

ALLAHABAD HIGH COURT

S.H. Jhabwala

Vs

Emperor

(Sulaiman, J.)

03.08.1933

JUDGMENT

Sulaiman, C.J.

1. This is an appeal by 27 accused persons in what is known as the Meerut Conspiracy case. The trial has become somewhat notorious on account of its unprecedented duration. All the accused persons, except Hutchinson, were arrested in March 1929, (Hutchinson was arrested in June of the same year) and have all this time, except for the period during which some of them were released on bail, been detained in jail. The trial commenced in the Court of the Committing Magistrate on a complaint filed on 15th March 1929, and on a supplementary complaint against Hutchinson on 11th June 1929.

2. The entire proceedings have now lasted for nearly four years and a half. This is accounted for as follows: (1) The preliminary proceedings before the Magistrate took over seven months, resulting in the commitment of the accused to the Court of Session on 14th January 1930; (2) in the Sessions Court the prosecution evidence took over 13 months; (3) the recording of the statements of the accused occupied over 10 months; (4) the defence evidence lasted for about two months (5) The arguments continued for over four and a half months; (6) the learned Sessions Judge took over five months thereafter to pronounce his judgment; (7) the last of the appeals was filed in the High Court on 17th March. 1933, and, as the paper-books were all ready and printed, 10th April 1933, was fixed for the hearing of the appeals. But the accused themselves applied for an adjournment of the hearing till after the long vacation, to which the Crown counsel agreed. Accordingly 24th July 1933, was fixed for the appeals, on which date the arguments commenced, and having lasted for eight working days were concluded yesterday.

3. The case was conducted on a gigantic scale. The evidence consists of 25 printed volumes of folio size. There are altogether over 3,500 prosecution exhibits, over 1,500 defence exhibits and no less than 320 witnesses were examined. The judgment itself is in two printed volumes covering 676 pages of folio size. A mass of documentary evidence consisting of papers in

printed, type-written, and manuscript forms, books, pamphlets, letters, notes, slips, and other documents found in the possession of the various accused at the time of the searches, as well as those found at the search of numerous other places have been produced, and there is a mass of oral evidence, both from India and England, to prove them. There is also voluminous evidence to prove the various political activities of all the accused and their association with each other. We think it is necessary to make a few observations in regard to the proceedings. In the first place, there seems to be an erroneous impression that the entire evidence for the prosecution must be produced before the Committing Magistrate and that the Magistrate has no option to postpone the recording of such evidence. This view is based on, the language of Section 208, Criminal P.C., under which the Magistrate is bound to take all such evidence as may be produced in support of the prosecution or on behalf of the accused.

4. Section 210 also says that when "upon such evidence being taken and such examination (if any) being made," the Magistrate is satisfied that there are grounds for committing the accused he shall frame the charge. But all that these sections imply is that the Magistrate should record all evidence for the prosecution which the complainant considers it necessary to produce. If the Magistrate stops the proceedings and does not take all the evidence that the prosecution wishes to produce, and discharges the accused under Section 209, the order would be improper. On the other hand, if the Magistrate does not take all the evidence offered by the accused and, nevertheless, commits the accused to the Court of Session under Section 213, the order would be illegal and is bound to be set aside. But these sections, in our opinion, do not mean that once the Magistrate is satisfied that the accused should be committed to the Court of Session--that is that the prosecution has established a prima facie case--he is still bound to take down all the remaining evidence for the prosecution. Nor do they mean that if the Magistrate, after hearing part of the evidence of the accused, is satisfied that there is no case for commitment, he should, nevertheless, proceed to complete the recording of the entire evidence. Indeed there is an express provision in Section 347 which requires that if at any stage of the proceedings it appears to the Magistrate that the case is one which ought to be tried by the Court of Session, he shall commit the accused.

5. The significance of the words "at any stage of the proceedings" obviously is that the Magistrate should commit, even though he has not heard: the entire evidence of both sides. In *Queen-Empress v. Hayfield*¹ Knox, J., expressed the opinion that the prosecution cannot produce a witness as of right when he had not been examined by the Committing Magistrate, nor had he been examined by the Crown under the supplementary provisions of Section 219, Criminal P.C., and at the sessions trial the accused had no knowledge of the nature of the evidence which he might give. It does not appear that Section 347 of the Code was considered. It also appears that the learned Judge thought that the accused were being taken by surprise, and were likely to be

prejudiced. We think that although the ruling might be supported by the special facts of that case, and the rule laid down should be ordinarily applied, the law was too broadly stated.

6. In *Queen- Empress v. Stanton* ²the same learned Judge remarked that the prosecutor was not free to select the evidence which should be produced at that stage--he was bound to produce all, the evidence directly bearing upon the charge. That observation also was made in a different connexion and without any reference to the provisions of Section 347. The same learned Judge in *Queen-Empress v. Ahmadi*³ again made a similar observation that a Magistrate inquiring into a case was not empowered to frame a charge or commit until he had taken all the evidence the accused might produce. But that was a case where the Magistrate had declined to hear the evidence tendered on behalf of the accused and had committed her for trial. The observation made by the learned Judge must be read in connexion with the facts of that case. The case of *Emperor v. Jaswant Singh* (1898) 20 All 264(Supra) decided by another Judge of this Court was also quite different. In that case the Magistrate had not asked the accused whether they load any evidence to produce. When an application was made on their behalf for the summoning of certain witnesses the application was rejected and the accused were committed to the session. It was accordingly held that the order was illegal and must be set aside.

7. In our opinion it is not correct 'to Say that the Magistrate has absolutely no option, but to hear the entire evidence on both sides, and that he cannot commit the case to the sessions unless he has done so. This construction of these sections sometimes leads to two full trials --one before the Committing Magistrate and the other before the Sessions Court. We think that the prosecution can place before the Court all the evidence on which they wish to rely, but after evidence has been taken, which is sufficient to make out a prima facie case, it is not necessary to call further evidence. Similarly, if there is a mass of evidence tending to prove the same point it is not necessary that all such evidence should be produced in (the Magistrate's Court before the charge is framed. Notice of all evidence to be produced in the Sessions Court ought however to be given to the accused at the trial, otherwise he would be prejudiced. The mere fact that same evidence is not produced till proceedings in the Court of Session can in no way prejudice the accused if he has notice of it. If proper care is taken by the prosecution and by the accused, as well as by the Magistrate concerned, the hearing in the Magistrate's Court can be very much shortened.

8. In the second place, if the prosecution exercises a careful discrimination and avoids the piling up of evidence and the overburdening of the record, much time can be saved. Of course, no Sessions Court would refuse to examine witnesses who have been sent up by the Committing Magistrate, or reject evidence which has been relied upon by him, *Queen-Empress v. Bunkhundy*⁴ But if a proper selection of evidence is made at the outset the volume of evidence can be kept within reasonable limits. We think that there has been-unnecessary multiplication of evidence in this case, resulting in the production of numerous documents, tending to establish the same point.

We think that the legislature should consider whether the procedure should not be further simplified so as to avoid duplication of trials. It seems wholly unnecessary to have full hearings successively in the Committing Magistrate's Court and again in the Sessions Court. This necessarily prolongs the duration of the trial, involving a considerable waste of time, and is not always in the interest of the accused.

9. In the third place, the accused in their turn took an inordinately long time in reading out well prepared statements which the Court had to take down word for word. In most cases they were nothing more than an exposition, on an elaborate scale, of the doctrines of communism, its tenets and its programme. There has been an extravagant waste of time and energy in the dictation and recording of these statements. Section 256 (2) allows an accused to put in any written statement in the trial of a warrant case in the Magistrate's Court. We do not see why, if the accused has already prepared a lengthy written statement, he should not be allowed to file it in the Court of Session. This would not, of course, relieve the Court of the necessity of questioning him generally on the case in accordance with Sections 342 and 364, Criminal P.C. Much time of the Court could be saved if such a written statement were accepted instead of allowing the accused to read it in extenso in Court and to have it recorded as he reads it. The doubt of a single Judge of this Court in *Emperor v. Ansuiya*⁵ was not so much against the filing of such a, written defence, but against its taking the place of the examination of the accused.

10. It is to be noted however that, apart from Sections 342 and 364, there is no section in the Code which permits an accused to make a statement at all in the Sessions Court. Section 342 enacts that the Court shall question the accused to enable him to explain any] evidence against him. The accused must confine himself to relevant answers to the questions asked by the Court. The Judge has power to refuse to record irrelevant answers, and, if necessary, may prevent the accused making lengthy irrelevant answers. Section 289 refers, to "the examination (if any) of the accused." It prima facie implies the possibility of there being no examination of the accused. But that is up-to the stage when he is asked "whether he means to adduce evidence.") This section has to be read in conjunction with the provisions of Section 342 of the Code, which makes, it the duty of the Court, for the purpose of enabling the accused to explain any evidence against him, to question him generally on the case "before he is called on for his defence." But the questioning of the accused referred to in the section is not meant to be lengthy cross-examination as regards all evidence produced by the prosecution. If in a big trial the accused is at that stage called upon to explain all the evidence he would naturally begin to argue his case before his defence is called on, which obviously is, not contemplated. It seems to us that the following form of question put to an accused is not only unnecessary, but also likely to lead to lengthy answers:

Question.--The following documents are in evidence against you. (Then a large number of

exhibits are named). 'Have you anything to say in explanation of the above evidence ?

11. Such a question would invite an argumentative explanation of each of the documents mentioned. In the fourth place, the length of the trial can be shortened if the accused also were to exercise a proper discretion in producing defence witnesses. In this case it seems to us that they were ill-advised to produce an unnecessarily large number of witnesses. In the fifth place, the length of arguments depends, to a great extent, on the volume of evidence that has already been brought on the record. If that volume is reduced, the arguments are bound to be shortened in proportion. In this connexion it may be mentioned that the Government, at great expense, had the whole of the oral and documentary evidence printed in the Court below and thereby provided every facility to the Court and counsel in examining that evidence. In the sixth place, much time would be saved if the Sessions Judge does not feel himself called upon to discuss in his judgment all the evidence produced by the prosecution and the defence. A judgment has not to be a resume of the entire evidence or a discussion of the relevancy of all the evidence. A Court is entitled to select such evidence as it considers important and sufficient to prove the point for consideration.

12. We feel that if the learned Sessions Judge had not discussed the entire evidence with minute detail he need not have written so lengthy a judgment and need not have taken so much time. At the same time we must express our high appreciation of the great care which the Judge has taken and the great perseverance and patience which he has shown in hearing this case. He has been so accurate and exact in his statement of facts that counsel for the appellants have not been able to draw our attention to any passage in the judgment which contained a wrong or incorrect statement of fact or gave a wrong reference to exhibits. Considering that the evidence before him was so vast, and his judgment covers so many pages, it is very creditable to him that he has been able to be so particular. But we must express our feeling that if there had been a greater discrimination in the choice and selection of evidence for the prosecution, a greater restraint by the accused in keeping their statements within the limits of relevancy, and a little more strictness on the part of the Court, the trial would not have taken such a long time.

13. As regards the appeal we would like to acknowledge that counsel for both sides have in this Court given us great assistance in deciding the case. In particular, Mr. Kemp, counsel for the Crown, who obviously knew every detail of the evidence, was always able to refer us promptly to relevant evidence without any loss of time whatsoever. In his arguments he has been very fair to the accused and has drawn our attention also to circumstances which are in their favour. We now come to the facts. The appellants have been convicted of an offence under Section 121-A, 'Penal Code (Act 45 of 1860); The charge against them was that in and between the years 1925 and 1929, within and without British India they agreed and conspired together with one another and other persons and bodies, "to deprive the King-Emperor of the Sovereignty of British India." As there has been considerable argument as to the exact implications of this expression in the

section, it may be convenient to dispose of that argument at an early stage. Ch. 5-A, Penal Code, deals with criminal conspiracy; and Ch. 6 deals with offences against the state. Criminal Conspiracy is denned in Section 120-A in the following terms:

When two or more persons agree to do, or cause to be done, (1) an illegal act, or (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy : Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such an agreement in pursuance thereof.

Explanation. -- It is immaterial whether the-illegal act is the ultimate object of such agreement, or is merely incidental to that object,

14. This section adopts the definition of Criminal Conspiracy as understood in England. In *Denis Dowling Mulcahy v. Queen*⁶ Willes, J., in delivering the opinion of the Judges consulted by the Lord Chancellor, remarked in his 11th answer at p. 317 as follows:

A conspiracy consists not merely in the intention of two or more, but in the agreement of two. or more to do an unlawful act or to do a lawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and the act of each of the parties, promise, against promise actus contra actum, capable of being enforced, if lawful, punishable if for a. criminal object or for the use of criminal means. And so far as proof goes conspiracy, as Grose, J., said in *Rex v. Brissac* 4 Bast 171, is generally a matter of inference, deducted from certain criminal acts of the parties accused done in pursuance of an apparent criminal purpose in common between them,

15. This opinion was accepted by the Lord Chancellor and the other Lords. Section 121, Penal Code, is in the following terms:

Whoever wages war against the Queen, or attempts to wage such war, or abets the waging of such war, shall be punished with death, or transportation 'for life'.

16. Section 121-A deals not only with depriving the Queen of the Sovereignty of British India, but also with conspiracy to overawe, by means of criminal force or the show of criminal force, the Government of India or any Local Government. The word "Queen" is defined in Section 13 as denoting the Sovereign for the time being of the United Kingdom of Great Britain and Ireland and would therefore mean His Majesty who is King-Emperor at the present moment. The section obviously draws a distinction between the Sovereign for the time being of the United Kingdom and the Government of India or the Local Government. It may therefore be conceded in favour of the accused that any conspiracy to change the form of the Government of India or of any

Local Government, even though it may amount to an offence under another section of the Code, would not be an offence under Section 121-A, unless it is a conspiracy to overawe such Government by means of criminal force, or show of criminal force. The accused have not been charged with any such offence. Depriving His Majesty of the Sovereignty of British India would obviously include the severance of the connexion of India with the Imperial Government in England. It cannot therefore be questioned that any conspiracy to establish the complete Independence of India, as distinct from obtaining for it the status of a self-governing- dominion within the British Empire, would be tantamount to conspiring to deprive His Majesty of the Sovereignty of British India. The same result would follow if there was a conspiracy to establish a perfectly democratic or republican form of Government in India outside the British Empire. This position has to been seriously disputed by the learned Counsel for the appellants.

17. What was strenuously urged was that the reference to the Queen in the section was a reference to the personality of the Sovereign for the time being. The contention which has been very strongly urged is that unless it be established that there is a conspiracy to deprive His Majesty King George the Fifth of England of his Sovereignty of British India there would be no offence within the meaning of the section. The contention is carried further and it is argued that unless the conspiracy is directed against the Sovereign rights personally enjoyed by His Majesty there would be no offence. On this assumption a further argument is built that unless the prosecution establish that it was in the contemplation of the accused to deprive the King-Emperor of the Sovereignty of British India in the lifetime of the present King-Emperor, the offence would not be brought home to the accused. We do not think that we need discuss these contentions at any considerable length as, in our opinion, they have no force whatsoever. This argument overlooks the fact that in law the King never dies. It is enough for the prosecution to prove that there was a conspiracy to deprive the King-Emperor of the Sovereignty of British India. It is not necessary to show further that the conspirators were conspiring for such deprivation to take place within the lifetime of His Majesty the present King-Emperor. No doubt Section 13, Penal Code, defines the word "Queen" used in Section 121-A as the Sovereign "for the time being" of the United Kingdom of Great Britain and Ireland. But Section 3, Clause (23), General Clauses Act (10 of 1897), provides that the "Queen" shall include her successor. And so the question whether the conspiracy is expected to succeed in the lifetime of His Majesty the King-Emperor or that of his successor is wholly immaterial.

18. It is important to note -that the offence of criminal conspiracy is complete as soon as two or more persons agree to do or cause to be done an illegal act, or an act which is not illegal by illegal means. It is immaterial whether the illegal act is the ultimate object of such an agreement or is merely incidental to that object. For the purpose of Section 121-A it is not necessary that any act or illegal omission shall take place in pursuance of the conspiracy. The agreement in

itself is enough to constitute the offence. The case for the prosecution was put forward in the complaints which were filed before the Magistrate. It is not necessary to recite them at length. Their gist is as follows: (1) That there exists in Russia an organization called the Communist International, whose aim is to overthrow all existing forms of Government throughout the world by the creation of armed revolution and to replace them by Soviet Republics' controlled by the Central Soviet Government in Moscow; that the Communist International has outlined a programme or plan of campaign for the overthrow of other Governments by means of general strikes and armed uprisings, the preliminary steps being the creation of Workers and Peasants Parties, Youth Leagues, Trade Unions, etc., and the introduction of fractions of groups of Communists into such bodies, the encouragement of strikes, propaganda by speeches, newspapers, literature, etc. (2) That the Communist International carried on its work and propaganda through various committees, branches and organizations controlled by its own Executive Committee and various sub-committees. (3) That the Communist Party of Great Britain is a section of the Communist International. (4) That in 1921 a branch organization of the Communist International was established in British India by a number of Communists including the accused Dange, Shaikat, Usmani and Muzaffar Ahmad who conspired together to deprive the King-Emperor of his sovereignty of British India. (5) That the accused Spratt and Bradley were sent out to India by the Communist International, through the medium of one of its branches, for furthering its aims. (6) That all the accused, although residing at different places, conspired with each other and other persons to deprive the King-Emperor of the sovereignty of British India, and carried out the programme and plan of campaign laid down by the Communist International at various places. (7) And that in particular, the accused formed a Workers and Peasants Party at Mecrut and held a conference of it at that place.

