

Basner: "An increase for the underground workers of 5d per shift and for surface workers 4d."

With regard to Boot Allowance, was there a recommendation?

Basner: 3/- a month of thirty shifts. The Boot Allowance is a considerable item, as natives have to buy their own boots, and they are quickly worn out.

Was there a recommendation in regard to overtime?

There was a recommendation for Sundays and overtime to be paid at time-and-a-half.

Do you know of any recommendation in regard to paid leave?

Two weeks in every two years should be granted.

Was there a recommendation in regard to rations?

There was a general recommendation to try and improve the position of the workers."

The recommendations of the Commission were made known. ~~It~~ They appeared in the Press. The word got around the mine compounds. The workers came to believe they were going to get the benefits recommended.

Berrange: Did the Government implement the recommendations?

Basner: Two months elapsed from the time of the report and the time when an announcement was made....The Government was not prepared to implement the recommendations....Most of the recommendations apart from the wage increase were not accepted.The effect was to cause very grave uneasiness and a sense of betrayal in the minds of the native miners.

Did you attend any conference of the African Mine Workers Union?

I attended conferences immediately after the Government decision...at which over 1,000 delegates from different shafts on the Witwatersrand were present.They wanted immediate action - to strike there and then. We inform them that we were putting it to the Government that this was their attitude, and asked them to wait....

What year was that?

Towards the end of 1944. From 1942 onwards all the Native Representatives continually brought up this question of the pay of the native miners. They kept on arguing with the Government to give the cost of living allowances as there was grave unrest on the

(Basner)
Witwatersrand.

In May 1946, did you have any news....in regard to the native miners? I received an urgent message to come to Johannesburg as there was trouble on the Mines, and when I came, Marks, the President of the Union, interviewed me, and other people interviewed me. They informed me that they could not hold the native mine workers from striking, and unless we could convince them that through the Government or the Chamber of Mines negotiations had started, they could not prevent the strike. ... I made certain investigations of my own... What the Union wanted was to have immediate negotiations so that the mine workers felt that something was being done for them. After that I came to the conclusion that the position was very serious, and I got in touch with a number of people, leading people and had interviews with them....and asked them to take steps to force the Gold Producers Committee to negotiate with the mine-workers. I was informed that the Gold Producers Committee was adamant, it would not negotiate.I then went back to Parliament and asked that a meeting be called for all Native Representatives. I had a meeting.....As a result of that it was decided to make immediate representations to the Government, and I was determined to interview the Minister of Labour, Dr. Colin Steyn. I interviewed him the same day and put the position to him - that I considered the position was very serious, that the strike was inevitable and he should put arbitration machinery into operation immediately. I asked him to apply War Measure No. 145. He replied that he did not want to use War Measures any longer.

The Government failed to act. He saw the Secretary for Native Affairs, Mr. Mears. He saw the Chamber of Mines Parliamentary lobbyist, Mr. Turvey. Nothing happened.

Berrange: Do you know whether the cost of living and the position in the reserves which is bound up with the whole question ~~xxxxx~~ since the Knudsen Commission report was drawn up in 1943?

Basner: The cost of living for the mine workers has increased the same as for everybody else...often more than the Europeans, because of the Black Market.... There was a very grave aggravation of the position from the middle of 1945 for the African Mine Worker. With the shortage of food in South Africa....their rations were exceedingly

(Basner) and increasingly made smaller all the time... When the cut came in mealie-meal and kaffir beer, then we had food riots on the mines.

Berrange: What is the position in the reserves?

Basner: The position was aggravated very considerably by the food position in the Ciskei after two years of drought, and last year the drought was so bad that the Government had to send relief.

Berrange: You mentioned the Lansdown Commission. On what terms did they come to their recommendations?

Basner: At the opening...it was made clear that the Chamber of Mines does not claim to pay its African workers a living wage. They say that the amount they earn at the mines, plus the amount of allotment in the reserves, those two give them sufficient to live on. The Commission proved there was no substance in that contention. At least one third have no allotment of land in the Reserves. They also came to the conclusion....that a living wage would be much more than the 2/5d. they recommended, plus cost of living allowance, but they said: 'We have examined the objections of the Chamber of Mines, and came to the conclusion that if we recommend a proper living wage, the mines will have to close down.....' The Lansdown Commission does not consider that this constitutes a living wage.

