

PREPARATORY EXAMINATION

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF JOHANNESBURG
HELD IN JOHANNESBURG

IN DIE MAGISTRAATSHOF VIR DIE AFDELING VAN JOHANNESBURG GE--
HOU TE JOHANNESBURG

BEFORE MR.:

VOOR MNR.: F.C.A. WESSELS.

REGINA VERSUS:

KONINGING TEEN: FARRID ADAMS AND OTHERS.

CHARGE:

HIGH TREASON

AANKLAG:

FOR THE CROWN:

MR. J.C. VAN NIEKERK.

VIR DIE KROON:

MR. LIEBENBERG

FOR THE DEFENCE:

Mr. V.C. BERRANGE

VIR DIE VERDEDIGING:

MR. COAKER

MR. WEINBERG

MR. ROSENBERG Q.C.

MR. MAISELS Q.C.

MR. ZWARENSTEIN

INTERPRETER:

TOLK: -----

VOLUME — 35 .

PAGES:

6801 — 7000 .

or for an African to make, to the effect that the "Europeans are our enemies". That is a very serious statement to make isn't it? -- Yes.

Did you mention that on the last occasion that you had heard that statement at an African National Congress meeting? -- I think I did.

I think you didn't. In fact I know you didn't. BY P.P. I think I can challenge my learned friend there...

BY MR. BERRANGE: The best way of challenging it, of course, would be through the microphone.

BY P.P. Play it back, yes.

BY THE COURT: I have a note of it - "The Europeans are your enemies".

BY MR. BERRANGE: I see. The statements that you haven't repeated now, however, are the following: "We must be prepared to sacrifice ourselves to gain freedom" - was that said, did you ever hear that said? -- Yes.

You never repeated it this afternoon? Have you forgotten it? -- Yes, it is possible.

Another statement - "If necessary we must go to gaol to get our freedom" - had you forgotten that when I asked you this afternoon? -- I thought I had given that one.

This time I can assure you that I am right in telling you that you never mentioned it. Had you forgotten that this afternoon? -- Well, if you say so then I must have forgotten it.

You mean if I am correct in stating that you never mentioned that this afternoon, then you must have forgotten that? -- Yes.

I see. And you are testifying now to events that took place how many years ago? -- Five years ago.

Did you make a written record of these statements? -- Yes, I did.

When? -- At the time of the speeches.

At the time they were made? -- Yes.

In your pocket-book? -- Yes, I did.

And these statements then can be found in your pocket-book? -- They can.

Can you produce your pocket-book? -- Not at the moment, no.

Would you be able to produce it on a later occasion? -- I would.

With these statements in? -- Yes.

And that would be a pocket-book relating to the year 1952? -- That is correct.

Over what period were these statements made? -- Over the period from the beginning of 1952 up to the time of the riots.

From the beginning of 1952 up to the time of the riots? -- Yes.

The beginning of 1952 was before the Defiance Campaign was first mentioned in East London? -- Yes.

That was first mentioned in June, 1952? -- That is correct.

So these statements, according to you, were made before the Defiance Campaign - or some of them were made before the Defiance Campaign? -- Some of them were made before, yes.

What do you understand by a religious meeting? -- By a religious meeting?

That is my question - a religious meeting? -- Where nothing but religion is discussed or preached.

Would you concede that to be a religious meeting, if hymns were sung, psalms were recited and the Bible was preached and that extracts from the psalms and from the Bible were related to current conditions, would you say that was or

was not a religious meeting? -- I would say it was a religious meeting.

Now then, you have attended a number of meetings?
-- Yes, I have.

Did you make any transcripts, notes, other than the notes you put in your pocket-book about the type of speeches. Did you make any transcript or notes of the speeches themselves? -- No.

At no time? -- At no time.

So when you say that you will find this type of statement written in your pocket-book, it will be purely a statement taken completely out of its context with nothing to show what preceded, or succeeded, that which you have recorded in your pocket-book? -- It would show what succeeded and....

It would show? -- It would.

It would show the whole of the speech? -- It would.

So you have recorded the whole of speeches? --
Yes.

From time to time? -- Yes.

I understood you to say you hadn't. However, we may have been misunderstanding each other. And have you heard from time to time things of this type said "Our necks are under persecution and we labour and we have no rest". Have you heard people complaining in that way from time to time? -- Yes.

And have you heard people complaining by saying words like "Our inheritance is turned to strangers and our houses are given over to aliens" - have you heard that sort of thing said? -- I can't remember whether I heard that sort of thing.

And have you heard remarks said which indicate

that "We have drunken our water for money and our wood is sold unto us" - complaints of that sort? -- Yes.

You have? -- I have.

And if you heard that sort of thing being said at a public meeting where the African National Congress flag was flying, you would immediately say that this is a political meeting and not a religious meeting at all? -- Yes.

You would. You will be interested to know that the three quotations that I gave you came from Chapter 5 of Lamentations out of the Bible, and you would still say it wasn't a religious meeting? -- Yes. I would still say it wasn't a religious meeting.

Even though the Bible is being quoted? -- Yes.

Was the Bible being quoted on the 9th November, 1952? -- Not that I know of.

Not that you know of? -- Yes.

Is it possible that it was being quoted? -- No.

Not possible. The statement "God must help us to retain what we have won" - where did that come from? -- That was made by.....

Where does that statement come from - out of the Bible? -- No.

What - or are you not sure? -- I am not sure if a similar statement could be found in the Bible.

A similar statement what? -- I say I am not sure whether a similar statement could be quoted from the Bible or not.

That is the only statement you ever heard? -- Yes.

And the other three quotations which I gave you you didn't recognise as coming out of the Bible? -- No.

And you say if you had heard those quotations

being made or those things being said you would have regarded it as a political meeting? -- Yes.

Even though they came out of the Bible? -- Yes.

And the words "God must help us to retain what we have won" is the sort of thing that a lay preacher might say in a prayer isn't it? -- It is, yes.

And it is the sort of thing that may have been said immediately after Lamentations had been quoted and the lay preacher was now uttering a prayer "God must help us to retain what we have won" - is it possible? -- It is.

It is possible. You don't know what was said other than that? -- No.

Must a religious meeting necessarily be held indoors and in Church? -- No, not necessarily.

Must the Ministers who preside at such a religious meeting be necessarily dressed in clerical attire? -- I should say so.

Is it not your experience that on occasions, particularly in a non-European area with non-Europeans, that Ministers do not always officiate in clerical attire? -- They do as far as I know.

Always? -- Yes.

Always? -- Always.

You say it is quite impossible for Ministers to officiate dressed in un-clerical attire? -- Yes.

And will you concede that in many Protestant Churches laymen preach and conduct religious services? -- Yes, that is correct.

Would you concede that to be a religious meeting? -- Yes.

Even if there wasn't a Minister there? -- Yes.

And would you concede that there is no reason why members of the African National Congress should not hold

a religious meeting addressed by lay preachers? -- Yes, I would.

You would concede it and would you concede that there is no reason why the African National Congress itself should not sponsor a religious meeting addressed by lay preachers? -- I don't see why they should.

I am not asking you whether you should see why they should because I take it that you don't read altogether into their minds. I am asking you whether you will concede that there is no reason why the African National Congress should not itself sponsor a religious meeting conducted by lay preachers? -- Yes, I would.....

Is there anything to prevent that? -- No, there is nothing to prevent it.

Because I might tell you right away - I don't want to catch you - that Major Pohl conceded that there is no reason why the A.N.C. should not have a religious meeting. I take it you don't want to disagree with him do you? -- No.

When Major Pohl arrived with his posse of Police officials at the scene of this meeting, what did he do? -- He gave them the order to disperse..

No, let us start from the beginning. I am much more interested in the beginning. What did he do when he arrived there with the Police officers? -- At the scene of the meeting?

Yes? -- He went to the microphone....

Before he went to the microphone what did he do - were you there? -- Yes, I was there.

Are you sure? -- Yes.

Before he went to the microphone what did he do? -- He gave instructions for the men to fall in.

To dismount first and then fall in? -- Yes.

He gave an order to fall in? -- Yes.

What else did he do? Anything else? -- He then went to the microphone....

No, before he went to the microphone - after he had fallen his men in, what did he do? -- No reply.

Let me ask you another question - forget it. When the first baton charge took place who charged? -- The Police.

Yes, but there were both Europeans and non-Europeans - did the European Police also charge together with the non-Europeans? -- Yes, the European Police charged.

Also charged? -- Yes.

