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IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

ROYAL COURTS OF JUSTICE,
TUESDAY, 12th OCTOBER 1943.

BEFORE:
MR JUSTICE GROOM-JOHNSON

0. Dan J. Lee PRCHALA

v

BENES & ANOTHER *of London Court Trail*

LONDON - SICINT-4

EVIDENCE

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IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Tuesday, 12th October, 1943

B E F O R E:

MR. JUSTICE GROOM-JOHNSON

P R C H A L A

v

BENES & ANOTHER

(Transcript of the Shorthand Notes of The Association of Official Shorthandwriters Ltd., Room 392, Royal Courts of Justice, and 2 New Square, Lincoln's Inn, London, W.C.2.)

MR. G. O. SLADE, K.C. (instructed by Messrs. Ballantyne Clifford & Co.) appeared on behalf of the Plaintiff.

SERGEANT SULLIVAN, K.C. and MR. VALENTINE HOLMES (instructed by Messrs. Herbert Oppenheimer Nathan & Vandyk) appeared on behalf of the Defendants.

F I R S T D A Y

MR SLADE: My Lord, in this case I appear on behalf of the Plaintiff, and my learned friends Serjeant Sullivan and Mr. Valentine Holmes represent the Defendants. The action is an action for libel, and the libel is contained in a foreign newspaper, the "Czechoslovak", which I am instructed is the mouthpiece of the Czechoslovak Provisional Government in this country. It is read by some 11,000 Czechoslovak refugees, or thereabouts, who are at present in this country. The Plaintiff is a General in the Czechoslovak army. He has at the moment been removed from the active post, but is in receipt of a subsistence allowance from the Czechoslovak Government in this country. He is the senior Army Officer in the Czechoslovak Army at present outside the country of Czechoslovakia. Your Lordship will see from paragraph 1 of the Statement of Claim that on or about the 28th August 1939, he was appointed Commander in Chief. These facts are set out in paragraph 1 of the Statement of Claim, which is not admitted, but which I shall prove. He was appointed Commander in Chief of a Czechoslovakian Legion in Poland and thereupon proceeded to organise a Legion for the purpose of assisting the Czechoslovak Liberation Movement until he was obliged to leave Poland on account of the German occupation of that country. May I give your Lordship three dates which may assist. Firstly, on the 5th October 1938, which was just after Munich, Dr. Benes resigned his Presidency of the Czechoslovak Republic and left Czechoslovakia, and, so far as I know, has never returned to it. On the 15th March 1939, the German Army marched into Czechoslovakia. On the 21st July, 1940, Dr. Benes set up a Provisional Government in London which has been recognised by the British Government. Dr. Benes, I think, in fact styles himself to this day as the President of the Czechoslovak Republic. So much

for the Plaintiff.

The Defendants are two. Firstly, there is Mr. Bohus Benes, who is a nephew of Dr. Eduard Benes. He was, I am instructed formerly private secretary to his uncle. At all material times now, at any rate until quite recently, he was Editor in chief of the "Czechoslovak" newspaper. The co-Defendant, Unwin Brothers Limited, are the printers of that newspaper.

General Prohala is an Officer who has had an extremely distinguished Army career with plenty of active fighting, and when he goes into the witness box I shall take him shortly through the various promotions that he has undertaken until he has reached his present rank. Your Lordship will notice that the translation of the Statement of Claim is not admitted. I think, however, not that it matters, the translation has been agreed with the exception of one very short passage of a few words. Your Lordship may not be surprised to hear that the passage which has not been agreed is the most important passage of the whole lot. I am, therefore, calling a Professor with an unimpeachable record of knowledge of languages, and I propose to put him in the witness box first, because when I come to read it I attach particular importance to it. If your Lordship will look at page 2 of the print in Czech, your Lordship will notice the words "Kahankovstina", which I ask your Lordship to notice is spelt with a capital "K", and spelt with a small "p" "prohalovstina". Your Lordship will hear that that is a deliberate play upon the name -- it is actually his name -- of the Plaintiff and that there is a significance in using a small "p" for his name and a capital "K" for the name with which his name is associated. Your Lordship will hear furthermore that the surname "Prohala" is formed from the Czech verb "prohati" and that that verb means "to run away", which applied to a soldier has a peculiar significance. Your Lordship will hear that the suffix "stina" which appears in both the names "Kahankov" and "Prohala" is essentially of a derogatory character. As these are foreign words, I shall be able to call expert evidence to tell your Lordship what a Czech would understand words in this form to mean.

I now propose to read the English translation which is set out in the Statement of Claim. The whole of the article is headed: "Into the Last Year". Although I am going to read the first long paragraph, it has been put in merely for the context, and I only attach any importance to a very few words of it: "We are used to pay a greater attention to the so-called internal matters of our Liberation Movement abroad than to our position in foreign policy or to the future perspective, owing to the fact that we are accustomed to leave the latter to the expert hands of our leaders. The Army, which went through several serious crises, caused by the heterogeneous structure of the emigration, was criticised by many. There were many who understood the Army better than those to whom its building up and leadership was entrusted and again finally very few remarked that the Army has already overcome all its main crises and is growing into a representative unit in spite of all the fundamental and often serious difficulties. All critics agree that the Czechoslovak pilots rank by their deeds on the fore in the picture of results of our struggle. At variance to this the political organisation of our second liberation movement is ceaselessly subjected to a - more or less - competent surgery performed by those who are personally convinced that they could do it better than the others, and that they are better suited to lend to our policy a more opportunistic ideology". I place no importance on that, it is merely the context. Now these are the words: "There were several attempts to create a schism

and to set up an opposition within our liberation movement. In two cases, in Poland and in France, all the complications were solved for us by the events themselves, as the President foresaw from the very beginning, with certainty and patience". I pause here to say that I am here concerned with Poland. In the next action which your Lordship will try, the Plaintiff was for 20 years the Czechoslovak Minister in Paris and he complains of the French portion of the article. "The Kahanek and Prohala nuisance" - I pause there, because I asked my client who Kahanek was. All I know about him is that he was a journalist who I think wrote a book called "Dr Benes versus Mr. Beck". Mr. Beck, your Lordship will remember, was the Foreign Minister in Poland. This article is written by a nephew of Dr. Benes and no doubt from his point of view anyone who does not bow the knee in its entirety to Dr. Benes is a nuisance. "The Kahanek and Prohala nuisance died off in Poland with the Beck regime before they could grow into a real schism. In Paris, all our difficulties -- far more serious than the pitiful attempts to create a "separate liberation movement" in Poland -- abused by the French politicians who share the responsibility for Munich -- were disposed of for us by Adolf Hitler in his crushing France. In Great Britain a small group of unsatisfied individuals attempted to impose themselves, trying to exploit the more or less justified grievances to get hold of the leadership in the time when -- according to their opinion -- the democratic world drifted definitely to the extreme left. However, this group didn't grow into an opposition and behaves reasonably and submits itself to the leadership of our liberation movement. The Communists who were temporarily in opposition, are today the noisiest champions of the national unity. An inefficient attempt to create a sort of a 'Slovak separatism' in the second liberation movement, badly miscarried already in France and in Great Britain nothing similar could have had any chance. It is characteristic that all these shadows, which fell on the unity of our second liberation movement didn't leave any lasting traces and were always of an absolutely different substance, emanating from different groups and tendencies". Then I emphasize the next passage: "This proves that they were too obviously grounded in personal or party ambitions or that their objective cause was swept away by timely reforms in our organization. The whole of our movement, although it had encountered many difficulties and made many mistakes as a unit presented itself in a very healthy light, because it overcame all its internal crises, without any dangerous disturbances or political divagations being noticed in the substance of our movement from the outside world. It can be trusted that our people at home will be more grateful to us for this asset of relative unity than for anything else we shall succeed elsewhere to do for them". Of course, the Plaintiff hopes to return home immediately after this war is over and your Lordship will notice the significance of the words "It can be trusted that our people at home". Now the imputation: "That the Plaintiff had endeavoured to disrupt the united and harmonious operation of the Czechoslovak Liberation Movement, that he had been guilty of subversive activities for personal or party reasons, and that he had been disloyal to his country".

In the Defence, paragraph 1 is not admitted. Paragraph 2 is admitted except that no admission is made as to the extent of the circulation of the "Czechoslovak", save that it is not admitted that the words complained of were printed or published or have any defamatory meaning, and then there is the rolled up plea.

Upon reading that article, General Prohala wrote letter No. 51 dated the 17th January, 1942: "In your independent weekly 'Czechoslovak' year 4, No.1, from the 2nd January, 1942, I was personally attacked. It happened in the leading article which had the heading "Tenax". 'Into The Last Year', on the first page in the first paragraph, the sixteenth line below by the expression "prehalovstina". This general expression is in the same paragraph connected with the sentences: 'We had various attempts for a break and for the formation of an opposition inside our movement. In two cases in Poland and in France all complications were settled for us by the events' and form the basis for the sentence "Kahankovstina a prehalovstina" (Kahankovism and prehalovism) ended in Poland with the regime of Beck earlier, before they could grow into a real break'. The logical conclusion of these sentences is the characteristic in the sixth line of the second paragraph of the same article contained in the sentence 'All these shadows which fall on the unity of the second liberation movement' and finished on the tenth line of the second paragraph with the words 'were too apparently based on personal or purely party ambitions'. By all these expressions words and characteristics, I feel to be deeply personally infringed and offended. As all of these personal offences are without the least foundation, I am asking you to publish in the next number of the independent weekly Czechoslovak in the same manner the attached declaration. Should this declaration not be printed in the next number of the independent weekly Czechoslovak - latest to the 31st January 1942 - I shall be forced to defend my honour before the appropriate Courts in the United Kingdom. Yours faithfully, Army General Lev Prohala". There was enclosed with that page 52: "In No.1, year 4, of the independent weekly 'Czechoslovak' we committed an offence against the Army General Lev Prohala. It happened in the leading article which had the heading 'Tenax' - 'Into the last year'. On the first page in the first paragraph, sixteenth line below were the words 'prehalovstina'. This general expression is in the same paragraph connected with the sentences 'we had various attempts for a break and the formation of an opposition inside our movement. In the cases in Poland and in France, all these complications were settled for us by the events' and forms the basis of the sentence 'Kahankovstina and prehalovstina ended in Poland with the Beck regime before they could grow into a real break'. The logical conclusion of the sentences is that the characteristics on the sixth line, second paragraph of this article contained in the sentence 'All these shadows which fall on the unity of the second liberation movement' and ended on the tenth line of the second paragraph by the words 'were too apparently based on personal or purely party ambitions'. The Army General of the Czechoslovak Army, Lev Prohala, C.S.V.K., D.S.O., feels by these words, expressions and characteristics deeply infringed and offended because they heavily touch his national honour, his military honour and his honour as a citizen. We regret that we used in the mentioned article such expressions, words and characteristics and are withdrawing them to the full extent. We ask Army General Prohala in this way for accepting apologies and we are giving him herewith full satisfaction and are thanking him that he did not for this article take further steps against us". The reply was on page 53: "Dear General. To your letter of the 17th January of this year referring to the article "Tenax - into the last year" the weekly Czechoslovak No.1 year 4 of the 2nd January of this year, we would like to inform you that even after careful consideration we do not see in the sentences you are complaining of an attack on your person or of personal offences against you. The writer of the article had not at all the intention to touch

you personally. The Article is only a fair comment in the sense of the English legal provisions on a political attitude. Should you, however, esteemed Mr. General, persist in your opinion, our paper is prepared to supplement the article by 'Tenax' as stated above".

MR JUSTICE CROOM-JOHNSON: What does that mean? Does that mean that they are willing to continue the Article by putting in the first paragraph of that letter?

MR SLADE: Yes, my Lord, I think by saying it was not intended to be personal. That is what I understand it to mean. Then this writ was issued. I do not quite know what they mean by saying it was not intended to be personal, seeing that whatever translation one gives to the word "prochulovstina", it is quite clear they are making use of the Plaintiff's name which is extremely well known. I am not going to deal with the plea of fair comment at all. The onus lies upon the Defendants to substantiate it and I shall deal with it if necessary in re-examination. If any attempt is made to set up a plea of justification it will, of course, have to go and be confined to the facts stated in the libel and the facts stated in this libel refer, as I understand it, to some schism which is alleged to have been created by this gentleman or some form of unpleasant attitude adopted by him at the time when he left Czecho-Slovakia and crossed the border into Poland after his country had been invaded by the Huns for the purpose of assisting the Poles whom he anticipated, and rightly anticipated, would be the next ones to be attacked in their impending fight against Germany. That is what he did. There are only two other documents I propose to trouble your Lordship with before I call my evidence. One is an Order of the President of the Polish Republic, and the other is the declaration of Field Marshal Edward Smigly-Rydz of the Polish Army. I may tell your Lordship that my client will tell you that Poland was still sanguine that Germany would not attack her long after the Plaintiff thought that they would behave to Poland precisely as they had behaved to Czecho-Slovakia. While they were in that state, Poland was most anxious to avoid doing anything which could possibly have been said to give any sort of excuse to Germany which, of course, we know now Germany would never worry about for invading someone else's country. Amongst other things they were asked to do and they submitted to it because they thought it would pacify Germany was that when Germany had annexed Czecho-Slovakia the Germans actually had the effrontery to demand that the Poles should close the Czecho-Slovakian Legation in Warsaw, because the Germans said the Czecho-Slovakian State had ceased to exist as it had been merged in the Reich. The Poles submitted rather than run the risk of giving the slightest excuse to the Germans to attack. General Prochala was an extremely patriotic Czech who all along saw this coming, and in between the invasion of his own country in March, 1939, and the invasion of Poland on the 1st September, 1939, he took steps, so far as he was able, to augment the resistance which Poland might be able to make to the Germans by getting this Czecho-Slovak Legion in Poland to fight shoulder to shoulder with the Polish Army. As we know, what happened was Poland were no match for the Germans and the Germans were in Warsaw before anything could be done. Of the two documents I have just put before your Lordship, there is one dated the 3rd September, 1939, signed General Officer Commanding, Edward Smigly-Rydz, Polish Marshal, "Proclamation of the Polish Commander-in-Chief to the Czech and Slovak Soldiers. Czech soldier, Slovak soldier. The age-old enemy of the Slavonic nations has launched a barbarous attack on our most sacred rights, on our freedom and

independence. All agreements and all peaceful pledges have been violated and trampled underfoot. The enemy fraudulently occupied the Czech lands and Slovakia against the will of the nations and at the same time has brutally attacked the Polish nation which will fight with weapon in hand until its last breath 'for our freedom and yours'. May the glorious tradition of Grunwald, where in the bloody struggle against the Teutons all the Slavonic nations acted in solidarity and when the blood of your fighting ancestors was self-sacrificingly shed, revive your hearts today with hope and fortify your arm", and then the last paragraph: "In Poland Czech and Slovak Legions are now being formed whose Command-in-Chief is being taken over by Army General Lev Prohala, a soldier experienced in battle. For military reasons these Legions will for the moment form a single military formation which will fight hand in hand with the Polish Army for your and our freedom until victory".

MR JUSTICE CROOM-JOHNSON: I see that is addressed to the Czechoslovak soldier.

MR SLADE: Yes, my Lord. Then on the other page is the Decree of the President of the Polish Republic of the 3rd September, 1939, concerning the formation of the Czech and Slovak Legions. I will not trouble your Lordship with that. It is merely the Polish authorisation for Czechoslovak soldiers to be raised within the Polish territory, just like in this country we passed the Allied Forces Act to allow Queen Wilhelmina, and so on, to raise Netherland forces.

That is all I propose to tell your Lordship at the moment. There is other correspondence, there is correspondence notifying the General that he has been awarded the Polish War Cross signed by General Sikorski. With your Lordship's permission I propose to call first of all a Professor to translate the Czech because I think it will assist your Lordship in interpreting the Plaintiff's evidence.

PROFESSOR FRANCIS DVORNIK Sworn

EXAMINED by MR SLADE

- Q What is your nationality? A. I am a Czechoslovakian - a Czech.
- Q You live, do you not, at Woods Cottage, Pound Hill, Crawley? A. Yes, I do.
- Q Are you the Chaplain of the Notre Dame Convent at Pound Hill? A. Yes, an evacuated Convent from London.
- Q Are you a Professor and a former Dean of the University of Charles IV at Prague? A. Yes.
- Q Are you a Doctor of Divinity? A. Yes.
- Q A Doctor of Literature? A. Yes.
- Q And a Member of the Czech Academy? A. Yes.
- Q I believe you are an Associate Member of various other Academies, and a Member of the Slavonic Institute? A. Yes.
- Q To complete your record, I believe you are at present engaged in research into Byzantine and Slavonic history? A. Yes.
- Q You were quite unconnected with the Plaintiff in Czechoslovakia? A. I did not know him in Czechoslovakia.

