

## CHAPTER III.

LEGISLATION AFFECTING THE PRESS  
IN SOUTH AFRICA.

Compared with some Continental countries, South Africa is in an enviable position so far as legislative restrictions on the freedom of the Press are concerned. Since Union nothing of a fundamental nature has been placed on the Statute Book to hamper the Press in its endeavours to guide and interpret public opinion and to place facts and figures before the reading public. There have been a few "pin pricks" which will be examined in the succeeding pages, but, for the most part, Parliament has adopted and pursued a sane and sober course in so far as its deliberations and decisions have had to do with the Press of South Africa.

The story of pre-Union Press legislation is less happy. The herculean struggles against officialdom of a handful of pioneer pressmen at the Cape during the first quarter of the Nineteenth Century has already been referred to, (Chapter I). The counterpart of that struggle for the freedom of the Press in the Transvaal in the 1890's has also been mentioned in general terms. An attempt will now be made to examine in detail the nature of the legislative enactments bearing on the Press in the Cape, in the Transvaal, in Natal, and in the Free State, as well as to continue the study through the twenty-two years of Union until the present day.

It seems appropriate to mention that, just as the most acute political struggles in the history have taken  
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place in the Cape and in the Transvaal, so that the battleground for the fight for a Free Press is to be found in those same areas. It is also worthy of mention that the most irksome Press legislation since Union is still under consideration and awaits the problematic fate that befalls all contentious measures on which the House finds itself divided. This Measure is the Newspaper Libel Bill, which, introduced by the Minister of Justice (Mr. O. Pirow) as a means of safeguarding the Press against "catchpenny" libel actions, was mutilated out of all recognition by the Select Committee whose report is entirely contrary to the spirit in which the Bill was originally introduced. The Bill will be discussed in detail towards the close of this chapter, before, for purposes of comparison, some indication will be given of the position of the Press in other countries, as determined by the restrictions and limitations imposed upon it by the Statute Book.

While the fight for the freedom of the Press was still in progress at the Cape, an Ordinance, No. 26 of 1828, was passed with a view to levying a stamp duty on printed newspapers and certain other periodical works. A similar measure had been imposed on British newspapers in 1713 but was repealed in 1855 as being a burdensome tax on knowledge. The Cape stamp duties were repealed by Ordinance No. 2, of 1848, which reads as follows:

"Whereas by the Ordinance No. 26 bearing the date 23rd of October, 1828, certain duties were imposed upon newspapers and other periodical works printed and published in this Colony; and whereas it is expedient that all such duties should be abolished; Be it enacted with the advice and consent of the Legislative Council and the House of Assembly thereof that the said Ordinance No. 26 and every matter therein or in the schedules thereto contained shall be repealed and the same are hereby repealed accordingly.

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"This Ordinance shall commence and take effect as law from the date of promulgation thereof".

The Magna Charta of the early Press in South Africa bears the uncomplimentary title of "Ordinance for Preventing the Mischiefs arising from Printing and publishing Newspapers and papers of a like nature by persons unknown". This was the work of Governor Bourke and was Ordinance 60 of 1829. It was repealed by Act No.8, of 1859, which states

"Whereas great benefits have been derived from the art of printing and publishing of newspapers and papers of a like nature in this Colony; and whereas all recognised remedies against abuses of the liberty of the Press are provided for by the law of Libel on proof of publication of any libellous matter or thing; Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof as follows :

- (1). The Ordinance No.60, 1829, is hereby repealed, except the 23rd section thereof, which repeals proclamation of July 21st, 1800.
- (2). In some part of every book, pamphlet, newspaper, or other printed work, printed or published in this Colony, there shall be printed the true and real name or names, addition(s), and place(s) of abode or business of the printer(s), thereof and also a true description of the place where the same is printed.
- (3). Any person(s) who shall knowingly and wilfully print and publish or cause to be published any such book, pamphlet, newspaper, or other work of that nature as aforesaid not containing the particulars aforesaid shall forfeit a sum of not exceeding £100.
- (4). This Act shall take effect from and after promulgation thereof. (130).

Subsequent Press legislation in the Cape is not of major importance. A period of legislative re-action set in and the Press did not figure conspicuously in legislative enactments /

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130. This Act was extended by proclamation No.212 of 1890 to the Transkei, Tembuland, and Griqualand East.

"Statutes of the Cape of Good Hope, 1652-1871, page 721.

enactments in the following years. The only measure of importance prior to Union was Act No.29 of 1884 providing for the Registration of Newspapers. This was then done through the Civil Commissioner, and is now affected through the Magistrate of the District concerned. There was no centralisation of these registrations and this defect has not up to the present time been remedied.

Ordinance No.14 of 1915 of the Cape Provincial Council exempted newsvendors and Railway bookstalls from the provisions in regard to shop hours.

The earliest enactments in Natal dealing with the Press was Law No.26 of 1846 which extended to the District of Natal certain provisions of the Cape Ordinance No.60 of 1829, the Ordinance for "Preventing the mischiefs arising from the printing and publishing of newspapers, and papers of a like nature, by persons not known, and for regulating the printing and publication of such papers in other respects; and also for restraining the abuses arising from the publication of blasphemous and seditious libels". This was repealed by Law No.9 of 1858 on the grounds that it was unnecessarily restrictive and cumbrous and was not adapted to the present circumstances of the Colony. This new law (1) repealed the old law; (2) made it necessary for a declaration to be made in writing setting forth the correct title of the newspaper and other details as to the printer, publisher, and proprietor; (3) required that one copy of the declaration should be filed in the office of the Resident Magistrate and the originals with the Colonial Secretary, these declarations to be deemed as conclusive evidence of the facts declared in any civil or criminal action; (5) made failure to comply with these requirements involve a penalty of £20; (6) required the name of the printer and publisher to appear in each issue, with a penalty



of £20 for non-compliance; (7) required that declarations should be made at least one week before the paper appears and that persons establishing a newspaper should conform to the law; (8) provided that no newspaper should be brought into being before the founders had entered into a recognisance with a Judge of the Supreme Court or executed a bond in the presence of and delivered to a Resident Magistrate in the sum of £100; together with two sufficient sureties.

A section of this Law was repealed by Law No.11 of 1887 which also made further provision for the transmission of newspapers through the post. This was later repealed by the Post Office Law No.22 of 1884, "to repeal the existing laws relating to postal conveyance and to make other and better arrangements for, and to regulate the conveyance and postage of letters, postcards, packets, parcels, and newspapers." Section 9 provided that : "For the purposes of this Law any publication coming within the following description shall be deemed a newspaper (that is to say): Any publication consisting wholly or in part of political or other news or articles relating thereto or to other current topics with or without advertisements and with or without engravings, prints, or lithographs, illustrative of articles in such newspaper, subject to these conditions :

1. That it be published in numbers or parts at intervals of not more than seven days.
2. That it be printed on a sheet or sheets unstitched.
3. That it have the full title and date of publication printed at the top of the first page and the whole or part of the title and the date of publication printed at the top of every subsequent page.

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131. This provision is partially repealed by Law 26, 1888.

There are further provisions defining and supplementing how newspapers are to be addressed and posted. Schedule A shows how far Natal was removed from the Cape notion of 1836 of taxing newspapers, and at what advantageous rates newspapers were transmitted through the post compared with other postal matter.

The newspaper rates were as follows :-

- Inland: On each newspaper for every four ounces or fraction of four ounces.....  $\frac{1}{2}$ d. (This was the same as the postal rate).
- Ship: On each newspaper for every four ounces or fraction of four ounces..... 1d. (Compared with 6d for every letter of  $\frac{1}{2}$  or fraction of  $\frac{1}{2}$  ounce).

This Act was repealed by the Union Act 10, of 1911, which co-ordinated postal rates for the whole of the Union

Section 6 of Law 10 of 1887 provided that no postage should be charged on the first issue of newspapers printed and published within the Colony and posted by the publishers within two days of publication, provided that the newspapers were enclosed in printed wrappers approved by the Postmaster General. This privilege was withdrawn by Act 28 of 1908 and authority was given to publishers to add the cost of the postage to the price of any contract for the supply of newspapers to be delivered through the post. It also provided for a uniform postage of  $\frac{1}{2}$ d on every single newspaper. The Union Act 10 of 1911 discontinued this concession. Item 23 of Schedule 2 of Act 43 of 1898 provided for the licensing of newspaper publishers. This provision was repealed by the Union Act 32 of 1925. The licence clauses of Act 43 of 1898 read as follows :

- (A) For every daily newspaper published in the Colony in conformity with Law No.9, of 1858 . . . . . £10.0.0.

(B). /

- (B) For all other newspapers under the same law issued at intervals not exceeding seven days...£5.0.0.

Section 4 of Act 37 of 1889 for the Better Protection of women and Children made it illegal to publish in print the evidence of proceedings in a Court of Law in cases coming under that Law and provided for a fine not exceeding £50. for any contravention of this provision. The Section reads:

"It shall not be lawful for any person to publish in writing or in print or the like any of the evidence of proceedings in a Court of Law whether at the trial or preparatory examination in any case of rape, incest, seduction, stuporation or indecent assault or indecency, or to so publish any precis or other account of any such proceedings or evidence in any such case, except by leave in writing of the Judge or Magistrate, signified by the Registrar of Clerk--provided that this section shall not be deemed to prevent a publication of the fact of the trial and issue thereof".