What were they carrying when they charged? Batons? -- Yes.

Anything else? -- They had their rifles too.

Bayonets in their scabbards still? -- No.

Where were the bayonets? -- The bayonets were fixed.

The bayonets were fixed? -- Yes.

When were those bayonets fixed? -- After the men had fallen in, after dismounting from the trucks.

That is what I am trying to find out from you. So after the men were ordered from the trucks and before anybody had been up to the platform, before any enquiries had been made from any person on the platform, the order was given "Fix bayonets"? -- That is correct.

It is quite a dramatic operation that isn't it. It is quite a dramatic operation when a squadron of men fix bayonets isn't it? -- Yes.

It is not at all provocative is it to the crowd - or would you think it is provocative? -- I wouldn't say it was provocative.

And if you were at a religious gathering of your own, attended by people of your own colour, and the Police

came along to that gathering, a posse of 70 men, and the order was given "Fix bayonets" and bayonets were fixed, it wouldn't upset you - or would it? -- I think it would.

So then bayonets having been fixed, what is the next thing that happened? -- Part of the crowd failed to disperse.

No, what did Major Pohl do? He got his men to fix bayonets then where did he go and what did he do? He went up to the platform didn't he? -- Yes.

Immediately after bayonets had been fixed - let me help you out? -- That is correct.

What happened when he got to the platform? -- He ordered them to disperse.

What did he say? Did he speak through the microphone? -- Yes.

Did you hear what he said? -- I couldn't hear everything clearly.

So if you couldn't hear everything clearly I take it there must have been lots of members of the crowd that didn't hear everything clearly also? -- I couldn't speak for them.

No, I think it is a natural inference to be drawn. What prevented you from hearing clearly? -- There was a lot of noise going on at the start.

Tell me, did you or Major Pohl, or anybody else to your knowledge, before the order was given to disperse this crowd, make any enquiries from the speakers or anybody else as to what was happening and what had been happening at this meeting before the arrival of the Police? -- No.

No enquiries were directed towards the speakers to find out whether - what sort of a meeting they were holding? -- No.

No enquiries were directed towards them in

order to ascertain if it might not perhaps be a religious meeting? -- No.

What happened was bayonets were fixed on the arrival of the Police and the next thing the crowd is told to disperse? -- Yes.

I suppose that you felt that the A.N.C. flag flying in the middle of the Square was a rather significant aspect was it not? -- I knew it was.

You knew it was. What did you find significant about that? -- I knew that it was an A.N.C. meeting.

That is what the flag told you? -- Yes.

Now, you have already conceded that there was no reason why the A.N.C. shouldn't hold a religious meeting? -- That is correct but I don't think they would hoist their flag, their national flag.

I see. You don't think that they would flash their national flag if it was a religious meeting, is that what you are going on record as saying? -- Yes.

You don't 'think' - do you know? -- I feel sure that they would not use their flag for a

Now you are 'sure' - just now you 'don't think'. Now you are sure. What makes you sure? -- Because their flag is hoisted at all their public meetings.

Is there any reason why it shouldn't be hoisted at a religious meeting? -- No, there isn't any reason.

But may I suggest to you, in all fairness to you, that you when you saw their flag, because of what you have just said that you are sure, or you don't think it would be used at a religious meeting, you immediately jumped to the conclusion that it was not a religious meeting but it was a political meeting. Am I correct in that? -- Partly.

Did you hear anything said to indicate that it

was a political meeting and not a religious meeting? -- The statement that you have already repeated.

What statement was that? -- "God must help us to keep what we have already gained".

I think you have told me already earlier that this may have been in the nature of a prayer by a lay preacher, haven't you? -- Yes, I have.

Do you want to change your evidence or do you stick to it? -- No, I don't change my evidence.

So that may have been a prayer? Correct? -- If it had been issued by a lay preacher or Minister it might have been a prayer.

What do you mean by a lay preacher? You seem to be drawing a distinction? Is there anything to prevent me, an Advocate, from going onto the Union Grounds and becoming a lay preacher by addressing a gathering? -- No, nothing at all.

On religious matters? --- Nothing at all.

Anything to prohibit any member of the African National Congress from going onto the Union Grounds and addressing a meeting on religious topics and asking for a prayer and singing hymns and becoming a lay preacher? -- No, I don't suppose so.

Nothing at all. I am putting it to you, it may have been a prayer that you heard for all you knew? -- I was sure that it was not.

I say it may have been a prayer for all you knew. You have said so twice already - but if you want to change your evidence I am perfectly happy? Do you want to change your evidence? -- No, I don't wish to change my evidence.

Am I correct in saying that you say it may have been a prayer? -- Yes, it may have been.

What else was there to indicate that this was

not a religious meeting or a religious gathering. You say there is no reason why the A.N.C. shouldn't fly its flag at a religious meeting; you say that which you heard may have been a prayer -- what else was there to indicate that this was not a religious meeting - anything? -- There were no Bibles or hymn books in evidence.

I was waiting for that one too. We heard that one this morning. If I want to go and address a meeting on the Union Ground and sing some hymns and preach from the Bible, must I have a Bible in my hand before I could be called a lay preacher conducting a religious service - must I have a Bible or a hymn book - is it necessary? -- I think you would have a Bible.

Do you mind answering my question. Is it necessary?
-- No.

Let us go on. What else makes you say this was not a religious meeting? -- I never heard any singing of hymns.

How long were you there? -- I was there about 10 or 15 minutes.

Ten or fifteen minutes - and in that ten to fifteen minutes you heard talking? -- Yes.

Who by? -- Reginald Ndube.

In Xosa? -- Yes.

And he may well have been saying the sort of thing that I quoted to you just now - correct? -- Yes.

"Our inheritance is turned to strangers our houses to aliens". "We are orphans and fatherless and our mothers are as widows". "We have drunken our water for money and our wood is sold unto us". "Our necks are under persecution and we labour and we have no rest". He may have been quoting Lamentations? -- He may have, yes.

During the time that you were there? -- Yes.

And he may have finished up with a prayer "Oh! Lord help us to preserve that which we have already gained" - correct? -- Yes.

Is there anything else other than what you have mentioned so far which makes you say this was not a religious gathering - which made you assume at the time that it was not a religious gathering - anything else? -- The attitude of the crowd was exactly the same....

BY THE COURT: Mr. Berrange, that will lead to another question now and it is convenient to adjourn.

CASE REMANDED TO 14th AUGUST. 1957 at 9.30.a.m.

COURT RESUMES 14/8/1957:

BY MR. BERRANGE: I'm dealing with the absence of one of the Accused, the task which has usually been undertaken by my learned friend Mr. Coaker. I have some information in regard to Cleophas Sibande, Accused No. 69, and I am given to understand that one of the Accused went out yesterday in order to ascertain what the position is, and Cleophas is ill in bed, and has been so for a couple of days. The information is to the effect that yesterday afternoon, the police went out to his house, at about 3 o'clock, and found him in bed, and he informed the police that he had been attended to by Dr. Robertson of Benoni, and that he had asked Dr. Robertson when he first attended to him to forward a medical certificate to the Drill Hall explaining the fact that he was ill. We can only conclude, that either Dr. Robertson overlooked this, or alternatively that the medical certificate hasn't reached the Drill Hall. That is all the information I have at the present moment.

BY THE P.P.: I am given to understand that the warrant was not executed.

BY THE COURT: In the circumstances, I take it that the warrant will be withdrawn.

BY THE P.P.: (MR. LIEBENBERG) Yes, I must accept the assurance that the person is ill.

BY THE COURT: So long as a medical certificate is forthcoming.

BY MR. BERRANGE: We will endeavour to present it at the earliest opportunity.

MR. COAKER ADDRESSES COURT:

Accused absent, same as on 13/8/1957, save that

Accused No. 60,	returned to Court,
Accused No. 80,	returned to Court,
Accused No. 126,	absent,
Accused No. 141,	absent,
Accused No. 146,	absent,
Accused No. 97,	absent,
Accused No. 127,	certificate handed in.

LEAVE GRANTED FOR PROCEEDINGS TO CONTINUE:

MR. SLOVO ADDRESSES COURT:

CHARLES ESSEX BOWEN, duly sworn,

CROSS-EXAMINED BY MR. BERRANGE: (CONTINUED)

Yesterday you said something in reply to a question of mine, which I think you really didn't mean, and I think it must have been due possibly to your misunderstanding my question. I want to be quite fair to you, I want to give you the opportunity of putting it right, if in fact there was some misunderstanding -- you follow what I mean? -- Yes.

