Copied from volume brought in by Mr Gush, Magistrate. This is the written judgment referred to on page 2 of the typed record. 15/2/65

RDS 22/11/65

IN THE COURT OF THE MAGISTRATE FOR THE REGIONAL DIVISION OF THE SOUTH TRANSVAAL HELD AT VEREENIGING.

CASE NO. R.58/1960.

In the case of :

REGINA

versus

JOHANNES MOKAAE and twenty-two others.

Judgment on exception to charges and motion to quash.

INTRODUCTORY :

In its notice dated 12th August, 1960 and addressed to the Public Prosecutor of this Court the defence have notified him of its intention to except to all the charges and, in the alternative, to apply to the Court to quash them, on certain given grounds. Argument by counsel for the defence and by the Public Prosecutor have proceeded on the basis that the defence contention is that the charges are vague and embarrassing and calculated to prejudice the accused in their defence. The defence contentions will be dealt with in further detail later.

The charges against the accused consist of a main charge of public violence, and four alternative charges, i.e. (i) contravening Section 2(a) of Act No. 8 of 1953, or (ii) contravening Section 2(b) of the same Act, or (iii) contravening Section 18(2)(b) Act of 1950 or (iv) contravening section 15(1)(a) or (g) of Act 1950

/ No. .....

No. 67 of 1952. In each alternative charge the sections quoted are to be read with certain other statutory provisions.

The defence, by notice dated 17th June, 1960, asked the Prosecutor for certain further particulars. He had not replied to this request by the 21st July, 1960, and on that date undertook to do so by 10th August, 1960, and in fact did so on that day. He refused to supply any particulars in respect of the main count. The defence has not followed the usual course of asking the Court for an order to compell him to furnish particulars, but served the notice of exception and application to quash dated 12th August, 1960.

THE MAIN CHARGE :

In regard to the main charge the defence contention is that it should be quashed on one or more of the following grounds : -

(i) There is misjoinder of the accused and that is calculated to prejudice and embarrass them in their defence.

(ii) The charge does not comply with section 315 Act No. 56 of 1955, and is calculated to prejudice and embarrass the accused in their defence, and more especially that the charge does not contain any of certain further particulars asked for.

(iii) Certain paragrphs of the particulars contained in the charge do not disclose the offence of public violence.

/ (iv) .....

(iv) The repeated use of the phrase "and/or" in the charge is burdensome and oppressive and calculated to prejudice or embarrass the accused in the conduct of their defence.

(5) There are more counts than one in the main charge and these are not numbered consecutively, and it is , therefore defective on the face of it in that it does not comply with the provisions of Section 312(2) of Act No. 56 of 1955, and is calculated to prejudice or embarrass the accused in their defence.

In their addresses in support of the application counsel for the defence did not specifically stress or press the ground set out in paragraph (iii) supra, but confined themselves to the various grounds alleging prejudice and embarrassment to the accused in the conduct of their defence.

It will be convenient to set out the main charge in the way in which the Court reads and understands it:

It is that the accused are guilty of the crime of Public Violence in that

during or about the period 18th to 21st March 1960

at or near Sharpville native township

The accused did, with divers others persons unknown ;

"riotously assemble and gather together a crowd
"of persons with intent by violent and forcible
"means to disturb and endanger the public peace
"and security and by such means to invade or

/ enter -

"interfere with the rights of people there
"being or carrying on business and to make
"riots and affrays and by the said means to
"assail or set at defiance the authority of the
"police and others in public authority there
"established to maintain law and order and
"did make riots and affrays——"

The charge then proceeds to set out four general ways in which the accused did these things, i.e.

(i) By marching in and with assembled crowds through the streets and public places of Sharpville native township; and

(ii) by threatening and attempting to damage, burn and destroy the premises and property of divers persons there being or carrying on business; and

(iii) by actually damaging, burning and destroying certain premises and property there situate; and

(iv) by assaulting certain persons and placing in fear divers persons there being.

The charge then proceeds to particularise these four general allegations in seventeen numbered paragraphs, giving particulars which the Court has no difficulty in allocating as follows to the general allegations:-

(i) The marching. Paragraph No. 1 : which alleges that the accused marched ——— and through the streets and public places of Sharpville, carrying and brandishing axes, knives, sticks, pieces of iron, stones, and blew whistles and shouted in demonstrations of force and strength.

(ii) The threats and attempts to damage property:

Paragraph No. 2 :- which alleges that they threatened

/ or .....

or suggested the use of violence to or restraint upon the property and persons of at least thirteen named persons, and that they in fact restrained some or all of them in order to compel these persons not to go to their lawful employment or business.

(iii) Actual damage to property : Paragraphs 5, 6, 7, 10, 12, 13 and 15. These paragraphs allege (5) malicious damage to the house fittings and window panes of eight named persons by means of the use of sticks, stones, and similar instruments ; (6) the wilful defacement, destruction, or mutilation of divers "reference books" by burning or tearing them; (7) the malicious breaking of bicycles and motor vehicles of two persons, two business firms, the Vereeniging Municipality, and the Union Government, by bouncing them about and striking them with sticks, stones, fists, feet, and other instruments; (10) the malicious cutting and severing of telephone cables and installations of the Union Government; (12) the malicious breaking of window panes and burglar proofing at beerhalls of the Vereeniging Municipality: (13) the malicous setting on fire, and setting fire to, a beerhall of the Vereeniging Municipality; (15) the breaking and damaging of the fence surrounding the police station at Sharpville native township.

