

THE E.T.U. CASE

A Study of Communism at Work in a Trade Union

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INTRODUCTION

The Issues and the Personalities

The Electrical Trades Union case is one of the most important in the history of British trade unionism. Allegations of a conspiracy to ensure Communist control of an important trade union were tested in open court, where rules of evidence apply, and where rumours and hearsay are not accepted as evidence.

As the evidence was presented, a story as fascinating as any work of fiction was revealed. This, however, was not fiction. It was fact, supported by overwhelming evidence and sifted by Mr. Justice Winn.

It will facilitate reading of the booklet itself if the following summary of the issues and personalities is first set down.

The action was brought on April 17, 1961, by two members of the Electrical Trades Union, Mr. John Thomas Byrne, of McGregor Street, Clydebank, Glasgow, and Mr. Frank Chapple, of Ravensdale Road, London, N.16, against Mr. Frank Foulkes, of London Road, Bromley, then President of the E.T.U.; Mr. Frank L. Haxell, Clarence Road, Bickley, Bromley, then General Secretary of the E.T.U., since resigned; Mr. R. G. McLennan, of Bromley, then Assistant General Secretary of the E.T.U.; Mr. J. N. Frazer, of Lewisham Hill, S.E.19, then an Executive Council member of the E.T.U.; 12 other members of the Executive Council and officials of the union, namely Mr. James Cosby, Mr. Ivor Davies, Mr. James Feathers, Mr. Samuel Goldberg, Mr. John Hendy, Mr. Ronald A. Sell, Mr. H. West, Mr. A. C. Batchelor, Mr. George

Scott, Mr. J. Humphrey, Mr. J. W. Rengert and Mr. Charles Shipman, and against the union itself, for, *inter alia*, a declaration that the election in December 1959 of Mr. Haxell as General Secretary of the union was contrary to the rules of the union, *ultra vires*, illegal and void and that Mr. Byrne was validly elected General Secretary; alternatively, that the union was bound forthwith to hold an election; damages for conspiracy; and further relief, in particular an order requiring the union to hold the forthcoming (Executive Council) elections under the control and supervision of members other than the defendants.

Leading Counsel for the plaintiffs was Mr. Gerald Gardiner, Q.C., and for the defendants, Mr. Neil Lawson, Q.C.

CHAPTER ONE

How the Communists Achieved Control

Its [the Communist Party's] most active and craftily planned arrangements operate inside the trade union movement. The successful working of these arrangements is secured only by the co-operation of individual trade unionists, *not a few of whom hold official positions in their unions*. Without this co-operation the aims of the Communist organisation cannot be effectively furthered, since the Party centre, *which directs the whole of these subversive activities, exists outside the trade union movement*.

This statement, taken from a Trades Union Congress pamphlet, "Defend Democracy", adequately summarises the central issues of the E.T.U. case. It added:

Interference by the Communist Party in the domestic affairs of affiliated unions has been constant for many years, and that conspiratorial work has grown.

This document was published in 1948—just about the time when Communist Party members secured and consolidated their control of all the top positions in the E.T.U.

With their successes in this union in mind, the Communist Party laid it down in the following year that organisation in the workshops was the "indispensable main basis of the Party's strength" and that members must "secure and extend the leading positions of Communists in the trade unions".

Yet only five years before the Communists captured the E.T.U. a special conference of representatives of the union, held at the Conway Hall, London, found the Communist Party guilty of interference in the internal affairs of the union. A further resolution, moved by Mr. E. W. Bussey, the General Secretary at that time, urging that Party members be debarred from holding official positions in the union, was withdrawn through lack of support.

The warning was given—and ignored by the bulk of the E.T.U. members. The product of this apathy is now there for all to see. Indeed, the Communists were able to press ahead

with their plans to capture the union in the belief that they could do so unchallenged by the majority of rank-and-file trade unionists.

The reason why the E.T.U. was top of the Party's priority list is clear. The membership, now about 240,000, largely consists of key men. They are to be found in every important industry. Leadership of the E.T.U., therefore, carries immense potential power. So far the ability to use this position of strength to undermine the British economy has been reasonably well contained by other, even more powerful, unions with which the E.T.U. in most industries has to co-operate.

Nevertheless, the danger has been more acute than is generally appreciated. In 1957 the Communist Party came perilously close to capturing the million-strong Amalgamated Engineering Union. If a Party member or nominee had won another seat on the seven-man National Executive Council it would have passed under Communist control.

The domination by the Communist Party of both the E.T.U. and the A.E.U. would have given them power of frightening potentiality in the unions and in industries of vital national importance. The fact that this did not happen—or has not happened so far—is in no small measure due to the courage with which many non-Communist union leaders have fought back in defence of their organisations.

These men have been severely handicapped by lack of interest on the part of the majority of trade unionists, but it is on these people that, notwithstanding the decision of the High Court and the subsequent action by the T.U.C., the future of trade unionism depends. For this reason it is imperative that the methods used by the Communists to secure and retain control of the E.T.U. be clearly understood.

The general principle is one which applies to Communism everywhere—once the Party is in power, it uses every conceivable method of safeguarding itself against defeat. In other words—once a Communist state, always a Communist state.

The threads of the present story can be picked up from December 1947. Already Mr. Foulkes was the union's President. In that month the post of General Secretary was con-

tested by Mr. Byrne and a Communist, the late Mr. Walter Stevens.

Mr. Byrne was defeated, but the size of his vote so startled the Communists, who already dominated the National Executive, that they held an inquiry and decided that one important factor was that in his election address Mr. Byrne referred to himself as a member of the Labour Party, and suggested that the time had come for Communist domination of the union to be ended.

It was promptly laid down that henceforth no candidate for a full-time national office would be allowed to mention his political beliefs or those of his opponent.

It was further ordered that "candidates be instructed to submit election addresses to the head office of the union" before they were sent out.

Regarding this latter provision, there have been two recent cases where the election addresses of anti-Communist candidates were censored before being circulated.

One was that of Mr. W. T. Sullivan, a candidate for the post of National Officer, from whose "message to members" key statements were deleted at E.T.U. headquarters. The second concerned Mr. Chapple, one of the plaintiffs in the present law suit, who in May 1960 successfully contested in court the E.T.U.'s action in "editing" his election address when standing for the position of Assistant General Secretary, held by a Communist, Mr. R. McLennan.

Notwithstanding the changes in the rules, however, another shock awaited the Communists in June 1948, when the persistent Mr. Byrne fought Mr. Frank Haxell for the Assistant General Secretaryship of the E.T.U.

On the first ballot Mr. Byrne polled 27,587 votes, against Mr. Haxell's just over 25,000. A third candidate polled sufficiently well to prevent Mr. Byrne from achieving an overall majority by the narrow margin of 229. In the final ballot Mr. Haxell polled 33,399 against Mr. Byrne's 28,732.

This began a long series of charges that ballots were being rigged in favour of the Communists. It was openly stated at the time that the returns had been falsified by Communist-influenced branches. Certainly when the detailed results be-

came known there were some startling discrepancies.

The same has applied to many key elections since that time. One which did more than most others to step up the controversy both inside and outside the E.T.U. took place in 1957, when Mr. Les Cannon, an ex-Communist who was at one time Principal of the E.T.U. College, challenged Mr. J. Frazer, Communist, for an important seat on the Executive.

It was generally believed that Cannon had won, and indeed this point was more or less conceded during the High Court action. Ultimately Frazer was declared elected after the votes of several branches had been disallowed under peculiar circumstances.

The Communists reacted in what is now a familiar fashion. The seat in question carried with it automatic membership of the five-man sub-committee (often referred to as the "inner cabinet") which controls the union between the quarterly meetings of the full Executive.

The election of Cannon would have broken the complete Communist monopoly on this sub-committee, and it is important to note that all the decisions of this body must be unanimous. Even worse from the Party's point of view was the fact that Cannon is not just an ordinary anti-Communist: he is an ex-member who knows and has practised all the Party techniques.

