

MR. SPILKIN intimates that he wishes to make an exception to the main charge before accd. pleads. Exception taken under Section 155 and 156 of Act 31 of 1917. Asked for summons to be quashed - charge prejudicial and embarrasses accd. in his defence. Alternatively under Sect. 157 of Act 31/1917 he raises an exception on the main charge kn that an individual cannot comprise an unlawful Assxmbly of 5 or more paxsons.

P.P. rexplixs:

Second exception to the main charge Mr. Spilkin submits as follows: he main charge is no offence in that the words uttered by the the accd. "You should not agree to the culling of the stock by the Europeansby Chief Magistrate Umtata" which constitute particulars by which the Crown is bound are not capable of any meaning sufficient in law to constitute their use asa resistance of the execution of any law of any legal process whatsoever, and in particular sufficient in law to constitute their use as a resistance to the execution of the Control and Improvement of Livestock in Native Areas Proclamation as set out in the charge.

The Crown has not alleged any special meaning of the words, no innuendo is set out to the words.

P.P. submits Act is cirrect in mentioning the word "person" thus one person can be charged.

Court overrules Exception No.1.

Mr. Spilkin addresses Court on Exception No.2 . Quoted Rex vs. Cox 1937 E.D.L.

Sgd. A.J.Adendorf.
Ass. Mgte.

Mr. Spilkin excepts to the alternative charge. Grounds similar to that put out in second exception in that the words 'agree' not capable to incitement.

P.P. asks Court to overrule this exception. Court adjourns to consider the exception raised.

Court resumes at 12 o'clock. Court overrules exception No.2 as also exception to the alternative charge.

Sgd. A. J. Adendorf.
Ass. Mgte.

Accd. called upon to plead.

Accd. pleads not guilty.

HERMANUS LAMBERTUS POTGIETER s.s. I am Det/Sgt. in S.A.Police stationed at Kokstad. I know Accd. On 16th. Sept. last I arrested the Accd. I also searched his person and belongings. The Accd, travelled b car at time of arrest. I searched the car and found a suitcase containing certain documents. I also found a parcel containing 82 books titled The Rehabilitation Scheme "The New Fraud" by I.B.Tabata. I hand these into Court Exh "A" I also searched Accd.'s person and his suitcase. I took possession of a note book containing entries which appear to be a diary of meetings held. I hand this into Court Exh "B". I hand in also a roneed form Exh"C" convening meetings - this is unsigned, a Memorandum b T.W.Mlungisi "The Path of Liberation", Exh."D". I hand into Court. Minutes of a meeting held at East London Exh "E" a portion of which reads "We shall drive the Whites out", I hand in to Court. I also hand in a poem "Red" Exh. "F". I hand in list of addresses of Nayives in the Transkei Exh."G" address No.7 is that of R.M.Tutshana Gillespie Mission School, Mount Ayliff. It was at this kraal that I found the Accd. I hand in to Court also a letter addressed to My dear B, Exh."H". I hand in 3 pamphlets "defend

the right to sit where you like. Resist train Apartheid." Exh."I" .

XED. BY MR SPILKIN: I took possession of these ~~the~~ documents after Accd. had been arrested by warrant from the Magistrate on the Charge as framed and - Mr. Spilkin wishes the warrant to be produced - as document has been executed.

P.P. claims privilege and says the warrant forms part of his docket. I produce the warrant) Exh."K". (after Court rules production of documents). Under this authority I searched the Accd. and produce the documents now before Court.

Mr. Spilkin wishes to know under what authority Accd. was ~~was~~ searched and documents taken possession of.