(iv) The assaults: Paragraphs 2, 3, 4, 8, 9, 11, 16, and 17. In these paragraphs the following details are set out : (2) assault with intent to do grievous bodily harm on four named persons, with full details as to the means used ; (3) assault on 14 named persons, with full particulars ; (4) assault with intent to do grievous bodily harm on five named persons with

/full.....

full particulars ; (8) assault by threatening violence to the persons or property of thirteen named persons giving particulars, and alleging an intent to induce these persons thereby from going to their lawful employment or business ; (9) the use of opprobrious epithets to unknown persons who had undertaken to go to their employment ; (11) obstructing hindering or interfering with the police in the execution of their duties; (16) full details (in paragraph 16) of acts amounting to inciting and challenging the police to fight; (17) assault with intent to do grievous bodily harm on police and others, by discharging firearms and throwing missiles at seventeen named persons.

In the paragraphs in which particular persons are named there is invariably an allegation of assault upon, threats to or damage to the property of (as the case may be) "other persons whose names are to the Prosecutor unknown".

The following numbered paragraphs seem to particularise the general allegation of setting at defiance the authority of the police and others in public authority ; Paragraph 1 : which alleges the marching in the streets, the carrying of weapons, and the blowing of whistles and shouting in demonstrations of force and strength; Paragraph 14 : which alleges a gathering at and around the police buildings, shouting, jeering and swearing at the police, taunts, curses, vilification, insults and abuse at the police, and blockading and interfering with policemen and police vehicles; paragraph 16 : which gives details of gestures and challenges to the police and other officials to

/shoot .....

shoot and fight, and the use of insulting and provocative language towards them ; paragraph 17 : maliciously discharging firearms and throwing missiles at seventeen named policeman and other officials.

This,in short, is the charge as it is set out in the indictment. With these pargiculars before them the defence asked the Public Prosecuter for further and better particulars in a document containing (in so far as the main charge is concerned) some 18 paragraphs. The further particulars required can be summarised as follows:-

In general : As to the 17 numbered paragraphs in the charge attention is drawn to the use of the phrase " and/or", and then the following particulars are requested : (i) did all the accused commit every act referred to in all the paragraphs or did all commit the acts referred to in one or other of them? (ii) is it intended to allege that some accused committed the acts referred to in one or more but not all the paragraphs; and other accused the acts referred to in others of the paragraphs? (iii) if the answers to (i) and (ii) are in the negative, what precisely is the expression"and/or" intended to convey? (iv) If the answer to (i) is in the affirmative full particulars are required indicating precisely when, where and by whom each of the said acts is alleged in the alternative to have been committed. If the answer to paragraph (ii) is in the affirmative full particulars required indicating precisely when, where and by whom each of the said acts is alleged to have been committed.

Then there follow a series of questions for

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certain further particulars in respect of each of the seventeen numbered paragraphs in the charge. The Crown is mostly asked to give exact details as to the exact date and place of each act; as to the weapons or instruments used or carried ; as to which accused assaulted, threatened, or damaged the property of which named complainant or of each of the other persons separately; as to the nature of the wounds or injuries sustained by each complainant or other person; as to the nature of the property damaged and the nature of the damage; as to where exactly damaged house fittings and broken panes were; how many reference books were defaced, destroyed, or mutilated, and in what manner was this done; as to the actual words used, which words constituted taunting, jeering, swearing, Willifieation and so forth, and which constituted threats; the duties and functions of the police; was there a single act of setting fire or more than one ?; and so on - asking for the most exact details of all the actions set out in the seventeen numbered paragraphs.

To the whole of this request the answer has been that the Crown declines to furnish any of the particulars asked for. During the course of argument Mr. Welsh invited the Prosecutor to reply to paragraph 1)(a)(i) and (ii) of the defence notice, but the Prosecutor declined to do so. At no stage did the Crown contend that it was unable to furnish the particulars asked for, or any of them.

In their arguments counsel mainly criticised the charge on the following grounds:-

The main complaint of the defence is the

/ refusal .....

refusal to give the further particulars asked for in paragraphs 1) and 2) of their notice of exception i.e. the particulars mentioned supra in the paragraph beginning "In general"—— In other words, the complaint is that the period of four days mentioned in the charge is too vague, and the allegation that the offence was committed at or near Sharpville native township is too vague; the time and place in respect of each act set out in the seventeen numbered paragraphs should be given; the charge does not allege a conspiracy or that there was common purpose between the accused ; it does not allege a single riotous assembly, but a number of such assemblies at unstated places and times over a period of four days; the continued use of the phrase "and/or" is confusing, uncertain and not definite; there is misjoinder unless the Crown alleges that each accused took part in all acts, and the charge, prima facie, alleges a large number of criminal acts committed separately; it alleges a large number of acts by the accused " and divers others," but does not say which accused committed which act; it does not set out a well defined time and place in regard to the acts committed. Counsel also dealt with the seventeen numbered paragraphs, and the particulars asked for in respect of each of them, and contended that none were frivolous or asked for merely to embarrass the Crown: and Mr. Welsh then gave full details of his complaints.

Counsel concluded by saying that, in general, the charge contained a number of "blanket allegations", hardly any particulars as to place ; no particulars

/ as .....

as to time; and no allegation of each individual accused person's acts.

