

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 38

PAGES: 7401 - 7600

I put it to you that that statement that you have just made is not a correct one. I want to put it to you that the vast majority of the people in the Western Areas were wholly and totally opposed to this forced removal, as were the vast majority of decent, thinking Europeans? --- I deny that.

NO FURTHER QUESTIONS.

CROSS-EXAMINED BY MR. BERRANGE :

One thing we do know is that the removal was a forcible removal, was it not? --- In what sense?

Do I have to explain to you or don't you understand my question? --- I don't understand.

Don't you. All right. It was forcible in this sense that notices were served upon the African inhabitants to move and had they not moved you would have availed yourself of the provisions of the law, whereby you could force them to remove. Correct? --- Yes, there were provisions to remove them to Meadowlands.

Why don't you answer my question. Notices were given for the Africans to move and had they refused to move, steps would have been taken to apply the process of the law to force them to move. Is that not so? --- I have explained that before.

Yes. Is that correct? --- Yes.

And you have, if I understand you correctly, endeavoured to stress the material benefits derived by those persons who have gone to Meadowlands? --- I endeavoured to give the Court the facts.

Well, do you say that they have derived material benefits then? As a result of going to Meadowlands, or don't you? --- I think yes.

Tell me, in your view, what is it that distinguishes the animal from the human being? Or do you know? Or must I help you? Would you agree with me that animals are more concer-

ned with the material aspects of life and that human beings are concerned both with the material and spiritual aspects of life? --- I can't say what animals are concerned with.

Would you agree with that proposition, that is all I want to know, that animals are concerned with the material aspect of life and that human beings are concerned with both the material and spiritual aspects of life. Would you agree with that or would you not? --- I say I don't know what animals are concerned with.

Do you suggest that animals are concerned with the spiritual aspects of life? --- I do not suggest that.

Do you suggest that human beings are concerned not only with material but also with the spiritual aspects of life? Would you concede that? --- They may be concerned with others as well.

Such as? --- I don't know.

Well then, why suggest it? Why suggest it if you don't know? --- I can't know, that is why.

I am asking you why suggest it? Have you an answer? --- I say there may be other concerns.

Such as what? --- I don't know.

There may be other concerns which you don't know about. Is that your answer? --- Yes.

Well, leave out the other concerns. Are you concerned with the spiritual aspects of life as well as with the material aspects of life? --- Yes.

And I take it that you will agree that most human beings are concerned - or all human beings are concerned with both the material and spiritual aspects of life? --- Yes.

You will agree with that, wouldn't you? --- Yes.

And included in the spiritual aspects of life are included certain basic freedoms, are there not? --- I think so.

I think so too. Freedoms to assemble without restric-

tion? That is a spiritual aspect of life, is it not? --- I don't know. I wouldn't like to express an opinion on that.

You wouldn't like to express an opinion on the Freedom to move around as and when you like? This is one of the spiritual aspects as opposed to the material aspects of life, is it not? Is it not? --- Maybe, I don't know.

Are you serious? --- Yes. I don't quite grasp the meaning of it all.

No, I'm sure you don't. Are you serious when you say that you don't know whether one of the spiritual aspects of life which a human being values is to be able to move around as and when he likes? --- Yes.

I think so too. One of the other freedoms would be to select what neighbours he desires to select, not so? --- Yes.

That would be one of the spiritual aspects which human beings are concerned with as opposed to animals? --- Yes.

Freedom to have what visitors he like and to seek the companionship of his fellowman, that would be one of the spiritual aspects of life as opposed to - which the human being values as opposed to the animal? --- Yes.

Freedom to have what guests or lodgers he likes? Also that would fall into the same category, would it not? --- Yes.

Freedom of recreation with whom he likes? --- Yes.

All those are the spiritual as opposed to the material aspects of life which the human being values? --- Yes.

Do you think that Africans also value the spiritual aspects of life and living? --- Of course, he is a human being.

Of course, that is what I wanted to know from you. But of course he in a location is not able, is he? To assemble without any restrictions, is he?

THE COURT AND MR. BERRANGE DISCUSS :

BY MR. BERRANGE :

Are there restrictions upon certain forms of assembly in the locations? --- Yes, public meetings.

Which are not applicable in places outside the locations? Is that not so? --- Yes.

Are there certain restrictions on the freedom to move around as and when he likes in the locations which are not applicable to persons living outside the locations? --- I am afraid I don't know exactly the question.

Let me give them all to you. Are there restrictions placed upon inhabitants in the locations in the selection of their neighbours which are not applicable to those who live outside the locations? --- Yes, the houses are allocated.

Yes, there are those restrictions. Restrictions on freedom to do so. Correct? --- Yes.

Are there restrictions on the type of visitor that a man can have in the location which are not applicable outside the locations? --- The type of visitor?

Yes? --- They can receive visitors.

They can receive visitors under certain restrictions? Not so? --- I don't think any restrictions are placed upon those living there.

Aren't there? Have they not to get a visitor's permit? Did you not say that? --- They don't get a visitor's permit. The person visiting them gets a permit.

And before I can be visited by my friends or my relatives, my friend or relative has got to get a visitor's permit? Correct? --- Yes.

So there are those restrictions which are not applicable outside the locations, are there not? --- Yes.

Are there any restrictions on recreation which are not applicable outside? --- Not that I know of.

Not? Did you know that at Meadowlands an Indian youths' football team was refused permission by the Superintendent of Meadowlands to play at Meadowlands, even though the Meadowlands team was very keen on the match? Do you know that? --- I have no knowledge of that.

Would you be surprised if that is what happened? --- I would be consulted in the matter.

Well, here I have got the letter. "The Secretary, Dymamos Football Club. I refer to your application to enter Meadowlands Location for the purpose of playing a soccer match at Meadowlands, Young Football Club A and B on the 11th August, 1957, and I regret to advise that the permission sought cannot be granted as Meadowlands is an area proclaimed as a Native Area in terms of Act 25 of 1945." Were you consulted about that? It is signed by the Location Superintendent of Meadowlands. Were you consulted about that? --- The date of that letter please?

First of all, were you consulted? --- I was on leave for five weeks.

Were you consulted? --- No.

BY THE COURT :

You say you were on leave? --- Yes.

When? --- From the beginning of July until the 3rd of August this year.

BY MR. BERRANGE :

All I am interested to know is is this a restriction on recreation or is it not? --- It is not a restriction on recreation.

To refuse a football team permission to play against a team composed of the inhabitants of Meadowlands?

BY THE COURT :

That is a matter for argument. You have the witness' opinion about the matter. You may disagree, I may not agree

with him, and it is merely a matter of his opinion.

BY MR. BERRANGE :

If the Court is going to adopt the attitude that I am not entitled to ask the witness for his opinion in regard to these matters, then I am going to ask the Court to rule as inadmissible both the question and the answer which followed upon the question, which was made by the witness to the last question put by my learned friend for the Crown. And that question was what the inhabitants of Meadowlands felt about Meadowlands. The witness said the Natives are very happy in Meadowlands today. 6,000 have been settled there. If that answer is an admissible answer...

BY THE COURT :

It is also a matter of opinion. The question was put and an answer given....

BY MR. BERRANGE :

May I say this? May I just finish for one moment? May I say that I myself don't see how relevant the question is to whether the inhabitants of Meadowlands are happy or not and how much it is in issue in the trial in which I am being charged with treason. But if it is in fact not relevant, if in fact it is not in issue, then the answer should be struck out. If in fact it is to be left on the record and this witness' opinion can be given in regard to the question of the happiness or unhappiness of the inhabitants, if that is a proper reply, then I am in my submission entitled to cross-examine the witness in regard to his opinion. The Crown can't have it both ways. They can't get a witness' opinion on record and then debar me from testing the validity of that particular opinion.

BY THE COURT :

It is not the Crown's attitude, Mr. Berrange. I am merely putting it to you whether the Crown ought to be bound by

these questions, or the answer to these question. The Crown hasn't raised any objection and you know that.