I knew him only by fame.

- Q What was his reputation? A. His reputation was quite high as a good patriot, and especially as a very good soldier one of the best Czech strategists we had.
- Q Did you see the article in the journal "Czechoslovak" when it was published? A. I did.
- Q Did you read it of your own accord or because you were asked to do so by anyone in this case? A. I read it because almost every Czechoslovakian in London, even though he does not like the general trend of the paper, reads this paper because it is the only paper which gives us some news about our country.
- Q Perhaps you would not mind taking the original of the newspaper in Czech. Would you mind looking at the words "Kahankovstina and prehalovstina"? A. Is it in the last paragraph on the first line?
- Q Yes. Do you notice that "Kahankovstina" is spelt with a capital "K"? A. Yes, it is.
- Q Do you notice that "prehalovstina" is spelt with a small "p"? A. Yes, unfortunately.
- Q Would you mind telling his Lordship what is your derivation of the name "Prehala"? A. The name "Prehala" is derived from the Czech verb "prehati" which means in English to run or to run away.
- Q Do you know who Kahanek was? A. I did not know him personally but I heard of him in Prague. He was a journalist on an agrarian paper, a very big paper.
- Q He was a journalist employed by some big agrarian papers? A. Yes.
- Q Would you mind telling my Lord what the words "Kahankovstina" and "prehalovstina" would convey to a Czech in the context in which they appear in that article? A. "Kahanek" and "Prehala" are, of course, two separate names of two persons. In Czech we can add the suffix "stina" to any surname or to any other different name, but especially to a surname. When we add it to a surname the word "stina" as a suffix generally has a very derogatory meaning. As an example, there is another difference. If we say "prehalovstina" in Czech it means something like a strategic doctrine or strategic science.

SERGEANT SULLIVAN: The learned gentleman has run completely beyond my comprehension as he is going too fast.

(The shorthandwriter read the witness's answer).

MR JUSTICE GROOM-JOHNSON: That is the same thing. It does not necessarily mean it is derogatory in our time that you say a celebrated man was Darwin and he had a celebrated theory. You do not make it derogatory of Mr. Darwin to say he had a Darwinian theory.

SERGEANT SULLIVAN: Our translation is that it means "ism" as we speak of Darwinism.

MR JUSTICE GROOM-JOHNSON: (To the witness). You say that

Professor F. Dvornik: Examined.

this word "stina" in your language would have that signifi-
cation, something derogatory? A. Yes. For example, if
we speak about Hitlerism, it means the doctrine of Nazi-ism.
I do not like it perhaps, but I can discuss it as doctrine.
If we say Hitlerstina, it means all the means which Hitler
has displayed to come to power or other similar things to
that.

MR SLADE: Quite apart from the addition of the suffix "stina"
with which you have just dealt, you have told my Lord that
the surname "Prohala" is derived from the Czech verb
"prohati", which means to run or run away? A. Yes.

Q You also have told me that you notice the capital "P" for
"Kabanek" and the small "p" for "prohala". Would that con-
vey anything to your mind when used of any Army General?
A. Yes. Unfortunately the name of Mr. Prohala, because it
is derived from the verb "prohati" when the suffix "stina"
is added to it, can evoke to a Czech mind a man, for example,
who is just running from his duty or from his responsibility
because of this unfortunate derivation of the name, espe-
cially when it is used with a derogatory meaning. It can con-
vey it.

MR JUSTICE CROOM-JOHNSON: That is not quite the question you
were asked. The question you were asked is this: Is there
any difference in this article because the word "prohalov-
stina" is spelt with a small "p" as compared with that word
if it were spelt with a capital "P"? A. Yes, it gives the
impression that the name "prohalovstina" is used with more
disrespect or contempt because it is not with a capital.

Q. Do you mean it is a mark of contempt or disrespect of this
gentleman who has this name? A. Yes.

SERGEANT SULLIVAN: My friend's question was, was it because
of the capital "K" for the General and small "p" for the
other. The capital "K" begins a sentence.

MR SLADE: Surnames are always spelt with a capital whether
they commence a sentence or not.

MR JUSTICE CROOM-JOHNSON: There is no full stop in the
original after the word which immediately preceded it.

MR SLADE: None at all.

THE WITNESS: May I just point out to be correct because I see
now it is the beginning of a new phrase, when it is at the
beginning of a new phrase then it is written with a capital.
But the other word is not at the beginning of the phrase and,
therefore, it can be a small letter. It can convey this
special meaning.

Q The difference in the letters? A. Yes.

Q Leave for one moment the difference in the letters. Will
you still answer my question which I also put, the word
"prohalovstina" being used in reference to an Army General.
Do you still say what you have just said about that?
A. Yes. Unfortunately the name is very unfortunate. It
can just convey this when used with the suffix "stina".
It certainly makes the derogatory sense more evident than
any other name.

Q Would it be a correct interpretation of what you were
saying to say that used in reference to an Army General it
emphasises -----

SERGEANT SULLIVAN: He does not say that. He says in reference to this Army General owing to the misfortune of his birth with a name like that.

MR JUSTICE GROOM-JOHNSON: I suppose it is like using the name Smith in any English article with a small "s" and with a suffix.

MR SLADE: If one had an Army General whose name was Coward and another whose name was Smith and you put Smithism commencing with a capital "S", and Cowardism with a small "o" ----

MR JUSTICE GROOM-JOHNSON: Well, that would be a question, would it not?

MR SLADE: That is what I suggest is the position here.

MR JUSTICE GROOM-JOHNSON: That is the distinction, is it not?

MR SLADE: I notice the witness's answer and I say nothing more for the moment. It is not what this witness says but what reasonable persons think. Before I put this question to the witness, I want to give Serjeant Sullivan an opportunity of objecting to it. Therefore I will put the question before I put it to the witness. Bearing in mind that your Lordship has heard that the words "Kahankovstina" and "prohalovstina" are what I may call made-up words, I propose to ask this witness what it would convey to him about the Plaintiff, the article in the Czech language as a whole.

MR JUSTICE GROOM-JOHNSON: I do not know about that. That sounds to me like putting one long leading question to him. If you can put particular passages in the article, well and good, because you yourself told me that you do not complain of all the article. I think the old fashion is much better in a libel action, that you put out the words and not the words in which the newspaper happens to have enshrined them. Here it is quite plain there are only two or three places of this article which are the words complained of. I think in order to admit that question I should have to get you to direct the witness's mind one by one to those parts of the article which really constitute what I have called in the old fashioned way "the words".

MR SLADE: I respectfully agree. (To the witness): Would you be good enough to take the paper in your hand again? Would you read through to yourself the passage commencing "There were several attempts to create a schism" just before "the Kahankovstina". Would you read from there down to the equivalent in Czech of the words "separate liberation movement in Poland"? A. Yes.

Q Would you mind then looking lower down until you come to the words "It is characteristic that all these shadows" down to the words "reforms in our organisation". Then perhaps you would read the last four lines "It can be trusted that our people at home", and so on. Would you mind telling me this: what would those parts of that article convey to a Czech about Army General Prohala?

SERGEANT SULLIVAN: That is dispensing with your Lordship's function. We are agreed on the translation except as to the significance of two words. The translation accordingly is the translation that is agreed upon when you have solved

Professor F. Dvernik: Examined.

these two words and written in your solution of that. Your Lordship is the judge.

MR JUSTICE CROOH-JOHNSON: Yes, but that does not shut out outside evidence as to what it would convey to the mind of a reasonably minded man. If it had been an English article such evidence would be admissible.

SERJEANT SULLIVAN: If your Lordship thinks it will be of any assistance to you, by all means.

MR JUSTICE CROOH-JOHNSON: I do not think I can shut it out, can I?

SERJEANT SULLIVAN: Very well, my Lord.

MR SIADE: Perhaps I might repeat my question. What would those passages which you have just read, coupled with the words ending in "stina" convey to a Czech about General Prohala? A. Any Czech in London who reads this article has to make these conclusions, that General Prohala has done something - "prohalovstina" is not quite correct - that he has attempted to create a schism which could have been very prejudicial to our common liberation movement. There are also some other attempts which are spoken about here, and it is suggested that those attempts have been made with party ambitions or personal intentions, personal and party ambitions.

MR JUSTICE CROOH-JOHNSON: The difficulty I feel about it is that the witness is purporting to be answering for the Czech people generally who read this article. Perhaps you will ask him about what he thinks himself.

CROSS-EXAMINED by SERJEANT SULLIVAN

- Q Where were you at the time of Munich? A. In England.
- Q When did you leave your own country? A. I left my own country in October, 1938.
- Q That was after Munich. Did you take an interest in the politics of your own country while you were there? A. Yes, indirectly.
- Q Did you take any part in the political life of your country? A. No, no direct part in the political life of my country.
- Q But you took an interest in political affairs and studied them and have done so since, have you not? A. Yes, I have done what I could.
- Q We may as well face the facts. What part of Czechoslovakia did you come from? A. I am a native of Moravia, and I am a Professor of the Charles IV University at Prague, and a Member of the Czech Academy.
- Q Was there in Czechoslovakia and, as I shall show you, outside of it some agitation for the division of Czechoslovakia between Czechs and Slovaks? A. Outside of Czechoslovakia?
- Q No, inside it commenced. Was there an agitation for the separation of Czechs and Slovaks? A. As everybody knows there were some tendencies of that kind.

Professor P. Dvornik: Cross-exd.

- Q Was Dr. Benes very strongly opposed to that? A. Yes.
- Q Were you a supporter of Dr. Benes? A. Yes, as almost all Czechs.
- Q What? A. I was a supporter of Dr. Benes as the President of the Republic and as the Minister of Foreign Affairs.
- Q You acknowledged his position, but were you not opposed to his policy personally? A. In many respects, yes. *As a matter of fact*
- Q On the question of Czechs and Slovaks were you in favour of the autonomous Slovaks? A. I do not know what you are driving at. These are political questions. If I am put under examination as to my particular opinion, why should I be, my Lord?

MR JUSTICE CROOM-JOHNSON: I do not know. It is unusual when an interpreter is called, but this is an unusual case perhaps. Let me see if I can put it in some form which will not hurt anybody's feelings. You know of the agitation for giving the Slovaks in Czecho-Slovakia some sort of separate position, and you are asked whether, in so far as you took any interest in that sort of thing, you were in sympathy with their having it. It is not quite a political question and it is not suggested, as I understand it, that you were engaged in political agitation.

THE WITNESS: Would you repeat your question, my Lord?

SERGEANT SULLIVAN: My Lord has put it to you, were you in sympathy with what I may call the Slovak movement? A. I was in sympathy with the Slovak Catholics, of course, as a Czecho-Slovakian and as a Catholic.

- Q I do not want to pursue that. I just want to get to the history of the time. Was the Slovak movement supported by the Polish Foreign Minister, Colonel Beck? A. Which movement, there were several.
- Q Was the idea of a separate Slovak authority assisted by the Polish Foreign Minister, Colonel Beck? A. I cannot answer that question because I should have to see some documents. I have not seen any special documents that there was any official support for a special Slovak movement before 1938.
- Q But in 1938 are you not aware that there was no disguise about it that Colonel Beck was in favour of a separate Slovak authority? Were you not then aware of it? A. I was not in Czecho-Slovakia. I was for the fuller right of the Slovaks in the Czecho-Slovakian Republic.
- Q I had passed from that. I asked you whether the agitation to that end had the open support of Colonel Beck, the Polish Foreign Minister? A. I do not know.

SERGEANT SULLIVAN: You do not know that. That is a perfect answer.

MR JUSTICE CROOM-JOHNSON: There seems to be a certain amount of ambiguity about this. Of course, an autonomous Slovakia within the area of the Czecho-Slovakian Republic is one thing.

SERGEANT SULLIVAN: Yes, Home Rule.

MR JUSTICE CROOM-JOHNSON: A separate State of Slovakia at that time is another thing.

SERGEANT SULLIVAN: Yes, my Lord.

MR JUSTICE CROOM-JOHNSON: It was not quite clear to me which you were putting to this gentleman. I rather gather that is one of his difficulties. As a Czecho-Slovakian he feels that one thing might be right and the other wrong.

SERGEANT SULLIVAN: And he is perfectly right, within or without the empire. Some of us have experienced that consideration elsewhere (To the witness): What I am coming to is this: Were not the supporters of Slovak autonomy - you say it would be within the Czecho-Slovakian State - assisted by the Polish Foreign Minister? A. I do not know.

Q You do not know? A. How could I know?

Q Very well. Now let us see what happened. You have studied the matter. There came Munich and then the occupation of Prague. You knew that the Plaintiff here had gone to Poland, did you not? A. Yes.

Q You knew that Dr. Benes, who had been in America - I will try and use a neutral expression - had at once sought to put himself at the head of a liberation movement? A. I do not think so. I have been here in London, and at the beginning there was no leader of the movement.

Q There was no leader, but did you not hear of the movement headed by Dr. Benes and supported by the Ambassadors and Councillors of the Czecho-Slovakian State in foreign countries? Did you never hear of that? A. At the beginning there was no Mr. Benes. I was here in London and I know very well that there were several separate movements. Mr. Benes came afterwards.

Q In the confusion that existed there were several movements all intended to be directed to liberation? A. Yes.

Q And General Pechala in Poland was organising an armed force to assist the Poles. You knew that, did you not?

A. Yes.

Prof. F. DVORAK:
Cross-examiner.

- Q There was this gentleman Kahanek; he was an opponent of Dr. Benes, was he not? A. Yes, he seemed so; not always.
- Q But he, as my friend has told us, had written a book contrasting Dr. Benes with Colonel Beck as a friend of the Slovaks, had he not? A. I do not know anything about this book.
- Q Did you never read this book? A. No, never.
- Q But you know he was opposed to Dr. Benes? A. Yes; but many people were opposed to Dr. Benes, even in Czechoslovakia.
- Q So you say, and so a great number of people have said, a great number of people were opposed to Dr. Benes -- quite honestly opposed? A. Yes.
- Q They thought that he was going the wrong way about liberation? A. Yes.
- Q He thought he was going the right way -- or do not you admit that? A. Ask Mr. Benes.
- Q You would not admit the honesty of your opponent whoever it is? A. Yes, to a certain extent.
- Q Now let us see what other people there were. Dr. Benes was at the head of the National Committee, was he not? A. But who has put him at the head of the National Committee?
- Q Assume that he assumed that office himself without anybody putting him there. He became head of the National Committee, did he not? A. The thing is not as simple as it seems. I was, fortunately or unfortunately, not mixed up in those small things, because I was here in London. After Munich and during the occupation by Hitler of Czechoslovakia, I was one of the very few Czech people who were in London. I myself went immediately to the Legation and urged our people at the Czechoslovakian Legation to do all they could to resist the occupation by Germany, and I succeeded; but the only thing at this time they could do for our Liberation Movement was to stay at our Legation.
- Q I do not want all this. I just want the fact. There was some criticism of Dr. Benes by a number of Czechoslovakians was there not? A. The enormous majority of Czechoslovakians; there was a very small minority who was for Benes after Munich.
- Q Apart from the National Committee of which Dr. Benes became the head or claimed to act as the head, had there been a Prime Minister by the name of Hodza? A. Yes, he was in London.
- Q And did this gentleman become President of another Liberation Committee called the National Council? A. Yes.
- Q That was a rival body to the National Committee? A. As I know the aim of this Hodza Movement was to form a one united Czechoslovakian body which could really represent the whole Czech and Slovak Nation and fight as a real representative of the whole Czech and Slovak Nation for the liberation of the Czechs and Slovaks. They said that the Movement of Mr. Benes did not represent the whole of the Czechoslovak Nation. That is what Mr. Hodza has done.

Q You went a little too far, but you did give me some information; that Hodza was claiming that Benes represented only Czechs; and Hodza was the champion of the Czechoslovaks, was he not? A. Of the Slovak people?

Q That was one of the differences between the two bodies. A. Mr. Hodza was the representative of the Czechoslovak Republic, and he had acted here in London.

Q The British Government dealt with the rival party.

MR JUSTICE CROOM JOHNSON: You are both speaking together on a matter which is not so simple to me. What this gentleman has said so far is that the body which President Benes was presiding over did not, according to Mr. Hodza's idea, represent the whole Nation? A. Yes.

MR JUSTICE CROOM JOHNSON: What the constituent parts of the organisation were I know not at the moment.

SERGEANT SULLIVAN: The accusation against Dr. Benes was that his was a Czech Government, was it not; Hodza said he was all for the Slovaks, did he not? A. He was also for the Czechs. There were two Committees as far as I remember. The Czech National Committee and the Slovak National Committee, and these two Committees made a union and became a Czechoslovakian Committee of which Mr. Hodza (I was not a member of this Committee, but I knew about its existence) was at the head of the Committee, and his aim was to force the members of the other Committee to make a big body which really would represent the whole Czechoslovakian nation.