Berrange:there were indications in the press that the strike was due to agitators, and that the Lansdown Commission's recommendations had been carried out "almost in full,"

Basner: The Prime Minister was reported to have made that statement. I can only suggest that it is a crippled version of what he said, or that he did not have the facts. I say that the Lansdown Commission's recommendations were not impelmented. The facts speak for themselves. As far as the question of agitators is concerned, the position is that if you have dissatisfied people you have a spokesman. People say a spokesman is an agitator. That has always been so.

Berrange: Do you know of a report known as the 'Fox-Back Report'?

Basner: It was the joint effort of the Government and the Chamber of Mines. The Government leaned Dr. Fox, who was Chief Nutrition expert of the Institute of Medical Research, to the Chamber. The report described briefly the conditions in the Transkei, in accurate

(Basner) terms. It was a report that horrified everybody, and gave startling figures about malnutrition and rife-ness of disease.

Berrange: Has that report been published?

Basner: That report was suppressed by the Chamber of Mines. They claimed it was their personal property.

Berrange: An endeavour was made to have it produced before the Lans-down Commission?

Basner: Until a few days of the close of the Commission it was not produced. Until the matter was brought up by me, and Mr. Gemmill then agreed to lend the report to the Commission. There was no suggestion to make it public. There are one or two copies in cir-culation, but the report itself was suppressed.

The Prosecutor attempted to cross-examine the witness. He floundered badly. The harder he tried, the more strongly he estab-lished the case for the defence.

On the Union:

"Is it not perhaps that the Chamber of Mines is afraid of outside ~~influences~~ influences.....which might make use of the unfortunate people for political reasons?"

Basner: "That is the reason that every employer gives when he does not want to recognise trade unions."

On the 'danger' from the strikers:

"You must agree that if these people had eventually over-flowed into Johannesburg, it might have been quite an upheaval?"

Basner: "It might have been. But nothing of the sort happened."
...."That would have happened I cannot tell you, but this story of natives marching with weapons towards Johannesburg, I deny that."

On strikes:

"A strike is certainly a very dangerous thing to toy with?"

Basner: "It is a thing one must never toy with.....That is why the African Mine Workers Union was so concerned."

On the demand for 10/- a day:

"They were asking for an impossibility?"

Basner: "They are ~~not~~ not asking for the impossible; they are asking for a living wage."

(Basner) You cannot expect the African workers to demand less. They can accept less, but they will not demand less.

Advocate Festenstein had a few questions in re-examination:

Are you a member of any political party in this country?

Basner: No. I am not a member of any political party.

Festenstein: In your evidence you said definitely that the Government had not implemented the Lansdown Commission's report in regard to overtime pay?

Basner: The position is this. Where the African is definitely called upon to work on a Sunday or for longer than the stated period, then he gets overtime pay. But one of the chief points is that the natives do not work eight or nine hours per shift. They work 12 hours a day, and sometimes 16 hours, because it takes them a couple of hours to get from the compound to their working places underground, and then another couple of hours to get back. Sometimes the natives wait ~~xxx~~ three hours before he gets back to the surface.

Magistrate: Is that the case on all mines?

Basner: On some days ~~xxxx~~ they take the ore up first, and then the workers; and sometimes there is congestion in the shafts. You ~~can~~ can take it that a native always take at least an hour. In other countries it is counted as overtime from the time he leaves his place to the time he gets back, but the mines refuse to recognise that this is virtually overtime.

Senator Basner was excused. He was leaving South Africa - on his way to New York to tell the delegates to U.N.O. something about the conditions and treatment of the people he represented - the African workers of South Africa.

Mr. Carlton-Jones, President of the Chamber of Mines, was standing in the passage outside the court, surrounded by his legal advisers. Mr. Festenstein explained to the court that, although he had issued a sub-poena for Carlton - Jones to appear, he no longer needed him, in view of the evidence given by Limebeer.

Advocate Shacksnovis rose to his feet: "I understand", he said, ~~xxxx~~ "that an objection was made to the hading in of the minutes of the Gold Producers Committee, and I want to make it clear that no privilege can be allowed to anyone who seeks cover for the minutes. Had the

Prime Minister himself been requested to hand in public documents, he would have had to produce them. And the Chamber of Mines is in no different position."