It is instructive to note that an old system prevailed in Natal whereby a newspaper reporter who had attended a specified number of sittings of the higher Courts became qualified to practise as an Attorney.

As far as the Free state is concerned, the field of legislation affecting the Press is indeed a barren one. A search through the Statutes has yielded only one solitary piece of legislation of any import. This is the Lottery and Sweepstake Law. Section 5 of this Law reads :

"It shall not be lawful for any publisher, owner, or other person charged with the control and management of any newspaper... to print or issue by way of advertisement or otherwise and whether in such newspaper or other printed matter /

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132. Barry Ronan "Forty South African Years".
133. "Laws of the Orange River Colony 1900-1906 edited by Messrs. P.L.Lefebvre and Bedver B.L.Jackson, page 198 et seq.

matter...any notice of any lottery to be held in this State or elsewhere, or to publish any information as to the result of any lottery which has been drawn and any person convicted of a contravention of this article shall be liable to a fine not exceeding £50. or in default of payment to imprisonment with or without hard labour for a period not exceeding three months, unless the said fine be paid before the expiration of such period".

This disposes of all pre-Union legislation excepting that in the Transvaal Republic. As the foregoing Ordinances, Laws, and Statutes have shown, the press has been helped rather than hindered in its forward march. In the South African Republic, however, under the iron rule of President Paul Kruger, the picture to be painted is a very different one. Two years before his election for the first time as President of the Transvaal, a Press Law, No.3 of 1881 was passed. This was repealed by Volksraad resolution, article 723 of 1886, and was superseded by Law No.11 of 1893.

Section 3 of Act 7 of 1890 of the Transvaal Republic, which prohibits the holding of lotteries, says :

"No publisher or proprietor or director of a newspaper or printing press shall accept as an advertisement or in any other manner any information in connection with any lottery whether held in the Republic or elsewhere. Offenders will be liable on conviction to a fine not exceeding £50. or, in default, a term of imprisonment, with or without hard labour, not exceeding one month".

The same provisions occur in Act No.9, the Prohibition of Lotteries Act, of 1889, in the Cape.

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Law 11 of 1893 was as follows :

"Whereas it is deemed desirable, in connection with Article 19 of the Grondwet, to make further regulations, it is hereby determined as follows :

(1) /



- (1). No newspaper may be published until the name of the responsible editor, printer, and publisher have been furnished in a Sworn Affidavit to the State Secretary.

The Penalty for disobedience shall be not more than £35. or, in default of payment, one month's imprisonment.

- (2). "These names must appear in each edition and a copy of each issue must be sent "Zoo spoedig mogelijk" to the office of the State Secretary.

A similar penalty for non-compliance is provided.

- (3). "The Printer and publisher of any newspaper, book, brochure, or other printed matter, including matter calculated to lead to disturbances, sedition, or mutiny, or insulting or attacking anyone's character will be punished by imprisonment with or without hard labour of not more than twelve months.

- (4). "Any person attacking the good name of any other person, either in a newspaper or in writing with intent to injure that person will be fined not more than £150. or, in default of payment; be sentenced to imprisonment of not more than six months.

Imprisonment for one year as provided for insulting cartoonists, although the maximum amount of the fine remains the same.

This Law followed an emergency application to the Volksraad on May 27th, 1893, to suspend Article 61 of the Standing Orders and Article 12 of the Constitution to enable the Volksraad to deal immediately with the Executive Committee's draft legislation to limit the Rights of the Press in certain respects. The Volksraad agreed to consider the legislation although the regulation three month's notice had not been given.

The Law was passed and on June 19th, notice

was given that the State Attorney had been authorized to <sup>135</sup>  
 prosecute the owner, editor, and publisher of "The Critic".  
 The ground for this prosecution was that the contents of "The  
 Critic" were "Dangerous to peace and order in this Republic".  
<sup>136</sup>  
 This was done and Henry Hess was duly convicted. Appeal was  
 noted and judgment was given by the full bench of the Transvaal  
 High Court on May 2nd, 1895, and that judgment spelt the death  
 knell of Law 11 of 1893, for, in the words of Hess himself,  
 "the only clause therein which sought to fix responsibility  
 upon the printers, publishers, or editors, of any newspaper,  
 was, after my argument, expunged therefrom and the whole  
<sup>137</sup>  
 object of the Law was thereby defeated.

Frustrated in his attempt to put the quietus  
 to his Press opponents by means of existing legislation, Kruger  
 immediately set to work on a draft Press Law which was to be  
 submitted to the Volkeraad in May, 1896. The full text of  
<sup>138</sup>  
 this Draft was as follows:

"Whereas it is considered expedient to make  
 regulations for the carrying out of Article  
 19 of the Grondwet (138) therefore, it is

decided /

135. "De Locale Wetten der Z.A.R.", 1890-1893, page 876.

136. The "San Francisco Examiner" of January 7th wrote of Henry  
 Hess, as "the mysterious man at present in London who appears  
 to be the only one who receives news from South Africa, and  
 who said he was in possession of information from Johannes-  
 burg so startling, he dare not divulge it, is in reality one  
 of the best-known men in South Africa. He is the editor  
 and proprietor of a weekly Johannesburg paper called the  
 "Critic". His paper resembles the London "Truth" and Hess him-  
 self is Labouchere, in that he is the terror of evildoers and  
 exposes more wrongdoings in South Africa than all the rest of  
 the local newspapers put together. Hess has been charged with  
 libel more than any other man in the last five years and yet  
 he has always come off with flying colours and popular applause

137. The "Critic", Vol. II, No. 27.

138. Published in "The Critic", Vol. II, No. 27.

139. the Constitution of the Republic.

decided as follows:

Article 1. explains what is meant by the term printed matter.

Article 2. provides that on every publication must be given the name of the printer and whether it is intended for distribution by the bookseller or otherwise; The name and address of the publisher or where the copy is issued for the writer's own account;

Article 3. Periodical publications, such as newspapers and reviews, must, in addition, contain in each number or issue the name and address of the responsible editor, whilst all articles (or pieces) of a political or personal nature which appear therein must be signed by the writer with his true and full name.

Article 4. Within a period of one month after this Law becomes into force, the publisher of any periodical publication already in existence in the Republic must send in to the State Attorney a written declaration under oath containing the name and address of the responsible editor, the publisher or owner. After this Law becomes of force, no newly appearing periodical publication can be issued without a similar declaration to the State Attorney.

Article 5. The State President has at all times the right (with the advice and consent of the Executive Council) to prohibit entirely or temporarily the dissemination of publications printed or published outside the Republic, the contents of which are, in his opinion, contrary to good morals or dangerous to peace and order in this Republic.

Article 6. Whosoever makes himself guilty, through the medium of the Press, of libel, slander, public violation of decency, or instigation to a punishable offence, shall be punished with a fine not exceeding £250, or with imprisonment of not more than one year.

Article 7. Whenever a punishable offence is committed by means of a periodical publication, the responsible editor-- whether or not he is the writer of the incriminating piece or article-- shall be punished as perpetrator, unless from exceptional circumstances it be estimated that he cannot be considered as such.

Article 8. Whenever a punishable offence is committed through the medium of the Press:

- (A). The responsible editor,
- (B). The publisher,
- (C). The printer, and

(D) /

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140. Article 19: "The Liberty of the Press is conceded, provided the printer and publisher remain responsible for all publications of a libellous character"



(D) Whoever has, in the exercise of his calling, disseminated the publication.

shall-- in so far as they are not culpable as perpetrators or accomplices-- be punished for negligence with a fine not exceeding £200, or with imprisonment for not more than one year, if they are unable to show that they have exercised all care reasonably demanded of them, or that there were circumstances which made such impossible for them. The said persons-- having fully complied with all the formalities of the law-- shall, however, be unpunished in the event of their pointing out (On the first demand of the State Attorney on his behalf) someone as the writer or presenter (of the incriminating article) or as occupying one of the position--superior to their own--named in the above list, and provided that such a one (so pointed out) is actually within the jurisdiction of the Court, or is deceased within the period during which dissemination has taken place.

Article 9. (A). The Printer and Publisher transgressing Art: 3 hereof;

(B). The responsible Editor and Publisher transgressing Art: 3 hereof;

(C). The Publisher transgressing Art: 4 hereof;

shall be punished with a fine not exceeding £100, or with imprisonment for not more than six months, Whoever, contrary to any prohibition of the State President, as specified in Article 6. shall disseminate any publication printed or published outside the Republic, shall be punished with a fine not exceeding £200 or with imprisonment for not longer than one year. On a second or further offence of a responsible editor, publisher or printer, or any periodical publication (through which they transgress this Law) the publication of such periodical can be prohibited by a judgment of the Court not exceeding two years .

Article 10. This Law does not apply to publications made on behalf of, or by order of, or with the consent of, the Government.

Hess, jubilant at his judicial success, immediately criticised the proposed legislation which sought to make good the defects of the old Law of 1893, Kruger, he declared, intended to concede the liberty of the Press, vouchsafed by the constitution over which he was suffered to rule,

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by :

- (1). Making himself the sole Judge of what is contrary to good morals or dangerous to the peace and order, as contained in foreign publications;
- (2). Running in if he think fit, every little street urchin who may, "In the exercise of his calling" be selling one of these publications.
- (3). Compelling every newspaper published in the Transvaal to become a Government organ.

