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### The South African Treason Trial

The case in which 92 people are charged with treason or, alternatively, with certain offences under the Suppression of Communism Act is due to begin in Pretoria on August 1. It is to be heard by a special court of three Supreme Court judges - Mr. Justice Rumpff, Mr. Justice Kennedy and Mr. Justice Ludorf.

#### Background to the Trial

In the House earlier this month, the Minister of Justice (Mr. C. R. Swart) made a statement on the circumstances which preceded the trial. The trial, he said, had attracted considerable attention in South Africa and overseas and there had been a sowing of suspicion against the Government. For this reason he wished to set out the particulars of the events which led up to it:

In the course of investigation by the police, certain information had come into their possession which they placed before the Attorney-General of the Transvaal for his consideration. The Attorney-General was a public servant - an individual who was outside politics and did not hold the same position as in other countries like the United States. On the information before him, and in terms of the Criminal Procedure Act, he decided that a preliminary examination was required. In such an examination it was the normal procedure for a magistrate to decide on the evidence whether there was a prima facie case to be met.

In the magistrate's court, the individuals in the case had their defending advocates and the right of cross-examination; and at the conclusion of the preliminary hearing the magistrate decided that there was, in fact, a prima facie case. The next step was for the matter to be placed again before the Attorney-General: he had to decide whether to accept the magistrate's findings and institute further proceedings. He again took all the evidence into consideration and decided to institute charges of high treason. Of about 150 persons originally charged, charges were preferred against 92 and the rest were discharged.

#### The Trial Judges

Mr. Swart, in Parliament, went on to deal with the superior court in which the 92 were to be tried (and here it should be pointed out that four types of superior court trial are provided for in South Africa's laws. These are (1) by judge and assessors; (2) by judge and jury - as a result of the election of the accused; (3) by judge and assessors - at the direction of the Minister and (4) by special court - at the direction of the Minister and on the advice of the Attorney-General.)

Treason Trial

The Minister of Justice told the House that before the decision was made to have the case heard before a special court of three judges, he had consulted the Judge President of the Transvaal as to what judge should be appointed if the case were to be heard before a judge and two assessors. The Judge President had nominated Mr. Justice Rumpff.

In the meantime the accused had elected to be tried by judge and jury - but the Attorney-General had informed him that it was in the interests of justice that a special court should be constituted. He (the Minister) had taken legal opinion as to whether he had the power to establish such a court and, having been assured that this was so, the special court was established.

In the meantime, again, the accused had changed their mind and had elected to be tried by judge and assessors. The question then arose whether a special court was still allowed and, according to legal opinion which he again took, it was. (The legal issue will be dealt with later).

The Minister went on to say that, having decided upon a special court, he appointed Mr. Justice Rumpff (who had previously been nominated by the Judge President) as its senior judge. He then consulted Mr. Justice Rumpff about the appointment of the other two judges, and the two appointed were those recommended by Mr. Justice Rumpff.

#### Reasons for a Special Court

Dealing with the decision for a special court, the Minister said the Attorney-General of the Transvaal had considered such a court desirable. He had said he was of the opinion that, because of the complicated nature of the case, the legal questions which he expected would be raised and the vast volume of evidence that would be led - that, in such circumstances, the interests of justice would best be served if three judges with experience of criminal courts were appointed to take the case.

Mr. Swart pointed out also that where a judge sat with two assessors he had to take responsibility for the Court's decision even if the assessors disagreed with him. "The decision in a trial, perhaps lasting for months and months, would be the responsibility of one judge." In a special court there would be three judges of experience who would be able to give a decision both on the facts and the legal aspects of the case, and their decision would have to be unanimous. "I say that this decision to have a special court is in the interests of the State and just as much in the interests of the accused people."

The Minister added that in South Africa it was traditional for all treason trials to be referred to a special court.

The Amending Legislation

The above statement was made by the Minister in the course of a debate on the Special Criminal Courts Amendment Bill.

There had, said the Minister, been shocking misrepresentation in the Press about the facts of the Bill and a totally incorrect impression had been created - for example, that it empowered the Minister of Justice to create special courts whenever he wished to. But the measure had reference only to an article in the Criminal Procedure Act empowering the Minister to create a special court in certain specific instances - namely, in cases of treason, public violence and communistic activities.

The Bill was introduced, not to alter, but to clarify the intention of existing legislation;\*  
and it was done because of indications that a lack of clarity might lead to proceedings needlessly protracting the treason trial.

Speaking of arrangements for the trial itself, the Minister made two observations: (1) The Department of Justice would be responsible for the daily transport of the accused people (who are on bail) to and from the court in Pretoria; and (2) The Government welcomed the observers from overseas who were going to watch the trial. Special facilities for them had been arranged at the Court.

\*Existing Legislation

The answer to the widespread misrepresentation of the purposes of the recent amending legislation (and the authority for a special court to supersede either a court of judge and jury or a court of judge and assessors) is contained in South Africa's previously existing legislation. The particularly relevant sections are No. 215 of Act 31 of 1917 and Nos. 109, 111 and 112 of Act 56 of 1955.

Section 215 of Act 31 of 1917 empowered an Attorney-General to recommend the trial of certain scheduled offences by a special court when he was of the opinion that "if the accused were tried by a jury, the ends of justice are likely to be defeated." The offences scheduled included treason, sedition and public violence.

In 1955 consolidating legislation was passed in the form of Act 56 of that year. Section 111 enabled the Minister to direct that certain offences be tried by a judge and assessors (in other words, he could disallow trial by judge and jury); and the next section, section 112, was substantially the same as section 215 of Act 31 of 1917 which provided for a special court.

It is clear from these two sections that, over and above trial by a judge and assessors, provision for trial by special court of certain offences was considered necessary. This is explicitly borne out by a third section (109) which says that accused people who do not demand to be tried by a judge and jury will be tried by a judge and assessors subject to the provisions of Section 112 - that is, the section which provides for a special court.

The intention of these sections is that a special court should have the power to supersede both a court of judge and jury and a court of judge and assessors. The purpose of the amending legislation was merely to bring into line with this established intention wording in the body of Section 112.

(The full text of the relevant sections will be sent to any reader who wishes to study them).

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