Carlton Jones, and his bevy of legal advisers, were allowed to go.

Shacksnovis called Dr. John Robertson, Doctor of Science.

"Have you been interested in any aspect of the affair of the African Mine Workers Union?"

Robertson: I have been considerably interested for some time, for the purpose of securing an effective working of the Union.

In what way were their aspiration and desires stifled and held back?

Robertson:the main obstacle to the African trade union organisation among mine workers arose from the imposition of War Measure 1425.

Do you know of any practical way in which the efforts of the Union were hampered?

Robertson: I was informed by the organisers that before the War Measure came into force the average monthly income from members subscriptions was between £120 and £150 per month, in sixpenny fees. Subsequent to the imposition of this measure it dropped to £30 per month, that is by 400%.

Doctor Robertson testified that he was a member of the African Mine Workers Union Organising Fund Committee. The main purpose of the committee was to provide the means for the Union to remain in existence. Other members of the Committee were Dr. Julius Leibman, Harold Sergay, Rev. Blaxall, Rev. Thompson, Rev. Michael Scott and Mr. E. J. Burford. Only the last named was a member of the Communist Party.

He was allowed to stand down, and Advocate ~~KEK~~ Shacksnovis called his last witness - Advocate Abram Fischer, one of the accused.

Shacksnovis: I propose to ask you your reasons for assisting in the continuation of the strike, and for your concern with the African Mine Workers.

FISHER:

Fischer: "We are concerned with all the workers in this country, and ...take an interest in any organisation or movement which might improve conditions of the workers. It is that principle which defines our relation to the Trade Union as a whole, because they are one form and a particularly important form of organisation which can improve conditions."

Shacksnovis:The African Mine Workers Union, are they a matter of great concern to the Party?

Fischer: We regard the African Mine Workers as a whole as by far the most important body of workers in the country. The Gold Mining industry is the chief industry - the dominant industry, and one of the ~~gi~~ biggest industries in the world.....Naturally therefore it sets the pace for labour conditions and wage conditions in this country. In our view that pace which is set is the basis of the whole restrictive economy of this country.

Shacksnovis: "....the workers in that industry. They are roughly half a million?"

Fischer: It has been known to be as high as 390,000 - usually between 300,000 and 400,000.

Shacksnovis: Before March of April of this year, was the Committee of which you are a member aware of what preceded the situation which developed towards the middle of the year?

Fischer: We were, naturally, aware.

Shacksnovis: "Had unrest been growing over a number of years?"

Fischer: Anybody who took an interest knew that unrest had been growing.

Shacksnovis; "The whole system of living, eating, sleeping - a pseudo-monastic condition, and ~~xxxx~~ very long hours and so on - those are very important causes of discontent apart from wages?"

Fischer: In my opinion they must be vital causes. Consider the breaking up of family life....Apart from general conditions, the whole system of migratory labour is a vicious social system.

Shacksnovis: Had all the recommendations of the Lansdown Commission been put into effect, were they anything like acceptable to the Union, or the Party?

Fischer: There was something more fundamentally wrong in the

{Fischer) report than the small scales of improvement recommended, because the report recommended the migratory labour system, and accepted the position that the mines were not obliged to pay a living wage. This came as a final ruling against getting a living wage..... I might point out that at the time of this report, War Measure 1425 had not yet been passed, and the assurance was given by the Chamber of Mines that no obstacles would be put in the way of mine workers meetings.

Shacksnovis: You say there was a complete absence of legal machinery to avoid a strike?

Fischer: More than that. After the passing of Proclamation 1425, not only could the union not organise, but the workers could not even air their grievances. It was restricted on free speech.

Shacksnovis: Assuming there was no legal machinery; having heard the evidence of Mr. Limebeer, it is common knowledge that neither the Government nor the Chamber of Mines were prepared to do, or did anything to establish a formal machinery for negotiation?

Fischer: Yes.

Shacksnovis: That being the case, are you satisfied that the strike was simply spontaneous and unavoidable?

Fischer: I have no doubt whatever upon that point that it was completely inevitable and spontaneous. In fact, it was the necessary consequence of what I have been trying to describe.

Shacksnovis:There had been recognition of the African workers unions in other industries?