I searched Accd. and took possession of documents on my own initiative and not by instructions from my superior officers. I rely on Section 49 of Act 31/1917 for my actions. I insist that I relied on this authority for my actions. Section 50 of Act 31/17 gives me also the right as a Police Sgt. In this case I had acted on the warrant before Court. I showed Accd. warrant and told him I was arresting him on that warrant. I asked Accd. for his pass to come to Transkei and ~~ask~~ accd. said he was born here. Accd. produced his Tax Receipt in support of his statement and ~~this~~ this did not satisfy me. I arrested the Accd. at the Charge Office Mt. Ayliff. I did not detain him before then. At Tutshana's I asked Accd. for his pass. Accd showed me his tax receipt which was for Capetown. I told Accd. to accompany me to the Charge Office. I asked Accd. at Tutshana's why he held the meeting. The warrant was not issued yet at time I saw Accd. at Tutshana's. Accd. was under charge of a Policeman. Then otherwise I would have taken him in my car. I did not see the documents before Court at Tutshana's. The warrant was issued before I saw the documents before Court. Accd was detained on his own request and in view of being passless. I told Accd. that there was an ~~any~~ allegation that Natives were expecting Attorneys from Capetown. I asked Accd. which Attys he represented. I refused to divulge who told me that Natives were expecting Attys. from Capetown. I did not say at Tutshana's that I arrested Accd. because he was suspected of collecting monies from Natives. I cannot remember that I told Accd. that he was arrested at Tutshana's. If accd. had refused to come with me I would then have arrested him. Accd. property is listed when arrested and given a receipt therefor. Accd was not given a receipt for his personal ppty at the time. I rely on Sect.49 of the Criminal Procedure Act for taking possession of the ppty at the time When warrant was issued I had already had information of words forming subject of the Charge. I explained to Accd. the nature of the Charge Accd took the references on the Warrant which set out the charge. I took possession of all the exhibits documents as these referred to the Charge before Court. The docts. speak for themselves. The docts before Court support the Charge. I rely on docts before Court. I knew accd. before. I did not know accd. was inhabitant of Transkei I saw Accd. at a meeting which he attended at Idutywa. I was there in my official capacity. Accd. was not arrested there. I did not see Exh. ~~kk~~"A" then. I did not know that this book was published before 1946 Exh "A". I refer to page 5 of this book Exh"A" and on the black board I saw a drawing same as appeared therein. I know Accd. was a member of the All African Convention or organisation forming part thereof. I was not present at the meeting. I saw the gathering at a distance. I receive a report from persons present at this gathering.

Mr. Spilkin wishes to apply for the deletion of all the exhibits A-I and the expunction of these from the record on grounds :-

1. These were taken possession of illegally and without process of law.
2. The evidence given by Mr. Potgieter ~~was~~ and evidence of extracts from these docts. e.g. Exhs "E" & "H" are not proved to be remarks of the accd. Documents irrelevant to charge & inadmissible.
3. If an offence has been committed by these docts. that this is not the offence before Court and that evidence of the commission

of another offence is inadmissible at this stage.

BY P.P. wishes Court to go into these docts. Submit that docts. were not taken from Accd. illegally.

P.P. recalls witness - Potgieter who states:-

I have already given evidence: I hand in form U.D.J.542 Exh^s"L" which is an application & order for handing in the Exhs. into Court.

Mr. Spilkin: No question.

Mr. Spilkin repeats his application. Court reserves decision on this Application till a further stage is reached in the proceedings

Court adjourns for the Lunch Hour.

Resumed at 2.p.m.

P.P. admits that some or other of docts referred to Rehabilitation Scheme. Submit all docts. were handed in correctly.

Court rules that docts. be admitted as showing relevance to charge in as much as it goes to show intention on accd's part.