BY MR. BERRANGE :

I put one very simple proposition to this Court...

BY THE COURT :

Will you put your last question again?

BY MR. BERRANGE :

May I seek clarity in regard to Your Worship's ruling, and I don't want to put any further questions...

BY THE COURT :

I made no ruling at all. I am merely putting it to you that your line of investigation may not be proper. The Court may not be bound by the answer...

BY MR. BERRANGE :

I am not interested in whether the Court is bound or not. I am interested in whether the Court accepts that which the witness says.

BY THE COURT :

I am only trying to be helpful.

BY MR. BERRANGE :

I appreciate that. I am only trying to ascertain one thing. If the Court feels that there is any merit whatsoever in the witness' opinion given in evidence in chief, then surely I am entitled to test the validity of his opinion. That is my only...

BY THE COURT :

The question as to the happiness or otherwise of the people in Meadowlands is not contested by the Defence. The question was put and an answer was given and that is all to it. I am now wondering, I had no idea that that had any relation to that aspect. I am now wondering whether the Court should allow this form of cross-examination to continue.

BY MR. BERRANGE :

I want to cut matters short in regard thereto. If the Court feels as I do that the question of this witness' opinion as to whether the people were happy there or unhappy there is something which is completely irrelevant to these proceedings, and something which can only have publicity value and no other value and therefore should not be put, then, Sir, I am perfectly prepared to drop the whole of my line of cross-examination of this witness in order to indicate that his opinions have no validity. That is my only reason for putting these questions to the witness, in order to test the validity, and if the Court feels that I am perfectly prepared to drop the whole thing.

BY THE COURT :

I should like to hear the Crown on this matter.

BY THE P.P. :

The position is that as regards the people in Meadowlands, I do not think that the witness' expressed an opinion. He expressed what he observed. He could see that the people are happy, but every time that that word has been mentioned, there has been a roar of laughter from the Accused.

BY THE COURT :

I don't know about a roar. It is difficult to detect. There are a few of the Accused who want to be offensive by laughing. It is difficult to detect who they are. There has been this - not a roar of laughter, but there has been slight disturbances from time to time, because some of the Accused don't seem to agree with the views expressed by the witness. I have tried time and again to stop that. I should ask the Court Sergeant to move around, and if any of the Accused is detected in doing this, to bring him forward.

BY THE P.P. :

As I say, the witness did not express his opinion,

he testified to facts.

BY THE COURT :

Yes, we don't know whether these are facts. He was merely asked a question, and he gave an answer. I don't know whether he expressed a thought as to whether the answer given by him is based on fact or conclusions.

BY THE P.P. :

That is a matter that can be tested in cross-examination.

BY THE COURT :

Now, the point is this. Is that aspect relevant? That is the point. If it is relevant then I should allow Mr. Berrange to continue, but I should like to say again that if it comes to a bare expression of opinion, not based on fact, then I don't know that the Court will be bound by that.

BY MR. BERRANGE :

Sir, I am unhappy about continuing, because the Court seems to be in some doubt as to the relevance of this aspect of the matter, and like me, if I may with respect say so, seems to doubt if this can be a matter that is in issue. If it is in issue, then it means this : That we can spend the next three weeks in having witnesses as to whether or not the inhabitants are happy or not.

BY THE COURT :

No, I did have a doubt as to whether the questions put by you and on which the witness is asked to express his views, would be helpful at all in that the Court may not be bound by those answers. But it seems to me, now that you have raised the point and the Prosecutor has agreed, that the question as to whether these people are happy in their new homes is probably relevant. I don't want to rule that out...

BY MR. BERRANGE :

What I was trying to ask the Court to do, was to ask

my learned friend for the Crown to indicate in what way he says this matter is relevant. Now I am not concerned as to whether or not it is the witness' opinion or whether it is the witness' own knowledge. For the purpose of my submission to Your Worship, I am prepared for that purpose to accept the witness has personal knowledge of the state of unhappiness or otherwise of the inhabitants. Let me accept that..

BY THE COURT :

You can question him about that...

BY MR. BERRANGE :

No, I am not disputing it. For the purpose of my argument I am accepting that he has got personal knowledge, it is not an opinion. Assuming that he has got personal knowledge, what I am asking the Crown to do is to indicate not only to the Court, but also to me, in what way does the Crown say this is relevant to the proceedings before the Court.

BY THE COURT :

The question of the feelings of the people? Whether they were happy or not? I don't think I can ask the Crown to indicate that, because I am not disallowing the investigation of that.

BY MR. BERRANGE :

Well, Sir, I am now raising formal objection...

BY THE COURT :

It seems to me that it may be relevant. It is probably relevant.

BY MR. BERRANGE :

I don't know how, Sir, but I am raising formal objection and I would like to argue it.

BY THE COURT :

You apparently proceeded on the assumption that it is relevant and...

BY MR. BERRANGE :

I proceeded on the assumption that if the Crown alleges it to be relevant, then I am here to test the validity of this witness' evidence on this. And I am testing his credibility....

BY THE COURT :

You are entitled to do that but I mean that it may not be helpful if the witness merely expresses a view without having any facts on which those views are based.

BY MR. BERRANGE :

One of the ways in which I am entitled to attack a witness' credibility, is to seek opinions from him for the purpose of showing that he cannot possibly hold the opinions which he says he is holding and it is a well-known manner of testing the credibility of a witness, and I am testing this man's credibility. I am going to submit to the Court at some stage that he is not telling the truth when he says that people are happy at Meadowlands, and I want to show by testing his opinions that he is not in fact a credible witness on this point.

BY THE COURT :

Will you not be bound by his answers?

BY MR. BERRANGE :

Oh yes. I am bound by his answer in this sense that I cannot lead evidence in rebuttal on his opinions. In that sense I am bound, but I am entitled to ask him his opinions on my submissions.

BY THE COURT :

Well, proceed.

CROSS-EXAMINATION BY MR. BERRANGE CONTINUED :

I think that I was at the point of asking you whether you thought that Africans also value the spiritual aspects of life as opposed not only to - the spiritual and

material aspects of life? Do they? --- Yes.

Of course they do. And I think you have already told us that where restrictions are put upon the spiritual aspects of life that is an interference with certain basic freedoms, is it not? The freedoms that I went through with you? --- Yes.

And this is an interference with certain basic freedoms which is not to be found in the cases of persons living outside the locations? --- Yes.

You have conceded that. In other words, there are certain restrictions on basic freedoms applicable to the inhabitants of Meadowlands which affect the spiritual aspect of their lives and those restrictions are not to be found elsewhere, except in locations. Correct? --- Yes. I think I should point out to the Court that this is not only in Meadowlands as such in which the restrictions are...

I said elsewhere other than in locations in regard to the restrictions that I have indicated to you. You agree with that? --- Yes.

And despite these restrictions on certain basic freedoms which affects the spiritual sides of their lives, you say that they are happy to live under those conditions rather than to live under conditions where those restrictions are not applicable? Is that your answer? --- I have moved about in Meadowlands very considerably....

No, no. You can give that answer later on. First answer my question. You say that despite the existence of these certain restrictions on basic freedoms which affect their spiritual lives of those who live in Meadowlands, which restrictions are not to be found in places other than locations, you say they are nevertheless happy to live in Meadowlands? --- Yes.

Despite those restrictions? --- Yes. I say so

because it is my opinion and it is the experience of the Board that very few people can really be happy if the fundamental things of life are not present. If a person for instance has not got a room or a roof over his head, or if he has to live as many as thirteen in a small room, I think they are very happy to go to a bigger place where parents and the bigger children don't necessarily have to sleep in the same room and...

And what? --- That is all I have got to say.

Let me ask you one very simple question. You used the word fundamental. Do you suggest the material aspects of life is fundamental and the spiritual aspect of life is not fundamental? Is that what you are suggesting? --- I don't suggest that.

