Rand Daily Mail Nov 7 '63.

State says: 'Don't quash indictment'

20M. 7 MAY 63.

CAPE TOWN.—It was not possible to set out each and every detail of each and every act alleged to have been committed by the 11 people at present appearing at the Criminal Sessions, Cape Town, on a charge of sabotage, Mr. J. E. Nothling, the Deputy Attorney-General, said yesterday.

He was replying to the application made by the defence for the indictment to be quashed.

Those accused are: Neville Edward Alexander, Don John William Davis, Marcus Solomons, Elizabeth van der Heyden, Fikele Charles Bam, Lionel Basil Davis, Ian Leslie van der Heyden, Dulcie Evon September, Dorothy Hazel Alexander, Doris van der Heyden and Gordon Frederick Hendricks.

It is alleged that they committed sabotage "by means of a conspiracy to commit certain wrongful and wilful acts," alternatively, it is alleged that they committed sabotage by inciting, instigating, commanding, advising or encouraging other persons to commit certain wrongful and wilful acts.

In two further alternative charges, it is alleged that they contravened the Suppression of Communism Act.

EXCEPTED

Exception was taken on Tuesday to the main and first alternative charges on the ground that the indictment was "vague and embarrassing and calculated to prejudice the accused" in that the State did not know and could not give them certain information which was essential to their defence and to which they were entitled.

Misjoinder was given as a further ground for excepting to the first alternative and to the second and third alternative charges, it being contended that each of the accused people was accused of different acts at different times and in different places.

Mr. Nothling said on the question of misjoinder the State's case was based on an alleged course of conduct in pursuance of one criminal design. This design was to overthrow the Government by violence through the Yu Chi Chan Club (Y.C.C.C.). Various acts and speeches of the accused people constituted their common purpose.

COMMON PURPOSE

"It is true that it is not stated in so many words in the alternative charges in the indictment that they acted in common purpose, but I submit that it is not necessary to state this in the indictment."

Mr. Nothling said if the defence were in any doubt that the State was alleging that the accused acted in concert, they should have asked for further particulars on that point. "If your Lordship feels that this should have been alleged specifically in the indictment, I shall gladly amend the indictment, but I submit that it is unnecessary," he said.

Dealing with the defence submission that the indictment was vague and embarrassing, Mr. Nothling said the Criminal Procedure Act required the State to provide particulars reasonably sufficient to inform the accused of the nature of the charge.

"The State is not required to inform the accused of each and every detail of the charge and the evidence," he said.

Referring to the defence complaint that the State had failed to comply fully with requests for further particulars, Mr. Nothling said that a large volume of additional information — in all, 27 typed pages — had been given to the accused.

EVIDENCE

Mr. Justice Van Heerden: I take it that if you do know particulars, you will not lead evidence on them.

Mr. Nothling said the defence wanted precise details, for example, about which accused attended which meeting. The State had said it did not know whether each of the accused attended each particular meeting and naturally would not be able to prove that each one attended each of the meetings.

The State had, however, said that each of the accused attended meetings during a specific period and at places specified.

Mr. Justice Van Heerden adjourned the court until tomorrow, when his ruling will be given. — SAPA.

Press, police outnumbered White spectators

RDM 30 OCT 63

PRETORIA REPORTER

POLICE and Pressmen together must have outnumbered the White spectators at the trial of 11 men and two organisations on charges of contravening the Suppression of Communism Act and the General Law Amendment Act, which opened in the Pretoria Supreme Court yesterday.

By 8.30 a.m., one-and-a-half hours before the trial was due to start, a sizeable crowd of Africans had formed on the pavement of Church Square, facing the main entrance to the Palace of Justice. Newspaper reporters, photographers and policemen thronged the steps leading into the building.

Photographers were kept busy taking photographs of senior police officers seeking to prevent the formation of groups of Africans on the steps of the building, and were also presented with the spectacle of a Saracen vehicle brought to a halt by the traffic directly in front of the building.

Policemen were on duty throughout the building and sought identification of all who entered the corridors leading to the side entrances of the court in which the trial is being held.

The massive steel grille doors at the back of the Palace of Justice were closed and guarded by policemen.

In the court itself, where a special dock had been installed to hold the 11 accused, both White and non-White galleries were filled to overflowing.

In addition to the large number of newsmen reporting the case, the S.A.B.C. installed a microphone in the court room and made a recording of the proceedings.

It is understood that this is the first time in the history of the S.A.B.C. that this has been done and that excerpts of the recordings will be broadcast.

Attractive Mrs. Barbara Kantor, wife of James Kantor, who is charged in his capacity as a partner in the firm of James Kantor and Partners and also in his personal capacity, was among the first of the relatives of the accused to arrive.

Also present were Mrs. Lionel Bernstein and her daughter, and Mr. Hepple, father of Bob Hepple.

Mr. J. Mendelson, a British Labour M.P., attended the proceedings during the morning, as did members of the Dutch Embassy staff, and Mr. H. Rein, the Attorney-General, who occupied a seat in the otherwise empty jury box.

An African woman in a mixture of Western and tribal dress and an African wearing what appeared to be medicine man regalia made an appearance at the entrance to the building, but did not come in. Indian women in colourful national dress mixed with leaders of the Johannesburg Indian community.

When Nelson Mandela and Walter Sisulu, who both at one time occupied the position of Secretary-General of the banned African National Congress, entered the dock in drab prison uniform, they were greeted with cries of "Amandhla Ngawethu" (strength is ours) and raised clenched fists from the non-Whites.

This happened every time they entered or left the dock until Major Fred van Niekerk told the non-Whites that if there was any more shouting the court would be cleared.

Sitting next to each other, Mandela and Sisulu, the first looking somewhat drawn and the other minus his now famous beard, engaged in sporadic conversation throughout the proceedings.

In contrast, bearded James Kantor, wearing a gold bracelet on his right wrist, slumped in his chair displaying little or no interest, and Hepple so divorced himself in attitude from his co-accused that he would have been taken for a bored spectator if he had not been in the dock.

A steady drizzle had dispersed most of the Africans gathered on Church Square before the proceedings ended, but this did not prevent those remaining from breaking into song and shouting slogans when those who had been able to obtain a seat in court emerged from the court building.

In spite of the rain, a row of policemen was still patrolling in front of the pavement on which the Africans stood huddled under coats, umbrellas and newspapers.

PTO

PERSONALITIES AT 'RIV

BASIS OF CHARGES SHAKY, SAYS FISCHER

20/10/63 RDM

By DICK RICHARDS

Applications to quash the indictment on behalf of seven of the prisoners and of one of them in his personal capacity and in his capacity as representing an association, plus two bail applications, occupied the whole of yesterday's proceedings at the Rivonia trial of the "National High Command and others."

