THE LESSONS OF LIBEL

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NAIROBI's Senior Magistrate had said his final word. He picked up his 13-page judgement and slipped quickly out of the court-room. Seven tired African elected members of the Kenya Legislative Council followed him to face the press cameras, the reporters' questions, and the sad-faced crowd still bravely waving its banners and placards in front of the law-courts.

They walked past the police who stood idly cracking jokes about the behaviour of the crowd, and towards their people. Mr Tom Mboya raised his hand in the freedom salute, and the crowd cheered.

The legal struggle had left Kenya's African elected members £525 poorer. Even the brilliance of the Colonial people's veteran champion, Mr D. N. Pritt, Q.C., had not been able to acquit them of criminal libel. Legally they had lost, but the political victory was undoubtedly theirs.

A few weeks before, when seven of the eight elected African members† had been charged with criminal libel and conspiracy to commit a misdemeanour against the newly passed electoral ordinances, official circles had denied that the trial was a question of politics. But the African elected members, pointing to the press statement in which they had vigorously attacked their political opponents, asked why none of these victims had brought civil actions and why the Government had immediately brought charges of its own accord. If the trial was not a political stunt, why had the non-European papers that had used the statement also been charged with libel, while the '*Kenya Weekly News*', the only European publication that had published it in full, escaped.

The African elected members gave world wide publicity to their trial. A fund was started in England to raise funds; the United States A.F.L.-C.I.O. sent $2,500, and contributions were raised by Tanganyika African National Congress (£250), Zanzibar Nationalist Party, and the Northern Rhodesian African National Congress.

Mr Tom Mboya's Nairobi People's Convention Party organized

†Under the Lennox-Boyd constitution, there are 14 African elected members, but at the time the statement was issued, the six new elected seats had not yet been filled, and the eighth sitting member was away.

two "sacrifice days" on which buses, smoking and drinking were to be rigidly boycotted. Banners, placards and slogans appeared everywhere . . . at the airport a crowd flourished a sign "Welcome Mr Pritt", while at the Nairobi lawcourts, other boards proclaimed: "Six million Africans on trial".

On May 28th, the day the trial started, the African leaders arrived on foot. Other symbolic gestures went as far as Tom Mboya's American tee shirt and Ghanaian robes, and the fur costume and beaded accessories of Central Nyanza's father-figure, Mr Oginga Odinga. It was obvious that both sides were determined to make as much political capital out of the trial as they could.

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Inside the wood-panelled courtroom, Mr Pritt, nodding over his notes like an elderly university don, had started the legal disputation with Mr D. W. Conroy, Solicitor-General, who sheltered, slow and sure, behind an old school tie and an old school voice.

Tom Mboya, Oginga Odinga, Masinde Muliro, Ronald Ngala, Daniel Arap Moi, James Muime, and Lawrence Oguda had been charged on two counts—on criminal libel and on "conspiracy to commit a misdemeanour"—by the Attorney-General of Kenya following the press statement they had issued on 25th March.

Their statement was aimed at the six Africans who had announced their intention to stand for the "specially elected" seats under the Lennox-Boyd Constitution, and had described them as "stooges, quislings and black Europeans" and as "self-seeking opportunists who must not be allowed to stand in the way of political development". These unnamed special-seat candidates had, according to the statement, "identified themselves with those who seek the perpetual domination and suppression of the African people, and consequently must be treated as traitors to the African cause".

This strongly worded statement cannot be understood except as the climax of united African opposition to the Lennox-Boyd plan and the "special seats" on the Legislative Council it established. For the twelve "special seats" (four European, four Asian and four African) were to be elected not by voters on the different racial rolls, nor by universal adult suffrage, but by the Legislative Council sitting as an electoral college. This was the

prize exhibit in Mr Lennox-Boyd's bag of constitutional conjuring tricks, a scheme by which twelve additional members would be elected to the Council as possessing "the confidence of all races", but in reality owing their seats and authority to a White-controlled Assembly. The device won support from European liberals and multi-racialists, taking in even members of the British Labour Party. But it was quickly discarded by the Kenya Africans, who could not see how a European majority combining White settlers and government nominees could return even middle-of-the-road candidates.

The African elected members accordingly boycotted the elections, which saw Kenya's outstanding liberal, Mr Vasey, defeated for one of the European seats, and a host of good government servants, ex-nominated members and friends of the administration (all of whom had acquired the habit of jumping to the crack of the government whip) coming forward to fill the African seats. At the time they issued their press statement, the opposition of the African elected members to the Lennox-Boyd Constitution had already become a question of principle.

Ingenious explanations have been offered as to why responsible political leaders should have used such strong language in attacking those whom they regarded as their enemies. Some maintained that they had deliberately challenged the Government, so that the Government would charge them, and that this would result is some form of martyrdom. Some political commentators even suggested that it might give them their opportunity of becoming "prison graduates"—an essential qualification for any African nationalist. Others said it was a way of demonstrating the unity of the African people behind them, by promoting an effective boycott and by letting the living-legend, Mr D. N. Pritt, handle another big Kenya trial.

At the time they were charged, however, the African elected members seemed totally unaware of the laws of libel. They merely thought the Government had picked upon a normal, if rather strongly worded, political statement as a means of punishing them for their opposition to the Lennox-Boyd Constitution.

