TREASON TRIALS DEFENCE FUND.

PRESS SUMMARY . No.11

This is the eleventh issue of a regular bulletin giving a factual resume of the proceedings of the Treason Trial.

Period covered: Monday April 20, 1959 (and including reasons for judgment on second indictment, given on March 2, 1959).

SPECIAL COURT QUASHES TWO INDICTMENT

The Special Court ruled that the Crown's indictments against 61 of the Treason Trial accused were defective and should be quashed. This puts these 61 accused into the same position they were in at the conclusion of the long Drill Hall preparatory examination hearing; the Crown could draft and bring against them a fresh indictment, but in the meantime these 61 persons face no charge.

Indictments Defective - Crown should have sought Postponement

The Bench upheld the Defence argument that the indictments were defective. It was insufficient to allege that the accused had joined a conspiracy and to expect them to know the case against them, and from the past judgments on previous indictments delivered by the Court the present indictments were clearly defective. The Crown had argued that the date for this appearance had been gazetted by notice of the Governor-General.

The Crown had not been ready with particulars for the indictment and had anticipated a postponement of the proceedings. In that case the Crown should not have served the indictments. It could have suggested to the Minister that the Governor General proclaim a new date for the appearance of the accused.

Only 30 of the 156 still Indicted

Thus of the original 156 men and women arrested in December 1956, only 30 (one in five of the 156) still face charges of Treason and these 30 at present await the outcome of the Defence appeal against the indictment to the Appellate Division. The appeal has been set down to be heard from June 15.

At the request of the Defence the Court ordered that the Crown supply further particulars to the indictment in the case of the 30 by June 1. August 3 has been fixed as the date for the re-appearance before the Special Court of the 30 accused, as the decision of the Appeal Court is expected to be known by that time.

61 AccusedSplit into 2 Cases.

The 61 accused summonsed to appear in Court on April 20 were split into two groups, one of 30, the second of 31 accused persons. The indictments served on the two groups were identical except in respect of evidence of speeches and articles on which the Crown relied, and the period during which the two groups are alleged to have entered the treason conspiracy. Both groups were called into the dock simultaneously.

The cases were referred to as Case number 2 (Rex v. Bernstein) and Case Number 3 (Rex v. Barsel.)

Mr.A.I.Maisels, Q.C., leader of the Defence team said the Defence knew of no cases 2 and 3 and the Attorney-General proceeded at his own peril.

Mr.Justice Rumpff/.....

Mr.Justice Rumpff asked Mr.O.Pirow, Q.C., leader of the Prosecution, if the splitting into two cases was permissible and Mr.Pirow replied that it did not matter at this stage.

Defence Opposes Postponement.

Mr.Pirow then formally applied for the cases to be postponed to August 3.

Mr.Maisels said the Defencewished to lodge an attack on the indictments which it proposed to argue immediately. The points to be argued were completely independent of any to be covered by judgment of the Appeal Court.

The Bench agreed to hear the argument of the Defence.

Defence attack on the Indictment.

Mr.Maisels said the two indictments before the Court were embarrassing and prejudicial to the accused as the charge did not set out the offence alleged to have been committed.

The Presiding Judge, Mr.Justice Rumpff, interrupted at this stage to ask whether, apart from matters already before the Appellate Division, and the point being argued by Mr.Maisels, there would be any other grounds for attack on the indictment. In past argument, he said, the Defence had deliberately attacked the indictment piecemeal. Perhaps the Defence was entitled to do that but it led to waste of money and time, and when the Defence knew there were a number of grounds for attack on the indictment, these should be argued together.

Mr.Maisels said these remarks affected the Defence conduct of the case. He wished to make it absolutely clear that it was never the intention of the Defence to withhold points of attack on the indictment. Further points had become obvious during argument on the first indictment. The Defence was more aware than the Crown, and with much greater reason, of the time and expense involved in this case.

The indictments before the Court were patently defective and should be quashed. If the Bench did not quash the Defence had ready a draft order for further particulars.

The Crown Did not Use its Remedy.