Appearing before Mr. Justice De Wet, the Judge-President, are Nelson Mandela, Walter Sisulu, Dennis Goldberg, Govan Mbeki, Ahmed Mohamed Kathrada, Lionel Bernstein, Raymond Mahlaba, James Kantor, Elias Matsoaledi, Andrew Hepple.

The first seven are charged as representing an association or associations known variously as the "National High Command, the National Liberation Movement, The National Executive Committee of the National Liberation Movement and Umkonto We Sizwe (The Spear of the Nation)," as well as in their personal capacities.

Fewer counts

Kantor is charged in his personal capacity as well as representing the firm of James Kantor and Partners in which he was in partnership with his brother-in-law, Harold Wolpe.

They are charged with 199 acts of sabotage — originally the charges totalled 222—with contravening the Suppression of Communism Act and the General Law Amendment Act.

The sabotage charges include damage to power pylons, railway and telephone lines and the bombing of public buildings.

In his application to have the indictment quashed in respect of the first seven accused, Mr. A. Fischer, Q.C., said the charges were not set out in sufficient detail to inform the accused of their nature.

Refusals

Applications for further particulars had been met either with a blank refusal or the replies had been totally inadequate.

The dates and places mentioned in the preambles to the charges did not always coincide with the dates and places of the offences in the actual charges.

Some of the acts of sabotage alleged to have been committed by the accused had taken place before the enactment of the anti-sabotage legislation.

There was also present extraneous and irrelevant matter which, with the other deficiencies, proved embarrassing to the accused and prevented them from preparing a defence.

Among other anomalies, it appeared that in the case of Mandela, he was charged with having committed 156 of the 199 acts of sabotage which took place while he was in jail.

Learnt nothing

Mr. Fischer quoted extensively from numerous decided cases, including the Treason Trial, and said that either the State had learnt nothing from them, or it had not given the accused the facts because it did not have the facts.

Dr. G. Lowen, Q.C., in his application to have the indictment quashed in respect of Kantor, said that not only did Kantor not know what he was supposed to have done but he was held vicariously responsible for what his partner, Harold Wolpe, had done.

Meaningless

In one case, when asked if an act was supposed to have been committed by Kantor or Wolpe, the reply from the State had been: "Yes."

"Numerous answers received to a request for further particulars," said Dr. Lowen, "are nothing but a meaningless answer to a meaningful question, with an evasion of any sense of fair play to the accused.

"On the further particulars supplied, which mean little or nothing, it is impossible to prepare a defence."

Both Mr. Fischer and Dr. Lowen will have the opportunity of continuing their arguments today.

Dr. P. Yutar, Deputy-Attorney-General, with him Mr. J. J. M. Naude, Senior Public Prosecutor of Pretoria, and Mr. T. B. Vorster, of the office of the Senior Public Prosecutor, Johannesburg, appeared for the State.

Mr. A. Fischer, Q.C., with him Mr. G. Bizos and Mr. A. Chaskelson (instructed by Mr. Joel Joffe) appeared for Mandela, Sisulu, Goldberg, Mbeki, Kathrada, Bernstein, Mahlaba, Matsoaledi and Mlangeni.

Dr. G. Lowen, Q.C., with him Mr. H. Schwarz and Mr. D. Kuny (instructed by Mr. Jack Cooper, of Benjamin Joseph, Cooper and partners) appeared for Kantor and James Kantor and Partners.

Hepple was not represented.

Bernstein applies for bail

RDM 30 Oct

By Pretoria Reporter

LIONEL BERNSTEIN, one of the 11 accused in the "Rivonia Trial," had given unique proof that he would in no circumstances avoid standing trial, said Mr. A. Fischer, Q.C., who made a bail application yesterday on his behalf.

Mr. G. Fischer said he was relying on the rule of law that as soon as an accused had convinced a court he was unlikely to avoid standing trial, he was entitled to bail.

Bernstein had amply demonstrated that at any time he was willing to put his political beliefs on trial and stand by the consequences.

OTHER FACTORS

On numerous occasions, including the four years during which he had had the threat of a conviction on a charge of high treason hanging over his head, he had had the opporunity of leaving the country but he had not done so. He had no intention of doing so now.

Mr. Justice De Wet said he would give Dr. Percy Yutar, the Deputy-Attorney-General, the opportunity of replying to Mr. Fischer today.

A TRIAL CHARGES QUASHED

STAR OCT 30. '63

Defence objections upheld by judge

THE INDICTMENT in the Rivonia sabotage trial has been quashed. The Judge-President, Mr. Justice de Wet, made this order in the Pretoria Supreme Court at 3.30 p.m. today.

This means that the State will have to redraft the indictment, present it to the accused, give them sufficient time to study the charges and to request further particulars and give them time to study those further particulars.

The case, therefore, cannot almost certainly be heard this year.

Mr. Justice de Wet, after Dr. Yutar had ended his argument on the defence application to quash said it was most improper, when accused people ask for particulars to say to them that this was a matter they knew all about.

"That presupposes they are guilty."

"I am satisfied the information they asked for should be given and the indictment cannot stand in the absence of that information.

"It is not the function of the Court to draw an indictment for the State.

The judge said it was possible, if the application for quashing was not acceded to, the ridiculous position would be reached of the defence having to ask for an adjournment after each State witness had given evidence to study that evidence.

"The accused should be able to prepare for trial before the trial begins."

90 days

The 10 accused — Hepple was discharged earlier today — will revert to the 90-day detainee status they lost earlier this month when they were served with the indictment.

Instead of being awaiting-trial prisoners with access to legal representation they will now again be without contact with the outside world until the State has redrafted the indictment and served the new ones upon them.

Not parallel

Dr. Yutar criticized the authorities the defence had relied on in their application to quash the indictment.

The treason trial was not a fair parallel because in that case the State relied on 5,000 documents and hundreds of speeches.

In this case there will be 250 documents — and no speeches — used as evidence.

Dr. Yutar referred to the defence argument that 156 acts of sabotage took place while Mandela was in jail.

"Evidence will be led that Mandela was overseas prior to July 1. He came back and prepared documents showing how the battle was to be waged.

"Then unfortunately he was arrested. Now it is said he was not responsible for what took place afterwards.

"While he was in jail a number of lawyers (Slovo, Nokwe, among others) visited him.

Plan of jail

"A plan was drawn of the jail so that there would be an attempt for him to escape.

"How dare my learned friends argue that he was not responsible for the acts while he was in jail. If I plan a murder with someone, then get arrested, and my friend then carries out the murder, am I

◆ Turn to Page 3. Column 6.

BAIL FOR KREELS

Leon Michael Kreel and his wife, Maureen, of Terrace Road, Mountain View, who are awaiting trial on a charge of harbouring or concealing Arthur Goldreich and Harold Wolpe after the Marshall Square escape, were granted bail today.

Kreel was granted bail of R2000 and his wife R400.

They are due to appear in the Regional Court on December 17.

Bail was granted on condition that they do not leave Johannesburg district, that they do not interfere with State witnesses and that Kreel reports twice a day to the police and his wife once a day.