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Every day before the trial started, long queues formed outside the courtroom. Only 90 were admitted to the public gallery, and throughout the trial a frieze of black faces, broken only by

an occasional Sikh or Arab turban, looked down in puzzlement at the legal proceedings below.

At lunchtime, a crowd several thousand strong cheered their members and waved placards.

Mr Pritt started the defence by immediately objecting to the conspiracy charge. He held that the seven accused could not have "unduly influenced" the members standing for the special seats, because, at the time the offence was alleged to have been committed, there was no constitution, no election regulations, in fact, nothing his clients could have conspired against. He claimed that the whole thing was a "conspiracy in the air", for one could hardly conspire to break a law not yet in existence.

At first the Magistrate merely registered his objection. But a week later, when Mr Pritt raised the matter again, the conspiracy charge was dismissed.

Throughout the next five days of the trial there was little dispute about the facts of the case. The defence accepted that all seven members charged had agreed to the statement, and that it had been widely disseminated to the press.

Once the conspiracy charge had been dismissed, the case revolved around the meaning of the words and phrases used in the statement and the question of whether or not they were defamatory. If shown to be defamatory, the defence had to prove the statement privileged or a true statement of fact.

The statement had declared: "The composition of those who have already declared to stand for these seats is both revealing and significant." And Mr Pritt tried to draw out what had been meant from the "special seat" candidates who climbed into the box as witnesses for the prosecution. Everyone of them admitted that when standing for a seat he was totally dependent upon European, or occasionally Asian, support. In fact, almost the only African who had been prepared to nominate candidates—and he had nominated practically all of them—was Mr Wanyutu Waweru, who was himself a candidate. Mr Waweru had been a nominated member of the Legislative Council for $3\frac{1}{2}$ years and had never tried to stand in a direct election.

The flashily dressed Mr Musa Amalemba, the first candidate to announce his intention to stand for a special seat and now Minister of Housing drawing £3,500 a year, agreed that he had been "kicked out" of his tribal Association long before the African elected members had published their statement.

Ex Court-President Gibson Ngome found some difficulty in

understanding Mr Pritt's English, but admitted that he informed the authorities about political meetings called in his area, and was therefore "an informer".

In his judgement the Magistrate said: "Mr Amalemba was said to be shifty and muddle-headed. He was subjected to a long, relentless cross-examination and emerged a simple, frank and engaging person, of gentle courage. He volunteered the information that he had been 'thrown out' by his association and said that he had accepted loss, degradation and ridicule for the sake of his country and his people's cause. Mr Waweru, who also endured a long and searching cross-examination, emerged as a simple, reasonable person of quiet dignity and pride in his personal achievements". The Magistrate added that "I cannot say that I like the idea of a Court President-cum-Informer".

The statement had contained a paragraph:

"These stooges whom we have been telling you about should be treated with the contempt that they deserve." Mr Pritt's definition of "stooge" was someone who preferred to serve the interests of another community against the wishes of his own. Mr Conroy for the prosecution said that he would have had no objection to the use of the word "stooge", if it had been used alone. But the Magistrate, Mr. Rosen, defined it according to the dictionary as a "butt or foil". In his judgement he said, "the point is made by the defence that by reason of there being a European majority, or conversely an African minority, in the Legislative Council, the seeking of support by Africans from non-Africans must directly lead to the conclusion that any African seeking such support must be a butt or foil. That does not follow".

The Magistrate also objected to the expression "traitors to the African cause", because "there is all the world of difference between betraying a cause and failing to support the policy of a particular group". He did not add that the "particular group" happened to consist of the chosen representatives of the African people whose popular backing had been so convincingly demonstrated by the boycotts.

The defence had suggested that the word "quisling" meant a person who supported people other than his own to rule his country. "This" said Mr Rosen "presupposes that only Africans are of this country". He didn't think that any one of the six persons was a quisling, and he believed that each had the good of his people and the country at heart.

And so the minute examination of the statement continued, revealing real differences in interpretation of the words used. Finally the Magistrate found "that the words in their natural meaning can be, and undoubtedly are, defamatory, being likely to injure the reputation of the six persons concerned by exposing them to hatred, ridicule and contempt . . . indeed defamation was a calculated purpose of the publication." Mr Pritt's case had largely rested on the view that the words and phrases used had been matters of opinion and not of fact, and that they could not therefore be proved to be true or untrue.

The Magistrate said that justification rested on proof of truth or privilege. A statement such as "Be it known this day to the African community that now we all know the stooges, quislings and black Europeans in our community" was an apparent statement of fact, but it was untrue and therefore could not be used in justification.

In conclusion he said that he thought the African members had gone far beyond the normal bounds of fair comment in order to restate their policy of non-cooperation with the Lennox-Boyd plan.

The Magistrate said that he had no desire to end the political careers of the African elected members, which he could have done by ordering prison sentences of six months or more. Instead he imposed fines of £75 upon each of the accused, a total of £525. The various trial funds came to well over £1,500.

During the trial the African elected members had learned a great deal about the law of libel, and they had seen how far the Kenya Government was prepared to press its challenge. Most important of all, however, they had shown that it was they who had the united support of the vast majority of the African people, and that the "specially elected" members were a small group standing alone. No doubt it is this lesson which will endure the longest.