Following this narrow escape, another change in rules was pushed through so that at the time of the case the union's sub-committee was made up of the President, General Secretary, Assistant General Secretary, and any two Executive Councilmen appointed by the Executive Council.

It is understandable, therefore, that after the Frazer/Cannon contest charges of election rigging and Communist Party control of union affairs became more frequent and more detailed. The E.T.U. leaders attempted to create a smoke screen by alleging that the union was the victim of a vicious Press campaign. What could not be hidden, however, was that the charges which were the subject of the High Court case were not laid by the newspapers, but by E.T.U. members. The supporting evidence was also given by members of the E.T.U.

CHAPTER TWO

“Democracy in Action”

During the whole of the controversy the Communist leaders of the E.T.U. have had, as one would expect, a staunch ally in the *Daily Worker*. It conducted a smear campaign against critics of the way in which E.T.U. affairs were being managed, and publicised with full credits any negotiations successfully concluded by the union. Typical of its propaganda was an article published on December 7, 1959, under the title “E.T.U. at Work: A Study in Democracy”.

When, however, Mr. Haxell was declared re-elected to the post of General Secretary, nothing could stop the controversy, already intense, from becoming so acute that the defensive manoeuvres of the Communist leaders were inadequate to keep it under control.

One of the many questions of importance to the trade union movement as a whole which arose at this time was whether the issues could be resolved within the E.T.U., or even within the trade union movement, without costly and lengthy recourse to law.

Theoretically the E.T.U. rules enable members in their branches to control the Executive and to force action should any mistakes or malpractices be unearthed. In fact, the so-called “democratic safeguards” were useless against well-organised Communist intrigues and propaganda which amounted to downright lying.

What, for instance, could the branches in which a majority voted for Mr. Byrne, but whose returns were disqualified for an alleged breach of rules, do to correct any injustice which existed? When Mr. Foulkes was questioned on this point during the B.B.C. *Panorama* programme on February 22, 1960, the following exchanges took place:

Mr. Freeman: Then it is up to any Branch Secretary who feels that he has been badly treated to appeal and bring his witnesses?

Mr. Foulkes: It is up to the Branch to appeal, not just the

Branch Secretary. The Secretary has to convince his Branch that he was correct, and the Branch makes an appeal.

Mr. Freeman: So where a Secretary did post in the presence of witnesses, and all are prepared to swear, then an appeal can be heard. And what then?

Mr. Foulkes: And the witnesses will be heard.

Mr. Freeman: And roughly the Executive Council can overrule the decision of the scrutineers?

Mr. Foulkes: The Executive Council would consider the witnesses and it may lead to myself and the scrutineers being charged.

Mr. Freeman: Yes, but let's just have a clear answer to that question. Has the Executive Council the power to overrule the scrutineers?

Mr. Foulkes: No, the Executive Council have the power to institute the appeals machinery, and the members of the union have the right to overturn any decision of the scrutineers.

Mr. Freeman: Months ahead?

Mr. Foulkes: Yes.

The truth, however, emerged during the High Court hearing, when, in reply to Mr. Justice Winn, Mr. Foulkes stated that in his view the Executive Council had no alternative but to accept the scrutineers' report. Then came the all-revealing question and answer:

His Lordship: So it is a mere façade. All the talk in this Court about whether a Branch has a right to appeal against the acceptance of the report is so much wasted air?

Mr. Foulkes: Yes.

His Lordship: Then why have a motion about it? Are you playing fairy tales? It is like children playing at shops with no real money to pass over the counter.

When Mr. McLennan was in the witness box he, too, left no doubt about the power of the Communist-dominated Executive Council to do exactly what it liked:

Mr. Gardiner: Except by bringing an action in the Courts, there is no way in which an ordinary member can bring a charge against a member of the Executive Council or a full-time official?

Mr. McLennan: He can report the matter to the Executive Council.

Mr. Gardiner: Oh yes, but if the Executive Council chooses not to take any action, they need do nothing about it?

Mr. McLennan: The Executive Council is free to act as they see fit.

It is clear that, notwithstanding the so-called democratic rules of the union, the rank-and-file had very little hope against Communist-dominated committees sheltered behind a rule book of immense complexity.

Nor was it possible to force the Communists into the open, even in defence of their own reputations. This is how the point was put and answered during the *Panorama* programme:

Mr. Freeman: Mr. Foulkes, you do realise, don't you, that these charges concern you personally. Now your own answers show quite clearly that these are not just charges of administrative inefficiency. You assured me this evening that you, yourself, presided over the scrutiny and so on. If they are not administrative inefficiency, then they are charges that amount to charges of fraud and perhaps Communist conspiracy.

Mr. Foulkes: I don't want anybody to prove my innocence, and I am quite well able to stand up to any charge of criminal conspiracy.

Mr. Freeman: Well, now, why don't you do so? You have a very simple remedy. You can go to the Courts tomorrow morning and issue writs for libel against me, against the B.B.C., against all the papers that have attacked you, and against the four gentlemen [E.T.U. members] who appeared in last week's programme.

Mr. Foulkes: Because my experience of the Courts is that

while you may ultimately get justice, your character may be spread all over the papers, and it is worth less when you come out of the Courts than it was when you went in.

The fact is, of course, that charges against E.T.U. leaders were already spread all over the newspapers as a result of allegations made by rank-and-file members of the union. Further, no one can doubt that if Mr. Foulkes had successfully pursued a libel action against the Press and the B.B.C. the damages would have been astronomical.

The T.U.C. fared no better in its attempt to get the charges investigated by an impartial court or committee. In assessing its actions, it must be appreciated that the E.T.U., like other affiliated organisations, is a self-governing body, and that consequently there is a limit to the power of the T.U.C. to intervene in internal disputes.

Under Rule 13, however, the right exists for the General Council to investigate the conduct of any affiliated union if its activities are thought to be "detrimental to the interests of the trade union movement".

An exchange of letters between the General Council and the E.T.U. was both fruitless and frustrating. On November 25, 1959, the General Council wrote to the E.T.U. referring to a previous communication from that union. It said:

Having regard to its timing and its contents the General Council can do no other than take your letter of November 18 as further and, indeed, conclusive evidence that the majority of the present leadership of the Electrical Trades Union is more concerned to evade than to deal adequately with the questions put to your Union by the General Council and to delay rather than to assist the General Council in bringing this matter to a conclusion.

In the same letter the General Council stated that it had come quite firmly to the conclusion that the main reason why the Communists in the E.T.U. had consistently sought to evade and to delay dealing with the charges publicly made against them was because they were aware that "there is so much substance in these charges that they are unwilling to

have them thoroughly investigated and unable specifically and unequivocally to deny them”.

The correspondence between the General Secretary and the E.T.U. went on right up to the opening of the High Court proceedings. As early as March 23, 1960, the union was virtually ordered either to institute legal proceedings against one or other of those who had alleged malpractices, or alternatively to agree to an inquiry conducted by a person of judicial authority and ability not connected with the trade union movement.

On April 27, 1960, the General Council stated that failure to accept one of these alternatives would result in the E.T.U. being suspended from membership of the Trades Union Congress.

The correspondence ended when writs were issued by Mr. Byrne and Mr. Chapple against the E.T.U. leaders, and in the light of all the evidence it is difficult to see how within this so-called democratic organisation there was any other way in which the methods used by the Communists to maintain their grip on the union could have been thoroughly examined and exposed.

CHAPTER THREE

How Communists Were "Elected"

As the rules stood, it was pathetically easy to rig E.T.U. ballots. The safeguards embodied in the electoral system are inadequate almost to the point of non-existence. All that was required to secure the "election" of Communists was for Party members or sympathisers to collaborate in one or more of several methods of falsifying the results.