19. It is not now disputed that a Communist International exists in Moscow nor is it disputed that there is a Communist Party of Great Britain. It is equally admitted that a Communist Party of India was formed and existed in British India. It is convenient to divide the 27 accused into four groups. The first group consists of 12 accused, namely (1) Muzaffar Ahmad, (2) Dange, (3) Ghate, (4) Joglekar, (5) Nimbkar (6) Mirajkar, (7) Usmani, (8) Sohan Singh Josh, (9) Majid, (10) Ajodhia Prasad, (11) Adhikari and (12) Shamsul Hud a, all of whom are members of the Communist Party of India. The second group consists of two accused- (1) Spratt and (2) Bradley, who are members of the Communist Party of Great Britain, but not members of the Communist Party of India. The third group consists of six accused-(1) Goswami, (2) P.C. Joshi, (3) Chakravarti, (4) Basak, (5) Hutchin-son and (6) Mittra, who, it is now admitted, are Communists by conviction, but did not become members of the Communist Party of India. The fourth group consists of the remaining seven accused, namely--(1) Desai, (2) Jhabwala, (3) Sahgal, (4) Alvc, (5) Kasle, (6) Gauri Shankar and (7) Kadam, who are not Communists and who have never been members of the Communist Party of India. They assert that they are political workers belonging

to either the Peasants and Workers Associations, or Trade Unions or the Congress, and deny that they have ever belonged to any Communist organization or joined in any conspiracy. Having regard to the difference in the nature of the defences put up by the accused of these various groups, their cases have to be examined separately. It will be convenient to take the accused in the groups into which they naturally fall.

20. The first group--It seems to us that the prosecution case against the 12 accused, who are admittedly members of the Communist Party of India, is both clear and simple. They knowingly became members of the Communist Party of India of which we know the constitution as well as the report of its working for the first year. Prosecution Ex. 1207 (i) printed in Vol. V (b) (parties) at p. 964 onwards is admittedly a genuine document and contains the annual report of the Executive Committee of the Communist Party of India for 1927 as well as its constitution for that year. The introduction mentions that the aftermath of the War had created an all-round discontent and the masses were everywhere seen in a revolutionary mood which could not find a way for radical action, owing to lack of bold leadership.

21. It points out that at the time of the non-co-operation movement the masses joined the struggle with great zeal which led India almost to the verge of a great political upheaval.

22. It recites as a matter of history that the previous arrest of Muzaffar Ahmad and Dange on a charge of conspiracy brought into light.

the programme of a national revolution that was proposed by the revolutionary leaders of world reputation for India, and that the Indian Communist Party was started which attracted a number of people who were enlisted as its members and that among the ideals, the attainment of complete independence was kept in the forefront.

23. The report, having given a short history of the birth of the Communist Party of India, proceeds to record "the work done by the Executive." Under the heading "record of work done during the period" it points out that in Bengal work was done in re-building the already existing Peasants and Workers Party in that Province; in Lahore work was done in educating the masses; in Bombay a left-wing organization was found necessary and there was success in having a Workers and Peasants organization which had already commenced work amongst the industrial workers with their organ--the Kianti. In Rajputana a Workers and Peasants Party had been started and efforts would be made to organize industrial labour; in Madras propaganda work was being done through Trade Unions and strike activities; and in the United Provinces and other provinces, owing to lack of sufficient financial resources, no effective left-wing had been organized, but a favourable atmosphere for labour activities had been created. The report then contains what is called "The Constitution of the Communist Party in India, 1927." It is significant to note that in

para. 2, which formulated the conditions of membership, it is provided.

only those subscribing to the programme laid down by the Communist International will be eligible for its membership,

24. It provides for a central executive, for a "Presidium," for a foreign bureau, and "fractions." The Foreign Bureau was to act as the organ through which the international relations of the party would be maintained and was to keep constant touch with all the Communist Parties and the Comintern, i.e., the Communist International. In para. 20 it was provided that the Communist Party of India at its annual sessions would formulate a regular programme and policy to be carried out and to form party groups called Comrades' Fractions to work in the National Congress and the Trades Union Congress on behalf of the Party. This report contains a number of resolutions including that the Party looks up to the Communist Parties of the world as well as the International, for lead and guidance. Then follows the "programme." After pointing out that only the dynamic energies of the toiling masses can bring Swaraj to India the Communists were called upon to formulate a common programme on the lines of the following minimum programme: complete national independence' and the establishment of a democratic republic based on universal adult suffrage, etc. Several points emerge from this document. The first is that it was believed that the masses were seen in a revolutionary mood and that at one time the masses joined the struggle with great zeal which brought India almost to the verge of a great political upheaval.

25. The second is that the Communist Party is confined only to such members as subscribe to the programme laid down by the Communist International. Those who do not subscribe to such a programme are not eligible for membership at all. The third is that the minimum programme prescribed by the party was complete national independence. The only explanation which the learned Counsel for the appellants has offered is that the word "programme" in this document has been loosely used for "aims and objects" and that what the Communist Party in India had set before itself was not a programme but an ultimate aim and object which may not per se be punishable. Reading the document as a whole, including the introductory portion, the history of the movement, the constitution of the party and the programme before it, we can have no doubt that the members of this party agreed together to achieve by action what was laid down therein as the minimum programme. As the members bound themselves to abide by the programme of the Communist International it is necessary to see what that programme is, P. 2398 is a copy of the programme of the Communist International which is admitted to be a genuine copy. We can therefore safely quote from it:

26. The introduction mentions that the Communist International openly advocates the violent overthrow of the Bourgeois order by means of the Communist revolution and that the

programme (for 1924, which was in force in 1927) shows the way to victory over the Bourgeoisie. The first section deals with what is called Capitalist Wage Slavery. The second section deals with the emancipation of the worker and the Communist order. The third section deals with the fall of the Bourgeoisie and the fight for Communism. The first head under this section is "The general characteristics of the transition period," which are a period of national wars, of colonial uprisings, etc. The second is:

The dictatorship of the proletariat as the unavoidable pre-requisite of the struggle for Communism.

27. It points out the necessity of the proletarian dictatorship and says:

an unavoidable premise for the transition from Capitalism to Communism--the starting point without which the further evolution of mankind is entirely impossible--is thus the revolutionary overthrow of the Bourgeois State and the seizure of power by the working class, which is to set itself the first and most important task of suppressing the enemy and formally establishing the new regime--the dictatorship of the proletariat, that is the most elementary pre-requisite for social evolution.

28. It then mentions the destruction of the Bourgeois State by the organs of proletarian class war and says:

the seizure of power by the proletariat is nothing less than the destruction of the Bourgeois State apparatus by the fighting organs of the proletarian class struggle and the organization of a new proletarian class power by those organs.

29. It goes on to emphasize the destruction of the Bourgeois monopoly of armies and the concentration of these in the hands of the proletariat and says:

An essential part of the seizure of power by the working class is the destruction of the Bourgeois monopoly of armies and the concentration of armies in the hands of the proletariat. During the course of the struggle the main object in view must be the disarmament of the Bourgeoisie and the arming of the proletariat.

30. The fourth section points out the road to the dictatorship of the proletariat and lays down the strategy of the Communist Party and the tactics to be adopted. The paragraph under the head "Revolutionary Situation and Party Tactics" may be quoted in extenso (p. 36):

Given a direct revolutionary situation, when the ruling classes are more or less disorganized, when the masses are in a state of revolutionary excitement, when the intermediate strata are inclined to go over to the side of the proletariat--the party of the proletariat is confronted with the

task of leading the masses to the direct attack on the Bourgeois State. This is achieved by the advancement of more marked slogans and the increasing intensity of mass movements, to which must be subordinated all branches of party agitation and propaganda, including parliamentary activities. These comprise strikes, combination of strikes and demonstrations, combination of armed demonstrations and strikes, and finally the general strike in conjunction with the highest-form of the direct military fight against the State-power of the Bourgeoisie. This fight is subject to military rules ; it pre-supposes a military plan (the fixing of time and place, etc.), aggressive operations, and undivided loyalty and heroism on the part of the proletariat. Such actions pre-suppose the organization of the broad masses into militant bodies, which by their very form should attract and set into motion the largest number of toilers (Council of Workers and Peasant Deputies Soldiers' Councils, etc.). A pre-requisite for victorious tactics is propagandist work in the army and navy.

31. It is unnecessary to quote other extracts. The whole programme from beginning to end shows, without a shadow of doubt, that the programme laid down is the overthrow of the existing order of Society and Government by the use of force with ultimate resort to arms. A revised programme of the Communist International was printed in 1929. It is P. 2339, the genuineness of which also is admitted. It is much in the same terms. Under the section dealing with the period of transition it equally emphasizes that the conquest of power by the proletariat is a necessary condition precedent, and that it does not mean peacefully capturing the ready-made Bourgeois State machinery by means of a Parliamentary majority; that the violence of the Bourgeoisie can be suppressed only by the stern violence of the proletariat, the conquest of power by the proletariat is the violent overthrow of Bourgeois power, the destruction of the Capitalist State apparatus (Bourgeois, armies, police, bureaucratic hierarchy, and judiciary, parliaments, etc.) and substituting in its place new organs of proletarian power. It is not necessary to quote other extracts, but it may be pointed out that among the fundamental tasks of Communist strategy and tactics it is provided that the Communist Party must openly recognize the rights of the colonies to separate and their right to carry on propaganda for this separation, i.e., propaganda in favour of the independence of the colonies from the Imperialist State; they must recognize their right of armed defence against Imperialism (i.e. right of rebellion and revolutionary war) and advocate and give active support to this defence by all the means in their power.

32. The mass action is stated to include:

Strikes; a combination of strikes and demonstrations ; a combination of strikes and armed demonstrations; and finally the general strike conjointly with armed insurrection against the State power of the Bourgeoisie. The latter form of struggle, which is the supreme form, must be conducted according to the rules of war; it presupposes a plan of campaign, offensive fighting operations and unbounded devotion and heroism on the part of the proletariat. An absolutely

essential condition precedent for this form of action is the organization of the broad masses into militant units, which, by their very form, embrace and set into action the largest possible numbers of toilers (Councils of Workers' Deputies, Soldiers' Councils, etc.), and intensified revolutionary work in the army and the navy. The Communist Parties in the Colonial and semi-colonial countries must carry on a bold and consistent struggle against foreign Imperialism.

33. And they are warned that: failure to take advantage of the culminating point in the development of the revolutionary situation, when the party of the proletariat is called upon to conduct a bold and determined attack upon the enemy, is not less dangerous. To allow that opportunity to slip by and to fail to start rebellion at that point, means to allow the initiative to pass to the enemy and to doom the revolution to defeat.

34. It is apparent from these few extracts alone that the members of the Communist Party of India, who subscribe to this programme of the Communist : International, have undoubtedly formed a revolutionary body with the professed object of overthrowing the present order of society and bringing about the complete independence of India by means of armed uprisings of the proletariat, which includes the workers and the peasants. The contention of the learned advocate for the appellants that such an objective is a distinct aim to be realized in the unknown far- off future cannot be accepted for a moment. No doubt the Communists would, as a tactical measure, begin with the preliminary stages in the first instance, but whenever conditions become favourable they would adapt themselves to those conditions and resort to armed revolution, if necessary. Nowhere in the programme is it suggested that such an armed revolution is not to be brought about within any period of time. The question is entirely one of opportunity and the opportunity has to be seized and not lost sight of as soon as it occurs. That the object in view is not a mere dream of the Communists which may be realized after several generations beyond the lifetime of the present accused is apparent from their own statements made before the Sessions Court. The accused, Nimbkar, read a long written statement in Court which was ultimately accepted by all the Communist accused persons, and has been called their joint statement. It contains an exposition and elaboration of the theories of Communism and extends to such a length as to have caused an inexcusable waste of time of the Court. The statement says: When we are trying to set up an entirely new system of laws we cannot be expected to pay very much respect to the existing one.... We fully subscribe to the system of thought and the well-thought out and scientific political programme laid down for the world revolution by that most powerful world-wide revolutionary organization, the Communist International.... While we assert our general deterministic view, we do not attempt to use this as an argument by which to escape from the consequences of our actions or to minimize them in the eyes of the Court, on the contrary we lay the greatest possible stress upon the importance of conscious revolutionary activity, organization and leadership....

35. It goes on to state that the Indian national revolution is inevitable and, in describing the attitude of the accused towards Indian affairs, says:

We consider that the way in which the economic and political life of the world generally and of India in particular have developed makes it certain that the Indian National revolution now developing, will culminate fairly soon in the revolutionary overthrow of the British Imperialist Rule.

36. It then goes on to admit that: We have no objection to the help of the Communist International and the Russian working-class ; in fact, we consider that India should welcome such help.

37. Every attempt has been made to emphasize in this long statement the inevitability of violent revolution. We consider it wholly unnecessary to burden our judgment with further extracts from this statement. It leaves no doubt in our minds that the violent overthrow of the present order of society and bringing about the independence of India by means of an armed revolution is not a distant but an immediate object, although in the absence of favourable conditions, the spade work has to be done as a matter of policy and tactics. We are fully convinced that any group of persons, who formed themselves into a party and placed before themselves a programme of this type and agreed to give effect to it to the best of their ability, have undoubtedly conspired to deprive His Majesty the King of His Sovereignty of British India. There can be no manner of doubt that on these admitted facts and on the statement of the accused themselves, the offence with which they have been charged has been fully established. We could have multiplied extracts from their statements, extracts from speeches made by them, and extracts from their writings to show that these are their professed object, programme, and plan of action. We however consider it unnecessary to go any further, and on the evidence mentioned above we unhesitatingly record a finding that these accused persons have been rightly convicted of the offence under Section 121-A. As frequent references will have to be made to some of the parties and unions that were formed, and an appreciation of their constitutions would be useful in considering" the cases of some of the accused, it is convenient at this place to discuss them, before taking up the case of each accused.

38. In addition to the Communist Party of India, which has already been discussed, there came into existence towards the end of 1928 an All India Workers and Peasants Party. This was subsequent to the formation of Provincial Workers and Peasants Parties. Advantage was taken of the Christmas Session of the Congress at Calcutta, and the first All India Workers and Peasants Party Conference was convened during the Christmas of December 1928. The President elect was the accused, Sohan Singh Josh, and the Secretary of the Reception Committee was the accused, Goswami. It was on this occasion that the All India Workers and Peasants Party was formed. There are two copies of the Constitution of this Party. Both show that the object of the

party was the attainment of complete freedom from Imperialism in general and British Imperialism in particular and a thorough democratization of India based on economic, social and political emancipation of the masses. But the means for the attainment of this object was stated to be the Party programme adopted from year to year at the annual session of the Party or at any extraordinary congress called for the same purpose. It is to be noted that the Constitution did not say that the Party adopted the programme of the Communist International or that its members would in any way be bound by the decision of any Communist Party. Any one seeking to be a member who read the Constitution would not necessarily conclude that it was a Communist organization. Nor would it follow that any one who was invited to the All India Workers and Peasants Party Conference would necessarily be aware that speeches in pursuance of the aims and objects of Communism would, be made at such a conference. The fact however remains that at this Calcutta Conference a number of resolutions accepting several theses, which were presented to, or perhaps read at, the Conference, were adopted. We have also the Presidential address delivered on the occasion by the Communist President. A few extracts from these may be quoted with advantage. Sohan Singh Josh in his presidential address after dealing with the Nehru Report said: We must clear the air and put the issue definitely before India that we are out not only to end Imperialism, but Empire as well. All Emperors have proved to be a curse everywhere ; for they meant the exploitation of one country by another.

39. He then goes on to say:

The presence of the King, Governor General and the Governor in the Nehru scheme has made it all the more reactionary.... India will get true freedom only when the British interests are: cleared away bag and baggage Will the peaceful revolution recommended by the Nehru Committee ever succeed in clearing away these interests from the Indian soil? India can attain true liberty only through a revolution and not by framing Constitutions.

40. He then went on to observe:

Our party is carrying on an uncompromising campaign for complete independence: our Workers- and Peasants Party is an Independent Party and our slogan is complete independence....All people who believe in revolution and class struggle should join our Party, and placing before the Workers and Peasants a revolutionary programme should organize them to win freedom.

41. He went on to remark:

If all of us would imbibe the spirit shown by them (Bombay comrades during mill strikes) I am sure that we can bring about revolution in a very short time. It will be an act of ingratitude on our part to forget the help given by Russian Workers and our Indian friends.

42. After suggesting that there was a conflict of interests between Russia and Great Britain and war was coming, he went on to state what their attitude should be: As soon as the war begins we should resort to mass strikes, sabotage, hartals and boycott, and by paralysing the means of transport harass the enemy in the rear... When the enemy is busy in war, we should adopt such tactics as would put him between two forces. The Worker and Peasants should not hesitate to make any sacrifices at that time because that would be the Operating time to destroy British Imperialism.

43. He also remarked: To speak my mind freely I am working to bring about such an order of things and because Bolsheviks of Russia have shown us the way in this respect--we are thankful to them.

44. Dealing with the task of the party he remarks:

But the condition of the masses has grown so wretched that to remain any longer under British yoke means death to them. They cannot wait long, therefore they urgently need solution of their troubles.

45. He ended by an appeal to all comrades "to fight to bring about such a beautiful order of things" and said: but all 'this cannot be achieved without revolution, for revolution is the only friend of the poor and the helpless.

46. One thesis which was adopted at this Conference was the All Workers and Peasant Party Principles and Policy. After stating that the function of the Workers and Peasants Party was to achieve at least the essential preliminary step i.e., the attainment of Political Independence, for the abolition of exploitation and Political oppression, he went on to say: The question of political power is thus brought before the masses and it becomes increasingly clear as it must go on that there will not be any substantial improvement in any respect until there established a political regime responsive to the wishes and needs of the masses and not under the complete control of the propertied classes. The demand thus arises for a democratic regime. The masses must therefore strive for independence from British Rule.

47. It proceeded:

From all points of view the attainment of independence is the first task, of any movement which strives to improve the position of the Indian masses... The struggle against Imperialism for the complete independence of the country is thus the central item for the immediate future in the programme of the masses and of the Workers and Present Party. The struggle having as it does the object of destroying Imperialistic control of India, must be a revolutionary one.

48. It went on to remark:

The progress of the Peasants Party does not deny the general utility in Indian condition as non-violent but... that it will not be necessary for the Indian movement to use this tactic at all times and in all conditions, and it is strongly opposed to raising non-violent to the level of a principle.

49. There was also a statement that: It is a mistake to underestimate the revolutionary potentialities of the Peasants class which is in a state of acute discontent and sometimes of actual revolutionary excitement over long areas of the country.

50. It ended with the statement that: The whole Movement united and led by the Workers and Peasants Party demands complete independence from Imperialism, and the democratic organisation of the country, including universal suffrage etc.... To enforce these demands a mass movement using the weapons of demonstration etc, and direction must be organized leading up to a general strike of workers and mass campaigns of non-payment of rent and taxes by peasants. Only by following a programme of action such as this can sufficient force be brought to bear before the country.