PHILIP MSENTI s.s. I am Native Const. in S.A.P. stationed at Zwartberg On instructions I attended a Kongo meeting on 16th. Sept. last at Dundee Location. I was in private clothes. There was a large number of Natives at this meeting. There were about 400 Natives present consisting of men only. I saw accd. for first time at this meeting. Accd. attended this meeting. The meeting commenced at about 11 a.m. in the morning When I got to this meeting Accd. was already addressing the Natives. I did not see Accd. arrive. I saw a car at the meeting, one only. I left the car there. Accd. said: "I have come to you" Accd. was speaking in Xhosa. Accd. continued: "in connection with your complaint about the reduction of livestock; and also about your complaint in which Natives were to build their kraalsites. I say you should not agree. You should not agree that your cattle should be taken by Europeans or the Magistrate or the Magistrate from Umtata. I am advising you to unite with other Native tribes such as Basas and "ondos". I think accd. also said to the meeting that they should join the All African Congress. I only remember accd. mentioning the reduction of stock to which they should not agree (Question: Was anything mentioned about the culling of stock?) Accd. used words "Nciphiso" - reduction. Accd. said overseas there was war going on. Accd. told the Natives not to join the army as they did during the last war we had. After accd. had addressed the meeting men asked accd. where European was as they were expecting the arrival of European. Accd. did not reply. The meeting dispersed and I also left. These Natives were angry.

Native clerk distracting Court's attention. Mr. Spilkin's interpreter is distracting my attention at times

Mr. Spilkin intimates that he cannot conduct the case as he is not a Native linguist and needs the assistance of his clerk, who is an articled clerk in his office. Mr. Spilkin prefers to use his own interpreter and not the Court's interpreter.

Court points out that its own Interpreter is available for Mr. Spilkin if he wishes to clear up any Native words.

XED BY MR. SPILKIN : I am not very fluent in Xhosa. I am a Hlangwini, a Zulu. I gave evidence in Xhosa. I know something about "Nciphiso" but know nothing about "Uhlaziyo".(culling). The accd. used the word "Nciphiso". I did not hear Accd. use word "Uhlaziyo"(culling). Accd. used the words "Uncitshiso" (reduction). I was sent on instruction of my officer. I went with one Magwala. I think he is an Umsuthu. The name of the meeting was called "Kongo". I don't know its meaning - it's a term I found in this district. I take Accd. was presiding over the meeting. The people were sitting in a circle & accd. was in their midst. The meeting dispersed ultimately. Natives were scolding the Accd. asking where European was. I made no notes there and then about the meeting. Magwala made no notes. If we had written notes. There would have been trouble. I made a statement to Sgt. Potgieter on the road

near Dundee location. That was verbal only. A written statement was made after my arrival at the Charge Office. This was made in the afternoon of the same day. I made the same statement to Mr. Potgieter as I am telling the Court now. I am sure accd. said that they should not agree that their cattle be taken by the Magistrate or European. Accd. used the words "All African Congress" in English. Accd. used the words "Congress not Convention". I am a bit educated. I don't know that there are 2 different bodies. I was sitting at the back - both of us. The people did not know that we were acting as informers. If the people had known there would have been trouble for us as informers. I heard things clearly. I heard everything accd. said and had left nothing out. I did not hear what accd. said in my absence. I did not draw Magwala's attention to anything said by accd. nor did Magwala draw my attention. We were together and he must have heard what I heard. Magwala was not inside the room where I made my statement in the Charge Office. I was not in this room where Magwala made his statement I did not discuss the meeting with Magwala about what we heard. I made my statement in English. I won't be able to recognise some people who spoke at this meeting. Accd. was speaking about 30 paces indicated from me. I heard Accd. clearly. I don't remember having heard a man saying they have sent people to Capetown. The Natives said that they were expecting a European from Capetown. In my presence no mention was made as to "qweta" attorney. I did not hear accd. mentioning that he did come from All African Convention and not from Attorney. I did not hear anybody saying that rehabilitation was compulsory or not. The words "you should not agree etc" was not said by accd. in answer to a question put to him. If accd. says this or anybody else it would be a false statement. Accd. did not say stock limitation was not compulsory. Accd. only said they should not agree to rehabilitation. Accd. did not say stock limitation is not compulsory as far as he knew. Nobody stood up to thank accd. for coming. No speaker said they had been and were against rehabilitation. No speaker said that they were united against rehabilitation. 4 people after accd. spoke before the meeting broke up. I would not be able to recognise speakers even if brought to Court now. First speaker asked where European was. That was all he asked. He also said they were expecting the arrival of a European. Accd. did not reply to those questions. Second speaker, 3rd. & 4th. asked same question from accd. Accd. did not reply. After accd. finished his main speech, accd. did not speak at all. If other people say accd. spoke after his main speech they will make false statements. I left the spot with people remaining behind. I left accd. there. Accd. might have spoken after I left the meeting I met Mr. Potgieter on the road at that spot, we were out of sight from the meeting. I saw something similar to this Exh A at the Charge Office on that day. Accd. did not mention about a book he had written Accd. did not mention that that they were going to have another meeting at Bloemfontein of the "All African Congress". Accd. said that they should unite like the Basas & Ponds. I did not hear accd. say that organisation is strength & they should speak as one voice. Accd. said All African Congress was for all Native tribes.