Mr. H. S. Bosman was on the Bench.

Hepple to give State evidence

Bob Alexander Hepple, one of the 11 Rivonia sabotage trialists, was discharged today. Dr. Percy Yutar, Deputy-Attorney-General, said Hepple would give evidence for the State.

Hepple was immediately led from the dock and down the steps into the cells. It is probable that he will be held in protective custody until the trial starts. He did not leave the court at the lunch adjournment.

This dramatic turn was presaged earlier when, at the tea interval, Hepple was not taken down the steps to the cells with his fellow-accused but to an office by two Security Branch men.

NO POLICE PROTECTION FOR FREED BOB HEPPLE

RDM 31/10/63

Pretoria Reporter

BOB HEPPLE, a Johannesburg advocate who, until yesterday was one of the accused in the Rivonia trial when it was announced that he would be called as a State witness, said last night that he had not asked for police protection, "nor do I intend to do so."

He said he had not received any threats since his release.

The 28-year-old advocate cuddled his 11-month-old son as he talked about his release and the four months he has spent in prison.

"My son has changed a lot since my arrest — he has forgotten me. I suppose he wonders who I am."

Mrs. Shirley Hepple said: "I was so surprised when they announced in court that Bob was being released. I didn't think it would be so soon. At first I couldn't believe my ears. I rushed out of the spectators' gallery and a detective brought Bob to me."

LOST 10 LB.

Tall, bespectacled Mr. Hepple, who lost 10 lb. in jail, said that he had known for some time that he was to be released, "but it came as a surprise when I was released today."

He said he did not know whether the other accused were aware that he was to be released.

Mr. Hepple—top University of the Witwatersrand law student of 1957—said that he and the other accused had stayed in the same cells after they had been charged and had become awaiting trial prisoners.

"The only changes were that we were allowed literature — as detainees we were only allowed the Bible—and were able to speak to one another during exercise periods."

TAKEN TO FORT

He said that he had been moved to the Fort in Johannesburg a week before the trial, which started on Tuesday, and was only moved back to Pretoria Central prison on the day of the trial.

During the tea adjournment yesterday, Mr. Hepple was taken to see Dr. Yutar and told he was to be released.

"It has been a terrible strain," Mrs. Hepple said. "But the worst is now over. Things won't be easy though for the next few months."

NON-STOP

As Mr. and Mrs. Hepple talked, friends called at the house to congratulate them and the telephone rang non-stop.

Mr. Hepple's father — Mr. Alec Hepple, the former Labour Party M.P. — heard of his son's release when he visited friends.

"I have no plans for a holiday or about my work," Mr. Hepple said. "At the moment I feel too dazed to think clearly."

ILED CONSTABLE ALL
ONEY OFFER BY KANTOR

STAR 31 OCT. 63

Marshall Square talk on "when I am free"

JAMES KANTOR, one of the Rivonia trialists, stated in the Supreme Court today that he had no knowledge of an alleged plot to get him out of the country. The State's affidavit alleging the plot, presented today by the Deputy Attorney-General, Dr. Percy Yutar, was by Johannes Arnoldus Greeff, the constable who was jailed for helping Goldreich and Wolpe to escape.

The affidavit dealt with a conversation Greeff said he had with Kantor in Marshall Square.

Dr. Yutar introduced the plot allegation yesterday afternoon while Kantor's bail application was being argued.

He told the court that he had been given a secret document by the police which, he said, showed that Kantor would be rescued from jail or spirited out of the country.

Up to that moment, he said, he was in sympathy with Kantor's application but that he now strenuously opposed it.

At 10.40 he came into the court and handed copies of the affidavit to defence counsel.

"Are you ready?" he asked them.

There was a chorus of protest. "You have just handed this to us."

"But I gave you the contents before," said Dr. Yutar. "Oh, well, tell me when you are ready."

Denial

Counsel and instructing attorneys went downstairs to the cells, where Kantor started dictating his second affidavit of the day.

His first, in reply to Dr. Yutar's statement yesterday, denied he had ever heard of an escape plot.

Kantor said he was "astounded" to hear yesterday that there were plans, if they exist at all, to help him escape.

"I state emphatically that that (i.e., yesterday afternoon) was the first time I had any knowledge whatsoever of any such plan and that if such plan does exist I am certainly not included therein nor would I under any circumstances have anything whatsoever to do with it."

Responsibilities

The affidavit continued that Kantor has no intention of estreating his bail and not standing trial.

Kantor added that he will submit to the most stringent bail conditions and will not evade his responsibilities to his wife and widowed mother.

When the court started at noon Dr. Yutar read out two affidavits, one made by Major Fred van Niekerk, head of the Pretoria C.I.D., and the other by Johannes Arnoldus Greeff.

Major van Niekerk's affidavit said he had learnt from a reliable source that Kantor and any others released on bail would flee to Lobatsi.

If they did not get bail an attempt would be made to free them from jail by November 9. Greeff's affidavit was made yesterday in the Pretoria Jail.

Dr. Yutar said before reading it that it would show that Kantor said that Greeff had been promised R4000, and would be paid this money.

Greeff's affidavit was to the effect that after his arrest on August 25 he was held in the Marshall Square cells.

He and Kantor could not talk to each other, but once he walked

◆ Turn to Page 3. Column 1.

CONT'D ON P.

Trial date— Kantor protests

STAR 31 OCT 63

IN a brief appearance in the Pretoria Magistrate's Court this afternoon the 10 Rivonia sabotage trialists were remanded to November 12.

The appearance lasted only a few minutes. The 10 men entered the small dock from the cells below the court and stood in two rows. They were not represented.

Mr. J. J. M. Naude, senior public prosecutor in Pretoria, said he wanted the case adjourned to November 12 for summary trial in the Supreme Court.

As the magistrate, Mr. D. F. Marais, was about to remand the men, James Kantor pushed from the back of the dock and sked if he could say something.

He said his legal advisers had not been told that the case would be remanded until November 12. The date might not suit them.

Mr. Naude said November 12 was only a provisional date.

Kantor said he wanted the matter adjourned in the Magistrate's Court until tomorrow.

After discussion the magistrate remanded the 10 men for summary trial in the Supreme Court on November 12.

They were then escorted from the dock to the cells below.

STAR. 31 OCT. 63.
CONTD FROM. P

KANTOR PLOT ALLEGED

◆ Continued from Page 1.

down the passage past Kantor's cell.

Kantor had told him that he must not worry about not getting "the money" because he would get it when he was free.

Kantor had added that Greeff must not come to his office because there were microphones there, but must talk outside his office.

Dr. Yutar then raised what he called "a serious matter."

He said he had given an undertaking that the State would honourably abide by any decision the court made, and had stood by this.

"Yesterday a member of the defence team said in the presence of a warrant officer that "they" (the State) would stop at nothing. They will perjure any amount of evidence."