MR JUSTICE CROOM JOHNSON: I gather from all that that he is not agreeing with you, Sergeant.

SERGEANT SULLIVAN: You see we are not trying here whether Godlin was the friend and not Short. All I want my Lord to appreciate is that there were a number of Movements to get the Germans out of Czechoslovakia, and a number of them were hostile to Dr. Benes. I only want to ask you one other question: did you appreciate that any action by Colonel Beck to segregate Slovaks and Czechs in two different Armies would be quite opposed to Dr. Benes' wishes. A. I do not know about what Mr. Benes has done.

Q I will not ask you any more now. A. I know very well there was a separate Movement in Slovak which became more violent after the Munich Crisis; but as the whole policy had brought about catastrophe there was a general opposition against Dr. Benes among the Czechs and Slovaks, and after that moment the Slovaks became anti-Czechoslovakian --

MR JUSTICE CROOM JOHNSON: Do you know one way or the other whether in Poland after Munich and before the outbreak of the war there was any setting up of separate Czech and separate Slovak bodies of troops? A. After Munich, my Lord?

MR JUSTICE CROOM JOHNSON: Yes. A. After Munich Mr. Prehala does something in Poland and the whole Nation regarded it as the first thing done for the liberation of our Nation.

Q Were there separate Armies, if that is the right word, of Czechs and Slovaks in Poland or any separate bodies of troops, as we have here, Welsh, English, Irish and Scots Regiments?

Prof. F. Dvornik: Cross-ex.
Re-examined.

SERGEANT SULLIVAN: Would you look at the Decree. I believe that the Plaintiff wanted to organise one body.

MR JUSTICE GROOM JOHNSON: Yes.

SERGEANT SULLIVAN: What Colonel Beck raised was two Legions; the Plaintiff wanted to organise one.

MR JUSTICE GROOM JOHNSON: "The Czech and Slovak Legions are to be constituted". Is there a language difficulty - I do not mean the difficulty we all have in making ourselves acquainted with Czech, but as between Czechs and Slovaks is there a language difficulty? A. There is a difference. The Slovak language is just on the way to become an independent language, but the Slovaks used the Czech language for their literature till the end of the 19th Century; after that period they started to have their own literature and wrote in their own language. Both languages are very similar. Myself I used to preach in Czech to the Czechs and Slovaks and they understood me well. I heard the confessions of Slovaks and Czechs when I was a priest in Paris for many years; and I had no difficulty.

Q Is it like the Scandinavian languages? A. I believe they are more similar. I am not a real linguist, but I have studied them. It is more similar than Polish and Czech, much more similar.

Re-examined by MR SLADE

Q You have said, I think, the majority of people after Munich was in opposition to Dr. Benes. Can you tell us the date or approximately the date when Dr. Benes resigned the Presidency of Czechoslovakia? A. I do not remember the exact date, but it is very easy to find out.

Q You can take the date from me, and I will prove it. Do you remember it was just after Munich? A. Yes.

Q Rightly or wrongly there were people who took the view that Dr. Benes had chosen an unfortunate moment to resign the Presidency of the Republic? A. Yes; many people thought that it would have been better if he had resigned before.

Q Do you know whether he removed himself entirely, and left the country? A. Yes, he became a private person like anybody else. He was a Professor, I think, at a High School in Prague - some High School, I do not know which - a Commercial High School, and he was afterwards appointed Professor at the University. I do not remember that he ever lectured there. He got that position when he resigned the Presidency.

Q So quite frankly the position was that having resigned the Presidency and become a private citizen just after Munich, he resumed the title of President again in England after the Great War had started? A. Yes, that is true.

GENERAL JBY. FRONJA, SWORN

Examined by Mr. SLADE

MR SLADE: My Lord, I have an interpreter here if necessary but your Lordship will probably find it easier to get along as far as we can.

MR JUSTICE GROOM JOHNSON: I think the better plan would be

General Lev. Prohla:
Examined.

to swear the Interpreter at once, then in case of any need the Interpreter can act. (To the witness): If you find yourself in any difficulty in speaking or understanding anything in English, will you say so; and then the Interpreter will be available to help us all out.
A. Thank you, my Lord.

WACLAW JAN PANSKI-SOLSKI was sworn as Interpreter.

MR. SLADE: General Prohla, are you an Army General in the Czechoslovakian Army? A. Yes.

Q Are you at present the highest ranking officer in the Czechoslovakian Army outside the Czechoslovakia State?
A. Yes.

Q Are you at present living at Raris Grange, Milford, Surrey?
A. Yes.

Q I believe at the moment you have been retired some time from the Active List; is that right? A. Yes; I am in enforced military inactivity.

Q Are you in receipt of a subsistence allowance from the Czechoslovak Government? A. Yes, £36 per month and £5 for my wife.

Q Are those the allowances pertaining to an Army General?
A. Yes.

Q I want a few particulars of your Army career. I believe you are 50 years of age? A. 51.

Q In 1916 were you serving as a Lieutenant in the Austrian Army? A. Yes, as a First Lieutenant.

Q I believe you were taken prisoner by the Russians? A. Yes.

Q You have changed sides, so to speak, because being a native of Slovakia you were antagonistic to the Austro-Hungarian Empire, were you not? A. Yes.

Q Were you made, in 1917, a Captain of the Czechoslovak Forces in Russia? A. I joined the Czechoslovak Liberation Movement in Russia and joined the Czechoslovak Legion in 1917 as a Second Captain.

Q Did you command the 8th Regiment which took part in the Battle of Ussurig on the Ural Front? A. Yes, in July I took command of the 8th Regiment and was five months on the Ussurig, and afterwards on the Ural.

Q Were you then promoted to Colonel and given the command of the 2nd Czechoslovak Division in the offensive of Perm in December of 1918? A. In December 1918 I commanded the 2nd Czechoslovak Division in the offensive at Perm.

Q In 1919 were you given the command of the 3rd Czechoslovak Division? A. In 1919 I was in command of the 3rd Czechoslovak Division.

Q I think you left Russia with your troops in July 1920 and then you returned to Czechoslovakia? A. Yes.

Q From 1921 to 1923 did you study military tactics at the Superior Military School in Paris? A. Yes.

General LEV. PRCHALA:
Examined

- Q As a part of your service ? A. Yes.
- Q And in September of 1923 were you appointed to the command of the First Czechoslovak Brigade at Kucumberok in Slovakia?
A. The First Czechoslovak Mountain Brigade.
- Q I believe you were promoted General in the following year, 1924 ? A. 1924.
- Q Was that Brigadier General or what ? A. In this time there was only one grade of General in Czechoslovakia -- only General.
- Q In 1925 were you given the command of the 12th Infantry Division at Ushored in Subcarpathian Russia ? A. Yes.
- Q In 1927 were you made a General of that Division ? A. Yes.
- Q And from 1929 to 1933 were you Deputy Chief of Staff ?
A. Yes, at Prague.
- Q How do you pronounce I-n-g-r ? A. I-n-g-a-r.
- Q At that time was there a General Ingr who was subordinate to you ? A. There was a Colonel Ingr who was in charge of the Operational Bureau of the General Staff.
- Q At any rate, is the gentleman who was then Colonel Ingr, to-day General Ingr, the Minister of Defence of the Czech Government in London ? A. Yes.
- Q And he was subordinate to you at that time ? A. Yes.
- Q I believe it was in 1935 that you were promoted to full Army General ? A. Yes.
- Q And was General Ingr then in command of a Reserve Army Corps in the Army commanded by you ? A. In September 1938 I was in command of the 4th Army in Moravia and General Ingr was in command of the Reserve Army Corps under my command.
- Q Coming to September 1938, I believe, as you tell us, having regard to Munich, or before Munich, general mobilisation of the Czechoslovak Army was ordered -- on the 23rd September 1938 ? A. Yes.
- Q Were you at that time in command of the 4th Army ? A. Yes.
- Q And shortly thereafter in command of the 3rd Army ?
A. After Munich; from the 4th October.
- Q Following upon Munich, of course, demobilisation took place?
A. No, the general mobilisation took place on the 23rd September, Munich was the 29th.
- Q Are you talking about mobilisation or demobilisation ?
A. The demobilisation commenced after Munich in Moravia, and only some few weeks afterwards in Slovakia.
- Q After the demobilisation did you command the Army in Slovakia and Carpathian Russia until the 19th January 1939?
A. Yes, the 3rd Army.
- Q Were you then appointed Minister for Carpathian Russia by the Czechoslovak Government of the 2nd Republic under Dr. Hacks ? A. Yes.

General LEV. PROHALA:
Examined.

- Q I believe you held that office of Minister until the Occupation of Czechoslovakia by the German Army in March of 1939? A. Yes.
- Q I think the actual date, as I caught it, was the 15th March 1939? A. The 15th March 1939.
- Q The moment that the German Army occupied your country, did you make up your mind to go to Poland? A. Yes, at once.
- Q I ought to have asked you this: I believe you now have a son serving in the Czech Forces with the British Army in North Africa? A. My son was serving with me in Poland and now he is in Great Britain; a few weeks ago he came to Great Britain from Tobruk.
- Q I believe you actually crossed the Frontier, did you not, on the night of the 24th/25th May 1939 into Poland? A. Yes.
- Q Did you go to Poland with the intention of raising a Czechoslovak Legion in Poland to fight side by side with the Polish Forces? A. To save the honour of the former Czechoslovak Army.
- Q You took the view, did you not, even then, that the Germans would attack Poland just as they had attacked your own country? A. Yes, I was convinced of it.
- Q Was your object in going to Poland to assist the Polish Forces with a view to the ultimate liberation of your own country, Czechoslovakia? A. I cannot say that because we were too few. The Polish Army was a great and honourable Army -- but to fight together stronger and stronger with the Polish Army for the liberation of Czechs and Slovaks and my former Fatherland.

MR. SLADE: Perhaps this question could be put to him in Czech, if I do not make it clear: Were you in any way concerned with the difference between Czechs and Slovaks or were you solely concerned with raising a Legion to assist Poland?

(The question was interpreted).

SERGEANT SULLIVAN: I am told that the Interpreter is talking Polish.

THE INTERPRETER: Yes, I was.

THE WITNESS: I understand Polish perfectly, my Lord.

THE INTERPRETER: May I explain why?

MR. JUSTICE GROOM JOHNSON: No, you need not explain.
(To the witness): Is it just the same to you whether you speak to him in Polish or in Czech?

THE INTERPRETER: I suppose so.

THE WITNESS: Yes.

MR. JUSTICE GROOM JOHNSON: Could you give us the answer in English then we shall have no question about it.
A. I was only concerned with the raising of the Legion never with any political question in Poland.

MR. SLADE: Would your Lordship be good enough to give me the answer to that question?

General LEV PRCHALA:
Examined.

MR. JUSTICE CROWM JOHNSON: "I was concerned only with the raising of the Legion" (as I heard it) "and never with the position in Poland".

MR SLADE: Before you went to Poland did you discuss your proposal to go there with the Prime Minister General Elias ?
A. At this time, yes, with the Premier Elias, who was shot afterwards, by the Germans.

Q He was murdered by the Germans in 1942 ? A. Yes.

Q Did you go there with his full approval ? A. With his full approval.

Q Who was the Chief of the General Staff in Poland at this time ? A. At this time it was General Stachiewicz.

Q Had he been a Fellow Student with you at the Staff College in Paris ? A. Yes, he was a Fellow Student in Paris from 1921 to 1923.

Q Was he a great friend of yours ? A. He was a good friend.

Q Were you anxious to convey to him the conviction which you felt that Germany would serve his country just as they had served yours ? A. Yes, I was.

Q I believe on reaching Poland you went to Warsaw, did you not ? A. Yes.

Q Soon after your arrival, in the early part of June 1939, did you have an interview with General Stachiewicz ?
A. Yes, I had my first interview with General Stachiewicz at this time.

Q Did you tell him of your conviction about Germany's intention and of your proposal to form a Czechoslovak Legion in Poland ? A. Yes, I did.

Q I believe he was rather sceptical ? A. Yes, he was sceptical.

Q About Germany's intentions ? A. Yes.

Q But he welcomed your suggestion about the Legion and asked you to write a Memorandum about it, and you wrote a Memorandum and gave it to him ? A. Yes, I did.

Q At that time who was the Czechoslovak Minister in Warsaw ?
A. There was nobody.

Q Nobody there ? A. Nobody there.

Q Who had been immediately before the German annexation of Czechoslovakia ? A. Before the German annexation of Czechoslovakia there was Mr. Slavik.

Q I believe after the annexation of Czechoslovakia the Germans called upon the Polish Government to disband the Czechoslovak Legion in Warsaw ? A. Yes.

Q And the Poles complied with that demand or request; is that right ? A. The Minister left for the United States and there remained only a few members of the Staff of the Legation. The Poles were very friendly towards the Czechoslovak Legation.

General LEV PRCHALIA:
Examined.

- Q I want to take this very shortly, because I will leave you to deal with various matters from now onwards in cross-examination; but while you were in Poland did you have several interviews with General Ingr? A. Yes, I had.
- Q And was General Ingr anxious to persuade you to submit entirely to the authority of Dr. Benes? A. Yes, he was.
- Q Finally, did Dr. Benes inform you that if you were prepared to submit to his authority - he informed you through Mr. Slavik, I think? A. Yes.
- Q If you were prepared to submit to his authority he would appoint you Generalissimo of the Czechoslovak Legion in Poland? A. Yes, he did.
- Q I will not go into the reasons now, but eventually you did consent to accept the authority of Dr. Benes; is that right? A. Yes.
- Q And did you sign some document? A. I signed a document of my acceptance.
- Q Thereafter, about the end of August 1939, just before the Germans marched into Poland, did Dr. Benes appoint you Generalissimo of the Czechoslovak Forces in Poland? A. Yes.
- Q As we know, you were equally accepted by the Polish Government and by Marshal Smigly Rydz, who was Generalissimo of the Polish Forces? A. Yes.
- Q I do not think I need ask you anything more except to take you through the libel of which you complain. Just to complete the picture, I believe that the moment the German Forces invaded Poland you issued an Order of the Day to the troops did you not? A. Yes, I did.
- Q But events moved with such rapidity that the Germans occupied Warsaw in a very short space of time? A. Not Warsaw, but we were forced to evacuate Warsaw on the 5th September by Order of the Polish General Staff.
- Q You had not the arms and equipment to resist? A. No.
- Q I believe, in order to assist you further still - or rather to embarrass you - on the 17th September the Russians also took a hand in over-running Poland? A. The Soviet Army entered Poland to find the Minister who was in charge of the political affairs. I was taken prisoner by the Soviet Army with my Chief of Staff, Major Slavik.
- Q Eventually you crossed the Frontier into Roumania and got here after a stay in Paris; is that right? A. Yes.
- Q I just want you to take in your hand, if you would not mind the Statement of Claim, as I read it in English no doubt you can follow the similar passage in Czech? A. I have it in English.
- Q I want to start with the words "There were several attempts to create a schism and to set up an opposition within our Liberation Movement". Do you see those words? A. Yes.
- Q I will read on: "In two cases in Poland and in France all the complications were solved for us by the events them-

General LEV PRCHALA:
Examined.

selves". Now firstly, did you ever make an attempt to create a schism? A. Never.

Q Did you ever attempt to set up an opposition with Dr. Benes or anyone else's Liberation Movement? A. Never

Q Had you anything to do with Mr. Kahane? A. No, he was working in his own way, and I was forming my Legion without any interference from Mr. Kahane.

Q As I understand from what you have already told us, you were forming your Legion with the approval of the Czechoslovakian Prime Minister and with the approval of the Poles.

SERGEANT SULLIVAN: Is that a question in direct examination or is it a statement?

MR SIAD: I thought he told us so. He mentioned the man who was murdered by the Germans in 1942. A. Elias.

Q I will carry on. Were you anything to do with what is called the Beck Regime in Poland? A. No, I was a guest in Poland, and I did not even see Minister Beck beyond what I had to do.

Q To put it generally, were you concerned with politics or with the military situation? A. At this time?

Q At that time. A. No; I was not concerned with politics.

Q I am talking now of between May 24th and 25th of 1939 when you crossed the Polish Frontier, and the 1st or 3rd September when you were appointed Generalissimo of the Czechoslovakia Legion in Poland - in those four months? A. I was not concerned.

Q I will read on a little lower down. "In Paris all our difficulties", now look at the next words, "far more serious than the pitiful attempts to create a separate Liberation Movement in Poland" - had you at any time ever attempted to create a separate Liberation Movement in Poland? A. I created the first Liberation Movement: the first armed Liberation Movement.

