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BT1 3JY

15th August, 1968.

Dear Mr. Black,

Police v. Austin Currie, M.P., and others

I feel I should put you in the picture about the developments in this prosecution.

I decided, after some deliberation, that Currie and his associates should be prosecuted under Section 1(1)(a) of the Summary Jurisdiction (M.P.) Act (N.I.) 1946 for their part in breaking into and barricading themselves in the house at 9 Kinnaird Park, Caledon, Co. Tyrone, on the 20th June, 1968. I reached this decision mainly on three grounds:-

- (i) there seemed to the police and to me to be a clear breach of the law by Currie and his associates - a breach of the sub-section mentioned above;
- (ii) the decision not to prosecute might well encourage a campaign of civil disobedience or action in other places along the same lines; and
- (iii) although a certain amount of publicity might well ensue as a result of a prosecution which would probably be welcomed by Currie - still a Member of Parliament who does and incites others to do a wrongful act for whatever motive should not be allowed to think that he is "above the law".

Accordingly a summons was issued against each of the three persons concerned that

"the defendant on the 20th day of June, 1968, at

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Caledon, with intent wrongfully to take possession of certain premises did wilfully enter upon the said premises, contrary to Section 1(1)(a) of the Act."

The sub-section (Section 1(1)(a)) enacts:

"1(1) Any person who -

- (a) with intent wrongfully to take possession of, or use, any premises wilfully enters upon such premises; shall be guilty of an offence."

Without being a lawyer, you will see at once that this sub-section creates 2 offences - one, with the intent wrongfully "to take possession of premises" and the other, the intent wrongfully to "use premises".

Currie and his associates should have been prosecuted for these 2 offences each but contrary to the directions to this effect by the Chief Crown Solicitor and County Inspector, they were only each prosecuted for the single offence I have set out above. A "misunderstanding" (I am trying patiently to use the kindest word) took place in the communications of the directions referred to between the local Dungannon police and the local Crown Solicitor. The failure to prosecute for wrongful user may have some legal significance later in the Court of Appeal.

To the surprise of all concerned in the prosecution and to my own, the Resident Magistrate dismissed the summonses, on the grounds (so far as I can gather) that a 3½ hour wrongful occupation of the premises was not a wrongful taking of possession within the meaning of the Act because it was not an appreciable length of time - they didn't intend to stay overnight .. and that Currie had not the intent "wrongfully to take possession of ... the premises ..." but simply the intent of making a protest against what he considered was unfair allocation of housing.

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This, to my mind, is a wrong finding - I should have thought that one can wrongly take possession of premises for even a much shorter length of time than 3½ hours and I think he confused motive with intent when he found that Currie's intent was only one of protest and not to wrongfully take possession of the premises.

You may also have seen from the newspaper reports that the Magistrate permitted a lengthy cross-examination (which was objected to) of some of the witnesses about the allocation of houses in the area and the circumstances of the allocation of the particular house, 9 Kinnaird Park. This was, in my view, clearly irrelevant and should not have been allowed.

I held a conference this afternoon at which the Crown Solicitor for Tyrone reported the details of the prosecution and which was attended by the local police, County Inspector Meharg and the Chief Crown Solicitor.

I have decided to appeal against this decision by way of "Case Stated" (under Section 146 of the Magistrates Courts Act 1964) because in my view -

- (i) the point of law involved in and governing the Magistrate's decision has been wrongly decided by him; and
- (ii) if this Act is not wide enough to enable the Crown to effectively prosecute in future cases which may arise through a repetition of this course of action, then the law will have to be amended, and in the meantime, the scope of this Act of 1946 should be tested before the Court of Appeal.

It will be some time - October or November - before this Appeal will be heard and of course in the meantime the matter will be sub-judice.

I have written to you because some of your members of the Cabinet may be interested in the developments in this

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case - I apologise for the repeated legal references herein but they are necessary to enable me to explain what the situation is.

I am sending a copy of this letter to the Minister of Home Affairs and to Wm. A. Leitch, Esq., and I hope that they, as lawyers, will forgive my over-simplification of legal issues in the letter to you.

Yours sincerely,

B. KELLY

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