



Archived at the Flinders Academic Commons:
<http://hdl.handle.net/2328/27231>

This is a scan of a document number DUN/Speeches/3291
in the Dunstan Collection, Special Collections, Flinders University Library.
<http://www.flinders.edu.au/library/info/collections/special/dunstan/>

Title:
Radio broadcast - Rupert Max Stuart

Please acknowledge the source as:
Dunstan Collection, Flinders University Library.
Identifier: DUN/Speeches/3291

© Copyright Estate Donald Allan Dunstan

7/12/59

Good Evening. The latest episode in the story of the inquiry into the conviction and sentence of Rupert Max Stuart has not been any happier than a number of those which preceded it.

Let me recount the story to you. Stuart was tried and convicted of a shocking murder early in the year. At his trial he was unable to have his statement of his defence read to the jury, although had he not been illiterate he could have read it himself. He was thus, as an illiterate, put in a less favourable position to make his defence than a literate man. However, that is the law in South Australia. The Full Court of S. A. dismissed an Appeal.

On appeal to the High Court the High Court held that a statement to the jury by the Crown Solicitor had been one which was unlawful, but that its unlawful effect had been nullified by a statement to the jury by the trial judge and while the Court expressed uneasiness, it dismissed the appeal. A subsequent appeal to the Privy Council was also dismissed.

In the meantime public uneasiness was aroused by a number of things - statements by Stuart's former employers giving him an alibi for the time of the murder, statements by various people that Stuart's knowledge of English was such that he couldn't have spoken the words of the confession which the police had sworn were his exact words, and statements by certain police officers and involved in the case as to Stuart's legal position/background which were quite in-accurate.

When the Labor Party gave notice of its intention to debate the matter in the House of Assembly the Premier undertook to appoint a Royal Commission to go into all aspects of the matter.

He then announced the appointment of the Royal Commission consisting of 3 Judges of whom one had been the trial judge and another the chairman of the Full Court on its hearing of the appeal. He also announced restricted terms of reference for the Commission - further questioning in the House found him to agree that if the parties needed it the Commission would go

beyond these terms and an assurance that Stuart's confession would be investigated.

The inquiry then proceeded and public confidence was not increased by a number of unhappy incidents which occurred before the commission, culminating in the withdrawal from the commission of Stuart's counsel Mr. Shand Q.C. on the ground that he had been improperly stopped in cross-examination of a police witness.

Public controversy became widespread and eminent legal authorities gave it is their opinion that it was a most undesirable and peculiar position that judges who had been involved in the proceedings before the Courts should now sit on a Commission of inquiry on the very matter which they were now asked to examine.

The Labor Party then sought to move in the House of Assembly that the Commission be reconstituted with other commissioners. The Government, in what is now typical of Sir Thomas Playford's regard for the accountability of the Executive Government to Parliament, used its numbers to refuse Parliament the right to discuss the matter. As a result, the Labor Party moved a motion of no confidence in the Government on the grounds that it had refused to account to Parliament for its action in appointing the Commission.

In the course of the debate not only was the widespread public criticism of the appointment of two of the judges concerned by the most eminent of legal authorities cited, but it was revealed that the trial judge, quite properly at the time had indicated his opinion as to conclusions which the jury could draw from the evidence before them, and was not asked to inquire into those opinions, and that the chairman of the appeal court, sitting as a judge, had said of submissions made as to the way in which the confession was obtained from Stuart said, "That is utter rubbish" and a little later "If you ask me whether I believe that - I don't believe it." Having expressed the strongest possible personal view on the matter of the accusations against

the police over the way in which the confession was obtained -

he was now asked to sit and enquire into that very matter as chairman of the Commission. This was of course, a complete departure from accepted British practice in the administration of justice.

The Premier in answer to the censure motion said at first that the judges were considering entirely new matters. Let me read to you from the Hansard report of the debate:

The Hon. Sir THOMAS PLAYFORD - I believe that the position now is that the Commission will do its duty a rather interesting question arises regarding the composition of the Commission. The commissioners are considering entirely new matters.

Mr. Shannon - A point that has been overlooked by some legal men.

The Hon. Sir THOMAS PLAYFORD - They are considering whether the new evidence would have had any effect upon the trial if it had been available at the time.

Mr. Dunstan - Are you saying that is all they are doing?

The Hon. Sir THOMAS PLAYFORD - The original trial was a regular one, and the only matter of substance that comes up for the Commission to consider now is whether there are any additional facts which were not before the judge and jury at the time of the trial and which, had they been before the judge and the jury, could have had a bearing upon the trial.

Mr. Dunstan - You said the confession would be investigated by the Commission. That is not a new matter.

The Hon. Sir THOMAS PLAYFORD - I have said repeatedly that the Government wants this matter sifted to see that justice is done in its most complete form.