The voting system was that ballot papers were sent to branch secretaries and then distributed to members, who could vote in one of three ways—handing the ballot paper to a shop steward, sending it by post, or by attending a branch meeting.

Judging by evidence given in Court, branches had no difficulty in obtaining extra ballot papers if they wanted them. Indeed, it was disclosed that some 26,000 of them were lying around at union headquarters.

Agreeing how many of the normal branch members are entitled to vote is one of the problems that makes it easy to "cook". Sometimes the discrepancies are fantastic. For instance, after the highly controversial Frazer/Cannon election at the end of 1957, Mr. Haxell asserted that only 385 of the 1,084 members of the Mitcham Branch were eligible to vote. On the other hand, the branch officials, after checking the ledger, claimed that over 1,000 members were entitled to take part in the ballot. It is almost superfluous to add that the branch overwhelmingly supported Les Cannon, and that its returns were disqualified.

Such chaos provides great opportunities for dishonest practices. The charges relevant to the Haxell/Byrne election were outlined by Mr. Gerald Gardiner, Q.C., representing the plaintiffs, in his opening address before Mr. Justice Winn on April 17, 1961.

Prior to this, on the first day of the case, however, it is noteworthy that the defendants, through their counsel, Mr. Neil Lawson, Q.C., had abandoned any pretence that Mr. Haxell had been validly elected. As Mr. Lawson put it, the exhaustive

preparations for the case had revealed mistakes made by branch secretaries and irregularities in the scrutiny of the votes, and "in the circumstances the defendants do not now seek to uphold the validity of the election".

In opening the plaintiffs' case, Mr. Gardiner stated that the E.T.U. had 241,000 members and 703 branches. Only about 37,000 members troubled to vote at the election. The plaintiffs' case was that the defendants had conspired by breaches of union rules and by unlawful fraudulent practices and advice to prevent non-Communists being elected to union posts, and to secure the election of Communists.

They also claimed that some of the defendants were on Communist Party committees and that at meetings arranged by these committees decisions were taken as to who would be candidates for official positions in the union.

The charges against the E.T.U. leaders can, therefore, be summed up as follows :

- (1) That elections were falsified by various methods, so as to ensure the return of Communists and fellow-travellers to official positions in the union.
- (2) That the Communist Party, through advisory committees, exercised control over the E.T.U.

It was the plaintiffs' case that the "election" of Mr. Haxell to the position of General Secretary was achieved through the connivance of Party members at the union's headquarters, and their supporters in Party-dominated branches.

The methods of falsifying returns in the branches included the altering of figures. Mr. Gardiner instanced the Slough and Windsor Branch minutes, which showed 27 votes for Mr. Byrne and 42 for Haxell, with one spoilt paper.

The minutes of the Executive Council, however, reported Byrne 27, Haxell 69. The branch scrutineers' report to Head Office revealed when examined that the figure 42 had been obliterated.

Another example mentioned by Mr. Gardiner was that of Preston. It was alleged that someone at the union's headquarters had altered the number of votes cast for Haxell from 101 to 191.

A second method of rigging the vote was the circulation of ballot papers to some branches in excess of their legitimate requirements. Mr. Gardiner divided these into four categories. The first he called "arrivals before departure". Examples included Woolston, where the branch secretary received four ballot papers duly completed about six hours before he posted the forms to members. At Hythe the secretary received six postal votes on December 15, although he did not send out the blank forms until December 17.

The second method Mr. Gardiner referred to as "peculiarities". He instanced Belfast, where "they had an absolute avalanche of postal votes". Never in ten years had so many been received and "*at least 48 were posted in the same pillar-box*".

The third he called "unduly large postal votes". After stating that the normal maximum postal vote was about 20 per cent, he pointed out that in the London North-West Branch there were 125 postal votes out of 172. Other figures he gave were: London South-West, 250 postal votes out of 313; Peckham, 153 out of 190; London Station Engineers No. 9, 124 out of 148; London Station Engineers No. 11, 401 out of 500; and Hayes, 286 out of 309.

The fourth group involved five branches where, Mr. Gardiner submitted, there was direct evidence that the additional voting papers had come from Head Office or the printers. Invoices from the printers indicated that 35 extra papers had been sent to the Hendon Branch, but the person to whom they had been sent was not the Branch Secretary.

Notwithstanding these manoeuvres at branch level, a shock awaited the Communist leaders at union headquarters. As the returns came in it was obvious that Mr. Byrne had won the election, and that the Party monopoly at Hayes Court had been broken. The post of General Secretary, apart from such important functions as control of headquarters staff and responsibility for the union's magazine, carries membership of the five-man sub-committee which actually runs the union. Only by disqualifying enough pro-Byrne branches and by reversing the decision of the E.T.U. members—or those of them who voted—could complete Communist control of the union be maintained.

Consequently, 109 branches had their votes rejected. In all but three of these the majority voted for Mr. Byrne. The other three gave Mr. Haxell an advantage of just three votes.

How the E.T.U. leaders justified declaring the election returns of over one-seventh of the branches null and void made fascinating reading as the evidence was presented in Court.

Eighty-five of the branches were disqualified on the sole ground that the papers were said not to have been received at headquarters within the prescribed five days.

Witness after witness—all E.T.U. members—went into the box and in effect accused the leaders of deliberate lying.

Mr. Cecil Keill, Secretary of the Gilmoor Branch, Liverpool, reported that his branch voted 154 in favour of Byrne and 20 for Haxell. The return was posted at 11 p.m. on December 21, 1959 (the night the ballot took place), but he was later informed that it had been rejected by the national scrutineers on the grounds that it arrived too late.

After writing a letter to Head Office in protest against what he described as this “ridiculous and farcical excuse”, he later attended headquarters, where Mr. McLennan and Mr. Frazer produced an envelope alleged to be the one in which the return was sent. It was date stamped Liverpool, 1.15 p.m., January 2, 1960.

Mr. Keill stated in Court: “This was not my envelope. All mine are franked ‘West Derby’. In any case, when this was posted I was on duty five miles away from the nearest Liverpool post box.”

Mr. Alexander Sinclair, Secretary of a Cumberland branch, stated that at his election meeting on December 15, 1959, the voting was Byrne 24, Haxell 1. The branch return was posted at Silloth Post Office the next evening. When he attended Head Office he was shown an envelope marked Carlisle, January 1, 1960. On January 1, he said, he was on holiday in Scotland with his family for Hogmanay.

Mr. John Varty, Secretary of the Kendal Branch, said in Court that his branch held their ballot on December 18, and the voting was Byrne 49, Haxell 9. The returns were posted at Windermere Post Office at noon on December 19. He was

later told that the branch votes had been rejected because of lateness, and the envelope had been postmarked 9.30 a.m., January 2, Westmorland.

Mr. James Paterson, Secretary of the Ayr Branch, said that his branch voted Byrne 101, Haxell 4, on December 22, 1959. The meeting ended at 8.45 p.m., and at 9.40 p.m. he posted the returns at the Ayr General Post Office. He later read in a morning newspaper that his branch votes had been rejected, and was told by Head Office that they had arrived too late. When he later attended headquarters he was shown an envelope, said to be his branch's, postmarked 2 p.m., January 2, 1960.

Mr. Richard Fenwick gave evidence that he was a scrutineer at the election in the Jarrow Branch in September 1958, when the post of Area President was being contested. The branch secretary, who had stood as a Communist Party candidate in local authority elections, was a candidate. At the meeting the branch secretary handed to the witness 63 postal votes which had been received by him.

The witness considered that this was an unusually high number of postal votes, as the branch average was about four. He examined the envelopes, and found that 61 had the oblong Empire Games stamp, and were all posted in the same place at the same time. All the votes contained in the envelopes were for the branch secretary.