In his reply the Prosecuter stressed that the charge was sufficiently detailed, and that the accused were not entitled to the wealth of particulars asked for by them. Some of the questions were unnecessary and trifling. The test is prejudice. He contended, in general, that each accused could defend himself, and ought to know what his actions over the four named days were, and wether or not he had any part in any of the numerous acts set out in the charge.

Section 115 of Act No. 56 of 1955 deals with the essentials of a charge in a criminal case as follows :-

"Subject (to certain other provisions of the Act) each count of a charge shall set forth the offence ——— in such manner and with such particulars as to time and place at which the offence is alleged to have been committed and the PERSON, if any, against whom and the PROPERTY, if any, in respect of which the offence is alleged to have been committed, as may reasonably be sufficient to inform the accused of the nature of the charge."

The question of further particulars is dealt with in section 179 of Act No. 56 of 1955, which reads as follows :-

"(1) The Court may either before or at the "trial, in any case if it thinks fit, direct "particulars to be delivered to the accused " of any matter alleged in the charge, and may, "if necessary, adjourn the trial for the

/ purpose .....

"purpose of the delivery of such particulars".

The wording of Section 315 provides only for particulars as to time, place, person against whom, and property in respect of which the offence has been committed, and they must be of such a nature as may reasonably be sufficient to inform the accused of the nature of the charge. The wording of Section 179 affords no guidance whatsoever to the Court as to the circumstances under which it should order further particulars to be delivered. That being the case the Court must turn its attention to judicial interpretation of these sections. There has been a whole series of decided cases, but it is not considered necessary to refer to them all.

In Rex vs. Schapiro and Saltman 1904 T.S. 355 Innes C.J. remarked as follows: "Now an indictment is a "plea of the Crown. It is a document setting "forth the crime with which the Crown charges "the accused person and giving particulars "of the the charge. It seems to me there "are two essentials to an indictment; it "should contain allegations which, if proved, "would constitute the crime with which the "accused is charged; and the particulars of the "offence should be stated in such detail as to "enable him to know the case that he has to "meet." In this case the accused were charged with statutory bribery (Section 3 Law 10 of 1894), and the indictment did not specifically allege that the official was a liquor inspector, neither did it set out the details of his duty and how he was being bribed

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to act contrary to his duty - but learned the Chief Justice held, notwithstanding these defects, that the particulars were reasonably sufficient to allow the accused to know the nature of the crime with which he was charged.

Again, in the Doornhoek case (Rex vs. Alexander and others, 1936 A.D. 445), Wessels, C.J. says (at page 457), "What is the object of an indictment? Its real purpose is to inform the accused in clear and unmistakable language what the charge is or what the charges are which he has to meet. It must not be framed in such a way that an accused person has to guess or puzzle out by piecing sections of the indictment or portions of Sections together what the real charge is which the Crown intends to lay against him————".

In Regina versus Adams and others 1959 (1) S.A.L.R. 646, the Court said at p. 656 "It seems "to us that the accused will not be in a position " to prepare their case unless the Crown "particularises the speeches and documents upon "which it relies. It is a well known principle "in our law that an accused persons is entitled "to such particulars as he properly requires "for the purpose of preparing his case before "he is called upon to plead and enter upon his " defence, and he is entitled to such parti- "culars even if it entails a disclosure of "Crown evidence". and at p. 668 "The question "whether the accused has been sufficiently advised of the "extent" of his participation in a criminal course of "conduct, seems to us to be one of degree, depending

/naturally .....

"naturally on the circumstances of each case, but which "ultimately reduces itself into one of fairness to the "accused."

This case is the well known treason case which is even now still being heard before a speeial Court. The hearing has already stretched over many months, and the Crown's allegations cover many speeches delivered over a very long period by a very large number of people. It is a case of very much greater magnitude than the case now sou ht to be proved, so far as the Court can judge at this stage, by the main charge in the indictment before the Court.

In an earlier case, that of Rex versus Levenstein, 1919 T.P.D. 348, the learned judge, on an appeal, dealt with both the question of the objects of an indictment, and of further particulars, as follows:

(at p. 351) : "It is a curious thing that in "connection with particulars they are re- "stricted, so far as this Section (Sec.127 "Act 31 of 1917, which is substantially similar " in terms to Section 315 of Act No. 56 of 1955) is concerned, to particulars as to the "alleged time and place of committing the "offence and the person, if any, against whom, " or the property in respect of which the "offence is alleged to have been committed. "<u>These are not exhaustive particulars</u> in connection with all offences, but I think the words of "this Section really mean———— the offence "must be set forth in such manner as may be "reasonably sufficient to inform the accused

/of .....

"of the nature of the charge————————."

" ———————— The indictment therefore in itself
" is good, but, of course, the accused may be
"prejudiced by an indictment even if it is
"good, unless sufficient particulars are set
"forth to enable him to frame his defence."
(At p. 354) "One can see that in many cases such
"particulars - (that is particulars beyond
those specifically called for in the section
"quoted") - ought in justice to the accused,
" to be given."

In Ah Kee and another vs. Additional Magistrate and Attorney General (T.P.D. 7.3.57 1957 unreported) Mr. Justice Boshoff, in considering whether further and better particulars should have been furnished, said:-

"The object of asking for further particulars
"is to enable an accused to know the case which
"it is proposed to make against him and thus
" to enable him to prepare his defence: "Re
"Vs. Mokoetsi: 1943 A.D. 622 at p. 627. The
"amount of latitude to be allowed to the Crown
"depends upon the nature of the crime and the
"circumstances of the particular case, bearing
"in mind the importance of securing the accused
"against embarrassment in his defence.
"Re Vs. Smit 1946 A.D. 862 at p. 872".