Fischer: Yes. That is de facto recognition which has been growing up all over the country. The interesting thing is a statement by a Chairman of the Wage Board, Dr. Botha, saying.... "there was still too general a belief among employers that because Native trade unions were not statutorily recognised, they were not entitled to negotiate as unions; but native employees were recognised by the Department of Labour, and if the Labour Department could deal with their Union, he thought employers could do the same"I am certain the strike could have been postponed at the last minute, if there was any offer by the Chamber to negotiate.

Shacksnovis: So far from recognising the Union, so far from attempting to get any machinery for negotiation, and so far from allowing even an informal basis of approach, we have it from Mr. Limebeer that he considered it a mistake even to acknowledge the first letter. In addition to that, Proclamation 1425 was a positive policy to the contrary was it not?

Fischer: That proclamation was issued, and stated to be for use against subversive elements, and there was a suggestion that it was against the Ossewa Brandwag and other anti-war elements. I have no knowledge that it was ever used against anyone but the African Mine Workers Union. It seems to me that the conclusion is inevitable, that it was introduced for this purpose. At one stage it was suggested that the charge against us would be one of conspiracy. It seems to me, as the facts stand, that the result of the facts was to produce a conspiracy against the workers.

Shacksnovis: It is your view therefore that ~~ANYONE~~ any person with unbiased social conscience, with any sense of sympathy could not have refused to assist these strikers when they went on strike?

Fischer: It is by no means pleasant to break the law, and I do not think that anyone of us would willingly do so. But it seems to me that insofar as we have done so in this case, it was unavoidable.

The questioning passed to documents handed in by the Crown when the charge was one of conspiracy. Fischer stated that when the strike broke out, he was on holiday in the Game Reserve. He returned on the night of August 14th. The next evening he attended a meeting of the Communist Party District Committee. By that time the strike was virtually over.

Shacksnovis: We have it recorded on admission that leaflets were distributed by members of your party, and you had no part in that? Do you associate yourself with it?

Fisher: Yes, I associate myself with it.

Berrange:The Labour Party protested against the methods used to force the workers back to work. It included...methods used by the employers to use the Police force for purposes of interfering

{Berrange} in industrial disputes. What have you to say about that aspect?

Fischer: We have Sergeant Steyn's evidence. My opinion is that the methods were highly illegal. The press reports describe illegal action taken by the authorities.

Berrange: ...The method adopted to quell the strike was to use the Police force for driving the workers back to work?

Fischer: If the press ~~xxx~~ reports are correct, and from information ~~we~~ we received they are apparently correct. It discloses a situation that horrifies the Labour Movement, because of its use of force to fulfil a civil contract.

The Public Prosecutor opened his cross-examination:

"Mr. Fischer, why have you actually pleaded guilty?"

Fischer: I am a member of the Communist Party's District Committee in this District, and as such I am responsible for the decisions of the District.

Prosecutor: Is that the only reason why you feel yourself bound to plead guilty? You have nothing physical or otherwise to assist?

Fischer: No.

Prosecutor: The questioning went back to the documents, to meetings of the District Committee months ~~xxxxxx~~ before the strike, to discussion on the Communist Party's constitution and its attitude to the use of violence. Everyone began to get slightly sleepy in the stuffy atmosphere.

Prosecutor: Are you aware of the fact that the idea of your Party is to work members of your party into trade unions....

~~xxxxxx~~ Shacksnovis jumped to his feet to object. "I thought, your worhsip, that we had got past the 'Have you stopped beating your mother-in-law?' sort of question."

The objection was upheld. The questions dragged on and on.

Prosecutor: One of the big aims of your party is to provide means to enable labourers and employees an opportunity of bargaining with the employers?

Fischer: Yes. It is the whole aim of the establishment of a trade union.

"With the right to strike and picketing,"

Fischer: Yes. The same right as the employer has in the Chamber of Mines, where the Chamber fixes the average wage....and deprives the worker of the right of fixing a minimum wage.

"There is no possibility of refusing to work, if you do not want to work under those conditions,"

Fischer: Not if you are starving in the reserves.

The evidence was ended. The magistrate made a formal announcement, finding all the accused guilty. Counsel rose to address the court in mitigation of sentence.

.....