Q Was there any other? A. There was not any other Movement at this time.

Q I do not know what time is referred to, but I will ask you this: "In Great Britain a small group of unsatisfied individuals attempted to impose themselves, trying to exploit the more or less justified grievances that held of the leadership in the time when - according to their opinion - the democratic world" and so on; when did you first reach Great Britain? A. In June 1940.

Q At any rate if this article is intended to include you in this, since June 1940 have you ever tried to exploit grievances to get hold of any form of leadership in Great Britain? A. No.

Q Would you mind looking a little bit lower down where it says "It is characteristic that all these shadows which fell on the unity of our second Liberation Movement" - just help me about this, I see the phrase "second Liberation Movement"; when was the first Liberation Movement? A. Before the Great War.

General LEV PRCHALA:
Examined
Cross-examined.

- Q "didn't leave any lasting traces and were always of an absolutely different substance emanating from different groups and tendencies. This proves that they were too obviously grounded in personal or party ambitions or that their objective cause was swept away by timely reforms in our organisation". By what motives were you inspired when you went - (This shall be translated to you).
A. I understand.
- Q - when, on the 24th/25th May 1939 you went to Poland to form the Czechoslovak Legion? A. My only motives were honour, to save and restore the honour of my Army and liberate my Nation from German domination.

Cross-examined by SERJEANT SULLIVAN

- Q Tell me, General, do you approve of Dr. Benes?
(The question was interpreted).

SERJEANT SULLIVAN: No conversation with the witness, please.

MR JUSTICE CROOM JOHNSON: Can you answer that question?
A. If I approve Dr. Benes?

- Q Do you approve of Dr. Benes? A. I cannot understand very well; if I approve Dr. Benes?

Q Yes. A. When, at which time?

MR. JUSTICE CROOM JOHNSON: Now, I think it is.

SERJEANT SULLIVAN: Take it now.

MR. JUSTICE CROOM JOHNSON: Do you agree with him, first of all? A. About what?

SERJEANT SULLIVAN: All right, very well, leave it there. When you went to Poland you have mentioned this gentleman Elias, or whatever his name is? A. Elias, yes.

Q Was he the authority set up after the Germans occupied Czechoslovakia? A. He was Premier of the Government in the Protectorate.

Q That is to say, in the annexed -- A. Yes.

Q After the annexation? A. Yes.

Q Did you know that Dr. Benes had put himself at the head of an Organisation? A. No, Sir.

Q You did not. Did you object to giving obedience to orders of Dr. Benes? A. Dr. Benes resigned from his Presidency on the 6th October 1938. He left his country in the greatest desperation, and I did not suppose that he would try to direct the fortunes of my country again.

Q I think that answers my first question very excellently. When you went to Poland was Colonel Beck at that time the Foreign Minister of Poland? A. At that time Colonel Beck was Foreign Minister in Poland.

Q Did you know that Colonel Beck had been supporting the Germans at Munich - the policy of the Germans? A. I did not know this, because it was an agreement of four great Powers.

General LEV PRCHALA:
Cross-examined.

Q If you did not know it, you did not know it? A. They did not need the support of Colonel Beck.

Q When you went to Poland was it not your intention to organise a single armed body representing Czechoslovakia?
A. My intention was to raise a Legion of Czechs and Slovaks, because at this time there was a Slovak State recognised by many Powers.

Q That is exactly what I want.

MR JUSTICE CROOK JOHNSON: Does that mean this, that it was one Legion or one Army containing both Czechs and Slovaks?
A. Yes.

Q Or separate Armies? A. No, my Lord.

Q One Army? A. One Army containing Czechs, Slovaks and even Rumanians.

SERGEANT SULLIVAN: There was to be, you say, one Army, but there were to be separate Divisions, Czechs in one, Slovaks in another? A. There never was a division between Czechs and Slovaks.

Q I did not ask you that. You have just told me, you say, that several powers had recognised the Slovak Nation.

MR JUSTICE CROOK JOHNSON: No, the Slovak State.

SERGEANT SULLIVAN: The Slovak State as being something separate from the Czech State -- several Nations took that view? A. Several Nations recognised Slovakia.

MR JUSTICE CROOK JOHNSON: That is after -- A. After the 18th March.

SERGEANT SULLIVAN: At the time you went to Poland Colonel Beck recognised the Slovak State, did he not -- the Poles recognised the Slovak State? A. Yes.

MR SLADE: May I suggest it would be better with a foreigner to put one question at a time. The first question was with regard to Beck, and the other was the Poles. He has already said he knew nothing about the Beck Agreement.

MR. JUSTICE CROOK JOHNSON: As I have it at the moment, he says the Poles recognised the Slovak State.

SERGEANT SULLIVAN: Did you notice that the Polish Decree that sanctioned your activity in Poland contemplates not one Legion, but more than one? A. Yes, I noticed it.

Q You noticed that? A. Yes.

Q And did you see that it recognised, that it contemplated, there would be Slovaks in one Legion and Czechs in another Legion? Did not you understand that that was the meaning of the Polish Decree? Inside of the one Legion of Czechoslovakia there would be a Legion of the Czech State, is that right, and a Legion of the Slovak State?
A. No, no Sir, a Legion of Czechs and a Legion of Slovaks?

Q Yes. A. There was not a Czech State at this time, it was a Protectorate and we were only refugees, Czechs or Slovaks.

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General LEV PRCHALA:
Cross-examined.

Q I think you answered that the Slovak State had been recognised as a State? A. Yes.

Q Did you recognise the Slovak State as a State?
A. De facto. The Slovak State was de facto a State.

MR JUSTICE CROOM JOHNSON: I do not quite understand this question. I can understand a foreign Power recognising a State or not. There may be deficiencies in my knowledge or my upbringing, but I do not understand an individual saying he recognises a State, nor do I think it matters.

SERGEANT SULLIVAN: I do not mean he was a diplomatic person; I mean in his own mind.

MR JUSTICE CROOM-JOHNSON: Do you mean by your question that he accepted it?

SERGEANT SULLIVAN: He accepted it.

MR JUSTICE CROOM-JOHNSON: And was going to stick to it or was going to work against it.

SERGEANT SULLIVAN: Accept it is what I meant. When you said you recognised de facto a Slovak State, did you accept that as being the basis on which you would conduct yourself?
A. I was willing to fight Germany in all circumstances; even if Czechs were not, I was willing to fight.

Q That does not answer the question I put to you. There were, as you have told us, Slovak refugees in Poland and Czech refugees in Poland? A. Yes.

Q Were the Slovaks in Poland in your opinion separate people from the Czechs? A. They were Slovaks.

Q They were Slovaks? A. Yes.

Q A separate Nation? A. A separate Nation.

Q The Slovaks were a separate Nation, and being a separate Nation were they to have their own Regiments and Divisions?
A. In my mind the Decree of the President of Poland was only formal; it was only to form a force that he had recognised the Slovak State. Poland was forced to put on the paper Czech and Slovak Legions, but I am sure that nobody in Poland thought that there would be two Legions because there were Czech and Slovak Legions under my command.

MR JUSTICE CROOM JOHNSON: If you want to develop this I think we had better do it tomorrow morning.

(Adjourned till tomorrow at 10.45 a.m.)

S E C O N D D A Y

MR. LEV. PROHALA, Recalled.

CROSS-EXAMINATION continued by SERJEANT SULLIVAN

Q I am not going to occupy much more of your time and I hope that you appreciate that there is nothing personally hostile in being asked questions. You will understand my position as your own. I just want to ask one or two questions. Did you object to the claim of -- to use a neutral expression -- the Benes Party that you should render unconditional obedience to them? A. When?

Q When you went to Poland and started the scheme of organizing a force there. When the Benes Party made representations to you did you object to unconditional obedience?
A. Yes.

Q Did you consider that the direction of the Movement in Poland should be left in your hands? A. I was sent by my nation-----

Q There is a rule of unconditional obedience here that you should answer the question. I did not ask who sent you or anything. I asked did you wish that the leadership and direction of the Movement in Poland should be left to you?
A. I had no political intentions and no political ambitions. My only intention was to create a fighting force.

MR L. PRCHALA; Cross-exd.

Q Having executed that manoeuvre, will you answer the question. Was it your wish that the conduct of the Movement in Poland organising the fighting force there should be left in your hands? A. I did. I organised there the fighting force.

MR JUSTICE CROOK-JOHNSON: I suppose that is an answer, is it not. If in fact he did it, he must have intended.

SERJEANT SULLIVAN: Yes. (To the witness): It was your force. You objected to the interference of the Benes Party with your plans, did you not? A. Not on the whole, only concerning the organisation of the fighting force.

SERJEANT SULLIVAN: You objected in part, we may take it, to the interference of the Benes Party with your plans?

MR JUSTICE CROOK-JOHNSON: I want to understand what that means. There are two senses in which that may be right. One is that they were interfering with what you regarded as the soldier's job and the other that they were interfering in some political sense? A. Yes, my Lord. They did not want the creation of the Legion or fighting force in Poland.

Q You say they did not want it? A. They did not want it.

Q And you did? A. Yes, I did, my Lord.

Q Is it in that sense that you are telling the learned Counsel that you objected to---- A. ---- to any interference with the creation of a fighting force against Germany.

SERJEANT SULLIVAN: You can refresh your memory with your diaries if you wish to answer this question. Did you at one point make up your mind that if the Benes Party did not fall in with your plans and the Polish plans, that you would resign and take a Commission in the Polish Army? A. You will allow me to correct you -- not the Polish plans. It was only my plan to create a fighting force in Poland.

MR JUSTICE CROOK-JOHNSON: Before we deal with that difference between you I should like to see how far he goes with you.

SERJEANT SULLIVAN: Certainly, my Lord.

MR JUSTICE CROOK-JOHNSON (to the witness): Were you at one time contemplating resigning your Commission as an Officer of the Czechoslovak Army after you arrived in Poland? A. I once told General Ingr if there will be no Legion of Czechoslovak in Poland I am resigning and I will enter the Polish Forces as a simple soldier.

Q When you say as a simple soldier, you mean as a Private? A. Yes, my Lord.

SERJEANT SULLIVAN: I want to call your attention to your own memorandum in your diary of the 23rd June, 1939. I will read the translation supplied to us by your solicitors. Is this a correct copy of your own memorandum: "At 6 p.m. talk with General Ingr. He tries to persuade me again to accept the principle of unconditional obedience and asks me to specify precisely my point of view. Here it is: I recognise everyone who will be at the head of the resistance but I shall remain in Poland and I want to work there in accordance with sensible general directions if London recognises neither my work" -- now note the next words --

"nor the wish of Poland".

MR JUSTICE CROOM-JOHNSON: Had you not better finish the sentence?

SERGEANT SULLIVAN: "I shall resign and join the Polish Army".

A. Yes. It was in a certain way a wish of Poland to help us, to help Czechs and Slovaks to create an army or legion to put right what he could not at home.

Q That was what Mahanek was preaching too, was it not? You knew him? A. Yes.

Q He was also preaching that the salvation of Czechoslovakia was in letting the Poles help them? A. Yes, and he was right.

Q Rather than Dr. Benes. His book was contrasting the two principles of Colonel Beck helping you or Dr. Benes? A. At this time it was only Poland which could help us. There was not any Czechoslovakia and there was not any President of the name of Benes. At this time he was in the U.S.A. as a University Professor.

Q You will understand I am not saying you are wrong. We do not take sides one way or the other in this Court. You may have been quite right. I only want to get the facts. Now I want to know, in view of all that, what is your objection to the Movement in Poland being called after your name. It was your Movement, was it not? A. I do not understand.

MR JUSTICE CROOM-JOHNSON: There are two questions there. Do you mind putting the second one first?

SERGEANT SULLIVAN: The Movement in Poland was your Movement? A. The creating of an Army, yes, it was my work. It was not a political Movement. It was, first of all, a real military Movement.

Q What is your objection to that Movement being called by your name? A. I have no objection, because the 8th Army is called after General Montgomery. The Army in Poland was called after the General heading this force.

Q There is only one more question I want to ask you. Was that Movement favoured rather by the Slovak Party than by the Benes Party? A. Would you kindly repeat your question

Q Was your Movement in Poland supported by the Slovak Party that was opposed to Dr. Benes? A. I had nothing to do with the Slovak Party which was opposed to Dr. Benes. I only had to do with Slovaks and Czechs who were willing to fight.

MR JUSTICE CROOM-JOHNSON: Do you mean by that that you dealt solely with individuals who were refugees in Poland? A. Yes, my Lord, with people who came to Poland to fight against Germany.

SERGEANT SULLIVAN: I was not suggesting that you were a member of a Party. What I asked you was did you find that your scheme was more popular with Slovaks who desired to be separate from Czechs? A. I do not know. Perhaps my intentions to fight Germany were more popular with the Slovaks and even with the Czech Party because there were in Slovakia many people opposed to the German yoke.

MR L. PRCHALA: Cross-exd.

MR JUSTICE CROOK-JOHNSON: Just let us see that I have your answer right. I understand that you do not know whether your Movement was more favoured by Slovaks than by Czechs?
A. No, my Lord.

Q But that is not quite the question, whether your Movement was more favoured by Slovaks than by the Benes Party. As far as you knew, were the Benes Party in Poland or where were they. Where was the Benes Party at this time, in Czechoslovakia?
A. At this time there was not any Benes Party, my Lord.

Q If that is right, it solves my difficulty.
A. There was only Dr. Benes in the U.S.A. and some of his followers abroad from home.

SERGEANT SULLIVAN: You say they did not deserve the name of a Party who were in command of the Army on the Polish frontier at the time of Munich?
A. No, I was in command of the 4th Army which was on the former Austrian frontier.

Q You must have known that at the time the Germans marched into the Sudetanland Poland marched in on Czechoslovakia, did she not?
A. It was a separate agreement made between, Dr. Eduard Benes and the Poles and is not signed by Parliament.

Q But the Poles were in occupation of part of your country?
A. They got it voluntarily, they did not make it by force.

Q Do you now perceive at all events that any Party formed for the restoration of pre-Munich Czechoslovakia might think that your Movement in Poland was disruptive of that idea. Do you follow me?
A. Yes, I follow you, sir. I do not suppose it, because all Movements for liberation of Europe from German occupation, from Nazi terror, is in favour of any people and not only of the Czechs.

RE-EXAMINED by MR G.C. SLADE.

Q You told us, I think, that Dr. Benes resigned the Presidency of Czechoslovakia on the 5th April, 1939?
A. Yes.

Q Your country was overrun by the Germans we know on the 15th March, 1939?
A. Yes.

Q And the period that we are discussing is your activities in Poland between the 24th and 25th May, when you crossed the border and went to Warsaw, and the commencement of the present war so far as Poland is concerned on the 1st September, 1939?
A. Yes.

Q What position was occupied by Dr. Benes, so far as your country was concerned, between May and the 1st September, 1939?
A. I did not know it rightly because he was in the U.S.A. I heard that he was a Professor at a United States University.

Q So far as you know, was he authorised by anyone to place himself at the head of any particular liberation movement?
A. I did not think so. There were some former officials of the Czechoslovak Legation at the Consulate in the United States who elected Dr. Benes at this time the leader of a body.

MR L. PRCHALA: Re-examined.

- Q On the 31st August or the 1st September of 1939 did Mr Slavik come to see you at your office? A. Yes.
- Q He was the Czech Ambassador in Warsaw? A. Yes.
- Q Was it on that occasion that he produced to you a letter from Dr. Benes? A. Yes. I do not remember exactly the date of the day but it was either the 30th or 31st August. He came to me in my office and produced a letter from Dr. Benes.
- Q Was that the letter that you told us you ultimately signed and handed back to him again? A. Yes. In this letter Dr. Benes presented himself as chief of the liberation movement elected by all the ambassadors and men of importance abroad and gave me an ultimatum to sign to join this body and to be subordinate to him.
- Q Did you say that he told you that Dr. Benes had the support of all the leading men? A. Yes. Later on I found out it was not true.
- Q At any rate, that is what you were told by Dr Slavik as the emissary of Dr. Benes on the 31st August or the 1st September? A. Yes.
- Q You then at any rate believed it to be true? A. I believed it was true.
- Q And in fact you did sign that letter, did you not? A. I signed that letter.
- Q As a result of your signing that letter did Dr Benes recognise you as being in command of the Czechoslovak Legions in Poland? A. Yes. By this letter I was put in command of all the Czechoslovak forces in Poland and in the same letter Mr Slavik, the former Minister in Warsaw, was designated as the political representative of this Movement in Poland.
- Q Serjeant Sullivan asked you whether you objected to the movement bearing your name. Suppose for one moment that it bore your name in this context; suppose it was a separate liberation movement. Do you object to the statement that you were inspired to take the line that you did by personal or Party ambitions? A. Never, sir. This fighting force was called the Legion of Czechs and Slovaks in Poland and never the Legions of General Prchala. If someone called this fighting force after General Prchala, it was not his private opinion, it was nothing official. I had never ambitions that the fighting force should be called after my name. My only wish was to fight.
- MR SLADE: Did you think it would satisfy any personal ambition to enlist in the ranks of the Polish Army? Perhaps that is a matter of comment. That is all I desire to ask, my Lord.
- MR JUSTICE CROOK-JOHNSON: (To the witness) Would you just tell me this. The statement in this document is "Kahankovstina a prehalovstina zhasla v Polsku", I hope you follow me as nearly as I can get it. Do you object to the expression "stina" following your name? A. Yes, my Lord.
- Q I do not know that it really matters a great deal, but I would like to have your opinion about it. What does the

MR L. PRCHALA:

use of your name with that addition of "stina" after it convey to your mind? A. Only what is harmful and bad.