51. We have another document called the Political Resolution accepted at this conference which emphasized that: There must be left no doubt as to the meaning of independence ; it involves the destruction of Imperialistic control and economic penetration and hence necessitates revolution.

52. There was another thesis on the Trade Union movement which referred to the special responsibility of the Workers and Peasants Party in organizing the Trade Union movement. Its object is to organize a federation of trade unions with peasants and other Peasants Party of Bengal which when of a political struggle for the independence of the country, but also for the general improvement of the position of the masses. Further in the mass struggle for independence organized workers will take a decisive leading part. It is therefore quite clear that although the Constitution of the All India Workers and Peasants Party did not in itself disclose that it was a Communist organization, there is no doubt that the party was organized and formed by Communists and that the presidential address delivered at the Conference, and the theses accepted by resolutions, advocated Communist doctrines and principles and urged the adoption of the Communist programme.

53. Then there were Workers and Peasants Parties in the various provinces.. These stand on a slightly different footing. There was the Workers and Peasants Party of Bengal which when originally formed stated the object of the party to be the attainment of Swaraj in the sense of complete independence of India based on economic and social emancipation and political freedom of men and women, but as to means to be adopted the Constitution enjoined non-violent mass action as the principal means for the attainment of the above object. But later on the Constitution was amended and the mention of non-violent action was dropped and for it was

substituted:

The rallying of the people to mass action will be the principal means for the attainment and realization of the above objects.

54. But there was nothing in the Constitution of this Party on paper to suggest that it was a Communist organization. It is not suggested even by the prosecution that it was so. A report of the Executive Committee published in 1928 stated that the "Ganawani" was its organ. There was a third annual conference held which had as usual a presidential address. A report drafted by a Communist was submitted which used Communist phraseology and put forward Communist aims and ideals. Discussing the task of the Party it said: It is the duty of all who are concerned with obtaining national freedom, establishing democracy in the country... to gather together all fighting progressive forces from all sections and thereby to establish its own army which will enable it to carry out its ultimate function.

55. After advocating the boycott of the Simon Commission it went on to say:

As opposed to the programme of the All India Party Conference the Party must demand on the behalf of the masses complete independence and the establishment of democracy....The League against Imperialism must be supported and its propaganda for the alliance of the revolutionary Labour Movement and the Colonial revolutionary movement be assisted. Solidarity must be encouraged with the Russian and Chinese revolution.

56. The Workers and Peasants Party of Bombay had as its object the establishment of Swaraj (complete national independence) wherein the means of production, distribution and exchange are publicly owned and socially controlled. The immediate political demands and the economic and social demands enumerated in it were those which might be put forward by a socialist organization. There was nothing in the Constitution to suggest that it was a Communist Party, nor were its members bound to follow the Communist programme. There was also a Workers and Peasants Party in the Punjab which had as its aims' and objects the securing of complete independence from British Imperialism by every possible means to liberate workers and peasants from every sort of political, economic and social slavery, and the establishment of a united socialist republic. This Party was called the Kirti Kisan Party. The Constitution did not disclose that this association was necessarily a Communist organization, although there is no doubt that the leading members of it were Communists.

57. The prosecution case is that in the United Provinces also a Workers and Peasants Party was formed at Meerut. This fact was not admitted on behalf of the accused who were said to be its members. But there is no doubt that several letters issued under the signature of the accused, P.C. Joshi, were on printed forms which described him as the General Secretary of the Workers and

Peasants Party, United Provinces. It is not necessary to discuss all the evidence, but there seems to be no doubt that on the occasion when a conference of the Mazdur Kisan Sangh (admittedly not a Communist organization) was being held at Meerut, advantage was taken of the opportunity and a Workers and Peasants Party of the United Provinces was formed. There is also evidence to show that a newspaper the Kranti Kari, was regarded as its organ. But the Constitution of this Party is not available, and therefore apart from the fact that some of its members were professed Communists, it cannot be definitely stated that the newly formed Workers and Peasants Party, U.P., was a Communist organization. Although the constitutions of the Provincial Parties do not themselves show that they were Communist organizations there is no doubt that the formation of such bodies is a part of the programme laid down by the Communist International and is in furtherance of its aims and objects. As regards the Conference of the Mazdur and Kisan Sabha held at Meerut; it is not said that the Conference itself was a Communist Conference, though the Presidential address delivered on the occasion praised the Soviet Government and the lead it had given to the Trade Union Movement. 42. Before dealing with the evidence it is necessary to mention the question of the admissibility of a number of documents which has been raised on behalf of the accused. We have considered a good many of them to be admissible, though we do not think it necessary to discuss the question of admissibility separately in respect of each. On the other hand, there have been some documents, which we have excluded from our consideration altogether on the ground of their inadmissibility. We do not propose to discuss each document: separately, but we think it sufficient to point out the principles which we have followed, and on which we have acted: (1) We have considered that the execution or authorship of a "document" is a question of fact and may be proved like any other fact (2) In such a case:

(a) a document may be 'proved' as defined in Section 3 'when the Court considers its existence so probable that a prudent man ought, under the circumstances, to act upon the supposition that it was written by the person alleged to be its author even though no direct proof of his handwriting is given.

(b) thus a document may be proved both:

(i) by direct evidence, and

(ii) by circumstantial evidence.

(1) (a). Before the provisions of Section 10 can be invoked it has to be established from independent evidence that there is reasonable ground to believe that two or more persons have conspired together to commit an offence. (b) when this is shown, (1) anything said, (2) anything done, and (3) anything written by any one of such persons would be a relevant fact as against

each of the other conspirators : Provided that "it is in reference to their common intention." (c) Such things said, done or written would "be relevant for the purpose of: (i) proving the existence of the conspiracy,' and also (ii) for showing that any such person was a party to it.

(2) (a). In Section 10, "anything said" would include the statements made, speeches delivered, or declarations made. (b) Anything "done" must be some act done, and not merely the Intention or knowledge of the person. (c). Anything written would include, (i) a manuscript whether signed or unsigned written by the person, and (ii) matter transcribed by him on a typewriter.

(4) But the document, of which the writer is not known, found in the possession of a conspirator, would not by itself be admissible for the purpose of proving the truth of its contents as against the other accused. The fact of possession would "be evidence to show that the conspirator, in whose possession it is found,' had received and preserved it.

(5) (a) Section 11 of the Act makes a "fact" inconsistent with any fact in issue or relevant fact, relevant, (b) It applies to facts not otherwise relevant under the preceding sections: (c) It does not make all documents, which make the existence or non-existence of a relevant fact probable or improbable, relevant. The expression "highly probable or improbable" is significant. It indicates that the connection between the facts in issue and the collateral facts sought to be proved must be immediate as to render the co-existence of the two highly probable. The relevant facts under this section either (i) exclude, or (ii) imply more or less distinctly the existence of the facts sought to be proved.

(6) Copies of printed newspapers containing an account of some proceedings, found in possession of one accused: (a) are evidence of the fact of the publication of such an account in that paper; but (b) are not by themselves evidence of the truth of the facts stated therein, unless in connection with other facts they make the existence or non-existence of the facts mentioned "highly probable or improbable." (7) The opinion of an expert to the effect that one document has been typewritten on the same machine as another document is not' admissible, under Section 45, Evidence Act. It is for the legislature to consider whether the section should not be amended; but as it stands, it does not include such expert opinion. The Court may ask the witness to explain points in favor of the view whether the two documents have or have not been typewritten on the same machine, but must come to its own conclusion and not treat such assistance as an expert opinion--a relevant fact in itself.

(8) The identity of the machine on which two letters have been type-written would not by itself show that the writer of the two is one and the same person. But such a conclusion may be drawn from additional evidence, i. e., internal evidence afforded by the document, or external circumstances, or the continuity of the correspondence passing between the sender and the

addressee. (9) Even in a criminal case where secondary evidence has been adduced in place of primary evidence, the provisions of Sections 65 and 66, Evidence Act, are applicable and must be complied with before such secondary evidence is admitted. (10) In order to establish that the accused were in correspondence with an individual going by the name of M.N. Roy in Berlin it is not incumbent upon the prosecution to establish that any of the letters were, in fact, written by any particular M. N. Roy. It is enough to show that some person living in Berlin was in conspiracy with the accused and correspondence was passing between them. The activities of the various accused have been dealt with at considerable length in the judgment of the learned Sessions Judge, and the substantial accuracy of the main facts mentioned therein--as distinct from inferences drawn from facts or the admissibility of some documents--has not been seriously disputed before us. We however do not propose to go into the matter in any great detail, and shall content ourselves with mentioning the important facts only.

58. Muzaffar Ahmad was elected to the Executive Committee of the Communist Conference at Cawnpore in December 1925. He was a member of the Executive Committee of the Peasants and Workers Party in Bengal in 1926. According to his own statement he had published in England, a manifesto addressed to the Congress by the Communist Party in India and contributed articles to Ganawani. He was elected to the Presidium of the Communist Party of India in May 1927. He was not only a member of the Workers and Peasants Party of Bengal, but took part in the foundation of the All India Workers and Peasants Party and edited the Bengal Party paper. He appears to have been referred to under a pseudonym in letters sent secretly in cipher code, and he also used cover addresses. Some of his letters addressed to persons in Berlin and referring to the publication of the "Call to Action," and the failure of money sent from Berlin to reach India, were intercepted and with-held by the police. He took part in the meeting of the enlarged Executive Committee of the Bombay Party. Muzaffar Ahmad's activities were not limited to party organizations and to correspondence with other accused but extended to Trade Union Week. Indeed, the learned Sessions Judge has traced his whole career in detail which ground it is not necessary for us to traverse. In his statement before the Court Muzaffar Ahmad said:

I am a revolutionary communist. I had been a member of the Communist Party till the day of my arrest in connexion with this case.... Our party fully believed in the policy and principle and programme of the Communist International and propagated them as best it could under the circumstances.... I am proud to state that with all my drawbacks I am one of the early pioneers of the Communist movement in this country.

59. Referring to the seizure of power he said:

The essential problem of any revolution is seizure of power. At present the British Imperialism is in control of State Power in India. This Imperialism must therefore be overthrown. As the

Workers and Peasants will overthrow Imperialism they will naturally capture the State Power but they will not capture the Power in order to maintain the State Form as it is now. They will smash the present State Form into pieces and establish in its place the Workers and Peasants Republic based on the organ of the real mass power, the Soviet.

60. Regarding the work done by the Communists in the Peasants and Workers Party and in Trade Unions he said: The first and foremost duty of the C.P.I. (the Communist Party of India) was therefore to create militant Trade Unions inside which alone these revolutionary cadres could grow. This is why the members of the Communist Party of India worked almost whole time in building Trade Unions inside the Workers and Peasants Party which had been giving the Trade Union Movement a militant shape.

61. He had been convicted in the Cawnpore Communist Conspiracy case in 1924 and was released on medical grounds in 1925. From the time of his release from jail till the time of his arrest he took a prominent and active part in many activities of the Communist Party of India.

62. No. 2. Dange.--Dange was released " in May 1927, after his conviction in the Cawnpore Communist Conspiracy case. He was elected to the Presidium of the Communist Party of India. His own statement shows that he fully believes in the principles of Communism and the programme of the Communist International. He had been an active member of the Communist Party of India till his arrest. He also became a member of the Workers and Peasants Party, and took an active part in its activities. He was the editor of Kranti and also became the General Secretary of the Girni Kamgar Union and took part in the textile strike. He took an active interest as a Communist in Trade Unions and also in the All India Trade Union Conference, was a member of the Provincial Committee of the All India Workers and Peasants Party and participated in "the Council of War" in September 1928. In his statement before the Magistrate he said that he was a Communist and affirmed that statement in the Sessions Court. He said: The aim of the communist is the overthrow of Imperialism and Capitalism and the immediate aim of the communists in India is the overthrow of British Imperialism.

63. There is however one difference. He has stated that violent revolution is not inevitable and that peaceful evolution is a possibility. He suggests that although not adhering strictly to the principle of non-violence he had asked that the strike in which he took part should be conducted peacefully and explains that the principle that no class power is overthrown except by violent revolution is a deduction from historical experience, showing the inevitable way taken by all social revolutions in the past and that to be taken by them in the future also. He has admitted that his party used to describe the volunteers during the strike as the Red Army, Red Coats, etc. He explains that by using these epithets they were not organizing a real Red Army. He does not deny that after the termination of the big strike people were told that they should have 5,000 drilled

volunteers ready.

64. No. 3. Ghate.--Ghate was connected with the Communist Conference at Cawnpore in December 1925. He does, not appear to have made many speeches, but he wrote considerably as he was in charge of the secretariat work of the Communist Party. No less than 74 documents in Ghate's own handwriting have been produced and there are numerous other documents which mention him. He has been connected with the Communist Party of India throughout its existence and successfully maintained communications with people abroad. He was writing letters to many people in his capacity of Joint Secretary of the Communist Party of India. He was elected Assistant Secretary at the Delhi session of the All India Trade Union Conference. Later on he was elected General Secretary of the Communist Party of India. He took part in the organization of the Workers and Peasants Party at Bombay in 1927. Some of the letters sent out by him were sent out under cover addresses. Ghate took part in the enlarged Executive Committee meeting of the Workers and Peasants Party of Bombay, was elected to the editorial board of the *Kranti* and was also on the Financial Committee of the Party. He was the Secretary of the Workers and Peasants Party of Bombay, He was in constant correspondence with the other accused. He took part in the All India Workers and Peasants Party Conference at Calcutta and supported a resolution for the formation of an All India Party. He was a member of the Provisional Committee of the All India Party and took part in "the Council of War" in September 1928. In his statement he has said: An honest, genuine revolutionary working class party is therefore necessary, and that is the Communist Party to India which alone can truly represent the interest of the toiling masses.

65. He also says:

The World Communist Party, that is the Communist International, is perhaps the most organized force of the working class of the oppressed peoples.... It is the dynamic force which organized the workers by participating in their daily struggle and leads them to the final seizure of power.... Communists want to smash the existing State Machinery and build a new one in its place during the transition to Communism.... The State Machinery in India exists in the interest of the British Bourgeoisie and as such is suited only to serve their interest. The Indian masses can have no use from such a machinery at all. An establishment of a new State suited to and standing for the quiet masses of the Workers and Peasants will essentially mean the smashing up of the present State and the party of the working class can accomplish this.

66 While asserting that the Communist Party for India was not formally affiliated to the Communist International, he said:

The party accepted the tasks laid down by the Comintern though it was not formally affiliated to

it.

67. Among these tasks are: (1) the complete independence of India by the violent overthrow of British Rule, and (2) the establishment of a Soviet Government.

68. No. 4. Joglekar.--Joglekar, accused, was an active member of the Communist Party in India and took an active part in the foundation of the Workers and Peasants Party of Bombay and in the first conference of the All India Workers and Peasants Party. He was one of the two joint editors of the party organ Kranti at one stage. He worked as a Trade Union Group Leader and as a member of the Girni Kamgar Mahamandal and as organizing Secretary of the G.I.P. Railway men's Union. He went to Delhi for the All India Trade Union Conference. He also took part in the May Day meeting of the session. He was elected a member of the Executive Committee of the Communist Party of India. He went to Calcutta to attend the All India Workers and Peasants Party Conference as a delegate on behalf of the Bombay Party and was elected on the Drafts Committee. At some meetings of the Communist Party of India he acted as Chairman and. was elected a member of the Executive Committee for Bombay. There are some 22 documents in his handwritings which show the part taken by him. In his statement in Court the accused stated: The strikes are the Military Training Colleges of the workers; they are the schools wherein the proletariat is prepared for its entry into the great struggle which is inevitable.

69. While admitting that the general strike, as contemplated by Communists, is preparatory to insurrection he endeavoured to suggest that immediate insurrection was not in contemplation and said: It is only when there exists an objectively revolutionary situation that a Communist is called upon to give a call to the working class to join issue directly for a revolutionary overthrow of the social forces of imperialism.

70. He says:

It is essential to make use of all the economic needs of the masses as issues in the revolutionary struggle which, when united, form the flood of the social revolution. For this struggle the Communist parties have no immediate programme for the strengthening of this reeling world structure within the system of capitalism. The destruction of this system is the task of all Communists, but in order to achieve this task they must put forward attempts and they must fight with the masses for their fulfilment regardless of whether they are in keeping with the... system of the capitalist or not.... There is no doubt that a Communist is an uncompromising enemy of capitalism and I make no secret of it that if and when objective forces do ripen I shall not hesitate to strike the blow that will lay all forces of capitalism and imperialism completely prostrate.

71. He however qualified it by saying that it was not the intention of raising immediately the standard of revolt. He also says that according to the Communist view there is certainly very

close connection between revolution and a general strike. No revolution can be successful unless it is backed up and fortified by a general strike paralysing the entire machine of the Bourgeois consisting of telegraphs, telephones, transport, press, banks, military and the police. He says:

All general strikes are not tantamount to revolution, 'but asserts' no revolution can be successful without the backing of an actual general strike.

72. As to May Day he says:

May Day still plays the role as the military review of the forces of revolution.

73. He says:

I am a member of the Communist Party of India and have been a member of the party since its foundation in December 1925.... I have been a member of the Executive of the Communist Party of India since then.... Whatever activities I have been charged with and all the Trade Union and other public activities I have done as a Communist, As a Communist I believe in the principles of Marxism and Leninism and I have acted accordingly. As a Communist I do stand and subscribe to the programme and policy that is laid down from time to time by the Communist International, the policy for the world revolution and re-organisation of society on principles of socialism....And as the way to socialist 'revolution lies through a national revolution as a Communist I undoubtedly work for, and the Communist Party of India also works for, national revolution.

74. Joglekar is fully acquainted with the aims, policy and programme of the Communist International and he was carrying out that programme: in all his activities.