Mr. Dunstan - Sifted to the ground in all aspects.

The Hon. Sir THOMAS PLAYFORD - The fact still remains that the Commission would not have been appointed except for the fact that it was claimed an alibi had been established, that new evidence was available, and that there were new facts that were not brought before the court at the time of the trial. What would have been the purpose of the Commission otherwise? ~~The~~

He then changed the subject so he did not have to answer the undeniable fact that the Commissioners were being asked to consider matters which had been before them previously as judges - he did not return to the point and the Premier has never answered it. He will not because he cannot. The censure motion was lost - the Government did not account to Parliament but the Premier at the end of his speech gave an undertaking

Let me read it to you

I suggest that the Royal Commission be allowed to complete its work and bring in its recommendations. They would be public recommendations; and then if the Leader of the Opposition or any other person had any comment to make on them I should be happy to hear them before further action was taken. Needless to say, Mr. Speaker, I oppose the motion.

The Commission then proceeded and reserved its decision as to its findings.

Strangely enough last Thursday afternoon on the last day of the Parliamentary session and after the time for questions and notices of motion had expired the report of the Commission was produced in the House by the Premier who ~~talked~~^{tabled} it in the middle of a debate on the Hire Purchase Bill.

There was no opportunity left for a debate on the matter, so before the House adjourned I obtained the suspension of standing orders to ask whether the Government would call Parliament together as soon as possible to provide an opportunity to debate the report. The report is the responsibility of the Executive Government and it is normal parliamentary practice to provide time to debate such a report speedily to members of Parliament.

The Premier however, is untrammelled by any regard for what is normal practice in representative government - he doesn't after all believe in democracy at all. So he said he had not intention of calling Parliament together to debate the report from our three judges. (they were not of course in this matter acting as judges at all - but as Commissioners appointed to enquire and report and for whose report the Executive is accountable). He hadn't, he said, given any

undertaking to provide an opportunity for debate.

This, of course, is as inconsistent with normally accepted canons of justice as were some of his previous activities and deliberate misrepresentations of certain events which had occurred in relation to the commission.

So the thing is to be hushed up by the Government. I personally believe that the individual commissioners used their great endeavours to act impartially and properly and would do their duty as they saw it without question. But I personally do not see how two of them at any rate could approach this commission with an open mind. There are matters in the report which most strongly call for debate in the House, and which cannot be calculated to allay the anxieties which have been so widely expressed on this matter. I feel this is something which must not be allowed to pass quietly by and that Parliament must be accorded the rights which it has to safeguard the people of this State and to express their opinions upon the activities of the Playford dictatorship.

7/12/59

Good Evening. The latest episode in the story of the inquiry into the conviction and sentence of Rupert Max Stuart has not been any happier than a number of those which preceded it.

Let me recount the story to you. Stuart was tried and and convicted of a shocking murder early in the year. At his trial he was unable to have his statement of his defence read to the jury, although had he not been illiterate he could have read it himself. He was thus, as an illiterate, put in a less favourable position to make his defence than a literate man. However, that is the law in South Australia. The Full Court of S. A. dismissed an Appeal.

On appeal to the High Court the High Court held that a statement to the jury by the Crown Solicitor had been one which was unlawful, but that its unlawful effect had been nullified by a statement to the jury by the trial judge and while the Court expressed uneasiness, it dismissed the appeal. A subsequent appeal to the Privy Council was also dismissed.

In the meantime public uneasiness was aroused by a number of things - statements by Stuart's former employers giving him an alibi for the time of the murder, statements by various people that Stuart's knowledge of English was such that he couldn't have spoken the words of the confession which the police had sworn were his exact words, and statements by certain police officers and involved in the case as to Stuart's legal position/^{and}background which were quite in-accurate.

When the Labor Party gave notice of its intention to debate the matter in the House of Assembly the Premier undertook to appoint a Royal Commission to go into all aspects of the matter.

He then announced the appointment of the Royal Commission consisting of 3 Judges of whom one had been the trial judge and another the chairman of the Full Court on its hearing of the appeal. He also announced restricted terms of reference for the Commission - further questioning in the House found him to agree that if the parties needed it the Commission would go

beyond these terms and an assurance that Stuart's confession would be investigated.

The inquiry then proceeded and public confidence was not increased by a number of unhappy incidents which occurred before the commission, culminating in the withdrawal from the commission of Stuart's counsel Mr. Shand Q.C. on the ground that he had been improperly stopped in cross-examination of a police witness.

Public controversy became widespread and eminent legal authorities gave it is their opinion that it was a most undesirable and peculiar position that judges who had been involved in the proceedings before the Courts should now sit on a Commission of inquiry on the very matter which they were now asked to examine.