Remember, I asked you yesterday something which to me seemed self-evident, that if you take something which is said out of its context, it is possibly thereby to lose the true meaning of that which has been said, or even to get a false and inaccurate meaning? -- Yes.

And you disagreed with me about that. I don't know whether you understood me, or whether perhaps by the time the afternoon came you were tired, or I was tired, so I would like to deal with that again. Let me give you a simple example. If you were to say somebody had said 'I will shoot you,' that will mean one thing, but if the context of it is 'If you shoot at me I will shoot you,' that will mean another thing, won't it.

Well, that is the sort of thing I meant. Take for instance, these words that you quoted yesterday. 'You must know that Europeans are your enemies.' Now, that means one thing, but if added to that you have the words 'as long as they persist in despising and attacking us we must however make them our friends.' That would mean something quite different, wouldn't it? -- Quite different.

Or, for instance, the other statement, made by the speaker, according to you, who said 'I would be very disappointed if I died from natural causes, rather than from bullets by a white man.' Now, that means one thing? -- Yes.

But if what the speaker said was: 'If I am going to live in poverty and degradation for the rest of my life, I shall be very disappointed if I died from natural causes, rather than from a bullet by a white man, because this will shorten my life.' That means something quite different, doesn't it?-- Quite.

Or the words 'We do not only claim South Africa, but the four corners of Africa.' If to that is added the words: 'which should belong to all races, and not only to one race' that again means something quite different?-- It would.

So I think you would agree with me, that sentences taken out of their context, without any indication of what preceded or succeeded each particular sentence, could be -- I'll put it no higher than that -- could be inaccurate and misleading?-- It could, yes.

BY MR. BERRANGE: I would like to make it clear, Sir, before I pass on to the next point, that in traversing these sentences which have been deposed to by the witness, and in suggesting the manner in which they may have their meaning altered by the addition of certain words, that I don't necessarily suggest that those words which I gave as examples were in fact added to these sentences. I am merely doing that as an example to the Court and to the witness of the manner in which sentences and their context can be changed.

BY THE COURT: You may have created that impression.

BY MR. BERRANGE: That is why I thought I might mention it, because quite obviously I would have no means at the present moment of knowing what was said, and I could quite obviously not have any instructions in regard thereto. It is done by me as an example of the sort of thing that might happen.

CROSS-EXAMINATION BY MR. BERRANGE CONTD.:

You told us yesterday that when you went to this meeting at Bantu Square on this occasion, you were there for about

ten minutes, do you remember ?-- Yes.

And you have told us that you only heard one thing, and that was the thing 'God must help us to retain what we have won.' ?-- Yes.

How did you go to that meeting on the first occasion, on foot or by car ?-- By car.

Why do you smile ?-- I don't think I would have been here today if I had gone on foot.

Very well. Did you go alone ?-- No, I had other detectives with me.

Will you be so good as to tell us who they were ?-- Det. Sgt. Gerber, Det. Sgt. Van Der Westhuizen, Nat. Det. Sgt. Sigaoa, and Det. Sgt. Nortje. Those were the men who accompanied me.

When did you last see any of these men who accompanied you ?-- About three weeks ago, I think.

And who was it you then saw ?-- Sgt. Gerber.

At the time you heard these words 'God must help us to retain what we have won' did you make a note in your pocket book ?-- No, I did not make a note in my pocket book at the time.

Did you make a note in your pocket book on a later occasion ?-- No.

You said 'at the time.' I was wondering whether you intended us to infer whether you made one later on. Have you ever made a note about these words that were used, at any time, anywhere ?-- No, I have never made a note, but shortly after, within the first week of the riots, I embodied that in a statement.

And what was that statement intended for ?-- It was intended to be used at the inquest.

Was it so used at the inquest ?-- Yes, it was.

Did you give evidence at the inquest?-- Yes.

Did any of the other men that you have mentioned as having been with you give evidence at the inquest ?-- No.

I would like to return to the matter that we were canvassing yesterday. You told us, if I understood you correctly, that so far as you were concerned, it wouldn't be necessary to hold a religious meeting indoors -- do you remember ?-- Yes.

And Ministers would not necessarily have to be dressed in clerical attire, although you say you have never seen them not so dressed, if I understand you correctly ?-- Yes.

You could still have a religious meeting, even if there were no ministers present, and there were laymen who were preaching or conducting some form of religious service ?-- Yes.

And I understood you, I may be wrong on this, to say that there is no reason why the African National Congress, or individual members of the Congress should not hold a religious meeting, by singing hymns, reading psalms or Bible quotations ?-- That is correct.

And dealing with the flag, you saw the A.N.C. flag there, did you not ?-- Yes.

I take it you will concede that a funeral is a form of religious ceremony, is it not ?-- Yes.

And have you seen the A.N.C. flag flying at funerals ?-- No.

Do you deny that they fly it at funerals ?-- No, I don't deny it.

You have heard of their flying it at funerals ?-- No, I haven't.

When you were first at this meeting, that is when you were there for some ten minutes or so, did you speak to any members of the crowd -- I was going to say 'congregation' but I mean 'crowd' ?-- No.

Did you make any enquiries from them ?-- No.

So what you saw then was a crowd of people, about how many ?-- There were about 500 at the time.

That is when you first arrived ?-- Yes.

And you saw somebody on the platform ?-- Yes.

How many people ?-- Two men that I mentioned.

Mdubi and Gubai ?-- That is correct.

On the platform ?-- Yes.

Did they both speak whilst you were there, or only one of them ?-- No, only the one.

And he was speaking in Xosa ?-- Yes.

The only thing you were able to hear were the words you have already told us about ?-- That is correct.

Were those words uttered in English or in Xosa ?-- In Xosa.

Do you remember that you gave evidence indicating that people were convicted for murder, I think you said there were approximately 52, who were convicted on charges arising out of the riots ?-- Yes.

Out of those 52, do you include those who were convicted of murder ?-- Yes.

How many were convicted of murder ?-- I wouldn't be sure at this stage; I think there were 2 in the case of Dr. Quinlan and 3 in the case of Mr. Foster.

I don't know about Mr. Foster, but I know you're right about Dr. Quinlan. Were you present at that trial ?-- No, I wasn't.

Not at any stage whatsoever ?-- No, I don't think I was.

That is the trial Regina vs. Mgxwiti and 7 others. Were you present at that trial at any time ?-- No, I was not present.

Did you have anything to do with its investigation?--

Nothing at all.

Do you know that a man by the name of 'Span' gave evidence ?-- No, I don't.

Do you know who I mean by a man called 'Span' -- I will give you his full name, Span Nonkneza ?-- Presumably you mean that he was one of the witnesses.

Yes, but do you know the man I mean ?-- No, I don't know him.

Never seen him or met him ?-- No.

Have you heard that he was one of the witnesses ?-- No, I haven't.

Well, he was in fact one of the witnesses, and I want one of the witnesses for the Crown upon whom the Crown relied, and upon whose evidence it will be established, to a large extent, the conviction was founded against the two convicted persons. And this is what he said, on page 24 of the record, and I want to ask you after I have read it out to you whether you would agree with this: "When you passed the Bantu Square previous to this particular day, did you see there was a flag there, irrespective of whether a meeting was going on or not ?-- Yes, on previous occasions I had passed Bantu Square and had seen a flag there, but there were no people there." "But there was no meeting when you saw this flag ?-- No, it was early in the morning." So he indicated in his evidence that he has seen the African National Congress flag flying on Bantu Square, early in the morning, actually when there was no meeting taking place. Would you dispute that evidence, or would you concede that it may be correct. ?-- I couldn't dispute it.

You couldn't dispute then that the flag is sometimes left planted in the middle of the square, even where there is no meeting ?-- That is possible.

Am I correct in in the information which I have been

given that this square is sometimes called 'Congress Square' ?-- I have never heard it referred to as Congress Square.

You wouldn't dispute that either though ?-- No, I couldn't dispute it.

So to cut this short, let me ask you just one simple question. Is it possible that in fact, to put it no higher than that, so far as you are concerned, is it possible that in fact, a religious meeting was taking place that day, being addressed by members of the African National Congress, who were singing hymns and quoting psalms; do you agree that that is possible ?-- I can't agree to that.

Why not ?-- Having been present, and seen the attitude of the crowd.....

Do you mean the attitude of hostility towards you people, is that what you mean ?-- Yes. There was no doubt in my mind that it was an African National Congress meeting.