Do you suggest that both aspects are fundamental?

--- Yes.

Tell me, what were the major reasons that were advanced for the objections to the removals? --- The main objection to the removals, from what I could gather, was the fact that no freehold was..

That is one of them. Any others? In other words, they were being deprived of freehold rights. Rights which they have held since time immemorial. Correct? --- Yes.

Let us have all the objections, please? --- I don't know what other objections. No other objections have been put specifically to this Board.

Is that the only objection that was ever placed before the Board that you are aware of? --- Yes.

Are you serious? --- Yes.

That is the only objection you have ever heard from anybody at all? --- I was present at the meeting, as I explained earlier, at the beginning of March...

Of the City Council? --- No. A meeting of my Board which my Board had with prominent Natives from the Western

Areas and everything at that meeting settled down to the question of freehold.

Nothing else was raised as an objection? --- Not that I can remember.

Come, come. Did you not keep a minute? Were minutes not kept of this meeting? --- No. It was an informal discussion.

You read out a document, EXHIBIT G. 1094, which apparently was issued by the Transvaal Resist Apartheid Committee. What was that Committee? --- I don't know.

Never heard of it? --- I have heard of it.

What do you know about it? --- Nothing in particular that I know of it, except that the name implies that it is against the apartheid policy of the Government.

Is that all you know about it? --- Yes.

You don't know who the personnel are? --- No.

You don't know who composes it? --- No.

You don't know what organisations are affiliated to it? --- No.

You know nothing about it? --- I don't know if you could say...

Yet that was one of the organisations which, according to you, was resisting this removal? --- I handed in a pamphlet which came to the Board's notice.

That was one of the organisations that was resisting the removal, is my question? Is it so, or is it not? --- Yes.

Did you or your Board ever endeavour to find out what their reasons were for resisting removal? --- No, my Board had a duty imposed upon it from the Resettlement Act and no good purpose was to be served by arguing the matter.

Exactly the answer that I have been waiting for. In other words, because of the duty that was imposed upon your Board, you weren't in the slightest bit interested in what the reasons were for objection, were you? --- No.

So so far as you and your Board were concerned, a dozen good reasons could have been advanced by the Churches, by business men, by prominent individuals, by the City Council, by Committees that were set up, dozens of good and valid reasons could have been advanced for objecting to the removal, but that wouldn't have interested you, because you had a duty imposed upon you? Correct? --- My Board's attitude was that it was not the proper place to hear any objections.

That is my whole point. So neither you or your Board were in the slightest bit interested in the objections, correct? --- I have already intimated that the Chairman of my Board and members of the Board had informal discussions with the leaders of the Western Areas.

You had informal discussions. But I am not interested in that. I am asking you - And I say neither you nor your Board were in the slightest bit interested in the objections? --- We wanted the Natives to be moved to be happy...

Why don't you answer my question. This is the fourth time I am putting the question to you. Neither you nor your Board were in the slightest bit interested in the objections, in their validity or otherwise, were you? --- I can't say that...

THE P.P. OBJECTS :

(The Court, Mr. Berrange and the witness speaking together).

BY THE WITNESS :

The Board's - it didn't approach the matter : I have nothing to do with what you have to say, the why's and the wherefores, it...

BY MR. BERRANGE :

You put on a show of sweet reasonableness although you didn't mean it, is that it? --- No.

Well then please answer my question. Were you or

were you not interested in the validity or otherwise of the objections that were made by numbers of persons all over Johannesburg? --- I am prepared to answer that question and say that the Board was not interested in the validity. To say that the Board had no interested, it is not putting the matter correctly.

You weren't officially interested, is that what you are trying to say? --- Yes.

And that being so, seeing there was no official interest either by you or by your Board, you of course did not examine the objections? Because you wouldn't work for nothing, would you? --- The Board actually held a meeting with leaders of the Western Areas.

Did you or did you not examine the objections? You have told us that you weren't officially interested in the objections. Now I am asking you, in view of the fact that you were not officially interested, did you or did you not examine the objections? --- No.

You did not. Did anybody examine the objections that you are aware of? --- No.

This is what I meant by a forcible removal. My first question to you. Did you try - did you or your Board try ever to ascertain who the persons were that were combining for the purpose of objecting? --- Yes.

You did. Very well then. Tell us who the persons, individuals and organisations were that all combined, that means stand together, allied themselves in coming together, for the purpose of objecting? Who were all these persons? --- I can't give the names of the individuals or the - I do know that the African National Congress was the leader.

Was what? --- Seemed to be in the lead.

Isn't that a bit better? That is all you can think of. The African National Congress? --- There is this pamphlet,

the Resist Apartheid Committee.

You have told His Worship a few moments ago that your Board made a point of ascertain who the persons, individuals and organisations were that combined for the purpose of resisting this removal, or objecting to the removal. Now I am asking you, can you tell us who these individuals, persons or organisations were? --- I said that I can't give the names of all.

All you can think of is the African National Congress and the Resist Apartheid Committee? --- I have already given the name of Dr. Xuma.

That is an individual? --- Ratebe.

Anybody else? --- Lethoba.

Let us cut short the African leaders. Besides what you call African leaders, besides that? We have got African leaders, the Resist Apartheid Committee and the African National Congress who combined for the purpose of objecting? --- Father Huddleston from the Western Areas.

In his individual capacity or with the Church behind him? --- It is difficult for me to say.

Didn't you try and ascertain? --- I actually on two occasions had meetings with Father Huddleston.

Very interesting. But my question is did you not try and ascertain whether he was doing this in his individual capacity or whether he had the Church behind him? --- I assumed he had his Church behind him.

That would probably have been a better way of answering my question. What other organisations or bodies. Leave out individuals now? --- I can't think of any others.

Now we have got the Church, or a portion of the Church, African National Congress, Resist Apartheid Committee, and African leaders. You can't think of anybody else or any other bodies or organisations?--- (No. reply).

May I suggest to you that this scheme was regarded by you and your Board as being so cut and dried that really any objections, however valid they were, and from whatever bodies they may have emanated, were not just of any interest to you? That is why you can't tell us who they are? Is that not the true position? --- My Board was very interested in the removal of the Natives.

Yes, of course, but not very interested in knowing who was objecting or what the validity of their objections were? --- No.

Now I want to put the same question to you that has already been covered by my learned friend Mr. Slovo, but I want to put it in other wording, with Your Worship's permission. I want to get a crisp answer to this. There was in fact nothing illegal for any resident in refusing to move from Sophiatown, that is refuse to move on the 12th, or the 9th? Was there? --- In my opinion yes.

Under what law, or in what manner, or for the commission of what crime could he have been prosecuted had he refused to move on the 9th or the 12th? --- Act 19 of 1954.

Go on. Don't say Act 19 of 1954. Tell us what made that a criminal offence? How does that Act make it a criminal offence? --- I believe there is a section in Act 19 of 1954 which provides for a penalty.

Which what? --- Which provides that it becomes illegal.

Illegal if you do what? --- If a Native refuses to move - to leave the area after he had been served properly with the notice.

What sort of notice? --- To vacate the premises in which he stays in Sophiatown and to remove to Meadowlands.

Do you mean the sort of notice that was served on the Africans to remove on the 12th? --- Yes.

You are serious in saying that? Then what necessity is there..? --- I drafted the notice and the very first footnote I put on it was that it was an offence.

I see. I know that you did that. That was the very reason for my asking this question. I want to put it to you that you deliberately put on as a footnote that this is an offence, that note, for the purpose of intimidation when you knew perfectly well that it wasn't an offence? That was my reason for putting this question to you? --- As I previously said, that is a matter of opinion about the interpretation of that section.

Did you seek legal advice? --- Not at that stage.

Are you a lawyer? --- I am qualified.

You qualified as what? --- I passed by law exams.

When? --- Civil Service Law Exams.

When? --- 1939.