And in Regina versus Moilwanyane and others 1957 (4) S.A.L.R. 608 (at p. 617), Ramsbottom, J. gave utterance to the following words on the question of further pa rticulars : "An accused person is
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/reasonably .....

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/reasonably .....

"reasonably requires to inform him what he is
"said to have done, and an application for further
"particulars to an indictment or charge should be
"limited in that way. It was not intended that every
" question which ingenuity might suggest should
"be put to the Crown - not with the purpose of
"gaining information to which the accused is
"entitled but in an attempt, I cannot help thinking,
"to embarrass the Crown. I think that if a request
"of that kind is submitted to the representatives of
"the Crown it may well be that they are entitled to
ignore it....."

Therefore, I think, further authorities which need not be referred to for the views of the Superior Courts on Sections 115 and 179 of Act No. 56 of 1955. The general conclusion of the courts seems to be that an indictment or charge must set out the offence with such particularity that the accused can know what the charge against him is so that he can defend himself effectively.

But it would not be out of place to examine the authorities as affecting an indictment on a charge of public violence. Such indictments have been the subject of judicial comment in, i.a., the following cases:-

Rex versus D'Arcy and others (1934 W.L.D. 8). The charge was incitement to commit public violence, and the trial court ordered that certain general particulars only need be given. Bok J. on appeal remarked: "They were entitled to be given particulars in regard to each "of them individually of the manner in which they were "alleged to have incited, instigated, commended or "procured, either particulars of the words alleged to have been uttered by them or of the acts alleged to have been committed by them, or of both as the case might

/be...

"be..... The accused were still (i.e.
" after the amendment) in the dark as to what they
"were alleged to have said or done which was to be
"regarded as an incitement of others to public
"violence".

This case dealt with a charge of incitement, and should be read subject to the views of Ramsbottom, J., in Regina versus Moilwanyane 1957(4) S.A.L.R. 608.

In Rex v[illegible] Salie and others 1938 T.P.D. 136 the charge in the case was not discussed, but rather the circumstances in which conduct should be charged as public violence. At p. 140 Schreiner, J., says:-

"Ordinarily where acts of violence have been
"committed the Crown has to bring home to the
"individual the commission of a particular act,
"and the court then investigates the circumstances
"in which that act is committed. Defences like
"self-defence or provocation may be of great importance
"indeciding whether a particular accused person is
"guilty at all or what the degree of his guilt is.
"A general crime of the nature of public violence
"makes it very difficult to ascertain the relative
"parts played by the different persons and to fix
" the degrees of guilt, if any, attaching to them.
"No doubt in certain cases it is proper to deal with
"the persons concerned in the mass, but this should
"not be lightly permitted to the Crown....."
"As I say, there are circumstances in which it may
"be proper to deal with the persons who have taken
"part in the fight in the mass, but that should be
"confined to cases where the scale of the fight is
"a considerable one and where the persons taking
"part cannot be expected to be dealt with individually
"....."

In Rex versus Matthews and others 1941 C.P.D. 119, a charge in language similar to the main charge in this case, and not giving detailed particulars to any thing like the same extent, was held to be in order and sufficiently particularised. As in the present case, the charge in that case did not specifically allege a common purpose between the various accused persons.

Rex versus Williams, 1941 T.P.D. 276. At page 289, Murray J., says: "It is unnecessary to allege, or to "prove, that there was antecedent conspiracy "or agreement to commit such acts as constitute "public violence.....The circumstances of any "particular case may show that what occurred was "concerted action disclosing an intention at that "time to combine and not a number of isolated "unconnected acts of affrays. And if this be so "and scenes of riot and assault followed as a "natural consequence, it was unnecessary for the "Crown to prove specifically what assault was "committed by each of such persons. In order to "fix criminal responsibility upon any of the "present appellants..... it was not necessary for "the Crown to establish that each person committed "any particular act of violence.... it was sufficient "to show that the accused persons were associated "with the others in the execution of some common "purpose.....

Regina versus McNamarama, 1957(4) S.A.L.R. 608. In this case Ramsbottom, J., after a full and carefull consideration of earlier decisions, concluded that a charge of incitement to commit public violence cannot be said to fail to disclose the offence merely

/because....

because the ipsissima verba used were not stated. The Crown had failed, on request, to state the words used, but the judge held that the contents of the charge were such that the exact words need not be given, as the charge stated that they used words the effect of which was that the listeners should commit public violence.

It is advisable at this stage to examine the position in regard to one or two of the phrases used in the indictment.