Yes, I'm not disputing that. But you see, you have already conceded, there is no reason why the African National Congress themselves should not hold a meeting and quote from the Bible and sing ... and quote from the psalms. You have already conceded that ?-- Yes, I have.

Isn't that possible, that that is what these people were doing. You remember, I quoted to you yesterday from 'Lamentations' -- do you remember ?-- Yes.

And I suggested to you, yesterday, that it is possible that that is what was being said to the people, and you agreed with me ?-- Yes.

And if that is possible, it could be a religious meeting could it not, if in fact 'Lamentations' was being quoted from, and if in fact the statement 'God must help us to retain what we have won' is in the form of a prayer, that would be a religious meeting would it not ?-- It is possible.

Let's be quite fair, you really jumped to the conclu-

sion that this was not a religious meeting, because you saw the African National Congress flag there, because you heard this man say 'God must help us to retain what we have won,' and because of the hostility that the crowd displayed towards you people; isn't that the truth of the matter?-- It wasn't the flag alone that influenced me.....

No, I didn't only mention the flag; I mentioned a number of circumstances combined? Yes, it was.

And to be quite fair, to conclude this once and for all, there are no other circumstances, other than the ones that have been mentioned by you, and which I have now summarised for you, which made you conclude that this was not a religious meeting, were there?-- Would you kindly repeat that?

I say there were no other circumstances, other than those that you have mentioned, yesterday and today, and which I summarised for you a few minutes ago, which made you conclude that this was not a religious meeting?-- Yes.

You mean there were no others?-- No.

Mr. Coaker is really not quite certain whether you mean what I think you mean. I will put it to you again: The only circumstances, which made you think this was not a religious meeting, are the circumstances which you have already mentioned, yesterday and today, and which I summarised for you a short time ago?-- That is correct.

And in fact, I would like to draw your attention also to the evidence given by the Crown witness, 'Span' at this trial, I am quoting from pages 12 and 13 in which he is recorded as having said as follows: "Do you know where Bantu Square is in Duncan Village?-- I do." "Did you go in that direction?-- Yes." "What did you see at Bantu Square?-- A service was taking place, a church service was taking place." "Was this on the Square?-- Yes." "Who was conducting this

"Who was conducting this service ?-- A man who is an ex-railway policeman was preaching." "Did you see any flags there ?-- Yes, there were flags there." Now, this is the evidence which was led by the Solicitor-General, and was not given in cross-examination. And again at page 13: "Did you listen to what the preacher had to say ?-- Yes." "How long did you listen to him ?-- For about half-an-hour." Again at pages 22 and 23: "Could you understand what the preacher saying...." "Now, Span, this meeting you attended, you say it was a prayer meeting ?-- Yes." "Could you understand what the preacher was saying ?-- Yes, he was praying asking the Lord whatever they were praying for should be successful." That sounds very much like your evidence that you heard a man say "God must help us to retain what we have won. ?-- It is.

So you wouldn't dispute that what this man was saying, that he was asking the Lord that for whatever they were praying success should attend their efforts ?-- I wouldn't dispute that.

And then the next question, by His Lordship: Mr. Justice Sampson: "You might tell us what they were praying for ?-- This African question, my lord." And His Lordship then says: "Were you praying the Lord to support the African movement, is that what it was ?-- That the African movement may be a success." Then the question was by counsel for the defence: "Did he read from a Bible ?-- No, he was not reading from a Bible, he was merely praying." "And were hymns sung ?-- No, there was no hymn singing at that time." "Was there no hymn singing at all ?-- Yes." "What time were you referring to when you say there was no singing at that time ?-- When I arrived there they were singing hymns." You would not dispute that evidence, would you ?-- No.

I take it you will also concede, that the basic object of the Defiance Campaign was to break laws which were regarded as being oppressive and unjust, and thereafter to invite arrest

for having so broken these laws; I think that is a short way of summarising the campaign ?-- Yes.

You would agree with that ?-- Yes.

There was never any suggestion that arrest should be resisted; these people, the volunteers, actually went and invited arrest ?-- Correct, they invited arrest.

And you were a member of the Special Branch at that time, were you ?-- Yes.

So I take it you made it your business to ascertain what organisations, if any, were responsible for the initiation and the execution of the Defiance Campaign ?-- Yes.

Would you agree with me that the S.A. Council of Trade Unions was only formed in 1954 ?-- Yes.

Therefore, SACTU, obviously did not have anything to do with the Defiance Campaign ?-- Yes, I agree.

Nor could any of its members, because there was no such organisation in 1952, was there ?-- No.

And would you agree with me that the Congress of Democrats could not have had anything to do with the Defiance Campaign ?-- I'm not in a position to say whether they could or could not.

Were they in existence at the time the Defiance Campaign was planned ?-- No.

They weren't. And the S.A. Coloured Peoples Organisation, was that in existence at the time the Defiance Campaign was planned ?-- I couldn't say.

And can you say whether that organisation or its members had anything to do with the Defiance Campaign ?-- No, I can't say.

And the Peace Council, are you prepared to say whether that had anything to do with the Defiance Campaign ?-- No, I can't.

You have no evidence or any knowledge that it had, have you ?-- No.

Have you got any personal knowledge, I don't mean hearsay knowledge, knowledge gained from information, but any personal knowledge as to what organisations, if any, planned and organised the Defiance Campaign ?-- The African National Congress.

Just the African National Congress ?-- Yes.

That is your personal knowledge ?-- Yes.

In what way did you gain that personal knowledge ?-- From documents that came into my possession.

What sort of documents ?-- The one was an appeal for volunteers for conducting the Defiance Campaign, which purported to have been signed by Moroka, who was then President-General of the A.N.C. That campaign was to have started on the 25th June.

May I interrupt you a moment; this document you say purported to have been signed by Dr. Moroka, who was then President-General of the A.N.C. ?-- That is correct.

This was an appeal for volunteers to come forward, in order to participate in the Defiance Campaign ?-- Yes.

Was that document signed in his capacity as President-General of the A.N.C., or was it signed in his capacity as being Dr. Moroka ?-- No, in his capacity as being President-General of the A.N.C.

Was it a call by the African National Congress itself for volunteers to come forward ?-- Yes.

Have you ever heard of the Joint Planning Council ?-- Yes.

Did that have anything to do with the African National Congress ?-- Yes.

In what way -- is this of your personal knowledge ?-- Yes.

In what way ?-- I can't say exactly in what way.

Why do you say it had anything to do with the African National Congress -- if you can't say I'll pass on to the next point ?-- No, I can't say.

Now, you have told us in your evidence in chief that the Defiance Campaign started in earnest on 20th June, 1952. ?-- 26th June.

And you have already indicated to us the basis of the Defiance Campaign, that was to break laws which were considered to be oppressive and unjust, and thereafter to invite arrest for so having broken these laws ?-- That is correct.

And you went on to tell His Worship that speeches were frequently made, and they were well received by the audience, they gave shouts of Afrika, Mayibuye, I take it that you had no objection to Africans shouting Afrika and Mayibuye, have you, or do you object to it ?-- It wouldn't matter whether I had any objection or not.

Well, did I ask you that, whether it matters or not ?-- Did I have any objection to it?

Yes, that was my question ?-- No.

To Africans shouting Afrika Mayibuye ?-- No.

I don't know why you had to give me that answer then, it wouldn't matter. However, then you used an expression which to me was somewhat peculiar, and which I don't quite understand. You went on to say that the attitude that exists 'was quite despicable.' Do you remember saying that ?-- Yes, I do.

Do you mean by that that at these meetings which were being attended by members of the Special Branch, that the Africans were displaying their contempt for and despising the Police who they said had come to snoop at their meetings; is that what you mean ?-- Yes.

So when you say their attitude was despicable you mean by that that they were displaying an attitude of contempt to-

wards the Police ?-- Yes.

For having come to that meeting to do what they called the snooping, if I may use that expression, on their gatherings and their meetings; that is what you meant by that ?-- Yes.

And you also went on to say that they obstructed the police, they caused an obstruction to the police in the execution of their duty, they were rowdy near the car, they shook the car, and they stoned the car ?-- That is correct.

You, of course, didn't like this, did you ?-- No.

Did you recognise any of the persons who behaved in this manner ?-- No.

Did you open any dockets against persons who had so behaved ?-- No.

Did you make any arrests ?-- No.

During the whole period, if one searched through the files, criminal files, we won't find one single arrest that was made by the police in regard to the commission of these crimes, because they were crimes, weren't they ?-- Yes.