Higher, Intermediate or Lower? --- Higher.

In 1939. You say that you yourself can see that it was a matter of opinion as to whether this did or did not constitute an offence. Correct? You said that three times this morning? --- I said so.

Is that the truth? --- Yes.

And that was always your view in 1955? --- Yes.

As it is today? --- Yes.

So knowing that there was some doubt, let me put it no higher than that, some doubt in your mind as to whether this was or was not an offence, a matter of opinion as you say, you go and put a footnote on this notice saying that in fact it is an offence? --- I drafted the letter, the notice, I consulted the Government Attorney.

Did you not say that you took no legal advice? --- Afterwards.

After you put the footnote on? --- After I had seen

a notice in a paper to say that the - that it was not an offence to disobey the order.

I am asking you when did you consult the Government Attorney, before or after you issued the notice? --- After it had been drafted, after it had been served.

After it had been served, you then consulted an attorney? --- I saw a notice in the paper that it was not an offence.

And you consulted an attorney. Now I am not interested in what you did after you put your little footnote there, I am interested in what you did before you put your little footnote there. You say that at all times in 1955 you were of the opinion that this may or may not constitute an offence? --- I was of opinion that it did constitute an offence.

Then do you want to withdraw the evidence you gave a moment ago?

BY THE COURT :

I think you modified your question by saying at all times...

BY MR. BERRANGE :

I went further. I said that is your opinion today; he said yes, and I said that was your opinion in 1955, and he said yes. Not a word said by the witness at that stage that there was a time in 1955 which he was satisfied...

BY THE COURT :

He didn't qualify his answer. You said that in 1955 it was also your opinion that it might or might not constitute an offence? --- Yes, after I had seen the Government Attorney.

When you drew up the notice what was your opinion? --- My considered opinion was that it was an offence to disobey the notice.

BY MR. BERRANGE :

Why did you not give me that answer when I first asked you the question? --- I thought you were referring to the press.

I said in 1.55 and you said Yes, without any qualification? Why did you not qualify your answer when I asked you that question? --- Because it is still my personal opinion that it is an offence to refuse.

Why did you not qualify your answer when I first asked you the question? --- I am not quite certain of the wording you used.

BY THE COURT :

I don't know whether you appreciate the position. You were asked whether you also had a doubt as to whether this was an offence in 1955, and you said yes. But you didn't go on to explain that only after you had consulted the Government Attorney? --- That is so.

BY MR. BERRANGE :

That - Why not? Why only now that I have wrung from you the fact that you put a footnote to this notice, only now do you qualify your answer. Why didn't you qualify it when I first asked you the question? --- I have not been given the opportunity really of answering it fully, as I wanted to. The questions have been fired at me, and if I did make a mistake, I want to apologise to the Court.

However, having found out after you had seen a notice in the paper that this was possibly not an offence, I put it no higher than that, possibly not an offence, that is what the Government Attorney told you, is it not? --- No.

Didn't he tell you it was a matter of opinion? What did he tell you? --- He agreed with my note.

Oh, he agreed that it was an offence? --- In his opinion....

He agreed with you that it was an offence? --- Yes.

In his opinion? --- Yes, but he indicated that there are others who may hold a different opinion.

So when did you first come to the opinion that this may not be an offence? --- After I had seen a notice in the paper.

And after you had consulted the Government Attorney when he pointed out to you that there might be a different view held of the law? --- Yes.

He told you that, did he not? --- Yes.

He told you there might be a different view held of the law? --- Yes.

And he said all I can tell you is my opinion, but I am not sure? --- No, he didn't say that.

What did he say? --- He agreed with my opinion.

He agreed with your opinion, but he said that other persons - other lawyers held different opinions? --- Yes.

So then you became for the first time - so you for the first time held the opinion that it might or might not be an offence, correct? --- Yes.

I see. Did you amend your notice then? --- No.

Why not? --- I didn't think it was necessary.

Because your notice as framed would have a good intimidatory effect, would it not? --- I don't know.

You don't know. To put a footnote to a notice that if you don't do this you may be prosecuted according to due process of law is not calculated to intimidate anybody, is it? Is that your answer? --- The notice was so framed to try and give the maximum information to people.

Did you give the maximum information to the people by ultimately amending your notice and saying this may or may not be an offence? --- No.

That is not giving maximum information, is it? --- I

signed the notice and it is still my opinion as I said before.

I am asking one very simple question. To put a footnote to a notice saying that if you don't obey you may be prosecuted according to due process of law, is that or is that not in your opinion calculated to intimidate? --- The footnote says that failure to obey is an offence.

Yes, is that calculated to intimidate or is it not?
--- It may intimidate people...

It may. Did it occur to you that it may? --- No.

No, it didn't. You were just giving them full information? --- Yes.

Now you had this report from New Age dated January 20th, 1955. It came to your notice at the time, did it not? --- Yes.

You will agree that this is a report on what is happening in regard to the Western Areas Removal? --- It is a report.

A press report? --- Yes.

Did you read through it? --- At the time.

Why? --- I say at the time.

Why? --- I read it when it came to my notice.

Why? --- I wanted to see what was going on.

You look to the New Age to see what was going on, do you? --- That is not the only paper I was reading.

Did you see anything in this report in which you were being characterised as being untruthful? --- It is some whilst since I read the report and I would like to refresh my memory.

Before you refreshed your memory. At that time, when you read this report, because as you say you wanted to see what was going on, did it strike you then that there was anything in this report that was untruthful? --- I get a number of

papers every day...

BY THE COURT :

Can you recall what impression this made on you?
Can you now recall? --- I can't recall now what impression it
made on me.

BY MR. BERRANGE :

My question is a little bit different from that.
Can you today remember that when you read this report in
1955, you reacted to it by saying : Here is something that is
untruthful. Can you remember? --- I opened a file..

BY THE COURT :

I think you must answer the question. Did you re-
act to this..? --- Yes.

In the sense that you said here is something that
is untruthful? --- Yes, here is something that I want to keep...

BY MR. BERRANGE :

His Worship is not asking you whether you reacted
to it in the sense of saying that here is something I want to
keep. Now for the fourth time I am putting the same question
to you and I would like an answer. Would you please answer
the question? --- No, I can't remember.

You can't today remember that you reacted when you
read this report because of the fact that you saw something
untruthful? Is that your answer? --- Yes.

You don't today recollect that there was anything
untruthful in this report? Is that your answer? --- It is
very difficult to say....

BY THE COURT :

It is not difficult to say whether you can now
recollect? --- No, I can't recollect.

Well, say so.

BY MR. BERRANGE :

Of course if there had been something untruthful

in this report, you immediately would have reacted to it, wouldn't you? --- I did react in the sense that I put the paper aside. I didn't let it go through, I...

I didn't ask you that. Please answer my question. If you had found at that time something untruthful in the report, you would have reacted to the untruth? Would you not? --- May I be allowed to look at the report?

BY THE COURT :

No. Would you have reacted? --- I would have reacted.

BY MR. BERRANGE :

And what steps would you have taken if you had seen a gross or palpable lie in this report? --- I don't think I would have taken any steps at the time.

You wouldn't have? --- Because there were so many reports bringing the - or advertising the statements of prominent Native and agitating the resistance to the scheme.

So many reports where, in what other papers? --- In the daily papers. Daily English papers.

And daily Afrikaans papers? --- No.

So there were so many statements you say in the daily English papers which were giving prominence to what the leaders were saying and causing agitation amongst the Africans. Is that what you say? --- Yes.

And you say that amongst those daily papers that were agitating were included the Star and the Rand Daily Mail? --- Yes.

I see. They were agitating? --- Not daily.

No, whenever they got a chance? --- Yes, they gave prominence to...

And agitated is the word used by you? --- Yes.

Agitated what? Agitated the African inhabitants of Sophiatown not to move? --- Yes.

So they were the agitators? --- (No reply).