Dr. Yutar said that Mr. Kuny had made the statement. He was not making any threats, but would not let the matter rest.

Mr. Kuny then rose and denied that he had made the statement.

The judge said that this denial was sufficient at this stage.

Inspects cells

Kantor's second affidavit denies that he had any conversation with Greeff.

Because of the structure of the cells, he says, it was physically impossible that such a conversation could have taken place, and he asks the court, however inconvenient, to inspect the cells and satisfy itself on the point.

Kantor says that on August 25 he was under 90-day detention, so that it was impossible that he was in his office on that day.

"I deny I ever spoke to Greeff. I point out that I was kept isolated in solitary confinement.

Interrupting his reading of Kantor's affidavit at that point, Dr. Lowen said Greeff's statement was inherently improbable

He was at that stage facing trial on serious charges, for which he was later sentenced to six years' imprisonment, and it would be impossible for Kantor, held in jail, to have made an offer to Greeff with any hope of its being accepted or fulfilled.

Not Communist

Dr Lowen said the State had not indicated at all where this information (that Kantor would escape) had come from. "It may have come from an anonymous telephone call," he added.

The judge asked Dr. Lowen if Kantor would not be tempted to escape if he was given bail.

"Kantor is not a Communist. He is an anti-Communist. He does not belong to any of the organizations that the other accused are alleged to belong to," Dr. Lowen replied.

At the conclusion of Dr. Lowen's argument the judge said he would not give judgment until after Bernstein's bail application, which he understood will be made tomorrow.

After the judge had adjourned the case there was a heated exchange between Dr. Yutar and Mr. Kuny.

Mr. Kuny had asked Dr. Yutar to go with him to the judge.

Heated words were exchanged.

Dr. P. Yutar, Deputy Attorney-General, with him Mr. J. J. M. Naude, senior public prosecutor of Pretoria, and Mr. T. B. Vorster, of the office of the Senior Public Prosecutor, Johannesburg, appeared for the State.

Dr. G. Lowen, Q.C., with him Mr. H. Schwarz and Mr. D. Kuny (instructed by Mr. Jack Cooper of Benjamin Joseph, Cooper and Partners) appeared for Kantor and James Kantor and Partners.

Hepple at home

Mr. Bob Alexander Hepple, one of the Rivonia trialists who was discharged yesterday, spent part of the day at his Victory Park home today but neither he nor his wife wanted to speak to the Press. He went out a few times.

I KNOW OF NO ESCAPE PLOT, SAYS KANTOR

RDM 1 NOV. 1963

PRETORIA REPORTER

IF it were assumed that fools, knaves, criminals or political fanatics had formulated an escape plan, was this any reason to deny James Kantor his freedom, asked Dr. G. Lowen, Q.C., in the Pretoria Supreme Court yesterday.

He was speaking in support of his application for Kantor's release on bail after Kantor had denied any knowledge of an escape plan.

The Judge-President, Mr. Justice De Wet, had heard an affidavit submitted by Dr. P. Yutar, the Deputy-Attorney-General, alleging that there was a plan to take any of the Rivonia trialists, if granted bail, to Lobatsi.

One of the affidavits was stated to have been made by Johannes Greeff, the policeman jailed for six years for his part in the escape of Harold Wolpe and Arthur Goldreich from Marshall Square.

TALK IN JAIL

In it Greeff said he had been detained in Marshall Square at the same time as Kantor. One day, his cell door being open, he walked past Kantor's cell. Kantor called him to the door.

Kantor told him not to worry, that he would get his money.

Dr. Yutar said there would be evidence that Kantor had said: "Greeff was promised £2,000 and he will be paid."

Dr. Yutar then handed in an affidavit made by Major Fred van Niekerk, of the Pretoria C.I.D., in which he said he was in possession of information from a reliable source that there was a plan to take any of the Rivonia accused granted bail to Lobatsi.

IMPROBABLE

If they were not granted bail there was a plan afoot to take them out of custody and to Lobatsi before November 9.

Dr. Lowen said that Greeff's affidavit was so improbable that it sounded as if it had been concocted.

Kantor denied Greeff's affidavit and asked for an inspection of the cell he occupied in Marshall Square to support his contention that the cell door did not allow the occupant to see either up or down the corridor.

Regarding Major Van Niekerk's affidavit, Kantor said in an affidavit that he knew of no organisation planning an escape for the Rivonia accused nor of the plan itself.

NOT SECURE

If granted bail and offered an escape he would not avail himself of it but would approach the police.

Dr. Lowen said nobody knew the scurce of the document which alleged the escape plan. It could well be a letter written by some lunatic.

Dr. Lowen continued: "If my learned friend can shield behind this kind of document then the safety of an accused is not vouchsafed any more."

The judge said he would give a decision after hearing the bail application on behalf of Lionel Bernstein, postponed until today.

Probe into complaint by Yutar

Pretoria Reporter

AN allegation was made in the Pretoria Supreme Court yesterday that Mr. D. A. Kuny, who appeared with Dr. G. Lowen, Q.C., and Mr. H. Schwarz for James Kantor in the Rivonia trial, said after the dramatic allegation of the escape plot on Wednesday: "They will stop at nothing. They will perjure any amount of evidence."

Dr. P. Yutar, the Deputy-Attorney-General, who told the court of the alleged escape plot, said Mr. Kuny had said this in the presence of a warrant officer of the police. The officer was prepared to enter the witness box and swear that this was so.

A reflection

He said that Mr. Kuny's remark was a serious reflection on him (Dr. Yutar), his colleagues and the police. He demanded an immediate apology as this was "the time and the forum."

Granted an opportunity to reply by Mr. Justice De Wet, Mr. Kuny said this was the first he had heard of the matter. He denied that he had made the remark.

The judge said the allegation had been made, Mr. Kuny had denied it and the matter would have to be investigated.

90-DAY MAN IS ON HUNGER STRIKE

2 NOV 63
FROM RDM Sat Nov 2,

STAFF REPORTER

ARCHIE LEWITTON, a 90-day detainee has been on a hunger strike since his arrest last Friday, according to his wife, Dr. Yvonne Lejeune, senior lecturer in psychology at the University of the Witwatersrand.

Dr. Lejeune said last night that she visited her husband last Saturday, a day after his arrest. He told her then that she should not bring him any food. She did not take this seriously, but when she visited him again yesterday she noticed that he looked pale and drawn.

He then told her he had been on a hunger strike since his arrest.

"His protest is against the 90-day detention provisions which he considers to be unjust," she said.

TO ENGLAND

Dr. Lejeune said she was due to take up a lecturing position with the University of Keele in England on January 1, next year. In her opinion her husband's application for first a passport, and then an exit permit, had sparked off the interest of the security police in him.

She said she still intended leaving for England at the end of the year with her 16-year-old daughter, Linda. Her 18-year-old son, Andrew, will remain South Africa.