"Why, it may be asked, are the Criminal Libel Laws of the Cape Colony, the Orange Free State, and Natal not considered stringent enough for Mr. Kruger, not to speak of those obtaining in England, France, and other civilised countries. Why must Mr. Kruger go to Russia and Turkey for his model?", Hess asked, adding that he intended to fight this Law in the Court where the Judges had previously said that they would never countenance the gagging of the Press in the Transvaal. He was soon to be given an opportunity.

The entire staff of the "Critic" was arrested in November, 1896, for contravention of Article IV. The case was held in the First Criminal Court at Johannesburg before Mr. M. P. van den Berg, criminal landdrost. When the case for the prosecution was before the Court, it was found that the State was unable to prove that any one of the accused was responsible for the alleged contravention, and without any witnesses being called for the defence, the case was dismissed.

Refusal by Hess in Court to give the name of the responsible editor or proprietor led to the suspension in December, 1896, of the "Critic" for a period of six months. Representative Press comments on the action of the Executive Committee were as follows :

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'The 'Cape Times' December 23rd, 1896 : The snuffing out of papers inimical to the Transvaal Government has now begun with some boldness. The Critic, the new victim is probably the most widely read, and it is the most audacious of all the Government's Press opponents in the Transvaal, and now, by a mere stroke of Dr. Leyds's magic pen, it will cease to exist, or rather will remain in a state of suspended animation for the space of six months... The suppression of the Critic will be resented by the entire free Press of South Africa ".

'The S.A. Review', December 25th, 1896 : "Having revelled in violent repressive legislation during the year, the Transvaal Government is now proceeding to administer the enactments passed, having for their object the more complete suppression of the Uitlander. The arbitrary shutting down of the 'Critic' constitutes a triumph for the vindictive Hollander set headed by Dr. Leyds, but it can only be a temporary triumph. As the 'Times' says, in commenting upon the relations between the Government and the Uitlander population, it would be wiser to defer to local opinion... The safety valves of free speech and a free Press are now shut down tight in the Transvaal, but tho' the steam generated may not be large in quantity at the present moment, no reasonable doubt can be entertained that sooner or later the huge machinery must burst".

'The 'Natal Advertiser', December 24th, 1896: "It was proclaimed, not long ago, on the authority of the President himself that the new Laws would not be too strictly enforced and would be amended if found oppressive. But here we find one of the most oppressive and autocratic enactments rigidly carried out on the mere ipse dixit of the President, by means of an arbitrary proclamation, without giving the parties concerned the right of trial or appeal. . The whole proceeding is a flagrant violation of the elementary principles of republicanism and freedom, and is a direct assault on the liberty of the Press, which, at the present juncture, is of the most sinister significance".

'The Star', December 22nd, 1896 : "The position may be stated with clearness as follows : The authorities are understood to offer no objection to the immediate publication from the same offices of a weekly newspaper to be styled the 'Transvaal Critic', provided the requirements of the Law as to a declared editor, publisher, 141 and proprietor are complied with. Mr. Leopold Hess has in consequence sworn an Affidavit in which he describes himself as the sole proprietor and publisher of the 'Transvaal Critic', and Mr. R.H. Heffer is declared to be the responsible Editor. On this understanding, the new paper (signifying

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no real break of continuity with the old one) will make its appearance this week. (142) On public grounds, and notwithstanding the apparently fair arrangement which has been come to with the Public Prosecutor, the danger to liberty of thought which resides in the plenary power confided to Government under Article V of the Press Law, is sufficiently exemplified by these proceedings. Under Article V the President has at all times the power to prohibit the circulation of any newspaper, with no right of trial accorded to the parties responsible for its publication, and no possibility of appeal".

"The Standard and Diggers' News", December 23rd, 1896: "By decree of the Executive Council the weekly newspaper, the 'Critic' has been suspended for a period of six months. This act has been practically forced upon the Government by the refusal of the journal in question to conform with the Press Law; while it declined in open Court to furnish the names of either the proprietor or responsible editor. Although very properly upholding the dignity of the Law, the Government has been well advised in permitting the publication of the old journal under a new title, and in complete conformity with the easy provisions of the Press Law".

Writing to the "Cape Argus" on the 12th February 1896, "Delta" said: "I have been endeavouring to find some parallel to Kruger's Press Law. It is necessary to go a very long way back in order to find anything nearly so drastic as the measure proposed in Pretoria. About the middle of the Seventeenth Century there were four attempts at Press censorship, and no one who calls to mind the nature of the sheets then issued will deny that there was need for some restrictive measures, but it does not follow that the same necessity exists in the Transvaal to-day. "It is generally admitted that there is safety in a Free Press. Germany has muzzled its newspaper Press and now finds itself face to face with sedition"

Just as the "Critic" had fallen foul of the President in 1893 and in 1896, so the "Star" in 1897 incurred  
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142. It will thus be seen that the "Critic" got round the Law in much the same way as the "Star" in the "Star-Comet" episode hereinafter described.



the wrath of the authorities in Pretoria. The story is best told in the words of that newspaper itself. Thus, in the "Star", of March 24th, 1897, under the Headline, "The Star to be suppressed", there was published the following message from the Pretoria representative .

Pretoria  
1.25 p.m.

Wednesday  
Special.

"An order was issued this morning suppressing the "Star" for three months, the order saying that the paper is dangerous to law and order".

Thereafter appeared this follow-up :  
"Some days ago an official of the State Secretary's Department was in Johannesburg making enquiries as to the position of the "Star" in Johannesburg and its influence and as to how its suppression would be taken by the populace. He received the only possible assurance that any attempt to assail the independence of the "Star" would be indignantly resented".

"What reason have you for trying to shut up the paper?", the Pretoria Representative of the "Star" asked Mr. Coster, State Attorney.

"That I cannot inform you", was Mr. Coster's reply.

The representative thereupon called on Mr. W.J.Leyds, State Secretary.

"I cannot tell you just now If you wait on me at 10 to-morrow morning I will give you a definite statement", the Reporter was told.

But the "Star" died that night (March 24th, 1897) and on March 25th the "Comet" appeared. Similar to the "Star" in every respect but the name. Even the pink paper had not changed colour.



The leader was :

"Vanished into Space".

"That is the way with heavenly bodies....  
For 90 days to come the 'Star' will be  
seen no more in the canopy of Heaven.  
The disappearance of the 'Star' is  
synchronous with the bursting in upon  
the gaze of mortal men of a very fine  
and fully developed "Comet". ..  
It is not for us, - not at least at this  
present time - to dwell at any great  
length upon this latest exercise by Mr.  
Kruger of the arbitrary power conferred  
upon him by the representatives of those  
whom it is high treason to speak of as  
anything but the Sovereign people. No  
offence had been alleged; no opportunity  
had been afforded of putting forward any  
defence; but let no man say that this is  
not a great and glorious Republic in which  
the freedom of the Press is recognised and  
serves as one of the keystones of the  
people's liberties".

The official order suppressing the "Star"  
read as follows:

"I, Stephanus Johannes Paulus Kruger, State  
President of the South African Republic,  
acting in this matter with the advice and  
consent of the Executive Council as appears  
from the Executive Committee's resolution  
dated March 23rd, 1907, and in accordance  
with Article 5 of the Law No. 26, 1896,  
hereby prohibit the circulation of the  
newspaper the "Star", published in Johan-  
neshurg, and that for the period of three (3)  
months from this date for the reason that  
the contents of the said newspaper, in my  
opinion, are dangerous to peace and order in  
this Republic.  
Given under my hand at Pretoria, this the  
24th day of March, 1907.

(Signed) S.J.P. Kruger,  
State President.  
Dr. W.J. Leyds,  
State Sekretaria.  
F.E.T. Krause,  
First Public Prosecutor,  
Public Prosecutor's  
Office, Johannesburg.

True copy.  
24th March, 1907.

The following telegram was immediately dis-  
patched to the British Residence in Pretoria by the Managing  
Director of the Argus Company, of which the "Star" formed

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an integral part:

"Transvaal Executive received this morning suppress the Star three months on ground dangerous to law and order. My company comprising British subjects claim protection from loss under Convention (143) which secures access to Courts Press Law deprives us of and invoke intervention High Commissioner. Copy official intimation will be supplied you by post your advice earnestly solicited as to proper course to adopt meantime".

The reply was as follows :

"In accordance with desire expressed in your telegram of to-day, I have referred your message to the High Commissioner. In the meantime recommend you submit under protest to action of Government".

The "Standard and Diggers News" published the following comment on the suppression of the "Star" :

"While we consider that the vindictive hostility to the Government and wilful blindness to the cause of the burghers and the prosperity of the Uitlanders have fully deserved this checkmate, we regret that it has been thought necessary to bring the Government Article of State to bear on what was, after all, a case of misguided and impure journalism. A reprimand would surely have served the purpose of checking the dangers which might ensue from a poisoned and disastrous policy whose aim was to retard the progress of the State by the pedulous inoculation into the body politic of the virus of distrust and discontent".