75. No. 5. Nimbkar.--Nimbkar, accused, was a member of the Communist Party of India from the very beginning. He took part in building up a Workers and Peasants Party and occupied a leading position in that Party as the General Secretary of the All India Workers and Peasants Party. In December 1925, he was elected to the Central Executive of the Communist Party of India at Cawnpore as a representative of Bombay. He took a considerable part in the foundation of the Workers and Peasants Party of Bombay and was on its Executive Committee. He was appointed to the Central Executive of the All India Communist Party and took part in the public meeting held under the auspices of the Workers and Peasants Party to celebrate the 10th anniversary of the Russian Revolution. He appears to have been carrying on correspondence with the Municipal Workers Union of Moscow. There is plenty of evidence to show that he has been associating with the other accused. At the time of his arrest a large number of documents relating to the first Conference of the All India Party and the Executive Committee of the Communist Party of India, as well as in connection with the Workers and Peasants Party and

Trades Unions, were found in his possession. According to his own statement he made some 500 speeches during the general strike of 1928. Notes of his speeches at 66 meetings have been produced in this case. They preach the principles, doctrines and tenets of Communism and explain the plan of action of the Communist International. In his statement in Court he said:

I have already admitted that I joined the Communist Party of India at Cawnpore in December 1925, when I attended the Communist Conference. I was elected a member of the Executive Committee at the time and I continued those relations up to the day of my arrest.

76. Although asserting that the Communist Party of India was not formally affiliated to the Communist International, he wished to make it very clear that he did stand for the affiliation of the Party to the Communist International. He admitted having worked as a member of the Executive of the Workers and Peasants Party and acted as the Group Leader of the Bombay Party as well as the All India Workers and Peasants and also acted as the Group Leader of the Party in the textile strikes and the Girni Kamgar Union as well as other organizations. Referring to Lenin's Anniversary he said: Lenin's Anniversary has a particular significance for India. He, more than any other, has shown the way for the oppressed peoples of the colonial countries to free themselves from the yoke of Imperialism. He proved to us that this revolt of the colonial peoples would inevitably take on a more and more socialist character, leading the way therefore to a world proletarian revolution. The fundamental line of work of the Communist International with regard to the colonial countries was laid down by Lenin himself in the second World Conference of the Communist International.

77. There is no doubt that Nimbkar fully realized that in his manifold activities in the Communist Party of India, the Workers and Peasants Party, Trade Unions, and the Textile strike, he was carrying out the programme laid down by the Communist International.

78. No. 6. Mirajkar.--Mirajkar, accused, also carried on extensive correspondence. There are some 59 documents in his own handwriting, apart from his contributions to the Kranti. Although not elected a member of the Communist Party of India till late in 1928, he had been in close touch with the Party from a very early stage. He took an active part in the foundation of the Workers and Peasants Party of Bombay and wrote numerous letters as Secretary of the Party. He attended the Delhi meeting of the All India Trade Union Conference and was an active member of the Workers and Peasants Party throughout. He was the joint editor of the Kranti which was a Party organ. He made many speeches at meetings held under the auspices of the Workers and Peasants Party, particularly the one to celebrate the 10th anniversary of the Russian Revolution. An application on his behalf for membership of the Communist Party of India was ultimately accepted and he was appointed also a member of the Executive Committee of the Central Committee. He took part in the Bombay Presidency Youth Conference and in the enlarged

Executive Committee of the Party. Later on Mirajkar ceased to be the Secretary of the Party being replaced by Ghate and instead became Group Leader in charge of education and propaganda. He contributed articles to the Kirti. He carried on correspondence in connection with the May Day celebration and the textile strike. He is said to have made about 30 speeches. He sent a telegram to the Statutory Commission and followed it up with a copy of it under a covering letter saying: Revolutionary Indian masses are determined to achieve complete independence.

79. The accused admitted that the Kranti was an official organ of the Workers and Peasants Party. In his statement before the Court he said: I frankly admit that I am out to destroy the Sovereignty of Capital. Call it His Majesty's Sovereignty' if you please or whatever else you like.

80. He went on to say:

I unhesitatingly admit my connexion with those organizations and I feel very proud about it. I unflinchingly maintain that it is our right to carry on such correspondence and keep contact with the revolutionary organizations abroad by any possible means.

81. He said: The revolutionary experience of the working class and the peasantry of Russia is the common heritage of the workers of the world. It teaches them methods and tactics of dealing with their oppressors--of ushering in an era of a new society.... Most certainly we are pledged to overthrow the rule of British Imperialism in India.

82. As to fraction work done in other organizations he said: We consider it the best way of penetrating an organization when there is a genuine revolutionary element of winning it over for the Communist policy and work.

83. As to the All India Workers and Peasants Party he said: It has been already pointed out to the Court that the Workers and Peasants Party was a party inaugurated with a view to establish national independence through revolution.

84. With regard to the Red Flag of the Union during the six months of the general strike, which it was proposed to hoist in the Union offices, he said: The workers had known during the strike how the Red Flag proved the frame of the Worker's Raj in Russia and how the workers throughout the world cherished the ideal with revolutionary determination to establish their Baj by destroying Capitalist Raj.

85. As to the Red Army of 5,000 volunteers he said: We do not say that they will not form the basis of the future workers' army and we do not say that we would not lead them when the-time comes.

86. But he denied that these workers were organized at the time of the strike to overthrow the Government. Explaining some of his speeches he said: I do maintain that we want to establish a Workers' Raj in India and I was trying to explain to the workers how our Russian Comrades had brought about such a Raj in their country.... The oppression of Imperialist Rule and its allies, the Indian Capitalists, I was impressing upon the workers, cannot be removed till the *raison detre* of the oppression is destroyed. This could easily be done if the masses were to rise in revolt in an organized manner and the power of British Imperialism would collapse like a house of cards if such mass rising were to materialize.... Communists do not hesitate to advocate violence. We believe, as all sane people do, that it is not possible to be independent by non-violence, much less is it possible to destroy the capitalist social order by doing penance and by non-violence. The Capitalist State and Social Order is based on violence, is maintained and will continue to be maintained by violence. It will have to be overthrown also by violence. I was acquainting the revolutionary working class of Bombay with some of these fundamental principles, nothing more, nothing less.

87. He also said: Communists aim at the complete destruction of the existing State Machinery of Imperialism; hence they must rely on the strength, discipline and organization of that class, which alone can accomplish that task and erect its own State Machinery instead. That class is the proletariat; Its machinery is the revolutionary Democratic Dictatorship of the Workers and Peasants which alone can guarantee the carrying out of Bourgeois democratic tasks, such as, independence from foreign rule, abolition of landlordism, freedom of organization for workers and peasants, etc. It alone can open the road towards Socialism, The Communists therefore agitate, organize and discipline their forces on class lines to prepare for an armed uprising of the toiling masses which alone can bring independence to India and freedom, and bread to the workers and peasants.

88. No. 7. Usmani--No one has appeared for Usmani, accused; but we have considered his appeal sent from jail. Usmani joined the Communist ranks as long ago as 1927. Soon after his release from jail after his conviction in the Cawnpore Communist Conspiracy case of 1924, he joined the Communist Party of India in 1927. He was sent on behalf of the Communist Party of India to the Delhi Conference. He organized a Paper called *Payami-i-Mazdaor* and was in touch with Workers and Peasants movement. He is the author of a book known as "Peshawar to Moscow," which describes his lectures and speeches in the course of his own journey to Moscow. He was in Moscow about the time of the third Congress of the Communist International in July 1921, where he met M. N. Roy, who has been recently convicted of an offence under Section 121-A and who, as the evidence even in this case suggests, is one of the conspirators. Usmani figures in the various activities of the other accused. He appears to have been not only enrolled as a member but also elected to the Presidium of the Executive Committee of the Communist Party

of India. He was intimately connected with movements. There are numerous documents showing close association with the other accused and numerous documents showing his intimate connection with Communism were found in his possession. He admitted that he was elected as one of the Vice-Chairmen of the Reception Committee of the All India Trade Union Conference. In his statement he said: I am a Communist, a Communist none other than Marx and Lenin were known to be. I joined the Communist rank as early as 1921. It was in Soviet Russia.... Since then (conviction in the Cawnpore trial) I have always stood by my convictions. I have declared from within the prison four walls... that I am a Communist standing full-pledged (sic. fully pledged to) by the Communist programme. A Communist cannot conceal his views and aims. My aims and views are the aims and views of the Communist International. The aim of the Communist International is the establishment of a Communist order of society throughout the world.

89. No. 8. Sohan Singh Josh.---Sohan Singh Josh became connected with the Kirti of Amritsar, a paper preaching Communist and revolutionary ideas. It is not necessary to quote passages from the articles appearing in this paper. Josh became a leading organizer of the Workers and Peasants Party of the Punjab and was at its inauguration appointed as its general secretary. This party called the Kirti Kisan Party was established professedly to organize the Peasants and Workers. There is considerable correspondence which passed between Josh and other accused persons, Sohan Singh Josh was elected as the President of the All India Workers and Peasants Party Conference at Calcutta. It is not necessary to quote from the other speeches delivered by him or the articles written by him. His presidential address is enough. We have already quoted some extracts from it. He said: We are out not only to end imperialism, but empire as well.... India will get true freedom only when the British interests are cleared away bag and baggage.... India can attain true liberty only through a revolution and not by framing constitutions." "Our party is carrying on an uncompromising campaign for complete independence.... All people who believe in revolution and class struggle should join our party and placing before the Workers and Peasants the revolutionary programme should organize them to win freedom.

90. Referring to the "Coming War" between Russia and Great Britain he said: As soon as the War begins we should resort to mass strikes, sabotage and hartals and boycott and by paralyzing the means of transport, harass the enemy in the rear.... Therefore when the enemy is busy anywhere we should adopt such tactics as will put him between two fires. The Workers and Peasants should not hesitate to make any sacrifice at that time because that will be the opportune time to destroy British Imperialism.

91. He made no secret of what he was working for. He said: To speak my mind freely I am working to bring about such an order of "things and because the Bolsheviks of Russia have shown us the way in this respect--we are thankful to them.

92. Sohan Singh Josh made numerous other speeches of the same character and notes of them have been proved. But as already remarked it is wholly unnecessary to quote from them. In the statement he said:I claim to be a good Communist and had the honour to be a member of the Communist Party of India.

93. He further said:I want to say violence has been the rule in the history... is quite essential for the progress of mankind.

94. He however goes on to assert that his party could not do what they ought to have done and that the law of the land stood in the way and they tried to steer clear of it as far as possible.

95. But he said:Although I was not affiliated to the Comintern in any way I want to declare here, in this Court that I believe in the programme laid down from time to time by the Communist International, The Third International, in my opinion, is the only International that has any thought, word and deed, the Standard Bearer of Marxism and the advance guard of revolution.

96. No. 9. Majid.--Majid, accused, has been a member of the Communist Party of India from 1926 and he is frequently referred to in letters. He claims to have visited Russia. In 1927 he was publishing a newspaper which was the non-official organ of the Communist Party of India. He was also the joint secretary of the Workers and Peasants Party of the Punjab and took part in public meetings and made speeches in furtherance of his aims and objects. He went to Delhi to attend the All India Trade Union Conference as a delegate of the Punjab Press Workers Union. Majid had been in touch with several of the other accused and there was correspondence passing between them. He took part in the second Nawjawan Bharat Sabha Conference at Lahore at which he was elected Vice-President. He became the Joint Secretary of the Kirti Kisan Party of the Punjab Workers and Peasants Party formed at Amritsar and he was on the sub-committee which drew up its rules and regulations. He also took part in the Young Men's Conference held at Amritsar about the same time. Notes of speeches made by him at various conferences have been produced as evidence in this case, but it is not necessary to quote from them. In his statement in the Sessions Court he said:I am a Communist and was a member of the Communist Party before my arrest.... I wholeheartedly sympathise with the scientific programme of the Communist International which it has put before the world for a world revolution.

97. He went on to say:I am fully convinced that one day the proletarian revolution will surely be successful in India....We the Communists are making efforts to bring about this revolution. We are convinced that all those parties which are unitedly making efforts to crush imperialism, can attain success only by acting according to the programme which we have placed before the country.

98. He also said:We the Communists do not object to or refrain from taking aid from the

International or Russian Workers. In fact, we think that India should welcome such aids.

99. After stating that the Workers and Peasants Party (Kirti Kisan Party) of the Punjab was not a Communist Party but a national revolutionary party of the public, he said: The W.P.P. wants to reach its goal by establishing a complete independent Democracy of Workers and Peasants by adopting ways and means of organizing a struggle to which the Congress is opposed.

100. He pointed out the resemblance between the Communist Party and the Workers and Peasants Party and said: If there is any resemblance between the C.P. and the W.P.P. it is this : that the immediate programme of the former and the ultimate goal of the latter is one and the same....As both are revolutionary bodies it is necessary that their national revolutionary programme should resemble each other.

101. Thus according to him, Independence and Democracy, are the immediate programme of the Communist Party.

102. No. 10. Ajodhia Prasad.--There is considerable evidence to show that Ajodhia Prasad, accused, was working in furtherance of the aims of the Communists, as a courier, travelling as a laskar between India and Europe with the object of maintaining communication. But he stoutly denies that he was so used. But it cannot 'be disputed that in 1927 Ajodhia Prasad got himself registered in the Shipping Master's office in Bombay as an Indian Seaman under the false name of Abdul Hamid Abdul Karim. The identity of his thumb-impressions has been satisfactorily established. The photograph of the man who presented himself, which was pasted on the register, undoubtedly shows that it was the accused, Ajodhia Prasad, who got himself registered. There is evidence: to show that this accused performed several voyages between India and England. In the statement before the Court he stated: I am a Communist and I was a member of the Communist Party until my arrest.

103. As regards the Communist doctrines relating to the question of Independence and violent revolution he said: No discussions and arguments around the table can bring complete independence. This can only be attained through violent revolution. The oppressed nation is always at war with its oppressors until the domination of the latter is overthrown. Once-the actual fight is started there is no middle course between freedom and death....The only possible course open for these anti-imperialists who desire complete independence for India is to unite all such political parties and groups on a popular mass programme....and to carry on the straggle against imperialism.

104. After suggesting: a no tax, no rent campaign among the peasantry and the town poor and the general strike among the working class for their immediate relief. he went on to say: At the same time Kisan Sabhas must be organized on an All India scale, contract must be established with the

rank and file of the army and police force so that they can be won over to the side of revolution....Groups of armed workers and peasants must be formed and generally all preparations made, so that an armed uprising can be successfully carried through and seizure of power effected,

105. He adds:

For these reasons I joined the C.P.I.

106. No. 11. Adhikari.--Adhikari, accused returned to: India on 10th December 1928, after having lived for some years in Germany. When his baggage was examined by the Customs Authorities he was found' to have in his possession a number of letters which were retained. They show that there was correspondence between persons holding Communist views. Besides the letters there were other papers found in his possession including a Communist manifesto in German and a thesis on the revolutionary movement in the Colonies and Semi-Colonies. It is unnecessary to discuss these documents in detail but they undoubtedly show that prior to his returning to India he was associated with Communists abroad and that he returned to India with the Intention of working here as a Communist and to further the aims and objects of the Communist International. It is admitted that on arrival in India he joined the Communist Party of India and also the Workers and Peasants Party of Bombay and gave help in the publication of the Party organ the "Krantii." As he was arrested in March 1929, there was hardly any time for him to take any great part in the carrying out of the programme of the Communist International.

107. In his statement in Court he said:

Our Party was not affiliated to the Comintern but added:

This fact will not prevent us from defending the cause of the Communist International before this Court.... In fact, you cannot be a Communist by merely accepting Communist theories and principles in the abstract. It is the duty of a Communist to attempt to put these principles into practice and to actively support Communist Organizations.... It is our duty therefore as Communists to proclaim our adherence to the principles and the programme of the supreme revolutionary organization ; to repulse the attacks and allegations that have been levelled against it in this Court and finally to assert the right of the Indian working-class and the right of the Communists in India to associate with this body....The Communist International considers the national revolutionary struggle in the Colonies and Semi-Colonies as an integral part of the struggle for the world revolution for the establishment of a World Union of Socialist and Soviet Eepublics.

108. He also said:

The Communist International on the other hand enjoins its parties that they must recognize that the right of the Colonial countries of armed defence against Imperialism (i.e. the right of rebellion and revolutionary war) and advocate and give active support to this defence by all means in their power,

109. He admitted:I joined the party because it aimed at the complete independence of India from Imperialism through revolution.

110.He added:During the hundred days of freedom I had in India I did not have much opportunity of doing any work for the Party.

111. With regard to this the learned Sessions Judge himself has observed:He is naturally more of a theoretician than a practical worker, but in my opinion it is possible for such a worker to participate in the conspiracy.

112. There seems to be no doubt that he returned to India in order to work in furtherance of the aims of the Communist International but beyond becoming a member of the Communist Party of India and the Workers and Peasants Party Bombay he had not much time to do any practical work.

113. No. 12. Shams-ul-Huda.--Shams-ul-Huda was also a member of the Communist Party of India and of the All. India Workers and Peasants Party. He made several speeches of which notes were taken by the prosecution witnesses which have been proved. He appears to have taken part in the Dock Workers meeting in 1928 at which he made a highly seditious speech. There is evidence to show that he took interest in one strike and attended meetings in connection therewith. He also attended a Jharia Session of the All India Trade Union Conference and spoke in support of resolution advocating the organization of general strikes in the event of police military forces being used against workers. He took part in the first All India Workers and Peasants Conference held at Calcutta. There is evidence to show that he was elected a member of the Central Executive Committee of the Communist Party in India as a representative of Bengal. There is documentary evidence to show his association with other accused persons. In his statement in Court Shams-ul-Huda said:

Communists scorn to hide their views and aims ; they openly declare that their purposes can only be achieved by the forcible overthrow of the whole extant social order. I am a Communist and I stand by the Communist Party of India.

114. He went on to say:Freedom from British Imperialism is not the ultimate aim of the Communist Party but the immediate aim. The ultimate aim of the Communists all over the world is the aim of the Communist International.

115. He admitted that he worked in the Bengal Transport Workers Union of which he was the General Secretary and also for the Dockworkers. He also said:

If India wants to be free from British Imperialism like Czarism in Russia, the Indian worker has to be taught experience of Russian Revolution in order to overthrow the barbarian Government in India.

116. Speaking of the Workers and Peasants Party he said:It was not a Communist Party, but its aim was to secure independence and democracy for India.

117. He also said:The Communist 'International is the vanguard of the suffering millions of the world and will liberate them from the Imperialist domination. I therefore stand by the principles and programme of the Communist International.

