has accrued from claiming that others were indifferent to the threat of communism. The result has been that governmental officers, university presidents and ordinary citizens have felt it necessary to exhibit inordinate anxiety on this score.

The Fund has at present on its hands studies on "blacklisting in the motion picture, radio and television industries," "post office interference with the flow of information and opinion," and "an analysis of testimony of witnesses in proceedings relative to communism."

Loyalty Programme being Critically Examined

The American Government's personnel loyalty-security programme is being examined by three independent bodies and some of its "injustices and even downright absurdities" are being exposed to public view. The "New York Times" writes under the caption of "Security and Reason" about these studies :

We believe that when Americans generally realize the extent to which the spirit of our traditional constitutional guarantees has been infringed in the

futile search for a mythical absolute security they will insist that there be some reasoned modification of the programme — or programmes, for there are half a dozen or more. Protection against subversives is obviously essential ; but in too many instances the efforts at protection seem to have verged dangerously on persecution for ideas or associations, without any real beneficial effect on the security of the United States, which, after all, is what we are trying to defend.

There are cases in which the employee is charged with close association with his father, or mother, or brother, or is questioned about his reading habits, even religious affiliations and his voting record. The burden of proof is clearly on the accused, thus reversing the traditional American concept that a man is innocent unless proved guilty. Of course these are not judicial proceedings, but their effect is so pervasive on a man's future life and employment that they may be as important to the individual as any court case could be. The time between formal charges and final decision—during some or all of which the employee is suspended without pay—may run as long as two or three years. Accusations are frequently based on charges of "confidential informants" who never appear at the hearings — and whom the hearing board cannot compel to undergo cross-examination. The boards themselves may have the best will in the world but they are circumscribed by rules and procedures that in some respects are simply out of tune with the American way of doing things.

Security is essential but our country is not so endangered by the miserable little band of Communists and fellow-subversives who still persist that we can afford to forget for one minute—or in one instance — the principles on which our Republic is founded.

One of the recommendations for reform made by the Attorney-General which is now being put into effect is understood to be that "Government witnesses should be produced for interrogation when possible."

Georgia Rescinds Anti-Integration Resolutions

Georgia, one of the southern states which held out strongly against racial integration in public schools, rescinded on 15th August two resolutions which its Board of Education had recently passed aimed at teachers who favoured such integration. One of these had called for revocation of the license of any teacher who approved of or agreed to teach racially mixed classes. The other had required revocation of the license of any teacher holding membership in the National Association for the Advancement of Coloured People, which body is the spearhead of the movement for abolition of segregation in public schools.

Segregation will end immediately in the schools of Newport, Kentucky, in so far as kindergartens and grades seven to twelve are concerned, and it will end in all other grades at the beginning of the 1956 school year, when facilities will be available for the admittance of Negro children to mixed classes.