THE SUPRESSION OF COMMUNISM ACT (1950).

OPINION.

1. Section 5 of Act 44 of 1950 empowers the Minister to eliminate certain specified persons as members or officials of a Trade Union and to make their resignation and withdrawal compulsory on written notice by him. The Section applies to three classes of persons:-

a) Those on the list compiled under Section 7 & 8;
b) Those convicted of an offence under Section11;
c) Those who are Communists.

A wholly illusionary safeguard is provided for in relation to Trade Unions, to wit, that the Minister of Justice is not act except after consultation with the Minister of Labour, which euphemistically is that he must discuss the matter and nothing more.

With regard to the listed persons in class (a) I am of the opinion that the list only becomes effective upon the organisation being declared an unlawful organisation under Section 2 (2).

With regard to class (c) this applies to persons who are Communists. Communism is defined in very wide, perhaps inept, terms in Section 1 and, interalia, means any doctrine or scheme:-

"Which aims at bringing about any political, industrial, social or economic change within the Union by the promotion of disturbance or the threat of such acts or omissions or by means which include the promotion of disturbance or disorder, or such acts or omissions or threats";

or

"Which aims at the encouragement of feelings of hostility between the European and Non-European races of the Union the consequences of which are calculated to further the achievement of any object referred to in paragraph (a) or (b)."

Having indicated what doctrines or views are Communism, the Legislator defines a Communist as a person who professes to be a Communist or "who after having been given a reasonable opportunity of making such representation as he may consider necessary is deemed by the Governor-General to be a Communist on the ground that he is advocating, advising, defending or encouraging or has at any time after the date of commencement of this Act advocated, advised, defended or encouraged the achievement of any of the objects of Communism or any act or omission which is calculated to further the achievement of any such object."

I have set out the deeming provisions in full and I have the following comments to make on it:-

a) It is couched in language which although ill-defined is extremely wide. It, however, only applies to the acts and omissions specified <u>since</u> the Act and has no application to the such acts etc., committed prior to the Act coming into force.

b) The deeming is to be made by the Govenor-General after hearing representation on specified grounds and not within his unfettered discretion.

c) The deeming is only to be made after the Minister has considered a factual report by the Committee appointed under Section 17. I would emphasise that the Minister

is to consider but need not follow such report. Once an official of the Union is deemed a Communist his elimination from the organisation or any written notice given by the Minister under Section 7.

1. As stated above, the deeming relates only to activities etc., since the Act and prior activities cannot be taken into consideration. Obviously very wide powers were intended to be conferred on the Governor-General who in practise is the Minister, but in my opinion the right to deem is not unfettered in that it is limited to the specified grounds. If any person can affirmatively show that one of the grounds specified have existed, the deeming may be set aside by a Court on the basis that the Governor-General has not applied his mind to requirements set out in this Section. The onus would be diffucult to discharge; in fact it would necessitate to prove that no reasonable person would have come to the conclusion that the person was in any way associated in such activities. This is the only possible remedy open to any official who is made a deemed Communist.

2. The prior activities of certain officials are not relevant excepti in so far as they tend to prove a continuation of such activities since the Act or a present adherence to the activities specified.

3. Under Section 10 the Minister after a report by the Committee may prohibit certain persons from being within defined areas. This applies when the Minister is satisfied that any person is advocating, advising, defending or encouraging the achievement of any of the objects of Communism etc., or is likely to advocate, advise, defend etc., Under this Section the Minister's discretion, apart from malafides, is altogether untramelled and unfettered and the provisions of the Section may be applied at the Minister's discretion to any official of the Union.

4. I have set out the meanings in (b) and (c) of Communism. They are extremely widely framed and there is no limitation as to what is comprised in "any political, industrial, social or economic change", but there would have to be either an unlawful act or the intention to promote disturbance or disorder. However wide these provisions may be, they are not, in my opinion, applicable to a strike lawfully called in terms of the Industrial Conciliation Act.

(sgd) Norman E. Rosenberg.

Chambers,
Johannesburg.
26th July, 1950.

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