Mr. James Irving, former Secretary of the Falkirk E.T.U. Branch, said that he attended the ballot meeting of the Kirkcaldy Branch on December 18, 1959. The voting was Byrne 94 and Haxell 113. Two days later he told Head Office that there had been several breaches of rules during the balloting. On February 9, 1960, he was informed that his complaint had been investigated, and his allegations of breaches of rules had not been established. He had never been invited to attend any inquiry into his complaints. He was completely astounded when told that he was not entitled to know the nature of any investigation. The votes of this branch were allowed to stand.

Mr. Cyril Hussey, Secretary of the Slough Branch, gave evidence that the vote was Byrne 27, Haxell 42. In May 1960 he drew the branch's attention to the Executive Council's

minutes, which gave the vote as Byrne 27, Haxell 69. After writing to Head Office for an explanation, he received a reply from Mr. McLennan saying that the figures in the minutes were correct according to the branch scrutineers' return form.

Both he and the branch chairman then visited Head Office, where Mr. Humphrey showed them what purported to be the Slough Branch return. The form he was shown was not the one he sent in. It had an obliteration on it, and there was none on his. He refused to sign a declaration that the form he had been shown was the one he had sent in.

Mr. Francis Clarkson, a member of the Preston Branch Committee, said that on December 23 they voted Byrne 52, Haxell 101. At a meeting in May 1960 the branch secretary read the Executive Council's printed minutes which gave the voting as Byrne 52, Haxell 191. This was immediately challenged by the chairman and himself.

The branch secretary, a member of the Communist Party, said the figures could not be incorrect as they were in the Executive Council's minutes, and were also recorded as 52 and 191 in the branch minutes. When the matter was discussed at a committee meeting, the branch secretary said that it must have been a mistake on his part due to the mass of paper work involved. He was instructed to write to Head Office giving the correct figures, but the branch, said Mr. Clarkson, had never been told the result of that letter. (As will be seen when the evidence of defence witnesses is dealt with later in this booklet, the minute book of this branch disappeared and was not available in Court.)

Important evidence was given by branch representatives who visited headquarters to press complaints about their returns being negatived because of alleged lateness. Many of them were shown envelopes said to theirs, bearing postmarks which, if true, made it impossible for the results to have arrived on time. But, as one witness put it: "I was impressed by its newness and flatness. It looked as though it had never contained the bulk of documents I put in it."

It almost certainly never had, because one interesting fact noticed by Mr. Byrne and Mr. Chapple was that many envelopes said to have been sent by disqualified branches were

postmarked in a time and date sequence consistent with someone setting out on a letter-posting tour. This was tested by an inquiry agent, who described in Court three tours he had made by car posting letters in various towns indicated by the plaintiffs. That this was one of the methods used appears beyond doubt. It is indicative of the lengths to which Communists will go to keep power once they have it.

During the evidence for the defence another revealing fact was brought to light under cross-examination. Attempts were made to induce branch representatives to sign a form which, had they done so, was akin to admitting that the envelope they had been shown was indeed the one they had posted. Mr. McLennan, acting Assistant General Secretary of the E.T.U., denied that the form was ambiguous. After exchanges with counsel on the real significance of this form, Mr. McLennan was asked by Mr. Justice Winn:

His Lordship: Do you mean to say that you intended them (the branch representatives) to acknowledge that the envelope they had seen was the one in which their ballot returns had been posted?

Mr. McLennan: Yes, that was the only basis for asking them to sign the form.

His Lordship: Until now I had supposed your position to be that the wording of the form was possibly ambiguous but that it was a harmless and innocent record of the fact that an envelope had been shown. If, as witnesses have said, you asked them to sign the form on the understanding that it meant only that they had examined an envelope, that would be a fraudulent trick.

Mr. McLennan agreed that it would, whereupon Mr. Justice Winn observed that none of the witnesses who had given evidence that Mr. McLennan had made such a statement had been cross-examined on that issue.

CHAPTER FOUR

Dishonesty or Inefficiency?

From the first day of the High Court proceedings it was accepted by the defence and therefore common ground that Frank Haxell had not been validly elected General Secretary of the E.T.U.

Why, then, was he declared elected by the Executive Council? There are only two possible answers—either the ballot was rigged, or it was conducted under circumstances of almost incredible inefficiency.

It was on the latter that the defence based their case. This was stressed by Mr. Lawson in his opening remarks on behalf of the defendants.

After stating that the Haxell/Byrne election was the first supervised by Mr. Humphrey—a member of the Communist Party—since he took over management of the union's Head Office, he added: "It might be thought a little unfortunate that such an important election should have been left to a novice at the job."

Regarding the disqualifications, Mr. Lawson said that there appeared to be no set practice for rejecting branch votes. Different qualifications were applied from time to time, and it was unfortunate that sinister interpretations had been put upon events.

After describing the various procedures, Mr. Lawson added that the Head Office staff were really electricians, and knew nothing about accountancy and office management. They tried to muddle along. If one called in an efficiency expert the results might be startlingly different.

They might have thought they were taking proper steps to ensure the security of ballot papers, he proceeded, but whether they were in fact doing so was a matter of very great doubt.

Notwithstanding Mr. Lawson's remarks, however, the point remains that either through muddle or malpractice, of the 112 branches disqualified 109 had voted for Mr. Byrne. Under cross-examination even Mr. Haxell agreed that this was "odd".

Such muddle as existed had certainly produced the result wanted by the Communists. But was Mr. Humphrey so inefficient? Not according to Mr. Haxell, who in evidence described him as "an efficient administrator".

Inevitably the method of scrutinising election returns was thoroughly examined during the hearing. Mr. Haxell explained the procedures as follows:

At a scrutiny, the returns were previously sorted by Head Office staff under various headings. The two scrutineers, the general president and the general secretary first considered those returns from branches alleged to have committed a breach of the rules. Then the two rank-and-file scrutineers would consider the returns about which there was no complaint.

Questioned about letters being sent out by Head Office telling branches that their votes had been rejected before the national scrutineers met, Mr. Haxell said that each one was brought to the notice of the scrutineers, and if they disagreed with the decision it was withdrawn. The judge then put yet another pointed question:

His Lordship: Any instances of that happening?

Mr. Haxell: I don't remember any.

Cross-examined, Mr. Haxell denied knowing that 56 branches which had supported him had met on the wrong night but were not disqualified. The following exchange—very revealing of his attitude—then took place:

Mr. Gardiner: The sole complaint against the Barnet Branch was that they did not have their meeting on Christmas Day. Is Christmas Day to be regarded as an ordinary meeting night?

Mr. Haxell: Christmas Day would mean nothing to our members in Scotland. Meeting nights often fall on Good Friday as well.

When Mr. Humphrey went into the witness box he described what happened to election returns when they were received at headquarters. First they were handed to him in

their special envelopes unopened. He opened them, extracted any extraneous matter; clipped the election returns to the envelope, and "made a preliminary sorting out".

Those that appeared to be in order were separated from those which appeared late or incomplete. The returns were then handed in batches to Mrs. Higgs (then an employee of the union) for more detailed examination.

After this Mr. Humphrey again checked the returns, and moved some of them from the "first infringement" to the "second infringement" file. He denied moving any into the "all right" file.

Under cross-examination, Mr. Humphrey, like other witnesses for the defence, disavowed even normal curiosity about the election. Despite its importance and the fact that it involved no less a person than Frank Haxell, the Court was asked to believe that neither Mr. Humphrey nor any others with access to the voting papers even had a peep to see how things were going. This is how the cross-examination went:

Counsel: It was pretty obvious to you by December 28 at the latest that Mr. Haxell had lost the election?

Mr. Humphrey: I didn't know the progress of the election.

Counsel: Oh come, Mr. Humphrey, the general secretary is the most important position in the union and Mr. Haxell was on the Executive Committee of the Communist Party.

Mr. Humphrey: Yes.

