PRESS SUMMARY

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

Period covered: 15 -- 17 June 1959 (Appeal Court Bloemfontein)
3 - 4 August (Resumption of trial, Pretoria)
10 August (Mr. Pirow's Opening address)

APPEAL STRUCK OFF

On 2 March, 1959, the Special Criminal Court allowed the Defence application to appeal on certain questions of law, (see Press Summaries Nos.10 and 11.)

The hearing began before the Appeal Court in Bloemfontein on 15 June, with the Crown arguing, as they had done in Pretoria, that on a proper interpretation of the relevant sections of the Criminal Code, the Court had no power to grant leave to appeal in mid-trial. The argument on the quashing of the indictment could only be heard after the conclusion of the trial if the accused were convicted. Alternatively, the Crown submitted that if the Special Criminal Court had the necessary power, its discretion should have been exercised in favour of the defence only in exceptional circumstances, and the present circumstances were not exceptional.

Mr.I. Maisels, Q.C., argued the contrary view which had been accepted by the Special Court. The Appeal Court, however (giving judgment on 17 June), upheld the Crown's main submission and the appeal was struck off the roll.

(The judges who sat were the recently appointed Chief Justice Steyn, Appeal Judges van Blerk, A. Beyers, Ogilvie Thompson and Acting Judge of Appeal Holmes.)

THE TREASON TRIAL RESUMED

Crown's Defence of Indictment and Information Supplied

When the Treason Trial of 30 accused resumed on August 3, the Crown objected to the Defence application for the quashing of the indictment. Mr.O. Pirow, Q.C., leading for the Crown, objected that

a) the facts in the application did not support the exception to the indictment or the application to quash;

b) neither the application to quash nor the exception to the indictment was permissible, in terms of Section 158 of the Criminal Code.

Opening his argument on the first point of the objection, Mr.Pirow stated that the Crown had been asked to disclose certain documents and speeches on which it relied for the purpose of inferring violence. A mass of evidence had been given, totalling over 1,000 items and including documents and reports of meetings. It had been made quite clear that the Crown relied upon the evidence as a whole, and Mr.Pirow submitted that at this stage, unless the Court was prepared to go through all the evidence, the Crown must be the sole judge of the relevancy of the evidence. From the notice of the application to quash, there was no suggestion by the Defence that the evidence as a whole was incapable of supporting the allegation of violence.

Continuing the argument for the Crown, Mr.Trengove claimed that the Defence had failed to comply with Section 168 in that reasonable notice had not been given to the Crown, and that full grounds for the application to quash had not been set out in the notice, nor had the Defence given any reasons for

their assumption that the accused were prejudiced. The reason why the Crown should be supplied with sufficient particulars was obvious.

Mr.Hoexter then outlined the compliance of the Crown with the Order of Court made on 2.3.1959.

i. the policy of the organisations in relation to violence had been set forth;

ii. in respect of each organisation, the Crown had set forth the particulars of the speeches and documents relied on, together with numbered references to the record of the preparatory examination, so that it would be easy for the Defence to refer to them. These particulars had been served on the Defence on 2.6.59; on 17.7.59 the Crown had received a request for further particulars of which some had been furnished by the Crown (others had been refused) on 29.7.59. Subsequently, the notice of exception and the application to quash had been served by the Defence.

In the notice of exception the Defence had complained that the further particulars furnished by the Crown did not comply with the Order of Court, in that the facts, speeches and documents were not confined to the issue of violence against the State, but the Defence had failed to inform the Crown which documents and speeches were objected to and the grounds for the alleged inadequacy.

The policy of reciprocal support of the organisations to which the accused belonged had been set out in the Summary of Facts, and at no stage in the prior hearing had the Crown been ordered to supply information as to the facts, etc. on which it relied for this allegation of reciprocal support. On 17.7.59, however, the Defence had asked for such facts in their request for further particulars.

The Crown had set forth the series of facts and circumstances on which it relied in relation to reciprocal support of policies, e.g. the Indian Congresses supported and co-operated with the A.N.C. in supporting the same publications, attending the same meetings, Executive members made speeches at meetings of each others' organisations.

The Crown submitted that the Defence contention that "they did not know what case they have to meet" was meaningless; it was clear from the judgment on 2.3.59 that violence was the only issue outstanding; the adequacy of particulars, other than violence, had already been argued in Court.

Defence Objections to Amplified Indictment

Replying to the objection by the Crown; for the Defence, Mr.H. Nicholas pointed out that the whole matter must be considered in its setting - which was the Order of Court which had prescribed what further particulars should be furnished. The Defence submitted that the Crown had failed to comply with the order, because the further particulars supplied had not been limited to violence as required by the Order of Court in terms of Mr.Justice Bekker's judgment. The accused should not be called upon to consider additional information.

Mr.Justice Rumpff, presiding, stated that the Court proposed to note the Crown objection to the application and to hear the Defence Argument, since to some extent the validity of the Crown objection would depend upon the argument presented by the Defence.

Continuing the Defence argument, Mr.Maisels protested that although the further particulars supplied by the Crown looked better, they were in fact nothing more than the "particularised policy of the A.N.C.". In two of the organisations, a microscope would be required to find any trace of violence in the quoted speeches. The Crown had still failed to give the particulars required by the Court on the issue of violence. The Crown must not merely establish co-operation, but show that each organisation wished to bring about political change by violence. For three of the organisations,

there was no allegation of support of the Freedom Volunteers.