NO FURTHER QUESTIONS.

RE-EXAMINED BY THE P.P. :

Now, before the notices were served on people who were to be moved from Sophiatown to Meadowlands, did members of your staff enquire from people whether they were prepared to go? --- Yes.

And as people moved out, certain houses were destroyed? --- Yes.

What type of houses were being destroyed? --- Those in very bad condition.

Now you said that your Board had acquired some hundreds of houses in the area? --- Yes.

Can you say from whom these houses were bought? Or acquired? --- From individual owners, Natives, Indians, Coloureds, Companies.

How many instances did you find that the owner occupied the premises? --- In some instances....

MR. BERRANGE OBJECTS.

BY THE P.P. :

I will drop that question. Now your Board was created by Statute? --- Yes.

Your Board really started its functions after the Act had been passed? --- That is so. The Act making provision for the removal of the Natives also establishes the Board.

And as such did your Board have anything to do with the reasons for this removal? --- No.

NO FURTHER QUESTIONS.

COURT ADJOURNS.

(Accused No. 114, V. Mini granted permission to be absent this afternoon to consult a doctor).

COURT RESUMES :

(E. Mazwai, Int. Sesotho/Eng.)

MARIA STEFANI, duly sworn;

EXAMINED BY THE P. P. :

Do you reside at No. 619a Sesuto Section No. 5, Meadowlands? District Johannesburg? --- Yes.

Did you used to live in Sophiatown? --- Yes.

And did you move to Meadowlands in February, 1955? --- March, 1955.

Now did you receive certain papers from the Resettlement Board? --- Yes.

Do you remember the occasion when the people first moved from Sophiatown to Meadowlands? --- I do.

What happened to those papers that you got from the Resettlement Board? --- Took them to the Police Station.

Where? What Police Station? --- Newlands.

Why? --- Some people came by night and demanded these papers.

What people are they? --- I did not know them, because we were sleeping.

Did these people say who they were? --- No, they did not.

NO FURTHER QUESTIONS.

(E. Mazwai, Int. Zulu/Eng.)

LETTA KUZWAYO, duly sworn;

EXAMINED BY THE P.PL :

Do you reside at No. 71, Section N.13 Meadowlands? --- Yes.

Did you live in Sophiatown prior to moving over to Meadowlands? --- Yes.

Before you left for Meadowlands, did you get certain papers from the Resettlement Board? --- Yes.

What happened to those papers? --- I took those papers to the Police Station.

What Police Station? --- Newlands Police Station.

Why? --- Some people came by night and demanded these papers.

Did these people say where they came from, who they were? --- No, they did not and I did not ask them either.

Did they say anything about the papers? --- They said if I do not give these papers today, they would come back tomorrow.

For what purpose? --- They say they would come and take these papers if we refuse to hand them over.

NO FURTHER QUESTIONS.

(E. Mazwai, Int. Eng./Afr.)

JANET MASEKO, duly sworn;

EXAMINED BY THE P.P. :

Do you reside at 4880, Section OV, Meadowlands? --- Yes.

And did you used to live in Sophiatown? --- Yes.

Do you remember the occasion when you moved to Meadowlands? --- 22nd March.

Prior to moving to Meadowlands, did you receive certain papers from the Resettlement Board? --- I did.

What happened to those papers? --- People came in the evening and knocked, I then opened and they asked for these papers. I then said we have not yet received these papers. In the morning I took the papers to the Police Station.

Did they say where they came from? --- No.

What did you do with the papers? Oh, what Police Station? --- Newlands.

Do you know these people? Have you seen them before? --- No.

NO FURTHER QUESTIONS.

7429

PIETER GROBLER, duly sworn;

EXAMINED BY THE P.P. :

Are you the Deputy Commissioner, South African Police for the area Witwatersrand? --- Yes.

And have you held that position since the 1st July, 1954? --- Yes.

During 1954, did it come to your notice that the Re-settlement Board was removing certain people from Martindale, Sophiatown and Pageview to Meadowlands? --- Yes.

Do you know whether there was any agitation against this removal at that time? --- I received reports to the effect that there was a tremendous amount of agitation against the removal.

Were a number of protest meetings held in the area concerned? --- Yes.

Is that in the Western Areas? --- Yes, Sophiatown, Newclare....

As a result of the agitation, what did the authorities do in regard to the holding of public meetings? --- The public meetings were banned, prohibited between the 9th of February to the end of February.

Was it also decided to anticipate the date of removal? The first removal? --- The date was first given out for the first removal as the 12th of February, but in consultation with various bodies, it was decided to make the date earlier, made it the 9th of February, the first removal.

Why did you consider it necessary to anticipate the date of removal? --- Because we feared that there might be trouble on the 12th, the first day of the removal.

On this date of removal, that is the 9th February, did you have a force of policemen on the spot? --- Yes, I considered it necessary to take certain precautionary measures.

Why did you consider it necessary? --- Because of the reports which had reached me.

How many men did you draft to the area concerned? --- On the morning of the 9th February I drafted in a total of seventeen hundred policemen. May I qualify that by saying they were not all concentrated in one area.

How many did you concentrate in Sophiatown proper? --- In Sophiatown itself, as far as my memory serves me, subject to correction, I can verify that, I think between three and four hundred men.

And the balance? --- The balance were spread over the route between Sophiatown and Meadowlands, and also in Meadowlands itself.

Now these police that were in the area, did they in any way assist with the removal? --- In no way whatever.

What was the purpose of bringing them into the area? --- Their instructions were purely and simply to maintain law and order, to see that no disturbance takes place, and they were very definitely instructed not to assist with the removal itself otherwise.

You remember the 19th December, 1956, when the Preparatory Examination of this case opened in this hall? --- Yes.

What happened on that day? --- On the 19th December?

Yes? --- On the 19th December, there was a very large congregation of natives and people around this hall, in Quartz Street, Twist Street.

When you say a large number of persons, how many did you estimate? --- I estimated a total of possibly five thousand.

And these people, did they have any banners with them? --- Yes, a large number of them carried banners with placards on it "We stand by our leaders".

Did you see whether persons were carrying some identi-

fication marks on their lapels? --- Yes, a large number carried rosettes.

Can you still remember the colour of the rosettes? --- Black, green - I think it was three colours...

What happened when the Accused arrived in the prisoners van? --- The people gathered rushed towards the vans and they used to shout and bang against the sides of the van.

And then what happened? --- They shouted 'Afrika, Mayebuye'.

Then what happened after that? --- We brought the prisoners in, and I spoke to them to keep quiet. That was in Quartz Street, which they then did.

Did you conduct persons - or see that they were conducted into the space allowed for the public in the Court? --- Yes, a limited number of seats were available for non-Europeans and I allowed so many to come into the Court until those seats were filled and I told the rest that there were no more seats available.

Did they then leave? --- No, they did not.

And on the 20th, that is the next day, what happened then? --- On the morning of the 20th, there was again a crowd around in Quartz Street and in Twist Street, but not quite as many as on the first day. I went to the people in Quartz Street and told them that there were no more seats available and they started shouting and creating a disturbance, which I feared would interfere with the proceedings in Court.

What did you do? --- I warned them to keep quiet, but they didn't keep quiet. I ordered my men to disperse them from there, to move them out of Quartz Street.

How did they move them out? --- They simply walked in shoulder to shoulder and they entered Quartz Street and these people fell back before them.

Then what happened? --- They moved out of Quartz

7432

Street into Twist Street. I went to the gate in Twist Street and I also spoke to the crowd there and told them they were interfering with the proceedings in Court. It had no effect whatsoever, the shouting continued and I then ordered my men to cross Twist Street and to advance down and to work the crowd back towards the corner of Plein.

Did your men do so? --- They fell back as far as Twist and Plein. Meanwhile, there was another crowd gathered on the Northern side of the hall in Twist Street and some of the policemen came back and I instructed them to move this section of the crowd back to Noord Street.