Some criticism was directed at the allegation that the offence is charged as having happened "at or near" Sharpville Native Township; there was no express criticism of the phrase that the offence was committed "during or about" the period 18.3.60 to 21.3.60. These phrases - "at or near" and "during (or upon) or about" have been in use for many years, and have apparently been taken over from old indictments, possibly in use in the courts in England long ago. They are repeated in specimen indictments in such books as the well-known "Gardiner and Lansdown" as from its very first edition. They are used somewhat loosely, and appear even in charge sheet forms for use in Magistrates' Courts as printed officially for the department of justice. It is advisable, in the Court's view, for prosecutors to avoid using them in all cases in which they can with certainty state the place and date of commission of the offence. An amendment can, after all, always be asked for if necessary under the provisions of Section 18[illegible] of Act No. 56 of 1955. At page 325, Volume I, 6th Edition of Gardiner and Lansdown, the authors say that "where there is any uncertainty as to the particular locality, it is usual to allege that the act or omission took place at or near the place

"stated." In regard to the time or date of the offence, there are various provisions of Act 56 of 1955, to assist the Crown in cases of uncertainty. Section 176 of the Act provides for proof of the offence at any time three months before or after the date or period set out in the charge, or even outside this limit, if time is not of the essence of the offence, and if there is no prejudice to the accused.

In Mahlala versus Rex (para. 11 of Justice Summary of decided cases for 1940) a charge alleged the commission of an offence "at or near" an urban area. The offence could only be committed in an urban area. The learned judge on appeal read the allegation "at or near" as being in the alternative and ruled that the words "or near" were mere surplusage and should have been struck out. This Natal decision was followed in the Orange Free State in Molefesane VR (para. 17 Justice Summary for 1941).

The effect of the use of these two phrases in the present indictment will be considered later.

But the phrase "and/or" figures in many places in the indictment, notably between each of the seventeen numbered paragraphs, and the defence has excepted to its use in rather strong terms. In paragraph (4) of its notice to the Crown, the defence says:

"The repeated use of the expression "and/or"

"is burdensome and oppressive..."

Now, this phrase is undoubtedly inelegant. It has crept into legal documents in recent years, and is

/not..

not in conformity with the older and more dignified (albeit sometimes somewhat flowery) phraseology of older legal documents. It was the subject of complaint by the defence in the case of Regina versus Adams and others (supra). At pages 657/8 and on page 574 the special court commented as follows:

"The defence also complained about the extravagant
"use of the conjunction "and/or". It was
"suggested that if all the "and/or's" are
"added together, the number of combinations
"possible under paragraphs 1, 2 and 4 of
"part B of the main charge is 498,015. While
"not wishing to condone this type of
"conjunction, we think it is necessary to
"state that the total number of combinations
" looks more menacing than it really is.....

"The use of the particle "and/or" in
"part C and part D of the main charge, however,
"increased the need for the further particulars
"ordered ....."

""We shall say nothing at this stage
"of what was called the 'bastard conjunction'
"in Bonitto versus Fuerst Bros., 1944 A.C.
"at page 82, and to which van den Heever J.,
"referred in somewhat searching terms in Ex
"Parte McDuling 1944 O.P.D. at page 189".

/The...

The position then is that the judges have condemned the use of this phrase in various ways. They are discouraging its use, but they have not ruled that it is meaningless or vague. It must, in the circumstances, be given its ordinary meaning, that is, that in between a number of paragraphs or words, it means, on the one hand "and", or also, on the other hand "or".

The Court now proposes to examine the validity of the main charge in the light of these authorities."

Nowhere in its notice of exception and motion to quash does the Defence contend that the charge is ~~exceptionable~~ excipiable as not disclosing an offence cognisable by this Court (Section 169(1) of Act No. 56 of 1955). The only contention of this kind is that the numbered paragraphs 6, 9, 10, 11 and 16 do not disclose the offence of public violence. If they do not they should be struck out of the indictment. It is not necessary to examine, in detail, the various elements constituting the crime of public violence. The crime has been the subject of judicial interpretation in a large number of decided cases. Its definition as set out in Gardiner and Lansdown, Vol. 11, 6th Edition, at page 1012:-

"Public violence is committed by all such acts as
"openly and publicly effect, or are intended to cause,
"a violent and forcible disturbance of the public
"peace and security or a forcible invasion of the
"rights of other people". The crime, as so defined,
covers a large variety of other crimes and illegal acts.
One of its prominent elements usually is the setting
at the defiance of the authority of the police and

other/...

other state officials.

Paragraph 6 of the indictment alleges defacement, destruction or mutilation of reference books. Such action is a statutory offence, but it is also aimed at setting the law at defiance, and undermining the authority of the police and other officials appointed to administer the law in regard to reference books, and as such such conduct can be said to form part of the crime of public violence.

Paragraph 9: The use of opprobious epithets, jeers, and jibes, to people who wished to go to their places of employment, can, depending on the circumstances, amount to an incitement to them not to go to work and an invasion of their rights. It can be part of conduct constituting public violence.

Paragraph 10: The paragraph avers, in short, malicious damage to telephone cables and installations. Such action amounts, undoubtedly, to setting at defiance the rights not only of the Union Government, the owners of the cables and installations, but also amounts to a possible invasion of the rights of all users thereof. To say that such conduct cannot constitute public violence, especially in conjunction with other illegal acts, is ridiculous.

Paragraph 11: Alleges obstruction, hinderance and interference with members of the Police in the executions of their duties, and the adoption of a hostile attitude towards the police and a refusal to disperse when ordered to do so. The Court has no difficulty in ruling that such conduct is calculated to set at defiance the authority of the Police and the State, and

it/...

it clearly falls within the ambits of the crime of public violence.

Paragraph 16: The paragraph alleges, inter alia, a challenge to the police to fight, to shoot people, and the use of most vile and provocative language towards the police. Such conduct, once again, is obviously calculated to defy the authority of the police, and to incite the police to commit assaults and to kill. If such conduct does not constitute public violence, what does? The defence contention is ridiculous.