The suspension order was cancelled by Judgment given by Judges Ameshoff and Morice whereby it was held that Law No.26 of 1896 was contrary to Article 19 of the Grondwet and also to the terms of the London Convention of 1864, which assured the right of all at any time to appear before a Judge and defend themselves against any charge that may be brought against them. Mr. Justice Ameshoff said :

"The Volkeraad, which passed the Grondwet of 1864 also passed Law 26 of the same year and the Raad should be presumed to have known that the restrictions in the latter ought

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not to be in conflict with the former, as otherwise they would be making a Law one day and the next day they would be passing something contradictory to the former, which would not be commonsense..."

Article V could only be capable of one interpretation, and by that I mean that the President is only empowered to suppress matter already printed and published, and that the Article gives them no power to prevent matter being printed in the future; that being so, the President was not entitled to issue the order quoted and the applicants are entitled to redress; the order of the President must therefore be set aside and applicant is entitled to the costs of the application".

In a lengthy leader the "Star" commented as follows :

"STAR vs STATE".

"The 'Star' will resume its place in the firmament with a word of sincere and respectful advice to the Head of the State: "No Government ever yet rendered its people happier or justified itself in the eyes of posterity by trying to still the voice of its critics. The Star is once more free to shine in the heavens it adorned for so many years...."

These two instances of the "Critic" and the "Star", though the most notorious, are by no means the only instances of persecution of the Press by the State. A certain McCombie, Editor of "The Cape Lantern" and "Transvaal Truth", and well-known as "The Champion of Truth" was arrested for sedition and high treason. In an interview with a representative of "The Burlesque" he said: "I simply tried to do my best for the State and I still adhere to everything I have said. As to the language of the letter, it is no stronger than any of the hundred of open letters I have written. This is the 248th. I can't make out why the "Star" is not prosecuted. They have said the same things as I have said." Similarly

144

W.F. Monypenny while South African correspondent of the London Times and Editor of the "Star" had to fly across the border

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144. Renowned as the biographer of Benjamin Disraeli, Earl of Beaconsfield.



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in order to avoid arrest on a charge of high treason, while F.J.Pakeman was arrested and estreated bail by non-appearance at the trial. This incident was unconnected with that of the suppression of the "Star" in March, 1897, the editor of that paper at that time being Mr. Francis J. Dornier.

This persecution of the Press did not come from one side only. Just as the "Uitlander" papers were harassed by the Republican Government, so was the only Dutch paper in Pretoria kept under strict surveillance during the annexation period 1877-1881. Thus on April 2nd, 1878, Sir Theophilus Shepstone wrote to Sir Bartle Frere :

"I am afraid I shall have to prosecute the "Volkstem" for sedition; it has been and still is most persevering in its efforts to stir up the Boers to do mischief, it publishes every falsehood that can damage the Government that it hears or reads or can invent". (146)

In 1880 the Editor of "De Volkstem" was arrested for "oproerig swaadschrift" against the British Government. In the same year Mr. W.E.Bok, a member of the Volkskomitee and then sub-editor of "De Volkstem" was also arrested for "hoogverraad (high treason)".<sup>147</sup> When Martial Law was declared throughout almost the whole of South Africa, Advocate F.S. Malan, (now Senator), editor of "Ons Land" was brought before the Courts on account of a libellous and seditious article which had appeared in the paper, - a letter from Heidelberg, Transvaal, in which was told of the atrocious activities of the English troops. Together with Gertwright of the "African News",<sup>148</sup> Advocate Malan was sentenced to imprisonment.

Kruger /

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- 145 "Forty South African Years", by Barry Ronan, published 1919.
  - 146 "Shepstone Papers", page 798.
  - 147 "Die Volkstem", October 4th, 1924.
  - 148 "Die Burger", April 8th, 1932.



Kruger had for the most part a hostile Press, and had to put up with incessant uncomplimentary caricatures and adverse criticism. With his experience as an example, one could almost sympathise with General Smuts (See Chapter V) when he says that the Press can make it difficult, even impossible, for a Statesman to carry on. The writer has in his possession a supplement to the "African Critic" styled "An Easter Offering" and representing a "Suggested design for a window for the Transvaal Volksraad". The caricature, in stained glass colours, depicts a fantastic figure standing on top of the world (with his heel on the Transvaal), with a halo round his head, while Kruger's smiling face radiates above him. A lectern on one side supports a page on which is printed "To Kruger I had a message to send thee". The "Burlesque" continually bantered with the President. In its second issue it published a grotesque photograph of Kruger with one foot on "Transvaal Truth" and the other on "Concessions". In his right hand dangled the S.A.R.--O.F.S. trains, while in his inverted top-hat was stuck a copy of the "Burlesque", "Police Reform", "Freehold titles", and "Gold". A faked interview (with 12 headlines) in which, to the Greeting "Good morning" of the Burlesque's reporter, President Kruger replied, "Ja, ik het Pear's seep gebruik", and the "Burlesque" reporter muttered; "I hope so".

The offending sections : 3 (requiring the publication in each issue of the full name and address of the responsible editor, and that all political articles should be signed-- as is still required to-day by the Electoral Law of 1926--), 4 (demanding a written declaration as to the name and address of the responsible editor being sent to the State

Attorney /

Attorney), and 9 (providing for punishment for persons disseminating publications contrary to the express prohibition of the President) were repealed by Law No.14, of 1898, and the disabilities under which the Press had so long been retarded were removed.

The fight had been fast and fierce. The incidents of the hectic years from 1893-1898 were numerous and full of interest for the historian as well as for the man in the street. Their detailed examination is, however, beyond the scope of the present investigation, and the romantic story of that period must be left for others to tell. As was the case in the Cape half a century previously, the Press had triumphed over the obstinacy and determination of officialdom and the pioneer efforts in this connection of the "Critic", the "Star", the "Burlesque" and other newspapers, some now defunct, others still in existence must not pass unrecorded.

During the period that the Transvaal was a Crown Colony -- 1902-1906, two Ordinances were passed. These were the Telegraph Messages Protection Ordinance No.48 of 1902 and the Newspaper Registration Ordinance No.49 of the same year. No further legislation was passed from that date until the time of Union. The provisions of these two Ordinances respectively are as follows :

**Telegraph Messages Protection Ordinance  
No.48 of 1902 :**

"To protect the rights of property in telegraphic messages intended for publication" provided that whenever any message submitted by telephone from outside the Colony to within the Colony for newspaper publication purposes, no person shall, without the consent in writing of the person to whom the message was sent, print or publish such telephone message or extract therefrom, until 72 hours after the publication of the message by the person for whom it was originally intended.

The penalties provided were £20. for a first offence and £40 for a second, with an alternative of three (3) months imprisonment.

Newspaper Registration Ordinance,  
No. 49 of 1903.

to amend the Law relating to the Registration of newspapers :

BE it enacted by the Lieut. Governor of the Transvaal with the advice and consent of the Legislative Council as follows :

- (1). From and after the taking effect of this Ordinance it shall not be lawful for any person to publish or cause to be published any newspaper in this Colony until there shall have been registered at the office of the Colonial Secretary :
    - (a) the full and correct title thereof;
    - (b) the full and correct address at which the same is to be published;
    - (c) the full and correct names and places of abode of the proprietor, printer, publisher, manager, and responsible editor of such newspaper.
  - (2). In some part of every newspaper published in this Colony after the taking effect of this Ordinance there shall be printed the full and correct address at which the same is published, and the full and correct name of the proprietor;
  - (3). The responsible editor of every such newspaper must be a person resident within this Colony.
2. When any newspaper is the property of or is printed by a limited liability company or other joint stock company there shall be registered the full and correct name and place of abode of :
- (a) the Manager or other chief officer of such company resident within this Colony,
  - (b) Every Director of such company resident within this Colony.

3. (1). It shall be the duty of the Colonial Secretary to keep a register in the form prescribed in the Schedule annexed hereto in which shall be entered the particulars in the two preceding sections mentioned;
- (2). It shall be the duty of the Colonial Secretary to furnish an extract from the said register duly signed by him to any person on application being made therefor, and on payment of a fee of 2/6 for every such extract.....
- (3). The production of such extracts as in the last preceding section mentioned signed as aforesaid shall in any proceedings, civil or criminal, be sufficient proof of the fact stated therein;
4. Existing newspapers must register within a month without being required to pay the registration fee.
5. Whenever a change occurs in regard to any of the particulars entered in the register such change shall be notified within 7 days.
6. Penalties for non-compliance with the foregoing requirements entail penalties of £100. or six months.
7. Whenever a libel is published in any newspaper printed or published in this colony criminal proceedings may be taken against all or any of the persons mentioned in Sections I and II, provided that it shall be a defence to such proceedings on behalf of any such person as aforesaid to prove that the libel complained of was published in such newspaper without his knowledge, consent or connivance and without negligence on his part.
8. A Registration fee of £1. per annum is fixed and a fee of 2/6 for notification of a change of any of the particulars mentioned.
9. Law No.26 of 1896 and Law No.14 of 1898 are HEREBY REPEALED.

TRANSVAAL /



TRANSVAAL ORDINANCE 1902.

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SCHEDULE

REGISTER OF NEWSPAPERS

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Title of Newspaper & address of office of publi- cation.	.Name and address of Pro- prietor (a)	.Name and address of Printer. (a)	.Name and address of Pub- lisher. (a)	Name and address of Manager.	Name and address of responsible Editor.
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(a). Where there are more printers, proprietors, and publishers than one, the name and address of each must be given. Where the printer, proprietor or publisher is a company then in addition to the name of the company, the name and address of the manager and of each of the directors resident in this Colony must be entered in these columns.