The Crown should have obviated the current hearing and could have done so in a simple way, but it did not choose to. The Crown had no right to issue these indictments in the form they were issued, in the light of what had happened in earlier hearings in this court. It was not sufficient to make the bald statement that persons "did join a conspiracy". The accused were entitled to be told what they had actually done.

Asked by Mr.Justice Bekker if the Defence should not have applied for further particulars, Mr.Maisels said the accused were not obliged to do so. "This document is so vague I should not have to plead or ask for particulars."

Judgment has already been Given.

All these matters had previously been canvassed and judgment had been given on them by this Court. In drawing up the indictments the Crown had simply ignored the findings of the Court and had elected to repeat the bald allegations of violence as though there had been no previous judgment of the Court. The Crown had no right to expect a further application for particulars. There was no duty on the accused or the

Court/.....

Court to fill in gaps in a manifestly defective indictment. By now the Crown had had sufficient experience in drawing indictments in this kind of case. The Crown conduct was indefensible. The minimum requirements for an indictment had twice been laid down by the court. The first order had been seven months ago, the second about six weeks ago. It was wrong for the Crown deliberately to withhold its full allegations and to again expect the accused to embark on the wearisome job of getting particulars.

Mr.Pirow's Reply.

Mr.Pirow said these indictments had been drawn this way because of the Defence attitude in the first case. Details entailing a tremendous amount of work on the part of the Crown had been given for the Defence to say it did not want these particulars.

Mr.Justice Bekker said particulars had been ordered in the previous case, but none were furnished here.

Mr.Pirow said the Crown was not yet ready and had to get a postponement of the case.

Mr.Justice Kennedy asked whether the indictments should have been issued at all.

Mr.Pirow said the accused had to be present in Court because of the notice in the Government Gazette.

Mr.Justice Rumpff said if the Crown was not in a position to file the indictment in its completeness, the Governor General should have been asked to fix a different date for the appearance of the accused.

The Judgment

The Bench retired to consider their judgment and when the Court resumed Mr.Justice Rumpff announced that the two indictments should be quashed The overt acts alleged in the indictment lacked particularity to such an extent that the accused could not prepare their trial. No particulars had been given as to how it was alleged the accused had joined the conspiracy. It was not sufficient to allege they had done so, and to expect them to know the case against them. Mr.Pirow said the Crown was uncertain what the accused would want to know, but it had been very clear from previous judgments on the indictments.that in their present form they were defective. The indictments should not have been served in this form and if the Crown had not been ready it should have suggested the fixing of a new date for the appearance of the accused in Court, this date to be fixed by the Governor General.

The Court then adjourned.

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JUDGMENTS ON SECOND INDICTMENT

The Special Court's Reasons.

On March 2, 1959 the Special Court dismissed the exception and application to quash in which the Defence attacked the second indictment against 31 persons (See Press Summary No.10), but ordered the Crown to supply certain particulars of alleged violence.

The three judgments, 73 typed pages, are briefly as follows:-

Mr.Justice Rumpff found that the exception to the effect that the acts alleged were incapable of constituting acts of treason, would be good

if/.....

if the Defence contention that the change was based on words only, was correct.

Political Climate might be Created.

However, the charge alleges a conspiracy and words spoken and written in pursuance and furtherance of that conspiracy, so that the circumstances in which those words were uttered must be taken into account. If proved, the words alleged manifest a hostile intent and might be capable of contributing to the achievement of the ultimate object of the conspiracy: the overthrow of the State by violent means; i.e. eachact alleged (e.g. convening the Congress of the People, drafting the Freedom Charter which was in view of its contents a potent weapon of propaganda envisaging, as it does, a completely different type of State from the present South African State), might be a link in the chain of events leading to that end.

A political climate and a mental state, without which the overthrow of the S.A.State might never be achieved, might be created by advocating illegal action, campaigns against existing laws, inciting violent resistance against the enforcement of laws and by promoting feelings of discontent and hostility between the races of South Africa.