May it please Your Worship: Previous convictions have been admitted by Accused Nos. 1 and 6. These are very irrelevant matters as the most recent happened 9 years ago in 1937. In this case, the crime, the offence, to which the accused have pleaded guilty and been found guilty has been set out by Your Worship. A few minutes ago the admission was made that they assisted in the continuation of a strike by being parties to the distribution of leaflets. There is no suggestion whatever that the accused took part in the instigation or initiation of this strike, or took part in a conspiracy.

It is my purpose here to explain as shortly as possible the reasons why all the accused generally, and particularly Marks and Majoro, did what they did. My submission is that it is more satisfactory, and I hope Your Worship will agree that it is necessary to put the whole matter in its proper perspective. It is not sufficient merely to say:- "Here are a lot of accused who have admitted an offence and have been found guilty", and leave it at that. We must know why they did it because this is an industrial law and it concerns the whole economic structure of South Africa. It is necessary to know the background of the whole case, and for that purpose I start, without going into any of the details which Your Worship recollects as well as I do, from the conditions of the mine worker. Your Worship knows and has heard that for the past thirty to forty years the conditions of the African mine worker on the Witwatersrand has been steadily deteriorating. By this I mean his wages and his health and his standards; and we must also have regard to a similar deterioration in the Transkei and Ciskei. That has been taking place simultaneously with the general advance in South Africa of conditions in industry. All his fellow-workers in industry have, during the past twenty years, been obtaining more skilled jobs, and have been protected by the industrial machinery of Wage Board determinations. These facts have naturally aroused in the mine worker a sense of dissatisfaction at his deteriorating position, and have led to the development of ill-feeling which resulted in the outbreak of sporadic strikes on the
mines/.....

mines, and culminated in the outbreak of the 12th August.

With regard to this sense of dissatisfaction and irritation in the minds of the general body of African mine workers, I would point out that this attitude is due solely to the conditions under which they have suffered during the past years. It is my submission that it is absurd to suggest that this is due to agitators or their supporters, or to suggest that the African mine worker would have been a satisfied and efficient worker but for agitators. In my submission, this talk of agitators and such-like propaganda is a policy which misleads the public unfortunately into thinking that it comes from agitation; it is absurd, irresponsible and frivolous. The responsibility does not lie with the African Mine Workers Union, it does not lie with any of the accused. It lies first and foremost with their employers. It lies with the Chamber of Mines. I suppose they are really individual mining groups. And it lies with the Government, not only the present Government but all the past Governments in this country. I mean to say that over a number of years it has been the Government's responsibility, and they have admitted that responsibility, of stepping in between the employer and his employees whenever the employer treats his employees oppressively and harshly. As long ago as 1924 the Industrial Conciliation and the Wage Acts were passed. The former Act was used ~~in~~ by organised European Trade to bargain collectively with their employers. In the opinion of the authorities and of the Chamber of Mines the African Mine workers are not sufficiently educated or experienced to be formed into Trade Unions. But the Wage Act entitles the Government to appoint a Wage Board to make determinations. It was specially designed for the benefit of such workers, and the Government has fixed wages for African workers in industry under the Wage Act. But they have never ~~been~~ done so for the African mine worker. As a result of this the wages of the mine worker had not changed for years, and their conditions have become much worse during recent years. Notwithstanding the demand of the workers for a Wage determination it has consistently been refused. It has been refused by the authorities and that is firstly the Government and secondly the Chamber of Mines. They have set their faces not only against improving their conditions, but even against talking to

them about their demands. That is the background I wish to give Your Worship.

I come now to the demands for negotiation. I want to deal with the demands in some detail. We have it from Senator Basner and from one of the Exhibits dated 7th August, the circular from the Union. When the strike decision was taken in May it appears from this Exhibit and from the evidence of Senator Basner that the Union made attempts to obtain a channel of negotiation; these attempts were blocked either by the Government or the Chamber of Mines, or both. And these demands were not made by people of no standing in this country. They were not made by mere visitors. They were made later after a combined meeting of the Native Representatives in Parliament and other members of Parliament. They were made by all sorts of European bodies who associated themselves with these people. It was also, in a smaller degree, one of the recommendations of the Lansdown Commission. As a result of this refusal to negotiate and similar refusals in the past, the feeling of irritation and frustration which had grown over a number of years became worse. It was gradually changed into a feeling of bitter resentment; in fact, the native mine workers' dissatisfaction with their conditions, was more and more provoked by the response or lack of response with which the authorities treated their demands for peaceful discussion. Things got so bad that the situation was becoming so dangerous from the Government's point of view that in 1943 the Lansdown Commission was appointed. The Africans had always regarded the appointment of a Wage Board as what they wanted, with wider terms of reference than the Lansdown Commission. The Africans naturally and ~~reasonably~~ reasonably came to the conclusion that the recommendations of the Lansdown Commission were Government recommendations. That is what they concluded, and they were disappointed at the recommendations put forward.