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The Second Schedule of the Financial Relations Act No.10 of 1913 reserves to the Union Government the right to legislate on the Press while section 13 of the same Act says :

"Nothing in this Act shall be deemed to confer upon the Provincial Councils the right to receive revenue or the power to make Ordinances in respect of licences.....

(d) for newspapers ". It is therefore to the Statute Book of the Union that one must turn for legislation affecting the Press. It is nevertheless not without interest to notice that in a few instances newspapers are dealt with in certain Provincial Ordinances notably in connection with Horse Racing and Betting, The Shop Hours' Ordinance (Exempting newspapers from its provisions) and in connection with the publication of Provincial advertisements in newspapers.

Thus in the Transvaal by Ordinance 6 of 1922 the restriction on the publication of odds in a newspaper was removed, the Horse and Racing and Betting Restriction Amendment Ordinance, 1922. The restriction had been in force since Act 37 of 09. (Transvaal).

Similarly in Natal, Section 14 of Ordinance 17 of 1922, the Racing and Betting Ordinance, provided that:

"No person shall publish, except on a race course or in a Clubroom licenced under this Ordinance any advertisement (1) inviting the public or any person to make or take any bet, or giving or offering information regarding the terms on which bets are likely to be made or accepted by any person, whereby it is made to appear that any person, either in Natal or elsewhere, on payment or for any other consideration will give advice regarding the making of any bet or will act as intermediary between other persons in any matter relating to the making of a bet".

This was slightly amended in the following year by section 3 of Ordinance 6 of 1923 as follows :

"The word advertisement used in Section 14 of the principal Act shall not include the issue of a circular or price list by a bookmaker through the Post only".

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The position in this regard in the Cape was regulated by Act No.8 of 1914, section 7 of which reads as follows:

"Every person shall be guilty of an offence against this Ordinance who. (e) prints any newspaper in the Province or publishes in the Province any newspaper printed therein, or prints or reproduces any pamphlet or sheet containing information as to betting upon the result of a horse race, foot race, cycle race, motor race, boat race, whippet race, or shooting, coursing, running, or boxing contest, before such result has been determined and whether the race, contest, or prize fight be run or held or carried on within or outside the Province. (f) likewise the person who "sells or offers for sale" such newspaper is guilty of an offence."

The first post-Union legislation which bears on the Press is Act No.19 of 1911, the Powers and Privileges of Parliament Act, the relevant sections being as follows :

10. "Parliament may summarily punish for contempt by fine or fees or both, whether committed by a member or any other person in respect of the offences hereinafter mentioned:

The publication of any false or scandalous libel on any member touching his conduct as a member. Any contempt from time to time set forth and declared to be such in any Standing Order of Parliament.

24. No member or Officer of Parliament and no shorthand writer employed to take minutes of evidence before Parliament or any Committee shall give evidence elsewhere in respect of the contents of such evidence or of the contents of any documents or manuscript laid before Parliament or any Committee or in respect of any proceedings or examination at the Bar or before any Committee of Parliament without the special leave of the House.

30. In any civil or criminal proceedings instituted for publishing any extract from or abstract of any such report, paper, minutes, votes, or proceedings, if the Court or Jury (as the case may be) be satisfied that such extract or abstract, was published bona fide and without malice, judgment or verdict (as the case may be) shall be entered for the defendant or accused.

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This immediately raises the question, by what Statutory measures or regulations is the position of the Press in Parliament defined? The answer is that "in all cases not provided for by Standing Orders of the House, recourse shall be had to the usages and practice of the Parliament of the United Kingdom as laid down in this publication." <sup>150</sup> Senate Standing Order No.134 lays down that:

"Any Senator complaining to the House of a statement in a newspaper as a breach of privilege, shall produce a copy of the newspaper containing the statement in question, and be prepared to give the name of the printer or publisher, and also submit a substantive motion declaring the person in question to have been guilty of contempt"

<sup>151</sup>  
Parliamentary practice of the United Kingdom makes the following provisions in regard to the Press, which apply mutatis mutandis to the Press in South Africa in its relations to Parliament :

"The publication of the debates of either House has been repeatedly declared a breach of privilege, and especially false and perverted reports of them; and no doubt can exist that if either House desired to withhold their proceedings from the public, it is within the strictest limits of their jurisdiction to do so; and to punish any violation of their orders; (152) and under the Lands Standing Order No.80. it is a breach of privilege for any person, without the leave of the House, to print or publish in print, anything relating to its proceedings". (153).

<sup>154</sup>  
"Repeated orders have been made by the House forbidding the publication of the debates and proceedings of the House, or of any Committee thereof and of comments thereon, or on the conduct of members in the House by newspapers, newsletters, or otherwise, and directing the punishment of offenders against /

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150. Senate Standing Order, No.219

151. Embodied in Sir T. Erskine's May's "Parliamentary Practice".

152. In 1801 Allan Macleod and John Higginbottom were fined respectively 100/- and 5/8 and were committed to Newgate for six months for publishing and sending certain paragraphs purporting to be a proceeding of the House, which had been ordered to be expunged from the journal and the debate thereupon

153. Ibid, page 70.

154. See following page.



155

against such Rules.

"These orders have long since fallen into disuse, though the Speaker has ruled that a member cannot be required to state whether expressions alleged to have been made by him in the House were correctly repeated in a newspaper. Debates are daily cited in Parliament from printed reports; galleries are constructed for the accommodation of reporters; committees have been appointed to provide increased facilities for reporting; a place is reserved for a reporter near the table of the House of Lords, and grants are annually voted to further the publication of the debates....

The principle by which both Houses are governed is now sufficiently acknowledged. So long as the debates are correctly and faithfully reported, the privilege which prohibits their publication is waived; but when they are reported mala fide, the publishers of the newspaper are liable to censure.

"It is declared to be a breach of privilege for a member, or any other person to publish the evidence taken before a select committee until it has been reported to the

House.  
156

"Indignities offered to the character and proceedings of Parliament, by libellous reflections, have been punished as breaches of privilege.  
157

When /

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154. From previous page - The orders were issued on December, 22nd 1694; February 11th, 1695, January 18th, 1697; January 3rd, 1703, January 23rd 1722

155. Ibid, page 70.

156. Mr. Arthur Barlow, ex-H.P. and now political correspondent of the "Rand Daily Mail" was accused of such a breach of privilege in the Union House of Assembly. He duly apologised, but in the meantime his paper had been first with the news.

157. In 1834 Thomas Bittleston, editor of the "Morning Post" was committed to the custody of the usher of the Black Rod for a paragraph in the newspaper reflecting upon the conduct of Lord Chancellor Brougham, in the discharge of his judicial duties in the House of Lords.

When a complaint is made of a newspaper, the newspaper itself must be produced in order that the paragraphs complained of may be read.  
158

The entire newspaper must be produced. It is insufficient to produce a page or a cutting containing the article complained of.  
159

A member may not read any portion of a speech made in the same session from a newspaper or printed book. This rule indeed applies strictly to all debates whatsoever, the publication of them being a breach of privilege; but of late years it has been relaxed by general acquiescence in favour of speeches delivered in former sessions. Until 1840 the reading of any extracts from a newspaper whether referring to debates or not had been restrained as irregular. In that year Sir Robert Peel said it was drawing the rule too tightly if members were restrained from reading relevant extracts from newspapers and, with the acquiescence of the House, he proceeded to read the passage from a newspaper.  
160

Members are not to read books, newspapers, or letters in their places for amusement or for business unconnected with the debate.  
161

Strangers /

- 158. The "Times" of May 2nd, 1867, was by the Speaker's direction, circulated with the notice paper on the following day after a complaint had been made regarding an article appearing in that issue of the 'Times'.
- 159. Mr. Parnell, on April 4th, 1878, having complained of three newspapers handed up to the table certain extracts pasted upon paper, and upon the Clerk calling Mr. Speaker's attention to the irregularity, further proceedings were at once arrested.
- 160. Ibid, page 309.
- 161. Ibid, page 336.

Strangers in the House included reporters from 1849-1870, when the House cleared to avoid the public on the Contagious Diseases Acts. This led to a discussion but the status quo was maintained. In 1875, May 31st, this position was modified by Standing Order No.83 which provided that if notice was taken that strangers were present the Speaker or Chairman should forthwith put the question that strangers be ordered to withdraw, reserving to the Speaker or the Chairman the right whenever he thought fit, to order the withdrawal of strangers from any part of the House.

The Post Office Administration and Shipping Combination Discouragement Act No.10 of 1911 bears very directly on the Press. It supersedes all pre-Union legislation dealing with postal rates as far as newspapers are concerned, defines a newspaper, and lays down a uniform and standard postal rate for newspapers circulating within the Union and those leaving the Union. Its relevant sections are as follows :

- Section 17: (1) For the purpose of this Act any publication consisting wholly or in great part of political or other news or of articles relating thereto or to other current topics, with or without advertisements, and with or without engravings, prints, or lithographs, or any other sort of picture illustrative of articles in such publication shall be deemed a newspaper subject to the following conditions :
- (a) That it be wholly printed and published within the Union;
  - (b) That it be published at intervals of not more than one month;
  - (c) That the full title and date of publication be printed at the top of the first page thereof, and the whole or part of the title and date of publication at the top of every subsequent page;
  - (d) That it be registered with the Postmaster-General as a newspaper.