Q In other words --- A. Evil.

(The witness withdrew).

MR SLADE: That is my case, my Lord.

SERGEANT SULLIVAN: I have to submit first on behalf of the Defendants that this action, on the Plaintiff's own evidence, must be dismissed. First, before I get to the plea of fair comment, I most respectfully submit there is no libel here. You have not got the whole article but you have sufficient before you-----

MR JUSTICE CROOK-JOHNSON: Which branch of the problem that I have to face are you submitting that upon at the moment, the capacity of the words to be defamatory or their being defamatory in fact?

SERGEANT SULLIVAN: The capacity of the words to be defamatory in this context. They are not capable of a defamatory meaning. Alternatively, if capable of a defamatory meaning, they are defamatory of the Plaintiff in his personal capacity. The words complained of, apart from the context, are the words that your Lordship is able to pronounce and I am not. As the somewhat eloquent and revelatory first witness said, all that they mean is Kahaneism or Prehalaism and they are stated in the context. "Kahaneism and Prehalaism nuisances" is how they have translated it. It certainly does not mean nuisances. The one word that the eloquent and holy gentleman did not introduce into his definition of what they meant was that; they were significantly absent. If you take "Kahaneism and Prehalaism died off in Poland with the Beck regime", all that means is Kahaneism was the scheme and theory propounded by Kahane and Prehalaism was the movement and scheme and policy advocated by General Prehala. We have stated that they died off in Poland with the Beck regime before they grew into a real schism.

MR JUSTICE CROOK-JOHNSON: Would you apply your mind to the last three or four words of that sentence. Are you submitting that to accuse a man of a schismatic tendency is necessarily incapable of a defamatory meaning, because I think those words as at present advised are a suggestion that those two movements were schismatic in tendency but that they died off before they grew into a real schism, that is to say, before they had done their work. Do you say that to say that of a General in the Army is incapable of a defamatory meaning?

SERGEANT SULLIVAN: Yes, my Lord. You may have perceived - although the General in the Army strenuously disclaims acquaintance with politics, nevertheless does manifest political views quite openly. To say of any man that his political views are schismatic with regard to the Party to which he belongs or the Movement to which he belongs is not defamatory of that man. If his opinions are at variance with his Party, so far from being defamatory if he expresses them, if he fails to express them and hypocritically accepts the doctrines in his Party in which he does not believe rather than separate himself and his followers by proclaiming their difference - that is not defamatory. The word "schism" I am afraid has been appropriated by the Theologians as having a very dreadful meaning in their law, but

"schism" in politics is the commencement of every movement. To have a schismatic political tendency, so far from being defamatory I should say is some sort of a compliment in days where machine-made politicians are all supposed to be exactly in conformity with the same stamp.

MR JUSTICE CROON-JOHNSON: One difficulty I feel about that is this, following your argument. I have not heard of any Party that I might call the Prehala Party at all. As far as I have heard up to now, there was only one person who was engaged in this effort, and that was the Plaintiff. If it had said Liberalism might have a particular tendency and then a particular Liberal comes forward and says "I am a Liberal" and that is what I am saying about him, I could understand it. But I have not heard that there is any Party of Prehalaism, except that the writer of this article refers to something which he calls -- I am going to take the literary gentleman's evidence about that -- Prehalaism.

SERGEANT SULLIVAN: Yes, my Lord, I agree that is the meaning of it. My argument does not depend on the Party. It is all the stronger if it is a man who is certainly starting what must be a political act, namely, the organisation of the citizens of one country within the boundaries of another country. That is Prehalaism. The fact that it is only a one man show emphasises the fact that Prehalaism is the proper designation. When Mr Juggins M.P. starts a new Movement, the Party from whom he has deserted says: "This is not any great new doctrine of any kind started by any man of intellectual opinion, it is mere Jugginism, it is his own particular form. That is the meaning of "ism", that it is the fad of the particular man and his immediate entourage.

MR JUSTICE CROON-JOHNSON: Assume that is right. Supposing the individual who was addressing the gentleman whom you have called Mr Juggins goes on to ascribe personal motives to him, what then?

SERGEANT SULLIVAN: I am only dealing with the first part first, the meaning of Prehalaism. Prehalaism means that this was not a Liberation Movement as the General says it was. He said "I started the first Liberation Movement", those were his words.

MR JUSTICE CROON-JOHNSON: The suggestion in this article quite plainly is that there was a Liberation Movement and a number of individuals, we will not give them names, some of them in Poland, some of them in Paris and some of them in Great Britain, attempted to create a separate Liberation Movement. That must mean after the first one had started because they are all described as falling on the unity of the second Liberation Movement, which is what I will call for the moment Dr. Benes' Movement. Therefore, it is suggested that all these Movements were posterior in time to the creation of what I will call the Benes Movement. That is the meaning of the article, is it not? He may be right or wrong. It is nothing to do with me whether he is or not.

SERGEANT SULLIVAN: The Plaintiff admitted Dr Benes, although he says without any authority except that of the Ambassador in America, purported to act. He was the person who did purport to act as the leader of some Party. We know that he has now grown into the President and it is an Allied State, recognised by this country.

MR JUSTICE CROOK-JOHNSON: I was wondering what authority Garibaldi had when he started first.

SERGEANT SULLIVAN: My submission is that to call the action of the Plaintiff in Poland, which as you see was at loggerheads with Dr Benes from the start, Prehalaism is not defamatory. You are not saying that it is a Movement of any dishonest kind. A schism among the Theologians is always entirely attributed to the machinations of an evil spirit, but in politics at all events some people can imagine the schism is created by the conscientious convictions of a person who leaves his Party and starts a campaign on his own. The schism of Mr Joseph Chamberlain is one that we all remember, his second schism. But to say of a man that he has the tendency in politics to assert his own personal opinions and lead a Movement in accordance with them -- that is a schism in the Party to which he belongs but it is not personally defamatory of him. To call it by his name Smithism or Jonesism is no doubt to belittle the Movement and to be derogatory of the Movement that is being conducted as being something that is not worthy of notice. But it is no reflection on the personal character of the man who leaves the Party to start the Movement. Therefore, I say that to accuse a person of conduct which might have developed into a schism of the Movement if it had been persisted in does not say that he created a schism but that Mahanekism and Prehalaism died off in Poland with the Beck regime. The quarrel of the Czechoslovak Government was always with Beck, who wanted to establish an independent State at the far side under the Slovaks with the protection of Poland and thus put the Czechs between two fires. But it died off with the Beck regime before it could grow into a real schism, that is to say, the allegation is that Prehalaism had a tendency to develop into a schism but, before it developed into a schism, with the fall of Beck it died out. What is defamatory in that, because defamation does not mean any disapproval of a person's political schemes or social schemes or his scientific theories. It must mean defamation of his personal character and I say that to attribute to the action of a man, which was political action whether he chooses to face it or not -- he admits that he was taking an action which was a political action. You cannot go into a strange country and start organising individual refugees or those in a strange country, maintaining relations with the Government of that country on your own for the purpose of doing it. That is political action. To say of that action that it fortunately died out before it became a schism is not capable of being libellous and not capable of conveying personal defamation of personal character, because the Court of Appeal has recently affirmed that. Libel is defamation of the personal character of an individual, and criticism of a body or a Party or a policy in these days, a personal attack on an individual in respect of his own character, cannot be made the subject of an action for libel. There had been a rival Liberation Movement led by Mr Hodza. It says in Paris there were difficulties far more serious than the attempts to create a separate Liberation Movement in Poland. There certainly was an attempt to create a separate Liberation Movement in Poland.

MR JUSTICE CROOK-JOHNSON: Do not assume upon the evidence to which I have listened that I find that proved at present. There was an attempt to create a body of troops who were to act with the Polish Army in opposing the Germans.

SERGEANT SULLIVAN: As a Liberation Movement.

MR JUSTICE CROOK-JOHNSON: That that is a separate Liberation Movement or part of a larger one I have got nothing on which I can put my fingers.

SERGEANT SULLIVAN: But that it was a Liberation Movement was declared by the Plaintiff himself.

MR JUSTICE CROOK-JOHNSON: Certainly. The word "separate" is the word that I am calling attention to, a pitiful attempt to create a separate Liberation Movement. The writer is saying that this was something antagonistic, apparently, to a Liberation Movement already in existence. Up to the moment I am pointing out I know of no Liberation Movement which came first at the time when the Plaintiff went into Poland in May 1939.

SERGEANT SULLIVAN: Well, he admitted that on the invasion of Prague, which was the 15th March, 1939, he knew of the activities of Dr Benes in protest.

MR JUSTICE CROOK-JOHNSON: I do not think he did.

SERGEANT SULLIVAN: I have that, my Lord, and I thought he admitted it.

MR JUSTICE CROOK-JOHNSON: He told me over and over again about that. He said "I did not know that Benes had put himself at the head of any organisation. Benes left on the 5th October, 1939. He resigned his Presidency. He left his country in desperation", and then this morning he told me that he went to the United States.

SERGEANT SULLIVAN: I am not concerned with time, my Lord.

MR JUSTICE CROOK-JOHNSON: Time may be of importance because it is not until the 31st August, 1939, according to this evidence, that Dr Slavik produces a letter from Dr Benes, who Slavik said had been elected.

SERGEANT SULLIVAN: Yes, my Lord.

MR JUSTICE CROOK-JOHNSON: Of the Liberation Movement by all the Ambassadors and he gave him an ultimatum to sign in support of it. That is the 31st August, that is the day before the march into Poland.

SERGEANT SULLIVAN: Yes, my Lord. May I respectfully say that this matter of time does not bear on the argument that I have to put forward and I have already quoted---

MR JUSTICE CROOK-JOHNSON: I hesitate to interrupt you, but to my mind the question of time may be all-important as to whether this was an attempt to create a separate Liberation Movement when there was already in existence a Liberation Movement which the writer calls the second Liberation Movement.

SERGEANT SULLIVAN: May I remind your Lordship of this on the question of time. I could have put much earlier entries to him, but in June, long before the march into Poland, things had come to such a head between the Plaintiff and the Benes organisation that he had made up his mind that if Benes would not approve of his conduct and the policy of the Poles he would resign and take a Commission. My friend said he would enter the ranks, but to take a Commission was

what he contemplated in the Polish Army. That was in June, and that was, as you see, the culmination. He admitted that he found that the Benes people, whoever they were -- they called themselves a Liberation Movement and they are now an Allied Government -- were recognised as the representatives of Czechoslovakia by the British Government very early after the declaration of war. They have been since recognised as being a Constitutional Government of Czechoslovakia. They are an Allied Government now. So you see by June the quarrel between Benes and the Plaintiff had reached the point at which the Plaintiff said "I will throw up my relations with Czechoslovakia if they do not recognise my work nor the wish of Poland. If London recognises neither my work nor the wish of Poland, I shall resign and join the Polish Army".

MR JUSTICE CROOK-JOHNSON: The copy provided for me says "should London not acknowledge neither effort". I suppose that means neither my effort, nor the wishes of Poland. I shall resign and join the Polish Army.

SERJEANT SULLIVAN: There is obviously a slight difference in translation.

MR JUSTICE CROOK-JOHNSON: It is the same sort of thing.

SERJEANT SULLIVAN: It is the same thing, but on the question of time you see that is June and not September. So in June there was, as you see, at all events, a difference of two parties or two persons, if you choose to take it as persons. Each was claiming a leadership, but whether right or wrong on that I am on the question of personal defamation. It does not matter for my argument. Time is of no importance to my argument on the meaning of the words, for the meaning of the words does not become personal defamation whether he commenced a Movement without reference to any other or whether he commenced a Movement before another or after another with knowledge of another or with no knowledge of the other. It does not affect a statement that that Movement had a tendency to grow into a schism instead of being truly collaborative. That is all that has been said up to that point. That is a matter of opinion and is not a matter of personal defamation.

Now I want to go on. "In Great Britain a small group of unsatisfied individuals attempted to impose themselves, trying to exploit the more or less justified grievances to get hold of the leadership in the time when - according to their opinion - the democratic world drifted definitely to the extreme left. However, this group didn't grow into an opposition and behaves reasonably and submits itself to the leadership of our liberation movement. The Communists who were temporarily in opposition, are today the noisiest champions of the national unity. An inefficient attempt to create a sort of a 'Slovak separatism' in the second liberation movement, badly miscarried already in France and in Great Britain nothing similar could have had any chance. It is characteristic" -- now these are the words complained of -- "that all these shadows, which fell on the unity of our second liberation movement didn't leave any lasting traces and were always of an absolutely different substance, emanating from different groups and tendencies. This proves that they were too obviously grounded in personal or party ambitions or that their objective cause was swept away by timely reforms in our organisation". I do most respectfully

submit that none of that passage is capable of being defamatory. The statement is that none of these Movements grew into a schism and produced any lasting impression. They were shadows that clouded the Movement for a while and never materialised into anything worse because they really were grounded in personal or party ambitions or their objective cause. Higher up it had said there were some grievances and then it says "their objective cause was swept away by timely reforms". Now take personal or party ambitions. There is nothing defamatory in stating that a man has ambitions. There is nothing defamatory in stating that when he starts a movement or organisation or an action of any kind he has personal ambitions with regard to the leadership of it and the enlargement of it so that this movement will bring him fame and prominence in public life. There is nothing defamatory in that, personal ambition is not a vice. The lack of it may often be a contemptible thing. A man who has not at least the ambition to put his talents to the best use does not enhance himself by failing to be stimulated by ambition if he has the opportunity of service. There is nothing degrading in ambition. Everyone has some personal ambition or else he has no object in life. But to say that a movement of any kind was grounded in personal or party ambitions is not in any sense a defamation of the personal character of the person who has organised that movement. Every man who organises a movement and wishes to control and lead it has the personal ambition of controlling and leading that movement. It is a perfectly honourable and proper thing. How many persons in the Legislature have ambitions to distinguish themselves in order that they may eventually find themselves in the Cabinet and the Government of their own country. Is there anything dishonourable about ambition? - if there is, I fail to see it. Without ambition where would the public service of this country find itself? Personal ambition to distinguish oneself is one of the incentives of public service in every walk of life. There is nothing defamatory about it and as for party ambitions, every party has ambitions, and the object of every party is to realise its ambitions as the object of every man is to realise his ambition in life. Then it says: "The whole of our movement, although it had encountered many difficulties and made many mistakes as a unit presented itself in a very healthy light, because it overcame all its internal crises". There is no personal attack on the personal character of any individual from beginning to end in that.

Now, my Lord, my second argument is that if that were capable of being defamatory in the abstract it is not defamatory of the Plaintiff, reading the whole article together.

MR SLADE: I am sorry to intervene but I do not quite know whether this is a submission of law, because we are now coming to the question of fact. My friend has not yet told your Lordship whether he is calling any evidence.

SERJEANT SULLIVAN: I am making a submission of law.

MR SLADE: It cannot be a submission of law.

MR JUSTICE CROOM-JOHNSON: As I understand, the submission in law is that there is no evidence upon which I can find the second arm which is whether the words are defamatory in fact of the Plaintiff.

MR SLADE: The question whether the words are capable of a defamatory meaning with which the learned Serjeant has just dealt I agree is a question of law. The question whether the words are defamatory must be a question of fact.

MR JUSTICE CROOM-JOHNSON: That is quite right, but that does not preclude the learned Serjeant from submitting that there is no evidence on behalf of the Plaintiff upon which I can find that they are defamatory in fact. It leaves open, of course, the third question: assuming that they are capable of a defamatory meaning, assuming that there is evidence upon which I can find that they are defamatory in fact, are they defamatory in fact? Upon that, as you rightly point out, it seems to me that I may then have to refer to Carpenters case. We have not reached that stage yet.

MR SLADE: It is a matter, of course, entirely for your Lordship, but as your Lordship is sitting without a jury I thought the practice nowadays was not to listen to submissions at this stage unless the other party intimated that he was not going to call evidence.

