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21/5/58.

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PIROW APPLIES TO HAVE INDICTMENT AMENDED

MR. OSWALD PIROW, Q.C., leader of the Crown team of counsel at the treason trial, yesterday made application to amend the indictment. He also outlined the view of what course the Court could take in considering the application by the defence for the charges to be quashed.

Mr. I. A. Maisels, Q.C., leader of the defence, said the amendments Mr. Pirow wished to make would not relieve the embarrassment suffered by the defence at all.

He also referred to a curious letter which the defence had received from Mr. M. O. Barker, one of the Crown counsel.

Mr. Pirow said he wished to make two amendments to the particulars of the indictment.

The object of the first amendment was to limit the references to the preparatory examination in adducing facts on which adherence to the conspiracy was alleged to be based.

Application for limitation of references was not because the Crown felt in duty bound to do so but because it was suggested very strongly by the defence that the accused had been prejudiced.

"We want to meet them without admitting that it was improperly placed there in the first instance."

DOCUMENTS

Mr. Pirow said the second amendment to the indictment would deal with documents either in the possession of the accused or in the possession of certain other bodies.

He then explained that certain documents had been given numbers before the preparatory examination and then had not been handed in and consequently were not a part of the record.

He applied for these documents to be excised.

While Mr. Pirow was referring the court to the type-written amendments, Mr. Maisels rose.

Mr. Maisels: The Crown have been good enough to give us one copy. There are eight of us



Mr. Pirow

appearing here with only one copy between us. We are accustomed to that treatment already but one of the accused is appearing on his own behalf and has no copy. Would the Crown be good enough to give him a copy?

GLAD

Mr. Pirow. I am glad to see that my learned friend is accustomed to that treatment. I will do my best to see that it does not happen again.

When Mr. Pirow had finished reading the references to the deletions and substitutions he wished to be made in the indictment, Mr. Maisels rose again.

Mr. Maisels: I will contend that these amendments do not

make the matter any clearer at all. The embarrassment is not removed.

Mr. Pirow then addressed the court on the possible ways it could deal with the defence application to quash.

He said there were three courses:

(1) The court could quash the charges.

(2) The court could order an amendment in such way as the court thinks just.

(3) It could refuse to make an order.

NO CASE

Mr. Pirow said that there was no decided case in which a court had quashed a charge on the grounds of embarrassment only. After an interjection by the defence, Mr. Pirow said: No decided case that we can find anyway.

On the second suggestion the court would not strike out words from the indictment. That was not the function of the court, but it may give instructions to the Crown for this to be done.

Mr. Justice Rumpff: Can we do anything without an application from the Crown? May we not perhaps have some surprises for the Crown?

Mr. Justice Bekker: We cannot vary the indictment. The Crown may object and the defence may also have objections.

Mr. Pirow said the court may order the Crown to give further particulars.

Mr. Justice Rumpff questioned whether this could be done.

REPLY

Mr. S. Kentridge rose after Mr. Pirow had concluded his short address, to reply on behalf of the defence to Mr. Hoexter's argument on the exception to the alternative charges and the application to quash.

He said that the words advocate, advise and defend could mean only one thing and they had a common connotation: persuasion directed at the minds of others.

Mr. Kentridge gave various examples of what he meant.

"If an advocate prepares his argument last night can he be said to have advocated his client's case last night?"

"If a politician prepares his parliamentary speech by pacing up and down while in his room at night, can he be said to have defended his party policies?"

The trial was adjourned until today.