There is, therefore, no merit whatever in the contention that these paragraphs do not disclose the crime of public violence, and consequently the "notice of exception and motion to quash" must fail, in so far as it can be said to be an exception to the charge as not disclosing an offence cognisable by the court in terms of section 169(1) aforementioned.

The next matter to consider is whether the court should uphold the "notice of exception and motion to quash" in so far as it may be an application to quash the charge on the ground that it is calculated to embarrass the accused in their defence (Section 167(1) of Act No. 56 of 1955). This brings the court to the matter which was argued most vehemently by the defence, i.e. that the charge is so lacking in particularity, or so defective in particularity, that it ought to be quashed.

The charge has already been analysed in the earlier part of this judgment. It sets out four main ways of committing the crime of violence, i.e. (i) Marching in and through the streets; (ii) the

threats/...

threats and attempted damage to property of others; (iii) the actual damaging, burning and destruction of property; and (iv) Assaults on numerous police officials and other persons. There then follows full particulars of these four ways in the seventeen numbered paragraphs, which have already been summarised. The indictment consists of some five and a half foolscap pages of double-spaced typing. In general the conclusion of the Court is that the offence is set out very fully, and is well particularised.

The main defence argument was that it does not comply with the terms of Section 315 of Act No. 56 of 1955.

The time of the offence is said to be "during or about the period 18/3/60 to 21/3/60". That is, the offence was committed during or about a period of four consecutive days. In his argument Mr. Welsh seemed to accept that the accused were charged with acts constituting public violence which occurred only on the four named dates, i.e. the 18th, the 19th, the 20th, and the 21st days of March, 1960. The Court feels, in all the circumstances, that this is a fair reading of that part of the charge which relates to the time of the commission of the offence. The Crown could, with advantage, have omitted the words "or about" before the words "the period 18/3/60 to 21/3/60" and that is the way in which it is proposed to read the charge. The Crown will, subject to any rights conferred by Section 180 of the Act, be limited to proving acts constituting the crime which occurred only on one or more of these named dates.

The place of commission of the offence is stated in the main paragraph of the indictment to be "at or near

Sharpville Native Township". But in this respect the charge must be read as amplified by later statements in it. For instance, it is alleged that the accused "did then and there make riots and affrays by marching ..... through the streets and public places of Sharpville Native Township"; by threatening to damage property of persons "there carrying on business". and by damaging property "there situate". In paragraphs 12 and 13 it is clearly stated that the beerhalls damaged or set on fire belong to the Vereeniging Municipality. In the numbered paragraphs the place of commission of the various acts is mentioned in various ways. e.g. in paragraph 1. the marching is stated to have been in and through the streets and public places of the above said township". Assaults are alleged to have been committed on named persons "there being". And so the Court can go on quoting from the charge as framed. But it is not necessary, for on a fair reading of the charge, it is clear to the Court that the place of the offence is Sharpville Native Township, with some possibility that some of the acts may have happened not in it, but in its immediate vicinity. Presumably it would not be difficult for the various accused to ascertain where the damaged houses, beerhalls and police stations are.

The persons against whom various criminal acts are alleged to have been committed are detailed by name in the indictment. It is true that the indictment alleges that the accused "and other persons" committed these acts, and that the acts were committed on the named persons "and others whose names are to the Prosecutor unknown"./...

unknown". But this sort of charge is often put forward in public violence cases. The crime is invariably committed by a large number of persons, all of whom cannot always be brought justice; and invariably their acts affect the persons and property of many people, all of whom do not always come forward to complain.

The property in respect of which the acts are alleged to have been committed is set forth with sufficient particularity. It is true that the charge does not describe the exact locality, but invariably the nature of the property and the names of the owners are set out.

In addition to these details the indictment contains many other particulars. The manner in which certain acts were committed is set out in some detail. The language used, and the nature of gestures, jeers and so forth are set out. On the whole the court is satisfied that, in so far as full particulars are concerned, there have been given to the defence in what appears to the court to be a sufficiently exhaustive recital.

An important complaint of the defence is that the Prosecutor has refused, in reply to their request, to state specifically that his contention is that all the accused committed all the acts set out in the whole of the charge over the full period. But need he do so if his charge says, with sufficient charity, that this is the case he will try to prove against the accused. In the Court's view the charge does say so. In contrast with the alternative charges, the main charge does not contain an express allegation of conspiracy

or/...

or common purpose. It is true that public violence is usually committed by persons who, at some stage, have a common purpose. The charge, as it now stands, is against twenty-three named accused persons. It has, presumably after full consideration been withdrawn against some fifty - three others. The remaining twenty-three are charged "that the said accused are guilty of the crime of public violence ———— in that the said accused with divers other persons did wrongfully and unlawfully ....". There is no allegation that the accused, all or one or some of them, did commit the crime. This method of charging them must convey to the accused that the Crown will set out to prove that they all committed the crime as set out in the indictment.

What is the effect of the use of the phrase "and/or" between the numbered paragraphs. It is quite clear to the court that if the word "or" did not figure in the phrase, the Crown's contention is that all the accused did all the acts set out in the charge. That is one way of reading this inelegant phrase. It is obviously intended to be read that way. The stroke and the word "or" have merely been inserted ex abundante cautela, in case the Crown cannot prove the commission of all the acts, but only of some of them.