MR JUSTICE CROOM-JOHNSON: There is nothing to prevent me listening to a submission that there is no evidence. What the importance of it may be I cannot say.

SERJEANT SULLIVAN: May I say at once I am not going to call evidence.

MR JUSTICE CROOM-JOHNSON: That clears the deck, so to speak.

MR SLADE: So that I may not have interrupted in vain, may I assist my friend by saying that I do not dispute that as a matter of law the matters commented on here are matters of public interest.

MR JUSTICE CROOM-JOHNSON: I had better not anticipate what is going to be said about that. When we get there I may want to ask a question.

SERJEANT SULLIVAN: What I have said on the first part of the meaning of the words contains the nucleus of the argument on the second and third and I know that anything I could elaborate will be present to your Lordship's mind. Your Lordship's mind will turn it over in the same way as mine would. Your Lordship has indicated there are two other questions, but they are really developments of what I have said on the first.

Now I come to the third question, and I submit that there is nothing in this article which exceeds what a reasonable man might write about the Plaintiff and his movement. If in fact it is not only capable of being defamatory but in fact is defamatory and is defamatory of the Plaintiff -- all these are prerequisites before you reach the plea of fair comment.

MR JUSTICE CROOM-JOHNSON: Then the first step that one has to look at on this plea is whether the writer is commenting on facts. What I should like to know is which part of this article or of these words do you say are proved facts upon which the writer is entitled to comment, because he cannot set up things which are not facts and then comment upon those.

SERJEANT SULLIVAN: I think I have appreciated that point, my Lord.

MR JUSTICE CROOK-JOHNSON: I am not sure you have.

SERJEANT SULLIVAN: I want to see what are the facts stated and we will take the whole paragraph. "We are used to pay a greater attention to the so-called internal matters of our Liberation Movement", and so forth. Then it deals with critics of the Army, critics of the Air Force, and then there were the statements: "There were several attempts to create a schism and to set up an opposition within our liberation movement". That does not refer to the Plaintiff, but that was true as you have heard. It went so far as to have an opposition organisation of Dr Hodza set up in Paris.

MR JUSTICE CROOK-JOHNSON: Yes. I want to be rather careful about this. It says: "There were several attempts to create a schism". Do you agree or do you not agree that from that moment the writer is proceeding to set out a list of attempts to create a schism?

SERJEANT SULLIVAN: No, my Lord, I do not agree. He says: "There were several attempts to create a schism and to set up an opposition within our liberation movement". He says: "In two cases, in Poland and in France, all the complications were solved for us by the events themselves, as the President foresaw from the very beginning, with certainty and patience". He says that Kahanekism and Prehalaism died off in Poland with the Beck regime before they could grow into a real schism".

MR JUSTICE CROOK-JOHNSON: Now would you stop there. Is he not saying, therefore, that the Kahanek and Prehala things, to use a neutral expression, were attempts to create a schism which fortunately died off before they grew into a real schism?

SERJEANT SULLIVAN: Very well, my Lord, I will accept that.

MR JUSTICE CROOK-JOHNSON: Is he not therefore ascribing something to the party of run-away-ism, if I may use the expression we heard yesterday? The party was attempting to create a schism but they did not succeed. Is that a far too loose rendering?

SERJEANT SULLIVAN: Well, my Lord, take it so. I am quite willing to take that view of it for the purposes of my argument. The facts with regard to that are that certainly after the Beck organisation had intervened as being the real official organisation there was a persistence in Poland, perfectly honest, perfectly chivalrous - a persistence in a course of conduct which might, however mistakenly, be thought to be persistence in a course of conduct which would create divergence in the liberation movement. Accordingly, instead of one movement, you certainly had in Poland for a time, certainly from June onwards, the assertion of what the writer of the article calls the liberation movement and a movement which was an attempt to do something that would create an opposition or a fiction inconsistent with the ideas of what the writer calls the second liberation movement. That is a perfectly fair criticism of what is proved to have been Kahanekism and Prehalaism in Poland.

Whoever commenced first, there was, no doubt at all on the Plaintiff's evidence that by the month of June he was being asked to submit himself to unconditional obedience to the Benes party as being the real authority of the Liberation Movement; and there can be no doubt at all that the Plaintiff resented the authority of that body, resented the claim of unconditional obedience, and went so far as to say that if that was persisted in, and London, from whence the Committee was now operating would not acknowledge the work and comply with the wishes of Poland he would cut loose from Czechoslovakia altogether and become a Polish Officer. It is a perfectly clear comment on that that that attitude and conduct of the Plaintiff was in fact an attempt to create a separate Liberation Movement, and in fact an attempt to create a schism in the second Liberation Movement under Dr. Benes.

Now consider the point of view of the writer of this article who is in favour of Dr. Benes' Movement. You have heard the attitude of Colonel Beck. You have seen -- I thought that the Plaintiff might not have perceived it himself, the position, into which he was manoeuvred in Poland. He went to Poland to organise, I understand, a Czechoslovak Legion to fight against the Germans if the Germans invaded Poland, but he persisted in his Movement in spite of the protest of Dr. Benes conveyed to him when that Movement was being used at all events by Colonel Beck, into drawing the distinction that Beck had always sought to draw between the two States, the Slovak State and the Czech State; and accordingly, when you come to look at the Proclamation of the Polish Government, accepted by the Plaintiff, he was willing to work with them according to their wishes, as his own Memorandum shows; there is no appeal to Czechoslovakian soldiers, there is a separate appeal to Czech soldiers and Slovak soldiers.

MR JUSTICE CROOK JOHNSON: Separate in this sense, that they are individually referred to in the document, but not as States; they are referred to as Nations.

SERGEANT SULLIVAN: Yes.

MR JUSTICE CROOK JOHNSON: I thought there was a distinction between them. When Mr Benes wrote his book "The Two Nations" he was not thinking of the two States in England, he was thinking of two Nations in England, the rich and the poor.

SERGEANT SULLIVAN: I am afraid I have not conveyed what my point is to your Lordship.

MR JUSTICE CROOK JOHNSON: What I am pointing out is that according to the translation which I have, there is no reference in these documents to a Slovak State; there is a reference to a Slovak Nation, which may be quite a different thing.

SERGEANT SULLIVAN: It may be quite a different thing, but what I want to point out is this; there is no reference by Poland to a Czechoslovak existence at all. It was not to be a Legion of Slovaks and a Legion of Czechs. The Liberation Movement was a Liberation Movement for Czechoslovaks; and Colonel Beck is taking advantage -- I thought at first that the Plaintiff might have been unaware of it -- he was taking advantage of this Movement to support his own views of the separation of Slovaks and

Czechs. The General is now, as he told you in answer to his Counsel, a General of the Czechoslovak Army. There is no reference to Czechoslovaks by the Poles, and while Colonel Beck was in office there never would be. Beck wanted two separate States and the General used the word -- he said the separate Slovak State had been acknowledged by a number of Powers, and he accepted that. There was not a separate State, and the Liberation Movement is not a Liberation Movement of two separate States; the Government which is now functioning in London is the Czechoslovak Government. If the General is their General -- he says he is a General in the Czechoslovak Army, it is not by accident that Colonel Beck is appealing to a Czech soldier and a Slovak soldier; there was no Czech Army, there was no Slovak Army in contemplation of the Liberation Movement. There was to be a Czechoslovak Army, and Beck would have seen to that; and that is the meaning, I respectfully submit, of the Plaintiff's reference to resigning and becoming a Polish Officer. What was he to resign? He was to resign his Commission as a Czechoslovak Officer and become a Polish Officer, and as a Polish Officer he would be free to accept the Polish view of the separation of the Slovak State which, as he said, had been acknowledged by a number of Powers, namely Poland and Germany, and he accepted that, accepting that condition was entirely at variance with the whole spirit of the Czechoslovak National Liberation Movement.

Accordingly I most respectfully submit that this criticism, if it was defamatory -- if you can find in it some reference to the personal character and personal conduct of the Plaintiff, is not outside the bounds which, on the proved facts of this case, as specified in the article -- this statement of fact turned out to be true. This Movement of the Plaintiff in Poland was a Movement which in fact accepted the separation of the Slovak State as a Movement in which the Slovak party ambitions might be a success. The separatist party might be assisted by this Movement of the Plaintiff; that is to say, it was a Movement which, whether he knew it or not, was in accordance with the Party ambition of the Separatists. That it was a Movement in which his own personal ambitions were to be realized is perfectly plain, and he confesses -- and it is not in the smallest degree a reflection upon him that he confesses it -- it was his Movement, it was his desire, that he should be left in control of the Movement; if he could not control it as a Czechoslovak he was willing to become a Pole and control it there. It was his Movement, it was his ambition, that he should lead Czechs and Slovaks against the Germans when the day came: strictly honourable, perfectly chivalrous and perfectly right from his point of view, but quite inconsistent with being a Czechoslovak, quite inconsistent with being under the command of any authority which would speak for the Czechoslovakian Republic, and, therefore, if that was his conscientious view, that that was better in the long run for his country, than to comply with the views of Dr. Benes, very well; let us respect the opinion of a man who is willing to surrender his position in the high command of his own country because he thinks in the long run he will serve them better under a foreign flag. There is no personal reflection in that, but it is a perfectly fair criticism of his persisting in such conduct that it should be said it came to an end, he made his peace with the Czechoslovak Government, as it became. They were first recognized as the Czechoslovak representative body, and are now the

Czechoslovak Government, an Allied Government and he remained their Officer.

MR JUSTICE GROOM JOHNSON: I suppose I can take judicial notice of the fact that the Czechoslovak Committee or Government in London is ----

SERJEANT SULLIVAN: An Allied State.

MR JUSTICE GROOM JOHNSON: Is recognised by the British Government. Can I take judicial notice of the date as from which that operated?

SERJEANT SULLIVAN: If you wish I will call a witness.

MR JUSTICE GROOM JOHNSON: No, you need not call evidence about it.

SERJEANT SULLIVAN: It came in two stages.

MR JUSTICE GROOM JOHNSON: You can agree at the Bar as to when it was.

SERJEANT SULLIVAN: It came in two stages: first, the recognition of the National Committee as being the body which could speak on behalf of Czechoslovakia.

MR JUSTICE GROOM JOHNSON: It is sufficient for my purpose to know was that after the outbreak of the war between the British Commonwealth and Germany?

SERJEANT SULLIVAN: Oh yes.

MR JUSTICE GROOM JOHNSON: That is sufficient for my purpose. That is the first stage.

SERJEANT SULLIVAN: That was the first stage of recognition.

MR JUSTICE GROOM JOHNSON: That is right. I will call that, for convenience, the recognition of Dr. Benes' Committee; everybody understands what I mean by that.

SERJEANT SULLIVAN: I can give you the date of that.

MR JUSTICE GROOM JOHNSON: The exact date does not matter so long as it was after the outbreak of the war.

MR SLADE: I opened that the provisional Government, not the National Committee, was the 24th July 1940.

MR JUSTICE GROOM JOHNSON: That is the provisional Government.

MR SLADE: Yes; I do not know that I can say more except that it was some time after the war.

SERJEANT SULLIVAN: In November 1939 they were recognised as a representative of the State; and then they were recognised as the provisional Government and are an Allied Government at the present moment.

What I was presenting to your Lordship was that for the purpose of fair comment your Lordship has got, to a large extent, to put yourself in the position of the writer and see what the circumstances are for the purpose of seeing what deduction a reasonable person might draw from these facts. I am emphasising these things -- I am

not here on behalf of the Czechoslovak Government, two private individuals are sued. The Benes who is the Defendant is a nephew of the President of the Czechoslovak Republic. The actual Defendant, who is in an official position which keeps him in America, is not here. He was the writer of the article, but you can see it is a defence of the Czechoslovak Government, but if they sued the President, of course, they could not proceed in this Court, he is, in the contemplation of law, the head of an Independent State, and they could not sue him in this Court.

MR JUSTICE CROOM JOHNSON: If the thing you have to show has been proved, the fact must surely be this -- I am not seeking to set aside your argument, which I shall have to consider later; this reflects upon this particular Plaintiff -- I put that on one side for a moment -- what went on in Poland was an attempt to create a schism. That is one fact.

SERJEANT SULLIVAN: Yes.

MR JUSTICE CROOM JOHNSON: That is not opinion; and the other fact is that that attempt was too obviously grounded in personal or party ambition. Never mind whose or whether an individual's or anybody's. Those two facts have to be proved as facts. Where do you say there is any evidence that what I have heard about the attempt to create a Foreign Legion in Poland was done as part of an attempt to create a schism.

SERJEANT SULLIVAN: The creation of a schism, once you have an act done or persisted in, is at variance with the policy of the National Committee by a person purporting to act for the same ends and objects as the Committee, and the attempt to persist in that policy by a person who is opposed to the Committee is an attempt to create a schism.

MR JUSTICE CROOM JOHNSON: That is all very well, you know, but it may have that result. If it succeeds, it may have that result, but it does not follow that because somebody takes a differing view of policy and seeks to get his policy adopted, that his intention is to create a schism. He may be trying to preach in order to convert the other side.

SERJEANT SULLIVAN: That is what every schismatic does.

MR JUSTICE CROOM JOHNSON: And a lot of perfectly good people who are not schismatics, and that seems to be a question of fact. The writer seems to me to be saying that these people intended, and were attempting to create a schism, it may be they were not attempting to do anything of the sort, but thought that was the best way of getting unity. I do not know.

SERJEANT SULLIVAN: Several attempts to create a schism and to set up an opposition within our Liberation Movement.

MR JUSTICE CROOM JOHNSON: Certainly.

SERJEANT SULLIVAN: Remember, my Lord, that the statement of fact may be a matter of fair comment. A statement of fact can be a matter of fair comment even if that statement of fact (I am referring to the Judgment of Lord Justice Greer in Morris against The Express) even if that statement of fact is a statement that

the conduct of a person is fraudulent, the Lord Justice in his Judgment, said that the libel did mean that the conduct of the Plaintiff was fraudulent ----

MR JUSTICE GROOM JOHNSON: I can follow that quite well; and supposing the statement of fact in that case had been: "Mr So and so was attempting to commit a fraud" would you say that was opinion?

SERJEANT SULLIVAN: That is exactly what the Lord Justice said on the facts might be a fair comment. Fair comment is not confined to opinion. I most respectfully submit that is a fallacy. You may deduce a fact as fair comment, and accordingly a person is presumed to intend that which is the natural consequence of his action, and taking your Lordship's translation of it fully, and accepting it, this gentleman, if he was doing a thing which, if persisted in would cause a real cleavage in the ranks -- if he was prepared to persist in it and give up his National Commission and take a foreign Commission in order to persist in it -- if the Movement that he sets his heart on was in fact of a schismatic tendency -- I am afraid we are too much impressed by the word "schism" -- if it had that tendency, then he must intend, in his attempt to carry it out, to attempt the natural consequence of his acts. If the Poles separated the refugees into separate units, Slovaks and Czechs, acknowledging the Slovak unit as being the citizens of one State ----

MR JUSTICE GROOM JOHNSON: That is going back again to what I pointed out to you just now. There is no document before me which indicates that there was any attempt by the Plaintiff or anybody connected with him, to acknowledge Slovaks as members of a separate State. A man may be a member of a Nation and nevertheless not be a member of a separate State. England and Wales is one of the best illustrations of that which I know of. I should be very sorry to think that by accepting some of my Welsh ancestry I was setting up a State in Wales.

SERJEANT SULLIVAN: The Plaintiff himself in terms told us, when I pressed him about this, that a number of Poles had acknowledged Slovak as a separate State -- had "recognised", was the word he used, the Slovak as a separate State. May I remind your Lordship that when I put to him: Did you recognise it as a separate State, your Lordship said that the word "recognise" with regard to a private individual would not be correct; and you put it to him; What is meant is: Did you accept that? And his answer was: Yes, I did accept it de facto.

MR JUSTICE GROOM JOHNSON: Yes, I have that.

SERJEANT SULLIVAN: So you see, my Lord, that a Czechoslovak General should be giving any assent of any kind to the splitting up of his country politically -- that he should give any assent or acceptance to that, was absolutely inconsistent with a Movement for the restoration of the Czechoslovak Republic. So, my Lord, it is not a difference between Nations and States, it was, in truth, assent to the Polish and German recognition of the Slovak separate State, not Nation, but State. In view of that, my Lord, if he was determined to go on with a Movement which was based -- based and had to be based -- upon the acceptance of that fact, if he was going to continue his collaboration

with the Poles, who had recognised the separate Slovak State, the tendency of any official of the Czechoslovak Government to collaborate on that basis with anybody, was an attempt to set up a Movement that would have resulted in a schism and obviously had the tendency to promote the separatist agitation on behalf of a Slovak State.