118. He however added:Though I hold the principles, as I have stated now, now I say that I have not conspired between 1925 and 1929 against the King's sovereignty as the charge is. It is my belief that the independence of India, that is, of the proletariat and peasantry, cannot be brought about by the conspiracy of individuals, but the revolutionary action of a whole class, the exploited toilers of India.

119. The learned Sessions Judge with regard to him has remarked:

It is true that the case against Shams-ul-Huda accused, is not, same as others, based on a very long period of work or a very large number of activities, but we have it that he was a member of the Communist Party of India and a member of the All India Workers and Peasants Party.

120. The second group of persons consists of Spratt and Bradley. They are not members of the Communist Party of India, but they are members of the Communist Party of Great Britain. The statutes and the rules of the Communist Party of Great Britain have been printed and are to be found in P. 2399. The genuineness of this document is accepted on behalf of the accused. The very first rule lays down that the Communist Party of Great Britain is a section of the Communist International, and is bound by its decisions. The second rule enjoins that all members must accept the programme of the statutes of the Party and that every such member shall place his whole time and strength, in so far as he can 'himself dispose of them under existing conditions, at the disposal of the Party, and all members must carry out the decisions of the Party Lead. Being a section of the Communist International and being bound by its decisions, the Communist Party of Great Britain has undoubtedly adopted the full programme of the Communist International and is bound to carry it out. In this way the entire programme of the Communist International has been enjoined upon, and. has been adopted by, the Communist Party of Great Britain. Important extracts from that programme have already been quoted. It follows that the the accused, Spratt

and Bradley, adhere to this programme in the same way and to the same extent, if not to a greater extent, as those accused who are members of the Communist Party of India. And therefore all that we have said with regard to the former applies with equal force to the-latter.

121. There is equally no doubt that the-accused, Spratt and Bradley were sent out by the Communist Party of Great Britain to India to carry out that programme. There is also no doubt that they carried on their activities in India and formed various organizations in furtherance of that programme. By making speeches, writing articles, communicating their doctrines and preaching their views and establishing organizations and making them more effective they have taken a prominent and leading part in the carrying out of the programme of the Communist International in India. Obviously they are not mere theorists or arm-chair professors. They are active and enthusiastic workers in the cause which they advocate, and they have undoubtedly come out to this country for active participation in the carrying out of the programme laid down by the Communist Party of Great Britain, which, as pointed out above, is identical with the programme accepted and adopted by the Communist Party of India. In this view, we can see no essential difference between the case of these accused and those of the other accused who are members of the Indian Party.. The position, in our opinion, of all these is the same and, on the evidence before us, there is no doubt that the: offence of conspiring to deprive the Sovereign for the time being of Great Britain of his Sovereignty of British India has been established. Their convictions also are quite proper. The activities of these two accused are in point of fact not really disputed and may be briefly summarized as follows:

No. 1. Spratt.--The accused, Spratt, is admittedly a member of the Communist Party of Great Britain. There is a mass of evidence to show that he was sent out by this Communist Party to India to work as ,an agent in order to carry out the policy and the programme of the Communist International. There can also be no doubt that throughout the period of his stay in India he was actively busy in the furtherance of his object. The learned Sessions Judge has traced his whole career during his stay in India, but we do not think it necessary to do so. It is clear that he was the moving spirit in organizing Workers and Peasants Parties in India and in giving a lead to the 'Other Communists. It is proved that large sums of money used to be received by him from England and his explanation of the source of this money is not satisfactory. Some of his letters seem to suggest that what he was receiving was in the nature of a salary. He visited many towns in India and met Communists. His close association with the other accused, particularly some of the members of the Communist Party of India, is well established. Numerous documents were recovered from his possession at the time of his arrest. He took a leading part in the organization of the Young Comrades League though it ultimately failed. He was present at the Council of War at Bombay at which there was a. consultation among the members of the Party. He also attended the All India Trade Union Conference at Jharia and the All India Workers and Peasants Party

Conference at Calcutta. That he threw himself whole-heartedly into Indian Communist politics is shown by his taking part in demonstrations and in the Lenin Day Meeting.

122. There are over 150 documents in the accused's own handwriting which show his various activities. He made several speeches preaching the doctrines of Communism but it is not necessary to quote from them. In his statement in Court he said:I did what I could to carry out that policy in the name of the British working class and in the Communist Party by co-operating with what I thought was the only body actively and effectively working for the national revolution in India at that time, that is, the Workera and Peasants Party.

123. As regards the use of force he said:The correct attitude is to say that even if we cannot use force very effectively now, and it is therefore usual though not always wiser not to try it, it is one of our principal duties to see that this situation does not continue and that we are as soon as possible in a position to use force effectively.

124. He went on to say:The Magistrate has quoted one of my speeches in which I said something about the brutal and violent side of our policy. I have nothing to retract from that. We admit that we shall have to use violence.

125. He also said:It seems to be a matter of common sense to conclude that if we are going to get rid of this regime, it must be done by violence.

126. According to him:The only alternative (to a highly improbable national movement for independence) is the mass national revolution which can be carried out only with a Communist policy and under a Communist leader.

127. No. 2. Bradley.--Bradley, accused, came out to India in September 1927. He says that he came out as an agent for the sale of tiles on behalf of a company. No evidence has been produced to show whether this Tile Company in reality exists or that Bradley worked on behalf of it. There is no doubt on the other hand, that during his period of residence in India he was deeply concerned with Trade Union work of various kind. He received moneys from England from time to time which he represented as his salary. But the varying amounts received at irregular intervals do not suggest a fixed salary. The communications sent with the remittances did not suggest that the amounts were sent by way of salary.

128. Bradley attended the Cawnporei session of the All India Trade Union Conference. He appears to have been advising the members of the Sub-Committee of the workers and Peasants Party of Bombay. During the Bombay strike Bradley spoke at public meetings on several occasions and at the May Day Meeting he advocated a Labour Raj. He also presided at a Non-Party Workers and Peasants Conference at Nagpur. Many documents were found in his

possession at the time of his arrest. Notes of speeches made by him at various meetings have been proved by the prosecution. But it does not seem necessary to quote from them. It may however be said that at the open session of the Trade Union Congress he said:I am always for a militant policy because I believe it is only a militant policy that is going to win workers' emancipation from Capitalism and Imperialism.

129. He was in close association with some of the members of the Communist Party of India. He attended the All India Workers and Peasants Party Conference at Calcutta as a delegate of the Bombay Workers and Peasants Party. He also attended the first session of the All India Youth League Conference. His diary shows his engagements to attend meetings of the Transport Workers Union and other bodies. He wrote numerous articles for various papers which were organs of Provincial Parties. The evidence shows that Bradley took an active part as a Communist Fraction in a number of Trade Unions, particularly the G.I.P. Railway men's Union and also the B.B. & C.I. Railway Union. He took an active part in the Textile Mills Strike and also took interest in Unions of Port Trust Railway Employees, Municipal Workers, Oil Workers, Tramway Men, Jute Workers and Transport Workers in Bengal.

130. In his statement when referring to the demand for the withdrawal of Troops from India and the Colonies and the recognition of their complete independence he said:On this basis the Communist Party of Great Britain is forging the link that will unite the struggle of the British Proletariat with the struggle of the Colonial masses against Imperialism and lead them to overthrow this great organization of exploitation and oppression as represented by the British Empire....I claim that the only way out of the present day world economic crisis is the revolutionary way. Capitalism must be smashed and Socialism built up from the ruins thereof. Upon this must be taken into consideration the position of the British Empire.

131. He asserted that:There is no conspiracy but open co-operation in the class struggle against our common enemy, and, come what may, we are determined ultimately to march forward together shoulder to shoulder to our emancipation under the banner of the Communist International.

132. After emphasizing that there can be no real or lasting improvement under Capitalism he said:Therefore it is our policy to consider the means for attaining Socialism and to this end we work for the mobilization of the masses of workers for the revolution. In a Colonial country this takes the form of a revolutionary fight for independence and the overthrow of Imperialism.

133. He admitted that his activities had been in accordance with his theory. As to his connection with the Communist Party of India he said that he was a member of the Communist Party of Great Britain, and in India he worked with the members of the Communist Party in India as he

was a member of the same organization. It seems to us that both Spratt and Bradley, being members of the Communist Party of Great Britain and professed Communists, were sent out to India for the express purpose of carrying out the programme laid down for Communists by the Communist International. They admit having been in close association with the members of the Communist Party of India and to have taken part in various activities which are part of the programme of the Communist International. It is therefore quite clear that the charge of having conspired with the other accused to deprive the King-Emperor of his Sovereignty of British India is fully established.

134. The third group consists of six Communists, namely, Goswami, P.C. Joshi, Chakravarti, Basak, Hutchinson and Mitra. All these accused are professed Communists. They have made no secret of believing in the doctrines of Communism with all its implications. Not being members of any Communist Party, and therefore not having in express terms subscribed to the programme of the Third Communist International, they are not in one sense? bound to carry out that programme to the dictation of Moscow but they agree in principle and theory. In this respect their case stands on a slightly different footing to that of the Communists who are members of the Communist Party of India or of England.

135. The mere holding of Communists beliefs or doctrines is not punishable per se. A theoretical Communist or a student of Communism cannot be said to be guilty of an offence. And if a Communist were to work individually, in furtherance of his belief, he would not be guilty of conspiracy. The question before us is whether these non-member Communists also conspired with the member Communists to deprive His Majesty the King Emperor of his Sovereignty. That they have been associating with each other cannot be doubted for one moment and is in fact not disputed. That they have chosen to put forward the same exposition of the Communist doctrines, in Court is apparent from their subscribing to the joint statement made on their behalf by accused, Nimbkar. They openly adhere to all the Communist doctrines in all its grim details. The question whether the charge of conspiracy has been established as against them is a matter of inference to be drawn from their beliefs, their associations and their activities, as well as from the statements which they themselves have made before the Sessions Court individually.

136. We are not called upon to deduce an illegal conspiracy from a number of legal acts. What we are called upon to decide is whether the conduct of the even though legal when taken (separately, do not establish in point of fact the prose-accused and the acts done by them, cution case that they had conspired with the member Communists. The question is primarily one of fact and has to be decided on weighing the evidence both direct and circumstantial. When the beliefs are identical and the association of all these accused with each other is established, it does not require very much evidence to convince us that such a conspiracy existed. But the position is made still clearer for the accused themselves, not only in the joint statement made on their behalf

by Nimbkar, but also in their own separate statements in Court have admitted that they have been working in concert for the attainment of the common object. It will be now convenient to take up first the individual cases of the six Communists who were not members of the Communist Party in India.

137. No. 1. Goswami.--Goswami, accused, is professedly a Communist by conviction. As a member of the Workers and Peasants Party of Bengal he did considerable organization work in Trade Unions. He did some work in the East Indian Railway strike and there is much evidence to show his close association with the accused, Spratt and Muzaffar Ahmad. He was present at the Cawnpore Session of the All India Trade Union Conference. He was elected as one of the Vice-Presidents of the Bengal Jute Workers Association. He appears to have read a paper at a meeting of the Scavengers Union and at one time acted as its Secretary. In November 1928, Goswami delivered a speech at the Maldah Young Men's Convention after accused Spratt had spoken. Referring to the withdrawal of the non-co-operation movement as a result of the episode at Bardoli he said: The blood is bound to show itself in a national agitation. No one will be able to turn it away. No leader has probably yet been born who will be able to make a success of the national movement without a show of blood.

138. He also attended a meeting held in connection with the East Indian Railway strike at Lillooah. He took part in furthering the work of the Young Comrades League in Bengal. In his statement before the Sessions Judge he said: I do not deny that, being a Communist, naturally I should have full sympathy with the ideals of that party.

139. Talking of what would take place during the transitional period he said: During that period the proletariat will seize the existing capitalist state and forcibly overthrow capitalism and establish instead its own state, that is the dictatorship of the proletariat that is one proletariat organizes itself as the ruling class....As a Communist I aim at that, because the Communist has got no separate ideal than that of the proletariat, and as such my immediate aims are the organization of the proletariat on a class basis, destruction of capitalism and bourgeois supremacy and conquest of political power, and as such I also support every revolutionary movement against the extant social and political conditions. I do not make a secret of my views as a Communist does not do so Communists scorn to hide their views and aims I believe that and I adhere to it.

140. Later on he says: I do not deny that I was a member of the Workers and Peasants Party of Bengal and the All India Workers and Peasants Party, and also that I was elected as Sectional Secretary for labour of the Workers and Peasants Party of Bengal.

141. He went on to explain: The Workers and Peasants Party is the only party in India that stands

for complete independence from the British Imperialism and thorough democratisation of India based on economic and social emancipation and political freedom of men and women, as it is mentioned in the constitution of the Bengal All India Workers and Peasants Party.

142. He further said:

The Workers and Peasants Party being a party of revolutionaries (that is, the Party of Workers and Peasants who are by nature revolutionaries) leads from the very beginning a systematic, well-planned, well-organized and uncompromising militant struggle against Capitalism and Imperialism.

143. Dealing with the object of the Workers and Peasants Party he said: Its object was to organize a federation of trade union primarily for the purpose of a political struggle for the independence of the country and also for the general improvement of the conditions of the masses.

144. He said that he took upon himself the responsibility of having issued invitation letters to all working class revolutionary and non-revolutionary bodies as the Secretary of the Reception Committee of the All India Workers and Peasants Conference. With regard to the Young Comrades League he claimed that he took some part in guiding that body as he was one of its organizers. According to him the remedy lies in the overthrow of capitalism and achievement of complete independence and emancipation of the masses from their present position of economic and political subjection. Quoting Engels he said: Engels has defined that revolution is an act in which one part of the population imposes its will upon the other part by means of rifles, bayonets and artillery. I therefore say that the one part of the population which will impose its will upon the other will be none else than the toiling masses, the workers and peasants.... For the success of this historical task the working class as a whole shall have to capture the existing capitalist state and establish instead their own, that is the dictatorship of the Proletariat. Revolution cannot be successful without destroying the present existing state through which the exploiting bourgeois class dominates over the other classes of the society.

145. We have no doubt that Goswami, a professed Communist, entertaining the views he did, was acting in Concert with the workers of the Communist party when he took part in the various activities described above. Some of those activities when taken by themselves might not be illegal, but they were certainly in pursuance of the programme laid down by the conspirators. In our Opinion, there is ample evidence to justify the conclusion that Goswami, accused, was a member of the conspiracy.

146. No. 2. P.C. Joshi.--92. P.C. Joshi, accused, was a student of a university when he was arrested. Admittedly he is a confirmed Communist. Presumably owing to his youth he did not become a member of the Communist Party of India, but one document shows that his name was

at least proposed or suggested for membership but his election was held over. There are various documents under his own signature showing that he was the General Secretary of 'the Workers and Peasants Party of the United Provinces. He attended the Mazdur and Kisan Sangh at Meerut in October 1928, on which occasion the U.P. Party was organized. The documents found in his possession, including a thesis, showed his highly 'Communitic views. He contributed articles to the newspaper Kranti Karl, which his own letters showed was an organ of the party. Considerable correspondence passed between Joshi, Muzaffar Ahmad and also Spratt. Joshi was also looking after the working of the Kranti kant. There is a letter dated 5th November 1928, writ- ten by P.C. Joshi as General Secretary of the U.P. and Delhi Workers and Peasants Party and sent to Palme Dut, care of a Communist Book Shop in London. He states that 'his party was busy in propaganda and organizational work alone and asked for books which could be easily translated for village schoolmasters who would link up the Party with the peasantry and petty bourgeois. Referring to the urgent need he said:Soon the next crop will be sown so no work for villagers. They become busy body. Now the iron is hot because of the failure of the crop and the new assessments. In the middle of April the university examinations begin and from middle of February the university friends will close their eyes.

147. The last sentence in the letter is important. It runs as follows:I am writing to Comrade Spratt to write to you about my credentials.

148. This conclusively establishes that accused Joshi was well known to accused Spratt who was expected to give him a good certificate for introduction to the Communist Book Shop. At the time of the search, a manuscript of his was found in the possession of Joshi headed. "The Role of the Congress." After pointing out the Congress strategy and tactics, with which the author did not agree, he went on to say:They do not advocate organized armed mass revolution because of the secret joy they derive from handling a rifle but on the knowledge that Militarism and Universalism are the essence of Imperialism and that the only way to destroy force is by massing against it still greater force...and can be captured by force alone. Any serious and uncompromising movement of liberation ought to provide and prepare for these successive stages : mass demonstrations and nonviolent discipline, direct mass action and finally armed mass rising.

149. He went on to point out that:The Congressmen were poisoning national thought by standing on the same platform with Gandhiji, and when they will shout "to arms" nobody will be prepared for it, nobody will understand it.

150. Joshi wrote to Spratt asking him. to advertise the Kranti Kari predominantly in Ganawani and to get friends who will accept V.P.P. It is not necessary to refer to the articles sent by him to the Kranti Karl. In his statement in Court he admitted:

I was a Secretary of the Workers and Peasants Party of United Provinces and a member of the National Executive Committee of the All India Workers and Peasants Party. In professed terms the aim of the Workers and Peasants Party was the achievement of independence from British Imperialism through a revolution for the establishment of a Workers and Peasants republic.

151. Explaining the sentence: Independence involves destruction of the Imperialism, Military control and economic federation and hence necessitates revolution, in the Political Resolution, he explained that the only way to secure freedom from Imperialism is through a revolution. As regards revolution he said: Revolution to Imperialism is dreadful; by us it is adored.... Revolution is not to be justified according to the sections of the Imperialist Penal Code or defended before an Imperialist Court of law ; the inevitable success of the revolution is its own justification, and it speaks through the voice of history.

152. He went on to say: Armed mass insurrection is the highest stage of the upward growth of revolution. The price of the victory is the Capture of Power, the Destruction of the enemy and the Liberation of the People. We therefore hail and salute the final armed mass uprising of those who are slaves today but will be free after it.... The problem which is to be consciously decided however is the when and the how of the armed insurrection.

153. In conclusion he said: National revolution is the historical impeachment of British Imperialism by the Indian masses and then bullets and not words will speak.

154. We have quoted enough to show the doctrines which he advocates. His association with the members of the Communist Party of India and his activities in carrying on work in pursuance of the Communist programme are sufficient to justify the conclusion that he was not only a Communist by conviction but that in agreement with the other conspirators he took an active part in prosecuting its aims and objects and working out its programme as best he could.