Section 17 (2) provides a definition for supplements to newspapers.

Section 18 /



- Section 13** (1) The Postmaster-General shall cause a register to be kept of publications coming within the requirements of the last preceding section and the proprietor, printer, or publisher of any such publication may, upon payment of the prescribed fee, register the same as a newspaper at such time in each year and in such manner, and with such particulars, as the Postmaster-General may direct.
- (2) The Postmaster-General may from time to time revise the register and remove therefrom any publication which in his opinion is not a newspaper as defined by this Act, or a posted copy of which contains indecent or obscene matter, and the Postmaster-General may refuse to transmit or deliver and may destroy any such copy which contains indecent or obscene matter, notwithstanding that such publication may be registered as a newspaper.
- (3) The decision of the Postmaster-General in regard to the admission to or removal from the register of any publication shall be final save that the Governor-General may, on the application of any person, reverse or modify that decision.

**Section 13:** Newspapers published outside the Union may be regarded as newspapers for the purposes of this Act provided they are published at intervals of not more than seven days and conform in other respects to the requirements of section 17.

**Section 14:** Makes provision for rates of postage, with a proviso (e) that, subject to regulation, a single copy of any issue of any registered newspaper printed and published within the Union may be accepted for transmission from the editor of any such newspaper to the editor of any other such newspaper without payment of postage.

The Police Act No.14 of 1912 provides in section 13 for the calling of witnesses in proceedings of alleged misconduct of officers, and, in section 14, for the imposition of a penalty upon persons failing to attend, or, having attended, failing to answer questions. This may not seem to affect the Press, but its relevance was brought home in Pretoria during 1931 when newspaper representatives were twice called

upon /



upon to give evidence at Police enquiries. The instances referred to are (I) "The Louw case", and (II) the "Carolina Murder case", both of which have been closely analysed in a subsequent chapter dealing with the Press and the Police.

Section 90 of the South African Defence Act 1912 provides that :

(1). In time of war no information with respect to the movements or dispositions of the Union Defence Force or other of His Majesty's forces or of His Majesty's ships shall be published in any newspaper, magazine, book, pamphlet, or by any other means, nor shall there be published any statement, comment, or suggestion calculated directly or indirectly to convey any such information, except when the information is furnished by the Minister or under his authority,

(2). No information, strategic plans for the defence of the Union or any works proposed or undertaken for or connected with the fortification or defence of the Union shall be so published at any time, except when furnished under authority as aforesaid,

(3). The breach of these sections renders the person responsible guilty of an offence,

(4). As is also any member of the Defence Force or any person employed in the Public Service who discloses the information.

In the Childrens' Protection Act 1913, Section 30 provides that :

"The publisher of any newspaper published in the Union shall on the request of the Magistrate of the District of publication disclose to the Magistrate the name and address of any person in the Union who has advertised in such newspaper that he is willing to adopt or to undertake the care of any infant. Any person failing to comply with this section shall be guilty of an offence under this Chapter, and Section 31 is liable to a fine not exceeding £100. (or six months).

Section 57 of the Children's Protection Act No.25 of 1913

"Empowers a Magistrate to order the Court to be cleared during the taking of a child's evidence, but sub-section 3 states : "Nothing in this section shall authorise the exclusion of bona fide representatives of a newspaper or news agency from any sitting of a Court". (163)

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163. It is interesting to note that a similar position obtains in England. "The question was raised last January in regard to the Children's Court. A request was mad at one of these

(continued at foot of next pg

This Act was amended by Act 26 of 1931 but this Clause remains unaltered.

Provision is also made in The Magistrates Court Act (No.32 of 1917) for the hearing of a child's evidence in camera, sub-section two of section five reading as follows :

"The trial of any child which is, in the opinion of the Court, less than 16 years old, may be held in camera, and in some other place than the ordinary Court room; provided that in such case the parents or guardian of such child shall have the right to be present thereat".

Sub-section (3) reads : "The Court may in any case, in the interest of good order or public morality direct that the trial shall be held behind closed doors....."

In neither case is mention specifically made of the Press but in practice the Press is not excluded from the Court when the above sub-sections are put into operation. The position in this regard in this country is therefore identical with that obtaining in England, as set out in the foregoing footnote. Section 6 of the Magistrates Court Act provided that "records and proceedings of the Court shall in all cases be accessible to the public under the supervision of the Clerk of the Court.....". There is therefore no attempt at "secret justice". The Magistrates Court Act No.32 of 1917 was amended by Act No.17 of 1932 but the above-quoted clauses remained intact.

By the Telegraph Messages Protection Act, 26 of 1917. Section I :

"Whenever /

163 contd. these

Courts that a case should not be reported, and in support the Bench was handed the report of the Juvenile Organisations Committee set up by the Board of Education in which a recommendation is made against publicity being given to the proceedings of Juvenile Courts. The Magistrate's Clerk, however, pointed out that the Magistrate had no power to exclude the representatives of the Press from the Court or to control the Press in regard to reports. If the Bench thought it desirable that any portion of the evidence in a case should not be reported they could ask the Press to omit it; but compliance with such a request would be purely voluntary". - Newspaper Press Directory, 1925, "The Legal Year in Relation to the Press", by P. Faschini.

"Whenever any message transmitted by telegraph from any place within or outside the Union for the purpose of publication in the Union has been received at any office of the Telegraph Department or at any other Telegraph Office authorised to receive such a message, no person shall, without the written consent of the person to whom the message is addressed, or his agent thereto lawfully authorised, print or publish the message, or the substance thereof or any extract therefrom, until a period of 72 days has elapsed from the time when the message was first published by some person entitled so to publish it; provided that such period shall not extend beyond 84 hours from the time when the message was received at a Telegraph Office aforesaid. Provided further that bona fide comment on such message by a weekly or monthly periodical shall not be considered an infringement of this section so long as the said comment does not appear within 12 hours after publication of the said message.

(2) During the period in which a message is protected under section one from publication, no person shall, without the written consent of the person whose written consent is necessary under that section, transmit for purposes of publication the intelligence contained in that message or the substance thereof or any extract therefrom".

Act No.13 of 1918, in regard to Title Deeds, provides for:

- (1) Notice of Application for Amended Title to be inserted in a newspaper, and,
- (2) for a Notice re Lost Title Deeds to be inserted in a newspaper.

In the Public Health Act 1919, Section 65 provides that :

- (1). "No person shall publish any advertisement or statement intended to promote the sale of any medicine appliance or article for the alleviation or cure of any venereal disease or disease affecting the generative organs or functions, or of sexual impotence, or of any complaint or infirmity arising from or relating to sexual intercourse.
- (2). "Any person who publishes any such advertisement or statement by printing it in any newspaper or exhibiting it to public view in any place or delivering or offering or exhibiting it to any person in the street....

shall /



shall be guilty of an offence".

Section 6 of the Children's Protection Act, Amendment Act No.26 of 1921, states :

"It shall be unlawful for any newspaper published in the Union to insert in such newspaper an advertisement or other intimation that any person desires an infant to be adopted or given into the care and custody of another person or that any person is willing to adopt or undertake the care of any infant, unless such publisher has first received the written permission of the Magistrate of the District to insert such advertisement or intimation".

Act No.11 of 1936 (Electoral Act,1918, Amendment Act), Section 40, requires that :

- (1). "The proprietor and publisher of a newspaper published in the Union shall in accordance with this section make or cause to be made a return of electoral matter in connection with any election inserted in his newspaper in respect of which payment was or is to be made to him, the space occupied by such electoral matter, the amount of money paid or owing to him in respect of such electoral matter and the names and addresses of the companies, associations, societies, trades unions, organisations, leagues, bodies of persons, or persons authorising the insertion thereof, or contributing such matter.
- (2). "In this section "electoral matter" includes advertisements, articles, and other matter which on the face of it are intended or calculated to affect the result of the election.
- (4). "The return made and filed in pursuance of this section shall, subject to such regulations as may be prescribed, be open to public inspection during a period of two years next after it is so made and filed, on payment of a fee of one shilling and the Administrator or the Minister concerned, as the case may be, shall during the same period, supply copies of or extracts from such return to any person demanding the same on payment of such fees and subject to such regulations as may be prescribed.

Section 5 provides a penalty not exceeding £500, with the addendum that, if after conviction, the proprietor or publisher

continues /



continues to fail to comply with Section 1 he shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding six months.

45. "The proprietor and publisher of every newspaper shall cause the word 'advertisement' to be printed as a headline to each article or paragraph in his newspaper containing electoral matter, the insertion of which is or is to be paid for or for which any reward or compensation or promise of compensation is or is to be made. The words 'electoral matter' used in this connection include all matters which on the face of it are intended or calculated to affect the result of an election and any report of the speech of a candidate if the insertion of the report is or is to be paid for. If any proprietor or publisher fails to comply with this section he shall be guilty of an offence and liable on conviction to a penalty not exceeding £50.