At all events, all I have to say is that it was not outside the function of a person writing about it to assert it in that form. I most respectfully submit that was true. He may not have intended, and he may not have had it present to his mind, but he must be presumed in law to intend it if the natural consequence of his action would be the promotion of the Separatist State and the division of Czechoslovakia into two different authorities. He must be presumed to intend it. His attention is called to the fact of the opposition of the National Committee to it and he says he will go on with it, and if necessary, he will cease to be a Czechoslovak General. I most respectfully submit that that statement, if you take it as a statement of fact, is true, and my submission is that as a statement of fact it is a deduction, and a very proper deduction, from the policy of Kahanekism and Prochalaism. When you read the whole thing, what is said is: There are attempts to create a schism and set up opposition; in two cases all complications were solved by the events, and they died off with the Beck Regime. This complication died off with the Beck Regime before it had grown into a real schism; but if this gentleman had resigned and said, "I am not a Czechoslovak any longer, I will become a Polish Officer", when he became a Polish Officer he must fall in with the directions of the Polish politicians who are in office. He has to take his ideas from Colonel Beck. He would have created a schism. Here was a distinguished General of the Czechoslovak Army assenting to Beck's policy, he was under Beck's command; where would the National Liberation Movement for the unity of the Czechoslovakian Republic be? He may not have seen the result of his action, but when he says: "I will go on, and he is attempting to create a schism, he is attempting to get his refugee compatriots to consent to his point of view and to repudiate the point of view of the National Committee. He is attempting to set up what would be a schism if it succeeded and went on to the bitter end. Fortunately it did not, and fortunately this gentleman remains a Czechoslovak General in the Czechoslovak Army. He is neither a Czech nor a Slovak. (Laughter). I do not understand that laughter.

MR JUSTICE CROOK JOHNSON: If I hear any more laughter in Court I will have the Court closed. This is a serious discussion; it is not a theatre.

SERGEANT SULLIVAN: He is the General of an Army of the United Nation, a single Nation. That would be absolutely inconsistent with his carrying on an agitation in collaboration with those who had declared that there was not a united Nation and that there was a separate State ruled by the Slovaks. Accordingly, my Lord, I most respectfully submit, once you look at this, not with a microscope or attempting to try and spell out something, all that this says is what was perfectly fair deduction from the facts alluded to, namely, that this agitation of Kahanek and Prochala in Poland was in truth an agitation for the creation of a schism, or it would have grown into a schism if it had been persisted in and if the Beck Regime

had not come to an end. Your Lordship has that whole paragraph in front of you, and I most respectfully submit that the whole paragraph is a perfectly clear criticism of the state of affairs that arose partly out of the conduct of the Plaintiff who may have been animated and no doubt was animated, with the very best of motives, but motive and intention are two totally different things, and the motive of the person who kills another to save that other from pain, does not exclude the intention of committing murder, however sincere that motive may be. There is no attack on the Plaintiff's motives, there is no attack on the Plaintiff's honour; there is a criticism of his political wisdom and his failure to collaborate and his reservations when he does purport to collaborate with the National Committee, which I most respectfully submit are no personal libel. Secondly, if true, it is contained in what is a fair comment on the fact, on the policy that is there called Prochalaism, or whatever it is; but at all events it is fair comment on the fact of the Plaintiff's agitation and Movement by whatever name you call it, whether a Liberation Movement or a Prochala Movement. That is all I have to say, my Lord.

MR JUSTICE GROOM JOHNSON: Let Dr. Dvornik come back into the box again for a moment.

MR SLADE: I understand, my Lord, that Dr. Dvornik is not here.

MR JUSTICE GROOM JOHNSON: Very well.

SERGEANT SULLIVAN: I have a gentleman here as translator, and if it will assist your Lordship I will call him.

MR JUSTICE GROOM JOHNSON: It may raise some difficulty if you call any evidence.

SERGEANT SULLIVAN: It might, my Lord.

MR JUSTICE GROOM JOHNSON: I suppose I can call evidence myself.

MR SLADE: You can call him to assist your Lordship on any matter.

MR JUSTICE GROOM JOHNSON: Perhaps that will be better.

MR SLADE: I should not raise any objection at any time or any criticism if that were done.

SERGEANT SULLIVAN: This gentleman is subject to the objection that he is an Official Interpreter in the Czech Foreign Ministry.

MR JUSTICE GROOM JOHNSON: I do not think that what I am going to ask him will raise any difficulty.

ROBERT AUTY, Sworn.

MR JUSTICE GROOM JOHNSON: What are you? A. I am at present a Translator in the Czechoslovak Ministry of Foreign Affairs

Q Where do you live? A. I live in London.

Q Your address? A. 55, Cambridge House, Kennington Park Road

Mr ROBERT AUTY;
Examined.

Q Would you just take that article in your hand for a moment and my blue pencil. Fold the other half of it, and you will see the part we are discussing. There is a Czech word there which is translated as "schism". Would you put square brackets round that word in that newspaper so that I may know exactly which word it is that is translated as "schism".
A. I have done that, my Lord. (The witness had marked the word "roskol").

MR JUSTICE CROOM JOHNSON: Show that to learned Counsel first of all. (The paper was handed to Counsel).

MR JUSTICE CROOM JOHNSON: Is that a separate proposition?
A. Yes, my Lord, it is a separate proposition.

Q What is the meaning of it in Czech? A. Of the word "roskol"?

Q Yes. A. I should say "schism" is a correct translation.

Q What do you understand by that as a Czech word? A. Well, it means a difference in views or policy.

Q A split? A. Yes, a split.

Q It is sometimes described as a state of divided allegiance; would you agree with that? A. I would not call it a state; I should say it is rather the action of bringing about the difference.

Q The action of bringing about a divided allegiance. A. Yes.

MR JUSTICE CROOM JOHNSON: Would either of you like to ask this gentleman any question upon that?

SERGEANT SULLIVAN: No, my Lord.

MR SLADE: No, my Lord.

MR JUSTICE CROOM JOHNSON: Thank you, Mr Auty.

MR SLADE: Serjeant Sullivan's first point is the point of law that the words were incapable of a defamatory meaning.

MR JUSTICE CROOM JOHNSON: You need not trouble about that.

MR SLADE: The second point was, as I respectfully submit, a question of fact: as to whether they were in fact defamatory.

MR JUSTICE CROOM JOHNSON: Of the Plaintiff.

MR SLADE: Of the Plaintiff. Of course the Plaintiff is mentioned by name here; his name is mentioned and I am therefore unable to understand the Serjeant's reference to personal libel.

MR JUSTICE CROOM JOHNSON: Supposing that in an article somebody who writes it says something which is like Gladstoneism (I am going back a long way) would that have enabled the late Mr. Gladstone to have brought a libel action?

MR SLADE: No, my Lord, not unless it was in relation to the activities of Mr. Gladstone and was of a derogatory character. The word "ism" may be used as in "spoonerism",

which is quite colourless, or it may be "Hitlerism", which I should very strongly object to if it was applied to myself.

MR JUSTICE CROOM JOHNSON: Take "Hitlerism"; I suppose we most of us have in mind Hitler. Supposing somebody said there had been a massacre of the people in a particular locality and the writer of the article said, "This is only another example of Hitlerism", would that entitle our enemy, Adolf Hitler, to bring a libel action?

MR SLADE: Certainly.

MR JUSTICE CROOM JOHNSON: You seem to have no doubt about it, but I confess I have a great deal of doubt about it. Of course you may be right in saying it depends upon what the rest of the article says, but put simpliciter, as I put it I should have thought there was a great difficulty.

MR SLADE: I do not want to appear unduly dogmatic, of course.

MR JUSTICE CROOM JOHNSON: I am inviting you to be.

MR SLADE: The word "ism" as a suffix to a proper name, depends entirely for its meaning upon the propensities which the world knows to be attached to the man bearing that name: Spoonerism because of Mr Spooner; Hitlerism because of Hitler. If I use the word "Annaniaism" everyone would know, probably what I meant, and it would be defamatory applied to anyone, in my respectful submission. Now what is said here -- and this is also germane when I come to the third point -- may I take the "shadows" first of all; "It is characteristic that all these shadows which fell on the unity" -- unity" -- "of our second Liberation Movement were grounded in personal or party ambition". Now what were the shadows which we know failed to reach the substance only because they were nipped in the bud by the German Occupation of those countries? What were the shadows which were grounded in personal or party ambitions? Two of them are specific. The first one is that there was an attempt to create a schism. Firstly, that involves two things: one, that there must be in existence, at the time of the attempt, an existing Liberation Movement. You cannot separate from something which does not exist, and therefore the words "attempt to create a schism" postulate that there shall be in existence what has been called the second Liberation Movement (the first one being in the Great War) "to set up an opposition within our Liberation Movement"; that is to say, again, it postulates that there must be an existing Liberation Movement or you could not attempt to set up an opposition within it. The so-called Prehalism started on the 24th/25th May 1939, and came to an end at least before November 1939 when, for the first time, our Government gave recognition to the National Committee; and there is not a tittle of evidence, the learned Serjeant has given you a lot of interesting reminiscences about Continental countries, but where it can be found in the evidence before your Lordship passes my comprehension. Certainly there is not a vestige of evidence of the existence of any Liberation Movement of any kind whatsoever at the time of the so-called Prehalism. It then described them as "pitiful attempts to create a separate Liberation Movement" -- pitiful attempts; and it then says that "they fell on the unity of our second Liberation Movement". That must mean that it was an attempt to create disunity; and again you cannot have a unity of something which does not exist.

Lastly it says, "What was his motive for attempting to create disunity in a Movement which had as its purpose the liberation of his own country"; and the answer given is self aggrandizement. My learned friend the Serjeant says there is nothing wrong in ambition. Of course there is nothing wrong in ambition, ambition is a highly attractive and necessary quality, but when I subordinate the interests of my country to my own personal self aggrandizement, surely, to use the definition of libel, that would tend to lower me in the estimation of right thinking members of society. Could it be said that anyone reading that article would think otherwise than is said in the Innuendo, which I respectfully submit to your Lordship is a very reasonable one, not couched in extravagant language, as so many of them are, that this was an attempt to disrupt the united and harmonious operation of the Czechoslovak Liberation Movement designed to liberate the country of which he was the Senior Army Officer at the time.

Your Lordship has heard the evidence of, if I may so say, that charming witness, Professor Dvornik, who went into the witness box first of all, a most fair-minded witness, because the moment when we were discussing about the terms of one answer he at once withdrew it because he thought he might have done an injustice. He said that to a Czech the words convey a derogatory meaning, and if applied to an Army General, more. He went on to say, as I understood him, it was a play on the word "Přehati" which, when used to a General, was an unpleasant word; but be that as it may, he said the words to a Czech would definitely convey a derogatory meaning, and no tittle of evidence has been called to suggest otherwise. The whole of this translation was agreed with the exception of that one passage, and I merely called that witness to prove the passage which was not agreed. They heard the evidence as to what Czechs would understand it to mean, and they have not called any evidence to contradict it.

That is all I desire to say to your Lordship on whether the words are defamatory in fact. With a Jury I do understand the difference between words being capable of being defamatory and words being defamatory in fact, because Jurists swallow camels and do not strain at gnats; but when one comes to appear before a Judge sitting alone, it is quite too difficult for a learned Judge to differentiate between those two matters, because I should respectfully have thought on the first point on which your Lordship has said you need not trouble me, the point was almost unarguable, and that being so, and there being no evidence to contradict the Plaintiff's witness, Professor Dvornik, could it possibly be said that anyone reading those words could think they were complimentary to General Přehala.

My learned friend says it has not only got to be defamatory, but defamatory of the Plaintiff. Of course it has, but the whole point is that there were two nuisances, one was Přehala and the other was whoever was responsible for the opposition in Paris. And his motive in doing that was personal ambition -- whose ambition? No one else but Přehala is referred to, it could only be Přehala. Přehala was the General who was in supreme charge of the whole of the Liberation Movement in Poland, and no one dreams of suggesting otherwise. Your Lordship may remember what General Přehala wrote in his own words in the letter on page 51, and your Lordship remembers the terms of the reply: that it was not a personal attack on him. I do not under-

stand the difference in a personal attack. If anyone says of me, I am inspired by sordid motives, does it matter to me whether they say it of me as a Barrister or as a private individual? If it was an action for slander that would be a material consideration, but in an action for libel it is quite irrelevant. I only mention this because Serjeant Sullivan referred to the case in which both he and I were engaged, but that has no bearing on this case, because the whole point in the Nutford case was that Nutford's name was nowhere mentioned in the libel, and it was held that there was no reference to him or to the young Russian Party.

Now I pass to fair comment, and there I quite fail to understand the argument. Your Lordship remembers the form of the Defence. It is in paragraph 5. It is a rolled up plea that the "words, in so far as they consist of statements of fact" -- therefore, I assume there were statements of fact -- "are true in substance and in fact, and in so far as they consist of expressions of opinion, are fair comment made in good faith" and so on, on the said facts. Before this can be a fair comment part of this article must be fact and part of it must be expressions of opinion, and the expressions of opinion for the purpose of a rolled up plea have to be, as your Lordship knows, fair comment on those facts.

Now what are the statements of fact in this article? In my respectful submission your Lordship mentioned them correctly when you suggested to Serjeant Sullivan that the two statements of fact might be firstly that what went on in Poland was an attempt to create a schism -- that could not be anything else, but a statement of fact -- and the second one that it was grounded on personal or party ambition. I should have thought (it is a matter entirely for your Lordship) that that also could only be a statement of fact.

MR JUSTICE CROOM JOHNSON: I am not sure about that, but it may be either.

MR SLADE: That was the very next thing I was coming to.

MR JUSTICE CROOM JOHNSON: It may be that somebody sets out various things relating to a public man and says: This shows that what he did was founded on personal or party ambition. In that case it would clearly be opinion.

MR SLADE: I was going to take it as being either. Of course, if there were a Jury, if there were no doubt about a particular statement of fact or an expression of opinion, your Lordship would rule as a matter of law which it was. If there was any doubt your Lordship would leave it to the Jury to decide. Here, of course, both matters are within your Lordship's province, and I am proposing to deal with it (1) upon the basis of a statement of fact and (2) an expression of opinion. Be that as it may, you cannot have an opinion hanging in thin air. Supposing it is an expression of opinion, it is an expression of opinion on what? On the statement of fact that there was an attempt, by the Plaintiff to create a schism.

SERJEANT SULLIVAN: No.

MR JUSTICE CROOM JOHNSON: I cannot see any other fact relating to Prehalsiam other than that. That is, in so far as that statement of fact about that Movement, I will call

it, to use a colourless expression, pointed at or expanded by the other statement of fact about the other places.

MR SLADE: And there can be no doubt, because it is the characteristic of all those shadows.

MR JUSTICE GROOM JOHNSON: If this passage disapproves that they were grounded and so on, if that fact was being stated, where is there any opinion expressed at all?

MR SLADE: Your Lordship means "if all these shadows" is fact.

MR JUSTICE GROOM JOHNSON: If this disapproved that they were obviously grounded, is that fact?

MR SLADE: There is no opinion at all.

SERGEANT SULLIVAN: Surely that is a deduction from the previous sentence, and deduction is comment.

MR SLADE: Whether those words, which have no bearing on this case, might be comment, like the words "an inefficient attempt to create a sort of Slovak separatism" -- I suppose whether it is inefficient or not, the adjective might be comment, but so far as this case is concerned, there would be no complaint at all if the statement about motive was a statement of fact. In my respectful submission, whatever it is there is no room for the plea of fair comment here at all.

MR JUSTICE GROOM JOHNSON: Are you going on to suggest that the comment cannot be fair?

MR SLADE: Yes, my Lord.

MR JUSTICE GROOM JOHNSON: If you are going on to suggest that, I think I had better listen to it at 2 o'clock.

(Adjourned for a short time).

MR SLADE: When your Lordship adjourned I was dealing with the imputations of motive according to whether it was a statement of fact or an expression of opinion. If it is an expression of opinion, the only statement of fact upon which it could be based is the one, the Plaintiff's alleged attempt to create schism. In my submission, it simply is not a statement of fact. First of all, upon our evidence it does not exist; secondly, the onus lies upon the Defendant to prove the truth of the facts upon which his comment is based. He has not done it. There could not have been a schism because there was nothing to separate from, in other words, the sole fact upon which the comment purports to be based, upon the assumption that it is comment, is simply completely false, or the Defendant has not proved it to be true. My evidence is that it was in fact false because there was no question of there being any liberation movement at all in existence during the period from May to the 1st September, 1939. Dr. Benson resigned, of course, in October, 1938. Furthermore, supposing the statement of fact that there was an attempt by the Plaintiff to create a schism was true? Assume against myself that it was true, and assume, therefore, that the Plaintiff did attempt to create a schism. The comment which I am assuming for the purposes of my present argument is a comment which is an imputation of an unworthy or disgraceful motive. I respectfully agree that the defence of fair comment extends to the imputation of disgraceful motives. Serjeant Sullivan quoted the Morris case which went to the House of Lords.