I wish to put in the recommendations of this Commission as one of the Exhibits. I shall hand it in in a moment. The main recommendation was a 5d increase in the basic wage for underground and surface workers, and 3d cost of living allowance and a boot allowance. The only allowance which was granted was a small increase in basic wages, less than that recommended. That is given in the evidence of Senator Basner. I think Mr. Limebeer also admits it. The evidence shows that this decision

came as a tremendous blow to the expectations of the African worker and to all liberals in this country; and not only did it come as a blow, but it served as fuel for further resentment at their conditions which had deteriorated so gravely. The Lansdown Commission was published towards the end of 1943, after there had been serious increases in the cost of living.

I think it is a fact that the Government followed up the findings of the Lansdown Commission by the issue of Proclamation 1425. Thereafter, with effect as from 1944, gatherings of more than 20 people were forbidden on proclaimed land. It is clear what the purpose of proclaiming such a law just at that time was. In my submission, it is clear what that purpose was. The African Mine Workers Union had come into existence about the beginning or early in 1941. Your Worship will remember that Sergeant Boy stated that he had been present at many meetings, and it was not only at later meetings that he had been present. He stated that when he had been present the purpose of these meetings had been to explain the nature of the trade union to the African mine worker, to enrol members and to collect subscriptions from the workers. All these meetings were attended by hundreds of people, and you can see that the organisation was growing by leaps and bounds. The Union had grown to such an extent that it was able and permitted to present a comprehensive memorandum of evidence to the Lansdown Commission. That must have been a tremendous blow to the Chamber of Mines, who, according to the evidence of Mr. Ljmebeer, consistently refused to face up to the position, as they had previously failed to face up to the position in regard to the European miner, namely not to recognise the Union. It must have been a tremendous blow to them because there was an official Commission apparently giving recognition to the African Mine Workers Union which they refused even to negotiate with. And it must be remembered that having got this report, the Government implemented to some extent this report. The fear was that the workers would regard the Union as having obtained the benefits for them and would join up so that the African Mine Workers Union would go from strength to strength. And in my submission it follows as might follow day why Proclamation 1425 was passed; at the recommendation of the Chamber of Mines or at the request of the Chamber of Mines, for the sole purpose of preventing the Union
from/.....

from carrying out its legitimate work. It applies only to meetings which are not held in buildings, and I might say that it is still in existence today, eighteen months after the end of hostilities. For this reason the Proclamation does not hit any section except the African mine worker. From the evidence of Sergeant Boy, in answer to my question, he replies that these people couldn't possibly he said it was with the greatest difficulty that they could meet elsewhere than on proclaimed land. My submission is that this added to the resentment which had been created by the failure to implement the Lansdown Commission and by the passage of the Proclamation itself. It closed the safety valve of discussion in open and public meetings; and you cannot stop them merely by not allowing them to meet; They become secretive, or tend to become secretive, and thus the unrest grows. The submission I make is that this Proclamation in these circumstances was nothing else but a provocative Proclamation, and it must have been known to be a provocative Proclamation. Again in May of this year the Secretary of Native Affairs issued a circular saying that the Government was not going to recommend any further increase in wages whatever; and Senator Basner told him at the time that this would only aggravate the position. This was such a provocative measure that any sensible person must have known the effect it would have. We have further evidence, that there were last year, further demands to open a channel of negotiations. There were letters put in to the Prime Minister, Field Marshal Smuts, to which a reply was given that the Native Advisory Council is dealing with the matter; but no further progress was made with the Government and the result was that with the deteriorating conditions in the reserve and elsewhere, the position became so bad that sporadic strikes broke out early this year. Nobody suggested that they were anything but spontaneous strikes, and there is evidence that Marks did his very best to prevent these strikes. The evidence given by Sergeant Boy shows that Marks addressed the gathering and Majoro addressed the gathering. That is on the 19th May. They said that the Union was against these strikes; but that meeting unanimously decided as a result of a proposal made by a member at the meeting, that the position had gone so far that the African mine worker generally was at the end of his tether, and that the only thin left was a general strike on all mines. Even then the Union officials got them to postpone this/.....