This almost inhuman indifference to the fate of Mr. Haxell did not prevent something odd happening to the returns. Mrs. Higgs, who was congratulated by the judge on her abilities, gave evidence as follows:

Mr. Gardiner: I am not suggesting any sort of dishonesty or partiality on your part, but can you tell me how it came about that of four Liverpool returns received on the same day, two which voted for Byrne were disqualified and two in favour of Haxell were accepted?

The Witness: No, I am afraid not. I imagine I would have put all four returns in the "infringement" file. All four were

in the same position of never having been warned for lateness.

Counsel then read a list of other branches and asked :

Don't think this is a complete list of branches which were late but were not disqualified, but can you throw any light on how it could have happened?

Witness: No, I cannot.

Counsel: We all make mistakes, but could this have been the result of thirty separate mistakes?

Witness: I should hardly think so.

Mr. Oliver, who preceded Mr. Humphrey as E.T.U. Office Manager, was faced with much the same questions. He was handed three lists of branches which had met on the same day, but whose returns arrived at Head Office more than five days afterwards.

Asked if he could explain why every branch that voted for Mr. Haxell was accepted, and every branch for Byrne disqualified, he replied that he "could not understand it". Perhaps the next question provided the answer :

Mr. Gardiner: If Mr. Humphrey, whether by mistake or on purpose, put a lot of branch returns into the wrong files, no one would be likely to notice?

Mr. Oliver: If he had put any in the acceptance file when they ought not to have been accepted they would have gone through.

Further, when Mr. Rengert, one of the scrutineers, was asked by Mr. Gardiner if he "relied on the statement that someone had checked through all the returns, and those in the 'all clear' file were all right", he answered: "Yes, but if we had noticed something wrong with any of them we would have said so."

But why should they have noticed anything wrong? It is quite clear from the evidence that the scrutineers were concerned solely with returns said to be in doubt, and even then the details were, according to Mr. Rengert, read out by Mr. Foulkes, who had the documents in front of him.

Understandably, Mr. Gardiner, after hearing this evidence, withdrew charges against the scrutineers, Mr. Rengert and Mr. Shipman, on the grounds that "they were not deceivers, but were themselves deceived".

Further examples of either inefficiency or dishonesty deserve mention. One concerns the Preston Branch, where, it will be remembered, the charge was made that the number 101, representing votes cast for Mr. Haxell, had been altered to 191.

The minutes of the meeting recording this disputed figure were not available in Court. Somewhere, somehow, they had disappeared.

Nor could the Judge have been impressed with the evidence of Mr. Scott and Mr. Foulkes relating to the Cannon/Frazer election. This is how *The Times* reported the cross-examination in both instances. Mr. Scott was questioned about an article he wrote in the *Daily Worker*, and agreed that he had written that if all the branch returns had been accepted, Mr. Frazer would still have been elected in 1957.

Counsel: The truth is that if all the returns had been accepted Mr. Cannon would have been elected by a majority of 34?

Mr. Scott: On the figures you have given me, that is so. If I was inaccurate I was not as inaccurate as the national Press. The Press were claiming that Mr. Cannon had been elected by a 300 majority. This figure was later reduced to 34.

This answer, of course, evades the obvious truth that the Press was right on the essential fact that Mr. Frazer was not properly elected. Mr. Scott was wrong on this essential fact, despite access, denied to the Press, to all voting returns.

Mr. Foulkes was questioned on the same point, and agreed that he had said in a television broadcast of December 14, 1957, that if all the votes which had been invalidated had been included the result would have been the same.

Counsel: Are you, or are you not, ashamed of having told the members and the public that Mr. Cannon would not have been elected anyway if all the votes had been included?

Mr. Foulkes: I am not ashamed of saying it because I said it in good faith.

Counsel: This was the lie told from the start to shut up Mr. Cannon and his supporters?

Mr. Foulkes: I have never told a deliberate lie in the whole of my life.

CHAPTER FIVE

Communist Party Control of the Union

The existence of Communist Party committees in industry and the unions has been common knowledge for many years. In its pamphlet *Defend Democracy*, published in 1948, the T.U.C. General Council stated :

It is known that there are industrial committees set up by the Communist Party which exist in many industries and trades—e.g., railways, transport, seamen, cotton, mining, etc., etc. The membership of these committees consists of representatives drawn from the trades and industries in which they function. From these industrial sub-committees the Communist Party secures information on which the officials of the Communist Party, who have no connection with the industry concerned, frame industrial policy and tactics which are used as the basis of instructions and propaganda directed at all levels inside the unions.

The General Council think it necessary to request affiliated unions to investigate the extent to which such interference has already gone on in their particular trades and industries.

It is a matter for consideration by the unions whether it is consistent with the obligations and loyalty to the policy of the union and to the Movement as a whole that any member should serve on these Communist Party industrial sub-committees or on the national committees of the Communist Party whilst holding executive or delegate office in the union.

Well-intentioned as this undoubtedly was, it broke down against the sovereignty of affiliated unions, and the ability of the Communists to lie and get away with it.

Their tactics, when confronted with charges regarding these advisory committees, were flatly to deny their existence. For instance, on November 26, 1959, the E.T.U. in a letter to the T.U.C. said :

In our letter to the General Council on January 23, 1959, we said "the affairs of the Union are not controlled by the Communist Party"—a clear and precise denial of the allegation made. We have repeated this on many other occasions. We do so now, and in order to make it perfectly clear, deny that there are sub-committees of the Communist Party, advisory or otherwise, to deal with the affairs of the Union.

This attitude was maintained right to the High Court action. Yet even before then the evidence was overwhelming.

This is what Mr. Mark Young, for five years Chairman of the Finchley Branch of the E.T.U., and an ex-member of the Communist Party, stated in a letter published in the *New Statesman* of August 9, 1958:

The Communist Party maintains its control of the union through fractions called "advisory committees" at the national and local level. At the last advisory committee I attended, in February 1958, the only topic of discussion was how to defeat our ex-comrade Cannon in the pending March election. We were directed to make contacts in each branch that had nominated Cannon and to undermine him principally by describing him as "the candidate of the capitalist Press". I challenged that allegation. No evidence was produced then or since to support it.

During the Court proceedings, the denial that such committees existed crumbled under the weight of evidence. Mr. Joseph Raymond Thomas, Secretary of the Luton Supply Branch, stated that he was a member of the Communist Party from 1950 to 1957. In 1954 he deputised as a representative on the London Advisory Committee, which met at the Communist Party headquarters in King Street. Mr. Frazer, Mr. Foulkes, Mr. Haxell and Mr. Chapple (then a member of the Communist Party) were at the meeting.

Tom Vetterlein, who gave evidence on *subpoena*, described the organisation of the London, Divisional and National Advisory Committees, and said that at one time Communist

Party members of the union were "run" as delegates to the Labour Party Conference.

When asked about discussions at meetings of the National Advisory Committee, he stated:

We felt that the Communist Party had the answer to all problems ultimately and that by doing this work in the union we were advancing the cause of the members of the union and also of the Communist Party.

Mr. Albert Charles Sullivan, a former E.T.U. member, told the Court that he belonged to the Communist Party from 1956 until he was expelled in 1957. Early in the latter year he attended a meeting in Whitechapel to discuss the choice of a candidate for No. 11 Area in the next Executive Council election. Some wanted a Communist Party member and others wanted a fellow-traveller. Eventually Mr. Frank Chapple was accepted as candidate.

Another witness, Mr. Tuck, described how he had attended meetings of the London, the South-West and the South-East Advisory Committees. The London Advisory Committee (a committee of the Communist Party) met at an address in Farringdon Road, and all those present were both Communists and, except the London Industrial Organiser of the Communist Party, E.T.U. members. He added that among the things they discussed was how to get members supported by the Party elected to offices in the E.T.U.