In regard to the commission of these crimes which you say took place ?-- Yes.

Nothing on record at all ?-- No.

Now, when you returned to this meeting at Bantu Square with Major Pohl, how big was the crowd then ?-- There were about 800 there.

And after Major Pohl had paraded his men and had given the order to fix the bayonets, he walked straight up to the platform, did he not ?-- Yes.

Did you see him speak to anybody on the way ?-- No.

Did you see him try to speak to anybody on the way ?-- No.

The first thing he did when he mounted the platform -- by the way, was the platform a table ?-- Yes.

The first thing he did when he mounted the table was to

go to the microphone ?-- Yes.

And call upon the crowd to disperse ?-- Yes.

You have told us yesterday, and I asked you to give us his words, or to tell us what he said, that you couldn't hear very well ?-- Yes. There was a lot of confusion.

Do you think the fixing of the bayonets might have caused confusion ?-- No.

Major Pohl thinks so. Are you serious -- think again; don't you think that the fixing of these bayonets would cause a certain measure of confusion ?-- It might have.

And you can't give us any idea of what Major Pohl said other than you heard him calling upon the crowd to disperse ?-- Yes.

Is that all you can tell us ?-- I know that he repeated his order to disperse several times.

You can't tell us what his words were ?-- No, I can't tell you.

Did these two men who were on the platform, Mgubai, and Ndubi, endeavour to use this microphone whilst Major Pohl was on the platform ?-- No, I don't know, I couldn't say.

Didn't you see ?-- No, I couldn't see clearly.

Is it possible that they did ?-- It is possible.

Why do you say you couldn't see ?-- Because the crowd was milling around.

Milling around who, the platform, or you ?-- Around the platform.

But weren't they above the crowd, standing on the table ?-- Yes.

And I am still asking you whether either one or other or both of these men used or attempted to use the microphone ?-- I can't say.

Did anybody other than Major Pohl use the microphone

?-- Not that I saw.

And the table was about as high as an ordinary table is ?-- Yes.

And you would be able to see persons standing on that table at least from the waist upwards, would you not ?-- Yes, I'd say from the shoulders, just below the shoulders.

I 'don't want to have to have a demonstration in Court, but I think it speaks for itself.

And you saw no-one other than Major Pohl use the microphone ?-- No.

Nor did you hear anyone other than Major Pohl talk into the microphone ?-- No.

The only language that you heard coming over the microphone was in English ?-- Yes.

And what happened thereafter, after he had spoken on the microphone; could you just tell us what is the next thing that happened. An order to disperse was given, you have told us, several times. Now, what is the next thing that happened ?-- Then there was the baton charge.

Were the people, some of them, at that time in the process of dispersing ?-- Yes.

When the baton charge was made ?-- Yes.

And then after the baton charge, the stones started falling from the crowd, is that so ?-- During the baton charge.

During the baton charge stones started falling from the crowd ?-- Yes.

From the direction of the crowd ?-- Yes, and from our rear, from buildings in the rear.

Were the European constables at that time also using their batons, as well as the non-European constables ?-- Yes.

I am talking about the time when the stones first started falling -- were they both using their batons ?-- Yes.

And then, what was the next thing that happened; we have got to the stage now where Major Pohl was called upon the crowd several times to disperse, where some of the people were dispersing, where the next thing that happened according to you was that there was a baton charge, and whilst the baton charge was taking place, the stones started falling from the crowd, and also from buildings behind, if I understand correctly, is that so?-- Yes.

We are in this position then that the police were charging the crowd with batons, I take it, using their batons, stones were being thrown, what was the next thing that happened?-- After the baton charge the gathering had been dispersed.

I take it the baton charge was responsible for that?-- Yes.

Yes?-- There were three injured on the square, and Major Pohl instructed me to remove them to the hospital.

And you then left?-- Yes.

Before the second baton charge?-- Yes.

Were stones at that time being thrown, or had the stone-throwing stopped?-- No, there were stones still being thrown.

There was a continuous stone-throwing?-- Yes.

From the time, it started at the time when the police were first amongst the crowd using their batons and it was still going on at the time you removed these three men to hospital?-- Yes.

That is correct, is it?-- That is correct.

Have you any idea of what period of time elapsed between the time that Major Pohl gave his last order through the microphone to the crowd to disperse, and the time that the baton charge started? Perhaps I can assist you by reading you again

from the evidence of Snap and I am going to ask you whether you substantially agree with his evidence -- it will be found at page 13. This is what he said: "The lorries were laden with police...." and I want to point out to you that this is in evidence where the witness is being led by the Solicitor-General, evidence-in-chief. "The police got off the lorries and went and stood near the school. What appeared to me to be the officer in charge of the police...." I take it that is Major Pohl: he was in charge, wasn't he?-- Yes.

".....then proceeded towards this man who was preaching at the service and said 'I will give you five minutes to continue what you are doing here now.'" You, of course, didn't hear that, because you say you couldn't hear very well?-- Yes.

"As the crowd started to disperse, the officer in charge of the police, then said 'Fire' the native policemen then struck the people with their sticks...." batons, presumably: "....and the European policemen used their bayonets to stab these people. The people then dispersed and ran away. Shortly after this the crowd returned and then stoned the police." Would you agree with Span's evidence in regard thereto as being substantially correct?-- No, I can't agree to that.

Well, what is it that you disagree with in the evidence that I have read out to you?-- He says that the stoning started after the baton charge.

You say it started whilst the baton charge was in progress?-- Yes.

Well, that is the one thing. What else. You do agree with this part, in which he says: "As the crowd started to disperse the officer in charge of the police then said 'Fire.'" Well, I'm not pinning you to the word 'Fire'; he may have said 'Charge.' But you do agree because you have told us that

already, that as the crowd started to disperse the baton charge took place ?-- Yes.

That is correct ?-- Which is correct?

That as the crowd was dispersing the baton charge took place ?-- Yes, that is correct.

And I take it the other part that you disagree with is that the European police in the baton charge used their bayonets to stab these people -- do you agree with that or disagree with that; or didn't you see ?-- I cannot agree or disagree.

Span may be correct ?-- He may be correct.

Now, were you in charge of the Special Branch down there; are you the senior man there ?-- Yes, I was then.

Then I think I am entitled to ask you these questions. I think it is quite obvious that in the performance of your duties and in carrying out your duties that were assigned to you as a police officer, that if you could have linked this meeting on Bantu Square with the subsequent riots and the murders that took place there afterwards, you undoubtedly would have prosecuted these persons responsible for the meeting; if you could have linked the two together ?-- Yes.

In fact, you knew Mr. Ngwentshe, did you ?-- Yes.

He was never arrested or charged with any offence arising out of these disturbances, murders, or riots, was he ?-- No.

Nor were these two speakers, Mgubi and Gubai ?-- No.

And you do know that as a fact, after these riots had taken place, and these disturbances had taken place, that the African National Congress called for a judicial enquiry, that is at a time shortly after the disturbances, and whilst the evidence was still fresh in everybody's minds; you know that, don't you ?-- Yes.

And you also know that the African National Congress, through the Press, and by the distribution of leaflets, issued statements deploring these murders and acts of violence and calling upon the African people to remain calm ?-- Yes.

And not to embark upon any further violence, you know that ?-- Yes.

Now, irrespective as to what happened at the Square, Bantu Square, when this meeting took place; I'm not going to deal with on the basis as to whether the Crown version is correct, or somebody else's version is correct; irrespective as to what the real facts were, I think you will agree with me that shortly after the charge by the police, and the shooting had taken place, that the location itself must have been seething with all sorts of rumours, or reports, and stories, as to what had happened ?-- Yes.

I'm not necessarily suggesting that those stories and rumours that were flying around in the location were true ones. They were, or may have been, like so many rumours are, completely false ?-- Quite.

And it is quite clear, because the evidence at the murder trial which I have already referred to, it is quite clear that several witnesses at this murder trial obviously thought that a religious service had been broken up by the police; you have heard me read that evidence out to you ?--Yes.

And it is also highly probable, is it not, that the story would have gone round the location like wildfire, to the effect that the police had come there and had broken up a religious service, and started shooting without any provocation, and that sort of thing ?-- Yes.

That is the sort of rumour that would have spread like wildfire through the location ?-- Yes.

And if that was so, and if in fact these sort of rumours that I have suggested to you were in fact going through the

location, that would naturally inflame and madden the more irresponsible and unruly elements in the location and result in mob violence; that is what you would expect ?-- Yes.