The Labor Party then sought to move in the House of Assembly that the Commission be reconstituted with other commissioners. The Government, in what is now typical of Sir Thomas Playford's regard for the accountability of the Executive Government to Parliament, used its numbers to refuse Parliament the right to discuss the matter. As a result, the Labor Party moved a motion of no confidence in the Government on the grounds that it had refused to account to Parliament for its action in appointing the Commission.

In the course of the debate not only was the widespread public criticism of the appointment of two of the judges concerned by the most eminent of legal authorities cited, but it was revealed that the trial judge, quite properly at the time had indicated his opinion as to conclusions which the jury could draw from the evidence before them, and was not asked to inquire into those opinions, and that the chairman of the appeal court, sitting as a judge, had said of submissions made as to the way in which the confession was obtained from Stuart said, "That is utter rubbish" and a little later "If you ask me whether I believe that - I don't believe it." Having expressed the strongest possible personal view on the matter of the accusations against the police over the way in which the confession was obtained -

he was now asked to sit and enquire into that very matter as chairman of the Commission. This was of course, a complete departure from accepted British practice in the administration of justice.

The Premier in answer to the censure motion said at first that the judges were considering entirely new matters. Let me read to you from the Hansard report of the debate:

The Hon. Sir THOMAS PLAYFORD - I believe that the position now is that the Commission will do its duty a rather interesting question arises regarding the composition of the Commission. The commissioners are considering entirely new matters.

Mr. Shannon - A point that has been overlooked by some legal men.

The Hon. Sir THOMAS PLAYFORD - They are considering whether the new evidence would have had any effect upon the trial if it had been available at the time.

Mr. Dunstan - Are you saying that is all they are doing?

The Hon. Sir THOMAS PLAYFORD - The original trial was a regular one, and the only matter of substance that comes up for the Commission to consider now is whether there are any additional facts which were not before the judge and jury at the time of the trial and which, had they been before the judge and the jury, could have had a bearing upon the trial.

Mr. Dunstan - You said the confession would be investigated by the Commission. That is not a new matter.

The Hon. Sir THOMAS PLAYFORD - I have said repeatedly that the Government wants this matter sifted to see that justice is done in its most complete form.

Mr. Dunstan - Sifted to the ground in all aspects.

The Hon. Sir THOMAS PLAYFORD - The fact still remains that the Commission would not have been appointed except for the fact that it was claimed an alibi had been established, that new evidence was available, and that there were new facts that were not brought before the court at the time of the trial. What would have been the purpose of the Commission otherwise? ~~The~~

He then changed the subject so he did not have to answer the undeniable fact that the Commissioners were being asked to consider matters which had been before them previously as judges - he did not return to the point and the Premier has never answered it. He will not because he cannot. The censure motion was lost - the Government did not account to Parliament but the Premier at the end of his speech gave an undertaking

Let me read it to you

I suggest that the Royal Commission be allowed to complete its work and bring in its recommendations. They would be public recommendations; and then if the Leader of the Opposition or any other person had any comment to make on them I should be happy to hear them before further action was taken. Needless to say, Mr. Speaker, I oppose the motion.

The Commission then proceeded and reserved its decision as to its findings.

Strangely enough last Thursday afternoon on the last day of the Parliamentary session and after the time for questions and notices of motion had expired the report of the Commission was produced in the House by the Premier who ~~tabled~~ ^{tabled} it in the middle of a debate on the Hire Purchase Bill.

There was no opportunity left for a debate on the matter, so before the House adjourned I obtained the suspension of standing orders to ask whether the Government would call Parliament together as soon as possible to provide an opportunity to debate the report. The report is the responsibility of the Executive Government and it is normal parliamentary practice to provide time to debate such a report speedily to members of Parliament.

The Premier however, is untrammelled by any regard for what is normal practice in representative government - he doesn't after all believe in democracy at all. So he said he had not intention of calling Parliament together to debate the report from our three judges (they were not of course in this matter acting as judges at all - but as Commissioners appointed to enquire and report and for whose report the Executive is accountable). He hadn't, he said, given any

undertaking to provide an opportunity for debate.

This, of course, is as inconsistent with normally accepted canons of justice as were some of his previous activities and deliberate misrepresentations of certain events which had occurred in relation to the commission.

So the thing is to be hushed up by the Government. I personally believe that the individual commissioners used their great endeavours to act impartially and properly and would do their duty as they saw it without question. But I personally do not see how two of them at any rate could approach this commission with an open mind. There are matters in the report which most strongly call for debate in the House, and which cannot be calculated to allay the anxieties which have been so widely expressed on this matter. I feel this is something which must not be allowed to pass quietly by and that Parliament must be accorded the rights which it has to safeguard the people of this State and to express their opinions upon the activities of the Playford dictatorship.