The Court's conclusion is that the accused are clearly told that the case against them is that all of them are involved in the commission of all the acts detailed in the indictment over the whole of the period of four days mentioned in the indictment.

The fact that they may be involved in tedious and long and detailed investigations in order to defend themselves/...

themselves fully is immaterial, and cannot constitute prejudice to them in their defence. The repeated use of the phrase "and/or" is stated to be burdensome and oppressive, but even if it is so, that cannot be said to prejudice or embarrass them in their defence. In any long and involved criminal case the defence must, of necessity, be involved in burdensome work.

In all these circumstances it is not considered necessary to go into the question as to whether the Crown should have replied to the many detailed particulars sought by the defence in paragraphs 2 to 18 of their request for further particulars.

Some questions were put unnecessarily, and apparently as the result of unwarranted doubts in the mind of the questioner or questioners. And many of the particulars asked for are of such a nature that one cannot help but conclude that they were asked for the purpose of embarrassing the Crown, and need not have been furnished in terms of the decision of MOLLWANYANA'S case quoted earlier.

Another complaint of the defence, as part of its motion to quash the charge, is that it does not comply with section 312 of Act No. 56 of 1955, in that it contains more than one count and such counts are not numbered consecutively. This point was not stressed in argument. The position is that the charge does mention and set out a large number of criminal acts, each of which alone does constitute a crime. But the charge clearly sets out one charge of public violence, consisting of a number of criminal acts. It would, ofcourse, had been better if the Crown had set out these

acts/...

acts clearly in chronological order. But they do not constitute so many crimes of public violence. As the Court reads the indictment - and it has no difficulty in doing so - it alleges a serious of acts, possibly continuous but certainly each following the other closely in time, and says that this series of acts constitutes one charge of public violence. But even if they constitute more than one charge, the accused cannot be prejudiced on that account. Consequently ~~the~~ this complaint is held to be unfounded.

The defence notice of 12th August, 1960, also raises a plea of misjoinder in paragraph (1) thereof. It is contended that the joinder of the accused in the main charge is irregular, improper and contrary to law, and calculated to prejudice and embarrass the accused in their defence. Section 327 of Act 56 of 1955 provides for the joinder of different persons in the same charge.

The basis of misjoinder always is that the various accused persons are charged, each with having committed a different offence, in one joint charge against all. This course is improper (Changwing and 2 others Vs Rex 1905 T.S. 767; Rex vs van Rooi and others 1913 C.P.D. 286; R vs Carsons 1915 C.P.D. 365). The argument advanced was that the charge as framed contained no allegation of common purpose between the accused, and the various acts as set out in the charge are of so variable a character that the court can come to but one reasonable inference only, and that is that some of the accused committed some of the criminal acts, and others of the accused other such acts.

Now, not withstanding the Court's conclusion

that/...

that the charges as framed clearly warns each accused that they all participated in all the acts set out in the charge, it is not inconceivable that the evidence may prove that some of them only became involved during the course of the happenings. In such a case the position seems to be that the Crown can charge them all jointly in one indictment on the basis of a course of conduct charge. Vide R vs Heyne and others 1956(1) S.A.L.R. 504, and an application of this judgment in R vs Adams and others 1959(1) S.A.L.R. 646 (at page 668).

But there is nothing, in the court's view of the charge as framed, which suggests that the Crown case against the accused is anything but a joint charge holding all of them responsible for all the various acts mentioned in the charge. It seems highly probable that the Crown's contention is that all the accused - particularly now that there are only 23 and no longer 76 - took part in a whole series of acts committed over four days, constituting one course of conduct which discloses the crime of public violence.

That being so, there is no evidence on the charge which suggests that some ~~are~~ are chargedwith one offence and others with another offence. The plea of misjoinder cannot, therefore, be upheld.

For these reasons the Court has come to the conclusion that the motion to quash the main charge as being calculated to prejudice or embarrass the accused in their defence must be dismissed. It may be necessary for the Court to deal with the matter ~~afresh~~ should prejudice or embarrassment become more apparent in the course of the trial. Vide the concluding

portion/...

portion of the judgment in Green & others vs Asst. Magistrate 1954(4) S.A.L.R. 580.

THE ALTERNATIVE CHARGES.

The charge as framed contains an introductory paragraph applicable to all four alternative charges.

But the question arises, firstly, whether these charges are truly alternative charges. The main charge alleges public violence at or near Sharpville on four consecutive days, i.e. 18th to 21st March, 1960. The alternatives allege various statutory offences committed over a much more extended period, i.e. 1st September, 1959, to 24th March, 1960, and "within the regional division of South Transvaal", which is a much larger area than the Township of Sharpville. In fact the area covers no less than some seventeen Magisterial districts, populated by several million people.

But the Crown has supplied further particulars, in respect of these alternative charges.

The Court Mero motu raised the question as to whether these charges were true alternatives to the Main charge when argument took place. As neither party seemed keen to persue the point, it is best left alone at this stage, and the alternative charges will be examined to determine whether or not they are framed in such a manner as to be calculated to embarrass or prejudice the defence.

The general introductory paragraph to all the alternatives reads as follows:-

"In that, whereas at all places and times where it is "alleged that the accused did or omitted to do any

act/...

"act, it is alleged that all the accused at all
"such times were acting together and in concert and in
"furtherance of a common purpose and were further
"acting together and in concert and in furtherance
"of a common purpose with persons who were members
"of an organisation known as the Pan African
"Congress ....."