Mr. Blairford, who resigned from the Communist Party after the Hungarian rising, said at the Court hearing that he had attended meetings of the Party's National Advisory Committee at which the E.T.U. National Organiser was present. These meetings were held at the Party headquarters, and among those he had seen present were Haxell, Cannon, McLennan, Frazer and Humphrey. The Secretary of the Committee, he said, was Mr. Hendy. The matters discussed were mainly policies decided by the Communist Party, and it was their duty to have those policies implemented in the branches and organisations to which they belonged. They also discussed, he went on, elections and nominations in the E.T.U.

Mr. Frank Chapple, one of the plaintiffs, was also asked

about appointments to the London Advisory Committee. He said that they were usually made by the District Secretariat of the Communist Party in consultation with the Industrial Organiser. He himself had been a member of the National Advisory Committee, which had always met at the Party headquarters in King Street.

When Mr. Lawson asked him if he was saying that he himself had been a member of "this alleged Communist conspiracy", he replied: "Yes, and I am heartily ashamed." Later, Mr. Lawson said: "I suggest there were no such things as the London and National Advisory Committees." Mr. Chapple replied: "That is not true; there are advisory committees of the Communist Party dealing with every facet of life in Britain, all the trade unions, industries and even the Law Courts."

Against this evidence no attempt was made by the defendants to deny that special Communist Party committees existed and functioned. In his opening remarks Mr. Lawson said:

The defendants' case in reply to an allegation of a Communist conspiracy was that there were, as one would expect, occasional meetings of people who were of importance in both the Communist Party and the Union, and, further, that there were no formal committees of the kind alleged by the plaintiffs. The meetings were informal and irregular. They were concerned with the general work of the Communist Party in the Trade Union Movement, and never with specific questions like elections on the basis of personalities, nor with organising breaches of rules or fraudulent conspiracies in connection with ballots.

Mr. McLennan, Assistant General Secretary of the union, admitted that he had attended various meetings of people who were members of both the E.T.U. and the Communist Party. Such meetings were, he said, generally convened by Mr. Haxell or Mr. Frazer in order to discuss trade problems, particularly in relation to the contracting industry.

In his turn, Mr. Frazer, a member of the E.T.U. Executive

Council, stated that from 1947 to 1957 he was a member of the Building Advisory Committee of the Communist Party, but he denied that there was any Party committee to deal with the affairs of the E.T.U. From time to time there were meetings of people who were members of both the union and the Party to consider the various problems confronting electrical workers on new methods, new techniques and such things as payment by results in the contracting side of the industry.

Mr. Haxell made some attempt to deny the charges by arguing that the committees were not what they were said to be. After saying that he had been a member of the Communist Party Executive since 1947, he added that the Party had its own Advisory Committees, and he had been a member of the National Building Advisory Committee. The committees described by witnesses for the plaintiffs, he argued, did not exist, but he had from time to time attended meetings at King Street of people who were members of both the Party and the union.

Mr. Hendy, also a member of the Communist Party, denied that he had been secretary of the National Advisory Committee which consisted of people who were members of both the E.T.U. and the Communist Party, but agreed that he was the convenor of a group of Communist electricians. This prompted the following question and answer:

Mr. Justice Winn: Don't let us bother about what it was called. What was it?

Mr. Hendy: It was a group. I may have referred to it as a committee but it was my responsibility, and not that of the Communist Party.

Mr. Hendy was then cross-examined about a letter he wrote to Mr. Cannon on November 23, 1951, in which he referred to a "full meeting of the committee" on the previous evening with Peter Kerrigan (the Communist Party National Industrial Organiser) in the Chair. At that time Mr. Hendy was writing as one trusted Party member to another.

After some discussion on the contents of this letter, the witness, in answer to Mr. Justice Winn, said that the trade union movement was comprised of a series of pressure groups of which this committee was one.

The crux of the matter was, however, reached when Mr. Gardiner commented: "This letter also says: 'the next item was to consider the selection of three officials and seven members to attend Congress'. That was the Trades Union Congress?", to which Mr. Hendy replied: "Yes."

CHAPTER SIX

The Final Speeches

Summarising the mass of evidence produced in Court (it was estimated to have exceeded $1\frac{1}{4}$ million words) is no easy task. For that reason the final speeches of counsel for both the defendants and the plaintiffs are particularly valuable.

For the defendants Mr. Lawson argued that the allegations had been pitched so high that they should be regarded with some suspicion.

Of particular importance to students of trade union affairs was his reference to the problems arising from making every post an elective one. This is often claimed, particularly by Communists, to be the only "democratic" way of running a union. Many unions, however, have based their structures on appointed officials who, in their executive capacity, are responsible for interpreting and carrying out the decisions of elected policy-making bodies—often made up of lay members.

Mr. Lawson expressed the opinion that the E.T.U. had fallen into the pitfall of trying to make every conceivable office elective, which had involved it in an almost persistent state of election. Arranging the elections every quarter had, he contended, created the most fearful problems.

This statement was, of course, re-emphasising the defence line that there had been muddle but not malpractice. The procedures which counsel agreed were "open to abuse" had, according to this theory, placed a burden on the union officers that they were not equipped to bear. Whether or not this is true, there is no doubt that this method of union government had placed upon rank-and-file members a responsibility that they were unwilling to shoulder.

A further suggestion made by counsel was that the defendants could not be responsible for misdeeds at branch level. Instancing the ballot for the Jarrow Area President in September 1958 (one of the elections mentioned in evidence), he asked: "Could the fact that the branch secretary [a Communist] cast 61 votes in his own favour—if he did, and he

probably did—be thrown at the door of the defendants?”

Another allegation raised during the case for the plaintiffs was that demands made by branches for a special delegate conference had not even been put to the Executive by Mr. Haxell. Again counsel made the plea that this was due, not to any dishonesty on the part of Mr. Haxell, but to the fact that he was—

. . . . a very forceful and dominant personality, who liked to run the show in his own way and have his own way. In dealing with the letters from dissatisfied branches, Mr. Haxell formed a view as to the origin of the complaints and dealt with the matter off his own bat—stretching one or two points in his favour—under what he regarded as his general power to deal with union correspondence.

Dealing with what he called the “Southampton complex”, where ballot papers were returned to branch secretaries before they were sent out to members, Mr. Lawson suggested that the extra papers were a deliberate plant by someone adverse to the interests of Mr. Haxell. He was, however, unable to say who was responsible, but nevertheless argued that it was impossible to exclude the suggestion from the picture.

On the disqualification of branches, Mr. Lawson pointed out that in 40 cases the allegations had been supported by evidence, and 28 of these branches were on the route of three tours alleged to have been made by car for the purpose of posting false envelopes. He went on :

I am the last person to suggest that there are not a lot of peculiarities in this aspect of the case. One of the most peculiar factors is that the overwhelming majority of disqualified branches had voted in favour of Mr. Byrne.

In 30 of the 40 cases, he added, the branch secretaries had said that they posted their returns during the Christmas period. He suggested that they may have honestly but quite mistakenly convinced themselves that they had posted their envelopes on certain days.

When Mr. Lawson came to the question of Communist Party advisory committees, he agreed that it was common ground that from time to time there were meetings attended by

people who were members of both the E.T.U. and the Communist Party, and that the Industrial Organiser of the Party was at some of these meetings. It was also common ground, he went on, that among the topics discussed at such meetings was the question of elections and candidates.

Concluding his address, Mr. Lawson said:

Bearing in mind the gravity of the charges, it would be wrong to hold that there was a conspiracy between any of the defendants, because the positive case is based on a combination of suspicion and possibility.

For the plaintiffs, Mr. Gardiner said that his clients were convinced that for years the union elections had been rigged by the Communists in control.

On the question of "substitute envelopes", he argued that the fact that 17 envelopes on one list were posted at exactly the same time and date sequence as was obtained by someone driving round in a car was more than a coincidence.

He discounted the idea that 40 witnesses who had given evidence on the posting of their envelopes had each laboured under honest misapprehensions. He drew attention to the fact, which he regarded as one of significance, that the one envelope which had its branch date stamp was among the few which the defendants had been unable to produce. He argued that the case about substitute envelopes was overwhelming, and it was "a gross and deliberate fraud carried out by more than one man".