MR JUSTICE CROOK-JOHNSON: It was the case of the median.

MR SLADE: My recollection is it did go to the House of Lords, and that the Defendants were Associated Newspapers. I do not think it is reported in any of the official Law Reports, and I do not remember upon what point it did go to the House of Lords. I did refresh my memory by looking at Fraser, and it merely quotes it as in "The Times" newspaper, 1933, and as being "H.L.", which means House of Lords. But be that as it may, no case, so far as I know, has ever decided that you can have an imputation of an unworthy motive constituting a fair comment when there are no facts whatever to support the imputation. In other words, supposing I am a candidate for Parliament and the sole fact that is proved against me or admitted is that I am a candidate for Parliament. If anyone said: "Mr Slade is seeking the suffrage of the electors of Oswaldtwistle and I think they ought to be warned that his sole motive for doing so is that the moment he gets into the House of Commons he is going to vote for every measure which he thinks will assist him to get on to the High Court Bench and vote against everything which he thinks may not help his ambition for self-advancement" -- if the man said something of that kind it would be an entirely unwarrantable imputation of a motive to me from the bare fact that I was seeking the suffrage of the electors of Oswaldtwistle. Your Lordship may remember that at one time it was thought that the defence of fair comment did not extend to the imputation of disgraceful motives at all, and in fact Lord Justice Fletcher Moulton in Hunt and the Star Newspaper went so far as to say so. Lord Justice Buckley did not take that view and I think the law is now well settled that it does with the qualification which I have just put. I cannot do better than refer your Lordship to a short passage from the judgment of Lord Justice Buckley which appears in the footnote to the current edition of Mr Justice Fraser's book on page 107. Perhaps I ought to read the

whole thing. In a note on Merival and Carson, Mr Justice Fraser said: "In Hunt v. Star Newspaper Co. Ltd. Lord Justice Fletcher Moulton said that this passage in the judgment of Lord Esher, Master of the Rolls, which is set out below, is applicable to literary criticism, but not to the imputation of disgraceful motives to an individual. The decision of the question before the Court of Appeal in Hunt v. Star Newspaper Co. did not turn on this point. Imputations of official misconduct had been made against the returning officer at a municipal election, and it was contended in the Court of Appeal that such imputations could not be fair comment". Now this is the passage: "Indeed", Lord Justice Euckley, "Comment...may convey imputations of a bad motive so far as the facts truly stated justify the imputation. It is for the jury to say whether the facts justify the imputation or not. The question for the jury is whether the comment is in their opinion beyond that which a fair man, however extreme might be his views in the matter, might make honestly and without malice, and which was not without foundation. The defence of fair comment extends to the imputation of motives". In practice, where disgraceful motives have been imputed to the Plaintiff, there are, no doubt, very few cases where literary criticism could be protected by a plea of fair comment, whilst, on the other hand, where the conduct of public men is attacked, such a plea might not infrequently succeed, but it is respectfully submitted that if the matter commented on is a matter of public interest and the comment is honest and otherwise fair and not without foundation, the comment will be protected under a plea of fair comment, although it imputes disgraceful motives to the plaintiff". Then the learned author sums up the position on page 112 where he says "Having regard to the judgment", and so on.

MR JUSTICE CROOK-JOHNSON: Is it a question of law for the Court to determine whether it is fair comment or fact which is being stated in the article? I am a little pressed in this case by the words "That proves" so-and-so. If it had been "In our opinion that shows", that would be one thing. Why it not be whether the writer is purporting to assert a fact or purporting to express an opinion?

MR SLADE: Yes, my Lord. I think the word "proves" is definitely a verb which would tend to the construction that it was a statement of fact rather an expression of opinion.

MR JUSTICE CROOK-JOHNSON: Assume it is opinion. You say there is nothing in what has gone before if those words refer to the plaintiff. There is nothing to justify an accusation of an unworthy motive.

MR SLADE: Your Lordship has my point precisely. If I may take the illustration which I gave facetiously just now, supposing in point of fact in addition to my being a candidate for Parliament I was elected and the facts were that I had voted in favour of certain measures and had abstained from voting or had voted against others, it might very well be that my conduct in so doing might justify an honest person -- not necessarily a reasonable person -- taking the view that I had been actuated by some secondary motive. But the mere bare statement that I was a Member of Parliament would not warrant such an imputation, and if I may apply that to this case, assuming against myself for the moment that I attempted to create a schism, I may have attempted to create a schism from the most patriotic and loyal motives or from the most corrupt motives or motives of pure self-interest. To say as a pure statement of fact "You created a schism and we are going to ask the Court to infer from that" - it is not inference, it is pure conjecture - that I must have been animated by some base motive in my submission shows that there is nothing which could possibly warrant such an interpretation.

MR JUSTICE CROOK-JOHNSON: What would you say to this.

An article says a man left certain employment hurriedly on a particular day and it was found his petty cash was short by £3.10. 0. On another day, says the article, he left some other employment and there, too, his petty cash was found to be short by £5. This proves that he is nothing more or less than a thief. What is that, fact or comment?

MR SLADE: It must be fact.

MR JUSTICE CROOM-JOHNSON: I should have thought that was comment and on proof of the fact that he left those two employments and that his petty cash was short, the question then for the jury would be, was that comment beyond that which a fair and reasonably minded man would make?

MR SLADE: I entirely and respectfully agree with the last part.

MR JUSTICE CROOM-JOHNSON: You say that is quite different from this case.

MR SLADE: Yes, my Lord.

MR JUSTICE CROOM-JOHNSON: Supposing the statement had been on the 1st February he left his employment hurriedly and got another job, and on the 10th March he left that employment hurriedly. This proves that, in our opinion, he is a thief. You would say there is no material there on which such an honest opinion could be founded.

MR SLADE: In spite of the words "in our opinion", I would respectfully suggest that is a statement of fact. It used to be considered a well known dodge for avoiding liability to say: "In my opinion Slade is a thief".

MR JUSTICE CROOM-JOHNSON: I shall not attach any importance to that particular form of words "this proves that he is a thief".

MR SLADE: I cannot help thinking that that must be a statement of fact. I, of course, agree that the writer could not prove it. Only a Judge or jury could find out whether he was a thief. But the mere fact that money was found missing being consistent with it either being taken by the plaintiff or taken by someone else, or if taken by the plaintiff not taken with intent to defraud within the meaning of the Larceny Act -- the fact that he was a thief would involve the felonious intent, and I think that must be a statement of fact. Assuming by way of an expression of opinion I am going to say, if I may alter the analogy, that "I was with Mr Slade; I looked for my gold watch. I saw my gold watch was missing and I saw Mr Slade running hurriedly away". I am not going to say for one moment that upon these facts a person might not honestly express the opinion, if it could be an opinion, that I had stolen it because there are facts from which an inference could be drawn by an honest person.

MR JUSTICE CROOM-JOHNSON: He could draw the conclusion that Mr Slade knew more about the watch than I did.

MR SLADE: Yes, my Lord. Then one is getting very near the borderline. But if the sole fact was: "I saw Mr Slade" -- leaving out that he was running hurriedly away -- "in my opinion he was responsible for the theft", then you are leaving out the sole fact from which the inference can be drawn or from which an inference can be honestly drawn.

Although it is "honestly" and not "reasonably", the two are always allowed because if a person has no possible reason the Court is entitled to think that he does not honestly believe. So much for if those words are an expression of opinion. If, as in my submission they are, they are a statement of fact, that is to say "This proves", it does not merely mean "This, in our opinion, proves". "This proves", are the words used, "that they were too obviously grounded in personal or party ambitions". Then, of course, the fact simply is not proved, and I do not suppose my friend Serjeant Sullivan would even suggest it.

MR JUSTICE CROOK-JOHNSON: If it is fact, there being no plea of justification, cadet questio.

MR SLADE: Therefore, I have only to consider the point upon the assumption that it is comment. As I say, summing up my argument, if it is comment, firstly, there is no fact proved upon which it could be based. For that purpose we need only look at the libel. The rolled up plea when applied to the facts stated in the libel, and the only fact stated in the libel, was that there was an attempt to create a schism. That has not been proved; indeed it has been disproved. Therefore the whole basis of the comment goes because a comment cannot be fair which is built upon facts which are not truly stated.

MR JUSTICE CROOK-JOHNSON: You say that the comment must be on the facts stated in the article, but how far can you go into facts which are within the knowledge, I will not say of everybody, but of the writer and of the Plaintiff which are not stated in the article? You see, a great deal of that to which I have listened is not stated in the article at all.

MR SLADE: No, my Lord. Your Lordship has now touched upon a point which one of these days the House of Lords will have to investigate because the rolled up plea is always used -- I certainly plead guilty to having used it on a number of occasions -- in order to avoid the necessity for giving particulars. Everyone knows, and no one knows better than those who plead in these actions, that if you plead fair comment, in the ordinary form you have to give particulars. The whole basis of the decisions which say that you need not give particulars is that the rolled up plea says "quoad fact, true: quoad comment, fair", and if I am to give particulars I am to usurp the functions of the learned Judge or the learned Jury and a jury in deciding what is fact and what is comment.

MR JUSTICE CROOK-JOHNSON: In the words complained of?

MR SLADE: Yes, my Lord. If one looks at the words of the rolled up plea, it must be strictly limited to the article because he says: "In so far as it consists of statements of fact", and then he says "The said facts". So that strictly speaking, in my submission all that the Court is entitled to do is to look at the evidence given in the case, so far as it relates to the facts stated in the libel, to superimpose upon that, of course, any matters of which the Court is entitled to take judicial notice, and that is all. Even the facts of which the Court is entitled to take judicial notice could only warrant fair comment if they are in fact specified in the article, though the Court takes judicial notice, for example, of a date when the particular incident occurred. But to take this liberation movement, if a liberation movement were referred to in the article, the Court might take judicial notice of the fact that the original liberation movement did not commence, so far as

a National Committee is concerned, until October, 1939 and a Government until July 1940. But it would not be entitled to rely on that as the basis for the comment unless that was referred to in the libel itself. My friend kept on saying "So far as it relates to the Plaintiff", imputations can be only imputed to an individual or individuals, and when you talk about Prchalaisr, it is Prchala who is responsible for that shadow, and that is one of the shadows which was inspired by motives of self-aggrandisement. In my submission it can only mean an imputation of an improper motive to an individual. The mere fact, although it is not specified, that other individuals were associated with Mr Prchala and were actuated by the same motives would not prevent Mr. Prchala suing because he is mentioned by name. If, therefore, there were 12 people at the head of the movement and they were all inspired by an improper motive, whether the 12 could sue might be a question of a class libel, but it would be perfectly clear the one who was named could sue because it would be an imputation of and concerning the person whose name was mentioned.

One further word on the issue of damages. I am only asking your Lordship to award such a reasonable sum by way of damages as will make it quite clear to all the Czech refugees in this country -- your Lordship may remember Professor Dvornik said it was read by all Czech people in this country -- that there was no vestige of foundation for this imputation upon him. It was not right to point out that he has been already placed on the Retired List and that he has been insubordinate -- I do not know to whom -- and that the reason for insubordination is simply the desire for self-aggrandisement. It is not right to say that what he sought to do was from these motives and to publish it at those times in a paper of this description concluding with the words, your Lordship may remember "It can be trusted that our people at home", where, of course, this General hopes to return as soon as this trouble is over -- that is a serious matter. Your Lordship is entitled to take into consideration, firstly, the circulation of the newspaper; secondly, the position occupied by General Prchala; thirdly, the person by whom the article was written and his relationship to Dr. Benes and the weight that name would carry. True it is the article was written under the non de plume of "Tenax" and he has certainly been tenacious in the way he has held to the article. Your Lordship may remember that we wrote the letter which obviously bears the stamp of having been written by the General himself asking for the publication of a statement in effect mentioning at the end his willingness in taking no further steps. Your Lordship remembers the answer we got, and he said he would have to appeal to the Court and defend his honour. Your Lordship is also entitled to take into consideration that he gave them the opportunity of publishing a reasonable statement after it had been cleared up. I ask your Lordship to find a reasonably substantial sum so as to make it quite clear that there was no warrant for this imputation.

MR JUSTICE CROOK-JOHNSON: Does the next action in the List arise on the same article?

MR SLADE: Yes, my Lord.

SERGEANT SULLIVAN: Yes, my Lord, and an unnamed individual.

MR JUSTICE CROOK-JOHNSON: It strikes me that there must be a great deal of ground which is common to both actions so far as public events are concerned, at least, and possibly so far as private activities are concerned. If that is so,

I think it would probably save time if I listened to the second case and then give either one Judgment embodying both actions, or else two separate Judgments in which I can refer to persons individually.

SERGEANT SULLIVAN: I agree, my Lord.

MR JUSTICE CROOM-JOHNSON: Then I will put this case in tomorrow as part heard to follow the one which I am now going to embark upon. Is the one that I am about to embark upon likely to finish, so far as the evidence is concerned, today?

SERGEANT SULLIVAN: I do not know what the evidence may be.

MR SLADE: A defendant is frequently in that position.

MR JUSTICE CROOM-JOHNSON: I will put the General's action in tomorrow as part heard to follow the one which it precedes to-day.

MR SLADE: My friend Serjeant Sullivan, said just now that he did not desire to address your Lordship now. The word "now" made me suspicious.

SERGEANT SULLIVAN: I have the right.

MR JUSTICE CROOM-JOHNSON: I do not know that he was saying he wanted to address me in the first action after I had heard the second one.

SERGEANT SULLIVAN: I did contemplate answering the Plaintiff now. I am for a Defendant who calls no evidence. I made a submission which I have heard argued about and I wish to reply to that argument.

MR JUSTICE CROOM-JOHNSON: I had better hear you now.

MR SLADE: I do not object, but my friend is assuming that he has the right to the last word. Whether he can have the right to the last word of reply upon my answer to his point of law, I raise no objection anyhow, but he put in the diary entry of the 23rd January and a translation of ours which is different from theirs.

MR JUSTICE CROOM-JOHNSON: This does not entertain me.

MR SLADE: If your Lordship pleases.

SERGEANT SULLIVAN: With regard to facts, once you get the idea of what these three words mean, words alluding to the doctrines of people or the movements of people or the policies of people, whatever be the rule it is very difficult for any two minds to hit upon a precise definition of the meaning of words because every word has its own evaluation in the individual mind. They are not like mathematical factors which are rigid and comprehensive. Whatever be the meaning of these two words, the reference to the two people in Poland, there is clearly a reference to the activities of those two people. Therefore there is stated as a fact that the activities of those people in Poland died off there with the Beck regime before they could grow into a real schism. In the old days senior Counsel was not allowed to argue a pleading point and I hope that those days will return, for I hate arguing points of pleading when a case has been heard. But those words open as relevant the question of what were the activities which came to an end but which might have developed into a schism. Accordingly the facts stated, namely, that

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those activities had a tendency to produce that again ambiguous word "schism" entitles your Lordship to enquire and ascertain what in fact were the activities that are described to use a common word, as Prohalatism or Mahanekism, as the case may be. Therefore you have to ascertain what in fact were those things so described and whether they were of a tendency if developed to create the circumstances which might result in divided allegiance. I think that was the final view and I say no more on that. That is the question of the investigation of the facts of what took place in Poland and the context in which they did take place to show the tendency of those facts.

The second thing I have to say is, as my friend persistently shuts his eyes to the two words at the commencement of what he calls the motif, "This proves" -- what proves? "It is characteristic that all these shadows, which fell on the unity of our second liberation movement didn't leave any lasting traces and were always of an absolutely different substance, emanating from different groups and tendencies. This proves that they were too obviously grounded in personal or party ambitions or that their objective cause was swept away" - that, my Lord, is deduction, and deduction is comment. I do not have to cite authority for that. Deduction is opinion, and opinion is comment. It is not stated as a categorical fact. It is stated as a deduction from the fact which is proved by the establishment of this body now as a national Czecho-Slovak Government, the Government of an Allied Nation. It is proved that the premise is right, that in spite of the agonies and difficulties of the shock which followed the Hitlerite invasion the cause survived and this proves that the troubles were not fundamental but were party or personal or based on something which was incorrect.

Might I correct a statement of my friend. The Czecho-Slovak publication at the time of this publication was not the official publication of the Government and the Benes, who is the Defendant, was not in any way a Government representative. He was the private Editor of the paper at that time. Later it was taken over as being the national organ of the Czecho-Slovak Government.

(Adjourned to tomorrow morning)

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