Colonel G. Klindt, head of the security police in Johannesburg, said last night that he had not been informed that anyone was on hunger strike, and thus could make no comment. He said Lewitton was being held in Pretoria.

A friend of the Lewitton family said last night that Archie Lewitton went on a 13-day hunger strike when he was detained during the state of emergecy in 1960. He only stopped because the group he struck with stopped.

VISITED WEEKLY

The Commissioner of Police, General Keevy, said last night he had no knowledge of Mr. Lewitton's "hunger strike." "All I can tell you is that he is being held in Johannesburg," said General Keevy.

General Keevy said 90-day detainees were visited every week by a magistrate.

"They would surely put to him any complaints they might have."

The Commissioner of Prisons, Brigadier J. C. Steyn, said last night he had not received any reports about Mr. Lewitton.

Brigadier Coetzee, the deputy-commissioner, said on Thursday he knew nothing of the hunger strike.

TEMPTATION TO FLEE

RDM. · NOV. '63

No bail for Rivonia men

RDM. 14 NOV. 63.

THE JUDGE-PRESIDENT, Mr. Justice de Wet, refused bail for James Kantor and Lionel Bernstein, two of the men appearing in the Rivonia sabotage trial, in the Pretoria Supreme Court today. The judge said he thought the temptation for them to flee the country would be too great if he granted bail.

He accepted the submissions made by the State that there was a move afoot to help the men escape. It would not be in the interests of public safety to grant them bail.

Mr. Justice de Wet said that in other cases several accused had been granted bail and in their applications they said they would stand trial, but they fled the country.

"One of the accused in the present case (Walter Sisulu) was given bail in another case and then went underground until he was arrested on the present charges."

COMMUNIST

Dealing particularly with Bernstein, the judge said he was a listed Communist and has associated with Communists.

"Kantor's case is different. His brother-in-law is Wolpe, who is concerned in activities against the State. Kantor says he knew nothing about Wolpe's activities.

"But he knew that Wolpe was a listed Communist and asked him not to indulge in any political activity. The evidence of the State will be that many listed Communists visited Kantor's offices and that his trust account was used for suspicious payments."

The judge continued: "On those facts, and on others to be presented, the court will be asked to infer that he was not innocent and must have known what was going on in his office.

"He has also denied his guilt. But I am satisfied that if Kantor is released on bail, the temptation to avail himself of the facilities to escape will be far too great.

The Deputy Attorney-General, Dr. Yutar, said the important factor was the strength of the case. "Never have I been presented with a more powerful case than I have against each and every one of the accused," he said.

The affidavit by Major F. van Niekerk was not so far-fetched as the defence would make out.

Goldreich and Wolpe had escaped from Marshall Square. This could not have been done without outside assistance.

"In the plight in which the accused find themselves, there is no limit to their ingenuity, and that of the organizations behind them, here and abroad," Dr. Yutar said.

RAND
Daily Mail

MONDAY, NOVEMBER 4, 1963.

90-DAY PRISONERS

THE Minister of Justice for the most part made the routine and expected replies to Mrs. Helen Suzman when she interviewed him last week on the treatment of the 90-day detainees. It will come as a surprise to most people to learn that as many as 500 have been imprisoned under this clause during the past six months. Of these 120 have been discharged and more than 200 are awaiting trial. But that still leaves nearly 180 subjected to the worst features of this shocking law — no charge, no trial and no means of stating their case.

Mrs. Suzman naturally raised the question which has been in the minds of all those who give the prisoners a thought, namely the rumours that "third degree" methods were being used by the police or the prison staff in some cases. The Minister emphatically denied that there was any truth in these stories of ill-treatment and promised to investigate any case that was brought to his notice. He also assured Mrs. Suzman that he was not trying to "break" the detainees mentally, but this surely is a question of what is meant by "breaking." Psychological pressure, in varying degrees, is involved inevitably in the bare fact of solitary confinement for long periods. One of the avowed purposes of this kind of detention is the extraction of information and, although Mr. Vorster may claim that he is not out to "break" his prisoners mentally, to most people he will seem to be doing something that comes very near to that. He says that, if the detainees were to show signs of being mentally affected by their detention, a doctor would be called in by the prison authorities or the visiting magistrate. This is not very reassuring. Mental deterioration may have gone a long way before it comes noticeable to a warder or a busy magistrate doing his rounds. On the allegation that the prisoners were locked in for 23 hours out of the 24 and could not speak to anyone even during their brief exercise periods the Minister made no comment.

Even if Mrs. Suzman did not get much out of Mr. Vorster, it is good to know that at least one Member of Parliament has not forgotten the plight of these detainees and has put her anxieties about the conditions of their imprisonment directly to the Minister. With far too many people in South Africa it is a case of "out of sight, out of mind." The country should be grateful to Mrs. Suzman for reminding the Government that these so easily forgotten people are not entirely forgotten.

VOL 31

IN THE SUPREME COURT OF SOUTH AFRICA.

(TRANSVAAL PROVINCIAL DIVISION)

Before: The Honourable Mr. Justice DE WET, Judge-President.

In the matter of:

THE STATE vs. NELSON MANDELA AND OTHERS.

12th JUNE 1964.

- JUDGE'S REMARKS IN PASSING SENTENCE -

DE WET, J.P.

I have heard a great deal during the course of this case about the grievances of the non-European population. The accused have told me, and their counsel have told me, that the accused, who are all leaders of the non-European population, have been motivated entirely by a desire to ameliorate these grievances. I am by no means convinced that the motives of the accused were as altruistic as they wished the Court to believe. People who organise a revolution usually plan to take over the Government, and personal ambition cannot be excluded as a motive.

The function of this Court, as is the function of a Court in any country, is to enforce law and order, and to enforce the laws of the State within which it functions.

The crime of which the accused have been convicted, that is the main crime, the crime of conspiracy, is in essence one of high treason. The State has decided not to charge the crime in this form. Bearing this in mind, and giving the matter very serious consideration, I have decided not to impose the supreme penalty which in a case

like this would usually be the proper penalty for the crime. But consistent with my duty, that is the only leniency which I can show.

The sentence in the case of all the accused will be one of life imprisonment. In the case of the accused who have been convicted on more than one count, these counts will be taken together for purpose of sentence.

VOL 31

IN THE SUPREME COURT OF SOUTH AFRICA

(TRANSVAAL PROVINCIAL DIVISION)

THE STATE

against

1. NELSON MANDELA,
2. WALTER SISULU,
3. DENNIS GOLDBERG,
4. GOVAN MBEKI,
5. AHMED MOHAMED KATHRADA,
6. LIONEL BERNSTEIN,
7. RAYMOND MHLABA,
8. JAMES KANTOR,
9. ELIAS MOTSOALEDI and
10. ANDREW MLANGENI.