3. Every report, letter, article, bill, placard, poster, pamphlet, circular, cartoon, or other printed matter (hereinafter in this sub-section called a newspaper article) which on the face of it is intended or calculated to affect the result of an election and which is inserted in any newspaper or otherwise produced and which is published in the Union on or after the date for the commencement of such election, shall bear at the foot thereof the full name and address of the person by whom such newspaper article was written or produced, provided that, (a) any such newspaper article which is inserted in any newspaper as aforesaid and which has been altered materially by the editor of such newspaper, may also be signed by such editor. (b) in the case of a report of a public meeting which is written jointly by two or more persons it shall be sufficient for the purposes of this sub-section if the report as a whole bears upon the face of it the full names and addresses of the persons by whom it was written, and (c) in the case of headlines to any newspaper article which is inserted in any newspaper as aforesaid, and bills, placards, or posters, having reference thereto, and which are issued in the ordinary practice of a newspaper, it shall be sufficient for the purposes of this section if the full names and addresses of the persons by whom such headlines, bills, placards, or posters were written, and a statement that such were written by such persons is published in the issue in which such newspaper article is inserted.

In order to test Section 40 of the above

Act/

Act, the writer made application to the Chief Electoral Officer at Pretoria for permission to inspect the newspaper returns made by "The Rand Daily Mail" and "Ons Vaderland" in respect of the Von Brandis by-election which had just been contested.<sup>164</sup> The reply received was: "I have the honour to inform you that no returns of electoral matter published in newspapers in connection with the recent by-election in the Electoral Division of Von Brandis have been received in this office from the proprietors or publishers of the papers mentioned by you". Nor, it is safe to add, have they been received in respect of any other election at any other time. The Section is so much waste of paper. Newspapers do not rely, even in however small a measure, for their income upon the payment of politicians for electoral matter published in connection with any political contest.

Subsection 7 of Section 1 of the Riotous Assemblies (Amendment) Act 1930 provides that :

"Wherever the Governor-General is of opinion that the publication or other dissemination of any documentary information (as defined in sub-section 11) is calculated to engender feelings of hostility between the European inhabitants of the Union on the one hand and any other section of the inhabitants of the Union on the other hand, he may, by a notice published in the Gazette and in any newspaper circulating in the area where the said documentary information is made available to the public, prohibit any publication or other dissemination thereof.

Sub-sections (8) and (9) provide respectively that a copy of such notice shall be sent to the Editor or other responsible person by registered post, and that any person affected by a prohibition under Section (7), has the right of appeal to the Provincial or Local Division of the Supreme Court to have the prohibition set aside. Section(10) makes contravention of a notice published in terms of  
sub-section /

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164. Application was made on July 1st, 1932.

sub-section (7) an offence, while sub-section (11) defines "documentary information" as, "any book, foreign magazine, pamphlet, manifesto, foreign newspaper, handbill, or poster, or any article or advertisement, cartoon, picture or drawing in any periodical publication or newspaper.

While this Sword of Damocles has, as far as the writer has been able to ascertain not yet been applied to any newspaper, there can be no doubt that it has done much to tone down some of the more daring and out-spoken mouthpieces of the native races of the Union. It is a piece of repressive legislation comparable to the Kruger Press Laws which have already been discussed in this chapter and as such it must be condemned.

Section 19 of Act 25 of 1932 makes provision that certain information which should by law be published in a newspaper may be published in the Government Gazette instead. This measure was passed largely to reduce the substantial advertising expenses falling upon the Government. If rumour is to be believed, the Transvaal Provincial Council will be asked at its Sitting in 1933 to pass an Ordinance embodying a similar principle.

The final measure which now remains to be examined is Mr. Pirow's Newspaper Libel Bill. This Bill, which was introduced into the House of Assembly in 1931, was intended to provide a measure of protection for newspapers against unscrupulous persons anxious to mulct newspapers of damages for unintentional libel. In spite of subsequent correction. Its provisions were briefly as follows :

"When a libellous allegation in connection with any person is published in a newspaper, the person will not be entitled to any

damages /



damages if the person or body, from whom damages are demanded, can prove :

(a) That the allegation concerned has been published without intention to damage the person libelled; and

(b) that the allegation concerned has been published erroneously and that the error is not due to the gross negligence of the person who was responsible for the publication, or who helped in the publication; and

(c) that within a reasonable time after the publication concerned the newspaper publishes an adequate apology in a manner calculated to draw no less attention to it than that to the allegation."

Before its Second Reading the Bill was referred to a Select Committee which brought out a fresh Draft but the measure was taken no further. The summary of the work of the Select Committee, consisting of the Minister of Justice, (Mr. O. Pirow), Mr. R.W. Close, the Rev. C.W.M. du Toit, Col. C. F. Stallard, and Mr. Visser, can best be given in the form in which it appeared in the "Pretoria News".

"What Mr. Pirow intended to give the newspapers in the way of increased protection against libel risks with one hand, the Select Committee of the House of Assembly, to which his Newspaper Libel Bill was referred has taken away with the other. In the amended measure, which is to be brought up for second reading on Monday, all the legal intelligence of Parliament seems to have combined in making the last state of the Press worse than the first, and to ensure for the Lawyers a further prolific harvest.

There was a general criticism against the original draft that, brief and simple as it was, it still exposed the newspapers to vexatious litigation at the hands of men of straw. The new Bill is much worse.

It lays down that in any newspaper report the proceedings of Parliament, Provincial Councils, Law Courts, any ecclesiastical body or local government authority, or any public meeting "any statement which solely by reason of an inaccuracy in such report is defamatory, no person shall be entitled to recover damages for such defamation from any person concerned with the publication of such newspaper, if the person from whom the damages are claimed proves :-

- (1). That the inaccuracy was published bona fide in error and that such error was not due to want of reasonable care on his part, or on the part of any person who effected or assisted in effecting such publication, whether by reporting or otherwise; and
- (2) that within a reasonable period after the date on which the inaccuracy became known to him an adequate apology was published in three successive issues of such newspaper at the foot of the leading article.

Notwithstanding such apology, any person so affected shall still have the right to recover damages to the extent of his actual loss in respect of such defamatory statement. (165).

The most amazing feature of the Select Committee's deliberations was the fact that the Minister on each and every occasion voted in favour of the provisions of the new Draft Bill. Before the report of the Select Committee was published, the "Sunday Times" highly commended the Minister of Justice for his friendly gesture. "Every newspaper in South Africa", it declared, "will be grateful to Mr. Pirow for the protection likely to be afforded by the measure. but Mr. Pirow's measure does not go far enough". If the same paper were to have commented on the new Draft Bill as it appeared in its disguised, unrecognisable, and mutilated form from the Select Committee, its comment would probably have been that it did not go anywhere at all! It is to be hoped that the Bill, now lying dormant in a pigeon-hole, will not be resurrected.

The writer has obtained a number of interesting cases in which South African newspapers have been brought before both the criminal and civil Courts of this country but space forbids even a brief summary of these cases here. Nor

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165. The writer, in his capacity as President of the Pretoria Branch of the South African Society of Journalists, in his annual report for 1931, wrote of this measure as follows : Mr. Pirow's Newspaper Libel Bill, which emerged from the Select Committee in an almost unrecognisable form, has fortunately not been translated into law and it is to be hoped that it will not be placed on the Statute Book in its present form. This is a matter to which the attention of the incoming Council (of the Journalists' Society) should be devoted without delay."

166. Proceedings of the Select Committee, April, 1931.

do they, in any event, come within the strict compass of this investigation which is in the nature rather of a historical survey of legislation affecting the Press than of a consideration of these laws in actual practice. The inclusion of the latter term of reference would necessitate the devotion of an entire volume to this aspect. Nor is it intended to deal with the law regarding copyright, or the position of the Press in times of Martial Law. Both these matters are of first-rate importance and justice could not be done to them in any scanty survey. They are recommended as a fruitful field of research for other investigators in this field.

Having attempted to give a thoroughly comprehensive, but not entirely exhaustive, survey of the position of the South African Press as determined by the Statute Book, the writer will conclude this chapter with a few references to the position of the Press in other countries in order to show, in spite of practical grievances, that South Africa has little to complain of as far as the liberty of its Press is concerned.

Before leaving this chapter, the writer would like to comment upon the provision made by the State for the proper recording of both old and current newspapers and of their attitude towards research workers. The Cape Archives is virtually the only storehouse in South Africa of any considerable quantity of early South African newspapers, although the Natal Archives have a complete record of all the early newspapers in Natal, most of which are now sleeping the sleep of the just. As far as current newspaper records are concerned, it is not compulsory for a newspaper to register itself, but, in order to obtain the benefit of the lower postal rate, newspapers invariably do register themselves



at the Post Office. Not all applications are approved of, however, as there are a number of publications in the Union which do not come within the definition of a newspaper as laid down in the Post Office Act. The Post Office, doing no more than its duty, keeps only a current register of newspapers. The registration system of the Department of the Interior is hardly more effective.

Investigations made by the writer revealed the fact that newspaper registers kept in the Department of the Interior are in respect of newspapers published in the Transvaal and Natal only, there being no law in the Free State providing for registration, while, under the relative act in force in the Cape Province registration was effected with the Civil Commissioner, now the Magistrate, so that in that Province the records are not centralised. The records of the Department of the Interior represent therefore only a portion, and probably not the greater, of the newspapers published in  
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the Union.

This seems a grave mistake. Newspapers are the best sources of information for persons engaged upon problems affecting current history and reflect in a manner not otherwise possible the changing modes and manners of passing generations. Failure to remedy this defect will mean the irrecoverable loss of valuable information regarding South Africa's national life, customs, and problems.