The Defence contended that the Crown was seeking to establish conspiracy in an improper way; the same flaw remained as on the last occasion. If the blanket allegation of violence were removed, there were no speeches, facts, etc., to support the charge of violence against the State for several organisations.

Mr.S. Kentridge then continued the argument for the Defence, saying that he would illustrate the gaps between the policies of the organisations. The case against the A.N.C., for example, as set out in the documents, was entirely different from that set out for the S.A. Indian Congress. In the case of the S.A. Coloured People's Organisation, it was alleged that A.N.C. delegates attended S.A.C.P.O. meetings and explained the A.N.C. policy, but the Defence had not been referred to any occasion on which the A.N.C. delegate had "explained" A.N.C. policy.

The speeches relating to the Indian Congresses showed only a policy of non-violence. This Congress was being accused of violence only by means of a blanket allegation of support of A.N.C. policy. The Defence submitted that by relying on the blanket allegation, the Crown had still failed to make the point of violence and had substantially failed to comply with the Order of Court.

Resuming the argument on the second day, August 4, Mr.Kentridge referred to the Court objection that whereas formerly the Defence had complained of "too little information, it now complained of too much. Mr.Kentridge reminded the Court that the Defence had always complained of an undigested mass of facts from which they were supposed to infer violence; there was now a smaller and semi-digested mass of facts!

Mr.Justice Bekker commented that the Crown had committed itself by saying certain speeches were "violent"; it would merely be for the Defence to ask "Why?"

Mr.Kentridge went on to disagree with the claim of the Crown to be deemed the sole judge of relevancy, submitting that obvious irrelevancy could not be proper and repeated the Defence objection that the Crown had failed to comply with the Court Order.

The Court's Ruling - Rejection of Defence Applications

Mr.Justice Rumpff said that on 2.3.59 the Court had ordered the Crown to inform each accused on what the Crown relied for the inference of violence in relation to the policy of the organisations. The Crown had supplied a comprehensive document setting out the facts relied on, and in response to a request for turther particulars, had supplied these on 22.7.59. The Defence was, however, not satisfied that the Crown had complied with the Order of Court.

The Crown had objected to the notice of exception on the grounds that it did not comply with Section 168 of the Criminal Code, which required adequate notice, but the Court did not find it necessary to consider this, as neither the exception to the indictment nor the application to quash could succeed. The Court was not called upon to consider the cogency of the evidence, the Crown had been called upon to supply information to the accused and had done so and, in the opinion of the Court, the accused now knew what case they had to meet and were not prejudiced by the information supplied by the Crown. The Defence had pointed out that the statement that organisations other than the African National Congress had had knowledge of and supported the policies of the African National Congress prejudiced the accused because the Crown had not supported this allegation with primary facts. The Defence had also submitted that the further particulars supplied by the Crown were of no assistance becaused the accused had once more been referred to the record of the preparatory examination. The Court did not agree with this view. Although all the primary facts had not been given, the gist of the case against the accused had been sufficiently set out. The application to quash was therefore refused.

THE TRIAL PROPER COMMENCES

Accused Plead 'Not Guilty'

By agreement, the procedure of reading the indictment to each accused was then waived, and the accused pleaded individually "I plead not guilty to the charge insofar as the overt acts are laid against me". On behalf of the accused, Mr.Maisels then made the following statement to the Court:

"It has already become apparent that during the preliminary stage of the case that the central issue is the issue of violence.

While no admissions are made in regard to any of the Crown's allegations, the Defence case will be that it was not the policy of the African National Congress, or any of the other organisations mentioned in the indictment, to use violence against the State. On the contrary, the Defence will show that all these organisations had deliberately decided to avoid every form of violence and to pursue their ends by peaceful means only.

The Defence will rely for its contentions as to the policies of these organisations upon their constitutions, the resolutions taken by them at their conferences, and the pronouncements of their responsible national leaders. If necessary, these leaders will be called as witnesses for the Defence. The Defence will place before this court the material relating to these organisations from which their policies might normally be expected to be deduced.

In its indictment, the Crown has relied upon certain speeches, most of them by persons of minor importance, which may seem to suggest the existence of a policy of violence. Insofar as such speeches were in fact made in the terms alleged, the defence will say that they may have represented the notions of individuals, and not the policy of the organisations."

Addressing the Court, Mr.Pirow stressed the importance of the opening statement by the Crown in which the case against the accused would be fully set out and the evidence would be preshadowed. On two occasions this opening address had been prepared and roneo'd, but the applications by the Defence for quashing of the indictment had thrown it out of focus, and on this occasion it was not yet ready for presentation to the Court and the accused.

Mr.Justice Rumpff: But, Mr.Pirow, why on earth could you not have had it ready for yesterday?

Mr.Pirow: The Crown could not anticipate the judgment of the Court. Although we believed in the rightness of our stand, it would have been a waste of time to have prepared the opening statement for yesterday.

Mr.Maisels then agreed, on behalf of the accused, that evidence of documents could be led pending the opening address by the Crown on Monday, August 10, and the Court then adjourned until the following day.

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THE CROWN'S OPENING ADDRESS

As the opening address, summarising the Crown case, is of such importance, it is added here in full.

The early stages of evidence lead by the Crown (on 5, 6 and 7 August, before Mr. Pirow's opening address on 10 Aug.) will be included in the next Summary.

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