decision, in the hope that a further attempt at negotiation in the light of the strike decision would bring the authorities to their senses. I say to their senses. Senator Basner was almost immediately approached by Marks and he saw, as a result, two leading men in the mining world but nothing could be done. He returned to Cape Town and after a meeting of the Native Representative Senator Basner put the whole situation to Dr. Colin Steyn, the Minister of Labour, and he spoke to Mr. Turvey, the liason officer of the Chamber. The letter which we put in dated 27th May deals with the meeting of the 19th and is written to the Minister of Labour. The letter asks for the appointment of an arbitrator under the very War Measure under which the accused are now charged. It was not expected that arbitration would be refused in the circumstances. It was pointed out that this could prevent the workers from taking action. These demands were being made by people who were not letting things slide and who wanted to do everything to settle the matter by negotiation. Then we come to the meeting of the 4th August, the evidence given by Sergeant Boy and Sergeant Viviers of the gathering. They reported that Marks and Majoro said at that meeting that further efforts had been made at negotiations, and that nothing had been achieved.

Now let us come to the point which the newspapers made such a fuss about during the strike. The Chairman, Marks, warned and admonished the mine workers not in any event to use violence. He never went so far that he told them that they should not even shout their battle-cry at the sight of the police, as the police might think they wanted to fight. He told them that they should not attack kitchens or compounds or damage property; we know that this is in fact what happened in the past, that this is what used to take place. There had been no evidence of violence on the part of the African mine workers in ~~this~~ this case. This is the first time this has happened. We have the evidence of one police detective as to what happened at Nigel. He stated that there were no attacks and no damage to property and that the police arrived in force to drive the workers back to the compound. Without even asking the workers to go back violence broke out on the side of the police. The point I am making is that there was no violence on the part of the workers. They were carrying out the instructions of their Chairman.

That then is the background of the case. There is one further thing/.....

thing in regard to the accused Marks, and this applies to all the accused. The question is this. What kind of law has been broken in this case? The law is a War Measure 145 which was passed in 1942 and in my submission I understand that my learned friend, Mr. Shacksnovis, will deal with this in some detail. This law was passed as an emergency war measure. Although they have the force of law they may not have or retain the sanction of the public and public opinion knows whether they are moral or right. In my submission, eighteen months after the end of hostilities, in these circumstances where there is no channel for negotiations, no right-thinking man, whatever his other opinions be, can consider Proclamation 145 to be in 1946 a moral or just law. And therefore the reasons why - I think I speak for all the accused; I certainly speak for Nos. 1 and 6 - why the mine workers supported this action was because it was the only action left for them to take against the iniquitous conduct of the authorities and the provocative silence which had greeted their prolonged demands to get to grips with their employers.

What could be expected from the Chariman himself? Could he run away when the strike decision was taken, because it is against a certain War Measure, and leave the members of the Union and the workers generally in the lurch? Was he morally doing wrong in assisting them in a non-violent way?

I have tried to give the background for the actions of No. 1. accused. I submit he did what every right-thinking person would have done under those circumstances, and did what those less endowed with leadership did not know what to do.

In my submission the evidence in respect of Marks and in respect of Majoro shows that they were not irresponsible persons. They did not drag the workers into a strike. Marks' recommendations, his instructions to them, showed him to be a leader of restraint, but there was nothing else to do. The magnitude and strength of the movement from rank and file could not be disregarded; he could not allow himself to be branded as a coward by running away. My submission is that it is clear from the evidence that he and all the accused did what every right-thinking person would have done and the only fair and proper sentence would be to caution and discharge them.

ADV. A. SHACKSNOVIS.