LEONARD MAKHOALI s.s. I am a Native Constable stationed at Cedarville S.A.P. On 16th. September 1948 I attended a meeting at the Dundee location called the "Kongo" I was in private clothes. I am a total stranger to these parts. I can speak Xhosa. I was with another Native Constable last witness. The meeting commenced about 11 o'clock in the morning. There were many Natives present. I saw people going to spot where meeting was held coming from all directions. When I arrived someone was speaking; that was the accd. I heard Accd. say at meeting: "I have come to see you about your complaints and in connection with your complaint about the reduction of stock." Accd. said the men at the meeting should not agree to the reduction of their stock. Accd. also told the men not to agree to come to this office when called by the Magistrate or a Magistrate from Umtata. The Magistrate must go and see them in the locations. Accd. also advised the people to join the S.A. Congress or words to that effect. Accd. said that he and others were having a meeting at Bloemfontein. Accd. did not mention the purpose of that meeting. Accd. advised men to join Congress and that the Natives of this dist. should unite with the Ponds Basas & Zulus. That was all accd. said. I remember accd. said also that Natives should not join the army like they did during

the last war; and that there was war elsewhere. The meeting was dispersed. After accd. had finished his speech a man asked where the European was. Accd. did not reply. I remember four people stood up to speak asking the same question. The meeting dispersed disorderly as some showed signs of dissatisfaction. I left meeting when people were beginning to disperse. Some Natives remained behind and also the accd. I don't know what happened thereafter. I know there was a car at the meeting No.C.A.36538. I know car belongs to accd.

XED BY MR. SPILKIN: (was anything mentioned about cattle? Question)
Answer - That was all that accd. said. I am Msutu. I am fluent in Xhosa. My father's mother is a Xhosa. Accd. did not use the word "Uhlaziyo". I know nothing about the word. The word is used in the Cape Colony & don't know what that means. I and Philip were together all the time. I am making no mistake about the word. Accd. said the Magistrate must come out to see them in the location. The subject was about cattle. The remarks refer to the rehabilitation of stock as well. Accd. said that men should not come to this office when called about the rehabilitation of stock. I mentioned this in my evidence in chief. I consider that the words used by the accd. were seditious words. I did not write notes down then about these strong words. I did not draw Philip's attention to this as there were many people & they would see me do it. I am sure those words were used. I made statement in the afternoon about this matter. Philip was not present at time, he was outside. I did not hear Philip making his statement. I & Philip did not discuss this case. I am stating what I heard on the 18th. September last. I am quite sure the words accd. used are the correct words used. Accd. did not say they must not agree that their cattle be taken away. I did not hear accd. say that they should not agree that their cattle be taken away by Europeans. Accd. did not say that their stock be taken away by the Magistrate. Accd. said that they should not agree to the reduction of their stock. Did not mention about Europeans. Accd. did not use the words Magistrate or Chief Magistrate in connection with reduction of their stock. He said that Natives should not come to this office even if called by the Chief Magistrate. Accd. said that they should not agree to the reduction of their stock. Accd. did not use the words "African Convention". I don't know what All African Convention & African Congress bodies are. Accd. used words Congress in European language. I never heard word Convention mentioned. I was about 30 paces indicated from accd. at the time. I was outside circle formed, there were many men between self and accd. I heard no mention made about "Qweta" Attorney. Four people spoke the same. First man asked where European was. Speaker said "Where is the European we want a European. Accd. did not reply. The other speakers asked same question & accd. did not answer. It is possible that accd. may have replied to the speakers after I left. It was a short while since first person spoke & meeting dispersed about time I spent in the box. I am about half an hour in box. I did not hear anybody ask "is the rehabilitation scheme compulsory" to the accd. whilst I was there.