I have no further questions, Sir, but I would like an opportunity of discussion with my learned friends, in regard to any further topics that might be broached with this witness.

BY THE P.P.: May I make the suggestion, Your Worship. I want to put certain questions to this witness arising out of the cross-examination, but I was wondering whether it wouldn't be a suitable time for me to put in certain documents which this witness took possession of.

BY MR. BERRANGE: That is perfectly in order.

RE-EXAMINED BY P.P.:

Did you attend a conference held by the African National Congress in the course of this year ?-- Yes.

Where was this conference held ?-- At St. Andrews Hall, Queenstown.

On what date?-- 31st May to 1st June, 1957.

Was that a provincial conference of the A.N.C., Cape ?-- Yes.

Did you there take possession of certain documents ?--
Yes, at the table occupied by the chairman of the conference, /
Z. Manubie

The first document you took, A.309, a report I may say this is a continuation of numbering of exhibits taken from the African National Congress offices. A.309, is that a report presented on 31st May, in Xosa, containing a translation in manuscript form ?-- Yes.

Then, A.310, circular letter dated 15/5/57, addressed to all Provinces and Regions in connection with an economic boycott, signed by D. Nokwe as Secretary-General of the A.N.C. ?-- Yes.

A.311, roneod document, entitled the annual report of

the Korsten Branch, Executive Committee, also in Xosa, with a translation attached to it ?-- Yes.

Do you know who translated that ?-- No, I don't know.

That is a question which will have to be cleared up.

A.312, a typewritten document, entitled 'Discipline' signed by N.D. Kota, chairman ?-- Yes.

The first portion is in English and the second portion is in Xosa; there is a translation attached, which deals with an economic boycott ?-- Yes.

Then A.313, a letter in ink, dated 12th May, 1957, signed by Walker S. Gawe, as President, A.N.C., Cape, and it is addressed to the Provincial Secretary, Cape, reading as follows: "In addition to the letter I wrote to you a week ago, I am furnishing you with one from Head Office together with a form to be filled in and returned to Head Office expeditiously" ?-- Yes, this is the letter.

Then A.314, typewritten document entitled "Direct Appeal to Chiefs" ?-- Yes.

Then A.315, another roneoed document in Xosa, issued by the A.N.C., Cape Province, dealing with means and instructions to strengthen the A.N.C. at various centres, contains a translation attached in pencil.

A.316, typewritten letter dated 17/5/57, addressed to the Working Committee, A.N.C., Cape, signed by the Secretary, A.N.C., Port Elizabeth, New Brighton Branch. It deals with the future of cultural clubs ?-- Yes, this is the letter.

A.317, typewritten letter with the address 'Sophiatown, Johannesburg' dated 13/5/57, addressed to the working committee, A.N.C., Cape, signed by P.T. Tshume, as secretary A.N.C., Cape. ?-- Yes.

A.318, a similar letter signed by P.T. Tshume, dated 10 /5/57, also addressed to the working committee, A.N.C., Cape, Port Elizabeth, enclosing a copy of a letter and a tele-

gram, addressed to the National Executive and signed by several members of the New Brighton Branch ?-- Yes.

A.321, letter in ink written from Springs, dated 30th April, 1957, addressed to the Secretariat, A.N.C. Working Committee, Port Elizabeth, and signed by Walker S. Gawe ?-- Yes.

A.319 and A.320, are the two documents attached to A.318 ?-- That is so.

A.321, reads: "I have been instructed by the N.E.C. to communicate with you and get some information concerning the state of health of our Province generally and in particular in regard to how the Branches stand in numerical strength and finance. You may communicate with Dr. Bokwe for a statement. Our Province is not known to exist at Head Office." ?-- Yes.

A.322, typewritten letter from Johannesburg, 18/4/57, signed by P.T. Tshume as Provincial Secretary, A.N.C., Cape, addressed to the working committee, A.N.C., Port Elizabeth, and it deals with the treason case defence fund, and in addition "we would like to get a report from you regarding the national share of the members' subscriptions" and it contains a copy of a typewritten circular issued by the A.N.C. Head Office, Johannesburg, on 17/4/57, and signed by O.R. Tambo as Secretary-General. I see this circular is numbered A.323 and he calls for support for the newspaper 'New Age', and attached to it as another typewritten circular dealing with the boycott and our future tasks, with the name O.R. Tambo, Secretary-General, typed. The first one which deals with 'New Age' is marked A.323a, and the one dealing with the boycott and future plans is marked A.323b. Then A.323c, is another typewritten circular signed by O.R. Tambo, Secretary-General, dated 17/4/57, and it deals with various matters, the N.E.C. further directs the attention of all our branches to the following issues,

treasons trials, which must be kept before the people as a central issues in our struggle; bills at present before Parliament, native laws amendment bill, apartheid bill, native taxation bill, pass laws, deportations and banishments. ?-- Yes.

A.324, copy of a typewritten letter dated 16th May, 1957, Port Elizabeth, addressed to Yali Manisi, Queenstown, reading: "Please find enclosed herewith a copy of the Freedom Charter in English and Xosa. I hope you will circulate the copies of the Charter to the people so that they can read it and know what future the organisation is preparing for the people of this country." Signed by C. Matshaba, acting secretary, A.N.C., Cape. ?-- Yes.

A.325, copy of a typewritten letter, with the address "National Match Company, Limited, Pretoria" 2/4/57, from Port Elizabeth, dealing with the proposed economic boycott, and it purports to come from the working committee, A.N.C., Cape. It is not signed ?-- Yes.

That concludes this handing in of documents.

MR. COAKER ADDRESSES COURT: Accused 97 back in Court.

BY MR. SLOVO: Before the Court proceeds, Sir, I should like to raise something which arises out of the evidence which has been led, just prior to the tea adjournment. The handing in of the documents which were seized at some Conference in May 1957. Your Worship will recall that the Accused before the Court, which includes myself, were arrested sometime in December of last year, and have now appeared at this preparatory examination for a period of approximately 9 months. The warrant of arrest, in the case of myself, and I think it was the same in the case of all the Accused, indicated that we were being arrested on an allegation of high treason which was supposed to have been committed between the years 1953 and 1956. We have, in the past few weeks had evidence placed before this Court relating to the period 51, 52, and we have had now had evidence

placed before this Court relating to the period 1957 some months after the arrest of the Accused. This is not the first time such evidence has been placed before the Court. I think on a previous occasion some months back, some other evidence relating to a period after the arrest also was placed before the Court. I speak for myself, of course, alone, when I say that it is extremely difficult to prepare one's cross-examination and one's defence in this preparatory examination, if one is faced with acts, omissions, committed outside the period mentioned in the warrant of arrest, and one is left in some doubt as to whether the Crown might not, in its endeavour, to show some violence in South Africa, go back as far as the Rebellion of 1906. And I say that, Sir, advisedly. Because up to now the evidence which has been led of events relating to the period 1951, 1952, have not been shown in any way to be connected with any of the Accused before the Court, and one wonders whether it is alleged by the Crown that we committed high treason, or whether it is alleged by the Crown that we are just continuously committing high treason. On the basis of the Crown's approach to this case, we could be here forever, because if it is the Crown's intention continuously to lead evidence of the activities of lawful organisations, and it is common cause that those organisations continued to exist, continued to operate, quite lawfully in the political field, one could be here permanently, if every act which has been committed by those organisations is being made the subject of evidence in this enquiry. It is rather late in the day for me to say that this enquiry has been prolonged for what I consider an oppressive period. We have had the assurance of the Crown that there is a possibility that this enquiry might end at the end of this month. This was before evidence of the type about which I am complaining was laid before the Court.

And I should like again, Sir, to get some sort of indication from the Crown as to what the scope of this enquiry is, where they propose to begin and where they propose to end, and whether, we are going to be sitting here indefinitely with the Crown endeavouring to scratch around in the middle of the enquiry and producing evidence, which they obviously could not have in their possession or had no intention of leading at the time when the Accused were arrested. And I ask, Your Worship, to ask the Crown whether they are willing to give an explanation for the benefit of myself, and I take it, the benefit of all the Accused in this regard.

BY THE P.P.: Your Worship, I don't want to answer at length to that enquiry. All I want to say is that the Crown proposes presenting evidence in this case which it regards relevant to the enquiry. The Crown will lead evidence which directly affects the organisations which are represented by some of the Accused, and it will lead evidence which directly affects these Accused before the Court. The Crown is at liberty to go as far back as the days when the Congress party was still in existence, and the Crown is entitled to lead evidence to show that some of these people were members of that party. The Crown is at liberty to lead evidence of occurrences which took place after the arrest in last year, and to show the association of these Accused with the activities and organisation of the various organisations. For that matter, documents were handed in this morning which show the direct participation in the organisations even after the arrest of the Accused, and the Crown regards that evidence as relevant. If my learned friends have any objection to it they can lodge the proper objection. That is as far as I can take the matter.