One of the questions asked was "who were the persons who were members of the organisation or organisations named?" And the reply was that they were eleven, all named, of the accused. In other words, the reply contradicts the charge itself, in that the reply conveys a common purpose between the accused only, and not between the accused and other persons.

So that, in general, the position already is that the Crown has laid charges covering a period of some seven months and has mentioned as the place of commission of the offence a very wide area, namely the whole of the regional division of South Transvaal. Here is true vagueness.

The first alternative: Alleges, i.e., that the accused did".....in any manner whatsoever advise,
"encourage, incite, command, aid, or procure natives
in general or some of them .... to commit the offence of
"contravening subsection (a)(i) or (a)(ii) and/or (g)
"of section 15(1) of act No. 67 of 1952 ..... by way of
"protest against a law ..... to wit,
"(a) by addressing gatherings of natives and/or
"(b) printing .... distributing pamphlets leaflets, bills
"..... to advise, incite, encourage, command or procure

the natives not to be in possession of reference books.
....."

This is a charge containing large numbers of alternatives; and one is not surprised that the defence asked for further particulars.

The first was as to the date and place at which each accused addressed a gathering? The reply was very vague, i.e. that the accused are criminally liable, and that no evidence of meetings held at Sharpville would be led. The questions asked are not replied to specifically.

What words were used by the accused? The reply was to refer the defence to copies of a large number of extracts from speeches at Pan African Congress meetings at Johannesburg. The Crown did not specify which portions of these speeches advised, incited, etc. natives not to carry reference books, and a perusal of many of them does not contain evidence of any such advice, incitement, etc. At this point it is advisable to draw attention to what Mr. Justice Bok said in Rex versus D'Arcy and others 1934 G.W.L.D. 8 at p 9:
"It was not right to ask the accused; nor could they or
"their attorney be expected to wade through a lot of
"documents in order to be able to guess more or less what
" the Crown might perhaps decide to prove against them.
"What was asked was a definite statement as to the words
"or conduct the Crown intended to rely upon". In the last case the charge was incitement to commit public violence.

The Crown was asked to state which of the various offences was created by each address, i.e. was sub-section (a)(i) or (a)(ii) or (.) contravened?

It/...

It declined to reply.

There is no doubt in the Court's mind that the first alternative charge is, in view of these facts, so vague and confusing and uncertain, that the accused cannot ascertain the nature of the case against them, and cannot defend themselves. The motion to quash it, on the ground that it is calculated to embarrass or prejudice the accused in their defence, is upheld.

The second and third alternative charges: These are defective in the same respects as the first alternative charge. The same criticisms can be levelled at them, and there is similar vagueness and uncertainty in the indictment and particulars given. The motion to quash them is upheld for the same reasons.

The fourth alternative charge:-

Is that during the same lengthy period and within the same regional division, and by way of protest against or in support a campaign for the repeal or modification, of Act No. 67 of 1952, the accused did not be in possession of reference books issued to them, and/or did without authority deface, destroy or mutilate reference books.

The indictment seems to convey that each accused committed an offence of not being in possession of his reference book, or of destroying, defacing or mutilating it. The Crown, in framing a joint charge, obviously relies on section 5 of Act No. 8 of 1953.

The defence have asked for particulars, i.e. the following, with the replies set out in each case:-

When/...

When, where and by whom was the alleged campaign conducted? Reply: The full period is repeated as to "when?" the regional division of South Transvaal as to "where?"; and the introductory paragraph to the alternative charges as to "by whom?". In other words, no further particulars are given.

Is it alleged that all the accused were not in possession of reference books during the whole period 1st September, 1959 to ~~31st~~ 24th March, 1960? Answer No.

If not, on what date was each accused not in possession of a book? Answer: Against the name of each accused there are various answers. Some to the effect that the Crown is not certain as to when the book was demanded; in others the date of demand is given and the name of the police officer who demanded it - the dates being 21/3/60, 27/3/60, 27/4/60 and 1/4/60; in some cases it is stated that the name of the police officer who demanded production is not known; in one case the accused is a female, who need not possess a reference book; and in three cases it is said that production was never demanded at all.

On what date and at what place did each accused deface, destroy, mutilate, reference books? Reply: During or about the period 20/3/60 to 24/3/60, exact dates being unknown.

Further particulars are given in very general terms as to the number of books destroyed, etc. and as to the manner of destruction, etc.

On this charge then the Crown alleges, at first, a period of some seven months ending on 24th March, 1960. In further particulars the earliest

date/...

date specified is only on the 21st March, 1960, and other dates extend beyond the 24th March, 1960. No further particulars are given as to the place where the offence took place. A regional division cannot be said to be a place by any stretch of imagination. Other particulars furnished indicate that one accused (the female) could never have committed the offence of not possessing a reference; in three other cases the production was never demanded, and it is difficult to follow how the Crown is going to establish non-possession. The remaining particulars furnished are in some cases vague and confusing. In all these circumstances this charge is so vaguely drawn up that it can only confuse the accused. It is calculated to prejudice or embarrass them in their defence, and the motion to quash the charge is upheld.

COURT ORDER:

The exception to the main charge and the motion to quash it are both dismissed.

The motion to quash all four so-called alternative charges is upheld. No order is made as to any exception ~~the~~ to them.

(Sgd.) P.M. O'BRIEN.
REGIONAL MAGISTRATE.

VEREENIGING.

7th September, 1960.