155. No. 3. Chakravarty.--Accused Chakravarty was a member of the Workers and Peasants Party of Bengal and also of the All India Workers and Peasants Party. He took part in the activities of Trade Unions and he was concerned with strikes in his capacity as General Secretary of the Bengal Jute Workers Association. He also took part in the organization of the Young Comrades League and there is an amount of evidence to show his association with the accused Spratt, Muzaffar Ahmed and Goswami. He made several speeches including one in which he translated Spratt's speech into Hindi and added that Satyagraha was not for men who had blood in their veins because if the strikers were assaulted they would not bear it without retaliating. He was a member of the Executive Committee of the Workers and Peasants Party of Bengal and took an active part in running it. The evidence shows that he was secretary of several bodies and unions and appears to have been actively engaged in such movements. He was also concerned in

strikes. In his statement in Court he said:I was a member of the Executive Committee of the Workers and Peasants Party of Bengal and I was also elected as a member of the Executive Committee of the All-India Workers and Peasants Party. I am a Communist by conviction. I fully subscribe to the system of thought and the scientific programme laid down for world revolution by that most powerful and revolutionary organization of the world the Gommunist International. My ultimate aim is the establishment of a classless society, that is a Communist Society through the transitional stage of the dictatorship of the proletariat. But attainment of complete national independence from British Imperialism through a mass revolution is my immediate objective.

156. He went on to say:Revolution is therefore the prospect before India either soon, or lass soon, but inevitable at some time.... First it will secure national in-dependence, political independence, which involves the overthrow of British Rule and the establishment of a completely independent State.

157. With regard to the organization of the Young Comrades League he said:It was with a view to enlist the services off the radically minded petty bourgeois youth in the cause of the working class and to win them over consciously to the side of the mass revolutionary movement, I wish to say that I was a member of the Young Comrades League.

158. His conclusion was that The working class can and will be the loading class in the Indian revolution. While peasantry will establish for the revolution the indispensable base in the country by seizing the land and overthrowing the Feudal Capitalist system and exploitation of the common people there, the working class assisted by auxiliaries from various sections of the town, poor artisans and proletarian, will con-duct the decisive attack upon the centres of the State power and will be principally concerned in establishing the new State and the new order, that is democratic dictatorship of the proletariat and the peasantry in the form of Soviet Republic.

159. He added that the views thus expressed explain his connection with the Workers and Peasants Party and the Young Comrades League. In our opinion, the accused Chakravarty, who is a professed Communist, undoubtedly conspired with the members of the. Communist Party of India in carrying on the work and the programme of the Communist International, and took a very active part in organizing many unions and in working for the Workers and Peasants Party.. His association with the other conspirators is equally established.

160. No. 4. Basak.--Basak is proved to have been in association with the accused Spratt, Muzaffar Ahmad, Goswami and Chakravarty. He was a member of the Workers and Peasants Party and was the chief organizer of a branch of the Party of Dacca. He worked in Trade Unions, among the Cotton Mills workers and scavengers at Dacca, and there is no doubt that he was carrying on his Trade Union work with zeal. He does not appear to have made speeches but

wrote several letters and articles, some of which were not published and were found in his possession. Basak, accused, was present at the first All India Workers and Peasants Party Conference at Calcutta. He sent an article on the Bengal Textile Works Union with a covering letter to the editor of "Spark" from which it is not necessary to quote. In his separate statement before the Court he said: I am a member of the W.P.P. I joined it at the end of 1927 because it was an anti-Imperialism Mass Party which stood unconditionally for complete independence from Imperialism. As distinguished from other political parties in India the W.P.P. is frankly a revolutionary party. It stands committed to the programme of International Democratic Revolution. Its policy is based on the principles of class 'struggles. I may refer here to the thesis, principles and policies.

161. This thesis has already been referred to by us. He went on to say: It was the aim of the W.P.P. to be the organizational and conscious expression of the revolutionary movement. The endeavour of the W.P.P. is not to create a split in the ranks of nationalists but on the other hand to rally together all genuinely anti-Imperialist and revolutionary classes and elements on a minimum programme of national democratic revolution.

162. He asserted that he was not trying to set up at the time organization for immediate insurrection. His ideas and the scope of his work were strictly limited and perfectly legal. He was engaged in selling Communist literature. He explained and said: In fact I had not the least suspicion that by selling and publishing books of Indian authors and importing literature from England, I was conspiring against King's sovereignty.

163. He admitted that they were his Trade Unions activities, but said that they were mainly confined to the work of the Dhakeshwari Union. In the course of his activities in these Unions he was corresponding with other conspirators like Muzaffar Ahmad and Go-swami. He admitted that he was the Secretary of the Scavengers Union at Dacca, a branch of the Scavengers Union at Calcutta, and that he took part in Textile Unions. With regard to these he said:

Believing as I do that if workers and peasants are the only general revolutionary classes in our country I had worked among them in their class organization, that is the Trade Unions, where I fought along with them in their drab day-to-day struggle, and as representative of these unions, I had attended the Cawnpore Session of the T.U.C.

164. No. 5. Hutchinson.--Hutchinson is undoubtedly a Communist. He is the only accused who was not arrested at first. He was taken into custody in June 1929, and was prosecuted under a supplementary complaint. He arrived in India in September 1928. It is admitted that he did not become a member of the Communist Party of India or of any of the Workers and Peasants Parties, but at Bombay he started a Study Circle which consisted of about half a dozen members.

The society was called the Circle of Progressive Youth. The members have fanciful names like Fraternity, Equality, Liberty, Solidarity and Sagacity. Hutchinson had the pseudonym of Tenacity. There is not the least doubt that in this Circle the principles of Communism were discussed and Communist literature was circulated among the members. The forming of such a Circle of Study is somewhat suspicious, but Hutchinson does not appear to have done anything else except to have made speeches which we shall consider later. Hutchinson came to India with Mrs. Nambiar and lived at her house. Notebooks found in the house of Mrs. Nambiar where Hutchinson was living contained minutes of the meetings of this Circle.

165. The evidence of association of the-accused Hutchinson with other Communists is that admittedly accused Bradley once dined with him at the house of Mrs. Nambiar. It also appears that a Copy of Bradley's photograph was found in the possession of Hutchinson and two visiting cards of Hutchinson were found with Bradley on the back of both of which the address of a lady in London was noted. It also appears that at the time of the search, among the books and papers discovered, there were one article written in pencil by Bradley on the Bombay Mill strike, copies of a thesis, a copy of the presidential address of Sohan Singh Josh, and a copy of the Colonial thesis as well as many other papers including a typewritten paper apparently typed on the same machine as those used for other letters which had purported to come by post from M.N. Roy in Germany. It also appears that when the house of one Amir Hyder Khan was searched some incriminating documents were found; but they did not mention Hutchinson by name. The minutes however, show that Hutchinson suggested to the members of the Study Circle that they would get into touch with Comrade "B" and Comrade "K." It is suggested on behalf of the prosecution that Bradley and Amir Hyder Khan were meant. But there is no evidence of any direct connection of these men with the Study Circle. Nor is the connection of Hutchinson with Spratt established. A photograph of a letter sent by Hutchinson to Nambiar has also been produced in which there is a sentence stating that he foresaw complications in the event of his removal which might take place any day. But that the powers than he might overlook him and he might be able to continue his work. This letter also raises a certain amount of suspicion. But it must be borne in mind that about that time the arrests and deportation of Spratt and Bradsley were being discussed in the newspapers and a Bill, which was called the Public Safety Bill, authorizing such a deportation, was being considered by the Legislative Assembly.

166. Nor do we think it surprising that Hutchinson should have met Bradley when both were European workers and were in Bombay. It is quite possible that as Hutchinson was a Communist, other Communists tried to seek his company and passed on to him. Communist literature. But apart from taking part in the work of the Study Circle, Hutchinson did not join in the activities of any other body or organization. He however made several speeches in which he used very strong language against the Government and the present order of Society, some of the passages in this

speech were highly seditious. They did not however amount to any incitement, to the use of violence, or advocated any uprising; they dealt mostly with the international situation as it existed according to the point of view of Hutchinson, and they also dealt with the position of India as an international ally. In particular Hutchinson delivered a rather violent speech at a public meeting presided over by the accused, Shaukat (Usmani). The speech was seditious, but the greater part of the speech was devoted to the supposed International situation of the world from the British standard. Dealing with India Ms theme was: We are in an epoch when troops can be sent to India in a little more than a week, when aeroplanes can bring troops quicker, and battleships can come within ten days, India can be crushed by the sheer weight of steel, and the only thing to prevent this is that the working classes of England are sufficiently actuated by an alliance with the oppressed people of India, to refuse to transport munitions and steel to crush the Indian exploited peoples.... The Imperialistic armies re composed of ignorant workers and if the working classes refuse to send these armies and trans- port munitions, the Government is helpless and India automatically becomes free.

167. Other speeches delivered by him were more or less in the same strain. Leaving out minor matters the above is the gist of the prosecution evidence against him. The learned Sessions Judge has himself remarked: Hutchinson accused's case is on somewhat different lines from those with which I was dealing so far. He did not arrive in India until September 1928, and even after his arrival he had no public association with the Workers and Peasants Party or the Communist Party of India,

168. In the concluding portion of the judgment the learned Judge has remarked:

It will be noted that the great distinction between the case of Hutchinson accused and the cases of all the other accused dealt with so far is that there is no evidence associating him with the Communist Party of India, with the Workers and Peasants Parties, or before 20th March 1929, with Trade Union Work.

169. According to the learned Judge For work in the parties or in the Trade Union field Hutchinson accused was not a suitable subject either by upbringing or training.

170. Although there are circumstances, such as his arrival in company with Mrs. Nambiar, and his correspondence with people in Berlin, which raise a suspicion against the accused that he might well have been sent out to India for the purpose of furthering the cause of Communism, the learned Judge has noted: There is no direct evidence that Hutchinson accused was sent out to India to work in this conspiracy,

171. There is also the fact that all the five assessors unanimously thought that no case of conspiracy had been made out against him. We have very carefully considered the case against

him and although we have no doubt that there are many suspicious circumstances which suggest that he might have been in conspiracy with the other accused, we feel that his activities were so limited that it would not be safe to convict him of the charge of conspiring to deprive His Majesty of the Sovereignty of British India. We must accordingly give him the benefit of the doubt and hold that the offence has not been established as against him.

172. No. 6. Mittra.--Mittra accused was not a member of the Communist Party of India and not actually a member even of the All-India Workers and Peasants Party. He was therefore not a member of any organization which may be characterised as Communist. During the early part when his career came under notice he was a Congress worker. The learned Sessions Judge has remarked that:the case of Radha Raman Mittra accused is markedly different from most of those which have gone before. It is not contended for the prosecution that he has been a Communist and a member of the conspiracy from the time of his first appearance in the evidence, or that he has been a member of C.P.I. or W.P.P.

173. The learned Judge has also pointed out that:the theory put forward by the prosecution is that in the course of the year 1928 he became more and more closely associated with such leading members of the conspiracy as Spratt accused, and is led thereby to join the ranks of the Communists in which he now claims to stand firmly.'

174. On the other hand, the suggestion put forward by counsel for the accused is that up to the time of his arrest Mittra was not a Communist at all, though he might have imbibed some of the doctrines of Communism, but that it was his close association with the other Communists in jail which has made him a Communist by conviction. That now he admits himself to be a Communist is patent from the fact that he subscribed to the statement made by Nimbkar accused on behalf of all the Communist accused. Mittra was a school master employed in a municipal school and no doubt he took part in Trade Union activities and helped the Scavengers Unions and assisted in the strikes. His explanation however is that these scavengers were employees of the same municipality and he sided with them because they had a just grievance. There are Trade Union activities of his during the East Indian Railway strike at Lillooah, Ondal and Asansoj. Apparently Mittra tried to get the strike extended; but these can be characterized as Trade Union, and not necessarily Communist, activities. Considerable reliance has been placed by the learned Sessions Judge on some of the speeches which he delivered during these strikes. But although the speeches may be highly seditious they rather go to show that he was not then a Communist at all. The earlier speeches of May and June do not necessarily show that he was a Communist. On 20th January 1929, Mittra delivered a speech at Shradhanand Park on Lenin's Day. In spite of the occasion he stated in his speech:I am a member of the Congress and of the B.P.C.C. (Bengal Provincial Congress Committee).

175. He went on to say: I admit that Mahatma Gandhi, Lokmanya "Tilak and Desbandhu Das in our country are great, very great, men, with powerful brains, but no creator, no saint, no preceptor has been born in our political world such as Mazzini.

176. In the course of his speech he said that he had joined the Labour Movement only that year. No doubt he praised Marx and Lenin as he was addressing the audience on Lenin's Day; but referring to a worker he also said: He may have his self-respect or may not have as Mahatma Gandhi who has eliminated self. But still unconsciously, another self is looming big, i.e, the class. I lived with the Mahatma for two years at Sabarmati, so 'there is no blind devotee like myself.

177. He does show reverence for Mr. Gandhi whose principles of non-violence are despised by Communists and he expressly called himself a member of the Congress and of the B.P.C.C. on that date. This is the very last speech made by him before he was arrested. It is very difficult to say that he was a Communist then. In his statement in Court, although Mitra there advocates the Communist doctrines, he nowhere admitted that he was a Communist before his arrest or that he was a member of any conspiracy or of any Communist organization before his arrest. In his statement before the Court when explaining his previous reference to Russia he said: But that my object was not to preach revolution or do propaganda on behalf of Soviet Russia is evidenced from the statement that immediately follows.... Had that been my intention I would not have held out the example of British workers to my audience for their emulation.... I would not have pointed out to them the road followed by the British workers, namely the road of Trade Union organization.

178. He asserted that he should not be understood that he regarded the preaching of revolution to workers as wrong, but said that even a Communist, supposing I am a Communist, can and does participate in the petty day-to-day economic struggles of the workers like any other genuine trade unionist, not only for remote bigger but also for immediate and partial improvement, and that in doing so he not only can but actually does lay aside for the time being all thoughts and talks of revolution or the dictatorship of the proletariat.

179. He maintained that he had been engaged in Trade Union activity only. As regards his being a Communist he said that although there was no evidence on the point he did not want to hide from the Court that "he was a Communist by conviction." There is one more circumstance which must be mentioned. Mitra attended one of the meetings of the first All India Workers and Peasants Conference at Calcutta and seconded a resolution. It also appears that he joined a procession of workers which was formed and marched with banners shouting slogans to the place where the Congress was held. But it has to be conceded in his favour that he was not a member of the Workers and Peasants Party, but attended it on behalf of a Trade Union. The resolution

which he seconded was innocuous and was confined to Ms interest in the Trade Union movement which he was then carrying on. As regards the procession also it has to be conceded that that had been organized by an outside labour man K.C. Mitra, and had not been organized by Communists. The 'fact that he made a speech on this occasion also only shows that he joined in the demonstration against the Congress which was in the nature of a labour demonstration. The learned Sessions Judge has observed: A point which seems to me to deserve a little consideration is the fact that in the course of the hearing in this Court, Mitra accused made a very obvious change of front.

180. At least up to March 1930, he was putting up a Congress defence and had actually produced three letters from Mr. Gandhi, but after June 1930, he apparently gave up that defence and adopted the same line of defence as the Communist accused. The learned Sessions Judge has however thought that the correct interpretation of these facts is that he began probably as a Congress worker, he became associated with Spratt, Goswami and others in the course of the East Indian Railway strike and from that time forward he became more and more closely associated with the activities of these persons. Having regard to the speech which he made as late as 20th January 1929, we are inclined to think that it is not a fair assumption to make that he had become a confirmed Communist before Ms arrest. No doubt he had come under the influence of Spratt and Goswami and others, and was imbibing some of their doctrines, but he does seem to have been completely converted at that date.

181. The activities in which he was engaged amounted mostly to those of a Trade Union nature, and his presence at the one meeting of the All-India Workers and Peasants Conference does not establish that he deliberately joined a Communist organization. It may be noted that all the five assessors considered that the charge had not been brought home to Mitra. We think that this case also admits of considerable doubt. It is very difficult to record a finding on the evidence that prior to his arrest Mitra had become a wholehearted Communist or had conspired with other Communists to deprive His Majesty the King-Emperor of His Sovereignty of British India. The acts committed by him fall short of establishing such a case.

182. The fourth group of accused consists of seven men who are not Communists. They have undoubtedly been taking an active part in the Trade Union movement. Not belonging to any party definitely committed by its constitution to adopting the programme of the Communist International, and not even believing in Communism with its doctrine of the inevitable use of force, it is clear that they cannot be presumed to have entered into a conspiracy with the Communist accused for depriving His Majesty the King-Emperor of His Sovereignty of British India merely if they are proved to have taken part in Trade Union activities or to have made seditious speeches. It must be borne in mind that it is a part of the Communist programme to form Communist fractions who enter into other non-Communist organizations, like Workers and

Peasants Parties, Trade Unions, etc., and try to influence the members and help in the dissemination of Communist ideas. If such bodies are also open to non-Communists, the mere fact of the association of non-Communists with Communist members, would not, without cogent evidence, justify an inference that they had all conspired together for the purpose of depriving His Majesty of His Sovereignty. Obviously in the case of such accused persons something more than taking part in non-Communist Workers and Peasants Parties and in Trade Unions or making seditious speeches, would be required. On the other hand, it is also clear that if they were inciting people to violence, or to bring about a violent upheave or revolution, and are found to be associating with professed Communists and planning with them the furtherance of their own aims and objects and working out an agreed programme, they may well be held to be members of the conspiracy, even though they are not committed to the doctrines of Communism. We would now consider the cases of the seven non-Communist accused persons separately.