DE WET, J.P.: The first count alleges that the accused are guilty of the offence of sabotage, in contravention of section 21(1) of Act 76 of 1962, in that during the period 27th June, 1962, to 11th July, 1963, and at Rivonia, Travallyn and Mountain View in the Province of the Transvaal, as well as at other places within the Republic of South Africa, the accused 1 to 7 personally and by virtue of their being members of an association of persons, within the purview of section 381(7) of Act 56 of 1955, as amended, known as the National High Command, the accused No. 8 personally and by virtue of his being a member of an association of persons within the purview of section 381(7) of Act 56 of 1955, as amended, styled James Kantor and Partners under which name he con-

ducted his profession in partnership with Harold Wolpe, and the accused 9 and 10, together with a number of named persons and organizations did, acting in concert and in the execution of a common purpose, wrongfully and unlawfully, through their agents and servants, commit the following wrongful and wilful acts, namely:

(i) the recruitment of persons for instruction and training, both within and outside the Republic of South Africa, in

(a) the preparation, manufacture and use of explosives - for the purpose of committing acts of violence and destruction in the aforesaid Republic, and

(b) the art of warfare, including guerilla warfare, and military training generally - for the purpose of causing a violent revolution in the aforesaid Republic, and

(ii) the acts particularised and numbered 40 to 193 in Annexure "B", attached hereto,

whereby the accused, injured, damaged, destroyed, rendered useless or unserviceable, put out of action, obstructed, hampered with or endangered -

(a) the health or safety of the public;

(b) the maintenance of law and order;

(c) the supply and distribution of light, power or fuel;

(d) postal, telephone or telegraph services or installations;

(e) the free movement of traffic on land, and

(f) the property, movable or immovable, of other persons or of the State.

The named co-conspirators include Goldreich and Wolpe as well as other persons unknown, and also include a number of persons named in a schedule to the indictment. The organizations named as co-conspirators are The South African Communist Party, The African National Congress and the Umkonto We Sizwe (The Spear of the Nation). Annexures to the indictment list a number of further particulars which are relevant to Count 1 as well as to the other counts. Count 2 also charges sabotage in contravention of section 21(1) of Act 76 of 1962 and differs from the first charge only in that it alleges that the accused, together with the named persons and other unknown persons, did wrongfully conspire with each other to aid or procure the commission of or to commit the following wrongful and wilful acts. Paragraph (i) is the same as Paragraph (i) of the main charge except that it deals with further recruitment of persons and Paragraph (ii) charges further acts of violence and destruction of the nature described in Annexure "B" to the indictment. Paragraph (iii) charges a conspiracy to commit acts of guerilla warfare in the Republic. Paragraph (iv) charges acts of assistance to military units of foreign countries when invading the aforesaid Republic, and (v) acts of participation in a violent revolution in the Republic and it is again alleged that these acts would have injured, damaged, destroyed, rendered useless or unserviceable, put out of action, obstructed, tampered with or endangered the health or safety of the public etc. Count 3 charges a contravention of section 11(a), read with sections 1 and 12, of Act No. 44 of 1950, and charges that the accused and the co-conspirators

acting in concert and in the execution of a common purpose did wrongfully and unlawfully, through their agents and servants, commit the following acts, and the acts set out are the same as those set out in Count 1. Count 4 charges a contravention of section 3(1)(b), read with section 2 of Act 8 of 1953, as amended, and alleges that the accused and the co-conspirators, acting in concert and in the execution of a common purpose, did wrongfully and unlawfully, personally and through their agents and servants, solicit, accept and receive money from various persons or bodies of persons, both within and outside the Republic of South Africa, and give money to various persons or bodies of persons, for the purpose of enabling or assisting the commission of offences, namely, sabotage in support of a campaign against some of the laws of the Republic of South Africa or in support of a campaign for the repeal or modification of such laws or variation or limitation of the application or administration of such laws.

Annexure "B" to the indictment sets out 193 acts of sabotage dating from the 10th August, 1961, to the 6th July, 1963. Annexure "C" sets out particulars which I do not need to deal with at this stage.

At the conclusion of the case for the prosecution I discharged Accused No. 8, Kantor, and undertook to furnish my reasons at the conclusion of the hearing of the whole case. These reasons follow. In the particulars in the indictment it is alleged that the State relies upon certain allegations to establish the complicity of Accused No. 8. These will be considered seriatim.

(a) "Kantor the senior partner in his legal practice took into partnership a named Communist and parti-

cipant in the concerted action and common purpose." This allegation is established up to a point. It is conceded that his partner, Wolpe, was a listed Communist and that there is prima facie evidence that he was a participant in the offences charged in the indictment. On the other hand it is common cause that Wolpe is No. 8's brother-in-law and Accused No. 8 stated in an affidavit placed before me in connection with his bail application that Wolpe had undertaken not to indulge in any illegal political activity whilst he was Accused No. 8's partner. Makda, a qualified assistant in the business who gave evidence, said that he was not aware of any illegal conduct on the part of Wolpe except that he on occasions interviewed restricted persons in private, sometimes in his own room and sometimes in Magda's room. He said that it is most improbable that Accused No. 8 knew of these interviews, assuming that they were illegal, as Accused No. 8 had his own office, was very busy and took no interest in the doings of Magda and of Wolpe.

(b) "The partnership, and Kantor personally, handled many cases in which parties to the concerted action and common purpose as well as members of the banned, South African Communist Party and the A. N. C. were charged with subversive activities."

No details have been given in evidence as to cases handled by Kantor but it does appear that some persons falling within the general description were clients of the firm both in relation to civil and criminal cases. In my opinion no sinister inference can be drawn from this evidence.

(c) "The parties and members referred to in (b) immediately above frequently held meetings in secrecy in the office of the partnership".

Except for the word "frequently" this allegation can be regarded as established.except as I have already said Accused No. 8 probably did not know of these meetings nor can it be inferred that these interviews were in any way connected with the offences specified in the indictment.

(d) "The partnership, and Kantor personally, participated in the purchase of Lilliesleaf farm, Rivonia, in the name of a fictitious person".

It was prima facie established that the property in question was used as the headquarters of one or more of the subversive organizations listed in the indictment and that the purchase of the property was made for this purpose, that the purchase was made by one Ezra, acting for a company which was subsequently incorporated, namely Navian Proprietory Limited. The matter of floating the company and passing transfer to it was originally handled by Wolpe but was later handed by him to another attorney, Furman, and the actual transfer and registration of the company was done by Sepal, a clerk in Furman's office. In my opinion, even if Accused No. 8 knew about this matter, there is no prima facie evidence to indicate that he knew that there was any illegality attached to the transaction which, judging by the papers produced, was a transaction normally entrusted to an attorney.

(e) "The devious manner of payments in regard to the purchase of the Rivonia property."

This allegation will be considered when I deal with the so-called "Ezra Account".

(f) "The use of the partnership trust account as a conduit pipe for the receipt of money and the payment out thereof in furtherance of the concerted action and common purpose".