BY THE COURT: I take it that the objection is not so much as to the subsequent evidence, but Mr. Slovo directed his request more particularly in regard to the events which took place in

1952. My impression too is that these events were not referred to in the opening address.....

BY THE P.P.: That is so, Your Worship, but as evidence is being led the whole trend develops and the Crown finds it necessary to lead evidence to show, to link up the present organisations with earlier activities.

BY THE COURT: What has been made by Mr. Berrange, in cross-examination, that some of these organisations were not in existence at that time.

BY THE P.P.: I do not agree with that. Evidence will be presented to Your Worship to show that these Accused were all members of organisations which took part at that time in the various activities.

BY THE COURT: Well, if that is the position, Mr. Slovo, I have no authority, of course, to direct the prosecution to do any more than it has done. In so far as the enlightenment of the offence is concerned, the prosecution has undertaken to lead what it considers to be relevant evidence, so long as the evidence is relevant then there can be no objection. No matter how long the enquiry is prolonged.

BY MR. SLOVO: Sir, I appreciate that, from a legal point of view. I did not fully follow the Prosecutor. Did he suggest that evidence was going to be led to show that the organisations which were mentioned by Mr. Berrange, in cross-examination were in existence at that time; is that the undertaking by the Crown.

BY THE COURT: That is what he indicated.

BY THE P.P.: I will show that the individuals who are before the Court were connected with the activities at that time.

BY MR. SLOVO: That, I take it, is with the riots in East London and with the murder of the nun, and Mr. Foster; is that the suggestion of the Crown?

BY THE P.P.: Yes, I will show that the Accused who are before

the Court were in some way or other connected with those activities.

BY MR. SLOVO: In some way or other. Well, Sir, I persist in my objection to date. It is my submission the Crown has not laid any basis whatsoever for that assertion, that the Accused were in some way or other connected with these occurrences.

BY THE COURT: I am afraid it is impossible to decide whether your argument has any basis until evidence which the Crown wishes to tender is before the Court. That is the difficulty.

BY MR. SLOVO: No, Sir, my chief complaint, if I may say so, Sir, is the one which is implicit in the question which Your Worship directed to the Crown, and that is that the evidence which is now being led appears obviously to have been an after-thought and the Prosecutor indicated that as a result of developments in the case, they have decided to lead this evidence. It is obvious, without any doubt whatsoever, that the Crown did not have in mind leading this evidence which it had at the commencement.

BY THE COURT: I am afraid, even if that were so, it doesn't avail the Defence.....

BY MR. SLOVO: No, Sir, if I may say so it is a reflection on the conduct of this case by the Crown. I appreciate it does not avail the Defence.

BY THE COURT: I am afraid that I can't uphold your objection.

BY MR. SLOVO: As Your Worship pleases.

CHARLES ESSEX BOWEN, still under oath

FURTHER CROSS-EXAMINATION BY MR. BERRANGE:

I want to refer you once again to what you call the type of speeches which you heard made from time to time at meetings which you say were held by the African National Congress. You remember I went through them this morning when I was dealing with the question of them being taken out of their

context ?-- Yes.

Can you tell us who the speakers were in regard to each sentence that you placed before the Court ?-- No, I can't off-hand.

Do you know who were the speakers ?-- Yes, I do.

Who were they ?-- One was S. Ngwentsha.

What did he say, which of these statements that you have made, is attributable to him ?-- He said he would be disappointed if he had to die from natural causes, rather than from a bullet by a white man.

The others, who were responsible for the other statements ?-- J. Lingisi.

Which of these statements is alleged to have been made by him, or don't you know ?-- He said 'The Europeans are doomed'

Anybody else ?-- No, I can't remember the names.

Now, it is your duty, of course, as a police officer, if an offence is being committed in your presence, immediately to take action, isn't it ?-- Yes.

Were any of these persons who are alleged to have said these things prosecuted at any time for having said these things ?-- Yes.

Who ?-- Both Ngwentshe and Lingisi.

Were prosecuted when ?-- I think it was March, 1953.

And this is alleged to have been said sometime round the middle of 1952 ?-- Yes.

And what were they prosecuted for in March 1953 ?-- They were prosecuted under the Suppression of Communism Act.

Yes. For what, what were they prosecuted for -- They were prosecuted for attending a gathering, weren't they ?-- Yes.

And they were acquitted ?-- No, they were convicted.

For attending a gathering ?-- No, as a result of their activities, the speeches they made.

Tell us what the charge was; what was the charge against Ngwentshe and Lingisi ?-- I can't remember the section of the Act.

Well, explain to us what the charge was; tell us what they were charged with having done; you have told us already they were charged with having attended a gathering ?--

Yes, they were charged with creating feelings of hostility between European and non-European.

Under the Suppression of Communism Act ?-- Yes.

In 1953 ?-- Yes.

And were these speeches that you have referred to, were they testified to in evidence ?-- Yes, they were.

Who by ?-- I, for one.

And who else ?-- Sgt. Nortje, Nat. Det. Hlabi,

Anybody else ?-- Det. Constable Petzer.

Let's get it quite clear, were these men charged with attending a gathering, in contravention of a ministerial order served upon them under the Suppression of Communism Act, or were they charged with creating hostility between the races; what was the charge ?-- The charge was having created hostility.

Were these people ever charged for anything arising out of the Defiance Campaign ?-- Ngwentshe was charged for attending a meeting.

You seem to be vague about this ?-- It's a long time ago. He was acquitted on that charge.

That is what I originally suggested, remember? When you first said the charge against him was for attending a gathering, I suggested to you that they were acquitted ?-- Yes, on the charge of attending a gathering, after having been served with a notice prohibiting them from attending a gathering.

But now you say they were also charged with having

created hostility ?-- Yes.

In terms of the Suppression of Communism Act ?-- Yes.

Are you sure it was in terms of that Act -- it wasn't in terms of the Riotous Assemblies Act, was it ?-- It may have been.

Don't you know ?-- No, I'm not sure.

You say they were convicted ?-- Yes.

Were they sentenced ?-- Yes, they were sentenced to 9 months imprisonment, suspended for three years.

This was in 1953 ?-- Yes.

Were they tried alone, or were they tried with others ?-- They were tried jointly with.... I think there were 18 in all.

Yes. And where were they tried ?-- In Port Elizabeth.

The truth of the matter is, they were charged, there were altogether 18 of them. These were prosecutions that were instituted all over the country, arising out of the Defiance Campaign, isn't that so ?-- Yes.

And it was suggested that as a result of having broken these laws which were regarded as being oppressive, they had endeavoured to bring about a change in the social, political, and economic system of this country, by unlawful means; that was the real charge ?-- Yes.

Nothing to do with creating hostilities between black and white; I think you are mistaken there ?-- Yes, I may be.

And this was a number of prosecutions which took place in the various centres of this country ?-- Yes.

Arising purely out of the Defiance Campaign in the sense that it was alleged by the Crown that having taken part in the Defiance Campaign they were endeavouring to bring about the social, political and economic change in this country by unlawful means ?-- Yes.

That was the charge. There was never any charge

against them of creating racial hostilities ?-- No.

Just one further thing. When were you first notified that you would be required to give evidence in these proceedings ?-- It was on the 4th May.

Until then you had no idea that you were going to be a witness in this preparatory examination in which a charge of high treason is being presented ?-- Do you refer now to the evidence that I have given on this occasion?

Yes, I am not referring to evidence that you may have been required to give in connection with other cases; I'm referring to the evidence you were required to give in connection with these proceedings, those were my words ?-- No, I knew when the Accused were arrested that I would be required to give evidence.

You knew that ?-- Yes.

And you knew that you would be required to give evidence for the purpose of handing in documents ?-- Yes.

You did not know that you would be required to give evidence relating to the Defiance Campaign of 1952 ?-- At that time I did not know.

The first time that that ever raised its head was in May 1957 ?-- Yes.