183. No. 1. Desai,--This accused after spending some years in England returned to India and arrived at Bombay on 28th November 1928. It appears that in England he became known to Palme Dutt and was to some extent connected with the Lascars Union in London. Up to the middle of 1928 there is no incriminating evidence against him. He also seems to have visited the Labour Research Institute. When he landed at Bombay the Customs Office discovered that he had with him copies of a Communist paper. But Desai was a journalist by profession and he admits that he was a Socialist. A point made against him is that sometime before his arrival in India, when some of the Communists -- Spratt, Bradley, and others--met at Bombay for consultation, Spratt drew up notes of their proceedings. The pencil notes made by him suggest that a Socialist paper the "Spark" was in contemplation., which would support the W. P. P. Party, but not be an official organ. We know that in January 1928, Desai started a paper which was named the "Spark." But according to the note made by Spratt himself this paper was not to be a Communist Journal. Thus the note is both for and against Desai. Desai did not on arrival immediately start this paper, but was first employed on the editorial staff of the Bombay Chronicle. Later on he went over to the staff of the Indian National Herald. This paper had financial difficulties and was about to be withdrawn when Desai gave up his connexion with it. It was on 27th January 1929, that the first number of the Spark appeared. On the face of it, it was a Socialist Weekly. The paper did not last long, and its 7th, and last, number came out on 10th March 1929, shortly before Desai was arrested.

184. The word "Spark" is an English translation of the Russian word "Iskra" --the name of Lenin's paper. The prosecution naturally suggest that this name was chosen because it was a Communist paper. On the other hand, Desai produced oral evidence to explain away the significance of the name. Desai called Khadalkar and Khare. It was said that the name "Spark" was hit upon after a discussion, and the choice was purely accidental. It does not seem to us

necessary to examine this evidence. We are prepared to assume that the name of the paper arouses suspicion against the accused But there is no evidence to show the he is a Communist. Being a journalis he possessed Communist literature and presumably other kinds as well. He admittedly never became a member o the Communist Party of India or even a member of the Workers and Peasants Party. There is no evidence to show that he became a member of any Trade Union. Being a journalist he naturally same into touch with the political workers in Bombay and it is not surprising that he associated with the Bombay Communists. They would naturally seek his company, particularly when he started a Socialist paper which would accept articles from Communist writers. Desai did not make any speeches nor did he participate in any strike. There are letters showing that Desai corresponded with Spratt and other Communists, but the letters were all written in connexion with his paper. He was naturally trying to push the sales. The Communists welcomed the appearance of the Spark and they appear to have tried to increase its circulation. Indeed Desai had many of the Communists as subscribers.

185. The Spark was first issued on the eve of the elections to the Bombay Corporation. Four Labour candidates were standing for election. Opportunity was seized by the Spark to support their, cause and impetus was thus given to the labour movement. It may be conceded that some of the articles which appeared in the Spark were of a seditious character and that the editor readily accepted articles written by Communist writers. We do not consider it necessary to quote passages. In our, opinion although the Spark was preaching Socialism in an extremist form, it is impossible to draw the inference that the editor was himself a Communist. There are references to the Spark in the correspondence of the other accused, but nowhere is it said either that the paper was a Communist paper or that it was the organ of the Party. In one document it is called "A Follower of the Party." In a copy of a letter written, by Spratt to Dutt the following paragraph occurred:Have you seen Desai's Spark, by the way? He has done it quite well, I think, in the circumstances. But it was a hopeless proposition from the first. We hare heard nothing of it now for three weeks, so it must have collapsed, I suppose, (1 am wrong as I write. Numbers 5 and 6 but not No. 1 are received.).

186. This paragraph does not suggest that the Spark was an organ of the Communist Party. Had it been so, Spratt would not have asked Dutt whether he had seen the Spark. It is also clear that the financial position of the paper was not sound. If it was a Communist paper, Spratt and other Comimunists would have been expected to l help it. The fact that Spxatt had heard ; nothing of it for some three weeks and imagined that it must have collapsed, i shows that Desai was not in constant correspondence with him. Furthermore, if it had been a Communist paper Desai might be expected to ask for financial help. Spratt would have known whether the paper had collapsed or not. In his statement Desai vehemently denied that his paper was an organ of the Communist Party or that he was a member of any conspiracy. He claimed to be a Socialist.

187. The learned Sessions Judge has rightly noted that "Desai's own name does not appear in the evidence until January 1929" and has conceded that there was no reference to Desai in the prosecution evidence throughout the period from the date of his arrival in India up to the end of 1928, and that he was never mentioned anywhere in the correspondence passing between the conspirators in India.

188. He held that the nature of the articles published in the Spark, which professedly was anti-Capitalist, anti-Zamindar, anti-Capital, but above everything anti-Imperialist, were in consonance with the theories of Communism. Four out of five assessors were convinced that the offence had not been proved against him. We think that Desai's case is doubtful. He and his paper might well have been used by the Communists for their own purposes ; but it does not follow from this that Desai conspired with them to deprive His Majesty the King-Emperor of his Sovereignty of British India. Whatever he did, however objectionable it may be otherwise, can well be explained by the fact that he was an extreme Socialist and was advocating the cause of labour candidates and the Labour movement. He was also upholding the rights of the working classes, though in highly intemperate language. We must accordingly give him the benefit of our doubt.

189. No. 2. Jhabwala.--Jhabwala is another accused who does not admit that he is a Communist. The position taken up by him in the Sessions Court is that he was a Socialist and a Trade Unionist. He seems to have studied Communist literature and he constantly uses Communist phraseology in his speeches and writings. His ideas are highly socialistic and verge almost on Communism. But there is one difference between him and the professed Communists. In all his speeches whenever he came to the question of revolt or revolution he carefully explained that he did not advocate the use of force or the shedding of blood. Accordingly it is natural that from time to time he was discredited by the Communists. Early in 1926, M.N. Roy placed him on the same footing as Mr. M.N. Joshi describing them as humanitarian intellectuals. But Jhabwala took a very prominent and a leading part in the Trade Unions and Workers and Peasants Party. On 22nd January 1927, he presided at a meeting on Lenin's Day; he talked of a general revolt against organized oppression, the need of a gradual revolution, and the adoption of Leninism against tyranny and oppression whether by Capitalists or Imperialists. But we have only a short note covering one paragraph of his speech. For sometime Jhabwala acted as the Secretary of the Bombay branch of the League against Colonial oppression. This was a European organization. He appears to have distributed leaflets and correspondence issued from the head office among some friends in India. But this League itself strongly protested against the allegation of the second International that the League was "nothing, but a Communist manoeuvre" and protested emphatically against this "misleading, unjustified and untrue document" and declaring that such action violated the principles of Socialism urged all Social workers to adhere to their Socialist principles. It is therefore impossible to say that the fact that

Jhabwala became a branch Secretary shows that he was a Communist. The party formerly known as the Congress Labour Party changed its name to the Workers and Peasants Party of Bombay. Jhabwala was a member of the Executive Committee of this party. In March 1927, he had attended the All-India Trade Union Congress at Delhi and stayed at an hotel with other delegates, some of whom were Communists. The report of the Trade Union group made by the accused Joglekar to the Secretary of the Workers and Peasants Party in April 1927 stated:

Mr. Jhabwala is busy with his Union activity" ties but the Party Leader has no record of this work as he has never submitted himself to the Party control. He has never attended any party meeting, and more, it is oven doubtful, so far as I know, whether he has accepted the party's regulations and constitution and signed the Party creed.

190. We have already pointed out this Party, according to its Constitution, was not a Communist Party. There is also evidence to show that just before the celebration of May Day, he distributed some leaflets, but that was also a Labour Day. In this connexion it might be pointed out that Spratt when writing to Dutt said "Huz" is improving. The prosecution suggest that "Huz" refers to Jhabwala. But although that phrase shows that Jhabwala was improving from the point of a Communist and therefore leaning more towards the side of Communism, it does not show that he had become a Communist. As regards Trade Union activities, Jhabwala undoubtedly took a very leading part. At a public meeting held under the auspices of the Bombay Workers and Peasants Party to protest against the electrocution of Sacco and Vanzetti, Jhabwala was voted to the Chair. In his speech he said that the exploitation and oppression to which the poor were subjected by the Capitalist and Imperialist Governments could only be stopped by a mass revolt. Unless such a mass movement was set afoot in India, no freedom should be expected for her. His experience of the past ten years' work amongst the workers, he said, showed that the Capitalist Government refused to accede to the genuine demands of the labourers. He added:As soon as all the workers were organized, mass revolution could be declared, but by evolution he did not mean bloodshed, aeroplanes hovering overhead and cannons blowing, because when workers and labourers were united freedom could be had within five minutes without shedding a drop of blood.

191. Again he presided at a public meeting held under the auspices of the Workers and Peasants party to celebrate the 10th anniversary of the Russian Revolution. We have only a note of his speech. He referred to the Russian Revolution and said that the conditions in Russia about the time of the Revolution resembled those in India today. He said:I could not say whether the methods used by the Russians in overthrowing the Gzarist domination should be used and followed in India at present.... He did not believe in shooting the Viceroy or the Governor. He would say that to achieve Self-Government the iron system of administration that brought about poverty should be gradually overthrown.

192. Later on he said:Self-Government was a thing to be achieved by the force of their own hands and it would not be tossed by God from above. By force of hands I do not mean beating anybody. I mean to say that unless the masses and everyone of them got enough to eat and clothes to put on there could be no Self-Government.

193. There was a passage in his speech to the effect that the Russians could not get freedom constitutionally and similarly they also should not get it constitutionally. But this he has tried to explain by saying that all constitutional measures should be exhausted and that if they could not get freedom then it was regrettable.

194. There is another passage in the speech delivered by Jhabwala at the Jhansi Conference to which we must refer. Towards the concluding portion of his speech he said:We are maligned as Communists, Extremists Revolutionaries, etc. I do not hesitate to cheerfully subscribe to all these attributes rolled into one.

195. Obviously it was an ironical sentence expressed boastfully. It would not be fair to Jhabwala to regard it as an admission that he was a Communist. He was there referring to all the workers and peasant who had assembled there in conference. In the earlier portion of his speech he said:If these very workers were helped by a little food in their bellies they will form a revolutionary base for an early independence of our country. In achieving such a revolution I refuse to take any foreign assistance.

196. Again in a note of his speech made at the G.I.P. Railway Union he praised the League against Imperialism and Colonial oppression and said That in these International actions India is bound to emerge a most successful and competent revolutionary helping in the (establishment of a happy Millennium of Soviet Raj in the world.

197. There is one more matter which should be mentioned. During the Bombay strike Russia sent two sums of money to assist the strikers. The first instalment came in June 1928, addressed to jhabwala, Vice-President of the Textile Labour Union, but by that time Jhabwala had retired from the Union and formed a separate Union of his own. The money was accordingly paid to Mr. M.N. Joshi, the then Vice-President. The second instalment came addressed to Jhabwala by name as President of the new Union. But this was ostensibly money sent for the strikers and the receipt of it, though suspicious, would not necessarily implicate Jhabwala. He appears to have acknowledged the receipt of this money and also sent a copy of the receipt to the League. We may also mention that Jhabwala was originally on the Executive Committee of the Girni Kamgar. Maha Mandal. There was some quarrel between him and the other members and he resigned and established the Girni Kamgar Union. This happened long before the first session of the All India Workers and Peasants Party at Calcutta which he did not attend. He attended the Executive

meetings of the Workers and Peasants Party at Bombay before he quarrelled with the executive. Before Jhabwala resigned he was asked to explain his curious position as Vice-Presidents of two Mill Workers Unions and President of a third. He was accused of intriguing against the Party members and of mishandling Russian money, of sabotaging workers' interests by trying to control too many Unions, of general apathy and antipropaganda since the settlement of the strike. In this connexion it may also be pointed out that Ghate accused when writing to Muzaffar Ahmad on 11th October 1928, said: Joshi (not the accused P.C. Joshi) and Jhabwala have their own Unions. You know since the settlement Jhab has been working against us and yesterday he has sent in his resignation from the party.

198. There is nothing after this which is incriminating. The case of Jhabwala has given us considerable anxiety and we have given it our best consideration. There are numerous points against him, but there seems to be one fundamental distinction between him and the professed Communists. He has not advocated the use of violence in clear terms. There is no doubt that his association with some of the accused persons is established, but he was not considered to be a Communist by his associates. He was utilized by them up to a point when he quarrelled and separated from them. As a Socialist and Trade Unionist and taking part in public meetings as a leading worker he made some highly seditious speeches. He was in our opinion acting as a Trade Union Leader and not as a Communist. His appeal must be allowed. Four out of five assessors were in Ms favour.

199. No. 3. Sehgal.--The first thing that we know of Sehgal is that he met Spratt in Lahore in August 1927, when the latter was staying at the house of Dewan Chaman Lal. This does not mean much as Spratt was a 'well-known person at the time. It is said that in March 1928, he attended a meeting at the Bradlaugh Hall in Lahore to which some of the other Communists accused, Spratt, Dange and Majid, also went. It is then shown that he attended the inaugural meeting of the Workers and Peasants Party of the Punjab at which there was an audience of about 60 persons. It was at this meeting that a resolution was passed that a party should be formed called the Kirti Kisan Party Sehgal became one of the five members in the sub-committee of this party. The learned Sessions Judge has remarked: There is no evidence to show what part was taken by Sehgal accused in the work of drawing up the rules and regulations. In the absence of evidence it must be presumed that he took his share in it.

200. But this presumption cannot be pushed very far. It may be noted that the accused has made a statement that he took no part in drafting the rules and regulations. The prosecution evidence itself shows that Sehgal had been doing Congress work for the last 10 years. In May 1928, there was another meeting in connexion with the organization of the Naujawan Bharat Sabha at which he also spoke. Now the aim and object of the Kirti Kisan Party was, it is pointed out, complete independence, but the constitution does not show that its members were committed to the

Communist programme. Sehgal spoke in April 1928, in Amitsar and also spoke on May Day at Lahore. The speeches are highly seditious, but Communist phraseology is not employed. There is an account of the "Friends of Russia Week" as reported in the Kirti in which Sehgal was said, along with thousands of other people, to have taken part and delivered lectures. Then in September 1928, Sehgal was present at a conference at Lyallpur, which Sohan Singh Josh also attended. At this Sehgal moved resolutions for a declaration by Workers and Peasants that they would not take any part in a bloody war, which, according to Mm, was in view owing to the military preparations of Capitalists and Imperialists. He was President of the Naujawan Bharat Sabha, but the Sabha was a Nationalist organization and included among its members men of all religions. It was more in the nature of a political than a revolutionary organization. He did not attend the All India Parties Conference at Calcutta, but the prosecution have pointed out that the probable reason for Ms absence was that he had been arrested previously. His participation in the Workers and Peasants Conference at Moerut must also be mentioned. His speech demanded complete independence and the abolition of British rule. He laid down 9 points for the labourers and peasants of India which have been summarized by the learned Sessions Judge as follows:(1) Unite together ; (2) Start unions at different places ; (3) Act upon what you pass (unanimously); (4) Use articles manufactured by the labourers of India ; (6) So long as you do not attain liberty, never use any article, however beautiful, manufactured by any foreign country : (6) The National Mag should be of uniform colour; (7) Celebrate all festivals and fairs together so that (mutual) love may be engendered ; (8) Do not try in any way to offend each other's feelings; and (9) Make common gymnasiums so that they may afford pleasure.

201. There is evidence of his association with some of the Communist accused. He was a prominent Punjab worker and so his coming into contact with them does not necessarily justify the conclusion that he had conspired with them to deprive His Majesty the King-Emperor of His Sovereignty of British India. The accused appears to have views, about workers and peasants in many respects similar to those entertained by Socialists. In his statement he has said:I am sorry to say that so far I have not been able to prepare my brain for Communistic ideas.

202. The learned Judge has pointed out that the accused has carefully avoided saying how the end is to be achieved. Four out of the five assessors expressed the opinion that he had not taken part in the alleged conspiracy. This is another case which has given us considerable anxiety. The violent character of his speeches more than his activities have raised considerable suspicion in our minds that he might have been prosecuting the aims and objects of the Communist conspirators. But "having considered the whole case we think that it would not be safe to uphold his conviction because there is an element of doubt, particularly as his activities in the various bodies cannot be said to have been necessarily of a Communist tinge.

203. NO. 4. Alve.--As regards Alve the learned Judge has remarked:This case is not quite on the

same lines as those with which I have dealt so far, mainly for the reason that Alve accused does not belong to the bourgeois or petty bourgeois class to which the six Indian accused from Bombay belong. He is definitely a member of the working classes having been actually a factory worker himself....He is a man who came to the front as long ago as 1923 when the Union known 'as Girni Kamgar Mahamandal was founded, and he became its first President.

204. Although not a highly literate person Alve occupied a position of eminence as President of this Trade Union. Naturally, he was sought after by Bombay Communists. Roy says in one of his letters that Alve's Trade Union was the basis of Trade Union work. This however is not conclusive. There is a reference to Alve in another letter addressed to Dutt. The last paragraph is as follows: The Girni Kamgar Mahamandal is almost equally compromising and is moreover divided internally. D.R. Mayekar, the Secretary, shares Joshi's views almost, and he is supported by most of the Committee. A.A. Alve, the President, is in favour of explaining to the men the actual state of affairs, but stops short of calling for a general strike. He will instantly plump for it if there is any further provocation, such as another mill attempting the new system.

205. But this does not show that Alve was a Communist or that Communists ordered his actions. He certainly joined the Bombay Workers and Peasants Party and attended one of their large executive meetings. When the Girni Kamgar Union was formed Alve became its President. Bradley and Nimbkar accused were also associated with him. The strongest point against Alve is his speeches. They are very violent. His text was that Government was behind the Capitalists and must be overthrown. These ideas seem to have been imbibed from the Bombay Communists and in some of his speeches he spoke of the strike not merely being for wages, but also for the capture of power. But his speeches were confined to the period of the strike. His early speeches were according to the Judge, innocuous. He advised the workers to remain peaceful and to persevere in the strike. His later speeches became more violent as the strike progressed. There are also some articles in the Kranti appearing under his name. But as Alve is not sufficiently literate the learned Judge had some doubt as to whether he was the author of those articles. The Judge remarked:

But it was not only through his speeches that he was spreading these ideas, for he also wrote, or some one wrote for him, and he signed a number of articles in the Kranti.

206. When questioned by the Magistrate his explanation was:

I never used that word (Communism). I do not know what it means.... I do not know what is Communism and what is called by that name. Similarly I have no information what this Communist International is; similarly I have no idea who Lenin was. Similarly, till this case was started I had no idea of what is meant by saying that a revolution took place in Bussia.

207. In his statement he explained that the speeches referring to the establishment of the Workers' Raj were regarded by him as empty talk. He asserted that: I have never taken any part in any conspiracy, I am not a Communist and was never one.... I have so far been working only by legal methods on behalf of the legal Trade Unions of the Workers, and I consider it my duty to do this work.