REXD. BY P.P.: The men were talking about the meeting with the Magistrate - Cattle was discussed as subject, and that people should not agree to reduction of cattle when called by the Magistrate or Chief Magistrate to this office.

PIETER JACOBUS VAN ASWEGEN s.a. I am the Native Commissioner for Mount Ayliff dist. I arrived on 10th. June 1947 to take up duties at Mt. Ayliff. In the Mount Ayliff district all the Locations have been declared a betterment area. Before an area is declared a betterment area a meeting is held in the location to say whether they accept or not. If they accept the matter is placed before the district Council for its recommendation. If the District Council recommends it the matter is submitted to the Chief Magistrate & procedure further gazetted as betterment area in a notice published in the Gazette thereafter the carrying capacity of stock is assessed and then the Chief Magistrate may order a count of stock of the location as further set out in Proc. 31 of 1939 as amended from time to time. The culling of stock up to the present has been a voluntary one not a legal one in one or two locations. We have not the manpower to carry out the

the culling of stock. There were vague objections against the culling of stock, since this scheme has been accepted. If the inhabitants refused to have their stock culled voluntarily, there is machinery legally for doing it by force. To cull means to take or remove the worst animals of the stock. It also means the reduction to the carrying capacity of stock in a location.

XED BY MR. SPIELKIN: The word cull is not defined in a Government Gazette as far as I know. I have not looked up a legal dictionary. I have given what I thought the literal meaning of word is, used in connection with the Proclamation. The removal of the worst animals in a flock is the literal meaning & attach to it. There is no definition or meaning of the word given in Proc. 31/1939. The word cull I take to mean in the Proclamation as the reduction of stock to the carrying capacity of the location. The meaning I put on the word cull itself is clear from the Proclamation & can be found therein. It is a question of construction in the absence of a clear definition. I think that the word cull includes the reduction of the carrying capacity of stock in a location. I cannot say the "reduction of stock" is used in the Proclamation. The Dundee Location was declared a Betterment Area before I arrived here. The quantities of stock have been fixed there. I gave evidence of the procedure according to the Proclamation. Mount Ayliff is a scheduled Area not a released Area. The consent of the Natives must be obtained first before imposition of stock limitation. I would not like to answer question that stock limitation is an additional measure to the rehabilitation Scheme, land allotment etc. under Act 27 of 1913 and 18 of 1936.