This allegation will be considered in relation to the various accounts which are alleged to establish this allegation.

(g) "Kantor's visit to Lilliesleaf and statements made by him to the police".

The police raided the property in the afternoon of the 11th July, 1963. A number of persons were arrested and a large number of documents were seized. It is clear from the evidence that the fact of the raid was known to the general public by the early hours of the next morning and that an account of the raid had been published in at least one newspaper. It also appeared that Wolpe did not come to office the next day, that he attempted to flee and was arrested in one of the country districts a few days later. The only evidence against No. 8 is that of Warrant Officer Dirker that No. 8 visited Lilliesleaf on the morning of the 12th and said to Dirker that he had come to feed the dogs and the fowls, that he appeared to know where the fowl food was, that he did in fact feed the fowls. This evidence appears to me to be highly improbable. None of the other police witnesses appear to have any knowledge of the purpose of No. 8's visit whereas it is clear that three children had been left at the house the previous night when their parents had been arrested, that the uncle and

grandmother of two of the children, the Goldreich children, had come to fetch them and their belongings that morning and that these persons and another woman relation had been present on the property at the same time as Accused No. 8. There is also evidence that police were stationed at the gate who had instructions to deny access to all persons who had no legitimate business on the property. The suggestion put in cross-examination that Accused No. 8 in his capacity as an attorney had accompanied the children's relations in order to fetch them seems to me much more probable than Dirker's version. But even if Dirker's evidence is true it seems to me to be of no assistance to the State. If No. 8 had in fact been one of the conspirators the last thing I would have expected him to do would be to put his head into a hornet's nest. Another possibility consistent with his innocence is that he was endeavouring to find out what had happened to his partner, Wolpe.

I come now to the various files and accounts which are relied upon to implicate Accused No. 8. These all relate to matters handled by Wolpe, not by Accused No. 8. It is necessary to mention in the first place that a new system of bookkeeping had been introduced by Wolpe when he became a partner and it is conceded by the accountant Mr. Cox, who gave evidence for the State, that this was a very sound system. It also appears from the evidence of the accountant, who periodically examined the firm's accounts, that it is a better system than that previously employed. I do not propose to explain this system in detail but merely mention that two signatures were required on each cheque drawn, namely

two out of these three: A. Kantor, H. Wolpe and Accused No. 8. At a later stage Makda was also given authority to sign cheques. It was the practice, for bookkeeping purposes, to make out a requisition for each cheque and two carbon copies of each cheque were kept. A ledger card was kept relating to the financial affairs of every client.

The first account relied upon is that in Ledger Card headed A. Letele. This reflects an amount of R8,000-00 received on August 20th, 1962 and 16 withdrawals from this account over the period August 21st to December 12th. The account was balanced on the 28th February, 1963, by transfer of an amount of 75c to "Defence and aid". Peculiarities in regard to this account are that the file relating to this client contains no instructions or information relating to the withdrawals from this account. In the case of seven of the withdrawals the cheques were payable to cash or selves. In regard to the first peculiarity it seems from other files produced that in any case Wolpe did not record instructions in many cases, even in cases of files where there is no suspicion of any irregularity. It is difficult, if not impossible, to ascertain from these files what work was done or what instructions were given by the client. It is also clear from Makda's evidence that Accused No. 8 never interfered with him or with Wolpe in relation to work done by them. It would certainly also, in my experience, be unusual for one partner in a firm of attorneys to check the work done by another, even if he had the time to do this.which would be unlikely in a busy practice. As to withdrawals in cash, a number of cheques were exhibited when Makda

was cross-examined showing that amounts were frequently withdrawn in cash from the Trust Account. Makda explains that this would be done for payments to clients in cash from their own accounts, for disbursements on behalf of clients and possibly for other reasons. Makda says that under the old bookkeeping system described by the firms accountant as unsatisfactory Accused No. 8 was averse to cash withdrawals but under the new so-called mechanical system he did not object. A point is also made that the purpose of the withdrawal is not specified in the cheques made out to cash or selves. Again quite a number of other cheques were exhibited where similar withdrawals were made and the purpose of the withdrawal was not specified but where there is no suspicion of illegality or impropriety in relation to the cheques in question.

The account of Ezra reflects receipts from Ezra in cash and cheques totalling R12,262-60 and expenditure in relation to the deposit on the Lilliesleaf purchase, disbursements in regard to the bond on the property, transfer costs, bank guarantee costs, repairs to car, renovations Lilliesleaf and the costs of transfer paid to Attorney Furman who, as I have already said passed the transfer. In relation to this account there is evidence that Wolpe sent an amount of R5,000-00 in cash to Furman's office at a later stage which covers the balance of the initial payment due. This transaction is not reflected in the records of the firm and there is no suggestion as to how it can be inferred that Accused No. 8 knew about this transaction.

I do not propose to deal with the accounts of

First, Rosenberg, Defence and Aid and Walter Sizulu in detail. In the light of the evidence which has been given there are peculiarities about these accounts and in the cases where files have been found relating to these clients there is the same dearth of information relating to instructions given by clients or reasons for the transactions reflected in their accounts. These matters were all handled by Wolpe and there is no reason to believe that Accused No. 8 at any time examined the files or the ledger cards closely. In fact on the evidence of Makda the probability is that he never examined either. Even if he had examined the accounts I doubt if a cursory examination would have disclosed cause for suspicion. A remarkable feature of these accounts is that in no instance was any fee or charge debited against the client. In effect, as conceded by Mr. Cox, Wolpe in each case merely acted as banker for the client in question except in the case of Ezra where he did portion of the work in connection with the floatation of the company but made no charge. On these facts the questions are posed, firstly, whether the transactions reflected in these accounts related to the activities of the subversive organizations mentioned in the indictment and, secondly, can it be inferred that Accused No. 8 had knowledge of this fact. Even if the first question is answered in the affirmative there seems to me to be no basis on which it can be inferred that No.8 Accused knew at the time that payments were being made by Wolpe to aid saboteurs and the persons who organized acts of sabotage - if this was in fact the case - or that Lilliesleaf was being purchased as the intended head-

quarters of the subversive organization - which prima facie does appear to be the case. To hold that a partner is prima facie deemed to know what his co-partner knows or does would be stretching inference too far.

The alternative case against Accused No. 8 is based on section 381(7) of Act 56 of 1955. Paraphrasing that section the effect is that where a partner has in carrying on the business or affairs of that partnership, or in furthering or in endeavouring to further its interest, committed an offence, any other partner is deemed to be guilty of that offence unless it is proved that he did not take part in the commission of the offence, and that he could not have prevented it.