208. Four out of the five assessors thought: that Alve had not taken part in the alleged conspiracy. We find the charge against Alve not proved.

209. No. 5. Kasle.--As regards Kasle the learned Sessions Judge has observed: The case against Kasle accused is somewhat similar to that against Alve except that there is decidedly less evidence available in regard to the part which he has taken.

210. Kasle became a member of the Workers and Peasants Party of Bombay and attended some of the meetings of the Executive Committee. The learned Judge has also remarked: It seems also decidedly doubtful whether he went to Calcutta for the All India Workers and Peasants Conference.

211. Kasle was connected with the Girni Kamgar Mahamandal and also the Girni Kamgar Union. But the learned Judge remarked: He does not seem to have taken a particularly active part in the meetings of the Executive Committee of the Mahamandal.

212. He however appears to have been elected a member of the Managing Committee of the Girni Kamgar Union and took some part in auditing the accounts, seconded resolutions for a telephone installation, and for purchase of a car and a bicycle. His name was used in the two leaflets which were issued as Red Army handbills. The Red Army was the name given to 'the strike volunteers. The strongest point against Kasle is the character of some of his speeches. They have the same characteristics as Alve's speeches, and may unhesitatingly be said to be highly seditious. But Kasle was a "supposedly ignorant and unintelligent factory worker" according to the Judge. When questioned about his speeches he frankly admitted that Nimbkar had acted as his Guru and had taught him. He appears to have been well tutored by some of the Bombay Communists to make these speeches. In one of his speeches he emphasised that:

rifles are not required, guns are not required, swords are not required--our power of organization, our wisdom, our intellect--there are our swords. If this takes place through unity, the nation will eorae into our hands, the workers and peasants movement will come into our hands. Never mind, if in order to do that lakhs of persons are killed, lakhs get hanged; but I clearly say that we shall not tit in our place till we extirpate this bureaucracy from India.

213. In his statement he asserted: The reason for participating in the strike was that I was a

member of the G.K. Mahamandal and a mill worker and as a general strike took place, it was necessary for me to participate in the strike just like other men. I am not a Communist nor do I understand Communism. Before the strike I did not participate in any political movement, nor did I incite others to go on strike. I have not corresponded with any conspirator, nor was I connected in any way with any conspiracy.

214. He even expressed his ignorance of Communism and Leninism and says that he heard all this after coming to Court and never before. The learned Judge has thought: no doubt he is not an educated man with a full understanding of all the theory of Communism, but he had got into his head quite clearly the most important items.

215. Four out of the five assessors were convinced that he had not taken part in the alleged conspiracy. We think that the case of Kasse--against whom as the Judge has remarked there is decidedly less evidence than against 'Alve--is equally doubtful. Being a Trade Unionist he might well have been used as a tool by the Bombay Communists and coached to make highly violent speeches during the strike. His joining the Bombay Workers and Peasants Party, the constitution of which did not suggest that it was a Communist organization, does not implicate him. He should be given the benefit of the doubt.

216. No. 6. Gauri Shankar.--Gauri Shankar accused was the Secretary of the Mazdur Kisan Sangh of Meerut which had been in existence since 1920. It is not suggested by the prosecution that this organization was Communist in its nature. In March 1928 a conference of this Association was convened by Gauri Shankar, but it is not suggested that this was a part of any Communist conspiracy. In October 1928, Gauri Shankar called a Workers and Peasants Conference at Meerut under the auspices of the old Mazdur Kisan Sangh. One suspicious circumstance against Gauri Shankar is that the President-elect of this Conference was the accused Usmani, a known Communist. Nevertheless it is not suggested that the conference itself was a Communist Conference, or that Gauri Shankar acted illegally in convening such a Conference under the auspices of the Mazdur Kisan Sangh. The choice of the President was unfortunate for him. Advantage was taken of the holding of the session of this Conference, and on this occasion a new Workers and Peasants Party of the United Provinces was formed at Meerut. The accused in the Court below did not admit the existence of any such Party in these Provinces, but there are numerous letters issued by P.C. Joshi on printed forms showing that he--Joshi--was the General Secretary of the Workers and Peasants Party of the United Provinces. There are also letters showing that a paper Kranti Karl was the organ of this Party. The evidence further shows that this Party was formed as a result of the efforts of some Communists. But the constitution of the Party is not before us, and it cannot therefore be presumed that it was necessarily a Communist organization. Probably its constitution was similar to those of the Bengal and Bombay Parties. The membership of such a Party, though suspicious, cannot be conclusive.

217. One point against Gauri Shankar is that he attended the Conference of the All India Workers and Peasants Party held at Calcutta. But this Conference was held during Christmas week when the Congress was in session. Gauri Shankar has throughout maintained that he was a Congressman and he had a great regard for Mr. Gandhi. It is also not denied by the prosecution that the evidence shows that after attending the All India Workers and Peasants Party Conference at Calcutta his interest faded away and he became indifferent. This is clearly shown by several letters written by Joshi in which he complains that Gauri Shankar was keeping silence implying that he was not replying to his letters. In another letter Joshi complained that he had not heard from Gauri Shankar at all, and was contemplating the disaffiliation of the Meerut Party. He described Gauri Shankar as "idiologically bunkum." Another point against Gauri Shankar is that in the search, various papers were discovered in his possession including a printed article entitled a "Call to Action." This has already been referred to as a piece of Communist literature. But the possession of such a document, though highly suspicious, cannot be conclusive in establishing that Gauri Shankar had conspired with Communists to deprive His Majesty of the Sovereignty of British India. In his statement Gauri Shankar said: I want to say that I have been following the Congress creed not only in thought but in deed also. I prefer practical work to writing letters, as I have done practical work for seven years as the Secretary of the Mazdur Kisan Sangh and the Congress....Up to the time of my arrest I have been a member of the Town Congress Committee, the District Congress Committee, and the Provincial Congress Committee.

218. He explained all his activities as done in furtherance of Trade Unions and Peasants and Workers organizations. He had been carrying on the work of a Workers and Peasants organization since 1920. He actually became the Secretary of the Sangh in 1925. With regard to its organization the learned judge observed:

But of course it is to be remembered that it is nobody's case that, the old Mazdur Kisan Sangh or Sabha was affiliated to the All India Workers and Peasants Party.

219. He appears to have been regarded by Joshi and Muzaffar Ahmad as the Secretary of the Meerut branch of the U.P. Workers and Peasants Party, but as already remarked, the constitution of that body is not known. Some letters in English were relied upon, but with regard to them the learned Judge has remarked: In all probability there could be no proof of handwriting, because at this time in his history Gauri Shankar's knowledge of English was very slight and I imagine that (the document) was probably written on his behalf by a scribe.

220. The learned Judge's concluding remarks regarding him are as follows: It appears to me that the only reasonable inference from all the evidence in Gauri Shankar's case is that he was quite satisfied with the aims and objects of the Workers and Peasants Party as long he thought he was able to combine membership of that party with not sacrificing entirely his allegiance to the

Congress. The fact however that he retained a sentimental allegiance to the Congress cannot free him from the responsibility of having accepted the aims, objects and methods of the Workers and Peasants Party and that he did so for a period of at least two and half months seems to me to be clearly proved,

221. The learned Judge has thought that no intelligent man who was present at the Meerut Conference and joined the Workers and Peasants Party under the auspices of Communists could be ignorant that he was joining a party whose object was to bring to an end by means of revolution the existing form of Government in India. All the five assessors did not accept this view. We are of opinion that the case of Gauri Shankar is doubtful and we must give him the benefit of the doubt. All his activities, particularly his presence at the All India Workers and Peasants Party Conference, raise serious suspicions against him, but we think that they fall short of establishing that he had conspired to deprive His Majesty of His Sovereignty. It may be he was only carrying on active propaganda for a Trade Union or a Workers and Peasants organization.

222. No. 7. Kadam.--Kadam is not a very literate person. He has not made many speeches, nor are there any articles written by him for any paper. He was responsible for organizing the G.I.P. Railwaymen's Union at Jhansi and he also formed a Mazdur Kisan Sangh at Jhansi, but this body was never affiliated to the Workers and Peasants Party. He attended the All India Trade Union Congress or Conference at Cawnpore. He convened a Workers and Peasants Conference at Jhansi and invited the accused Jhab-wala to preside over it: Muzaffar Ahmad and Mirajkar were also invited. The evidence however does not show that he ever went to Bombay and associated with any of the accused there. The accused, Johsi, in one of his letters gave him a good certificate as a sincere worker. He was also on the Executive Committee of the U.P. Workers and Peasants Party, although the activities of this party are not fully known. As a delegate he went to Calcutta to attend the All India Workers and Peasants Party. It was suggested by the prosecution that the report of the Conference showed that L.N. Kadam was selected to represent the U.P. It was suggested on behalf of the accused that the Lakshami Narain referred to in the papers was the Editor Lakshami Narain of Kranti Karni and not this accused. It is to be conceded that in notes there is some confusion which lends support to the suggestion of the accused that it was Lakshami Narain, Editor of Krtanti Kari who was selected. At any rate there is some doubt on this point.

223. Some documents were found in the possession of the accused including "Modern India" by Dutt and "India and the Next War" by Sohan Singh, also a small pamphlet by a German lady and copies of the Kranti. There is no doubt however that Kadam was a Trade Unionist and was taking an active part in the G.I.P. Railway men's Union and had joined the labour movement. He might well have been induced by the Communists to attend the All India Workers and Peasants Conference at Calcutta. The conference convened by him at Jhansi was not necessarily in

pursuance of a design to propagate Communist ideas. The Communist literature in his possession might well have been lent to him by the Communists who were endeavouring to convert him. He made several speeches which are highly seditious, but they could have been made by an extremist labour man or a Trade Unionist, and do not necessarily lead to the conclusion that he conspired with the Communists. In his statement Ka-dam stoutly denied that he had any concern with the conspiracy and asserted that he was working as a Trade Unionist. There are, no doubt, several suspicious circumstances against him, but we think that the evidence falls short of establishing that he conspired to deprive His Majesty of his sovereignty. The learned judge in dealing with this case has remarked as follows: The case against Kadam accused rests, it will have been seen, largely on association and on the evidence as to how other members of the conspiracy regarded him. First of all we have it that he got in touch at an early stage with the Bombay Party. There is nothing to show that he pursued this very far or that he was ever actually accepted as a member....He got into touch ("with some Communists") and on the occasion of his visit to Cawnpore must also have met a number of other members of the conspiracy. In association with Jhabwala accused he proceeded to organize a branch of the G.I.P. Railway men's Union at Jhansi and very shortly afterwards he started a Kisan Mazdur Sabha. This Sabha was not of course organized in association with members of the Workers and Peasants Party.

224. The learned Judge then went on to point out the coincidence that within six months of his making inquiries from the Bombay Party, and within a few months of coming into contact with members of that party, he should have started a Workers and Peasants organization of his own. All the five assessors considered that the case had not been proved against Kadam. We have come to the conclusion that his case also is extremely doubtful. We would now like to point out that the accused who are being acquitted have themselves largely to thank for their prosecution. Their seditious activities and association with Communists created a natural suspicion that they were engaged in the conspiracy. The evidence on the record shows that Communists look upon the British Empire as the citadel of Capitalism and the main obstacle to the progress of the Proletarian revolution in the world. Possibly it was on this account that a determined attack was contemplated on India which was considered to be Britain's most vulnerable spot. We have no hesitation in saying that the Government were fully justified in starting this prosecution which has resulted in a dangerous conspiracy being broken up.

225. It has been strenuously argued by counsel for the accused that Government had initiated this prosecution for the purpose of suppressing "opinions, ideas and education." This is a curious argument to advance on behalf of professed Communists. It has been abundantly proved in this case that it is essential for the success of the "Dictatorship of the Proletariat" that all ideas and opinions contrary to orthodox Communism must be sternly obliterated together with those unfortunates who hold them.. Further, that all those who are tainted with the Bourgeois vices of

humanity, sentiment, or piety, and who might therefore object to this "obliteration" policy, cannot possibly be good Communists, and that in the "material" home of the Communists--"spiritual" would not be the correct word--this policy is ruthlessly carried out. It cannot be too clearly stated that in this case the Government has not prosecuted anyone for his opinions. The gravamen of the charge--which as regards a large majority of the accused has been proved--is that they have endeavoured to put their opinions into practice; the inevitable result of their action is that the accused have brought themselves within the scope of Section 121-A, Penal Code. It now remains to consider the question of sentences. It may be said that the object aimed at in the conspiracy was impracticable, one might as well say impossible, of achievement. The steps taken by the accused till their arrest were in one sense utterly puerile and could not be conceived to lead to any such serious consequences as the accused dreamt of. 'But one reason why nothing substantial was done by the accused was the alertness and strict vigilance of the police, who were able to discover the conspiracy at an early stage and constantly watched the conduct of all the accused till their arrest. Even if there had been any chance of a partial success in rousing the peasants and workers, that was completely frustrated by the effective counteraction adopted by the highly efficient police. The detection of this conspiracy was a difficult matter, and it was very creditable to the Criminal Investigation Department that, in spite of every attempt having been made by the accused to conceal their designs and to cover up their communications and correspondence, the police managed to find out practically everything that the accused did or that passed between, them.

226. When a seditious appeal is made to illiterate and ignorant workers and peasants, organized propaganda and work carried on among them, particularly during strikes, and when inflammatory Speeches are made, it is not possible to look upon such conduct merely with contempt on the ground of its futility. Such a course of action might well lead to a serious general strike, a widespread breach of the public peace and bloodshed. We must therefore take a serious view of the offence of conspiracy committed by the accused whom we find guilty. In ordinary cases we would have no hesitation in inflicting long terms of imprisonment on the leading members of such a conspiracy. But there is one circumstance in favour of the accused which cannot be ignored. The learned Sessions Judge was of course aware of it, but we have not been able to find any reference to it, and counsel for the parties have not been able to draw our attention to it anywhere in the judgment. He does not seem to have imposed the sentence on the accused after taking into account the outstanding fact that all of them, except Hutchinson, were arrested in March 1929, Hutchinson was arrested in June of that year, and that, but for the short periods during which only some of them have been admitted to bail, they have remained in jail for all this time. We have already commented upon the duration of the proceedings. No doubt that was due to various causes, but the fact remains that for all this period these accused have been in jail and have been under the strain of this lengthy trial. We feel that it is only just that this

circumstance should be borne in mind and the sentences passed on the accused reduced on that account. We further think that, having regard to the limited scope within which the activities of the accused were confined, the scale of the sentences passed by the learned Sessions Judge is much too high.

227. As regards individual accused, we may say that the period during which Adhikari was in India before his arrest-was very short. Ajudhia Prasad was a lascar who was used principally as the messenger for carrying letters to and fro. Spratt and Bradley accused came out to this country from England with the express purpose of carrying on their propaganda and have taken an active part in the various activities mentioned by us throughout their periods of stay in this country. But the sentences of transportation passed on them, instead of penal servitude, are illegal and contrary to the provisions of Section 56, Penal Code. Muzaffar Ahmad, Dange and Usmani were previously convicted in the Cawnpore conspiracy case and sentenced. The other accused, namely, Ghate, Joglekar, Nimbkar, Mirajkar, Sohan Singh Josh, Majid and Goswami, stand more or less on the same footing so far as the gravity of the offence committed is concerned. Chakravarty and Shams-ul-huda stand lower in the scale.

228. After examining their cases and considering the reasons given by the learned Sessions Judge for the heavy sentences imposed by him upon them, we think that, having regard to all the circumstances of the case, it would meet the ends of justice to impose considerably reduced sentences. It is commonplace to observe that the theory of punishment is based upon: (a) the protection of the public; (b) the prevention of crime and (c) the reformation of the offender. But even commonplaces require restatement occasionally as in practice these principles are sometimes forgotten. In the case of political offences, arising out of the beliefs of the accused, severe sentences defeat their object. In practice such sentences confirm the offenders in their beliefs and create other offenders, thus increasing the evil and the danger to the public. We are satisfied that the sentences imposed in this case by the trial Court are calculated to defeat the purpose of punishment. We hope that" the sentences we impose will have the opposite effect. If they do not, and the present offenders prove incorrigible it may be necessary in the public interest to curtail their activities for lengthy periods. We accordingly order that the appeals of Ajodhia Prasad, P.C. Joshi, Basak, Adhikari and Shams-ul-huda be allowed to this extent that their convictions under Section 121-A, Penal Code, be maintained, but that their sentences be reduced to the terms already undergone by them. Consequently they will be released forthwith from jail.

229. As regards the appeals of Muzaffar Ahmad, Dange and Usmani, we order that they be allowed so far that their convictions under Section 121-A, Penal Code, be maintained, but that their sentences be and are hereby reduced to three years' rigorous imprisonment each. They will accordingly serve out the remainder of their sentences in jail. As regards the appeals of Ghate, Joglekar, Nimbkar, Bradley, Mirajkar, Sohan Singh josh, Majid and Goswami, we allow them to

this extent: that we order their convictions under Section 121-A, Penal Code, to be upheld, but we order that their sentences be reduced to one year's rigorous imprisonment each. They will accordingly serve out the balance of their sentences in jail. As to the appeal of Spratt, we maintain his conviction under Section 121-A, Penal Code, but order his sentence to be reduced to two years' rigorous imprisonment. He will accordingly serve out the remainder of his sentence in jail. As to the appeal of Chakravarti, we likewise partly allow it inasmuch as we order that his conviction under Section 121-A, Penal Code, be maintained, but as to his sentence we order it to be reduced to seven months' rigorous imprisonment. He will accordingly complete his term of imprisonment in jail. And lastly we order that the appeals of Desai, Hutchinson, Mitra, Jhabwala, Sehgal, Kasle, Gauri Shankar, Kadara and Alve be allowed, their convictions and sentences under Section 121-A, Penal Code, be set aside and that they be set at liberty forthwith. The first eight persons being already on bail need not surrender. The last shall be released from jail. The bail bonds of those who are not to surrender are hereby cancelled.

Cases Referred.

- 1(1892) 14 All 212
- 2(1892) 14 All 521
- 3(1898) 20 All 264
- 4(1892) 15 All 6
- 5(1903) Awn 1
- 6(1868) 3 E & Ir AC 3