

P.N.
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MAISELS ASKS FOR CLARITY

MR. I. A. MAISELS, Q.C., leader of the defence team, said a little less anxiety by the Crown to throw everything into the evidence and a little more attention to the ordinary facts — if there were any — and a clear charge might have produced an indictment of some simplicity, when the treason trial was resumed in Pretoria yesterday.

The court rippled with laughter when Mr. Maisels dealt with the use of the expression "and/or" in the indictment.

He said Mr. Justice Van den Heever had described the words "en/of" in a case in the Orange Free State Division as being an imitation of the English "and/or" and which had little meaning in the circumstances. The judge said one could just as well say "trousers is and/or are worn."

In an English case, the judge, referring to a gift to a woman and/or a man, said the expression was indefinite. He did not think he had met it before in a will and he hoped he would not meet it again.

In another English case, the judge said the expression should not be used in an affidavit and threatened to order costs against anyone using it.

"One can say fairly," continued Mr. Maisels, "that it is the sort of thing which courts do not like. It is an unfortunate expression."

PERMUTATIONS

He said Mr. Justice Van den Heever had asked why the person who drafted the charge in a certain case had introduced a series of permutations which created an astronomical number of possible counts against the accused.

Mr. Maisels: But the prosecutor in that case was an amateur compared with the one in this case. He only used a half a dozen 'and/ors'. It is nothing compared with the use of this unfortunate expression in this case. And I only refer to its use in Part B of the indictment.

Mr. Maisels said that the number of possible combinations in paragraphs 1, 2 and 4 of the main charge had been computed by an actuary for the assistance of the court.

498,015

Mr. Maisels said that in paragraph 1 of part B of the indictment "and/or" occurred six times. The accused could be found guilty on each of six items and each could be alternated with the other.

This meant that the number of charges could be worked out at 63. In paragraph 2 there could be 31 charges and in paragraph 4 there could be 255 charges. Each of the charges in each paragraph could be alternated with each of the others, giving a total of 498,015 charges.

The Crown, in case they had limited themselves, were careful to add the words "inter alia." This meant that there could be an infinite number of counts.

"If this were not a serious case of high treason it would be a matter for amusement. But it is not. What the Crown has asked the accused to do is this 'You must look at the record of the whole preparatory examination and bear in mind that there are 498,000 different ways of being found guilty.'

CONTRADICTIONS

Mr. Maisels said he would attempt to show the contradictions in the indictment.

There was an allegation that it was part of the conspiracy that various aims, purposes and objects should be achieved by the convening of a Congress of the People and the adoption of a freedom charter. The congress, according to the charge, was held on June 25 or 26, 1955, and the freedom charter adopted on one of those dates.

Making further submissions of the embarrassment to the defence, Mr. Maisels said the indictment was badly framed in that it referred to "the conspiracy" but seemed to refer to more than one conspiracy.

He referred to certain organisations which were alleged to have taken part in "the conspiracy" against the State from October 1952 to December 1956 (the period covered by the indictment).

But some of these organisations were only formed some time after October 1952, for instance, the Federation of South African Women which was formed in 1954 and the National Action Council of the Congress of the People which was also formed in 1954.

Therefore these organisations and their officers could not have taken part in a conspiracy which began in October 1952 and on that basis there was more than one alleged conspiracy.

"If there is more than one conspiracy then the Crown must have separate charges for each overt act and then possibly separate trials."

Mr. Maisels said it would be impossible to fight the case on the basis expected by the Crown.

The trial was adjourned until today.