It is argued in the first place that it is proved on a balance of probabilities that Accused No. 8 did not take part in any of the offences alleged in the indictment and in so far as any of these offences were committed by Wolpe he could not have prevented them. The proof required where the onus is placed on an accused need not necessarily be placed before the Court by the accused himself or by his witnesses. Such proof may be found in the evidence of State witnesses. Compare for instance The State v. Heller, 1964(1) S.A. 524 (W) at pages 539 et seq. Secondly, the question is whether it is proved that Accused No. 8 did not take part in any of the offences which it is postulated were committed by Wolpe. Now it is true that Accused No. 8 countersigned some of the cheques in relation to the purchase of Lilliesleaf but this offence which it is postulated was committed by Wolpe was to aid and abet the co-conspirators named in Counts 1, 2 and 3 in making the

purchase. Mr. Yutar has expressly stated that it is not alleged that Accused No. 8 in fact took any part in this conspiracy and that the State in fact admits that he took no such part. In view of this admission and in the absence of any evidence of association by him with the alleged conspirators it is highly improbable that Accused No. 8 had any knowledge of the purpose for which the property was being purchased.

If it is postulated that money was being collected for subversive purposes and the collections and payments were channelled through the other accounts I have referred to, it seems that, in the first place, there is evidence that No. 8 Accused did not handle the receipt of such money and if money was in fact paid out to be used for subversive purposes Accused No. 8 could only be said to have participated in this offence if he had known the object of the payment. Here again it seems to me most improbable that Accused No. 8 had any such knowledge.

It has been held in several cases that where an accused person has no knowledge of an offence and cannot reasonably be expected to have such knowledge that it follows that he could not have prevented it. See e.g. Rex v. Kapelus, 1944 T.P.D. 70. It is said at page 71 "One must have regard to all the circumstances and the difficulties that might be created if it were held that, in these circumstances, the appellant could have taken steps to prevent the infringement of this regulation". There an employee committed a breach of a regulation whilst the accused, a director, was serving another customer. This decision was followed in Rex v

Ebersohn, T.P.D., 12.4.49, reported only in 1949(1) P.H. K. 76. In this case offences were committed by an employee of a company in the absence of the accused, a director, and contrary to his instructions. It is said in the original judgment, which I have consulted, that "If it were held that Ebersohn could have prevented the commission of the offence, a director of a company would have to be present at and take part in every transaction, however small, of the company. In a great departmental store this would obviously be impossible. So, too, would it seem to be impossible in a business of the size of the appellant company's butchery".

It would seem from the cases that all that is required of a director is to take all reasonable steps to prevent the commission of offences. In the case of a partnership it is obviously impossible for a partner to keep a check on every act done by his co-partner. A good deal of mutual trust is essential and is in fact one of the requisites of a partnership. Mr. Yutar has referred to cases where disciplinary action has been taken against an attorney and it is said in cases where there has been defalcations or embezzlement of trust moneys, that it is no excuse for an attorney to say that he trusted his partner and left the bookkeeping to him, e.g. Law Society v. W and Another, 1962(4) S.A. 559. These are cases where the partner in question has kept no check at all on the books. The position may very well be different where an independent bookkeeper is employed who, as in the present case, is admitted to be competent and efficient and in addition an accountant is employed to make a periodical check on the

position of the trust account as is the position in the present case. In the present case it is noteworthy that the accountant who was employed did not find any cause for suspicion or suspect any irregularities. The suspicion appears to have arisen ex post facto because of subsequent events. Mr. Yutar has also relied upon the decision in Rex v. Kekane and Others, 1953(4) S.A. 378. There members of an association were convicted in relation to offences committed by an employee. The cases of Kapelus and Ebersohn (supra) were not referred to or dissented from. RAMSBOTTOM, J., says in relation to the accused: "There is nothing to show that they took any steps whatsoever to see that the rules of the club were carried out". In the present case it seems to me that the evidence shows that Accused No. 8 took all steps which could reasonably be required of him to protect the partnership trust account and for this reason cannot be held liable for the offences postulated to have been committed by Wolpe. I found it unnecessary to decide whether it was proved that Wolpe actually committed any of the offences falling within the present indictment in relation to his "conduct of the affairs of the partnership." I also found it unnecessary to decide whether the acts alleged fell within the partnership business.

I propose to give a short account of the properties which figure in the evidence as having been used by the alleged conspirators. According to the evidence of Watermeyer, an Estate Agent, a certain Harmel, using the name of Jacobson, inquired about a quiet secluded place for his brother-in-law Ezra who had a nervous breakdown. She showed him a number of places and he eventually agreed to purchase Lilliesleaf farm at Rivonia on the

north-western outskirts of Johannesburg in regard to which Harmel offered an amount of R25,000-00 which was accepted. It is common cause that the property was purchased by Ezra in the name of a company which was about to be formed and which was eventually formed under the name of Navian Proprietary Limited. It is also common cause that the initial deposit was paid by Wolpe to the clerk in Furman's office who dealt with the transfer and the floatation of the company. Also the second deposit of R1,000-00 was paid by Wolpe. According to the evidence of Fenn he was appointed the public officer of Navian Proprietary Limited at the request of Wolpe. Ezra was a director of the company. He said he encountered considerable difficulty in getting the necessary details to enable him to write up the books for the company. He testified further that in March 1962 he opened a banking account in the name of the company which at no time had sufficient funds to pay the first yearly instalment due. The evidence of Jelliman is that he was engaged as caretaker of the property and supposed to be manager of the farm. He lived at Rivonia from October 1961 to February 1962. A few days after he moved into the property Accused No. 1 also moved in and occupied one of the outside rooms. In December Goldreich with his family moved into the house.

The property in question is large in extent. On it was situated a normal dwelling house and a large block of outbuildings consisting of ten rooms shown on the map which is produced as an exhibit. These rooms are numbered 1 to 10. Room No. 1 is referred to as the thatched cottage. Certain alterations were made

to this room. A bath and toilet was installed and it was in effect a self-contained flat. As will be seen hereafter most of the accused occupied one or other room in the outbuildings at various times.

The next property to be described is a cottage detached from a house situated on large grounds at 10 Terrace Road in Norwood, referred to in the evidence as Mountain View Cottage. This cottage was hired from the occupants of the house, Mr. and Mrs Kriel, by a person named Bronkhorst. The cottage was occupied during part of May 1963 and during June 1963 by Accused No. 3 and thereafter until his arrest on the 11th July, 1963, by Accused No. 5. It appears from the evidence that Goldreich and Wolpe, who had been arrested and would have been tried with the present accused, managed to escape from prison. They made some use of the cottage, disguised themselves as Roman Catholic priests, made their way to Basutoland and from there by air out of the country. It appears from the evidence that the police only became aware of the significance of this cottage early in September 1963 and that the property was only searched and investigated on the 5th of September. At that stage the only thing of significance found on the premises was a quantity of burnt paper in the backyard which may have consisted of books, pamphlets and documents.

The next property is that referred to in the evidence as Travallyn, which was a dwelling house situated on fairly large grounds some little distance west of Johannesburg. This property was purchased by Accused No. 3 under the name of Barnard during June of

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