The question of punishment must depend on the circumstances and the circumstances arise from two aspects which I would like to deal with at once. The first is that they are charged with assisting in the continuation of a strike, as my learned friend has described. They are charged with breaking a War Measure operating and in force.. They were in a place of proclaimed ground, where no battles have taken place. This War Measure is as much a measure as any other measure in over-riding the freedom of speech and of assembly. Now that is a wide statement. Your Worship has to consider what is an adequate penalty under circumstances such as these.

Such a War Measure acts suppressively and repressively in all circumstances, more especially when it is extended for two years after the war has ended, and is applied to these people in the strike. I think it is audacity on the part of Mr. Limebeer to speak of the primitive man who cannot be organised, but you treat that man in such a way that he cannot be organised. What defence has he got? It is sure to stir these people into action because of what they have not got. Are they to be punished for a rightful crime like this, for having done so? And what have they done?

I put in on behalf of all the accused Mr. Fishher, and I venture to suggest that on his evidence it is clear that his purity of motive cannot be impugned, and I cannot see that this can be challenged in any way. These people stand to gain nothing more than the sense of a duty well-done and no more. In fact, they run the risk of suffering, and suffering as they do not deserve to suffer. That has been the case for over ~~in~~ two thousand years that people have suffered, but it does not necessarily follow that some time or another this should not cease to be the case. If the miner's moral urge comes into conflict with the ~~case~~ technical requirements of the law, whether consciously or unconsciously, he cannot change his defence, and I am clear that if you see that moral conflict, it is not justified that you penalise him.

Now, on provocation, this is an aspect I do not propose to
I do not intend to reiterate the evidence of Mr. Fischer. His refusal to see these people suffering created the impulse.

Any right-thinking person must have a policy which has as its set purpose that of helping these people who are suffering under adverse conditions. The accused realised that the miners needed assistance and it was under these circumstances that they broke the law, and they did so with extreme reluctance.

Your Worship, there is one other aspect I want to deal with, namely the attitude of the Chamber of Mines. I am dealing with the political aspect. I put it to you that the evidence of Mr. Limebeer virtually amounts to this. He told you these people are mere children. If your child comes to you and says "I am starving, I want bread" you do not tell him to go away, you don't want to talk to him, and you do not slam the door in his face. The distinction is all the more apt, seeing the door slammed in the child's face, without being prepared to give a reply, or to see that it comes to the public in the proper light, because that is what it amounts to.

Who are these intellectuals he referred to? They are people with an urge to help the down-trodden. It was such an overwhelming urge that Your Worship must make the fullest allowance in assessing the penalty.

I do not propose to say any more except this. If the Court feels disposed to deal with any of the previous convictions proved before you, I do say it may be my learned friend's duty to produce records, whatever they are. But let us examine them. Can they be held against these people in this trial? I propose to deal with an accused who is not my client. I do know this man, James Majoro. He is a messenger for sixteen counsel, and it appears that he admits a previous conviction in 1938 for theft, in which he was fined £5. or one month suspended. That boy has carried hundreds of pounds of my money and my colleagues to and from the bank. In spite of this knowledge I am prepared to keep in him in employment for as long as he is prepared to work for me.

I find one of my clients was convicted fourteen years ago for buying half a bottle of brandy for an Indian who needed it. The sentence given shows that the offence was not a serious one. But I do submit that none of that has any bearing on the case. No. 2. accused was also convicted in 1941 under the Riotous Assemblies Act, and I am informed by my learned friend, Mr. Boshoff, that he was convicted because of the refusal of the employers to pay their employees travelling time and in desperation they said "We will strike". I do not think it would be fair under the circumstances to regard him as a recidivist in this particular type of crime.

I just want to go back to my main theme and it is this. It is really irrelevant whether Your Worship is imposing a fine imposes one of £2. or £5. The point which, in my submission, Your Worship has to consider is the circumstances which led to the breaking of the law, and I want to make this appeal on behalf of all the accused that if that is considered they should all be cautioned and discharged.

.....

Collection Number: A3299

Collection Name: Hilda and Rusty BERNSTEIN Papers, 1931-2006

PUBLISHER:

Publisher: **Historical Papers Research Archive**

Collection Funder: **Bernstein family**

Location: **Johannesburg**

©2015

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.

This document is part of the *Hilda and Rusty Bernstein Papers*, held at the Historical Papers Research Archive, University of the Witwatersrand, Johannesburg, South Africa.