At that stage, what was the position in the street itself? Could traffic pass through? --- No, all traffic was blocked. Traffic could not pass.

And then, what happened? --- When the policement came up from Plein Street, the crowd surged back again towards the gates of the Drill Hall.

And then? --- I again formed up the men and told them to move this crowd back to Plein Street and to keep them there. They fell back quite quietly to Plein Street, and when my men, there were about a dozen of them at the intersection of Plein and Twist, when stones suddenly started raining on them from an open space at the corner of Twist and Plein.

What corner is that? --- The South-East corner.

What happened then? --- I was standing in front of the Drill Hall at the time, and I saw one of my men being felled by a stone or something which struck him. I think it was a stone. He fell down, and as he fell some policemen who were also in that area, drew their revolvers and they fired in the direction of this open space.

What did you do then? --- I went towards this scene, and when I got there I found that the natives had cleared off from this open space and I ordered them to stop firing - they

had already stopped by that time, Major van den Berg had stopped them before I arrived there.

Now did you hear other shouts like 'Hee, hee'? --- Yes, there was a large - there was quite a lot of shouting including this shrill cry that native women sometimes use.

What cry is that? --- It is known as their war cry, to egg their men on to battle.

And on the following day, the next day, did you have increased manpower here?--- Yes, it was necessary to increase the police on duty considerably and to keep these crowds away from the Court.

NO FURTHER QUESTIONS.

MR. BERRANGE ADDRESSES COURT :

The Crown has seen fit, over the latter portion of this witness' evidence, through the witness to traverse that which is alleged to have happened outside the Drill Hall when we first assembled here. I might say, Sir, that those incidents are the subject of litigation at the present moment in the sense...

BY THE COURT :

Is that in civil proceedings?

BY MR. BERRANGE :

Yes, in the sense that numbers of claims have been instituted against both the police and the Minister, alleging the most brutal, callous and murderous behaviour on the part of the police in which pregnant women were assaulted, in which women were assaulted when they were lying on the ground, and in which persons were assaulted when they were running away. Now, in view of the fact that the Crown has introduced this evidence, if one were to meet it properly, it would be necessary for the Defence to traverse all the aspects of this case. It would be necessary for the Defence, not only to lead the evidence of what is alleged to have been a brutal, foul attack

unprovoked, on the part of the police on the part of the crowd, but it would also be necessary, Sir, for evidence to be led by those onlookers, who would ordinarily be witnesses in the proceedings to which I have already alluded. That again, would mean that there would be a trial within a trial. Speaking for myself, I haven't had an opportunity of consulting with my colleagues yet, I wouldn't be in the slightest bit hesitant in placing all the facts before the Court for the purpose of endeavouring to prove that which has been alleged, and as I say, in order to prove it, it would mean prolonged cross-examination and the calling of numbers of witnesses in regard thereto. As at present advised, Sir, although those are the facts of which I am possessed in the form of affidavits, sworn statements, and when I speak about affidavits and sworn statements, I am talking about affidavits, taken not only from non-Europeans, but also from Europeans and persons in authority and in some cases from press reporters, who are all witnesses to substantiate the allegations in terms of which I have been instructed. But as I say, Sir, that would mean a trial within a trial. Before I embark upon any cross-examination of this or any other witnesses that might be called for the purpose of giving evidence as to what happened outside the Drill Hall on the day on which these proceedings commenced, I would like to be informed as to the manner in which it is alleged by the Crown, this evidence becomes relevant in the proceedings that are before the Court. Because on the face of it, I can see no relevance, I can see no point in unnecessarily prolonging these proceedings, probably for at least another month if this aspect is to be dealt with fully. Unless of course, Sir, it is relevant to the proceedings that have been instituted here. And I think perhaps the best way in which one can test whether

Your Worship, or I should first of all say ask the Crown, whether it would object, and for Your Worship whether you would allow evidence to be led from numbers of onlookers, bystanders, witnesses, who are alleged to have seen and witnessed the conduct of the police on this particular day. Because quite apparently, Sir, if this evidence is not relevant to the issue, and of course I would not be allowed to bring these witnesses before the Court and call their evidence, the evidence which would be, as I have already indicated, to testify to unprovoked and brutal attacks by the police upon members of the public. If on the other hand this evidence is, in Your Worship's opinion, relevant to these proceedings, if this is in issue before the Court and this is not purely collateral, then of course I would be allowed to bring that evidence. But as I say, Sir, we have been sitting in these proceedings for many, many months now, the best part of a year very nearly, and I am loath therefore to start the cross-examination of this or any other witness on this aspect of the matter, unless the Court as a result of what the prosecution informs the Court, is of the opinion that this evidence is relevant to the proceedings which have been instituted, and therefore that the Court can give me the assurance at this stage, that it being relevant, I would be allowed to lead evidence indicating the nature of the attack by the police allegedly on the members of the public. Otherwise I am just wasting my time, and what is more important, I am wasting the Court's and the Accuseds' time. I am therefore, at this stage - I invite my learned friend to indicate to the Court how this evidence could possibly be relevant to a charge of high treason or whatever it was suggested is to be the charge preferred against any or all of the Accused. Otherwise I don't, much as I disagree with the evidence which has been given, I don't propose to cross-examine.

7436

BY THE COURT :

Is the Crown prepared to indicate the relevancy of the evidence?

BY THE P.P. :

May it please Your Worship, the position is this, that amongst - in the possession of some of the Accused, or at least one of the Accused, there was a pamphlet which, issued, I think, I am speaking subject to correction, issued by the African National Congress calling upon its supporters to stage a demonstration at the day of the opening of the trial - of the Preparatory Examination. That is how it is relevant.

BY THE COURT :

I don't know, you seem somewhat vague about the contents of this pamphlet, Mr. Prosecutor. Is this not available?

BY THE P.P. :

I think it is at the photographers. I'll try and get hold of it.

BY THE COURT :

Will the Crown show that this pamphlet called upon members of the A.N.C. to support a demonstration outside the...

BY THE P.P. :

That is subject to my memory now, I might be mistaken, but...

BY THE COURT :

Is this the only reason why you consider the evidence you have just led to be relevant.

BY THE P.P. :

That is why I consider it relevant, because it is a demonstration against a Court of Law, staged by the - by one of the organisations concerned, and in the possession of at least one of the Accused, there was a pamphlet...

BY THE COURT :

This organisation, the A.N.C., you say, was that

responsible for the staging of this demonstration?

BY THE P.P. :

I do not say that they were, but that may be inferred from the circumstances. But there is, if Your Worship will allow me, I will endeavour to find out whether I can get hold of that document.

BY THE COURT :

It becomes important now that the point has been raised. Naturally one doesn't want to listen to evidence that may not be relevant, and now that the point has been raised, the Court must come to a decision on it.

BY THE P.P. :

I suggest a short adjournment to enable me to try and get hold of that document.

BY THE COURT :

There is not other evidence that you can conveniently proceed with?

BY THE P.P. :

No, there is no other evidence.

BY MR. BERRIDGE :

I wonder, Sir, whether I might be enabled to grasp the nettle even a little bit more firmly. Subject to the production of this pamphlet, I want for the purpose of my argument to assume that such a pamphlet is in existence. For the purposes of my argument I would like to assume that the pamphlet is in existence indicating - by the African National Congress calling upon the public as such to support the Accused in these proceedings by a show of demonstrations, by a show of sympathy, by whatever means possible. How does that constitute any form of criminal offence? That is the question that I am directly asking. My learned friend has stated, and this I am prepared to challenge him on, because I am prepared to say it is not true that he has stated or inferred that this

pamphlet was a pamphlet calling for a demonstration against the Courts of Law. By that, Sir, I am prepared to say, without even seeing the pamphlet, is to me wellnigh incredible. If a pamphlet was in existence calling for a demonstration which is to be a demonstration in order to set the law at nought, to frustrate the law, in other words against the law, then I have little doubt but that an offence may have been committed. But I am prepared to say at this stage no such pamphlet is in existence. On the basis that this is purely a pamphlet issued by the African National Congress, calling for support in the form of sympathy, in the form of a demonstration, I ask my learned friend to indicate to the Court how he suggests this is a criminal offence. So far we haven't gone in this country, not yet, not yet, whereby any demonstration in sympathy of an accused person has as yet become a crime. If I am wrong in that, then I ask my learned friend, please put me right. If in fact it is a criminal offence to show sympathy or support for an accused person, if that has already become a criminal offence in our country, then I am not aware of it and I ask the Crown please to correct me in my ignorance. But that is what it boils down to, Sir. Unless of course my learned friend can suggest that this is a pamphlet calling upon the public as such, or members of the public to endeavour to set at nought and to frustrate the Courts of Law.

