

Treason Indictment

'A Confused Mess'

THE INDICTMENT AGAINST the accused in the treason trial was a "confused, unmanageable mess," said Mr. H. C. Nicholas when the defence continued argument in support of its application for the charges to be quashed when the trial entered its 11th day today. Mr. Nicholas was arguing the point that the accused were prejudiced because the indictment did not set out separate counts, or overt acts, against them.

Mr. Nicholas said there were many overt acts, for each of which an accused could be held

Mr. Nicholas: Yes, my lord. intent was proved — and these acts were all lumped together.

The Crown should have separated each alleged act, set it out as a count, and numbered it in the indictment. In failing to do this it had not complied with the provisions of the Criminal Code and the accused should not be expected to defend the charge.

Mr. Justice Bekker asked if the defence suggested that even if the accused were not prejudiced by the indictment it should be quashed because of a technical fault.

Mr. Nicholas: Yes, my lord. The Code is there and it should be adhered to.

DECIDED CASES

Mr. Nicholas quoted decided cases which, he said, supported his contention that the accused should be charged with separate counts for each overt act.

He read out verdicts from old Natal cases in which the accused had been found guilty on some counts and not guilty on others by the same court.

Mr. Justice Rumpff: I take it in all these cases the accused were indicted by the same attorney-general? — Yes my lord, and in substantially the same court.

When Mr. Nicholas began to read other decided cases to support the argument Mr. I. A. Maisels Q.C., defence leader spoke to him.

Mr. Nicholas then mentioned that these accused had been indicted by different attorneys-general.

Mr. Nicholas submitted that the basis of criminal liability in the case of treason was the same as in any other trial.

OVERT ACT

"There must be an overt act which is accompanied by the requisite criminal intent.

"High treason is committed as soon as it is attempted—it is not necessary that the attempt to overthrow the state should be consummated."

Mr. Nicholas said conspiracy was not made a crime until the Riotous Assemblies Act of 1949 was promulgated.

But the legislature did not alter the criminal liability in acts which fell short of the consummated crime. There still had to be an overt act accompanied by the criminal intent.

The basic difference between the Crown and defence case was that the Crown said high treason was committed when the hostile intent became manifest, and that the defence said no crime was committed until an overt act — accompanied by hostile intent — had taken place.

CONCERT

Mr. Maisels said: "May I at the outset deal with the question of concert and common purpose which is an important matter in this case and which has arisen because of an initially incorrect statement in the indictment. It is important to bear in mind at the outset how this question comes to be argued.

"Your lordships will recall the way the charge is framed in part A, alleging that during a certain period the accused were guilty of high treason. Acting in concert and common purpose they did a certain thing.

"And in B the places where they committed the hostile acts alleged, and C in pursuance and furtherance of the conspiracy and acting in concert and common purpose.

"That indictment as framed has one meaning only that during the whole of this period the accused, acting in concert and common purpose, did certain things. The fact that a speech

(Continued on page 2, column 2)