He then dealt with the question of surplus ballot papers, and said that it was wildly unlikely that they had been stolen from the printer's premises—they must have come from the union's Head Office. The action itself, he said—

. . . . must have been a record one for the number of witnesses who had given evidence, not on oath, but on affirmation. If the same importance was to be attached to an affirmation as to an affidavit on oath, it was of interest to note that the defendants in January 1961 were still trying to hide their guilty secret of ever having had extra ballot papers at Head Office. They must have thought: "They'll never be able to prove it. Only us

and the printer knew about it." It was only when the printer was called and told what happened to the extra papers that they threw in their hand and conceded that extra ballot papers had been at Head Office.

Reminding the Court that, of the 109 branches disqualified, 106 had voted in favour of Mr. Byrne, and that even Mr. Haxell thought it was odd, Mr. Gardiner added:

It would not be putting the plaintiffs' case too high to say that this particular fraud was admitted. The facts were agreed facts, and when each of the persons involved was asked if they could give an honest explanation of those agreed facts, they all said "No". Of course each one was entitled to say, "It wasn't me, it must have been someone else".

Counsel also referred to the marked change in the defendants' case about Communist Party advisory committees, which he said dated from the moment Mr. Hendy went into the box. This was because the plaintiffs had disclosed that they had a letter written by Mr. Hendy to Mr. Cannon after a meeting of the committee.

Turning to Mr. Foulkes' appearances on television in 1957 and 1960, Mr. Gardiner said that he was obviously prepared to say or do absolutely anything if it helped the cause. In 1957 he had temporarily lulled the growing storm by his personal assurances that the result of the Cannon v. Frazer election would have been the same if the disqualified votes had been counted. In 1960, when the union was telling branches they could not appeal, Mr. Foulkes was telling the public that there was a right of appeal.

Counsel allowed for the possibility that Mr. Foulkes did not know about the substitute envelopes, and suggested that perhaps Mr. Haxell, Mr. McLennan, Mr. Frazer and Mr. Humphrey did not trust him with that knowledge.

When he dealt with charges against defendant members of the Executive Council, Mr. Gardiner said that:

The fraud could not have been achieved unless the Communist members of the Executive Council voted the right way when the election result came before the

Council. Everyone in the machine had his part to play. These defendants were not procuring additional ballot papers, or posting false envelopes. Their task was in a sense a minor one. Their simple task of raising their right arm at the right moment was essential to the fraud. Without the Communist majority on the Executive Council Mr. Haxell could have done comparatively nothing. None of them would have been there very long if they had started to ask awkward questions of Mr. Haxell.

During the concluding stages of his address, counsel for the plaintiffs described Mr. Scott as the most dangerous witness in the case, and one whose evidence was most likely to mislead the Court. The harm which a man like Mr. Scott could do, he argued, was so much greater than that which an open member of the Communist Party could do.

After stating that Mr. Scott was plainly elected to his office on a Communist Party ticket, counsel said that although nominally he was the only full-time officer who was not a member of the Communist Party, he acted throughout as if he was a Party member. He concluded:

Someone had to be chosen to be chairman of the so-called committee of inquiry, and it had to be someone of whom Mr. Haxell could be quite certain that he would bring out a report stating categorically that there was no truth in the allegations of election rigging and Communist interference in the union. Mr. Haxell knew his staff and his choice had fallen on Mr. Scott.

CHAPTER SEVEN

The Judgment

Evidence in Court was concluded on June 16, 1961, and the reserved judgment was given twelve days later.

Mr. Justice Winn said that, apart from the essential issues, the action also raised the question of the influence of the Communist Party. Out of a total membership in the E.T.U. of probably a quarter of a million, he assessed Communist Party membership of perhaps only one per cent. He added that:

If, as the evidence suggested, the assiduity in branch affairs of Communists was greater than that of those whose political aims were different, it was not surprising to find them or their sympathisers achieving successes in the ballots.

One of the issues of the case was whether any relationship of the Communist Party with the E.T.U. involved control. His Lordship expressed the view that:

Not only was the union managed and controlled by the Communist Party, but so managed as to serve the ideals of the Party.

Referring to evidence given by Mr. Blairford that he had attended meetings of the National Advisory Committee which met at King Street, he said that a significant passage, which he accepted as true, was as follows:

Policies which had been decided by the Communist Party were imparted to us and it was our responsibility to have them implemented throughout the various branches of which we were members and trades councils and so on.

The Judge added that in his view "the true assessment was that the Committee was organised by the Communist section of the E.T.U. with the authority, assistance and co-operation of the Communist Party, and it was not an organ but a tool of the Party".

Referring to the evidence of Mr. Hendy, whom he described

as a man of intellectual honesty as well as intellectual power, the Judge said that he had in a self-accusatory confession said that he was responsible for calling his "group" a "committee".

Mr. Justice Winn added that Hendy gave "a wonderful performance of adroit sidestepping and circumlocution". It was manifest, he went on, that the Committee was purporting to have the power, and he thought that it did have the power, to move men in and out of elected positions like pawns.

Turning to Mr. Haxell, the Judge said that he was a markedly dominating type of man, shrewd, ruthless and persuasive. He had agreed that the Communist Party had advisory committees and that he himself had been, since 1956, a member of the National Advisory Committee for the Building Industry, whose job it was to give evidence to the Communist Party about that industry.

Haxell had denied being chairman or a member of a body called the National Advisory Committee of the Communist Party. In His Lordship's judgment that was an instance of swearing by the book. It might be literally true, but the truth of the matter, which Haxell was trying to conceal, was that a committee of the Communist members of the E.T.U. often met, with Mr. Haxell sometimes in the Chair, to foster Communist aims in the E.T.U.

Referring to the September 1957 election for an Executive Councillor contested by Mr. Frazer and Mr. Cannon, the Judge said that thereafter certain newspapers asserted that Mr. Cannon had been robbed of his victory. In the *Daily Worker* of December 14, 1957, the defendant Scott wrote an article headed: "The Press and the E.T.U.: What are the Facts?" In it he said that if all the votes of the branches said to be wrongly disqualified had been included, Frazer would still have been elected. This was barely true, because the newspapers had referred to only six branches. The article said that if the E.T.U. leadership had really been dishonest they could have pretended that no ballot irregularities had occurred and saved themselves from the vituperations of the so-called champions of trade unionism.

The Judge said that he unhesitatingly inferred that Scott

had been given only partial facts by Mr. Haxell, who had misled him. Further, the circular sent out by Mr. Haxell and Mr. Foulkes revealed their readiness to deceive members of the E.T.U.

Of Mr. Foulkes' appearance on television in *Panorama*, Mr. Justice Winn said that he regarded as a lie his public statement that the voting figures in the 1957 election would be published in full. Mr. Foulkes also knew that it was untrue that branches could appeal against any decisions of the Executive Council. Both Mr. Foulkes and Mr. Haxell were prepared to prefer expediency to truth.

The Judge also described as a "wicked fraud upon members of the E.T.U." a circular prepared by Mr. Burns, a former employee of the union, and circulated by Mr. Haxell after the rules revision conference in 1957. The two men had deliberately approved a method of announcing a last-minute alteration to correct an error, and had done so in order to "exclude the possibility of appeal against Executive Council action on election results".

After stating that the number of ballot papers overprinted was 26,833, the Judge said that this was a "striking and sinister feature of the case". Mr. Humphrey deliberately ordered substantial excess quantities of ballot papers for branches where he expected members to support the Communist Party. It was impossible that such a scheme could operate without the knowledge of Mr. Haxell, nor did His Lordship have any doubt, having seen Mr. Haxell and Mr. Humphrey in the box, that the latter was incapable of conducting the scheme except at the instigation of Mr. Haxell.