I would like to have out of the documents, which we haven't had the opportunity of studying fully; we may require to do some more with them at a later stage. I would like to have just one document read into the record, and that is Exh. A.318, A.310, which reads as follows: "The National Executive Committee of the African National Congress has decided to launch a countrywide boycott of the commodities produced by Nationalist controlled firms, and financial institutions owned by Nationalists. A list of the products and institutions to be boycotted is being prepared and will be released shortly. The effect of this decision will be the extension of the boycott

at present being carried out. The boycott is a protest against the growing Nationalist suppression of the people, and in particular against the racialist bills at present before Parliament, viz. the Native Laws Amendment Bill, the University Apartheid Bill, the Nursing Apartheid Bill, and the tax increase bill, all of which the Government is introducing in the face of the strongest opposition by the vast majority of the people of South Africa. We wish to point out that the boycott being launched by the African National Congress, is not aimed at the Afrikaner as such, but against the Nationalist Party and its Government, and we appeal to all democracy loving people of this country to join the campaign as an act of protest against the excesses of the Nationalists and their persistent abuse of power. That is what is contained in this document ?-- Yes.

(No further questions)

MR. COAKER: NO QUESTIONS:

MR. SLOVO: NO QUESTIONS:

RE-EXAMINATION BY P.P.:

Did you give evidence in the trial against the 18 persons in Port Elizabeth ?-- I did.

Did you there give evidence about speeches directed against the Europeans ?-- Yes.

Do you know what form the charge took in that case ?-- No, I couldn't say.

BY THE COURT: I thought he agreed on the question put by Mr. Berrange that it had to do with matters arising out of the Defiance Campaign, and the charge was one of trying to bring about a change in the country?

BY THE P.P.: That is so. Now I am asking the witness whether he knows what form the charge took. Because the question was put in a very wide form, in my submission. That's why I am asking him whether he knows what form it took; whether it had

anything to do with the stirring up of feelings against the Europeans; now, he says he didn't see the charge, so I will leave it at that.

BY MR. BERRANGE: If the Prosecution is going to allege that it did have anything to do, in the way in which it suggests, viz. to create racial hostility, then I hope that the matter will not be left here, and that in due course the Crown will substantiate the inference which I draw from the Prosecutor's remarks. The witness has been perfectly clear in stating to this Court that this charge had to do merely with the question of bringing about this social and economic change . If there is such a suggestion, I don't know, I don't want to be in a position whereby I am asked to guess what the Crown is saying. I have been asked to do that for a sufficiently long number of months to guess at what the Crown is saying and doing and alleging. But in a case such as this, I don't want to guess. If it is alleged that this charge was of the nature, which is suggested by the Prosecutor, then I hope in due course he will establish it, because it could be done easily enough by the production of the necessary evidence, and that, of course, would be the record itself.

BY THE P.P.: The witness has already answered 'Yes' to my question which was whether he had given evidence in connection with speeches directed against Europeans; that is sufficient for my purposes. What use was made of that evidence in that case I am not interested in; I don't care whether they paid any attention. The fact is that this witness gave evidence about similar speeches in the course of that trial; that is sufficient for my purposes.

BY THE COURT: The question is this; there seems to be some doubt as to the actual charge that was brought against these people. I don't know whether you suggest that it was not what the witness agreed it was.

BY THE P.P.: The charge was in that form as was suggested, to bring about political, economical and social changes in the country. I don't dispute that, but the evidence that I am concerned about is this type of evidence, creating of feelings of hostility against Europeans.

BY MR. BERRANGE: If that was an allegation made by the Crown can't the Accused be charged with it, because I have only one point, Sir, and that is this, if in fact, it is alleged by the Crown in 1952, a charge ^{was laid} -- of creating hostility between the races, then it would have been easy enough for that charge to have been preferred against the Accused.

BY THE COURT: I must confess that I have some difficulty. I don't quite appreciate.....

BY MR. BERRANGE: May I indicate my point of view first. All I am trying to establish is that it was open for the Crown in 1952, 1953, and at any time thereafter, to bring a charge against the utterers of these remarks of creating hostility between the races. No such charge, according to the witness, has ever been preferred at any time. It is true, and I am not prepared to debate it with the witness, or to dispute his evidence, that in giving evidence about when the Accused were charged with trying to bring about a change by unlawful means, that the witness in giving his evidence may have testified to those speeches. But that was not the issue, and what is more important, Sir, the Crown never sought to make it the issue. That is the only point I am establishing.

BY THE P.P.: Well, my learned friend sought to get out of the witness what suits his case, and I submit the Crown is entitled to elicit from the witness whatever the Crown regards as relevant to its case. What is relevant to the Crown case is the fact that speeches were made from time to time against Europeans, even during the Defiance Campaign; the witness gave evidence to that effect.

BY THE COURT: I understand that the Crown is relying on the question of creating a feeling of hostility.....

BY THE P.P.: Yes, that is the Crown's

BY THE COURT: in its present enquiry.

BY THE P.P.: Yes, that is so. I am not interested in what form the charge took at that time. The Crown might, according to the information at its disposal have decided to frame a charge in that way; that is not for us.....

BY THE COURT: if that was the charge.

BY THE P.P. It is not something that concerns this enquiry. All that I am interested in is that this witness is consistent with himself in testifying at that time to feelings of hostility. He has given this evidence over and over again.

BY MR. BERRANGE: Now that we know what my friend is interested in, may I in return say that the reason for my questions which have been directed to the witness, and following upon the explanation that I have endeavoured to give, all I am interested in doing is to expose the tactics of the Crown.

BY THE P.P.: That I object to. It is not for my learned friend to question the integrity of the Crown.

BY MR. BERRANGE: I said 'tactics' not integrity.

BY THE P.P.: 'Tactics' is another thing that is entirely un-called for.

BY MR. BERRANGE: Let us be under no illusion about this, Sir. During the course of these proceedings I have in the past, and it will be done not only be me, but by Senior Counsel and Junior Counsel, we will at all times have a great deal to say about the tactics that have been employed at this enquiry.

BY THE COURT: I think, Mr. Berrange,

BY MR. BERRANGE: But that will be done at the proper time.

BY THE COURT: I think, Mr. Berrange, that ought to be done at the proper time. I am not concerned with the tactics of the

Crown at this stage, at any rate.

BY MR. BERRANGE: I merely said that to indicate that there should be no misunderstanding in this matter.

BY THE P.P.: I shall also have to say something in due course.

RE-EXAMINATION BY P.P. CONTD.:

Now, you gave evidence about this meeting that was held on Sunday, 9th November, and you said that the Major gave an order for the crowd to disperse. And then you said some people actually dispersed?-- Yes, I said so.

And you also said that the people were called back?-- Yes, there were shouts in the crowd of 'Come Back, this is our meeting.'

Now, I want to find out, in relation to the calling back of those people who were leaving the meeting, when the order for the baton charge was given by Major Pohl, -- there was an order for the crowd to disperse, some of the crowd actually started leaving the meeting?-- That is correct.

Then there was the calling back of those people?-- Yes.

Now, in relation to the calling back of some of those people, I want to find out when Major Pohl gave the order for the baton charge, whether it was before or after the people were called back?-- It was after the people were called back.

After the people were called back, Major Pohl gave the order for the baton charge?-- Yes.

Did Ngwentshe attend this meeting on the 9th November?-- No.

(No further questions)

BY MR. BERRANGE: In view of the fact that the Prosecutor has not taken that to its proper conclusion, as in my submission he should have done, could I be allowed to put a question through the Court? This question "Did Ngwentshe attend the meeting" was left in the air, I don't know why, by the Crown, but I sup-

Collection: 1956 Treason Trial
Collection number: AD1812

PUBLISHER:

Publisher:- Historical Papers, The Library, University of the Witwatersrand

Location:- Johannesburg

©2011

LEGAL NOTICES:

Copyright Notice: All materials on the Historical Papers website are protected by South African copyright law and may not be reproduced, distributed, transmitted, displayed, or otherwise published in any format, without the prior written permission of the copyright owner.

Disclaimer and Terms of Use: Provided that you maintain all copyright and other notices contained therein, you may download material (one machine readable copy and one print copy per page) for your personal and/or educational non-commercial use only.

People using these records relating to the archives of Historical Papers, The Library, University of the Witwatersrand, Johannesburg, are reminded that such records sometimes contain material which is uncorroborated, inaccurate, distorted or untrue. While these digital records are true facsimiles of paper documents and the information contained herein is obtained from sources believed to be accurate and reliable, Historical Papers, University of the Witwatersrand has not independently verified their content. Consequently, the University is not responsible for any errors or omissions and excludes any and all liability for any errors in or omissions from the information on the website or any related information on third party websites accessible from this website.