I cannot say that culling is only dealt with in Proc. 31 of 1939. I am ex officio member of Bunga & attended its deliberations. The general procedure as set out by me must have been in existence since 1939. The matter of Stock Limitation has formed matter of discussion at Bunga and other places. A minute is kept and forwarded to the Chief Magistrate. The original minute of meeting is kept in this Office. The document handed me is a White Paper brought to my notice. Exh. M. The Betterment Proclamation is a small part of the Rehabilitation Scheme. I did not attend Bunga in 1945 at Umtata. I produce and hand in an extract from proceedings of U.T.B.G. Council of the 1945 session Exh. "N". The consent of the Natives to the Rehabilitation Scheme is paramount. The Natives have a right to refuse. A right to agree implies right to refuse to agree. If Natives have agreed to stock limitation the policy is still to approach them, the Natives, again. I don't say that this is the policy. I have not had occasion myself for Natives to give initial consent. I have despite their consent had occasion to go back to them again. This if Natives have consented we don't force them if they refuse later again. I have not had occasion to prosecute refusal by Natives to carry out the Procl. As a fact I cannot say what policy of Dept. is and whether the issue would be forced where fencing has been carried out but not culling yet. I am referring to culls where Natives have accepted the Betterment Scheme. Unless the procedure of the Procl. has been carried out it will not be an offence to start culling today. I hand in report by Native Affairs Dept. for years 1945-47, Exh. "O" and refer to paragraph on Rehabilitation on page 1, on livestock page 6. The Procl. 31/1939 has been amended since. The accd. may have thought that he will not be liable if he had read this report. I don't think it would entitle the accd. to think so after reading the report. The amendments have been made to meet certain weaknesses in the Procl. I take it. I can't say whether the amendments affect the report Exh. "O". Consent is obtained from Location under the Betterment Scheme and I don't know whether a tribe has to consent now as I have not seen instruction to that effect yet. Where consent has been given by the people before work is begun the people are again consulted. This is merely an instruction not law. There is an instruction that culling not proceed until fences have been erected. Where certain Locations consented to schemes they have again been consulted. This happened also in this district. The previous consent is not legally insufficient, I maintain. There is nothing in the Procl to say that the Natives must agree again once they have accepted the scheme. If accd. knowing that people have agreed and now asks them not to agree, the accd. is making a dangerous statement. I will accept a prosecution at this stage if people refuse to have stock culled. Before September 1948 people were told to cull after they had given their consent. Consent means

consent by the Location. I don't know whether people support tribal chief more than Headman. There was agitation for removal of present chief. Tribal entities are too loose today as there are too many tribes without heads. I don't know whether there was trouble here as far back as 1942.

Court adjourns until 10 a.m. on 28/10/48.

Sgd. A.J. Adendorff
Asst. Mgte.
25/ 1/48.

Resumed this 28.10.48.

PIETER JACOBUS VAN ASWEGEN s.s.: (Court orders production of copy of minutes in Native Commissioner's possession to be handed in.- duly certified). I produce the copy of the minutes of a meeting held on 24.7.46 in the Dundee Location this district in connection with the Betterment Scheme Exh. "P". There are 31 Locations in this district. All Locations had similar meetings and all were passed by the Natives. There are about 30,000 Natives in the district according to 1946 census. I can't say how many resident in Dundee during 1946. 85 persons were present during this meeting. Ndakeni Location had a meeting on 23.7.46 and there were 50 present. At Rode there were 1150 Natives present. In Ngwekasana Location there were 50 persons present. In Nzinto there were 60 persons present. At Ngxwaledi Location there 50 persons present. At the Manzana Location meeting there were 44 Natives present. There were an average of about 50 Natives present at these meetings. Only Procl. 31 of 1938 has been promulgated as law governing part of the Rehabilitation scheme.

Crown Case Closed.

Mr. Spilkin addresses Court applies for discharge of a/cd.

Mr. P.P. Addresses Court.

Court's Finding: A/cd. found not guilty and discharged.

Sgd. A. J. Adendorff
Asst. Mgte.

Minutes of meeting held at Headman's kraal Dundee Location to consider the request of the people to have this Location declared a Betterment Area.

Present V. Leibbrandt Mgte.

Interpreter Mr. M. P. Msindwana.

Headman Nqubela and approximately 65 ratepayers from Location.

Magistrate explains in detail the provisions of the Proclamation.

Gunyavulu Kwayede asks whether there is any limit to ownership of cattle. Whether there will be compensation if kraals removed.

Mgediso Kwayele We asked that Native oxen be not called as they are better than the European bulls.

Sukehlalu Pondelu asks about people with no stock.

Nkenkele Kendle Cattle are our bank. We do not want European cattle. They die.

Cr. Bottoman addresses the meeting and thanks the Magistrate who has explained the matter clearly. We are sorry to be the last Location to accept. It is because we did not understand the Proclamation at first.

All present state they accept the Betterment Proclamation

Sgd. V. Leibbrandt.
MAGISTRATE AND NATIVE COMMISSIONER.
24/7/1948.

Certified a true copy.

Sgd. P.J. van Aswegen.
26.10.48.