BY THE COURT :

Of course, I don't know at the present stage whether the Crown wants to put in this Pamphlet to give the picture as a whole, that is the alleged conspiracy to commit the crime of high treason. I would not like to have piecemeal argument on this. I think I will take the adjournment now and give the Crown the opportunity of getting this pamphlet and putting forward its argument in view of the remarks and the question

7439.

raised by the Defence.

COURT ADJOURNS.

COURT RESUMES.

BY THE P.P. :

May it please Your Worship, it would appear that at least a half-an-hour would be wasted for the Court to sit here and wait for a document to be fetched, and I respectfully suggest that the Court adjourn to tomorrow morning, when the matter can be raised again.

BY THE COURT :

I take it that the Defence has been informed of this position and there appears to be no option but to take the adjournment now.

BY MR. BERRANGE :

There is obviously no option because there are no other witnesses available, but this is not the first time that this situation has arisen, and as we all know we are working somewhat against time in these proceedings for very understandable reasons. I would ask in future, Sir, that the Crown would have at least a number of witnesses available in case a situation is reached at two or three o'clock in the afternoon when we can't proceed for lack of witnesses.

BY THE COURT :

Yes, I think the Crown ought to keep that in mind.

CASE REMANDED TO THE 4TH SEPTEMBER, 1957.

4440

COURT RESUMES 4TH SEPTEMBER, 1957.

APPEARANCES AS BEFORE :

MR. COAKER ADDRESSES COURT :

Accused Absent : Same as on 3rd September, 1957.
In addition : No. 83, L. Forman.
Back in Court : No. 93, G. Peake; 132, A. J.
Luthuli; 139, G. M. Naicker.
Medical Certifi- : No. 93, G. Peake.
cates handed in. :
Excused : No. 114, V. Mini excused today.
No. 116, S. Kalipi excused
tomorrow (5.9.57)
No. 28, J. Makwe, excused today.
No. 97, B. Turok excused tomor-
row morning (5.9.57).

P.P. (MR. VAN NIEKERK) ADDRESSES COURT :

Before proceeding, the argument as to whether the evidence is relevant or not, the evidence that was given by Colonel Grobler yesterday, I propose to call one witness and thereafter I will address the Court, if Your Worship pleases.

YUSUF SULLIMAN BOKHARY, duly sworn;

EXAMINED BY THE P.P. :

Are you the proprietor of the Royal Printers at 12 Wolhuter Street, Johannesburg? --- Yes.

On the 12th December, 1956, was an order placed with you for the printing of certain leaflets? --- Yes.

Is that the leaflet before the Court, the "Treason Arrests"? --- Yes.

Was that printed by your firm? --- Yes.

Who placed the order? --- Ebrahim Moola.

Did he supply the copy? --- Yes.

Have you got the copy in front of you? --- Yes.

And the proofs? --- Yes.

And a few of these pamphlets? --- Yes.

7441

On whose behalf were these printed? --- Printed on behalf of the Congress.

Is the Congress' address given? --- 37, West Street, Johannesburg.

Did he collect these? --- Yes.

Sign for them? --- Yes.

Right at the bottom, the last sentence, does it read "In Johannesburg, rally to the Drill Hall, opposite Union Grounds, 19th December, 1956. Throughout the country demonstrate your support, hold meetings and rallies on December 19th. Stand by our leaders and by Congress". Are those the words? --- Yes.

This will be EXHIBIT G. 1096. Did you also print stickers "Stand by our leaders. Remember Magistrate's Court 19th December, 1956"? --- Yes.

Did you print that? --- Yes.

Who ordered the printing? --- E. Moola.

Sorry, I forgot. How many of the first leaflets, 'The Treason Arrests', how many did you print? --- Thirty-five thousand.

And of those sticks? --- Twenty-five thousand.

That will be EXHIBIT G. 1097. You say, who ordered those? --- E. Moola.

On the same date? --- Same date.

Did he take delivery of them? --- Yes.

Did you also print a sticker "Stand by our leaders. Remember Drill Hall, opposite Union Grounds, 19th December, 1956"? --- Yes.

Did you print those? --- Yes.

Who ordered the printing? --- E. Moola.

How many did you print? --- Ten thousand of them.

Did he take delivery of it? --- Yes.

7442

Do you know on whose behalf these were ordered, these stickers? --- On behalf of the Congresses.

Address? --- 37 West Street, Johannesburg.

The last will be EXHIBIT G. 1098. You also hand in the Delivery Note signed by E. Moola, EXHIBIT G. 1099? --- Yes.

NO FURTHER QUESTIONS.

CROSS-EXAMINED BY MR. BERRANGE :

You were asked by the Prosecutor to read out the last few words of this pamphlet and you read out the words "Stand by our leaders. Stand by Congress"? Correct? --- Correct.

But in the middle of the page, which you were not asked to read out, which I would like you now to read out, is a portion which says as follows : "What do the Accused stand for?". That is the heading. And the next sentence is : "We are not concerned here with any verdict which may be given for or against the Accused. That is for the Court to decide on the charges that have been laid and we cannot even comment on the case". Correct? --- Correct.

Now this is a document, quite apparently in which the public is asked to demonstrate its support and to hold meetings and rallies on behalf of those who were arrested? --- Correct.

Is there anything in this document, or were you ever asked to print words to the effect that the public should demonstrate in order to oppose the Courts? --- No.

Or that they should rally for the purpose of being against the Court? --- No.

Or any words to that effect? --- No words.

That was never suggested to you nor was it ever printed by you? --- (Recorder's note : Witness shakes his head - no).

This was an order placed on behalf of the People's Defence Committee, according to your Delivery Note? --- At that time we were told to put it on that account.

You were asked to debit the People's Defence Committee? --- Yes.

And the person E. Moola who actually placed the order is not one of the Accused in Court? --- I would not know that.

So far as you are aware you don't know that he is one of the Accused? --- No.

NO FURTHER QUESTIONS.

BY THE P.P. :

I wish to draw your Worship's attention to the fact that a sticker "Stand by our leaders", G. 1097, under the number P.D.N. 148, was found in possession of Accused Nokwe, Accused No. 56. That is what I termed a pamphlet yesterday afternoon issued on behalf of - as I said, I thought, the African National Congress. I see now it is not issued - it doesn't state by whom it was issued. Then another document was found in possession of Nokwe under P.D.N. 136, "Stand with our leaders", which says: "Let us show the Government and the whole world that we, the people of South Africa of all races stand with our leaders in this hour of trial, as they have been faithful to us, so we shall be faithful to them. Come to a mass meeting Wednesday. Issued by the People's Defence Committee". Then there is a manuscript note found in possession of Accused Nokwe, P.D.N. 174, a page and a half, and I am reading only paragraph 7 of this document. "Women have to organise strongly in their branches so that we shall have more than fifty thousand people on the 19th to show that we support our leaders. This is very important". With respect, Your Worship, my submission is that that is sufficient

7444

evidence for the Court to rule, for the Court to find as will eventually be argued that this is a portion of the conspiracy, this demonstration at the Law Courts. There is evidence before the Court already that the address 37 West Street, Johannesburg, occupied by the African National Congress, the Transvaal Indian Congress and the South African Coloured People's Organisation. My submission again is that that is prima facie evidence to show that this emanated from the offices of this organisation. There is evidence also in the form of a booklet, I haven't got the number, which shows E. Moola as being a member - and Executive Committee member of the Transvaal Indian Youth League, - Transvaal Indian Youth Congress. With respect, my submission is that the demonstration in these circumstances is relevant to the Enquiry and therefore the evidence can be correctly led.

