THE HEIGHT OF TREASON

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WHEN, on 23 March, in the last stage of the Treason Trial, Mr. Justice Rumpff interrupted defence argument—but one quarter delivered—to suggest that a week's adjournment, by enabling the judges to consider argument that had so far been heard, might shorten the duration of the trial, expectation came suddenly alive that the end was at last in sight.

Six days later, on 29 March, with white and non-white galleries filled to capacity, the court-room was tense, with hope held fearfully in check. The Crown doggedly made a last helpful offer to amend the indictment.

Mr. Justice Rumpff picked up his notes and began evenly to read his forty minute judgment.

"*We find you not guilty and you are discharged. You may go.*"

The Crown argument began early in November last year and lasted nearly four months, with frequent interruptions from the judges, who found the method of presentation unsatisfactory and suggested other procedures.

The Crown's case, as summarised in the judgment (which dealt only with the African National Congress, "the senior and dominant partner" among the organisations) was:—

"The first overt act of treason laid against all the accused in the indictment is a conspiracy to overthrow the State by violence. Against each accused further overt acts are laid, and these acts are said to have been committed in pursuance of the conspiracy.

"The case for the prosecution is not that the accused came together and entered into a treasonable agreement . . . but that during the indictment period (from 1 October 1952 to 13 December 1956) a number of organisations in South Africa had a policy to overthrow the State by violence, that these organisations co-operated with each other to achieve their common object and for that purpose the Congress Alliance was established, with the A.N.C. as the senior and dominant partner.

"The accused are said to have conspired because they took an active and leading part in the activities of the organisations of which he or she was a member, with full knowledge of and support for the policy of such organisations.

"In order to prove the existence of the treasonable conspiracy, the prosecution had to prove the violent policy of the Congress

Alliance. It also had to prove the adherence of each of the accused to the conspiracy. It is conceded by the prosecution that if it fails to prove the treasonable conspiracy, there is no case against any of the accused. . . ."

The means by which the State would be overthrown, it was alleged, and a Communist or other form of State substituted, included the achievement of the aims of the Freedom Charter by violence; the preparation of the 'freedom volunteers' for acts of violence; the advocating and organising of illegal action, including the use of violence; propagating the Marxist-Leninist doctrine, in which is inherent the use of violence.

The defence team analysed indictment and argument and showed that the Crown, following on questions asked by Mr. Justice Rumpff, had changed its case in the course of argument. For the original conspiracy to overthrow the State by violence had been substituted allegations (not to be found in the indictment) of a conspiracy to embark on extra-parliamentary methods, which the accused knew might or would provoke the government into using violence and against which the masses would actively retaliate. It was no longer, in the words of Mr. Maisels, Q.C., who led the defence, "direct violence", but "contingent violence".

The Court found that, although the membership of the A.N.C. was open to all who supported its policies, although some of its leaders had been Communists and although the type of State foreseen by the Transvaal Executive was a Communist State, known in Marxism-Leninism as a People's Democracy, it had not been proved that the State envisaged in the Freedom Charter was Communist, nor that Communists had infiltrated into the ranks of the A.N.C., nor that the A.N.C. was a Communist organisation, nor that the accused had "personal knowledge of the Communist doctrine of violent revolution."

The Court found, further, that the various speeches relied on by the Crown to prove violence were a minute and selected percentage of those made during the indictment period, that in general the reports of them were open to grave criticism, and that statements in A.N.C. official documents that its policy was non-violent were consonant with what many speakers at meetings had said. It was found that some A.N.C. leaders had been guilty in a few speeches of "sporadic violence", but that these outbursts formed an insignificant part of the total number of speeches. In the various campaigns conducted by the A.N.C.

no violence had ensued, nor was it alleged that violence resulted from the activities of the organisations. The 'freedom volunteers' were required to carry out the policy of the A.N.C., to be disciplined and not to become violent even in the face of provocation.

> "*On all the evidence presented to the Court and on our findings of fact, it is impossible for this Court to come to the conclusion that the A.N.C. had acquired or adopted a policy to overthrow the State by violence, that is in the sense that the masses had to be prepared or conditioned to commit direct acts of violence against the State. . . . While the prosecution has succeeded in showing that the programme of action contemplated the use of illegal methods (e.g. strikes, boycotts, etc.,) . . . for the achievement of a fundamentally different State from the present, it has failed to show that the A.N.C., as a matter of policy, intended to achieve this new State by violent means*".

This judgment has established that the tactics of the Congress Alliance—the use of extra-parliamentary, and even illegal, means to achieve its ends—are not high treason. They remain, however, illegal activities and under various laws—the 1950 Suppression of Communism Act, the 1953 Public Safety Act, the 1953 Criminal Laws Amendment Act, the 1960 Unlawful Organisations Act—subject to very heavy penalties. Furthermore, a Nationalist newspaper is already advocating a new legislative definition of treason. "New laws are essential to keep pace with the new methods and techniques which threaten the safety of white rule." A leading Member of Parliament has said that persons charged with treason should not be allowed to be acquitted, perhaps because of legal technicalities, and suggests that treason cases should be heard by military courts.

The judgment has, in addition, vindicated the banned A.N.C.'s policies and methods, acquitting it of treason and of Communism and also, in consequence, of charges long levelled against it by such varied accusers as the Pan Africanist Congress (P.A.C.), Liberals and the United Party—of being white dominated, or used by the Indians, or being the mere tool of white 'leftists'. Now no less an authority than the Special Court has found that the A.N.C. was "the senior and dominant partner" in the Congress Alliance.

On balance, the end of the trial is not in itself an end of any wider importance. The A.N.C. and P.A.C. remain banned organisations, and the 10,000,000 Africans enjoy no legitimate

representation. The confinement of the leaders, however, Chief Lutuli to the remote country and Mr. Sobukwe to prison, does not prevent the one from seeing his lieutenants and writing for the press, nor the other from issuing instructions from jail. Eleven organisers of the recent All-in African Conference at Pietermaritzburg in March (including two treason trialists) have been arrested and charged under the Unlawful Organisations Act; but that did not prevent a tremendous attendance at the Conference nor a call to the Government to initiate, before Republic Day on 31 May, a national multi-racial convention, failing which nation-wide all-race demonstrations would take place.

Twenty-eight people have emerged from the ordeal of a four and a half year trial on a capital charge apparently with intensified, rather than diminished, resolution. "We are overwhelmingly relieved that it is over. But even if we have to face the whole ordeal again, we will continue our struggle," is one typical comment.

The threat of internal strikes and demonstrations and external boycotts and sanctions has created great nervousness in commercial and industrial spheres; the stock market has declined spectacularly since Sharpeville. Dutch Reformed Church ministers, Stellenbosch professors, disaffected politicians, orthodox economists are now echoing, though still rather faintly, the call of "liberalists", "agitators" and such for modified race policies. Even the puppet chiefs of the Bantu Authorities, taking apartheid at its face value, are making embarrassing demands for independence now.

The withdrawal from the Commonwealth has been recognised by the non-whites as a tremendous triumph. With their leaders banned, banished, exiled, in prison or on trial, and their organisations disrupted, they have—against such powerful allies as big business, imperial preference, Commonwealth strategy, tough self-interest and nostalgic sentiment—got their way and inflicted a great defeat on white South Africa. This victory, followed almost immediately by the triumph of the treason trial, has engendered a profound sense of optimism and progress. The difficulties and sufferings to come are not under-rated. Yet there is a recognition, the exact opposite of that enjoyed by white leaders, that they are moving in the same inexorable direction as history.