The writer wishes further to place on record the fact that a source of information-- the value of which is not known because it could not be tested-- was denied him because "it is not the custom of the Department of the Interior

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167. The Secretary for the Interior in a communique to the writer.

to permit the inspection of its records before they become part of the state Archives"!

In a subsequent chapter ("Press and Politics") mention will be made of suggestions made in Great Britain to clip the wings of newspapers which repeatedly and unremittingly attacked the Government.

While the idea remains in the realm of theory in Great Britain, a very similar scheme has already become effective in Germany, where, by decree, newspapers are compelled to publish all Government manifestos and proclamations gratis and any newspaper attacking the Government is forbidden to comment on the Government's reply to it in the same issue in which the Government's reply appears. <sup>168</sup> Comment in subsequent issues on the Government's reply is not prohibited.

The position in Germany in regard to the Press is determined by Article 45 of the constitution. Under this Article a position now prevails in that country similar to that in the Transvaal in the days of President Paul Kruger. <sup>169</sup> That G.P. Gooch has every justification for his statement that the freedom of the Press was not unqualified was demonstrated in July 1932, when the Supreme Court of Leipzig upheld the Government's ruling suppressing the newspaper "Volks Zeitung" for three days. The Supreme Court similarly upheld the Government on July 1st, 1932, regarding the suppression of the <sup>170</sup> "Vorwaerts".

Drastic action was taken by Mr. Mcullin's <sup>171</sup> Government in Australia in the previous year. An Australian /

- 168. "Natal Witness", 1931.
- 169. "Germany", page 106.
- 170. "Star", July 6th, 1932.
- 171. "Star" — 1932.

*Since Hitler's advent these examples could be multiplied tenfold.*

Australian journalist who secured the text of the cables between Mr. Scullin when in England and his colleagues in Australia was interrogated by the Attorney General who demanded to know how the contents of the cables had been secured. The journalist refused to tell on the ground that he would be violating the ethics of his profession. The Australian Cabinet thereupon retaliated by banning him from all Government Offices and asking the Speaker to refuse him admittance to the precincts of Parliament. The Speaker complied with the request and the Pressman was expelled from the Federal House of Representatives. Under what statutory authority this was done is not known.

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A message to the "Star" from Tokio shows how discriminatory and invidious is the legislation affecting the Press in China. Some of the relevant facts in the message are as follows :

"The Chinese attitude towards Japanese newspaper correspondents is regarded here almost as a challenge to the freedom of the Press. So oppressive have been the recent measures against Japanese and other foreign Press correspondents in China that it is felt they had not been able to do their duty properly.

Leading Japanese newspapers, constituting the Shimbun Renco, or associated press of Japan, therefore called an urgent conference of their representatives yesterday. This meeting decided to request Baron Shidehara, the Foreign Minister, to demand immediate cancellation of the Chinese Government's orders prohibiting Renco correspondents from telephone and telegraph facilities in China.

The attitude of the Chinese Government dated from the resignation of the Minister Hu Han-min, state councillor, and President of the Legislative Yuan. They reported the full facts of Hu Han-Min's detention, although they also gave full publicity to the views of President Chiang Kai-shek, and statements from other official sources.

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The Chinese authorities, it is said, urged the Japanese representatives to "correct" their reports, and to state that the Minister had resigned of his own accord, and not as a result of his detention by Chiang Kai-shek.

The Japanese correspondents said they were prepared to publish the facts of the case if they could have an interview with Hu Han-min, but the Chinese authorities refused to agree, and deprived Japanese journalists in Nanking of all facilities for sending and receiving messages.

As the result of a protest to the Japanese consul in Nanking, the ban was lifted after five days for Japanese journalists other than the Renco correspondents.

The Chinese authorities have unofficially suggested that the Renco correspondents in Nanking should be replaced, but the Renco has refused to agree, and the Chinese authorities have prohibited the association's correspondents throughout China from the use of telephones and telegraphs, giving no reason for their decision".

Since the "March on Rome" in 1922 the position of the Italian Press has undergone far-reaching modifications. Those newspapers which are not Fascist are hardly newspapers at all and their number is rapidly becoming more and more negligible. Mussolini, himself at one time a journalist and Editor of "Il Popolo d'Italia", cannot be congratulated on the suppressive measures to which he has subjected the Italian Press. If the axiom that the greatest countries have the freest Press can be accepted, then Italy has indeed been reduced in status. A Regime which depends for its permanency upon such oppressive measures cannot be said to be built upon firm foundations. "The Fascist Experiment" by Luigi Villari demonstrates strikingly how the Italian Press has been muzzled. Enforcement of the Government decree of July 15th, 1923, together with further provisions contained in a decree of July 10th, 1924, placed an effective restraint upon the Press, which was prevented from publishing seditious articles. "Opposition and even

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Fascist /

Fascist papers were frequently confiscated for publishing seditious comments, although they were not prevented from publishing facts or news" ("The Fascist Experiment" page 212).

The decrees, being temporary measures, were supplanted by an Act of Parliament in December 1934, which largely embodied their oppressive provisions of the decrees. The Act further created an Order of Journalists in every town where there is a Court of Appeal and the journalistic profession can only be exercised by persons registered in the said Order, while the Prefect is empowered to issue a warning to any newspaper which publishes false statements calculated to injure the credit of the country, to hamper its diplomatic action, to provoke breaches of the peace, or if it instigates others to commit seditious acts, insults the King, the Royal family, the Pope, religion, and the heads of friendly States ("The Fascist Experiment", page 211).

Villari's view is that, apart from the advent of Fascism, this was a natural reaction to the unlimited liberty which the Press enjoyed under the Edict of Carlo Alberto of 1848. The Press apparently abused these privileges and "the most unlimited licence prevailed".

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A Bill is at present under consideration by the Chamber of Deputies at Athens whereby penalties will be exacted for the deliberate publication of false news, insulting foreign rulers and States, and making derogatory references to public functionaries. The Bill provides for the banning of obscene matter and details of crimes and

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174. This clause rings strangely when one recalls the methods by which Mussolini and his "Black Shirts" sky-rocketed their way to power.

175. 1932.

criminal trials. Directors of Corporations will be entitled to reply to criticisms no less prominently printed, and if a penalty is inflicted, the Courts may be empowered to seize the printing machinery until the fines are paid. The provisions of the Bill appear to be more drastic than they actually are, as it is obvious that the better class newspapers will not be affected. The Bill obviously aims at putting a stop to the more sensational and less discreet type of newspapers, whose aim is directed at circulation even if prestige has to be sacrificed in the process. More responsible Press organs realise that the latter is of even more importance than the former.

The new Turkish Press law, which passed the Angora Government last year, contains some drastic provisions, as a result of which the Press has to a large extent been muzzled. The avowed object of the legislation was to eliminate anti-Kemalists from the profession of journalism and to produce a more dignified and responsible Press. One of the means adopted to secure this end was the provision that all facts relating to the Police must not be "written up" but must be published in the exact form in which the facts are supplied by the Police.

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The "Star": -

\* This was inserted in the law chiefly to stop the sensationalism due to highly-coloured presentations of murders and suicides. The latter have recently become so frequent, especially among the young and among Turkish women and students, that suicide is almost epidemic. There is no doubt that Press publicity, especially interviews with those who have attempted suicide, which have become a "feature" in certain Turkish newspapers, has contributed to it. But while it is considered reasonable to stop such publicity,  
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176. "Natal Witness" 1931.

177. March 3rd, 1931.



and also to prevent the detailed reporting of divorce proceedings - another provision of the new law- it is doubted whether murders should be included under the ban on reporting. Turkish journalists are inclined to criticise the law on this ground, saying that too much power is being given into the hands of the police and that, if occasion arises, they may hush up political or other murders of which it would be to the advantage of the public to have full details. But the dread of Press sensationalism and Press influence on the morals of the public overweighed this danger in the eyes of the framers of the law.

"No newspaper articles may be published advocating the restriction of births or bearing unfavourably upon the institution of monogamous marriage. Anti-birth and anti-marriage propoganda was already doing harm in the country, whereas the chief need of Turkey was a development of population. What was the good, of prizes for large families if the cynical views of the family prevalent now in Western Europe were allowed ventilation?".

"Meanwhile, to apply the law, which has some 50 provisions, vast commissions have to be set up at Angora and Stamboul to "watch the Press". It is interesting that the stamboul Commission will probably be headed by a Turkish woman. This will not militate in favour of leniency. To meet the new conditions, several newspapers owners whose past is equivocal, are "retiring from the profession" and are transferring their papers to their wives".

These references have been included to show that the freedom of the Press is still an ideal for which the Eastern countries will have to fight, persistently and hard, if they are to fulfil the public trust which it is the duty of every newspaper to fulfil. Suppression of facts is an invidious and futile method of endeavouring to maintain an artificial state of affairs in any community. If Turkish citizens have a tendency to restrict families, they will do so, whether or not goaded on by the Press. On the other hand the Turkish Press, in order to obtain the repeal of the restrictions which at present shackle them must set their own house in order and show by the expression of moderate and sane views, and by a fair presentation of facts that its desire is by no means to be extremist but to give a fair reflection of the state of the country as it finds it. The best Press censorship is public opinion.