BY MR. BERRANGE :

The Prosecutor has indicated to the Court the following argument, if I understand it correctly. If I don't I must be forgiven, because I find it quite candidly a little bit difficult to understand some of the argument. He has indicated that because a certain leaflet was found in possession of Mr. Nokwe, that not only was that found in his possession, but that a certain E. Moola, without identifying who the E. Moola is, was a person who, according to a certain document, is a member of one or other of the Congresses and if one reads the document, and particularly reads that portion which the Crown failed to read out until I got the witness to refer to it, in my submission there can be no substance whatsoever or any suggestion that the document in itself is an improper or was an improper document. And if it were, it is amazing that it has taken the Crown nearly ten months to wake up to this fact. But the Crown has not met the argument which I adduced to you

yesterday. I take it I am now to reply to the Prosecutor's reply to my argument which was adduced yesterday, which I don't propose to repeat. What the Crown is in effect saying, is that anybody who indicated sympathy or support in writing by the issuance of a document, is therefore part of a treasonable conspiracy to overthrow the State. It has only got to be stated in that simple language in order for the ludicrous nature of that argument to be demonstrated. If, however, this Court finds that the evidence as to what took place outside the Drill Hall is necessary and relevant and is a matter that is in issue in these proceedings, then as I stated yesterday, if it is not collateral I would be entitled and I will avail myself of my right to call numbers of witnesses, numbers of persons who are plaintiffs in proceedings against....

BY THE COURT :

I don't think that that aspect is relevant at the moment...

BY MR. BERRANGE :

It is part of my argument...

BY THE COURT :

The Court will have to decide at the moment whether the Crown can adduce the evidence which it now seeks to adduce. Once I decide that that is so, then you can canvass the other point. At this stage it is not necessary.

BY MR. BERRANGE :

I say it is part of my argument. If you want to stop my argument, I'll sit down.

BY THE COURT :

That part of your argument is not relevant.

BY MR. BERRANGE :

Very well, I won't take it any further and I won't argue any further. I'd like you to note however, Sir, that

4446

you have stopped me from concluding my argument, without even having heard my argument.

BY THE COURT :

On this aspect, yes.

BY MR. BERRANGE :

And you don't know what I was going to say.

BY THE COURT :

Are you in a position to show that E. Moola is the man you say he is? There is nothing at the moment, as Mr. Berrange has pointed out, to identify this person. You have made that part of your argument that he is a member of the Executive Committee of the T.I.Y.C. Are you in a position....

BY THE P.P. :

I am not in a position at the moment to lead that evidence, but I can lead that evidence.

BY THE COURT :

I think that ought to be done. So long as I have that assurance. It seems to me that the Crown's contention is that the evidence which it now seeks to adduce is part of the conspiracy that it has contended will be the Crown's case against the Accused persons. Now if the Crown is in a position to show that E. Moola is connected with the Executive Committee of the T.I.Y.C. and the Crown gives that assurance, that does connect the Accused in my view with the acts that were committed - that the Crown contends that were committed, that is the demonstration before the Court on the 19th and 20th of December last year. There is the further aspect that one of the stickers, or a copy of one of the stickers, Exhibit G. 1097, was found in possession of one of the Accused. That further shows that one, at any rate of the Accused had some connection with this. And there is the further point made by the Crown and that is on the evidence adduced this morning, the order for these leaflets and stickers emanated from

7449.

37 West Street, and that is the place where several of these Congresses have their offices. Evidence to that effect has been adduced at previous occasions. Mr. Berrange has made a point of the fact that it is not a demonstration based against the authority of the Court. I don't know that the Prosecutor ever made that point...

BY MR. BERRANGE :

With respect, if there is any doubt about that, I'll ask for it to be played back, because that is the one thing that I took up yesterday....

BY THE COURT :

I just want to know whether the Prosecutor did contend that, that this was a demonstration against the authority of the Court.

BY THE P.P. :

I didn't say so in so many words. It is a reasonable inference that might be drawn from the circumstances after all the facts have been placed before the Court.

BY THE COURT :

All I want to say on this aspect that it doesn't seem to me to matter if I were to find that it was not a demonstration against the authority of the Court. The evidence can still be used as a basis for argument that this was a demonstration against the Government, and therefore against the State. I say this because the demonstrations were clearly carried out as is set out, the contents is set out in the leaflets or pamphlets to support the leaders and I take it that that is the people who are now before the Court. One can only infer from that that the demonstrations were organised in order to support the leaders in everything that they have done and to that extent it seems to me that the Crown's argument has some basis and that is that this is part of the conspiracy which the Crown has contended. For these reasons I

7448

feel that the evidence ought to be admitted.

BY MR. BERRANGE :

There are two requests that I have to make to the Court. In view of the denial by the Prosecutor that he stated yesterday that this was a demonstration against the Courts, and in view of his present assertion that he did not say so in so many words but that an inference could be drawn, I am going to ask, Sir, that the record be played back, because I challenge that statement made by the Prosecutor. And the reason for my asking for it to be played back is not for the purpose of endeavouring to prove that I am right and he is wrong, or that he is right and I am wrong. It is for the second application that I now propose to make to you, and that is this : As I indicated to you yesterday, if this evidence is allowed, it will necessarily mean that we are going to have a trial within a trial. That is a trial in regard to what happened outside, a trial in regard to who was to blame for what happened outside, a trial in order to establish, as I said yesterday, the Defence hoped it could establish the fact that it was the Police who were the aggressors; that it was the Police who brutally attacked the people; that it was the Police who felled pregnant women; that it was the Police who tackled people when they were running away; and that it was the Police who at all stages were the aggressors. And as I indicated yesterday, Sir, I had evidence to that effect, sworn statement, not only from ordinary members of the public but from responsible individuals such as press reporters and others. Now it means that if this evidence is allowed, as Your Worship has allowed it, that these are all matters that will have to be canvassed. And that is what I wanted to address Your Worship on argument about a little bit earlier, for the purpose of indicating the tenuous nature of the argument advanced by the Crown. Now we have been in these proceedings

7449

sufficiently long, I don't want to draw attention to a certain pattern which seems to emerge from the manner in which the Crown presents the evidence and the type of evidence that it is presenting. That can be left for argument later. But in view of the fact that this is a very serious matter, for this reason that it will mean, as I say, a trial within a trial, canvassing evidence, leading evidence, cross-examination of witnesses which may well prolong these proceedings for at least a month as I indicated yesterday. I, speaking for myself, and without having consultation with my colleagues for the Defence, am making an application now that this evidence be not led at the present moment, so as to enable me on behalf of the Accused to make an application to the Supreme Court for a mandamus directing Your Worship not to allow this evidence. If the Court desires authority in regard to the correctness of this type of procedure, given a little time I will produce it. It has been done in other cases, in cases in which I personally have acted. Now I was given to understand some little while ago by representatives of the Crown, that at a certain stage when they have presented the evidence that they have immediately available, they will be asking for a postponement for approximately a month in order to get together certain further evidence which they want to place before the Court. I have also indicated both to the Crown, and I think also to you, Sir, that when the Crown has presented its present evidence and before this further evidence is adduced which I understand is of a purely formal nature, that the Defence, for reasons that I don't want to indicate now, will require a postponement of at least three months. On further consideration and consultation with my colleagues, Mr. Rosenberg and others, we probably find that we have underestimated the period that we require. We probably require something more

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.