Drawing attention to Mr. Haxell's statement that he knew nothing about extra ballot papers having been at Head Office until the beginning of this year, the Judge said that he was wholly convinced that Mr. Haxell not only knew that surplus papers had been sent to Head Office, but that he caused them to be there and intended fraudulent use to be made of them.

Dealing with the scrutineers, the Judge said that their decisions were predetermined by the way in which the relevant material was presented to them, and that there was no ground

for making any allegation against them. The two national scrutineers formed wholly *bona fide* judgments on the cases they considered on the material before them, but they might just as well have spun a coin. He went on: "Head Office appeared to have closed from December 24 to 28, when the voting situation was Byrne 20,363 and Haxell 19,385."

The Judge said that he had not a shadow of doubt that these facts were known to Mr. Haxell, Mr. Humphrey and Mr. McLennan.

His Lordship then said that of the 40 cases of alleged substitution of envelopes, he found that 27 had been established to his complete satisfaction, and a further four cases seemed, on balance of probabilities, to have been proved. Had the votes of those branches been included it was clear that by December 24 Mr. Byrne would have led by 1,911 votes and on December 28 by 2,107. In the end the results became a victory by Mr. Haxell by some 1,000 votes, a shift of over 3,000 votes.

None of the three general officials of the union, he added, could offer any explanation consistent with honesty for the fact that, of 109 branches disqualified, 106 had produced a majority for Mr. Byrne. Nor could His Lordship. Therefore, the scrutineers were caused, by devices which could only have been fraudulent, to make their return in favour of Haxell. This result, he concluded, was achieved by "a compound of forms of dishonest trickery".

As to who posted the substitute envelopes, the Judge said that it would not be inconsistent with the probabilities that the aid of the Communist Party network was invoked. Mr. Haxell himself was unconvincing to the point of seeming a sorry figure in the witness box when asked where he was at the material time. He was certainly ill at ease, though he must have known for a long time that such a question would be asked.

Mr. Frazer was no less likely than Mr. Haxell to post some of the envelopes. To do so would not be alien to his character. He had given a thoroughly unsatisfactory account of having gone on Saturday, January 2, from Head Office to London to

work on correspondence, which he did not produce, in a room next to which was being held a committee meeting he ought to have attended.

Mr. Batchelor was suffering from an ulcer, and had not given evidence. He had drawn six gallons of petrol on December 23, six on December 30 and seven on January 3. He had also claimed expenses for 19 gallons, indicating that he was travelling somewhere in that period. His Lordship refrained from finding against Mr. Batchelor in his absence, and would not say more than that he might well have had an opportunity of posting some of the envelopes.

(*Note:* Earlier in the case, during the hearing, the plaintiffs had abandoned all allegations of fraudulent practices against Mr. J. W. Rengert and Mr. Charles Shipman. The defendants conceded that they could no longer maintain that Mr. Haxell's election was valid, but they denied all allegations of conspiracy and fraudulent practices.)

Also of great importance in the Judge's opinion was the manner in which the Executive Council had dealt with the scrutineers' report. He was satisfied that Mr. Foulkes deliberately put the motion that Mr. Haxell be declared elected promptly to stifle discussion of the disqualifications. This he did because he knew that they were wholly abnormal in number, and he either knew or deliberately shut his eyes to the explanation.

Taking the defendants individually, the Judge said that Mr. Sell made a speech in order to divert attention and to obstruct Mr. Chapple. He could not, however, be held guilty of any conspiracy. He was a raw hand.

The Judge further said that in the cases of Mr. James Cosby, Mr. Ivor Davies, Mr. Samuel Goldberg, Mr. H. West, Mr. James Feathers, Mr. George Scott and Mr. A. C. Batchelor, the evidence, direct and circumstantial, and the inference to be drawn, did not come to the standard required to find against them.

The case of the defendants Mr. Goldberg and Mr. John Hendy had caused particular concern. Each had such intelligence and so much experience of union affairs that it was

CHAPTER EIGHT

The Struggle Continues

It is with regret that I would conclude and hold that Mr. Foulkes played his part—not an unimportant one—in the rigging of this election.

Frauds had been practised: and Mr. Foulkes had such a grip on the affairs of the union that, had he been a man of complete integrity, those frauds would in all probability not have been committed.

Whatever dishonesty had taken place earlier, it had been essential that the election returns should pass the national scrutineers in January 1960 and the executive council meeting later. Mr. Foulkes had presided over both these meetings. For the most part he had retained the folder containing the returns in his own hands, and read out what he thought fit to the two appointed scrutineers. It was a travesty of scrutiny.

In these words Lord Justice Sellers dismissed the appeal of Frank Foulkes against the High Court findings of Mr. Justice Winn.

Lord Justice Donovan and Lord Justice Pearson, the two other Appeal Judges, concurred.

So ended a vital phase in the struggle to rid one of Britain's most important unions of Communist control.

The dismissal of a cross-appeal, in which Mr. Byrne and Mr. Chapple sought to add the name of Mr. George Scott to the five E.T.U. officials found guilty of fraud, testifies to the exacting nature of the proof required in a British Court of Law.

During the previous proceedings considerable importance had been attached to a report prepared by Mr. Scott, but which was not made available to the Court. In his judgment Mr. Justice Winn had commented:

In its absence I am left in very real doubt about Mr. Scott, but cannot find that he did misrepresent the facts.

The report was subsequently found, but was overlooked by the defence during the High Court hearing. The Appeal Judges, however, refused to allow it to be introduced as new evidence.

In his findings, though, Lord Justice Sellers commented that Scott's report was "certainly inept and valueless except as a cloak". Lord Justice Donovan went further. He stated that:

It was impossible to conceive an honest explanation of Mr. Scott's report, and its imaginary, false figures which, in fact, did affect the result of one of the elections. With conspicuous fairness, the Judge had refused to find Mr. Scott dishonest in the absence of his report.

He added his opinion that "it was almost certain that had Mr. Justice Winn seen the original report, to which he attached so much importance, it must have been decisive against Mr. Scott".

One thing is clear—the vital factors in the E.T.U. scandal were fraudulent acts carried out by determined men, the support or at least acquiescence of others who knew what was going on, the organised Communist machine operating at branch and district level, and the apathy of the mass of rank-and-file workers.

What happens next? It would be folly to assume that the struggle is over. Indeed, the Communists are convinced that, provided they hold their positions in the branches, complete control of the E.T.U. can be re-established within a few years.

The "resignation" from the Communist Party of Frank Haxell signposts the way ahead. This took place after Communist leaders had visited Moscow, and after Party members and sympathisers had lost their majority on the E.T.U. Executive Council.

In a statement accepting Haxell's "resignation", the Party Executive dropped all pretence that the ballot had not been rigged, but declared itself unable to pinpoint the men responsible.

On the principle of "ultimate responsibility", Haxell, as the man in charge of administration at the E.T.U. headquarters,

was made the sole scapegoat. He was regarded as expendable in the interests of the Party.

Two interesting points emerge from this incident:

- (1) That it seemed reasonable to the Communist Party that Haxell should be in charge of his own re-election as General Secretary of the E.T.U.
- (2) That for what was, according to the Party statement, no more than a failure to carry out his *union* job efficiently, Haxell was required to resign from the *Communist Party*.

The real purpose of this manœuvre was made evident when the Communist Party Executive stated:

We believe that the conduct of the election at head office gravely compromises the Communist Party and all those progressive forces in the trade union movement.

This places the whole responsibility for ballot rigging in the E.T.U. at head office, where the Communists have lost their positions, and away from the branches, where the Communists still hold positions of influence and power.

It is in the branch and local committees of the E.T.U. that the key to the future now lies. That is where the Communists will concentrate their attack, and that is where it must be repulsed.

The future of the E.T.U. was not decided in the Courts. It still lies in the hands of the rank-and-file members.

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