The application to quash on the grounds of misjoinder of the accused in one indictment was refused as the provisions of Section 308 of the Criminal Procedure and Evidence Act allow the joinder of persons where there is a joint conspiracy and a course of action common to all, though each person is charged with separate overt acts, and is not alleged to be responsible for the acts of the other accused.

Mr.Justice Bekker agreed with the above view of the exception and associated himself with Mr.Justice Rumpff's criticism of the Crown concession that the accused were not, in terms of the indictment, vicariously responsible for the overt acts of each other.

Each Accused Alleged Responsible Only for Acts Committed by Him.

He accepted the position that the Court was bound by the Crown's attitude and that this meant that each accused is thus only alleged to be responsible for the acts referring to him. He also concluded that since the accused, though committing separate acts, were each acting in terms of a common course of action, the conspiracy, the joinder in one indictment was valid unless there was prejudice to the accused. On this latter aspect, Mr.Justice Bekker concluded there was no prejudice since the proof of the conspiracy was by inferencefrom all the words of all the accused. The Defence contention, that in this manner the Crown sought to get round the statutory provision that treason must be proved on the evidence of two witnesses where one overt act is charged,was dismissed as the Crown was entitled to adopt this approach. He did not agree with Mr.Justice Rumpff in his conclusions on Section 328, though on his different reasoning the practical result was the same - the application to quash on misjoinder was dismissed.

Mr.Justice Bekker then deal with the Defence argument, that the Crown furnish particulars of the allegation of violence which is the essence of the charge of treason. The Crown had furnished a general answer in the form of a "summary of facts" which was not confined to the issue of violence and involved the accused in matters not relevant to violence in order to acquaint themselves with the particulars of violence. In any event an accused is not obliged to examine a mass of particulars and then to surmise or to infer on theories as to the case he has to meet.

Furthermore, without allegations as to special facts and circumstances, many speeches and documents are not, prima facie, suggestive of violence or related to the issue of violence. Thus the Crown must disclose

such/.....

such details to the accused. Without these further particulars the accused cannot hope to become acquainted with the Crown case.

Mr.Justice Bekker could see no reason for the Crown attitude that it could not supply particulars requested. Accordingly an order has been made for certain particulars relating to details of violence to be supplied.

Mr.Justice Kennedy in his judgment dealt with the numerous amendments applied for and granted during the course of the long argument. He agreed with Mr.Justice Rumpff on the quality of an overt act and with Mr.Justice Bekker on further particulars and misjoinder.

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INDICTMENTS 3 & 4

Separation of Accused.

Early in April, the Crown served two indictments upon the Defence, together with notices of trial for April 20. There were two indictments because the Crown had quite unexpectedly decided to divide the remaining accused again, into groups of 30 and 31.

Differences between Indictments.

There were few differences between the two indictments, or between them and the indictment in the case of the first 30. The allegations that the accused wanted to achieve changes "in their lifetime, meaning thereby five years", which caused so much argument at the February hearing, were now dropped. The indictment against L. Bernstein and 30 others alleged that these accused had joined the treasonable conspiracy between October 1952 and October 1953. That against H. Barsel and 29 others said that the conspiracy was joined between October 1952 and December 1954. The result of this difference was that speeches made during 1954 could be included as overt acts in Bernstein's case, but not in Barsel's.

Apart from these differences, it was the same charge, based on a conspiracy, speeches, documents and the Congress of the People.

Particulars not Given.

None of the particulars which had been given in amplification of the old indictment were given now, neither was there any attempt to supply the additional particulars which the Court had ordered in the first case, in its judgment of March 2.

Crown Attitude

It was known that the Crown did not intend to proceed with the trial on April 20, but would ask for a postponement, pending the outcome of the appeal now under way in the first case. Under these circumstances, Counsel for the Crown apparently took the attitude that only the formal skeleton of an indictment was required at this stage.

Defence Argument

The Defence contested this attitude and contended that the Crown must either serve a complete indictment, with all necessary particulars, or serve no indictment at all. An application to quash the two indictments was accordingly made on April 20. A full report of that day's proceedings appears elsewhere in this issue.

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